WITHDRAWAL SHEET

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Collection Name MATLOCK, JACK: FILES

Withdrawer JET 5/18/2005

File Folder USSR: PIPELINE-FORCED LABOR 7/7

FOIA F06-114/9 YARHI-MILO 3109

Box Number 31

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
10807	MEMO	ROBINSON TO MCFARLANE RE STATUS OF SLAVE LABOR ISSUE AND RECOMMENDED ACTION	5	2/9/1984	B1
10819	CABLE	280523Z JAN 84 R 3/24/2011 F2006-114/9	2	1/28/1984	B1
10808	MEMO	TALKING POINTS RE BAN	2	ND	B1
10809	MEMO	SAME TEXT AS DOC #10807	5	2/9/1984	B1
10821	CABLE	SAME TEXT AS DOC #10819 R 3/24/2011 F2006-114/9	2	1/28/1984	B1
10811	MEMO	SAME TEXT AS DOC #10808	2	ND	B1
10813	MEMO	ROBINSON TO MCFARLANE RE KEN DEGRAFFREID'S NON-CONCURRENCE ON BRIEFING MEMO FOR YOUR FEBRUARY 24 BREAKFAST MEETING WITH SHULTZ AND REGAN	2	2/23/1984	B1
10814	MEMO	DEGRAFFENREID TO MCFARLANE RE NONCONCURRENCE ON ROGER ROBINSON MEMORANDUM, FEBRUARY 22, 1984	1	2/23/1984	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]
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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.

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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
10822	MEMO	HILL TO MCFARLANE RE PROPOSED IMPORT BAN ON CERTAIN SOVIET PRODUCTS *R 3/24/2011 F2006-114/9*	1	5/7/1984	B1
10816	MEMO	MATLOCK/ROBINSON TO MCFARLANE RE CUSTOMS BAND ON SOVIET PRODUCTS PRODUCED BY FORCED LABOR	5	5/9/1984	B1
10817	E-MAIL	E-MAIL PROFS KIMMITT/MCFARLANE TO MATLOCK RE UPDATE ON SLAVE LABOR	1	5/9/1984	B1
10818	E-MAIL	KIMMITT/MCFARLANE TO MATLOCK RE TREASURY ANNOUCEMENT ON SLAVE LABOR	1	5/9/1984	B1

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There are five (5) product groups to be prohibited from importation.

Planned prohibited products and their import figures for CYs 1981 and 1982 are:

PRODUCT	VALUE of IMPORTS $ in thousands CY 81	CY 82
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5. TRACTOR GENERATORS**	"1,300.0"	"100.0"
CALENDAR YEAR TOTALS FOR PROHIBITED PRODUCTS	$113,454.1	$10,943.6
CALENDAR YEAR GRAND TOTALS FOR ALL US IMPORTS FROM SOVIET UNION	$360 million	$229 million

*/ The 1981 figure for refined oil products reflects an atypical "bulge" in imports caused by imports into Massachusetts and Rhode Island arising from the very harsh winter, short local supplies, and the unavailability of other fuel oil sources on the short term spot market. The CY 82 figure is typical. This difference accounts for most of the difference in total import figures for 1981 and 1982.

**/ Tractor generators are imported only as part of the tractor, not separately. Their value would be a small part of the total tractor import value. Obviously, the Soviet tractors could be imported without the generators if the Soviets chose to do so.

Legal Elements and Evidentiary Standards for Application of 19 U.S.C. §1307, Prohibiting the Importation of Convict-Made Merchandise

I. The Statute

The operative sentence of section 1307 provides:

> All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, ...

An exception, applicable where domestic U.S. demand is not being satisfied, will be quoted and discussed later.

II. The Procedures

A. The Secretary of the Treasury has substantive authority to make "such regulations as may be necessary for the enforcement of this provision." In the exercise of that authority, he has promulgated regulations defining the procedures the Commissioner of Customs is to follow in enforcing section 1307. See 19 C.F.R. §12.42-.44.

B. On receiving written information sufficient to support a decision and after such investigation as is warranted, id. §12.42(a)-(d), if the Commissioner finds "that information available reasonably but not conclusively indicates that merchandise within the purview of section [1307] is being, or is likely to be, imported, . . . the district directors shall thereupon withhold release of any such merchandise . . . ." Id. §12.42(e).

C. If the Commissioner actually determines "that the merchandise is subject to" section 1307, he is to obtain the approval of the Secretary of the Treasury and publish "a finding to that effect" in the Federal Register and the Customs Bulletin. Id. §12.42(f).

D. Any particular entry of merchandise that is (1) within a "class specified in a finding made under paragraph (f)", and (2) still being detained by Customs at the time of the publication, is to be treated as "an importation prohibited by section [1307]" unless the importer is able to establish "by satisfactory evidence that that particular entry of merchandise was not mined,

produced, or manufactured in any part with the use of a class of labor specified in the finding." Any importer, it appears, my voluntarily export the detained merchandise at any time.

E. Absent voluntary exportation, the Customs Service must hold the merchandise until 3 months after the publication or until 3 months after the attempt to import the merchandise, whichever is later. Up until that time, the importer may bring in evidence to establish that the particular merchandise at issue was not made with the use of a class of labor specified in the finding. Id. §12.42(g).

F. If satisfactory proof has not been submitted within 3 months, Customs is to notify the importer "in writing that the merchandise is excluded from entry". After waiting an additional 60 days to permit the importer to export the merchandise or file an administrative protest under 19 U.S.C. §1514, Customs is to treat the merchandise as abandoned and destroy it.

III. The Legal Elements and Evidentiary Requirements

A. While section 1307 only prohibits the entry of merchandise that actually contains "wholly or in part" components made with prohibited labor, the Secretary has substantive rulemaking power permitting him to detain other merchandise if reasonably necessary to achieve that purpose.

