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met 1-8-85
10:45
Mr. Meese
Secy. Baldrige



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

JAMES A. BAKER III
CHIEF OF STAFF AND ASSISTANT TO THE PRESIDENT

RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: Malcolm Baldrige

Attached are the following items related to trade reorganization:

1. Summary of the proposal
2. Chart of key trade reorganization issues
3. A section-by-section analysis to accompany the bill
4. Proposed text of the trade reorganization bill

ESTABLISHMENT OF THE DEPARTMENT OF
INTERNATIONAL TRADE AND INDUSTRY

- We propose to establish a new Cabinet-level Department to be named the "Department of International Trade and Industry".
- The new Department will combine the Office of the United States Trade Representative and certain elements of the Department of Commerce in one Cabinet-level department. Responsibility for both development and implementation of United States trade policy will rest in one agency.
- Functions of the new Department will be those of -
 - The Office of the United States Trade Representative;
 - The International Trade Administration;
 - The Office of Economic Affairs (except the Bureau of the Census);
 - The United States Travel and Tourism Administration; and
 - The National Telecommunications and Information Administration.
- Disposition of other elements of the Department of Commerce will be identical to the Administration proposal of the 98th Congress approved by OMB, except that PTO would go to Justice and MBDA would go to HUD (unless SBA receives continued funding). These elements are:
 - The Economic Development Administration (to be transferred to the Department of Agriculture);
 - The Minority Business Development Agency (to be transferred to the Department of Housing and Urban Development, or to the Small Business Administration if funding for that agency is continued by Congress);
 - The National Bureau of Standards (to be transferred to the National Science Foundation),
 - The Patent and Trademark Office (to be transferred to the Department of Justice), and
 - The National Oceanic and Atmospheric Administration and the Bureau of the Census (to be independent agencies).

- The Secretary of the new Department will serve as the United States Trade Representative, and the responsibilities and functions of the United States Trade Representative under existing law will be transferred to the Secretary, except that, at the request of the Secretary of Agriculture, delegations for international negotiations and meetings involving agricultural trade matters will be headed by the Secretary of Agriculture or his designee.

- The Administration proposal provides for establishment of the position of Advisor to the President for International Trade, Economic and Financial Policy. The Advisor will have a small staff, and his function will be to assist in the coordination, within the White House, of Trade and related issues.

- The Administration proposal provides for a single Cabinet-level trade policy committee, to be chaired by the President, with the Secretary of the new Department to serve as chairman pro tempore.

- The Administration proposal will bring together the analysis, negotiation, regulation, and implementation aspects of trade policy. Moreover, it recognizes the important link between international trade and domestic industry activities as American businesses compete more and more in the world marketplace. The new Department at the same time will be lean in size (approximately 4,500 persons), permitting the aggressive development of new trade opportunities.

KEY TRADE REORGANIZATION ISSUES

ISSUE	1983 ADMINISTRATION PROPOSAL	ROTH BILL (S. 121) AS REPORTED OCT. 17, 1983	PROPOSED ADMINISTRATION BILL -- 1985
1. White House Trade Advisor	No provision	White House Advisor and small staff	White House Advisor and small staff
2. "Industrial Policy" Provisions	No provision	"Tripartite" Councils established; would recommend to Secretary measures to improve industrial international competitiveness. Office of Competitive Analysis established (Eagleton/Levin amendments)	No provision
3. New Interagency Council	No provision	New Cabinet-level "Council on International Trade, Economic and Financial Policy" established (Mathias Amendment)	The Administration proposal provides for a single Cabinet-level trade policy committee to be chaired by the President; Secretary to serve as chairman <u>pro tempore</u>
4. Disposition of "Spinoff" Agencies	<ul style="list-style-type: none"> a. Census transferred to Treasury b. NBS transferred to NSF c. PTO remained with new Department d. Independent NOAA e. EDA transferred to HUD f. MBDA transferred separately by Executive Order 	<ul style="list-style-type: none"> a. Independent Census b. NBS remained with new Department c. PTO remained with new Department d. Independent NOAA e. EDA transferred to Agriculture f. MBDA transferred to SBA 	<ul style="list-style-type: none"> a. Independent Census b. NBS transferred to NSF c. PTO transferred to Justice d. Independent NOAA e. EDA transferred to Agriculture f. MBDA transferred to HUD (or SBA if funding continued)

