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MEMORANDUM

COUNCIL OF ECONOMIC ADVISERS

July 27, 1994

TO: JOE STIGLITZ

FROM: MARK MAZUR

SUBJECT: COMMERCE SECTION 232 STUDY ON OIL IMPORTS

The Department of Commerce was petitioned by the Independent Petroleum Association of America to conduct a study of the national security implications of oil imports under Section 232 of the Trade Expansion Act. Over the past 30 years, Commerce has conducted 21 studies under Section 232, four of which looked at oil imports. All the oil import studies found that the level of imports threatened national security. The other 17 studies found that the imports in question (e.g., bearings, machine tools, uranium, chromium) did not impair national security. Since current levels of oil imports are higher than in previous years, we expect Commerce to find that oil imports threaten national security. In the past, Commerce has looked at the current level of oil imports, the (higher) projected level of oil imports, calculated the oil requirements of the Defense Department, and concluded that high oil import levels threatened national security. It is not expected that the methodology used this time will be more rigorous.

There have been a number of developments since the last Commerce study of oil imports that suggest today's national security may be less threatened by oil imports than in the past. Chief among these is the fact that the Cold War is over. Department of Defense demands for oil can be met from a variety of sources and the potential for a naval blockade of U.S. ports impeding access to oil can be significantly discounted. Moreover, the United States has taken a number of steps to ensure domestic access to oil in the event of a supply shock. These steps include maintaining a Strategic Petroleum Reserve (over 500 million barrels), entering into international agreements regarding oil supply (e.g., the International Energy Administration), and developing diverse sources of oil supply. Finally, development of well-functioning international markets in oil and oil futures helps hedge against future supply shocks.

In general, there is a presumption that trade in a commodity increases national welfare and does not, by itself, impair national security. Therefore, the hurdle for a finding that imports of a particular item threatens national security should be high. Such a finding should result only from a rigorous study of the costs and benefits of trade in that commodity. At this point, it is unlikely that Commerce will conduct such a rigorous study. While Commerce has a December statutory deadline to finish this study, there is some concern that they will rush completion of it and issue their finding earlier (e.g., September).

We should probably try to encourage Commerce to develop a rigorous structure for their Section 232 study, including CEA and Treasury (and perhaps OMB) as part of a methodology "team". We may not be able to stop the string of consecutive findings that oil imports threaten national security, but we should at least insist on methodology that is not embarrassing. I would suggest that you contact the appropriate Undersecretary at Commerce (who I think is Barry Carter, not Ev Ehrlich) and express our concern with the underpinning of this study and our interest in working with them on the methodology. You should be aware that Commerce will not be happy to have the CEA insert itself in the process at this point, and that other agencies might also view this as us stepping into their areas of expertise. The memo sent by Alicia Munnell was not well-received by Commerce and others.

If you want to discuss this further, please let me know.

cc: LT, RW, MN, BC, KO'N, TO'D

SECTION 232 OF THE TRADE EXPANSION ACT

NATIONAL SECURITY REVIEW PROCESS

ISSUES RAISED BY COMMERCE DISCUSSION PAPER

- CAN WE BETTER DEFINE THE LINKAGE BETWEEN SECTION 232 CASES AND THE FOUR DANGERS IDENTIFIED IN THE BOTTOM UP REVIEW?
- CAN THE DEPARTMENT OF COMMERCE METHODOLOGY SUPPORTING SECTION 232 OBJECTIVES BE IMPROVED?
- ARE THERE ADEQUATE AUTHORITIES /PROGRAMS TO INVEST IN ENHANCING OUR TECHNOLOGICAL AND INDUSTRIAL CAPABILITIES?
- IS THE CURRENT INTERAGENCY COORDINATION MECHANISM ADEQUATE?
- ARE THERE LESSONS IN RECENT HISTORY OF NEC AND NSC INTERAGENCY WORKING GROUPS?

THE FOUR DANGERS

- PROLIFERATION
- REGIONAL, ETHNIC & RELIGIOUS CONFLICTS
- MAINTAINING/ESTABLISHING DEMOCRACY ABROAD
- ECONOMIC SECURITY

(BASED ON DOD BOTTOM UP REVIEW)

EVALUATION

- DEFINE SPECIFIC REQUIREMENTS & MILITARY CAPABILITIES REQUIRED TO MEET CONCRETE SCENARIOS (PROLIFERATION & CONFLICT DANGERS)

- ENSURE NEW POLICIES DO NOT INADVERTENTLY UNDERMINE OTHER KEY NATIONAL SECURITY GOALS (DEMOCRACY)

- PAY INCREASED ATTENTION TO LONG RUN INDUSTRIAL AND TECHNOLOGICAL CAPABILITIES IMPORTANT FOR NATIONAL SECURITY (ECONOMIC SECURITY)

- NEW SITUATION: WE FOCUSED ONLY ON MILITARY CONFLICTS BEFORE, NOW WE MUST ADDRESS MAINTAINING/ESTABLISHING GLOBAL DEMOCRACIES AND ECONOMIC SECURITY THREATS

- WE NEED TO ANALYZE THE RELATIONSHIP BETWEEN IMPORTS, VULNERABILITY AND MILITARY SCENARIOS

METHODOLOGICAL ISSUES (I)

- SPECIFIC REQUIREMENTS & MILITARY CAPABILITIES - CAN SKETCH OUT NEEDS UNDER SCENARIOS. MORE COMPLICATED THAN TRADITIONAL DOMESTIC CAPACITY AGAINST DEFENSE REQUIREMENTS FORMULA

- MEASUREMENT PROBLEM: WHERE FEASIBLE RAPID INVESTMENT IN NEW PRODUCTION OR CONVERSION OF OTHER INDUSTRIAL FACILITIES NOT REFLECTED IN TRADITIONAL CAPACITY MEASUREMENT PROCEDURES

- ALSO, MUST TREAT CAPTIVE PRODUCERS IN REASONABLE FASHION

  (eg IBM product for internal use)

METHODOLOGY ISSUES (II)

- NEW PROCEDURE SHOULD ASSESS:
  - •• GIVEN THREAT SCENARIO, IS PRODUCTION CAPABILITY REQUIRED (IS STOCKPILING APPROPRIATE)? DOES CAPABILITY RESIDE IN EXISTING U.S. FACILITIES?
  - •• IF NOT, DOES REQUIRED TECHNICAL CAPABILITY EXIST IN THE U.S., AND
    - ••• CAN INVESTMENT IN NEW FACILITIES BE ACCOMPLISHED GIVEN TIME CONSTRAINTS ASSOCIATED WITH THREAT?
    - ••• OR, CAN OTHER INDUSTRIAL FACILITIES BE CONVERTED TO NEW USE IN REQUIRED TIME FRAME?