B. The responsibility of the Commissioner (to whom authority to implement the regulations has been delegated) is to make preliminary and (with the approval of the Secretary) final findings concerning whether merchandise is being or is likely to be imported in violation of section 1307. There is no provision granting any importer a right to participate at this stage of the process. In making those findings, under §12.42(e) and (f) of the regulations, both the detailed requirements of §12.42(b) and the protest and judicial review provisions of §12.44 cause us to conclude that the findings must be supported either with (a) a recitation of the evidence and reasons supporting it or (b) the detailed supporting material required to be submitted to the Commissioner under §12.42(b), supplemented with the results of any further investigation he undertakes. This requirement, however, does not require that he reveal classified information and it is expressly contemplated that, should judicial review be sought at any point, the Government should reserve the option of protecting its intelligence sources and methods even at the cost of loss of the litigation. Appropriate unclassified summaries should be substituted to support the findings.

C. 1. Upon receiving information as provided in the regulation, the first step that the Commissioner must take is to define the appropriate class of merchandise. The Commissioner

has the authority to proscribe the entry of "goods, articles or merchandise" through the use of administratively necessary classifications. That is, he is empowered (as a result of his substantive rulemaking authority under section 1307) to define categories of merchandise that are to be detained or excluded despite the fact that a particular class may be somewhat too narrow or too broad to coincide perfectly with the universe of merchandise that was actually produced with convict, forced, and/or indentured labor.

C. 2. In establishing each such class, the Commissioner should use the narrowest classification that he can reasonably establish. That is, by using the most specific Tariff Schedule classification possible, and/or narrowing limitations such as country of origin, manufacturer, or specific physical characteristics, he should seek to avoid prohibiting the entry of any merchandise that is not necessary to the task of excluding the prohibited merchandise. Where possible he should use multiple narrow classifications rather than a single broad one.

D.1. Under the statute and regulations, merchandise is only excludable if it contains "wholly or in part" components made with prohibited labor. That is, the use of tools, factories, energy, or other means that were themselves made with prohibited labor to produce the merchandise will not make the merchandise excludable. In addition, the merchandise is excludable if any part or component is made with prohibited labor, except where the part or component is de minimus. Such a rule would comport with the construction given by the Court of International Trade to the term "in part." It would also permit the Treasury to invoke more easily the 1307 exclusion and shift to the importer and producer the burden of proving that the imported article is not "in part" of the offending component by establishing that the economic contribution of the prohibited labor to the article is de minimus.

D.2. The legislative history of the statute reflects the intent of Congress to protect American industries from foreign competitors who obtain a competitive advantage by using forced labor. Therefore, with respect to any producer in a free market economy for which such information is available, the Commissioner should make a specific finding that the use of forced labor gives that foreign producer a more than de minimus price advantage over American producers. If such information is not available because either the foreign producer or the country in which it is located is unable or unwilling to make such information available or is unreliable because the producer is in a state controlled economy in which costs and prices can be artificially set, then the Commissioner should consider the following in determining whether a competitive advantage resulting from the use of forced labor is more than de minimus:

(a) whether the economy is free market or state controlled;

(b) the nature of the product (whether labor cost is a significant component);

(c) the (apparent) value added by use of forced labor;

(d) the number of parts added or assembled by use of forced labor, relative to the number of parts in the finished product;

(e) the percentage of time required for production of the article which is contributed by forced labor; and/or

(f) any other relevant information available.

E. 1. If the class established is excessively overbroad, that is, if it includes too many articles that are not subject to the statutory prohibition, it cannot be justified under the rulemaking authority of the statute. A de minimus rule -- to the effect that goods will only be excludable under section 1307 if the classification chosen is not too overbroad -- should be developed on a case-by-case basis. In order to ensure that this important limitation is actually considered and applied in each case, the question of the overbreadth of each class should be expressly addressed in quantitative terms in each preliminary and each final finding. This step will help avoid a principal cause of the lack of uniformity in our past findings in this area. This is not to say that unrealistic precision should be artificially imposed on information that will not support it. But quantitative ranges (e.g., between 30 and 50%), rather than vague qualitative terms ("substantial" or "small") are needed, and the best estimate that is possible under the circumstances should be stated in the Commissioner's findings.

E. 2. The determination of the amount of overbreadth to be permitted is a judgment that should be made by the Secretary, or his delegee. So long as the overbreadth in each classification has been quantified to the extent that the available information reasonably permits, case-by-case application of the statute and regulations should lead to the evolution of more consistent standards than our past practice. This approach must permit the use of different quantitative standards where a country or other entity refuses to permit the Commissioner to perform an adequate investigation.

F. In deciding whether to act, the Commissioner must determine whether prohibited merchandise of the class defined "is

being or is likely to be" imported. Although research failed to reveal any case in which this language was invoked absent an actual importation -- with the resulting inference that additional merchandise was likely to be imported -- there is no indication in the statute, regulation or legislative history that such a limitation was intended. It seems fair to interpret the word "likely" in accordance with the dictionary definition "reasonably to be expected," and not to read into it any more stringent standard implying that importation must be more likely than not.

G. 1. The Commissioner must then determine whether the exception in section 1307 for "goods, wares, articles, or merchandise ... not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States" is applicable to any of the classes he has defined. The words "consumptive demand" cannot be read to mean demand at a price influenced or potentially to be influenced by importation of the prohibited merchandise, or the entire statute would be nullified and its purpose not served. Under the circumstances, it seems consistent with the statute only to apply it where there is no possibility of domestic production or what little there is cannot be significantly expanded even at a manyfold increase in price.

G. 2. The exception should use all domestic merchandise that fits within the classification that is selected for the finding (presumably stripping out the country-of-origin and, where applicable, manufacturer limitations), and should also take account of any commercially viable substitutes available in the domestic economy.

