

Ronald Reagan Presidential Library Digital Library Collections

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

Collection: Carliner, Geoffery O.: Files
Folder Title: Committee on Foreign
Investment in the US (1)
Box: OA 10696

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library Inventories, visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

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

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

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

Last Updated: 5/22/2024



ASSISTANT SECRETARY

UNCLASSIFIED
(with ~~CONFIDENTIAL ATTACHMENT~~)
DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

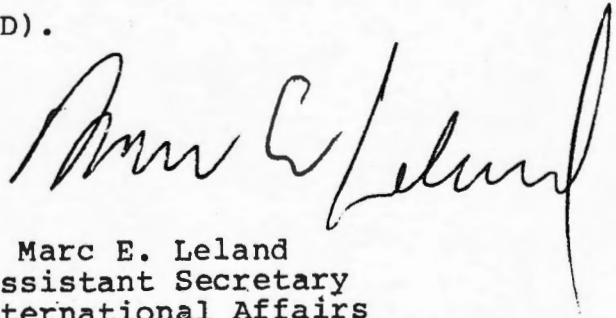
MAY 16 1983

MEMORANDUM FOR: MEMBERS OF THE COMMITTEE ON FOREIGN INVESTMENT
IN THE UNITED STATES

SUBJECT: CFIUS Meeting

There will be a meeting of the Committee on Foreign Investment in the United States on Friday, May 20, 1983, at 10:00 a.m. in Room 4121, Main Treasury Building. The Group will discuss the following proposed investments:

- ORIS-Syncor (Tab A),
- Nippon-Special Metals (Tab B),
- British Steel Corp.-United States Steel Corp. (Tab C), and
- Renault-Mack Trucks (Tab D).


Marc E. Leland
Assistant Secretary
International Affairs

Attachments

UNCLASSIFIED
(with ~~CONFIDENTIAL ATTACHMENT~~)

File 12/28/23

A

~~CONFIDENTIAL~~

TAB A
May 13, 1983

ORIS - SYNCOR INTERNATIONAL

Terms of Investment (U)

ORIS, a small commercially-oriented health products division within the French Atomic Energy Commission, plans to acquire about a 30 percent shareholding in the small U.S. nuclear pharmaceutical firm, Syncor International Corporation. In return for a \$20 million capital infusion by ORIS, Syncor will become exclusive U.S. distributor for about 200 ORIS biomedical and industrial products. (U)

In April, Embassy Paris suggested that the Committee on Foreign Investment in the United States (CFIUS) should delay its decision on this proposed investment and consider it in light of a potentially-related long-pending trade problem that another U.S. firm (Avon Products) is having in France. Specifically, for the past year and a half, Avon has tried to import new lines of radioactive medical products into France. To introduce new lines of radioactive products in France, companies must have a certified French testing laboratory. Avon says it has been unable to obtain certification for its French laboratory, despite repeated attempts. The company alleges that its certification has been held in limbo, to prevent it from importing the new product lines which would compete in the French market with those of ORIS. (C)

CFIUS Findings (U)

The Committee on Foreign Investment in the United States (CFIUS) has determined that the proposed investment does not have major negative implications for the U.S. national interest. Both companies are relatively small, with annual sales of about \$30 million. The Department of Defense has determined that it has no classified or unclassified contracts with Syncor, and has no reason to believe the investment will create a problem. The Nuclear Regulatory Commission is not concerned with the investment, since Syncor does not operate any nuclear reactors. Also, from a nuclear weapons perspective, the Department of Energy has no problems with the investment. As for antitrust policy, since ORIS is part of the French Government, it is exempt from filing a pre-merger notification with the Department of Justice. (LOU)

The Committee on Foreign Investment in the United States believes that it is appropriate that the proposed investment and the Avon Products case be treated on their separate merits.

~~CONFIDENTIAL~~

Classified by Frank Yurkovic

~~Do Not Classify~~

☐ Review for

Declassification on 5/12/89

for
12/28/23

~~CONFIDENTIAL~~

- 2 -

It is not clear that there is a link between the cases. By Avon's own admission, the Avon case is very complicated and long-standing. Avon is also currently not in compliance with French certification requirements for testing laboratories, since it does not presently have a licensed pharmacologist on the premises of its French laboratory. (LOU)

ORIS (U)

Office des Rayonnements Ionisants (ORIS) is the health care division of the French Commissariat a l'Energie Atomique (CEA). Since ORIS is an office within the French Government's atomic energy agency, rather than an incorporated subsidiary, it does not publish an annual report or other financial or operating information. (U)

ORIS was established in 1979 by merging several CEA departments involved with non-energy-related, mainly medical, applications of radioactivity and ionizing radiation. The Office comprises two groups: (a) Biomedical Products Laboratory, involved with industrial and commercial activities; and (b) Bioengineering and Applied Radioactivity and Ionizing Radiation Metrology Laboratories, involved with applied research and advanced technology. (U)

