

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Roberts, John G.: Files

Folder Title: Ferroalloys (1 of 2)

Box: 25

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name ROBERTS, JOHN: FILES

Withdrawer

LOJ 7/31/2005

File Folder FERROALLOYS (1 OF 2)

FOIA

2005-139

Box Number CF0578

COOKE

6LOJ

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
19464	MEMO	REAGAN TO SECRETARIES OF STATE, TREASURY, DEFENSE, ETC, RE DEPARTMENT OF COMMERCE'S SECTION 232 REPORT ON FERROALLOYS	2	11/29/1982	B1
19465	LETTER	CARROLL JONES TO ROBERT MCFARLANE, RE PROGRAM FOR PUGRADING...	2	3/21/1984	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

April 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Ferroalloys Upgrading Program

Paul Thompson of NSC has asked us to review as soon as possible an NSC/GSA plan for funding years two and three of the ferroalloy upgrading program. You will recall that the President, by memorandum dated November 29, 1982, exercised his authority under the Strategic and Critical Materials Stockpiling Revision Act of 1979, 50 U.S.C. § 98 et seq., to direct GSA to undertake a ten-year program to upgrade certain stockpiled ores. Contracts have been awarded and are nearing completion for the first year of this program. The Office of Stockpile Management within the Federal Property Resources Service of GSA has proposed awarding a one-year contract, with an option to renew for the second year, for years two and three of the program, rather than simply using a one-year contract, as was done for the first year of the program. NSC would like to send a three-sentence memorandum to GSA, approving the use of a one-year contract with option to renew for a second year.

I have no objection to use of a one-year contract with an option to renew, rather than two separate, sequential one-year contracts. GSA notes that the option to renew approach will save money and limit disruption in the program. The President's November 29, 1982 memorandum directed that the program was "to be continued on a year-by-year basis through the ten-year term at the direction of the Assistant to the President for National Security Affairs." The option to renew contract proposal is not inconsistent with this provision, however, since the United States will not be required to renew the contract at the end of the first year of the contract if the program is discontinued. Wayne Kulig, who runs the stockpile program for GSA, advises that this will be made clear in the contract. Furthermore, it is generally recognized that the program will be continued at least through the third year. Our clearance of the NSC memorandum to GSA should, however, be expressly contingent on the option to renew contract not interfering in any way with the flexibility of the Assistant to the President for National Security Affairs to discontinue the program after the end of the first year of the contract.

The second sentence in the proposed NSC memorandum simply states that the program "should be funded only with materials declared by Congress to be in excess of our National Defense Stockpile requirements." This sentence is entirely gratuitous in a legal sense. The President's November 29 memorandum directed that the program be funded by materials exchange using excess stockpile material, and applicable law provides that materials from the stockpile cannot be disposed of unless declared to be excess by Congress. See 50 U.S.C. §§ 98d; 98e(c)(2). NSC prefers to leave the sentence in, to highlight cooperation with Congress in the program. The sentence simply states as a directive what is already required by law, so I have no objections. The third sentence of the memorandum simply reiterates language from the President's November 29 memorandum, and is unobjectionable.

Attachment

THE WHITE HOUSE

WASHINGTON

April 20, 1984

MEMORANDUM FOR PAUL THOMPSON
STAFF LEGAL COUNSEL AND DEPUTY DIRECTOR
FOR LEGISLATIVE AFFAIRS, NSC

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Second and Third Year Funding for the
Ferroalloy Upgrading Program

Counsel's Office has reviewed the proposed memorandum from Mr. McFarlane to Ray Kline, Acting Administrator of the General Services Administration, on the above-referenced topic. We have been advised by J. Wayne Kulig, Assistant Commissioner, Office of Stockpile Management, that the proposed one-year contract with option to renew for a second year will be drafted in such a manner that it will not interfere with the flexibility of the Assistant to the President for National Security Affairs to discontinue the program after the first year of the contract, should he determine that such action is appropriate. On the basis of this representation, I have no objection to the proposed memorandum from a legal perspective.