~~CONFIDENTIAL~~ 2 kw drm

Department of State

OUTGOING TELEGRAM 12

ORIGIN EUR-00

ORIGIN OFFICE SOEC-02
INFO REA-01 RPE-01 EWEA-01 SOEX-01 SOV-01 SOML-01 SOBI-01
PP-01 XX-01 /011 A1

INFO OCT-00 COPY-01 ADS-00 AID-00 INR-10 SS-00 OIC-02
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DRAFTED BY EUR/SOV:RWINDSOR
APPROVED BY EUR/SOV:TWSIMONS, JR.
EUR/SOV:KSYALOWITZ

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AMEMBASSY LUXEMBOURG

~~C O N F I D E N T I A L~~ STATE 026679

BRUSSELS FOR USEC

E.O. 12356: DECL: OADR
TAGS: ETRD UR
SUBJECT: INTERNATIONAL TRADE COMMISSION INVESTIGATION OF SOVIET FERROSILICON EXPORTS: SOVIETS INFORMED OF ITC DECISION

1. (C) SOVIET DEPUTY TRADE REPRESENTATIVE AL'BERT MEL'NIKOV WAS CALLED INTO THE DEPARTMENT (EUR/SOV/ECON) JANUARY 27 TO BE INFORMED OF THE INTERNATIONAL TRADE COMMISSION'S DECISION JANUARY 24 TO REPORT TO THE PRESIDENT THAT IMPORTS OF FERROSILICON FROM THE USSR ARE NOT DISRUPTING THE U.S. FERROSILICON MARKET. MEL'NIKOV WAS HANDED A COPY OF THE ITC PRESS RELEASE ON THE DECISION (TEXT IN PARA THREE BELOW). ;WE POINTED OUT TO MEL'NIKOV THAT THE DECISION DEMONSTRATED THAT THE UNITED STATES GOVERNMENT EXAMINATION AND INVESTIGATION PROCEDURE WAS FAIR AND OPEN AND THAT THE USSR WAS NOT DISCRIMINATED AGAINST EVEN AS IT CHOOSE NOT TO PARTICIPATE IN THE ITC INVESTIGATION.

2. (C) MEL'NIKOV SAID THAT THE DECISION PROVIDED WELCOME EVIDENCE OF U.S. DESIRE NOT TO DAMAGE BILATERAL TRADE, AND UNDERTOOK TO INFORM MOSCOW. HE OPINED THAT THE ITC ACTION WILL HELP SOVIET FOREIGN TRADE ORGANIZATIONS OVERCOME THEIR FEAR OF UNPREDICTIBLE U.S. MEASURES AGAINST SOVIET EXPORTS. IN THIS CONNECTION, MEL'NIKOV ALLUDED TO A POSSIBLE BAN ON SOVIET IMPORTS ALLEGEDLY PRODUCED USING FORCED LABOR, AND TO THE POTENTIAL EFFECT ON THE ATMOSPHERE FOR CONSIDERATION OF FUTURE SOVIET PURCHASES OF U.S. GRAIN, AND ON PROSPECTS FOR A NEW LONG-TERM GRAINS AGREEMENT WITH THIS COUNTRY.

3. TEXT OF INTERNATIONAL TRADE COMMISSION PRESS RELEASE ON THE DECISION FOLLOWS. EMBASSY MAY WISH TO PROVIDE TEXT TO MINISTRY OF FOREIGN TRADE.

(BEGIN TEXT)

THE UNITED STATES INTERNATIONAL TRADE COMMISSION DETERMINED ON TUESDAY, JANUARY 24, 1984, THAT IT WILL REPORT TO THE PRESIDENT THAT IMPORTS OF FERROSILICON FROM THE U.S.S.R. ARE NOT DISRUPTING THE FERROSILICON MARKET.

10819

COMMISSIONERS PAULA STERN, VERONICA A. HAGGART, AND SEELEY G. LODWICK DETERMINED THAT MARKET DISRUPTION DOES NOT EXIST. CHAIRMAN ALFRED E. ECKES, HAVING FOUND THAT IMPORTS OF FERROSILICON ARE DISRUPTING THE U.S. MARKET, VOTED IN THE AFFIRMATIVE.

THE COMMISSION INSTITUTED ITS INVESTIGATION OF FERROSILICON FROM THE U.S.S.R. UNDER SECTION 406 OF THE TRADE ACT OF 1974 FOLLOWING RECEIPT OF A REQUEST FROM THE UNITED STATES TRADE REPRESENTATIVE.

INVESTIGATIONS CONDUCTED UNDER SECTION 406 PERTAIN ONLY TO IMPORTS FROM COMMUNIST COUNTRIES. THE COMMISSION FINDS MARKET DISRUPTION TO EXIST WITHIN A DOMESTIC INDUSTRY WHENEVER IMPORTS FROM A COMMUNIST COUNTRY ARE INCREASING RAPIDLY, SO AS TO BE A SIGNIFICANT CAUSE OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY. IF THE COMMISSION DETERMINES THAT MARKET DISRUPTION EXISTS, IT MAY RECOMMEND TO THE PRESIDENT IMPORT RELIEF IN THE FORM OF TARIFFS OR IMPORT QUOTAS.

FERROSILICON IS USED AS A DEOXIDIZING AGENT AND AS A STRENGTHENING ALLOY IN THE PRODUCTION OF VARIOUS IRON AND STEEL PRODUCTS.

THE COMMISSION'S PUBLIC REPORT, "FERROSILICON FROM THE U.S.S.R." (INVESTIGATION NO. 406-TA-10, USITC PUBLICATION 1484, 1984), CONTAINS THE VIEWS OF THE COMMISSIONERS AND INFORMATION DEVELOPED DURING THE INVESTIGATION. COPIES MAY BE OBTAINED AFTER FEBRUARY 9, 1984, BY CALLING 202-523-5178 OR FROM THE OFFICE OF THE SECRETARY, 701 E STREET N.W., WASHINGTON, D.C. 20436.