As of 1980, ORIS employed 500 persons in France. Its therapeutic and diagnostic medical products are marketed in about 65 countries. ORIS produces only in France and has a minority interest in an international marketing corporation called CIS International. The Fiat Corporation's wholly-owned Sorin Biomedica S.P.A. subsidiary and the Belgian atomic energy commission are the other shareholders in CIS International, which handles sales outside of Italy and France. The three partners also have a U.S. subsidiary known as CIS-Radiopharmaceuticals, Inc., which sold a manufacturing facility to Syncor (then called Ackerman Nuclear Inc.) in February, 1980. (U)

ORIS' 1982 sales totalled FF 230 million (about \$30 million). ORIS exported about 25 percent of its 1982 production. 1982 gross and net profits were FF 7.7 million (about \$1 million). ORIS is exempt from taxes. (LOU)

In addition to this proposed investment, the CEA recently invested in two other U.S. firms through its CISI and COGEMA subsidiaries (which acquired respectively the econometric firm, Wharton Econometric Forecasting Associates, Inc., and the uranium producer, Pathfinder Mines Corporation). A CEA official told Embassy Paris that the companies under CEA have a very broad degree of autonomy, but that certain basic decisions such as foreign acquisitions are reviewed by the CEA. (LOU)

~~CONFIDENTIAL~~

Syncor International Corporation (U)

Syncor is a young, small, and rapidly growing (through acquisitions) U.S. pharmaceutical firm. The company manufactures pharmaceuticals (diagnostic imaging agents) and offers consultancy services in the health care and industrial safety fields. It owns and operates 31 nuclear pharmacies and conducts research and development in the fields of immunodiagnostics, bioinstrumentation, and molecular biology. (U)

Syncor's fiscal year 1982 sales of about \$24 million were up about one-third from the year before. The company last showed a profit in fiscal year 1979 (its 1982 loss of about \$40,000 compared with its \$215,000 loss the year before). Syncor had \$10 million of assets at the end of fiscal year 1982, up sharply from \$1 million at the end of fiscal year 1977. 420 of Syncor's 490 employees work for its nuclear pharmacies subsidiaries, acquired in 1981 and 1982. Syncor's stock is closely-held by the directors and executive officers (who as a group own almost 49 percent of the common stock). (U)

The company was established in 1974 under the name of Ackerman Nuclear Inc. It began selling nationwide in 1979, and changed its name to Syncor International in April, 1980. In 1981, it merged with WSA, Inc. (industrial safety consultants) and with Pharmaco (owners and operators of nuclear pharmacies). Last year, Syncor merged with Pharmatopes (owners and operators of nuclear pharmacies) and with Hytech (R & D in molecular biology). Pharmaco, Pharmatopes, and Hytech are operated as wholly-owned subsidiaries of Syncor. Syncor is regulated by the Food and Drug Administration and by the Nuclear Regulatory Commission. (U)

B

TAB B
May 13, 1983

NIPPON STEEL CORP.-SPECIAL METALS CORP.

Nippon Steel Corp. and Allegheny International Inc. signed an agreement for the sale of Allegheny's wholly-owned subsidiary, Special Metals Corp., to the Japanese steel producer. The deal is scheduled to be concluded on June 30, 1983.

Special Metals Corp. produces high purity vacuum and other electro-slag melted superalloys for aerospace applications, nickel base and cobalt base alloys of various types used principally in the manufacture of gas turbines for aircraft engines and for power generating turbines. The company has facilities in New Hartford and Dunkirk, New York, Princeton, Kentucky, and Ann Arbor, Michigan. It has approximately 700 employees.

The sale is part of Allegheny's drive to diversify out of metals and metal related industries. Nippon had announced the acquisition will help it move into new high technology materials and to assist it meet a growing demand for superalloys. (A press release by Nippon is attached.)

DOD received a letter (attached) from Armco, which is supplied Special Metals' products, raising possible national security concerns regarding the transfer of sensitive technology. The Department of Defense is currently conducting an internal review of the investment and may request a CFIUS review.

5100 CC: Munk
Munk
Cornell, Hennessey

DAVID GINSBURG
MYER FELDMAN
J. W. ROSENTHAL
FRANK A. WEIL *
E. WILLIAM HENRY
LEE R. MARKS
JOHN H. ZENTAY
MARTIN JACOBS
JAMES E. WESNER
FRED W. DROGULA
MICHAEL I. SANDERS, P. C.
JOEL S. BURTON
JAMES HAMILTON
ALFRED J. EICHENLAUB
RICHARD P. SILLS, P. C.
PETER H. RODGERS
ALAN S. WEITZ
ANDREA JILL GRANT
PATRICIA N. BLAIR
RICHARD A. FRANK
JACOB DWECK
MARTHA JANE SHAY
GARY J. KLEIN
PHILIP M. BATTLES, III
JONATHAN M. WEISGALL
ROBERT W. HAWKINS
JOSEPH E. RESENDE
CELIA ROADY

DAVID G. BRESS (1908-1976)

*ADMITTED IN NEW YORK ONLY

LAW OFFICES
GINSBURG, FELDMAN, WEIL AND BRESS
CHARTERED
1700 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006

TELEX
89-2422

CABLE
"LEGIS"