FFF:JGR:aea 4/20/84
cc: FFFielding/JGRoberts/Subj/chron

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
ROBERTS, JOHN: FILES

Withdrawer
LOJ 7/31/2005

File Folder
FERROALLOYS (1 OF 2)

FOIA
2005-139
COOKE

Box Number

6LOJ

<i>ID</i>	<i>Document Type</i> <i>Document Description</i>	<i>No of</i> <i>pages</i>	<i>Doc Date</i>	<i>Restric-</i> <i>tions</i>
19464	MEMO REAGAN TO SECRETARIES OF STATE, TREASURY, DEFENSE, ETC, RE DEPARTMENT OF COMMERCE'S SECTION 232 REPORT ON FERROALLOYS	2	11/29/1982	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

TAB II

II

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

ROBERTS, JOHN: FILES

Withdrawer

LOJ 7/31/2005

File Folder

FERROALLOYS (1 OF 2)

FOIA

2005-139

COOKE

Box Number

6LOJ

<i>ID</i>	<i>Document Type</i> <i>Document Description</i>	<i>No of</i> <i>pages</i>	<i>Doc Date</i>	<i>Restric-</i> <i>tions</i>
19465	LETTER CARROLL JONES TO ROBERT MCFARLANE, RE PROGRAM FOR PUGRADING...	2	3/21/1984	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

TAB A

A.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE HONORABLE RAY KLINE
Acting Administrator, General Services
Administration

SUBJECT: Ferroalloys Upgrading Program

In response to Commissioner Jones' memorandum of March 21, 1984 (attached), I approve GSA making solicitations to cover the next 2-year period for the ferroalloy upgrading program through the use of a 1-year contract with an option to renew. This program should be funded only with materials declared by Congress to be in excess of our National Defense Stockpile requirements. Steps should be taken, to the extent possible, to avoid undue disruption of the usual markets of producers, processors and consumers of the materials exchanged.

FOR THE PRESIDENT:

cc: The Honorable Malcolm Baldrige
The Honorable David Stockman

Attachment

TAB A Commissioner Jones' memo of March 21, 1984

UNCLASSIFIED with
SECRET Attachment

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

705
7/29/85

I.

TAB I

MEMORANDUM


NATIONAL SECURITY COUNCIL

UNCLASSIFIED with
SECRET Attachment

April 6, 1984

ACTION

MEMORANDUM FOR ROBERT C. McFARLANE

FROM: RICHARD LEVINE 

SUBJECT: Second and Third Year Funding for the
Ferroalloy Upgrading Program

Attached at Tab A is GSA's plan to fund the next 2 years of the ferroalloy upgrading program. I tasked GSA for this memorandum in order that we may decide the funding issue involved with this program in a timely fashion.

The first year of this upgrading program is going along quite well. A total of \$34 million in contracts has been let and a very large ferrochromium plant in Senator Thurmond's state that had closed last year was reopened, thus maintaining furnace capacity for mobilization requirements.

The President's ferroalloy's directive of November 29, 1982, states that the upgrading program "...is to be continued on a year-by-year basis through the 10-year term at the discretion of the Assistant to the President for National Security Affairs. This program is to be funded for at least the first 3 years by materials exchange using excess stockpile materials."

The first year's program was funded by exchanging excess tin. GSA's proposal is to make solicitations to cover the next 2-year period through the use of a 1-year contract with an option to renew for a second year at the same price. This would simplify the extremely difficult contracting procedures GSA has to use and we should support this concept. GSA further proposes that we use about 6 million ounces of silver as the medium of exchange for this follow-on portion of the upgrading program. I have looked into the silver option at great depth by having Judge Clark's office chair an interagency meeting on silver disposals (currently, there is a congressional prohibition against disposing of silver). Right now, we cannot support GSA's plan to fund the ferroalloys program by the exchange of silver--there are too many Hill obstacles.

UNCLASSIFIED with
SECRET AttachmentUNCLASSIFIED
EXCLUDED FROM AUTOMATIC
DOWNGRADING AND
DECLASSIFICATION


I therefore suggest that you sign the memorandum at Tab I to GSA approving the next 2 years of the upgrading program with the proviso that only those materials declared excess by Congress (i.e., no silver at the present time) be used to pay for this program. Your decision on this matter will allow me to forward to you the final decision package on the ferroalloy 232 case. (NOTE TO BOB KIMMITT: You might want to run this through White House Counsel.)

RECOMMENDATION

That you sign the memorandum to GSA at Tab I.

Approve _____ Disapprove _____

Attachments

TAB I Memo for GSA
 TAB A Incoming memo from GSA
TAB II President's memo of November 29, 1982

THE WHITE HOUSE
WASHINGTON

Date 3.16.84

Suspense Date _____

MEMORANDUM FOR: John

FROM: **DIANNA G. HOLLAND**

ACTION

- Approved
- Please handle/review
- For your information
- For your recommendation
- For the files
- Please see me
- Please prepare response for
_____ signature
- As we discussed
- Return to me for filing

COMMENT

11/29/82 — year-by-year, 3 yrs — explore.
essential ban on silver —

consistent (?)