ISSUE	1983 ADMINISTRATION PROPOSAL	ROTH BILL (S. 121) AS REPORTED OCT. 17, 1983	PROPOSED ADMINISTRATION BILL -- 1985
5. NSC Membership for Secretary	No provision	Secretary member NSC	Secretary to be invited to meetings at which trade matters are considered
6. Office of USTR created in new Department	No provision	Office of USTR "estab- lished"; protected against subsequent reorganization	No provision
7. "Career Trade Service"	No provision	Secretary to recommend establishment after 6-month study (Mathias amendment)	Secretary to recommend improved personnel <u>procedures</u> after 6-month study
8. Small Business Trade Assis- tance Office	No provision	Small Business Trade Assistance Office to counsel and provide financial assistance; \$10 million authoriza- tion (Cohen amendment)	No provision
9. Competitiveness Impact Statements	No provision	Required in connection with each Executive branch Order, regula- tion or determination unless President deter- mines not in national interest (Mathias amend- ment)	No provision
10. Under Secretary for Agriculture	No provision	One of four	No provision



SECTION-BY-SECTION ANALYSIS

TO ACCOMPANY

THE DEPARTMENT OF INTERNATIONAL TRADE

AND INDUSTRY ACT OF 1985

Title I - Findings; DefinitionsSection 101. Congressional Findings:

This section represents a Congressional statement of the principal reasons for consolidating the trade and trade-related functions of the Department of Commerce and the United States Trade Representative (USTR) in a new Cabinet-level executive department.

The statement begins with the basic proposition that maintaining United States leadership in international trade, reinvigorating the ability of the United States economy to compete in international markets and expanding United States participation in trade must be principal national goals because they mean jobs, a higher living standard and improvements in our general welfare. The Federal Government has an important obligation to enhance the ability of domestic firms to compete in foreign markets by reducing political and economic barriers, promoting American goods and services in foreign countries, encouraging private sector participation and developing policies for productivity and long-term growth. The statement also identifies ways in which the Federal Government can enhance the ability of State governments to carry out our trade goals and the need for coordinating strong leadership and strong institutions to meet the challenge of foreign competition.

Accordingly, the findings conclude with a call for the consolidation of major trade responsibilities.

Section 102. Definitions:

Section 102 contains standard definitions of terms used throughout the bill. The term "function" merits particular attention. The definition includes the concept of rights

as well as responsibilities. Thus, if a statute confers a right to do something but requires the official to consult with designated persons, the transfer of that function means that the transferee must also consult with the designated party unless there is a change in the basic law creating the power or there is some other provision of law applicable to the transferee that authorize the performance of the function differently.

The term "administrative and support functions" are those which may conveniently and efficiently be carried out on a centralized basis. Subtitles A, B, C and D of title IV of the bill, transferring the Economic Development Administration, the Minority Business Development Agency, the National Bureau of Standards and the Patent and Trademark Office to other agencies, authorize the heads of the receiving agencies to perform these functions centrally, while reserving other programmatic functions to the agency transferred.

Title II - Department of International
Trade and Industry

Section 201. Establishment of Department:

This section establishes the Department of International Trade and Industry as a Cabinet-level department within the Executive branch and also establishes the position of Secretary of International Trade and Industry. The Secretary will be appointed by the President, by and with the advice and consent of the Senate.

Section 202. Functions of the Secretary:

Subsection (a) prescribes the Secretary's principal functions.

The principal functions include: developing and coordinating international trade policy in accordance with advice of the interagency council established pursuant to the requirements of section 1872 of title 19, United States Code (the Trade Policy Committee); serving as the President's principal adviser on trade matters; exercising lead responsibility for international trade negotiations; providing other agencies with guidance on trade matters in accordance with advice received from the Trade Policy Committee; keeping the Congress fully informed about the trade agreements program and other international trade issues; helping American businesses compete in the international market;

consulting and cooperating with state and local governments and other interested parties on international trade matters; enforcing the trade laws of the United States; and helping contribute to the development of policies that enhance productivity and growth.

This section is not intended to confer additional authorities on the new Secretary beyond those transferred to the Secretary under this Act and in no way derogates from the authorities vested in other officers by applicable statutes, Executive orders, or reorganization plans. Generally, the first four paragraphs are restatements of section 1(b) of Reorganization Plan No. 3 of 1979; the fifth is a responsibility of the United States Trade Representative under section 2171(c) of title 19; the sixth and seventh reflect the international trade functions transferred to the Secretary of Commerce under section 2 of Reorganization Plan No. 3 of 1979; and the eighth refers to current responsibilities of the Under Secretary of Commerce for Economic Affairs which are transferred to the new Department under section 302.