TELECOPIER
(202) 637-9195

TELEPHONE (202) 637-9000

BRUCE H. RABINOVITZ
GAYLE FORST
RICHARD A. COHN
SUSAN A. COBB
IRA T. KASDAN
EDWARD J. TOLCHIN
DANA H. FOX
ROBERT L. DEITZ
JONATHAN GINSBURG
DIANE HOLT FRANKLE
DAVID JAMES CAROL
BEVERLY J. RUDY
JOHN C. GRABOW
CLAUDE G. B. FONTHEIM
JERROLD S. KLEIN
HARVEY J. SHULMAN
MARK I. GRUHN
GRACE JANELLE SHERFY
JAMES E. MCNAIR
BRENT A. WEGNER
DANIEL T. WARD
JAMES L. RITZENBERG
LYNN BONDE
SHERIE B. GUMER
JOSEPH B. HOFFMAN
JOSEPH BLUM
CRAIG A. EMDEN

WRITER'S DIRECT DIAL NUMBER

April 27, 1983

The Honorable Marc Leland
Assistant Secretary for International Affairs
U.S. Department of the Treasury
Washington, D.C. 20220

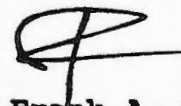
Dear Marc:

Enclosed please find a press release announcing Nippon Steel Corporation's acquisition of Special Metals Corporation (SMC), a wholly-owned subsidiary of Allegheny International Inc. SMC's principal facility is located in New Hartford, New York and employs approximately 500 people.

I wanted to ensure that you were informed of this important event before you read it in the news. Hopefully, I will have contacted you by phone before you receive this letter, but if not, I trust this will suffice.

Best regards.

Sincerely,



Frank A. Weil



NEWS RELEASE

FROM: Laura Weill/Judith Rothrock
Ruder Finn & Rotman
110 East 59th Street
New York, N.Y. 10022
(212) 715-1544/1532

FOR IMMEDIATE RELEASE

FOR: Nippon Steel Corporation
c/o Nippon Steel, USA, Inc.
345 Park Avenue
New York, N.Y. 10154

NIPPON STEEL ANNOUNCES ACQUISITION OF SPECIAL METALS CORPORATION

New York, N.Y., April 27th -- Nippon Steel Corporation of Tokyo, the world's largest producer of steel, announced today that it had agreed to acquire Special Metals Corporation (SMC), a wholly owned subsidiary of Allegheny International, Inc., of Pittsburgh, for an undisclosed sum, according to Shigeru Toyoda, an executive vice president of Nippon Steel.

Special Metals is a major producer of superalloys, which are high purity alloys containing nickel, chromium, cobalt, columbium, molybdenum and, to a lesser extent, aluminum, iron, titanium, tantalum and other metals. Superalloys are made into components for such products as gas turbines, oil drilling equipment, aircraft engines, space gear, and other applications which call for high strength in high temperature and other hostile environments. The company produces remelt stock, reforging products in ingot, billet and bar form, powder metallurgy products and dental alloys.

"We are pleased to be making this acquisition," said Mr. Toyoda, who is in charge of operations and technology. "We are a high-tech producer of industrial materials and are in the process of broadening our product line. By buying SMC, we are making progress toward this goal. This acquisition gives us a new and important capability in superalloys."

Nippon Steel Announces Acquisition
of Special Metals Corporation -2-

New York State Governor Mario Cuomo talked with representatives of Nippon Steel and said about this transaction, "This is an example of the kind of cooperation that my administration seeks to encourage in order to expand both job opportunities in New York State and free and fair trade among all nations, particularly with Japan, one of our most important trading partners. I hope that we can encourage many more foreign companies to follow this fine example of leadership. I am eagerly looking forward to sitting down with Nippon Steel representatives and working with the company in its future plans in New York State."

Continuing his statement, Mr. Toyoda said, "Special Metals is a fine, well-run company with a respectable share of its market. We look forward to relying on SMC's very capable management team for continued growth.

"We think that by sharing the technology and expertise that Nippon Steel and Special Metals have acquired over the years, we can look forward to creating even higher quality products for our customers in the U.S. and contributing to the progress of the superalloy industry."

SMC headquarters, main plant, and research laboratories are in New Hartford, N.Y., near Utica. Other facilities are in Dunkirk, N.Y. near Buffalo; Princeton, Ky., near Paducah; and Ann Arbor, Mich. Its employees number approximately 700.

#

Info Copy for Art M. Mah

ARMCO INC.

GENERAL OFFICES • MIDDLETOWN, OHIO 45043

KEMPTON B. JENKINS
VICE PRESIDENT



ADDRESS REPLY TO
1747 PENNSYLVANIA AVE., N.W.
SUITE 702
WASHINGTON, D.C. 20006
PHONE: 202 • 223 • 5370

PERSONAL

April 22, 1983

The Honorable Fred Ikle
Undersecretary
Department of Defense
The Pentagon
Washington, D. C.