National Defense Attributable — defined by Congress.

- if NSA goes ahead w/ it
- defined by Congress to be in excess



VSC
50 98 d

explicitly authorized in excess

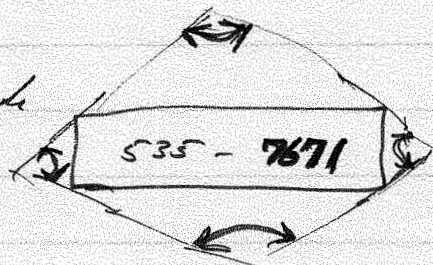
9/30/84 —
etc. to K²

→ annual date — 10-11 (84) (?) ✓ if we like, + can do
no silver

- year by year basis — to what?

4

Amount — to estimate
ways to fulfill



- annual national plan — list of things well
buy. Attachment: list of conditions not
considered needed



Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

5 OCT 1982

MEMORANDUM FOR HONORABLE FRED FIELDING
Counsel to the President

Re: Ferroalloy Investigation and Presidential Authority Under
§ 232(b) of the Trade Expansion Act of 1962

You have asked this Office to provide you with our views regarding four questions concerning the scope and flexibility of the President's authority to adjust imports under § 232(b) of the Trade Expansion Act of 1962, as amended, 19 U.S.C. § 1862. The questions relate to a range of actions the President might take in response to a "Report" he has received from the Secretary of Commerce which contains a finding by the Secretary that high carbon ferrochromium and high carbon ferromanganese are "being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security" 19 U.S.C. § 1862(b).

The Report, in connection with this finding, recommends to the President: (i) the upgrading to high carbon ferrochromium and high carbon ferromanganese of chromite and manganese ores currently held in the National Defense Stockpile (NDS), an action to be taken pursuant to the Strategic and Critical Materials Stock Piling Revision Act of 1979, 50 U.S.C. § 98 et. seq. (Stock Piling Act), and (ii) removal of high carbon ferromanganese from the Generalized System of Preferences (GSP) established under Title V of the Trade Act of 1974, 19 U.S.C. § 2461 et. seq. (1974 Trade Act). We conclude that the President may exercise his authority under the Stock Piling Act to upgrade the two ores and his authority under the 1974 Trade Act to withdraw GSP status of high carbon ferrochromium in response to a "national security" finding under 19 U.S.C. § 1862(b). We are also of the view that such actions would satisfy the statutory requirement that the President, unless he rejects the Secretary's finding, "shall take such action, and for such time, as he deems necessary to adjust the imports of such [ferroalloy] . . . so that such imports will not threaten to impair the national security" 19 U.S.C. § 1862(b).

Our responses to your specific questions are as follows:

1. Whether upgrading ores in the National Defense Stockpile into ferroalloys would be "action to adjust imports" authorized by Section 232 of the Trade Expansion Act of 1962?

We are not aware that any Department has argued that upgrading the ores in the NDS is, in this particular instance, "action to adjust imports" authorized by § 232. To the contrary, the Commerce Department Report recommends that the stockpiling action be taken pursuant to the Stock Piling Act. Although this Department has interpreted the President's authority under § 232 extremely broadly in the past, see 43 Op. A.G. No. 3 (Jan. 14, 1975), and the legislative history mentions stockpiling as an appropriate action 1/, we do not believe that upgrading the stockpile is an action which would be authorized by § 232 standing alone. In light of the cautionary language in Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 548, 571 (1976), which warned that "our conclusion here, fully supported by the relevant legislative history, that the imposition of a license fee is authorized by § 232(b) in no way compels the further conclusion that any action the President might take as long as it has even a remote impact on imports, is also so authorized," we see no reason to reach out unnecessarily to answer question 1 affirmatively since there is clear authority for the stockpiling action under separate statutory authority.

1/ See 101 Cong. Rec. 5588 (1955) ("they will have at their command the entire scope of tariffs, quotas, restrictions, stockpiling, and any other variation of these programs") (remarks of Senator Bennett); 101 Cong. Rec. 5299 (1955) ("It grants to the President authority to take whatever action he deems necessary to adjust imports He may use tariffs, quotas, import taxes, or other methods of import restrictions.") (remarks of Senator Milliken); S. Rep. No. 232, 84th Cong., 1st Sess. 4 (1955) (President to have the authority to take "whatever action is necessary to adjust imports").