FACTUAL HIGHLIGHTS

STATUS OF PROCEEDINGS:

1. PETITION FILED -- NOVEMBER 2, 1983

2. PETITIONER -- REQUEST RECEIVED FROM THE UNITED STATES TRADE REPRESENTATIVE

3. DATE INVESTIGATION INSTITUTED BY USITC -- NOVEMBER 16, 1983

4. HEARING DATE -- JANUARY 6, 1984

5. USITC REPORT TO THE PRESIDENT - FEBRUARY 2, 1984

U.S. INDUSTRY:

1. NUMBER OF PRODUCERS -- 9 PRODUCERS OPERATING 14 PLANTS

2. LOCATION OF PRODUCERS -- OHIO, TENNESSEE, WEST VIRGINIA, ALABAMA, WASHINGTON, KENTUCKY, IOWA, AND NEW YORK

3. TYPE OF PRODUCTS -- FERROSILICON USED AS A DEOXIDIZING AGENT OR AS A STRENGTHENING ALLOY IN THE PRODUCTION OF VARIOUS IRON AND STEEL PRODUCTS.

4. EMPLOYMENT OF PRODUCTION AND RELATED WORKERS -- APPROXIMATELY 1,200 IN 1982

5. APPARENT U.S. CONSUMPTION -- 416,437 TONS ($182.5 MILLION) DURING JANUARY - SEPTEMBER 1983 AND 442,584 TONS ($219.0 MILLION) IN 1982.

U.S. IMPORTS:

1. QUANTITY AND VALUE OF IMPORTS OF FERROSILICON, CLASSIFIED UNDER TSUS ITEM NUMBERS 606.35-606.40, TOTALED 110, 018 SHORT TONS ($46.7 MILLION) DURING JANUARY - SEPTEMBER 1983. U.S. IMPORTS OF THESE ITEMS IN 1982 AMOUNTED TO 77,790 ($40.3 MILLION).

2. MAJOR SOURCES OF IMPORTS IN 1983 -- BRAZIL, CANADA, NORWAY, VENEZUELA AND THE U.S.S.R. SHULTZ

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produced, or manufactured in any part with the use of a class of labor specified in the finding." Any importer, it appears, my voluntarily export the detained merchandise at any time.

E. Absent voluntary exportation, the Customs Service must hold the merchandise until 3 months after the publication or until 3 months after the attempt to import the merchandise, whichever is later. Up until that time, the importer may bring in evidence to establish that the particular merchandise at issue was not made with the use of a class of labor specified in the finding. Id. §12.42(g).

F. If satisfactory proof has not been submitted within 3 months, Customs is to notify the importer "in writing that the merchandise is excluded from entry". After waiting an additional 60 days to permit the importer to export the merchandise or file an administrative protest under 19 U.S.C. §1514, Customs is to treat the merchandise as abandoned and destroy it.

III. The Legal Elements and Evidentiary Requirements

A. While section 1307 only prohibits the entry of merchandise that actually contains "wholly or in part" components made with prohibited labor, the Secretary has substantive rulemaking power permitting him to detain other merchandise if reasonably necessary to achieve that purpose.

B. The responsibility of the Commissioner (to whom authority to implement the regulations has been delegated) is to make preliminary and (with the approval of the Secretary) final findings concerning whether merchandise is being or is likely to be imported in violation of section 1307. There is no provision granting any importer a right to participate at this stage of the process. In making those findings, under §12.42(e) and (f) of the regulations, both the detailed requirements of §12.42(b) and the protest and judicial review provisions of §12.44 cause us to conclude that the findings must be supported either with (a) a recitation of the evidence and reasons supporting it or (b) the detailed supporting material required to be submitted to the Commissioner under §12.42(b), supplemented with the results of any further investigation he undertakes. This requirement, however, does not require that he reveal classified information and it is expressly contemplated that, should judicial review be sought at any point, the Government should reserve the option of protecting its intelligence sources and methods even at the cost of loss of the litigation. Appropriate unclassified summaries should be substituted to support the findings.

C. 1. Upon receiving information as provided in the regulation, the first step that the Commissioner must take is to define the appropriate class of merchandise. The Commissioner

has the authority to proscribe the entry of "goods, articles or merchandise" through the use of administratively necessary classifications. That is, he is empowered (as a result of his substantive rulemaking authority under section 1307) to define categories of merchandise that are to be detained or excluded despite the fact that a particular class may be somewhat too narrow or too broad to coincide perfectly with the universe of merchandise that was actually produced with convict, forced, and/or indentured labor.

C. 2. In establishing each such class, the Commissioner should use the narrowest classification that he can reasonably establish. That is, by using the most specific Tariff Schedule classification possible, and/or narrowing limitations such as country of origin, manufacturer, or specific physical characteristics, he should seek to avoid prohibiting the entry of any merchandise that is not necessary to the task of excluding the prohibited merchandise. Where possible he should use multiple narrow classifications rather than a single broad one.

D.1. Under the statute and regulations, merchandise is only excludable if it contains "wholly or in part" components made with prohibited labor. That is, the use of tools, factories, energy, or other means that were themselves made with prohibited labor to produce the merchandise will not make the merchandise excludable. In addition, the merchandise is excludable if any part or component is made with prohibited labor, except where the part or component is de minimus. Such a rule would comport with the construction given by the Court of International Trade to the term "in part." It would also permit the Treasury to invoke more easily the 1307 exclusion and shift to the importer and producer the burden of proving that the imported article is not "in part" of the offending component by establishing that the economic contribution of the prohibited labor to the article is de minimus.