Dear Fred:

I received a call from my President Bob Boni early yesterday concerning the reported sale of Special Metals, Inc., a subsidiary of Allegheny International to Nippon Steel of Japan. Bob points out that SM is the prime quality producer of vacuum melted super duty alloys for defense and aerospace in this country. One of our subsidiaries, Ladish Forging Corporation in Cudahy, Wisconsin, one of the two or three major forge producers in this country which provide fittings for military aircraft and the aerospace industry in general. They rely totally on SM as their sole supplier for these important alloys. Dr. Boni believes that SM has proprietary metal powders processes, which if the sale were consummated, would become the property of Japan.

At a time when we are debating so fiercely the transfer of technology in connection with the reauthorization of the Export Administration Act, the business community has agreed with the Administration that strategic technology transfer has got to be carefully gauged and monitored. You will recall the flap which developed over the purchase of Sante Fe and its subsidiary C. F. Braun by the Kuwaitis approximately a year ago. Sante Fe, a conglomerate, eventually succeeded in insulating their C. F. Braun subsidiary and protecting the defense related technology in that way. In this case, however, we are not dealing with a conglomerate with a possibility of protecting one compartment, but rather a corporation devoted solely to use of a technology in the production of materials of strategic significance. The transfer of this technology in our judgment would be an important advance in Japan's efforts to achieve superiority in aerospace by acquisition.

I regret bringing this to your attention so late but it only came to mine 24 hours ago. We have discussed this with the Wright-Patterson acquisition and procurement people (specifically, Mr. Hank Johnson in charge of materiel at 513/255-2232). I have also brought this to the attention of Lionel Olmer's deputy Olin Wethington who was looking into it today. We could be wrong, of course. A studied review and judgment may have already been undertaken. But, our professional people who depend upon SM products are convinced that this transfer would raise serious questions about our capacity to support defense production.



The Honorable Fred Ikle
April 22, 1983
Page Two

I am delighted to see the evolution of our MX position. We are sorely frustrated in our industry efforts to sell Dense Pack at least partially because of inadequate groundwork and booster club organization. Now it seems to be rolling -- we'll do whatever we can.

Regards,

Jenks

KBJ:ja

cc: Lionel Olmer
Dept. Commerce

c

Congress of the United States

House of Representatives

Washington, D.C. 20515

April 20, 1983

Marc Leland, Chairman
Committee on Foreign Investment in the United States
Department of the Treasury
15th & Pennsylvania Avenues
Washington, D.C. 20220

Dear Mr. Leland,

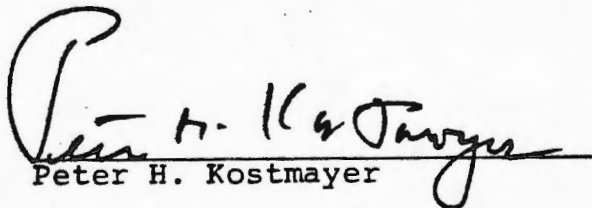
We are writing you to request that the Committee on Foreign Investment in the United States initiate a review of the proposed agreement between the United States Steel Corporation and the British Steel Corporation to import British steel to the United States Steel's Fairless Works in Pennsylvania.

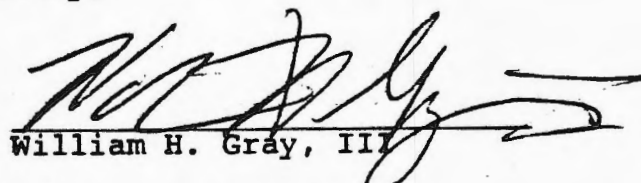
Congressman Peter Kostmayer whose district includes the Fairless Works recently completed a fact-finding mission for the House Foreign Affairs Committee, and we are attaching his report.

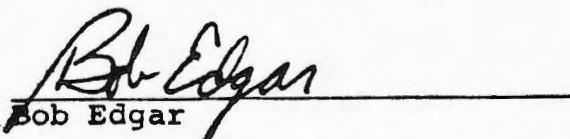
In our opinion the U.S. Steel/British Steel agreement poses serious questions concerning the future of the steel industry, not just in Southeastern Pennsylvania, but in the country as a whole.

We, therefore, urge CFIUS to review this plan, and make appropriate recommendations.

Sincerely,

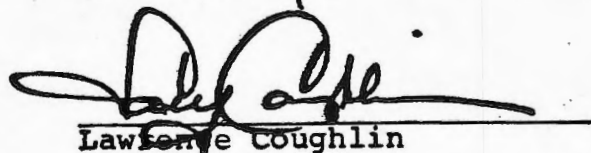

Peter H. Kostmayer


William H. Gray, III


Bob Edgar


Robert A. Borski


Thomas M. Foglietta


Lawrence Coughlin

PHK

Congress of the United States
House of Representatives
Washington, D.C. 20515

April 21, 1983

Honorable Clement J. Zablocki
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, D.C. 20515

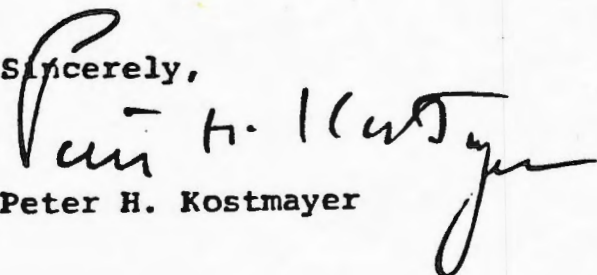
Dear Mr. Chairman:

There is transmitted herewith a report of my study mission to Glasgow, Scotland and London, England during the period April 3-5, 1983. At your request, I undertook this mission to explore the implications of a proposed supply and financing arrangement by the U.S. Steel Corporation and the British Steel Corporation.