DOWN SIDE TO IMPORT RESTRICTIONS (I)

- DEMOCRACY AND ECONOMIC SECURITY OBJECTIVES MAY BE HINDERED BY USE OF IMPORT RESTRICTION TOOL

  •• HIGH TECHNOLOGY - INDUSTRY'S ACCESS TO FOREIGN MARKETS IS CRITICAL:

  ••• WIDEST POSSIBLE GLOBAL MARKET & NEEDED TO LOWER UNIT COSTS WHEN FIXED COSTS (LIKE R&D) IS SIGNIFICANT

  ••• DEFENSE INDUSTRIES MAY NEED FOREIGN MARKETS TO REPLACE DOD BUSINESS

  •• TRADE MEASURES MAY RESULT IN RETALIATORY ACTIONS

  •• JOINT SYSTEMS DEVELOPMENT WITH ALLIES

  ••• MUTUAL INTERDEPENDENCE IS ENCOURAGED

  ••• COST AND OPERATIONAL ADVANTAGES TRADED OFF AGAINST INTERDEPENDENCE

DOWN SIDE TO IMPORT RESTRICTIONS (II)

- PAST RECORD WITH OUR ALLIES IS VERY SUPPORTIVE OVERALL
- BEST TECHNOLOGY AND PRODUCT MAY RESIDE ABROAD
- RESTRICTIONS ON DEFENSE PROCUREMENTS CUT AGAINST ACQUISITION REFORM; SEPARATE DEFENSE BUSINESS FROM COMMERCIAL PRACTICES

OTHER TOOLS TO ADDRESS LONG-RUN ECONOMIC SECURITY CONCERNS (I)

- TECHNOLOGY/INVESTMENT PROGRAMS

COMMERCE
- NIST
- NAT'L LABS
- ATP
- MEP

NASA
- CRADAS
- R&D PROGRAMS
- TECH TRANSFER

DOE
- CRADAS
- TECH R&D

DOT
- R&D

NSF
- R&D GRANTS

DOD
- MANTECH
- TITLE III
- ARPA
- CRADAS
- OTHER R&D

HHS
- NIH

- SEC. BROWN'S 1-800 NUMBER IDENTIFIES OTHER PROGRAMS

OTHER TOOLS TO ADDRESS LONG-RUN ECONOMIC SECURITY CONCERNS (II)

•• TRADE POLICY
  ••• EXPORT LICENSING
  ••• EXPORT PROMOTION
  ••• MARKET OPENING INITIATIVES

•• ACQUISITION REFORM - MAKE MARKET MORE COMMERCIAL
  ••• EASIER FOR COMPANIES TO SELL TO DOD
  ••• EXPANDS CAPACITY BY INCLUDING COMMERCIAL PRODUCTS

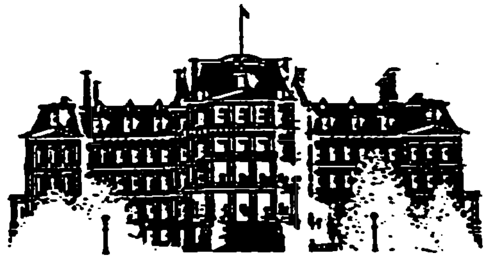
• THESE ACTIVITIES DON'T HAVE NEGATIVE DOWN SIDE OF IMPORT RESTRICTIONS

SUMMARY

- SECTION 232 CASES ONLY RELATED TO IMPORTS - THERE ARE OTHER ISSUES AND OTHER POLICY TOOLS
- NEED TO IMPROVE CURRENT 232 METHODOLOGY
- NEED TO CONSIDER OTHER AVAILABLE TOOLS/INVESTMENT PROGRAMS TO ADDRESS ECONOMIC SECURITY ISSUES
- IS CURRENT INTERAGENCY COORDINATION PROCESS PERFORMING WELL?

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL OF ECONOMIC ADVISERS
17TH AND PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20500



THE OLD EXECUTIVE OFFICE BUILDING

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TO: See List Below

OFFICE:

FAX NUMBER:

TEL NUMBER:

***

FROM: Marc Noland

FAX NUMBER: (202) 395-6853 **TEL NUMBER:** 395-3310

ROOM: 328

NO. OF PAGES (inc cover) 3 **DATE:** 3-9-94

SUBJECT: Dept. of Commerce Section 232 Report

MESSAGE:

BARRY E. CARTER 482-2387

KEN FLAMM 703-693-2026

NANCY SCHWARTZ 395-5157

TED MORAN 647-1681

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

March 9, 1994

MEMORANDUM FOR: BARRY CARTER, DOC

FROM: MARCUS NOLAND MN

SUBJECT: Department of Commerce Section 232 Report

The revised draft of the internal study by the Bureau of Export Administration on Section 232 of the Trade Expansion Act is a useful step in moving the national security aspects of our trade policy beyond Cold War concerns, and the Department of Commerce is to be commended on this effort. There were a number of specific areas in which we believe the report could be improved even further.

The reports states on p.1 that "our large trade imbalance" is one of the most important dangers that the U.S. must confront in the post-Cold War world. This may or may not be true. In either event, we should be clear that the trade interventions contemplated in the rest of the report will have little if any impact on our aggregate trade imbalance which is due primarily to *macroeconomic* determinants not discussed in the report.

When it comes to the actual remedies discussed in the report we are uncomfortable with both the lack of a defined methodology for calculating a) strategic requirements, and b) demand and available supply. With regard to the former, presumably this could be addressed through closer coordination with DOD, and we urge that the DOC and DOD work together on this issue.

With respect to the issue of supply, the single paragraph on p.7 is seriously inadequate and does not reflect the thoughtful interventions of either DOD or State at the December interagency meeting.

The subsequent section on demand (pp.7-8) does not appear wholly convincing. The first tick argues that if an export is controlled, it should be produced domestically. Strictly speaking, this is a non sequitur. As long supplies are available in the requisite amounts from trusted allies, there is no reason to insist on domestic production. My impression is that DOD encourages precisely this kind of cooperation and rationalization.

The second and third arguments, that if technologies are on critical technologies lists (or important inputs to such products), "imports should not be permitted to erode materially current or prospective production capabilities" are sweeping. They go beyond both the current statute (and all other trade laws) in proposing a trigger related to prospective production not explicitly related to projected defense needs. Furthermore, this criteria would contribute to the politicalization of this process, as the use of critical technology lists as the precondition for this trigger will make the already speculative exercise of constructing these lists subject to intense special interest lobbying and rent-seeking behavior.

The fourth argument, on "choke points", appears to be the most defensible. It would be desirable to incorporate some of the caveats raised in last December's meeting here as well though.

With respect to imports (p.8), concentration of supply is neither a necessary nor sufficient condition for assessing risk as noted by DOD at last December's meeting. Likewise, assessing the reliability of allied suppliers is surely a difficult and subtle exercise. We would urge DOC to work closely with DOD and State in developing operational criteria in this area.

cc: Ken Flamm, DOD

TELEFAX

OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY

Office of the PDASD and
Special Assistant to USDA
(Dual Use Technology Policy
and International Programs)

Date March 7, 1994

DELIVERY INSTRUCTIONS:

FOR: Marcus Noland, Council of Economic Advisers

OFFICE #:

SUBJECT: My comments on the Barry Carter draft

COMMENTS:

FROM: Kenneth S. Flamm

FAX #: 703-693-2026

OFFICE #: 703-697-4431, 3E1082 (TO CONFIRM RECEIPT)

THIS IS PAGE #1 of 4 PAGES

TELEFAX

DRAFT- Not For Circulation

Comments on Barry Carter draft:

1. statement (on page 1) that economic dangers to national security are now recognized by DoD is true enough, but note that this specifically includes "our large trade balance" is potentially misleading. Actual BUR report states "**Sustaining a healthy free trade regime and, within that**, expanding U.S. exports and reducing trade imbalances will be key to our future economic growth." Carter has chosen to ignore recognition of a free trade regime as lynchpin for economic growth and security. More broadly, DoD economic security policy stresses importance of new focus on reinvestment of defense resources in dual use technologies and industry.