D.2. The legislative history of the statute reflects the intent of Congress to protect American industries from foreign competitors who obtain a competitive advantage by using forced labor. Therefore, with respect to any producer in a free market economy for which such information is available, the Commissioner should make a specific finding that the use of forced labor gives that foreign producer a more than de minimus price advantage over American producers. If such information is not available because either the foreign producer or the country in which it is located is unable or unwilling to make such information available or is unreliable because the producer is in a state controlled economy in which costs and prices can be artificially set, then the Commissioner should consider the following in determining whether a competitive advantage resulting from the use of forced labor is more than de minimus:

(a) whether the economy is free market or state controlled;

(b) the nature of the product (whether labor cost is a significant component);

(c) the (apparent) value added by use of forced labor;

(d) the number of parts added or assembled by use of forced labor, relative to the number of parts in the finished product;

(e) the percentage of time required for production of the article which is contributed by forced labor; and/or

(f) any other relevant information available.

E. 1. If the class established is excessively overbroad, that is, if it includes too many articles that are not subject to the statutory prohibition, it cannot be justified under the rulemaking authority of the statute. A de minimus rule -- to the effect that goods will only be excludable under section 1307 if the classification chosen is not too overbroad -- should be developed on a case-by-case basis. In order to ensure that this important limitation is actually considered and applied in each case, the question of the overbreadth of each class should be expressly addressed in quantitative terms in each preliminary and each final finding. This step will help avoid a principal cause of the lack of uniformity in our past findings in this area. This is not to say that unrealistic precision should be artificially imposed on information that will not support it. But quantitative ranges (e.g., between 30 and 50%), rather than vague qualitative terms ("substantial" or "small") are needed, and the best estimate that is possible under the circumstances should be stated in the Commissioner's findings.

E. 2. The determination of the amount of overbreadth to be permitted is a judgment that should be made by the Secretary, or his delegee. So long as the overbreadth in each classification has been quantified to the extent that the available information reasonably permits, case-by-case application of the statute and regulations should lead to the evolution of more consistent standards than our past practice. This approach must permit the use of different quantitative standards where a country or other entity refuses to permit the Commissioner to perform an adequate investigation.

F. In deciding whether to act, the Commissioner must determine whether prohibited merchandise of the class defined "is

being or is likely to be" imported. Although research failed to reveal any case in which this language was invoked absent an actual importation -- with the resulting inference that additional merchandise was likely to be imported -- there is no indication in the statute, regulation or legislative history that such a limitation was intended. It seems fair to interpret the word "likely" in accordance with the dictionary definition "reasonably to be expected," and not to read into it any more stringent standard implying that importation must be more likely than not.

G. 1. The Commissioner must then determine whether the exception in section 1307 for "goods, wares, articles, or merchandise ... not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States" is applicable to any of the classes he has defined. The words "consumptive demand" cannot be read to mean demand at a price influenced or potentially to be influenced by importation of the prohibited merchandise, or the entire statute would be nullified and its purpose not served. Under the circumstances, it seems consistent with the statute only to apply it where there is no possibility of domestic production or what little there is cannot be significantly expanded even at a manyfold increase in price.

G. 2. The exception should use all domestic merchandise that fits within the classification that is selected for the finding (presumably stripping out the country-of-origin and, where applicable, manufacturer limitations), and should also take account of any commercially viable substitutes available in the domestic economy.

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Department of State

OUTGOING TELEGRAM 27

ORIGIN EUR-00

ORIGIN OFFICE SOEC-02
INFO REA-01 RPE-01 EWEA-01 SOEX-01 SOV-01 SOML-01 SOBI-01
PP-01 XX-01 /011 A1

INFO OCT-00 COPY-01 ADS-00 AID-00 INR-10 SS-00 OIC-02
CIAE-00 EB-08 DODE-00 H-01 IO-15 EXIM-06 NSCE-00
NSAE-00 COME-00 SSO-00 L-03 LAB-04 TRSE-00 OPIC-07
PA-01 CEA-01 OMB-01 STR-14 SIL-01 INRE-00 SMS-01
FRB-03 JUS-01 USIE-00 SP-02 SNP-01 PRS-01 /084 R

DRAFTED BY EUR/SOV:RWINDSOR
APPROVED BY EUR/SOV:TWSIMONS, JR.
EUR/SOV:KSYALOWITZ

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USMISSION GENEVA
AMCONSUL LENINGRAD
AMEMBASSY LUXEMBOURG

~~C O N F I D E N T I A L~~ STATE 026679

BRUSSELS FOR USEC

E.O. 12356: DECL: OADR
TAGS: ETRD UR
SUBJECT: INTERNATIONAL TRADE COMMISSION INVESTIGATION OF SOVIET FERROSILICON EXPORTS: SOVIETS INFORMED OF ITC DECISION

1. (C) SOVIET DEPUTY TRADE REPRESENTATIVE AL'BERT MEL'NIKOV WAS CALLED INTO THE DEPARTMENT (EUR/SOV/ECON) JANUARY 27 TO BE INFORMED OF THE INTERNATIONAL TRADE COMMISSION'S DECISION JANUARY 24 TO REPORT TO THE PRESIDENT THAT IMPORTS OF FERROSILICON FROM THE USSR ARE NOT DISRUPTING THE U.S. FERROSILICON MARKET. MEL'NIKOV WAS HANDED A COPY OF THE ITC PRESS RELEASE ON THE DECISION (TEXT IN PARA THREE BELOW). ;WE POINTED OUT TO MEL'NIKOV THAT THE DECISION DEMONSTRATED THAT THE UNITED STATES GOVERNMENT EXAMINATION AND INVESTIGATION PROCEDURE WAS FAIR AND OPEN AND THAT THE USSR WAS NOT DISCRIMINATED AGAINST EVEN AS IT CHOOSE NOT TO PARTICIPATE IN THE ITC INVESTIGATION.