During the course of my visit I met with U.S. diplomatic officials, British steel and government officials, and labor leaders in Scotland. I also held discussions with U.S. labor leaders and U.S. Steel officials, both in Pittsburgh and Washington D.C. I would like to express my appreciation for the assistance and cooperation I received from all of these officials.

The subject of my investigation has serious implications for U.S. steelworkers and for the foreign policy and national security of the United States. I therefore hope that this report will be helpful to the members of the Foreign Affairs Committee and the Congress in their deliberations on steel imports.

Sincerely,


Peter H. Kostmayer

PHK/acs

KOSTMAYER STUDY MISSION REPORT

Overview of the U.S. steel industry

In the past two years, the U.S. steel industry has suffered its worst slump since World War II. While this is partially attributable to the recent recession and the resulting weak domestic demand for steel products, it is also a reflection of structural problems in the steel industry. Many U.S. steelmakers have failed to modernize their mills, and thus rely on inefficient and outdated production methods such as open hearth furnaces. The combination of obsolete production methods and higher labor costs than those abroad have made it difficult for U.S. steelmakers to compete effectively with foreign steel producers. As a result, U.S. steel exports have declined and U.S. steel imports have increased.

U.S. steelmakers have fought fiercely against foreign imports. Foreign producers have the advantage not only of more modern plants, but also in many cases substantial government subsidies which make their products even more competitive in world markets. American steel producers maintain that it is impossible for them to compete against subsidized steel, and have used a variety of mechanisms available under U.S. law to curb such imports. In 1982, several American steel companies, led by U.S. Steel, filed for import relief from steel imports in one of the most comprehensive claims for protection ever made by a domestic industry. The resulting investigations by the Department of Commerce and the U.S. International Trade Commission produced a final determination that many of the eleven countries cited in the petitions for relief were subsidizing certain steel products, and a preliminary determination

that some countries were guilty of "dumping" as well (selling products at less than market value). The petitions were ultimately withdrawn in exchange for an agreement between the United States and the European Economic Community which limits most steel exports (though not semifinished, or "slab" steel) from the E.E.C. to the United States through 1985. (During this "breathing spell", the EEC governments are committed to phasing out subsidies to their steel producers.) However, the import relief cases clearly established the desire of the American steel producers to demand protection from imports. The cases also demonstrated conclusively that EEC countries were subsidizing their steel companies, and that the United Kingdom was one of the worst offenders in providing subsidies.

While U.S. Steel and other companies have been fighting imports (the most recent example being a petition filed against Japanese steel imports), U.S. steelworkers have made strenuous efforts to accomodate the steel companies during the industry's slump. On March 1, 1983, the United Steelworkers of America (U.S.W.A) agreed to give up an estimated \$2.9 billion worth of compensation over the next 41 months on the understanding that the savings would be utilized by the steel companies for plant modernization. For many individual steelworkers, this concession amounted to several thousand dollars per year in pay cuts.

Overview of British steel industry

The British Steel Corporation (BSC), a government-owned company formed in 1967 from nationalized steel companies, has made dramatic strides in modernizing the British steel industry with the help of direct financial assistance from the British govern-

ment. All five of its big steel plants are integrated, and utilize basic oxygen furnaces and continuous casting to produce steel (the last open hearth furnace was closed in the mid 1970's). The decision by BSC to nationalize its steel production based on the Japanese approach has been achieved only through massive government subsidies: more than \$6 billion since 1975, according to some estimates.

The current chairman of BSC was hired to turn BSC into a profit-making enterprise. While BSC's losses have been cut over the past few years, they still amounted to more than 500 million pounds (\$750 million) in the past year, all of which were covered by the government. In addition, the BSC receives a wide range of benefits which the U.S. Department of Commerce has determined to constitute subsidies. These include National Loans Fund loans and loan conversions, industrial investment loans from the European Coal and Steel Company, loans from the European Investment Bank, regional development grants, interest relief grants, Iron and Steel Industry Training Board grants, Export Credit Guarantee Department loans, Industrial and Commercial Finance Corporation loans, and preferential rail rates.

The current plan of the EEC calls for member governments to eliminate operating subsidies for steel by December 31, 1984. Although BSC claims it will meet this goal, it will be difficult to achieve without further layoffs and plant closings. In fact, in an effort to stem its losses, BSC attempted last year to close its Ravenscraig integrated steel mill in Glasgow, Scotland. The resulting outcry from Scottish organizations and Members of Parliament made the closure politically impossible, and forced the BSC

to seek other means to cut its losses: namely negotiations with U.S. Steel for a supply and financing arrangement.