Subsection (b) provides that the Secretary shall be the Chairman of OPIC's Board of Directors. Its former chairman, the Director of the United States International Development Cooperation Agency (OPIC's parent), will serve as Vice Chairman. This subsection reflects the important relationship between the Overseas Private Investment Corporation (OPIC) and the objectives of the new Department. OPIC assists American investors in making profitable investments in over ninety developing countries. These investments not only help those countries but improve our balance of payments by returning profits and creating new markets for exports. The Secretary may not delegate the responsibility to serve on the Board or the right to vote at its meetings.

Subsection (c) provides that the Secretary shall be the Chairman pro tempore of the interagency organization established by section 242 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1872) (the Trade Policy Committee); and that the President and the Secretary of Agriculture shall be the Chairman and Vice Chairman, respectively of that organization. This provision reflects the central role which the Secretary and the Secretary of Agriculture will be expected to play in the deliberations of the Trade Policy Committee. It is anticipated that the President will make whatever changes are necessary in the

title, status, composition, structure or role of the Trade Policy Committee, which was established by Executive Order No. 12188 in satisfaction of the requirements of section 242, in order to ensure its continuing effectiveness as a mechanism for resolving competing interests and viewpoints.

Subsection (d) provides that the Secretary shall be the Deputy Chairman of the National Advisory Council on International Monetary and Financial Policies. Exchange rate issues are discussed by the Council, and subsection (d) reflects Congressional recognition of the importance of exchange rate policies in international trade.

Section 203. Deputy Secretary:

Section 203 establishes the position of Deputy Secretary, which is to be filled by Presidential appointment, by and with the advice and consent of the Senate. This section makes clear that the Deputy Secretary will act for, and assume the duties of, the Secretary whenever there is a vacancy in that office. The Deputy Secretary will also serve as Vice Chairman of the Board of Directors of the Export-Import Bank of the United States.

Section 204. Under Secretaries:

This section provides authority for the appointment of three Under Secretaries of International Trade and Industry by the President, by and with the advice and consent of the Senate. The Under Secretaries shall perform such duties as the Secretary may prescribe, except that one Under Secretary shall have primary responsibility for managing programs to encourage residents of foreign countries to travel to and within the United States.

The absence of a requirement that specific assignments be made to the other Under Secretaries derives from the need to accord the Secretary a considerable degree of flexibility in organizing a new Department for the first time. Their duties will be described when the names of appointees are forwarded to the Senate for its advice and consent. That process, coupled with the normal oversight, authorization and appropriation processes, should provide the Congress with adequate opportunities to be consulted on the manners in which functional assignments are made.

Section 205. Assistant Secretaries:

This section provides authority for the appointment of seven Assistant Secretaries by the President, by and with

the advice and consent of the Senate. For the same reason applicable to Under Secretaries, their duties are not prescribed. The number is two less than the number of Assistant Secretaries now permitted the Department of Commerce because of the transfers of the Patent and Trademark Office and the Economic Development Agency from the Department of Commerce under title IV of this Act.

Section 206. General Counsel:

This section authorizes the appointment of a General Counsel by the President, by and with the advice and consent of the Senate. It is expected that the General Counsel will serve as the Department's principal legal officer and perform such other duties as the Secretary may from time to time prescribe.

Section 207. Inspector General:

This section authorizes the appointment of an Inspector General in accordance with the terms and provisions of the Inspector General Act of 1978, as amended. As provided by that Act, the appointment will be made by the President, by and with the advice and consent of the Senate.

Section 208. Other Senior Positions:

This section authorizes the appointment of three senior officials. Subsection (a) establishes a Permanent Representative to the General Agreement on Tariffs and Trade (GATT) who will be appointed by the President, by and with the advice and consent of the Senate, and who will have the rank and status of Ambassador. These functions are currently performed by the Deputy United States Trade Representative in Geneva.

Subsection (b) establishes the position of Chief Negotiator for Textile Matters who will be appointed by the President, by and with the advice and consent of the Senate, and who will have the rank and status of Ambassador. This official will perform the duties now performed by the Chief Negotiator for Textile Matters in the Office of the United States Trade Representative.

Subsection (c) authorizes the appointment by the President, by and with the advice and consent of the Senate, of a

Director General of the United States and Foreign Commercial Services. This position currently exists within the Department of Commerce's International Trade Administration.