2. (C) MEL'NIKOV SAID THAT THE DECISION PROVIDED WELCOME EVIDENCE OF U.S. DESIRE NOT TO DAMAGE BILATERAL TRADE, AND UNDERTOOK TO INFORM MOSCOW. HE OPINED THAT THE ITC ACTION WILL HELP SOVIET FOREIGN TRADE ORGANIZATIONS OVERCOME THEIR FEAR OF UNPREDICTIBLE U.S. MEASURES AGAINST SOVIET EXPORTS. IN THIS CONNECTION, MEL'NIKOV ALLUDED TO A POSSIBLE BAN ON SOVIET IMPORTS ALLEGEDLY PRODUCED USING FORCED LABOR, AND TO THE POTENTIAL EFFECT ON THE ATMOSPHERE FOR CONSIDERATION OF FUTURE SOVIET PURCHASES OF U.S. GRAIN, AND ON PROSPECTS FOR A NEW LONG-TERM GRAINS AGREEMENT WITH THIS COUNTRY.

3. TEXT OF INTERNATIONAL TRADE COMMISSION PRESS RELEASE ON THE DECISION FOLLOWS. EMBASSY MAY WISH TO PROVIDE TEXT TO MINISTRY OF FOREIGN TRADE.

(BEGIN TEXT)

THE UNITED STATES INTERNATIONAL TRADE COMMISSION DETERMINED ON TUESDAY, JANUARY 24, 1984, THAT IT WILL REPORT TO THE PRESIDENT THAT IMPORTS OF FERROSILICON FROM THE U.S.S.R. ARE NOT DISRUPTING THE FERROSILICON MARKET.

STATE 026679 8485 EUR7483

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COMMISSIONERS PAULA STERN, VERONICA A. HAGGART, AND SEELEY G. LODWICK DETERMINED THAT MARKET DISRUPTION DOES NOT EXIST. CHAIRMAN ALFRED E. ECKES, HAVING FOUND THAT IMPORTS OF FERROSILICON ARE DISRUPTING THE U.S. MARKET, VOTED IN THE AFFIRMATIVE.

THE COMMISSION INSTITUTED ITS INVESTIGATION OF FERROSILICON FROM THE U.S.S.R. UNDER SECTION 406 OF THE TRADE ACT OF 1974 FOLLOWING RECEIPT OF A REQUEST FROM THE UNITED STATES TRADE REPRESENTATIVE.

INVESTIGATIONS CONDUCTED UNDER SECTION 406 PERTAIN ONLY TO IMPORTS FROM COMMUNIST COUNTRIES. THE COMMISSION FINDS MARKET DISRUPTION TO EXIST WITHIN A DOMESTIC INDUSTRY WHENEVER IMPORTS FROM A COMMUNIST COUNTRY ARE INCREASING RAPIDLY, SO AS TO BE A SIGNIFICANT CAUSE OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY. IF THE COMMISSION DETERMINES THAT MARKET DISRUPTION EXISTS, IT MAY RECOMMEND TO THE PRESIDENT IMPORT RELIEF IN THE FORM OF TARIFFS OR IMPORT QUOTAS.

FERROSILICON IS USED AS A DEOXIDIZING AGENT AND AS A STRENGTHENING ALLOY IN THE PRODUCTION OF VARIOUS IRON AND STEEL PRODUCTS.

THE COMMISSION'S PUBLIC REPORT, "FERROSILICON FROM THE U.S.S.R." (INVESTIGATION NO. 406-TA-10, USITC PUBLICATION 1484, 1984), CONTAINS THE VIEWS OF THE COMMISSIONERS AND INFORMATION DEVELOPED DURING THE INVESTIGATION. COPIES MAY BE OBTAINED AFTER FEBRUARY 9, 1984, BY CALLING 202-523-5178 OR FROM THE OFFICE OF THE SECRETARY, 701 E STREET N.W., WASHINGTON, D.C. 20436.

FACTUAL HIGHLIGHTS

STATUS OF PROCEEDINGS:

1. PETITION FILED -- NOVEMBER 2, 1983

2. PETITIONER -- REQUEST RECEIVED FROM THE UNITED STATES TRADE REPRESENTATIVE

3. DATE INVESTIGATION INSTITUTED BY USITC -- NOVEMBER 16, 1983

4. HEARING DATE -- JANUARY 6, 1984

5. USITC REPORT TO THE PRESIDENT - FEBRUARY 2, 1984

U.S. INDUSTRY:

1. NUMBER OF PRODUCERS -- 9 PRODUCERS OPERATING 14 PLANTS

2. LOCATION OF PRODUCERS -- OHIO, TENNESSEE, WEST VIRGINIA, ALABAMA, WASHINGTON, KENTUCKY, IOWA, AND NEW YORK

3. TYPE OF PRODUCTS -- FERROSILICON USED AS A DEOXIDIZING AGENT OR AS A STRENGTHENING ALLOY IN THE PRODUCTION OF VARIOUS IRON AND STEEL PRODUCTS.

4. EMPLOYMENT OF PRODUCTION AND RELATED WORKERS -- APPROXIMATELY 1,200 IN 1982

~~CONFIDENTIAL~~

Department of State

OUTGOING TELEGRAM 28

5. APPARENT U.S. CONSUMPTION -- 416,437 TONS ($182.5 MILLION) DURING JANUARY - SEPTEMBER 1983 AND 442,584 TONS ($219.0 MILLION) IN 1982.

U.S. IMPORTS:

1. QUANTITY AND VALUE OF IMPORTS OF FERROSILICON, CLASSIFIED UNDER TSUS ITEM NUMBERS 606.35-606.40, TOTALED 110, 018 SHORT TONS ($46.7 MILLION) DURING JANUARY - SEPTEMBER 1983. U.S. IMPORTS OF THESE ITEMS IN 1982 AMOUNTED TO 77,790 ($40.3 MILLION).