British Steel Corporation-U.S. Steel Negotiations

In late March 1983, reports began to appear in the U.S. media that BSC and U.S. Steel were conducting negotiations which would result in BSC shipping slab steel from its Ravenscraig plant in Scotland to U.S. Steel's Fairless Works plant in Southeastern Pennsylvania. Given the potential domestic and foreign policy implications of such an arrangement, the Chairman of the House Foreign Affairs Committee requested the study mission to investigate the proposed arrangement. The study mission therefore visited the Fairless Works and the Ravenscraig plants, and held discussions with the Chairmen of U.S. Steel and BSC, and with U.S. and Scottish labor representatives, as well as other appropriate officials from both governments. Although some of the participants in the negotiations were reluctant to explain all of the details of the arrangement, the study mission obtained important information on the negotiations which raises serious questions about its propriety.

The basic elements of the arrangement would include a three year contract (with a three year renewal option) for BSC to supply Fairless Works with slab steel at the rate of 3 to 3.5 million tons per year. The majority of the slab would be supplied from the Ravenscraig plant, with lesser amounts supplied by other BSC mills. The slab would be transported in U.S. ships. In addition, BSC would invest an unspecified amount of money in the finishing operations at Fairless Works. If the negotiations are successful, they would permit U.S. Steel to close down the "hot" end of its Fairless

Works plant, while BSC would close the finishing end of its Ravenscraig plant. Some 2,000-3,000 jobs would be lost at each plant from the closings.

BSC officials made it clear that the proposed venture was being legally structured to avoid U.S. penalties on subsidized steel products. It would be virtually impossible for BSC itself to participate in such an arrangement without being subject to import relief actions in the United States. Therefore, BSC proposes to form a private corporation financed from \$400 million to be raised through a private stock offering. The company would gain ownership of the Ravenscraig plant, which would be "spun off" from BSC. None of the funds would be provided by the British government, although government approval of the plan is required. BSC officials expressed confidence that government approval would be granted.

BSC and U.S Steel officials argue that such an arrangement makes good economic sense, at least in the long run. Ravenscraig, it is claimed, can produce slab steel economically, but the finishing end of the mill is too costly to operate due to low demand. Fairless Works, on the other hand, cannot produce slab steel as efficiently because of its outdated production methods, but it is an efficient producer of finished steel. BSC officials also stated that even though the slab steel would be provided on a "full cost" basis with no subsidy, it would still be cheaper than that produced by Fairless Works. Both companies argue that shutting down the less productive parts of their plants will ultimately save more jobs than are immediately lost as a result

of the arrangement, on the premise that if they are not permitted to cut their losses on their less productive operations they may be forced to completely close the plants.

Both Scottish and U.S. labor unions are opposed to the proposed venture. Labor leaders at Ravenscraig stated that the most recent statistics on their mill show that it is now operating at a profit. They also pointed out that there is a high demand for slab steel in Great Britain, which might have to be supplied from imports if Ravenscraig's slab production were devoted to exports for the U.S. market. Furthermore, employment in the U.K. steel industry has already been cut more than in half, and Glasgow's unemployment rate stands at 18%. Given these factors, and the political importance of retaining a steel mill in Scotland, labor leaders are confident they can prevent the proposed arrangement. U.S. steelworkers have condemned the plan for the loss of jobs it would produce in an already depressed industry. They also point out U.S. Steel's hypocrisy in lobbying against steel imports while arranging a deal which would make Fairless Works dependent on steel imports, and its deceitfulness in forcing wage concessions from U.S. steelworkers while negotiating behind their backs to eliminate more jobs. They have vowed to use every possible means to oppose the arrangement.

Implications for U.S. Foreign Policy and National Security

U.S. Steel's leading role in demanding protection from steel imports had been seriously undercut by the announcement of the current negotiations with BSC. Its crass "flip-flop" on steel imports could well lead the current Administration to regard further requests for import relief much less sympathetically,

thereby loosening the restrictions on even more imports. Any such development could provoke protectionist efforts in the U.S. Congress, with unfortunate consequences for U.S. trading partners.

The proposed arrangement poses even more serious long-term consequences for U.S. national security, however. Other steel companies have already shut down their raw steelmaking facilities and are relying on imported slab steel. Should this trend continue, the United States may find itself eventually dependent on foreign producers for steel. This prospect raises serious questions not only in regard to lost jobs but to the very security of the United States, particularly in the construction and transportation sectors.

Conclusions and Recommendations

- 1) The proposed arrangement between U.S. Steel and BSC is an attempt by BSC to circumvent U.S. restrictions on subsidized imports. BSC officials admitted freely that the venture is being structured to avoid U.S. penalties on subsidized steel. Even if a "dummy" corporation with a new name takes ownership of Ravenscraig, however, the fact remains that the British government has subsidized the construction and operations of the Ravenscraig plant. The capital which Fairless Works needs to modernize its slab production has been provided to Ravenscraig by the British taxpayer.
- 2) BSC is trying to solve its own domestic problems at the expense of the American industry. BSC was prevented from closing the Ravenscraig plant for domestic political reasons. Because that closure was prevented, it has targeted an American plant to absorb its excess production capacity.