2. Carter's memorandum does not recognize an important point made at the meeting of last December-- that national security may at times require **increasing** imports. Strengthening democracy or reducing the potential for regional or ethnic conflict may at times require increasing trade with a particular nation, possibly even increasing dependence on imports.

3. we concur with Carter (on p. 5) that section 232 investigations have the potential to highlight problem areas in the industrial base. The section 232 authority, however, is specific to measures affecting imports. The data developed by the 232 investigation may prove very valuable to other parts of the government concerned with, say, technology policy, but those other agencies have the charter and expertise to evaluate all the technical and economic issues and actually set such policies. If Carter feels strongly that technological investments are required, it can certainly bring relevant facts to the attention of other parts of the Commerce Department, for example, which are charged with setting technology policy, establishing technology investment programs, and administering these programs. If Carter feels the current interagency or intraagency coordination and consultation process is inadequate, he should analyze that process and make explicit where the deficiencies lie.

4. we are confused by the statement (at the bottom of p. 5) that investigations are initiated based on petitions submitted by private "interested parties". This appears to conflict with the statement (on p. 1) that such investigations may also be initiated at the request of the head of any government Department or Agency, including Commerce itself.

5. as Carter notes (on p. 6), the key to defining where intervention is needed in order to maintain national security is to establish what levels of "U.S. capability and proficiency in these sectors must be maintained (or developed)." It is disappointing, therefore, to not see the useful discussion of this issue at the

DRAFT- Not For Circulation

meeting of last December reflected in this draft.

a. In particular, many of those present at that meeting agreed with the proposition that import relief (given its down side of destabilizing the open international markets so crucial to the long term health of U.S. high technology industry) is an appropriate remedy when consideration of plausible military threat scenarios suggests that dependencies create likely outcomes in which military capabilities are significantly threatened or degraded. Long term issues of investment in maintaining technical capabilities for future systems, on the other hand, are more appropriately addressed by aggressive investment in creating those capabilities, the realm of technology policy. Both defense, dual use, and commercially-oriented industrial capabilities should be constantly examined by the many Federal agencies charged with oversight for investments in these capabilities quite independently of the narrowly-focused section 232 authority. If the current efforts of OSTP and NEC in this regard are viewed as providing inadequate coordination by Carter, the perceived deficiencies, once again, should be spelled out.

b. The discussion of supply (on p. 7) does not reflect the discussion at last September's meeting. That discussion suggested the following procedure: (i) determine whether a plausible scenario existed under which a given dependency created a probable significant degradation of military capabilities; (ii) determine whether the particular technological capability associated with this dependency resided in the United States; (iii) determine whether needed industrial capabilities could be created **de novo**, or existing capacity expanded, or other industrial capabilities converted to a new use, within the time frame associated with the threat scenario. If this sequential logic suggested that the dependence was of plausible military significance **and** either the technology did not reside within U.S. firms or could not be turned into an operational industrial asset within the required time frame, then use of Section 232 restrictions on imports might be appropriate. None of these ideas are present in the supply section (on p. 7).

c. The section on supply nowhere recognizes the increasing internationalization and interlocking supply relationships associated with the growth of international trade's role in the global economy. Interdependency and use of foreign components and technologies can reasonably be expected to increase as the result of greater reliance on off-shelf commercial high technology products, the proliferation of advanced technical capabilities around the globe, and an explicit Defense strategy of fostering cooperative technological relationships with trusted Allies. Nowhere are these developments recognized as tradeoffs which requiring consideration when the implications of dependency for national security are considered.

6. The discussion of "choke points" and "critical technologies" in the section

DRAFT- Not For Circulation

on demand (on pp. 7-8) ignores the above points as well. Choke points and the absence of critical technologies will only be militarily significant if they cannot be remedied within the time frame associated with a plausible threat scenario.

7. The section on the role of imports (p. 8) nowhere recognizes a critical point made at last December's discussion: concentration in supply is neither a necessary nor sufficient condition for import dependence to be of military concern. It is not necessary: if a diversified group of foreign suppliers can be cut off by a plausilbe interdiction of sea lanes, for example, a well diversified supply of a key components or materials will not prevent that dependence from becoming of military significance. It is also not sufficient: if a domestic supplier with a tiny share of the market can be rapidly expanded in crisis, or if a foreign supplier is associated with a very close and highly reliable ally, where there is no real chance of supply line interdiction, dependence will also not be an issue.

8. Similarly, with respect to the issue of reliability of supply (p. 8), some requirement for plausibility of the threat must be brought to bear before concluding that reliance on an Ally for supply creates a lack of "reliability" in supply. The same logic, it should be noted, could be applied to U.S. exports to our Allies, and if carried to the extreme conclusion of our Allies restricting imports from the United States on similar grounds, could lead to a disruption to the existing free international flow of high technology goods. This would pose the gravest threat yet to the economic foundations of our high technology industries (which are highly dependent on foreign markets), and ultimately, our economic security.

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Export Administration
Washington, D.C. 20230

Copy to
Cerveny
Noland

February 22, 1994

MEMORANDUM FOR DISTRIBUTION

FROM: Barry Carter
Acting Under Secretary

SUBJECT: Revised Draft on Section 232

Attached is a revised draft of the internal study by the Bureau of Export Administration on Section 232 of the Trade Expansion Act of 1962, as amended. The draft responds to Secretary Ronald H. Brown's directive to us last August to examine further the criteria determining in future Section 232 investigations what "threaten[s] to impair the national security" in the post-Cold War environment.

This draft hopefully reflects the many excellent comments that we received at the informal interagency meeting last December. As promised then, we are circulating this draft to obtain further comments.

Could you please provide me with your written comments, if any, by Wednesday, March 9. The Bureau will then promptly prepare a final report for Secretary Brown, unless it appears advisable to have another informal meeting. If you believe that another meeting is necessary, please indicate that in your comments.

Incidentally, we have heard indirectly that the Independent Petroleum Producers Association (IPPA) intends to file a new Section 232 petition concerning the impact of petroleum imports on national security. This draft report was prepared without any consideration of that petition or the particular facts in that industry. If IPPA does file a petition, we will open a new investigation.

Attachment

DRAFT DISCUSSION PAPER: SECTION 232 IN THE POST COLD WAR ENVIRONMENT

Introduction

As stated in the Department of Defense's "Bottom-up Review":[1]

> The Cold War is behind us. The Soviet Union is no longer. The threat that drove our defense decision-making for four and a half decades -- that determined our strategy and tactics, our doctrine, the size and shape of our forces, the design of our weapons, and the size of our defense budgets -- is gone.

The threat of a conventional war with the Soviet Union also drove the assumptions and methodology that were used for conducting investigations under Section 232 of the Trade Expansion Act, and similar strategies for addressing issues relating to the ability of the industrial base to support national security.