2. MAJOR SOURCES OF IMPORTS IN 1983 -- BRAZIL, CANADA, NORWAY, VENEZUELA AND THE U.S.S.R. SHULTZ

1424 (add-on)

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10814

MEMORANDUM

~~SECRET~~

NATIONAL SECURITY COUNCIL

February 23, 1984

MEMORANDUM FOR ROBERT C. McFARLANE

FROM: KENNETH deGRAFFENREID

SUBJECT: Nonconcurrence on Roger Robinson Memorandum, February 22, 1984 (#1424)

I strongly nonconcur in this action with respect to the proposed approach which would use the gimmick of remanding the evidentiary issue concerning Soviet slave labor back to the intelligence community for better evidence and more analysis.

I believe there is an important, though subtle and complicated, issue here as to whether or not this Administration is politicizing intelligence by asking the community to once again "review" its intelligence. The hint to the community in this case will be none too subtle, i.e., the Administration does not wish to offend the Soviets and, therefore, the community should go back and take its time re-analyzing the slave labor issue. After long attempts to get the community to provide better intelligence on this and other issues, this approach will send a very bad signal indeed.

Unfortunately, we have a community which contains some (with good media contacts) waiting to charge this Administration with "politicization." We have worked very hard to dispell that notion, and the President has publicly and privately told the intelligence community to tell the truth and he will let the chips fall where they may. While I agree that the dispositive intelligence may be lacking, given the Customs' provision which puts the burden of proof on the importer, it may be in fact fully sufficient for this action. It appears from the paper the real interest here is that the Customs' finding at this time would not serve US foreign policy interest. If so, we ought to have the guts to say that and not blame it on the lack of intelligence.

On the intelligence issue itself, it is true that we do not know as much as we should. However, the scenario outlined in this paper is not designed to encourage the community to do better. I strongly urge that you not use the rationale regarding the lack of intelligence if you decide to pressure Secretary Regan to reverse the Customs' decision.

~~SECRET~~
Declassify on: OADR

~~SECRET~~

3685 forced labor 3A

United States Department of State

~~SECRET~~

Washington, D.C. 20520

8413273

May 7, 1984

10822

MEMORANDUM FOR MR. ROBERT C. McFARLANE
THE WHITE HOUSE

SUBJECT: Proposed Import Ban on Certain Soviet Products

With respect to the issue of a possible import ban on certain Soviet products allegedly made with forced labor, the following developments have occurred recently.

The Department of State, in cooperation with the International Trade Commission and the Department of Commerce, sent a cable on April 21 to US missions in 33 countries in all areas of the world requesting information on goods manufactured using convict or forced labor. This action is part of an investigation by the ITC which was initiated at the request of the Senate Committee on Finance, on December 29, 1983. The investigation, instituted under section 332(G) of the Tariff Act of 1930, is attempting to determine the nature and extent of imports into the US of goods that are wholly or partially manufactured by convict or forced labor. The ITC will hold a public hearing in connection with its investigation on July 10 and issue a final report between November 12 and the end of the year.

The Department of State has previously informed the NSC of its view that the evidentiary base is inadequate to support the proposed ban on Soviet products. This issue is not simply a technical one, but could have a significant impact on US-Soviet relations, including US exports to the USSR. Further, it would be inappropriate to single out the Soviet Union when other trade partners may be using similar practices. This view is consistent with that expressed by Senator Dole, who, we understand, has written to Treasury Secretary Regan pointing to the need for a consistent and comprehensive official position on this issue, and stating his preference that a final decision on the Soviet issue be deferred until the ITC report is available.

The State Department believes that no action should be taken on the Soviet forced labor issue until the ITC investigation has been completed.

Eugene for
Charles Hill
Executive Secretary

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DECL: OADR

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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

March 2, 1984

The Honorable Donald T. Regan
Secretary
Department of the Treasury
Washington, D. C. 20220

Dear Don:

Thank you for your letter of November 21, 1983, advising me of the ongoing review by your Department of preliminary findings that the United States may be importing articles from the Soviet Union produced with the use of convict, forced or indentured labor. I look forward to the results of this investigation, including your evaluation of the collateral effects of enforcing section 307 of the Tariff Act of 1930 on overall U.S.-Soviet relations.

As you may be aware, the Committee on Finance has requested a similar investigation by the International Trade Commission, which initiated its review on February 1. The ITC investigation will encompass articles imported from all U.S. trading partners, and will include the application of domestic and international law, and particularly section 307 to international trade in goods produced in whole or in part by convict, forced or indentured labor. A copy of the ITC notice of investigation, and the transmittal letter from Chairman Eckes, are enclosed for your review and information.

The ITC will hold a public hearing in connection with its investigation on July 10, with a final report due between November 12 and the end of this year. I am sure that the Treasury Department's findings and views on the legal standards and adequacy of proof for enforcement of section 307 would be of great value to the ITC's current review.

In view of the broad scope of the ITC investigation now underway, I hope you will take into account the need for a consistent and comprehensive official position on this issue in

developing the Treasury Department's recommendations. It may be preferable to defer a final decision until the ITC report is available to assure an unambiguous interpretation of the relevant statutes and practices.

I appreciate your consideration of my views, and look forward to working with you on this important matter.

Sincerely,

BOB DOLE
Chairman

BK:lsk

File: US-USSR — aa

US Customs; Forced Labor

TREASURY NEWS
Department of the Treasury • Washington, D.C. • Telephone 566-2041

FOR IMMEDIATE RELEASE
May 17, 1984

CONTACT: Sydney Wilson
566-2041

Mathluck:

TREASURY POSTPONES FINDING ON FORCED LABOR GOODS

Secretary of the Treasury Donald T. Regan announced today that he has postponed any determination on whether convict-made goods are being imported into the United States from the Soviet Union in violation of 19 U.S.C. 1307 until after completion of the International Trade Commission study of this question. Because of the closed nature of the Soviet economy, the only usable information of any value on the question of Soviet forced labor was furnished to the Commissioner of Customs by the Central Intelligence Agency. Secretary Regan's decision was made after consultation with CIA Director William Casey as to the nature of the evidence on Soviet imports made available to the Customs Service by the CIA. According to Director Casey, the evidence is "fragmentary" and not useful in determining whether any particular Soviet goods are being produced with forced labor, or that any significant quantity of such goods is being imported into the United States.