Section 209. Advisor to the President for International Trade, Economic, and Financial Policy:

This section establishes the position of Advisor to the President for International Trade, Economic, and Financial Policy in the Executive Office of the President. The Advisor shall be appointed by the President, and shall be Executive Director of the interagency organization established by section 242 of the Trade Expansion Act of 1962 (the Trade Policy Committee). The Advisor shall assure proper coordination, within the White House, of issues involving trade as well as international economic and financial policy. The Advisor would have the authority to assemble a professional staff of not-to-exceed fifteen persons.

Title III - Transfers to the Department of International Trade and Industry

Section 301. Transfers From the United States Trade Representative:

This section transfers all functions of the United States Trade Representative to the Secretary of International Trade and Industry. Among the principal functions transferred are: administering the trade agreements program under the Tariff Act of 1930, the Trade Expansion Act of 1962, and the Trade Act of 1974; representing the United States for all activities of the GATT; representing the United States for negotiations in the OECD, the United Nations Conference on Trade and Development (UNCTAD), and other multilateral institutions when trade or commodity issues are the primary issues under consideration; and that of representing the United States in bilateral negotiations when trade or commodities is the primary issue under consideration. A principal exception to the above is contained in section 512(b), which requires that the Secretary, at the request of the Secretary of Agriculture, delegate to the Secretary of Agriculture responsibility for conducting or participating in any international trade negotiation or meeting, or portion thereof, when the subject matter of the negotiation is primarily related to

trade in agricultural products or agricultural trade generally.

Section 302. Transfers from the Department of Commerce:

This section transfers to the Secretary all functions of the Secretary of Commerce and the Department of Commerce which will be transferred to the Department. This section transfers all functions of Commerce's International Trade Administration, Under Secretariat for Economic Affairs (other than the Bureau of the Census), National Telecommunications and Information Administration, and United States Travel and Tourism Administration to the Secretary of International Trade and Industry.

Those functions performed within the Office of the Secretary or elsewhere in the Department in connection with the functions of the units described in this section are also transferred to the Secretary.

The functions not transferred to the Secretary are those performed by or in behalf of the Economic Development Administration, the Minority Business Development Agency, the Bureau of the Census, the National Oceanic and Atmospheric Administration, the National Bureau of Standards, and the Patent and Trademark Office. The disposition of these functions is the subject of title IV.

Title IV -Transfers to Other Agencies

Subtitle A - Economic Development Administration

Section 401. Transfer to Agriculture:

This section transfers to the Secretary of Agriculture (USDA) all functions of the Economic Development Administration (EDA) and of the Secretary or any other officer or employee of the Department of Commerce pertaining to EDA. EDA's programs generally include activities to promote the long-range economic development of areas with severe unemployment and low family income problems.

Section 402. Administrative Provisions:

Section 402 requires that, for a period of at least one year, EDA be preserved as a separate, identifiable unit within USDA, and that all functions transferred by this

subtitle be performed by EDA. However, it preserves for the Secretary of USDA the ability to provide administrative and support functions for EDA and other components of USDA on a centralized basis.

Section 403. Technical Provision:

This provision reflects that, on October 1, 1981, the Secretary of Commerce transferred certain trade adjustment assistance functions under Title II of the Trade Act of 1974 from EDA to the International Trade Administration. These functions involved assistance to firms and communities affected adversely by imports. EDA retained responsibility for certain projects previously approved or then in process. This section transfers only the limited responsibility remaining with EDA on the effective date of the Act.

Subtitle B - Minority Business
Development Agency

Section 411. Transfer to the Department of Housing and
Urban Development [Small Business Administration]:

This section transfers to the Secretary of the Department of Housing and Urban Development (HUD), or to the Administrator of the Small Business Administration (SBA) if SBA continues in existence, all functions of the Minority Business Development Agency (MBDA) and of the Secretary or any other officer or employee of the Department of Commerce pertaining to MBDA. MBDA's programs generally include activities to provide national policies and leadership in forming and strengthening a partnership of business, industry, and government with the Nation's minority businesses.

Section 412. Administrative Provisions:

Section 412 requires that, for a period of at least one year, MBDA be preserved as a separate, identifiable unit within HUD (or within SBA if SBA continues in existence), and that all functions transferred by this subtitle be performed by MBDA. However, it also preserves for the Secretary of HUD (or the Administrator of SBA) the ability to provide administrative and support functions for MBDA and other components of HUD on a centralized basis.

Subtitle C - National Bureau of Standards

Section 421. Transfer to the National Science Foundation:

This section transfers to the Director of the National Science Foundation (NSF) all functions of the National Bureau of Standards (NBS) and of the Secretary or any other officer or employee of the Department of Commerce pertaining to NBS. NBS' programs generally include activities to strengthen and advance the Nation's science and technology and to facilitate their effective application for public benefit.