Despite the end of the Cold War, the Department of Defense (DOD) believes that this is an era of "new dangers" -- such as those posed by the spread of nuclear, chemical and biological weapons; by aggression by major regional powers; by ethnic and religious conflict; and the uncertain future of democratic reform in the former Soviet Union. In addition, the Department of Defense believes "perhaps the most important set of dangers that U.S. strategy must confront [in the post-Cold War period] is economic,"[2] including our large trade imbalance. In view of the above, there is an unambiguous understanding within the Administration that economic security and national security are interrelated objectives.

This paper discusses how Section 232 has been implemented in the past, and how the changing world environment will affect future Section 232 investigations.

Background

Section 232 of the Trade Expansion Act of 1962, as amended (19 USC 1862), calls for the Secretary of Commerce (in consultation with the Secretary of Defense and other agencies as appropriate) to conduct investigations of the impact of imports on the national security. These investigations are initiated based on the request of the head of any Department or agency, the application of an interested party, or the Secretary's own motion. The Secretary has 270 days in which to conduct an investigation, after which the report and findings are forwarded

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[1] "Report of the Bottom-Up Review," U.S. Department of Defense, October, 1993, p. 1.

[2] Bottom-Up Review, page 10.

to the President. If the Secretary finds that imports of a specific item do threaten to impair national security, the President has ninety days in which to determine if action should be taken to "adjust imports" to remove a national security threat.

Specific criteria for review and analysis mentioned in the statute include:

Why not alt foreign sources of supply?

(a) domestic production needed to meet projected national defense requirements;

(b) the capacity of domestic industries to meet such requirements;

(c) the availability of human resources, products, and raw materials essential to national defense;

or, see next page

(d) the requirements of growth of such industries including investment necessary to assure such growth; and

(e) the quantity, availability, and character of imports and their effect on U.S. capacity to meet national defense requirements.

The statute also states that the Secretary and the President shall recognize the close relationship between the economic welfare of the nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries as it relates to a weakening of our internal economy that may impair national security.

<u>History of Use of the Statute</u>

Since its inception in 1962, Section 232 has been used infrequently. There have been 21 investigations since 1962. All found that imports did not threaten to impair national security except four cases involving oil, where imports were found to threaten national security. The non-oil cases generally concerned manufactured subcomponents or equipment (bearings, gears, machine tools) that support production of a wide variety of defense items, but that are also used extensively in commercial applications and are far removed from military systems themselves.

Most of the investigations involving manufactured products conducted during the Cold War years were initiated based on a petition from representatives of the domestic industry seeking import relief.

The methodology for conducting Section 232 investigations was based on a two step process.

The first step involved a supply/demand analysis for the item(s) under investigation.

Step 1

1) Demand was based on military and essential civilian requirements for the item(s) under review under an emergency mobilization and wartime scenario (i.e., one year mobilization followed by a three year global conventional war with the Soviet Union.) This demand analysis yielded high requirements since the anticipated procurements needed to prosecute a global conventional war are prodigious. However, this demand analysis was also somewhat static because issues such as the effect of imports on American R&D spending, future technological innovations, and overall U.S. economic growth were given marginal consideration.

2) Supply was based on estimates of the following:

   (a) maximum domestic merchant and captive production capabilities (i.e., three shifts per day, continuous production) including the ability to expand production under emergency conditions and;

   (b) assessments of reliable imports, i.e., those that could be confidently obtained from allied countries through open sealanes. Potential substitute items were also included in supply calculations.

Step 2

If there was a projected shortfall between supply and demand during any phase of this four year process (mobilization year and three war years), then the second step of the analysis focused on whether this shortfall could be attributed to import penetration eroding U.S. production capabilities.

However, even if it could be demonstrated that imports were a principal cause of the supply shortfall, the Secretary could recommend that no action to adjust imports be taken because such action would not prove to be an effective remedy.

\- - -

Using this scenario and methodology, none of the cases involving manufactured products resulted in a formal Presidential action to "adjust imports." Few cases met the stringent criteria of a national security threat, largely because imports tended to come from our major trading partners -- Japan and Western Europe --

who are also our closest defense allies and are thus considered to be reliable suppliers. In addition, many in the interagency community viewed the industry-originated petitions for Section 232 investigations as U.S. firms or associations seeking protection from imports when they were uncompetitive. Moreover, there was often significant political opposition to any action in these cases from the domestic industries that consumed the products under investigation. These industries were dependent on cheaper, sometimes higher quality imports, and thus had a vested interest in ensuring that no action was taken to "adjust imports." For example, the aerospace industry was vehemently opposed to any restrictions on their ability to import gears and bearings, and the semiconductor industry opposed import restrictions on ceramic semiconductor packages.

The several cases involving oil were different, because the U.S. is dependent on foreign oil from sources that could not be guaranteed as reliable and the Administration wanted to make a political statement. Moreover, in two instances, Section 232 was apparently used as an instrument of foreign policy to embargo oil from politically insecure sources, even though imports from these sources did not constitute a large percentage of total U.S. oil imports. (The cases were imports from Iran in 1979 and Libya in 1982). Thus we can see that Section 232 can be invoked in special circumstances that do not relate to the erosion of the U.S. defense industrial base and where the analytic methodology described above (i.e., "two step process") does not apply. In the future, it is possible that Section 232 may again be used for such purposes.

Future Section 232s

Although the U.S. Government maintains broad controls over **exports** for national security and foreign policy reasons, Section 232 is one of the few statutory mechanisms enabling the President to limit **imports** to the United States for national security or foreign policy reasons. Thus, the ability of the President to use Section 232 authorities is an important aspect of his national security powers.

Despite the end of the Cold War, the loss of U.S. technological preeminence and market share in key industries, including high and emerging technology sectors, continues to be an issue of great importance and relevance to national security. In addition to meeting the requirements for production of today's weapons, continued innovation in these critical industries is essential to development of the next generation of defense systems. Moreover, this technological development is necessary for our competitiveness in commercial markets and our overall economic well being.

However, the end of the Cold War makes the traditional methodology used in Section 232 investigations (projected demand-projected supply in conventional war) infeasible.
The Section 232 statute itself does not dictate a specific methodology; rather methodologies were devised over time based on Cold War strategies. Moreover, the statute appears to be flexible enough to address the new challenges to national security, including the "economic security" challenge. The statute does not define "national security" but leaves this to the President's discretion. It addresses such issues of current concern as "the requirements of growth of industries," the "close relationship between our economic welfare and our national security," and the "weakening of our internal economy."

In fact, it is hardly unprecedented to address these issues in Section 232 investigations. There are numerous precedents in which Section 232 led to other (internal) policy actions under different authorities. The objective was to achieve import adjustment in the longer term by increasing the competitiveness of the domestic industry through these internal mechanisms and not via a unilateral trade action.

For example, in the mid-1980's President Reagan stopped short of declaring that machine tool imports "threatened to impair" national security, but did find significant production problems in the domestic industry. He sought and obtained "voluntary" import restraint agreements (VRAs) with Japan and Taiwan to allow the U.S. industry the opportunity to rebuild. This respite from imports was accompanied by a "domestic action plan" to revitalize the domestic industry (including some Defense Department funding through the National Center for Manufacturing Sciences). The VRAs did result in significant foreign investment in U.S. production facilities (generating U.S. employment and production capability). The bearing and gear investigations (1989 and 1990) also contained non-trade remedies designed to improve the competitiveness of the U.S. industries (and contained no trade remedies at all).