2. If, by action under separate authority, the President were to implement the two remedial actions (stockpiling and GSP removal) recommended in the Section 232 Commerce Report, would the requirement of Section 232 -- that action "to adjust imports" be taken -- be satisfied.

As a preliminary matter, we would note that this question need not be resolved if the President were to refrain at this time from accepting or rejecting the "national security" finding made in the Commerce Report. That is, the President could take the two recommended remedial actions under independent authority established in the Stock Piling Act and the 1974 Trade Act and simply postpone, in light of changed circumstances that would exist at that point, his determination whether the articles are being imported into the United States in such a manner as to threaten to impair the national security.

Should the President, however, determine to affirm the finding of the Secretary, we believe the requirements of § 232 would be satisfied. The only statutory requirement imposed on the President by § 1862(b) is that he "shall take such action, and for such time, as he deems necessary to adjust the imports of such article . . . so that such imports will not threaten to impair the national security" As we understand the facts, by upgrading the NDS many domestic producers of high carbon ferrochromium and ferromanganese who might otherwise go out of business will remain economically viable for the 10 year period during which the upgrading would occur. Absent such a remedial measure, the failure of these domestic producers would leave the country dependent on imports of strategically critical ferroalloys. Necessarily then, the President's action will have the result of adjusting imports; the nation will rely less on imports of ferroalloys if some domestic production continues. In addition, the effect of removing high carbon ferromanganese from GSP treatment would be analogous to the imposition of tariffs or fees, which are accepted remedies for purposes of § 232. See FEA v. Algonquin SNG, Inc., *supra*, 426 U.S. at 571. Presumably, raising the price of imports of high carbon ferromanganese would increase the demand for the domestically produced article and thus "adjust imports" within the meaning of § 232.

The language, legislative history and purpose of § 232 indicate that the proposed remedial actions would satisfy the President's obligations under § 232(b). As the Supreme Court noted in FEA v. Algonquin SNG, Inc., supra, 426 at 561:

In authorizing the President to "take such action and for such time, as he deems necessary to adjust the import of [an] article and its derivatives," the language of § 232(b) seems clearly to grant him a measure of discretion in determining the method to be used to adjust imports. (emphasis added).

Nor has this Department ever questioned that the language in § 232 grants the President "the broadest flexibility" in selecting actions "to adjust imports." 43 Op. A.G. No. 3, supra at 5.

Section 232 of the Trade Expansion Act also instructs the President to

give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, . . . [as well as to] take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, . . . loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports . . . in determining whether such weakening of our internal economy may impair the national security.

19 U.S.C. § 1862(c). Because the statutory language specifically indicates that maintaining the viability of domestic industries perceived to be critical to the national security was a major purpose of § 232, we believe that the proposed remedial actions -- which would achieve the statutory purpose of preserving domestic production of articles important to the national security -- would "adjust imports" within the meaning of § 232.

The legislative history of § 232(b) and its predecessors 2/ similarly indicates that Congress wanted the President both to address himself to the effects of imports on domestic industries deemed critical to the national security 3/ and to have broad powers to preserve domestic production needed for national defense requirements. Indeed, Representative Cooper, the floor manager of the bill containing § 232(b), illustrated the meaning of that provision with an example analogous to the present situation. He noted that the Conference Report "emphasized that if the President sees fit to stockpile critical materials under any other law, that act may be taken wholly aside from the authority contained in this amendment [final version of § 232(b)]. Conversely, action under the new provision may be taken wholly aside from the authority contained in any other law." 101 Cong. Rec. 8160, citing H.R. Rep. No. 745, 84th Cong., 1st. Sess. 7 (1955).

Representative Cooper further explained: "This means that if the President should institute a stockpile program which would successfully preserve the essential domestic producing facilities in a sound condition and the threat to the national security would thereby be eliminated, there would be no necessity for limiting imports. The President would not only retain flexibility as to the particular

2/ Section 232(b) was originally enacted by Congress as § 7 of the Trade Agreement Extension Act of 1955, Pub. L. No. 84-86 c. 169, 69 Stat. 166, and amended by § 8 of the Trade Agreement Extension Act of 1958, Pub. L. 85-686, 72 Stat. 678.