Section 422. Administrative Provisions:

Subsection (a) of section 422 requires that, for a period of at least one year, NBS be preserved as a separate, identifiable unit within NSF, and that all functions transferred by this subtitle be performed by NBS. However, it also preserves for the Director of NSF the ability to provide administrative and support functions for NBS and other components of NSF on a centralized basis. Subsection (b) requires that NBS adhere to the policies of the National Science Board, which is a constituent element of NSF, and clarifies that NBS will perform its functions subject to the authority and direction of the Director of NSF.

Section 423. Technical Provision:

This section clarifies an apparent inconsistency between section 14(c) of the National Science Foundation Act of 1950 (which forbids the Foundation from maintaining laboratories or pilot plants) and this subtitle (which, by transferring NBS to NSF, transfers such entities as the National Measurement Laboratory, the National Engineering Laboratory and the Institute for Computer Sciences and Technology).

Subtitle D - Patent and Trademark Office

Section 431. Transfer to the Department of Justice:

This section transfers to the Attorney General all functions of the Patent and Trademark Office (PTO) and of the Secretary or any other officer or employee of the Department of Commerce pertaining to PTO.

Section 432. Administrative Provisions:

Section 432 requires that, for a period of at least one year, PTO be preserved as a separate, identifiable unit within the Department of Justice, and that all functions transferred by this subtitle be performed by PTO. However, it also preserves for the Attorney General the ability to provide administrative and support functions for PTO and other components of the Justice Department on a centralized basis.

Subtitle E - Bureau of the Census

Section 441. Continuation:

This section provides that the Bureau of the Census shall be continued as a separate executive agency within the Executive branch.

Section 442. Transfer of Functions:

This section transfers all functions of the Bureau of the Census and of the Secretary or of any other officer or employee of the Department of Commerce with respect to the Bureau of the Census to the Director thereof.

Section 443. Technical Provision:

This section clarifies that nothing in the Act is intended to affect any provision of law requiring that information be provided to the Census Bureau and prescribing penalties for noncompliance, or any provision concerning the confidentiality of information within the possession of the Census Bureau.

Subtitle F - National Oceanic and
Atmospheric Administration

Section 451. Continuation:

This section provides that the National Oceanic and Atmospheric Administration shall be continued as a separate executive agency within the Executive branch.

Section 452. Transfer of Functions:

This section transfers all functions of the National Oceanic and Atmospheric Administration and of the Secretary

or any other officer or employee of the Department of Commerce with respect to the National Oceanic and Atmospheric Administration to the Administrator thereof.

Title V - Administrative Positions

Subtitle A - Personnel Provisions:

Section 501. Officers and Employees:

This section authorizes the Secretary, in accordance with the civil service laws, to appoint officers and employees to carry out the functions of the Act.

Subsection (b) provides for the reappointment of incumbent employees in grades GS 16-18, the Civil Service Reform Act notwithstanding (this authority terminates upon these positions becoming vacant). This subsection also provides for the establishment of the number of Senior Executive Service positions which existed within the Department prior to the effective date of the Act, and which relate to functions transferred to the Department by the Act.

Subsection (c) provides that, within 180 days after the effective date of the Act, the Secretary shall submit to the President and the Congress a report containing recommendations for the establishment of personnel procedures designed to attract and retain qualified and experienced professionals to administer the trade policies and programs of the United States. This report must address the advancement and retention of personnel on a competitive basis, the creation of exchange programs for officers and employees of federal agencies who are members of the Trade Policy Committee, and the designation of senior positions in these agencies in order for their employees to advance in careers relating to international trade.

Section 502. Experts and Consultants:

This section authorizes the Secretary to employ experts and consultants, in accordance with section 3109 of title 5, United States Code, at pay levels not exceeding those provided for grade GS-18. This section authorizes payment for time spent in travel away from the employee's home or regular place of business.

Section 503. Voluntary and Uncompensated Services:

This section authorizes the Secretary to accept voluntary and uncompensated services if they will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis. It also authorizes the Secretary to pay for incidental expenses, including transportation, lodging, and subsistence, for individuals providing these services.

Subtitle B - General Administrative Provisions

Section 511. General Authority:

This section authorizes the Secretary and other agency heads to whom functions are transferred by this Act, to utilize, in carrying out a function transferred to the Secretary by this Act, the authorities available by law, including appropriation Acts, of the official or agency from which the function was transferred. (This section provides the necessary authority to assure continuity in the functions transferred by the Act until such time as they are subject to reauthorization.)