Section 232 investigations still have the potential to highlight problem areas in the industrial base such as unacceptably high levels of foreign dependency, dependency on concentrated suppliers, and manufacturing problems. If such problems are highlighted through a Section 232 investigation, the Executive Branch has a range of options at its disposal that do not involve adjusting imports under authority of this statute. (Although the Administration has a range of policy options other than Section 232 to pursue national security objectives, the statute requires that investigations be initiated based on petitions submitted by private "interested parties." Most Section 232 cases are have been initiated based on such petitions.)

Moreover, Section 232 analysis could carefully determine what type of support is necessary. That is, the investigation could determine the nature of problems in the domestic industry -- technological, regulatory impediments, unfair trade, poor management, etc.-- and could target policies to improve these specific conditions. Domestic actions would usually not be as objectionable to the countries that are the source of the imports as are trade actions. Most, if not all, governments clearly recognize the importance of certain industries to their national and economic security, and adopt policies to nurture and develop these industry and technology segments.

In addition, Section 232 could be used as a mechanism to foster a bond between the domestic industry in question and its end-user industries -- e.g., the semiconductor industry and ceramic package producers or semiconductor equipment producers. While end-user industries are usually opposed to import restrictions, they often realize that it is in their best interests (as well as in the interest of the U.S. Government) to reduce dependency on foreign sources, particularly concentrated foreign sources. This is because in many cases,. U.S. companies have alleged that foreign suppliers withhold cutting edge technology from them (e.g., lithography equipment); concentrated suppliers tend to have high prices (e.g., ceramic packages); U.S. producers are dependent on their competitors for components; or they are vulnerable to supply cutoffs (semiconductor resin). In fact, in past Section 232 cases, end-user industries generally support action to improve their domestic supplier industries.

Clearly Section 232 cannot and should not be used to provide massive financial assistance for every American industry characterized by a lack of international competitiveness. However, not all industries are equal in their importance to national security. Certain industries are "building blocks" and a certain level of U.S. capability and proficiency in these sectors must be maintained (or developed). Section 232 could be an effective mechanism to achieve this.

No statutory or regulatory changes appear necessary to modernize Section 232 for the post-Cold War environment and to ensure its continued usefulness as a national security statute. The statute appears to be broad and flexible enough to handle the "economic security" issues of current concern. However, a new methodology must be developed to replace the "Cold War" mobilization-based methodology that is now obsolete.

New Methodology

The new methodology will still involve a demand versus supply comparison, but the factors used to determine supply and demand have changed.

There is virtually no chance that the United States will need to prosecute a global conventional war, preceded by a year of industrial mobilization. Therefore a static comparison of supply versus demand under such a scenario should not be used as a basis for implementing any remedial public policy action. However, factors in the Section 232 statute that were heretofore given little consideration have become increasingly important indicators of national security.

National security analysis includes but is not limited to an evaluation of an industry's ability to support the development of new weapon systems. It also includes an evaluation of the capability of critical industries to support overall U.S. technological innovation. There is an increasing realization that a world power must have an indigenous high technology production base and not be dependent on other countries to supply its military and civil needs.

no linkage

Supply

The supply side still requires a detailed assessment of the domestic industry's manufacturing capabilities. However, this cannot be based only on the static formula used during "Cold War" assessments. Future Section 232 supply analyses must focus on an industry's technological and financial strength vis a vis foreign competitors, as well as its ability to support future research and development needed to maintain a qualitative superiority in weapons systems and innovation in essential civil applications. No specific predetermined formula can be set forth for such an analysis because the factors for consideration must be adapted to each industry.

BS

Demand

With today's uncertain threat scenario, the demand side of the equation is no longer readily quantified. Although we will still need to evaluate current and prospective production capabilities, we also must consider a number of other factors in a demand analysis. For example, future Section 232 investigations should include a determination of just how critical the industry or technology is to current and future defense needs and the overall economy. Several indicators of criticality include the following:

?

-- Is it export controlled for strategic reasons by the Department(s) of Commerce, State, Defense or Energy? If we want to ensure that potential adversaries do not acquire a technology, we should have the ability to manufacture it ourselves.

non-sequitur

-- Is it on the lists of Critical/Emerging Technologies that are regularly updated by the Departments of Commerce and Defense and the White House? If we consider a technology to be essential for future manufacturing needs, then it can be argued that imports should not be permitted to erode materially current or prospective production capabilities. nonsense

-- How important is it as an element of other industries that may be considered critical?

-- Is it a "choke point" technology for a specific weapon system? If a certain item is a critical component in a weapon system, then we should not lose indigenous capabilities to manufacture it. only reasonable

This analysis is also not subject to will precise quantification in the abstract but must be adapted to the specific item(s) under investigation.

<u>The Role of Imports</u>

The role of imports in undermining current and/or prospective U.S. production capabilities should also be more sophisticated than in previous assessments. Factors for consideration include the following:

-- **Concentration of Supply:** If foreign suppliers are heavily concentrated in one or a few countries/companies, then the risks of import dependence are magnified.

-- **Reliability of Supply:** The fact that a foreign supplier is located in a friendly or allied country is not necessarily a basis for concluding that this is a "reliable supplier". In a world of fierce international competition, there is no universal assurance that foreign manufacturers will provide American firms with technology we need for current or future civil and military applications. Manufacturers in allied countries are competing with us for defense related sales and are seeking to enter heretofore proscribed markets in the USSR and China with advanced dual use technologies. Clearly, imports from producers in allied countries can have a deleterious impact on U.S. production capabilities and this should be taken into account in each investigation. Accordingly, each case must be assessed on its merits without the predetermined methodological straightjacket that imports from allied countries can never threaten the national security. how are going to assess this?

Clearly, the new methodology will rely heavily upon an interagency approach, with the Department of Defense and other agencies playing key roles, especially with regard to the demand side of the equation.

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

DATE Feb. 23, 1994

FROM Barry Carter OFFICE/DESK BXA PHONE NBR 482-1455

SUBJECT Revised Draft on Section 232

DELIVERY INSTRUCTIONS:

PAGES 10 (INCLUDING COVER)

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DOC	Kent Hughes			482-6315
NSC	Steve Jones			395-4970
DOE	John Keliher			586-0645
NEC	Robert Kyle			456-6554
DOS	Ted Moran			647-0434
DOS	Joanna Shelton			647-2532
DOL	Andrew Samet			219-6043
DOT	Jeff Shafer			622-0060
CEA	Joseph Stiglitz			
NSA	Stewart Baker			301-688-6105
ITA	Sue Esserman			482-3641

REMARKS:

United States Department of State

Washington, D.C. 20520

POLICY PLANNING STAFF

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Nancy Schwartz	OMB		(202) 395-5157
Bob Cumby	Council on Economic Advisers		(202) 395-6853

FROM: Theodore H. Moran

PHONE #: (202) 647-4734

SUBJECT:

COMMENTS:

United States Department of State

Washington, D.C. 20520

February 25, 1994

The Honorable
Barry Carter
Acting Under Secretary for Export Administration
Room 3898
14th & Constitution Ave., N.W.
Department of Commerce
Washington, D.C. 20230

Dear Barry:

Thank you for the opportunity to comment on your Revised Draft on Section 232.