- 3) U.S. Steel is backing away from its promises to U.S. steelworkers to modernize its plants and fight imports. U.S. Steel has failed to take the necessary steps to modernize its plants. It is now asking the steelworkers to pay for its mistakes.
- 4) The loss of jobs which would result from the arrangement negates the limited economic benefits which would accrue to the two companies.
- 5) The proposed arrangement poses serious questions about U.S. dependence on imports of foreign unfinished steel.
- 6) Given the factors outlined above, the study mission recommends that the Foreign Affairs Committee and the U.S. Congress enact legislation which would prevent a successful conclusion of the negotiations. Specifically, the mission recommends legislation which would restrict foreign investment of the type contemplated in vital industries such as steel. The Committee should also request the Committee on Foreign Investment in the United States to review the proposed arrangement.

The study mission further recommends enactment of legislation to tighten the Trade Act of 1974 to ensure that subsidized steel such as that produced at Ravenscraig cannot be brought into the United States under a loophole which would not cover the situation created if the British Steel Corporation spins off the Ravenscraig plant to a new entity.

A Window Of Opportunity

Statement by

David M. Roderick, Chairman

U. S. Steel Corporation

Before the

Congressional Steel Caucus

Rayburn House Office Building

Washington, D.C.

GEORGE T. ESHERICK
DIRECTOR - PUBLIC AFFAIRS



818 Connecticut Avenue, N.W.
Washington, D.C. 20006
202/857-0300

April 19, 1983

In recent weeks, accounts in the news media have referred in some depth to on-going discussions and a proposed business venture between United States Steel Corporation and British Steel Corporation.

These reports have excited considerable speculation, much of it inaccurate. Expressing an interest in learning more about these negotiations, the Congressional Steel Caucus invited U. S. Steel's chairman, David M. Roderick, to brief its members. Mr Roderick's statement before the caucus April 19, 1983 is reprinted in this pamphlet.

A Window Of Opportunity

Good morning.

I am David Roderick, chairman and chief executive officer of United States Steel Corporation. And I'm pleased to accept your invitation to appear here today.

The subject at hand is a proposed business arrangement between United States Steel Corporation and the British Steel Corporation under which semi-finished steel produced in the United Kingdom would be processed into finished product at our plant in Eastern Pennsylvania. Contrary to speculation, no agreement has yet been concluded.

I have, of course, confirmed on numerous occasions recently that negotiations between ourselves and officials of British Steel have been ongoing since last November. I have also confirmed that we have been discussing the possibility of forming a joint venture — with U. S. Steel maintaining majority control — which would insure and enhance the long-term economic future of two plants — British Steel's Ravenscraig plant in Scotland and our Fairless Works near Philadelphia.

And I hasten to assure this caucus that a joint venture would also save and protect the jobs of about 5,000 steelworkers at Fairless.

This morning, I intend to share with you the conditions which led up to these negotiations, the three options open to us at Fairless and the consequences of acting — or not acting — on these options.

First, what are the conditions that convinced us to open talks with British Steel?

It is no secret to this group that the domestic steel business has been suffering the most severe case of unemployment and unprofitability in its history. Collectively, the American steel industry lost more than \$3.5 billion in 1982. The industry

operated at less than 50 percent of capacity during the year. Indeed, capacity utilization during the last week of 1982 reflected the lowest level since 1932. Employment in our industry fell to its lowest point since the American Iron and Steel Institute began keeping such figures in 1933. Last December and January, 165,000 steelworkers were on layoff, 14,000 others were on short work weeks, and the AISI reports that a half million employees in supporting industries have lost their jobs because of the low operating rates of the domestic steel industry.

Shipments of finished steel in 1982 were the lowest since 1958. And although the industry is now operating at about 58 percent of capacity, we believe that production has settled on a plateau that won't show any significant improvement until late 1983 or early 1984. In short, the industry continues to lose heavily with no real promise of upturn for many months.

For years, U. S. Steel has attempted to define the industry's mounting problems — lax enforcement of the trade laws . . . capital starvation . . . unrealistic environmental regulations . . . debilitating tax laws. But what has happened?

Since 1959, the steel industry has lost more than 40 entire steel and fabricating plants, more than 300 steelmaking facilities, warehouses and mining operations. Just between 1979 and 1981, five companies in the industry have either closed or have been reorganized under the bankruptcy laws. While these events have dramatized the plight of the industry, our critics have failed to

comprehend the true sources of our dilemma and have only accused us of coming up short in our plans to modernize our plants.

The response from those who could help has been woefully slight — except from this caucus. Until this body was organized in the mid-1970s, we in the steel industry had no one in Washington we could count on to recognize our problems and to lend a supportive hand. You have already helped to bring a sense of balance into our environmental laws, and you have also campaigned for a stricter enforcement of our trade laws. We appreciate being your constituent. And since this caucus already represents the steel community in the Congress of the United States, we do not intend to seek out any other legislative panel or committee for the purpose of discussing this issue further. We prefer to work with you and not through self-appointed splinter groups.