In connection with this decision, Secretary Regan said: "This is a significant and highly controversial issue. Many Americans, including many in Congress, believe that substantial quantities of goods are produced in the Soviet Union with forced labor. Although CIA Director Casey confirms that this is true, it is apparent from his comments that we cannot, with currently available information, determine which products are produced in this manner and which are not. I do not believe that the American people want their government to act precipitously and without serious consideration and evidence in a matter of such importance to our international relations."

To facilitate the International Trade Commission study, Secretary Regan has directed Customs Commissioner William Von Raab to provide the ITC with monthly reports on all importations of Soviet-made goods. The ITC study, which was requested by Senator Dole on behalf of the Senate Finance Committee, is scheduled for completion on November 12, 1984.

The Treasury Department will release evidentiary standards recently established by Treasury and Customs to assist in future determinations of whether any foreign-made goods violate 19 U.S.C. 1307. These standards will be applied to information available to the Secretary regarding Soviet-made goods upon completion of the ITC study.

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D N CZCUIVQYV
fBC-IMPORTSt
fBy CLYDE H. FARNSWORTH
fc.1984 N.Y. Times News Service
WASHINGTON - The Reagan administration; after a heated internal conflict; has decided to postpone until after the November election any decision to ban imports of Soviet products believed to have been made with forced labor.
The action; announced Wednesday by Treasury Secretary Donald T. Regan; was seen as a victory for those in the Cabinet who have been arguing that American trade restrictions would cause further deterioration in relations with Moscow and lead to retaliation against American farm exports.
Most of the Cabinet; led by Secretary of State George P. Shultz; had taken this position; according to Administration officials who have monitored the often angry discussion.
The chief proponent of restrictive action had been Regan himself; these sources said.
The issue has been smoldering since last September; when Customs Commissioner William von Raab said in a letter to Regan that he had information that ''reasonably indicates'' some three dozen products imported from the Soviet Union in 1982 were manufactured with the help of prisoners or other forced labor.
Regan; who oversees the Customs Service; also felt pressure to act from a nonbinding Sense of the Senate Resolution that called on the Treasury to ban imports of products made by forced labor.
Led by Sen. William L. Armstrong; R-Colo.; 45 senators had sent a letter to Secretary Regan also urging the use of a rarely enforced provision of the 1930 Smoot Hawley Tariff Act that denies entry to ''all goods; wares; articles and merchandise mined; produced or manufactured wholly or in part in any foreign country by convict or forced labor.''
Regan was described by one source as ''genuinely caught in a quandary.''
''He wanted to do something; and yet every time he did it was knocked down by Shultz and Baldrige;'' this source added.
Among the other cabinet officers opposed to taking action against the Russians were Commerce Secretary Malcolm Baldrige; U.S. trade representative; Bill Brock; and Agriculture Secretary John R. Block.
The decision to postpone action was taken just before a Soviet trade and economic delegation was due to arrive here to discuss the easing of existing administration trade restrictions.

SOVIET FORCED LABOR WAS FURNISHED TO THE COMMISSIONER OF CUSTOMS BY WILLIAM J. CASEY, DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

A LETTER FROM CASEY DISTRIBUTED WITH THE TREASURY STATEMENT SAYS: ''THERE ARE ABOUT 2 MILLION FORCED LABORERS IN CAMPS. AN ADDITIONAL 2 MILLION OR SO FORCED LABORERS ARE NOT CONFINED, AND ARE MOSTLY INVOLVED IN CONSTRUCTION.''

BUT CASEY'S LETTER GOES ON TO SAY THAT DESPITE THE ''CONVINCING'' EVIDENCE OF EXTENSIVE USE OF FORCED LABOR, ''IT IS FRAGMENTARY WITH RESPECT TO SPECIFIC PRODUCTS.''

THE TREASURY SAID NO DECISION IN THE MATTER WOULD BE TAKEN UNTIL AFTER COMPLETION OF A STUDY BY THE U.S. INTERNATIONAL TRADE COMMISSION TITLED ''IMPORT OF GOODS MANUFACTURED BY CONVICT, FORCED OR INDENTURED LABOR.'' THE INVESTIGATION BY THE FEDERAL FACT-FINDING AGENCY WILL NOT BE COMPLETED UNTIL NOV. 12, SIX DAYS AFTER THE PRESIDENTIAL ELECTIONS. THE TRADE COMMISSION WILL HOLD A HEARING JULY 12.

THE STUDY WAS COMMISSIONED LAST DECEMBER BY THE SENATE FINANCE COMMITTEE AFTER THE SENATE HAD VOTED ITS NONBINDING RESOLUTION. AS ONE SENATE STAFF MEMBER PUT IT: ''HERE WERE WERE ASKING THE ADMINISTRATION TO ADMINISTER THE LAW ON SLAVE LABOR, AND YET NO ONE HAD ANY CLEAR DEFINITION ABOUT WHAT WE WERE TALKING ABOUT.''

THE ARGUMENTS WITHIN THE ADMINISTRATION HAVE ARISEN AT A TIME WHEN MOST CABINET OFFICERS WERE LOATH TO SEE FURTHER DETERIORATION IN RELATIONS WITH MOSCOW FOLLOWING THE SOVIET DECISION LAST WEEK NOT TO PARTICIPATE IN THE OLYMPIC GAMES IN LOS ANGELES.

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