It is a very interesting and insightful paper. Let me make a few comments that may help strengthen it, and also point out a couple of potential trouble spots.

On page 6, third paragraph, I would suggest that the text read: "However, not all industries are equal in their importance to national security. Certain industries contain "choke points" where concentrated external suppliers might have the potential to delay, deny, or place conditions on the use of inputs they control. Section 232 could be an effective mechanism to monitor and address such choke points." The text reference to "building blocks" is a buzz word used by the folks who advocate industrial policy to justify very broad and loose use of import controls.

On page 8, the fourth paragraph must have a portion left out because it does not make sense as it reads now.

On page 8, the sixth paragraph would be much more helpful to the folks administering Section 232 if it read: "Concentration of Supply: If foreign suppliers are heavily concentrated in one or a few countries/companies, then the risks of import dependence are magnified. Conversely, if foreign suppliers are widely dispersed, the likelihood of denial is low and the rationale for protection on national security grounds attenuated."

Finally, on page 8, I would omit the sentence in the first paragraph "If we consider a technology to be essential for future manufacturing needs, then it can be argued that imports should not be permitted to erode materially current or prospective production capabilities." Similarly, on page 7, I would advise you to leave out the last sentence in the second paragraph "There is an increasing realization that a world power must have an indigenous high technology production base and not be dependent on other countries to supply its military and civil needs." It is not at all in our national interest to even hint that we put out the Critical Technologies lists with the idea that we want to build a technological equivalent of Fortress America. Indeed, in many of these critical technologies, our interest is to expand our access to foreign suppliers and ensure a two-way flow. To suggest otherwise ("imports should not be permitted to erode...") will give an excuse to a long list of special interests to seek protection to maintain the status quo.

I hope these comments are helpful. Please keep me informed about your progress.

Sincerely,

Ted

Theodore H. Moran
Senior Advisor
Policy Planning Staff

bcc: Robert Cumby, Council for Economic Advisors (CEA)
William Plummer, EB/MTA/STA

ASSISTANT SECRETARY OF DEFENSE

3300 DEFENSE PENTAGON
WASHINGTON DC 20301-3300

ECONOMIC
SECURITY

8 DEC 1993

Copy to Noland

MEMORANDUM FOR ACTING UNDER SECRETARY OF COMMERCE (EXPORT ADMINISTRATION)

SUBJECT: Investigations Under Section 232 of the Trade Expansion Act

Your December 3, 1993, memorandum and discussion paper on Section 232 of the Trade Expansion Act raise a number of interesting issues for the Department of Defense. Unfortunately, I am unable to attend the meeting you have scheduled on December 9 due to prior commitments. (Please note that I was travelling on December 6, and was unable to turn my attention to them until today, December 7.) In any event, I believe it would be useful to establish a dialogue between our staffs to frame the issues prior to a meeting at our level. I, therefore, would like to ask you to postpone the December 9 meeting until this has occurred and to select a date and time in the future which will be compatible with both our schedules.

In the interim, I have suggested to my staff that they consider the following issues raised by your paper:

1. Section 232 gives the Commerce Department the authority to recommend import restrictions to the President, after consultation with the Secretary of Defense, if the absence of such restrictions would threaten to impair national security. Clearly, the Department of Defense is best equipped to analyze the national security implications of restrictions from the perspective of the four new dangers identified as the basis for the Clinton Administration's defense policy in our recent Bottom Up Review. Can we better define the linkage between Section 232 and the four new threats? Can the Department of Commerce methodology supporting Section 232 objectives be improved?

2. The technological and industrial capabilities supporting defense are clearly a vital element of our national security, particularly in view of our new policy of enhanced reliance on dual use products and technologies available from commercial suppliers. Is the spectrum of authorities to undertake programs to invest over the longer term in enhancing these technical and industrial capabilities currently available to your Department, our Department, and other agencies of the Federal government inadequate?

3. When deficiencies in our technical and industrial capabilities are of sufficient magnitude as to warrant an interagency coordination process, is the current interagency coordination mechanism inadequate, as the Commerce discussion paper seems to suggest? Are there lessons to be learned from the recent history of NEC and NSC interagency working groups?

I look forward to working with you and your staff in better understanding these issues.

Kenneth S. Flamm

KENNETH S. FLAMM
Principal Deputy

cc: JOSEPH STIGLITZ

OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE (PRODUCTION RESOURCES)

TO:	Phone	FAX
JOSEPH STIGLITZ	395-5036	395-6947 -6958

CALL FOR PICKUP: ✓ YES ______ NO

FROM: OFFICE OF KEN FLAMM, PRINCIPAL DEPUTY (ECONOMIC SECURITY)

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REMARKS:

NUMBER OF PAGES TRANSMITTED INCLUDING HEADER: 3

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Export Administration
Washington, D.C. 20230

Copy to Roland

December 3, 1993

MEMORANDUM FOR: Gordon Adams, Office of Management and Budget
Kenneth Flamm, Department of Defense
Ellen Frost, Office of the U.S. Trade Representative
Jeff Garten, Department of Commerce
Kent Hughes, Department of Commerce
Steve Jones, National Security Council
John Keliher, Department of Energy
Robert Kyle, National Economic Council
Ted Moran, Department of State
Andrew Samet, Department of Labor
Jeffrey Shafer, Department of Treasury
Joanna Shelton, Department of State
Joseph Stiglitz, Council of Economic Advisors

FROM: Barry E. Carter
Acting Under Secretary

SUBJECT: Investigations Under Section 232 of the Trade Expansion Act

As you may recall, Secretary of Commerce Ron Brown directed the Bureau of Export Administration to review the purpose of Section 232 investigations in the post-Cold War environment, specifically the meaning of what might "threaten to impair the national security." This direction came in response to the complex economic security issues raised during the course of the recently completed investigation of the impact of semiconductor ceramic package imports on U.S. national security.

I would like to invite you to participate in an interagency discussion on this subject, to be held at the Department of Commerce, 15th and Pennsylvania Avenue, N.W., at 10:00 a.m. on Thursday, December 9, 1993, in Room 5843.

My staff has prepared a draft discussion paper addressing the historical background of Section 232 investigations, and raising some issues regarding the statute's future use. This draft is attached for your review. I hope that it will generate some thoughts and ideas for discussion at the meeting.

Please contact Cindy Maruca or Lora Watkins at (202) 482-1427 to confirm your (or your representative's) attendance at the meeting.

I look forward to seeing you on December 9.

Attachment

You are free
Will you attend this meeting?
Yes
No

DRAFT DISCUSSION PAPER:
SECTION 232 IN THE POST COLD WAR ENVIRONMENT

Background

Section 232 of the Trade Expansion Act of 1962, as amended (19 USC 1862) calls for the Secretary of Commerce (in consultation with the Secretary of Defense and other agencies as appropriate) to conduct investigations of the impact of imports on the national security. These investigations are initiated based on the request of the head of any Department or agency, the application of an interested party, or the Secretary's own motion. The Secretary has 270 days in which to conduct an investigation, after which the report and findings are forwarded to the President. If the Secretary finds that imports of a specific item do threaten to impair national security, the President has ninety days in which to determine if action should be taken to "adjust imports" to remove a national security threat.