Section 512. Delegation and Assignment:

Subsection (a) permits the Secretary, unless specifically prohibited by law, to delegate any of the functions transferred to the Secretary to officers and employees of the Department and to authorize successive redelegations as appropriate.

This section is intended to provide the Secretary with the flexibility necessary to assign and delegate the functions transferred to the Secretary for performance by other officers of the Department. It is expected that the Secretary will delegate to appropriate officers many of the responsibilities and functions transferred to him in this Act, but that he will retain the final responsibility for the effective discharge of authorities and responsibilities.

Subsection (b) requires that the Secretary, at the request of the Secretary of Agriculture, delegate to the Secretary of Agriculture responsibility for conducting or participating in any international trade negotiation or meeting, or portion thereof, when the subject matter of the negotiation

is primarily related to trade in agricultural products or agricultural trade generally.

Section 513. Seal:

This section authorizes the creation of a Departmental seal, and provides that judicial notice be taken of such seal.

Section 514. Reorganization:

This section provides authority to the Secretary to reorganize units and components of the Department, subject to applicable law, as may be necessary or appropriate. This section recognizes the practical necessity of flexibility in organic legislation so that the Departmental organization may be adapted to new needs.

Section 515. Rules:

This section authorizes the Secretary to prescribe rules and regulations necessary for the administration and management of the functions vested in the Secretary.

Section 516. Working Capital Fund:

This section authorizes the Secretary to establish a working capital fund within the Department, the purposes of which are to promote efficiency and economy in the carrying out of certain centralized administrative functions, such as the procurement and distribution of office supplies, the provision of messenger and telephone services, and library services. Monies in the fund shall be available without fiscal year limitation for these and other such expenses that the Secretary determines should be paid out of the Fund.

Section 517. Contracts, Grants and Cooperative Agreements:

This section authorizes the Secretary to enter into and perform contracts, leases, cooperative agreements, grants, or other similar transactions with public agencies and private organizations and persons, subject to appropriation Acts.

Section 518. Use of Facilities:

Subsection (a) authorizes the Secretary to use, with their consent, the facilities of any person, corporation or other private organization, federal, state or local agency, or foreign government in carrying out the functions of the Secretary under this Act. Such use may be with or without reimbursement as circumstances require, and under such other conditions as the Secretary may negotiate.

Subsection (b) authorizes the Secretary to make available facilities under the custody of the Secretary, under such terms as the Secretary considers to be in the public interest, to public and private organizations, individuals, and other entities for their use. Under this provision, the terms of use may include the maintenance or rehabilitation of the facility under conditions specified by the Secretary.

Section 519. Field Offices:

This section authorizes the Secretary to establish or discontinue such field offices as the Secretary considers necessary to perform functions transferred by the Act.

Section 520. Technical Provision:

This section provides that the functions of the Secretary carried out pursuant to sections 516 through 519 of the Act will be carried out in a manner consistent with the authorities of the Administrator of the General Services Administration (GSA). It is the intent of the Act that, wherever practicable and otherwise required, the Secretary will work through GSA for the procurement of public space, furnishings and other requirements.

Section 521. Publications:

This section authorizes the Secretary to disseminate in the form of reports or other publications such information as the Secretary considers appropriate. In the capacity as the principal promoter of trade and chief trade negotiator, the Secretary will be greatly assisted by the authority to prepare such publications as needed. The requirements of OMB Circular A-3 must be observed in the preparation of reports and other publications under this section.

Section 522. Funds Transfer:

This section provides for the transfer by the Secretary of not more than ten percent of any Department appropriation within the Department to another appropriation within the Department. This section will provide the Secretary with additional flexibility in the management of the Department, by permitting limited transfers of appropriated funds from account to account within the Department in response to changing circumstances or unforeseen events. In light of the homogeneous nature of the Department and its unified mission, such transfers are likely to be free of controversy and will represent sound management decisions.

Section 523. Gifts and Bequests:

This section authorizes the Secretary to accept, hold, administer and utilize gifts and bequests of property and personal services for the purpose of aiding or facilitating the work of the Department, and requires that such gifts and bequests be utilized as nearly as possible in accordance with their terms. The section permits the deposit of gifts or bequests of personalty, or the proceeds therefrom, in insured interest-bearing accounts, and provides that such gifts and bequests are deductible for purposes of federal income, estate and gift taxes, and state taxes.