3/ In directing the President to consider the domestic effects of imports, § 232 contrasts with other statutes which delegate powers to the President to deal with imports but instruct him to focus primarily on international concerns. See, e.g., 19 U.S.C. § 2132 (correcting balance of payments disequilibria); 50 U.S.C. §§ 1701-06 (IEEPA).

measure which he deems appropriate to take, but, having taken an action, he would retain flexibility with respect to the continuation, modification, or suspension of any decision that had been made." 101 Cong. Rec. 8160-61. 4/

As noted above, Congress made no attempt to restrict the options available to the President to adjust imports in response to a national security finding under § 232. See n.l supra. (President authorized to take whatever action he deems necessary). See also H.R. Rep. No. 1761, 85th Cong., 2d Sess. 13 (1958) (statute provides "those best able to judge national security needs . . . [with] a way of taking whatever action is needed to avoid a threat to the national security through imports"). We therefore conclude, based on the language and legislative history of § 232, that stockpiling and removing the GSP status of the relevant ferroalloys under independent statutory authorities are sufficient actions "to adjust imports" in response to a national security finding by the Secretary of Commerce.

Finally, we do not believe that either FEA v. Algonquin SNG, Inc., supra, or Independent Gasoline Marketers Council v. Duncan, 492 F. Supp. 614 (D.C.D.C. 1980), establish that these actions would be a legally insufficient response to the finding. In upholding the President's authority to impose a license fee system under § 232(b), the Court's opinion in Algonquin repeatedly cited to expressions from Congress and the Executive Branch reflecting their understanding of the broad scope of authority granted to the President by the language of § 232(b). See 426 U.S. at 564-70. The Court's final caveat that neither its holding nor the legislative history "compels the further conclusion that any action the President might take, as long as it has even a remote impact on imports, is also so authorized," 426 U.S. at 571, is simply not applicable in the present instance because we do not deal here with the coercive regulation of private enterprise that was an underlying concern in the Algonquin case.

4/ See also Hearings on Trade Agreements Extension (H.R. 1), before the House Comm. On Ways and Means, 84th Cong., 1st Sess. (1955); Hearings on Trade Agreements Extension (H.R. 1), before the Senate Comm. on Finance, 84th Cong., 1st Sess. (1955).

The present actions are also similarly distinguishable from the Petroleum Import Adjustment Program (PIAP) that was created in response to a national security finding concerning oil imports, and was successfully challenged in Independent Gasoline Marketers Council v. Duncan, supra. The PIAP license-fee system was a demand-side disincentive, ultimately designed to fall on consumers of gasoline rather than users of home heating oil. It imposed a gasoline conservation fee on refiners of both domestic and imported crude oil. The court determined that the PIAP system was structured to lower demand for oil generally rather than demand for imports in particular. The court explained the remoteness of the program's effect on imports as follows:

First, the quantitative impact of the program on import levels will admittedly be slight. Second, the program imposes broad controls on domestic goods to achieve that slight impact. Third, Congress has thus far denied the President authority to reduce gasoline consumption through a gasoline conservation levy. PIAP is an attempt to circumvent that stumbling block in the guise of an import control measure. TEA alone does not sanction this attempt to exercise authority that has been deliberately withheld from the President by the Congress.

492 F. Supp. at 618. The PIAP system clearly was the type of Presidential action that the Supreme Court had warned was not authorized by § 232 in the Algonquin case.

In contrast to the PIAP system, the proposed remedial actions for ferroalloys in no way penalize domestic industries; rather, the stockpiling action aids them. More importantly, these actions do not constitute coercive regulation taken pursuant to the Act. The removal of GSP status for ferromanganese also discriminates between imports and domestic goods, in conformity with the requirements of § 232. Further, the President would not be relying on § 232 to accomplish indirectly an action that Congress had not authorized him to undertake directly. Accordingly, we conclude that the proposed remedial actions would satisfy the requirements of § 232.

3. If, by independent action and under separate authority, the President implements the two remedial actions (stockpiling and GSP removal) recommended in the Section 232 Commerce Report, can the President then either take no action on the report at this point or return the report to Commerce for further consideration in light of the remedies taken? What effect would such action have on the other eleven ferroalloys for which there were no positive findings?