Specific criteria for review and analysis mentioned in the statute include:

(a) domestic production needed to meet projected national defense requirements;

(b) the capacity of domestic industries to meet such requirements;

(c) the availability of human resources, products, and raw materials essential to national defense;

(d) the requirements of growth of such industries including investment necessary to assure such growth; and

(e) the quantity, availability, and character of imports and their effect on U.S. capacity to meet national defense requirements.

The statute also states that the Secretary and the President shall recognize the close relationship between the economic welfare of the nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries as it relates to a weakening of our internal economy that may impair national security. (A copy of the statute is attached.)

History of Use of the Statute

Since its inception in 1962, Section 232 has been used only infrequently. There have been 21 investigations since 1962. All found that imports did not threaten to impair national security except four cases involving oil, where imports were found to threaten national security. The non-oil cases generally concerned manufactured subcomponents or equipment (bearings, gears, machine tools) that support production of a wide variety of defense items, but that are also used extensively in commercial applications and are far removed from military systems themselves.

Most of the investigations involving manufactured products conducted during Cold War years were initiated based on a petition from representatives of the domestic industry seeking import relief. The methodology for conducting Section 232 investigations hinged largely upon how much of a given product would be needed to support defense requirements in a specific wartime scenario (e.g., a protracted conventional war with the Soviet Union fought in Europe). Based on detailed surveys of domestic industry, estimates were derived as to how much and how quickly domestic production could be increased to meet the needs estimated by the Department of Defense (DOD). Reliable imports (those that could be consistently attained from allied countries through open sealanes) were also included as part of the supply side of the equation.

Using this scenario and methodology, none of these investigations resulted in any Presidential action to "adjust imports." Few cases met the stringent criteria of a national security threat, largely because imports tended to come from our major trading partners -- Japan and Europe -- who are also our closest defense allies and are thus considered to be reliable suppliers. In addition, many in the interagency community viewed the industry-originated petitions for Section 232 investigations as U.S. firms or associations seeking protection from imports when they were uncompetitive. Moreover, there was often significant political opposition to any action in these cases from the domestic industries that consumed the products under investigation. These industries were dependent on cheaper, sometimes higher quality imports, and thus had a vested interest in ensuring that no action was taken to "adjust imports." For example, the aerospace industry was vehemently opposed to any restrictions on their ability to import gears and bearings, and the semiconductor industry opposed import restrictions on ceramic semiconductor packages.

The one possible exception was the case of machine tools (1984-1986). Although the President (Reagan) stopped short of declaring that imports "threatened to impair" national security, he did find significant production problems in the domestic machine tool industry. He sought and obtained "voluntary" import restraint agreements (VRAs) with Japan and Taiwan to allow the U.S. industry the opportunity to rebuild. This respite from imports was accompanied by a "domestic action plan" to revitalize the domestic industry (including some DOD funding through the National Center for Manufacturing Sciences). While the domestic action plan was never taken seriously by the Reagan or Bush Administrations, the VRAs did result in significant foreign investment in U.S. production facilities (generating U.S. employment and emergency production capability).

The several cases involving oil were different, because the U.S. is heavily dependent on foreign oil from sources that could not be guaranteed as reliable (e.g., Libya in 1982). In two instances, Section 232 was apparently used as an instrument of foreign policy to embargo oil from politically insecure sources, even though imports from these sources did not constitute a large percentage of total U.S. oil imports. (The cases were imports from Iran in 1979 and Libya in 1982).

"The New Two Three Two"

The end of the Cold War makes the traditional methodology used in Section 232 investigations (projected demand-projected supply in conventional war) infeasible. In fact, the last few Section 232 investigations, especially the ceramic package case, did not attempt this type of analysis. Rather, conclusions and actions in the ceramic packaging case were based much more upon the importance of the industry to the semiconductor industry and the importance of a technologically advanced industrial base to national security.

As evidenced by the ceramic package case, despite the end of the Cold War, the loss of U.S. technological preeminence and market share in key industries, including high and emerging technology sectors, continues to be an issue of great importance and relevance to national security. In addition to meeting the requirements for production of today's weapons, continued innovation in these critical industries is essential to development of the next generation of defense systems. Moreover, this technological development is necessary for our competitiveness in commercial markets and our overall economic well being.

Section 232 is deliberately broad. It does not define "national security" but leaves this to the Secretary of Commerce's and President's discretion. Although much analytical emphasis was placed in the past on surge/mobilization of production and conventional war scenarios, the statute itself does not mandate this restricted methodology. Rather, it contains references to such issues as "the requirements of growth of industries," the "close relationship between our economic welfare and our national security," and the "weakening of our internal economy."

There are few statutory mechanisms for the President to take action to preserve and enhance critical industries in the United States for national security or foreign policy reasons. Section 232 could be such a statute. (Further work on its legislative history is proceeding.)

For example, Section 232 could be used to provide an analytical framework and methodology for assessing possible relief not only by "adjust[ing] the imports," but also for recommendating other relief not specified in Section 232. Much import adjustment could be achieved in the longer term by increasing the competitiveness of the domestic industry through internal mechanisms. Section 232 analysis and recommendations could thus be used to launch industrial or technology policy initiatives, such as Title III funding under the Defense Production Act, or Manufacturing Technology Programs of the Department of Defense. In contrast to the ad hoc way these initiatives are now initiated, using Section 232 would represent an interagency, analytical approach to determine whether and which industries/technologies warrant support.

Moreover, Section 232 analysis could carefully determine what type of support is necessary. That is, the investigation could determine the problems in the domestic industry -- technological, regulatory impediments, unfair trade, poor management, etc.-- and could target policies to improve these specific conditions. Domestic actions would usually not be as objectionable to the countries that are the source of the imports as are trade actions. Most, if not all, governments clearly recognize the importance of certain industries to their national and economic security, and adopt policies to nurture and develop these industry and technology segments.

In addition, Section 232 could be used as a mechanism to foster a bond between the domestic industry in question and its upstream industries -- e.g., the semiconductor industry and ceramic package producers or semiconductor equipment producers. While upstream industries are usually opposed to import restrictions, they often realize that it is in their best interests (as well as in the interest of the U.S. Government) to reduce dependency on foreign sources, particularly concentrated foreign sources. This is because in many cases, U.S. companies have alleged that foreign suppliers withhold cutting edge technology from them (e.g., lithography equipment); concentrated suppliers tend to have high prices (e.g., ceramic packages); U.S. producers are dependent on their competitors for components; or they are vulnerable to supply cutoffs (semiconductor resin). In fact, in past Section 232 cases, end-user industries generally support action to improve their domestic supplier industries.

While investigations must still be conducted based on petitions from domestic industries seeking protection, they could more often be "self-initiated" by the head of an executive branch agency, as clearly emphasized in the statute, based on concerns within an agency over a critical industry (e.g., semiconductor manufacturing equipment, supercomputers).

Clearly Section 232 cannot and should not be used to provide massive financial assistance for every American industry characterized by a lack of international competitiveness. However, not all industries are equal in their importance to national security. Certain industries are "building blocks" and a certain level of U.S. capability and proficiency in these sectors must be maintained (or developed). Section 232 could be an effective mechanism to achieve this.