Section 524. Successions:

Subsection (a) provides that, subject to the authority of the President, and section 203(b) of this Act, the Secretary may prescribe the order in which other officers of the Department may succeed the Secretary in the event of the absence or disability of the Secretary. This provision makes clear that the Deputy Secretary is the first in the order of succession.

Subsection (b) provides that individuals acting for the Secretary under this section shall continue to serve until the absence or disability no longer exists or a successor has been appointed, unless the President directs otherwise. Only officers appointed by the President by and with the advice and consent of the Senate may succeed the Secretary. The Secretary is also authorized to designate Presidential-ly appointed officers to fill vacancies in positions requiring Presidential appointment (e.g., designate an Assistant Secretary to serve as a Deputy Secretary until the President can appoint a successor).

Subsection (c) preserves other authorities to fill these vacancies under 5 U.S.C. §§ 3345, 3346 and 3347 or other statutes. Any limitations that apply to appointments made thereunder would continue to apply. For example, the designation of a Deputy Assistant Secretary who is a member of the Senior Executive Service (rather than a Presidential appointee) to serve as an Assistant Secretary under 5 U.S.C. § 3345 would not be subject to subsection (a) or (b).

Section 525. Authorization:

This section authorizes the appropriation of such sums as are necessary to carry out the provisions of this Act, such sums to remain available until expended.

Title VI.--Transitional, Savings, and
Conforming Provisions

Section 601. Additional Transfers:

Section 601 provides that all personnel and functions incidental to, necessary for, or primarily related to the performance of the functions transferred by subtitles E and F of title IV of the Act are transferred as well. It is the intent of this section to ensure that operations of those agencies becoming independent under the Act are not adversely affected by the transfer.

Section 602. Transfer and Allocation of Appropriations
and Personnel:

Subsection (a) transfers to each recipient agency all assets, liabilities, contracts, personnel, personnel positions, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds connected with the functions transferred under this Act which the Director of the Office of Management and Budget, in consultation with the affected agencies, determines to be appropriate. This subsection also provides that the Director of the Office of Management and Budget shall provide for the termination of the affairs of the entities terminated by the Act.

Subsection (b) authorizes the Director of the Office of Management and Budget, in consultation with the Director of the Office of Personnel Management, to make such

determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with the functions and offices transferred by the Act.

Subsection (c) provides that the unexpended balance of prior appropriations for the Department of Commerce that are transferred to new appropriation accounts may be merged with funds in the newly established accounts and accounted for as one fund for the same time period as originally enacted.

Section 603. Effect on Personnel:

Subsection (a) provides that any full-time government employees transferred by this Act shall not be separated or reduced in grade or compensation for one year after the date of transfer under this Act.

Subsection (b) provides that individuals compensated in accordance with the Executive Schedule and transferred by the Act shall be compensated at the same level at which they were compensated prior to the transfer.

Subsection (c) terminates all positions transferred by the Act, the incumbents of which are appointed by the President, by and with the advice and consent of the Senate. This subsection does not apply to members of the Foreign Service or the head of the Commissioned Corps of the National Oceanic and Atmospheric Administration.

Section 604. Savings Provisions:

Subsection (a) of this section provides for the continuation of all effective orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges made prior to enactment of this Act in connection with transferred functions, unless they are modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other appropriate officials, a court of competent jurisdiction, or by operation of law. This subsection is intended to make clear that rules and regulations adopted under authorities transferred under this Act will continue in effect unless they are revoked or otherwise changed in a manner that is in accordance with law, and that any changes made in existing regulations must be done in accordance

with the substantive and procedural requirements imposed by this Act and the underlying statutes.

The other subsections of this section serve to protect the status of proceedings or any notice of proposed rulemaking pending on the effective date of this Act before any body whose functions are transferred by the Act. Such a proceeding shall be discontinued or modified to the same extent permitted had this Act not been enacted. The Secretary is authorized to promulgate regulations to assure the orderly transfer of such proceedings. The Act shall not affect actions commenced prior to the date this Act takes effect, except to substitute or add the appropriate Department official as a party. The authority to impose sanctions and grant waivers with respect to conflicts of interest occurring before the effective date of the Act would continue.

Section 605. Separability:

This section provides that if any provision of this Act is held invalid, the remainder of the Act is not affected.

Section 606. Reference:

This section provides that after the effective date of this Act, references in any other law to a department, agency, officer or office from which functions were transferred shall be considered to refer to the official to whom the functions were transferred.

Section 607. Presidential Authority:

This section preserves for the President all authorities and functions which the President possessed immediately before the effective date of this Act.