Section 232(b), as explained above, requires the President either: (1) to take such action, and for such time, as he deems necessary to adjust imports so as to remove the threat to the national security; or (2) to reject the finding of the Secretary of Commerce that imports threaten to impair the national security. 19 U.S.C. § 1862(b). No time frame constrains the President. Moreover, as this Department has previously indicated, the statutory language and relevant legislative history contemplate a continuing course of action, with the possibility of future modifications. 43 Op. A.G. No. 3 at 2-3 (Jan. 14, 1975). ^{4/} As noted in a Commerce Department memorandum, the constant monitoring contemplated by § 232 encompasses not only a review of factual circumstances

^{4/} Representative Cooper, floor manager of the bill which adopted § 232(b), commented:

"The President would not only retain flexibility as to the particular measure which he deems appropriate to take, but, having taken an action, he would retain flexibility with respect to the continuation, modification, or suspension of any decision that had been made."

101 Cong. Rec. 8160-61 (1955). The Conference Report on the bill also stated with reference to § 232(b) that "it is . . . the understanding of all the conferees that the authority granted to the President under this provision is a continuing authority" H. Rep. No. 745, 84th Cong. 1st. Sess. 7 (1955).

to determine whether a particular remedy is effective, but also a review to determine whether the initial finding of a threat to the national security remains valid. Memorandum to H.P. Goldfield, Associate Counsel to the President, from Irving P. Margulies, Deputy General Counsel, Re: Ferroalloy Investigation at 2 (Sept. 8, 1982). Thus, we see no reason why the President may not retain the Report for further consideration in light of the actions he will have taken under independent statutory authority. Similarly, we see no reason why he may not return the report to the Commerce Department for further evaluation given the changed circumstances resulting from the actions he will have undertaken.

You have further inquired whether either of these actions would affect the eleven ferroalloys for which no positive national security finding was made. The only potential effect we have been able to identify is whether the President or Secretary of Commerce would be required to publish the Report of the investigation and findings. Section 232(d) requires that:

A report shall be made and published upon the disposition of each request, application, or motion under subsection (b) of this section. The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b) of this section.

The Commerce Department regulations promulgated thereunder state that:

The report, excluding the sections containing national security classified and business confidential information and material, shall be published in the Federal Register upon the disposition of each request, application, or motion made pursuant to [§ 232]. 15 C.F.R. § 359.10(c).

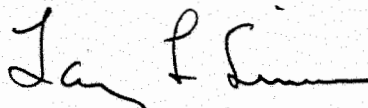
The President's decision either to retain the Report for further study or to return it to the Commerce Department for further evaluation would not constitute a final disposition of the § 232 application by the Ferroalloys Association. Consequently, no publication requirement would be triggered.

4. Whether GSP eligibility may be withdrawn under Section 232 of the Trade Expansion Act, without the President (i) considering the factors required in Section 504(a) of the Trade Act of 1974, and (ii) issuing an Executive Order overriding the previous Executive order under which GSP status was granted to the product?

We are unaware that any Department presently contends that GSP eligibility should be withdrawn under § 232 of the Trade Expansion Act. The consensus has been that withdrawal of duty-free treatment for high carbon ferromanganese should be implemented under the authority of § 504 of the Trade Act of 1974, 19 U.S.C. § 2464. Two reasons supported this consensus. First, § 503 of the Trade Act of 1974 provides that whenever an article is the subject of any action proclaimed under § 232, that article will not be eligible for GSP status. 19 U.S.C. § 2463(c)(2). We understand that there was a policy disagreement as to whether removal of GSP status was therefore a necessary concomitant of other import-adjusting action under § 232, or whether removal of GSP status alone would suffice to adjust imports under § 232. Second, even if withdrawal of GSP status alone were action authorized by § 232, this determination would not establish that the President had acted solely under the authority of § 232 with respect to high carbon ferrochromium, which has no GSP status. One would still have to rely on the proposition that action to "adjust imports" as contemplated by § 232 could be taken under separate authority were the President to stockpile high carbon ferrochromium under the Stock Piling Act.

Assuming that withdrawal of GSP status can be demonstrated to adjust imports sufficiently directly so as to constitute action under § 232, we do not believe the President is required to consider the factors mentioned in § 504(a) of the Trade Act of 1974. (The factors are set forth in 19 U.S.C. §§ 2461, 2462(c)). Those factors, which focus on economic interactions

between developed and developing countries, are relevant to withdrawal of GSP treatment under the Trade Act of 1974; they have no bearing on actions taken under § 232 of the Trade Expansion Act to address threats to the national security. We are of the view, however, that should the President remove GSP treatment of ferromanganese, he would be required to issue an Executive Order overriding the earlier Executive Order, issued pursuant to 19 U.S.C. § 2463(b), which had designated high carbon ferromanganese to be eligible for GSP treatment.



Larry L. Simms
Deputy Assistant Attorney General
Office Of Legal Counsel