No statutory or regulatory changes appear necessary to accomplish the possible objectives discussed above. However, an interagency consensus on some of these approaches is important, as is a high-level mandate to use the statutory authority in some of these ways for industries/technologies of current concern.

II. STATUTE

TITLE 19 - Customs Duties

CHAPTER 7. Trade Expansion Program
Trade Agreements

NATIONAL SECURITY

19 U.S.C. § 1862

§ 1862. Safeguarding National Security

Prohibition on decrease or elimination of duties or other import restrictions if such reduction or elimination would threaten to impair national security.

(a) No action shall be taken pursuant to section 1821(a) [19 U.S.C. § 1821(a)] or pursuant to section 1351 of this title [19 U.S.C. § 1351] to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Investigations by Secretary of Commerce to determine effects on national security of imports of articles; consultation with Secretary of Defense and other officials; hearings; assessment of defense requirements; report to President; publication in Federal Register; promulgation of regulations.

(1)(A) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall immediately initiate an appropriate investigation to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.

(B) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this section.

(2)(A) In the course of any investigation conducted under this subsection, the Secretary shall--

(i) consult with the Secretary of Defense regarding the methodological and policy questions raised in any investigation initiated under paragraph (1),

(ii) seek information and advice from, and consult with, appropriate officers of the United States, and

(iii) if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.

(B) Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary an assessment of the defense requirements of any article that is the subject of an investigation conducted under this section.

(3)(A) By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

(B) Any portion of the report submitted by the Secretary under subparagraph (A) which does not contain classified information or proprietary information shall be published in the Federal Register.

(4) The Secretary shall prescribe such procedural regulations as may be necessary to carry out the provisions of this subsection.

(c) Adjustment of imports; determination by President; report to Congress; additional actions; publication in Federal Register

(1)(A) Within 90 days after receiving a report submitted under subsection (b)(3)(A) of this section in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall--

(i) determine whether the President concurs with the finding of the Secretary, and

(ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.

(B) If the President determines under subparagraph (A) to take action to adjust imports of an article and its derivatives, the President shall implement that action by no later than the date that is 15 days after the day on which the President determines to take action under subparagraph (A).

(2) By no later than the date that is 30 days after the date on which the President makes any determinations under paragraph (1), the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action, under paragraph (1). Such statement shall be included in the report published under subsection (e) of this section.

(3)(A) If–

(i) the action taken by the President under paragraph (1) is the negotiation of an agreement which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security, and

(ii) either–

(I) no such agreement is entered into before the date that is 180 days after the date on which the President makes the determination under paragraph (1)(A) to take such action, or

(II) such an agreement that has been entered into is not being carried out or is ineffective in eliminating the threat to the national security posed by imports of such article, the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B) If--

(i) clauses (i) and (ii) of subparagraph (A) apply, and

(ii) the President determines not to take any additional actions under this subsection, the President shall publish in the Federal Register such determination and the reasons on which such determination is based.

(d) Domestic production for national defense; impact of foreign competition on economic welfare of domestic industries.

For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use of those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d)[1] Reports by Secretary of Commerce and President

(1) Upon the disposition of each request, application, or motion under subsection (b) of this section, the Secretary shall submit to the Congress, and publish in the Federal Register, a report on such disposition.

(2) The President shall submit to the Congress an annual report on the operation of the provisions of this section.

[1] Congress enacted two subsections (d)

(f)[2] Congressional disapproval of Presidential adjustment of imports of petroleum or petroleum products; disapproval resolution.

(1) An action taken by the President under subsection (c) of this section to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress--

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under ____ dated __.", the first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (c) of such section 232 for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.
(As amended Pub.L. 100-418, Title I, § 1501 (a), (b)(1), Aug. 23, 1988, 102 Stat. 1257, 1259.)

[2] **Legislation omits subsection (e)**

UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for Export Administration
Washington, D.C. 20230

FACSIMILE COVER SHEET

DATE: December 3, 1993

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Kenneth Flamm	DoD	3E1082	~~(703)~~ 697-4172	(202) 693-2026
Ellen Frost	USTR			395-5639
Steve Jones	NSC		395-4970	395-1185
John Kelliher	DoE		586-0645	586-0862
Robert Kyle	NEC		456-6554	456-6487
Ted Moran	State		647-0434	647-1681
Joanna Shelton	State		647-2532	647-2302

FROM: Karen Swasey for Barry Carter (202) 482-3795

MESSAGE: See Attached invitation to attend meeting on December 9.

NUMBER OF PAGES (INCLUDING COVER): 11

U.S. Department of Commerce
Room 3892
14th and Constitution Avenue, N.W.
Washington, D.C. 20230
OFFICE: (202) 482-1427
FAX: (202) 482-2387

UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for Export Administration
Washington, D.C. 20230

FACSIMILE COVER SHEET

DATE: December 3, 1993

TRANSMIT TO:

NAME	OFFICE	ROOM NO.	PHONE NO.	FAX NO.
Andrew Samet	DOL		219-6043	219-5980
Jeffrey Shafer	Treasury		622-0060	622-0417
Joseph Stiglitz	CEA			395-6947
Kent Hughes	DOC			482-3610

FROM: Karen Swasey for Barry Carter (202) 482-3795

MESSAGE: SEE ATTACHED - Invitation to Meeting on December 9th

NUMBER OF PAGES (INCLUDING COVER): 11

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MEMORANDUM

COUNCIL OF ECONOMIC ADVISERS

March 30, 1994

TO: LAURA TYSON
ALAN BLINDER
JOE STIGLITZ

FROM: MARK MAZUR

SUBJECT: Oil Import Study Requested from Commerce

The Secretary of Commerce has received a request from the Independent Petroleum Association of America for a finding under section 232 of the Trade Expansion Act that the level of oil imports threatens national security. Under this Act, Commerce has 270 days from the time the petition is accepted to respond. If Commerce finds that imports do threaten national security, the President has an additional 90 days to determine whether to use the statutory authority to "adjust imports" that threaten to impair national security. This authority is quite broad and includes the ability to impose import fees or set quotas. I believe Commerce has not yet formally accepted this petition, but that event should occur soon.

Commerce has examined the situation of oil imports six times in the past 20 years and every time has found that the level of oil imports threatens national security (four of these cases can be collapsed into two episodes in 1973-75 and 1978-79). Four times, the President took significant action (embargoing oil produced in Libya, terminating oil imports from Iran, and twice imposing fees on imported oil). In the other two cases, the President relied on existing policies to manage the level of imports. In 16 cases involving other goods (including bearings, ferroalloys, uranium, and nuts, bolts, and screws), Commerce found that imports did not threaten national security.

At a meeting of the Gas and Oil Working Group last week, representatives from Commerce predicted that their upcoming study would again find that oil imports threaten national security. It seems to me that this conclusion (while possibly the logical outcome of a study) is premature, because national security needs in a post-Cold War environment are substantially different from those of the past 20 years. CEA probably has an interest in ensuring that Commerce undertakes an objective study of the national security aspects of oil imports and incorporates current notions of national security needs. There is a chance that this issue will rise to the NEC level either in this context or the context of a complete overhaul of Commerce procedures for doing these studies.

cc: BC, MN, TO'D, KO'N