Section 608. Conforming and Technical Amendments:

This section makes a number of amendments to existing laws to bring them into conformity with this Act. Subsections (a) through (i) delete references to the Department of Commerce and its statutorily established officials in titles 3 and 5 of the United States Code and replace them with the positions established by this Act.

Subsection (j) provides that a Deputy Secretary of the Department shall be the Vice Chairman of the Board of

Directors of the Export-Import Bank of the United States, in conformance with section 203(d) of the Act. This section also amends the Eximbank Act to provide that the number of members of the Board may exceed five members until the first expiration of a Director's term which occurs after the effective date of the Act, upon which the authorized number of Directors shall return to five.

Subsections (k) through (n) delete references to the Department of Commerce and its statutorily established officials in title 15 of the United States Code.

Subsection (o) provides that the Secretary shall serve as Chairman pro tempore of the interagency organization established under section 242 of the Trade Expansion Act of 1962 in conformance with section 202(c) of this Act.

Subsection (p) amends chapter 4 of Title I of the Trade Act of 1974 to reflect the transfer of the functions enumerated therein to the Secretary of International Trade and Industry.

Subsection (q) provides that the Secretary shall serve as the Chairman of the Board of Directors of the Overseas Private Investment Corporation, in conformance with section 202(b) of this Act.

Subsection (r) amends the Foreign Service Act in order that the Secretary have the unequivocal authority to appoint and compensate members of the Foreign Commercial Service thereunder.

Subsections (s) and (t) delete references, in the organic legislation of the United States Travel and Tourism Administration, to the Assistant Secretary of Commerce for Tourism Marketing.

Subsection (u) amends the organic legislation of the Economic Development Administration to delete the reference to the Secretary of Commerce and replace it with a reference to the Secretary of Agriculture in conformance with subtitle B of title IV of this Act.

Subsection (v) amends the National Security Act of 1947 to provide that the Secretary shall be invited to meetings of the National Security Council when trade matters are considered by the Council.

Section 609. Repeals:

Section 609 would repeal certain provisions of federal law.

Subsection (a) repeals the Acts codified at 15 U.S.C. § 1501, regarding the establishment of the Department of Commerce and the position of Secretary of Commerce.

Subsection (b) repeals 15 U.S.C. § 1503a, regarding the position of Under Secretary of Commerce for Economic Affairs (the position of Under Secretary of Commerce, previously referred to in 15 U.S.C. §§ 1502, 1503, was abolished by Reorganization Plan No. 3 of 1979, which created the position of Deputy Secretary of Commerce).

Subsections (c), (d), (e) and (f) repeal 15 U.S.C. §§ 1505, 1506, 1507 and 1507b, respectively, regarding additional Assistant Secretaries of Commerce.

Subsection (g) repeals 15 U.S.C. § 1508, regarding the position of the General Counsel, Department of Commerce.

Subsection (h) repeals 15 U.S.C. § 1511, providing for certain bureaus, etc., to be under the jurisdiction of the Department of Commerce.

Subsection (i) repeals 15 U.S.C. § 1519, regarding the preparation of certain annual reports by the Secretary of Commerce.

Subsection (j) repeals 15 U.S.C. §§ 1522, 1523, and 1524, regarding, respectively, the acceptance of gifts and bequests, the tax status of such gifts and bequests, and the investment of such gifts and bequests, or the proceeds thereof, in income-producing funds.

Section 610. Transition:

This section provides that, with the consent of the Secretary of Commerce or the United States Trade Representative, the head of each agency to which functions are transferred by this Act may employ the services of personnel of the Department of Commerce or the United States Trade Representative as appropriate to facilitate the transfer of functions under this Act. It also provides that funds appropriated to such functions or offices may be used for this purpose.

Section 611. Abolition:

Section 611 abolishes the Department of Commerce.

Title VII.--Effective Date and
Interim Appointment

Section 701. Effective Date:

This section provides that the Act takes effect 120 days after enactment. However, section 610, pertaining to utilization of Department of Commerce employees to facilitate the transfer of functions, would become effective upon enactment. Further, at any time after enactment, the officers provided for in this Act may be nominated and appointed. Until appropriations under the Act are available, the compensation and expenses of such officers may be paid from existing accounts of the Department of Commerce or the Office of the United States Trade Representative.

Section 702. Interim Appointment:

This section authorizes the President to make interim appointments if officers required to be confirmed by the Senate have not entered office on the effective date of the Act. However, such interim appointees must be officers whose appointment was subject to Senate confirmation.