In short, we in the industry believe that we gave sufficient and early warning of the crisis which has now overtaken us. And the absence of remedial action from the last five Administrations demonstrates, I think, not so much a lack of will to correct trade abuses, but rather an overly protective and misplaced concern for the economic well-being of our country's offshore competitors — largely government owned or government subsidized.

Meanwhile, over the past five years Third World nations have been building steel industries, financed not by private capital but by capital borrowed by the governments of those nations from world money markets. To my knowledge, every single steel plant built during this five-year period in emerging countries is either owned by the government or is massively subsidized and protected from fair, worldwide competition.

It is an irony that the steel produced has not been for Third World consumption, but primarily for export.

From the standpoint of the American steel industry, these exports couldn't be more unfair or damaging: steel coming from new and efficient mills financed by readily available international capital . . . steel from mills owned or subsidized by foreign governments . . . steel produced by some of the world's lowest-paid workers . . . and steel unloaded on American shores at prices consistently below the cost of production. Little wonder that the American steel industry cries foul as it watches its domestic markets overrun by cheap, artificially priced imports.

The steel industry here in the United States, therefore, has been forced to do business in this new environment, and it has not been easy. We have been facing the ultimate stricture of the marketplace — failure and bankruptcy, something to which foreign steel companies — government owned or subsidized — are immune. Our government, of course, does not generally prop up our industries with loans or subsidize our costs of

production. And in the steel industry, at least, we don't want that kind of help. But given the growing steel capacity in the world, compounded by shrinking markets, we fare poorly — both in markets around the globe and in our own. And ours is the only truly open market left in the world.

Under these conditions, American producers could go out of the steel business altogether or become less and less competitive . . . only delaying the inevitable.

If we choose this latter course, you will continue to see a sequential closing of important producing units in steelmaking plants throughout the industry. And you will continue to see the disastrous effects of an economic domino principle. First, a closed unit . . . then the loss of a particular steel product made by that unit . . . a lost product joining a legion of others which have fallen victim over the years to cheaper, subsidized steel imports . . . and ultimately, as the domino continues to fall, the closing of entire steel mills and the loss of tens of thousands of jobs — both in the steel industry and those allied with it.

These are the conditions, then, that led to our negotiations. They should be familiar to you. They have been unfolding in the American steel industry for years. They are unacceptable conditions, and if the industry is to be rescued, something must be done . . . and done quickly.

Now, let me discuss options with you.

Our first option is to do nothing new, to continue operating Fairless Works until it reaches the end of its economic life. At the latest, that will occur by the end of this decade.

So that you may understand the impact of this option, let me describe the plant and its work force.

Fairless lies along the Delaware River about thirty miles upriver from Philadelphia in Bucks County. It was built more than three decades ago. The engineering for the plant came off the drawing boards more than 35 years ago. It was the best mill in the world when we built it, but in terms of engineering and technological advance, 35 years ago is ancient history.

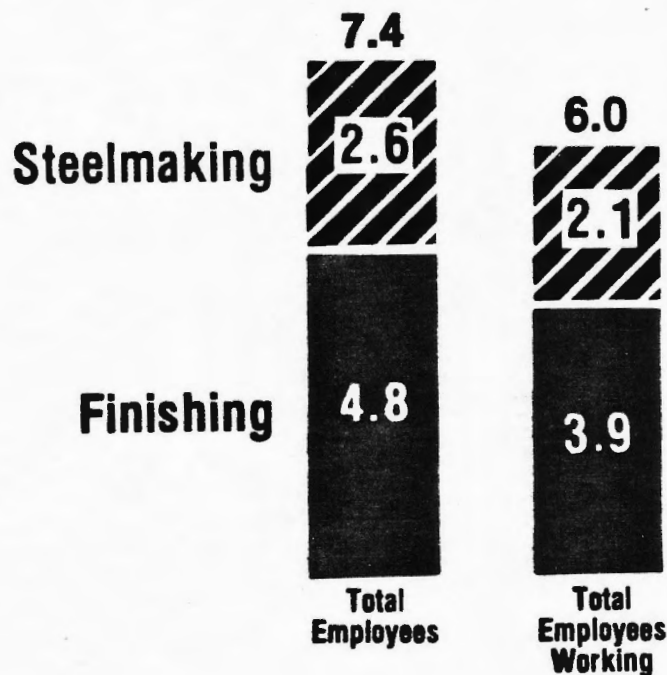
All of the plant's manufacturing facilities were installed simultaneously. Steelmaking facilities there need to be replaced now. The finishing operations require modernizing now.

The plant normally employs about 7,400 workers — 2,600 in the steelmaking end and 4,800 in the finishing end. Currently, a little more than 6,000 are working at the plant — about 2,100 in steelmaking and 3,900 in finishing. Approximately 1,400 workers are on layoff. It is highly doubtful that the employment level

at Fairless will ever climb above the 6,600-worker level. And that is taking into account the possibility of a strong economic turnaround over the next few years.

The options, therefore, as they relate to employment, have been based on a plant work force of about 6,600 workers.

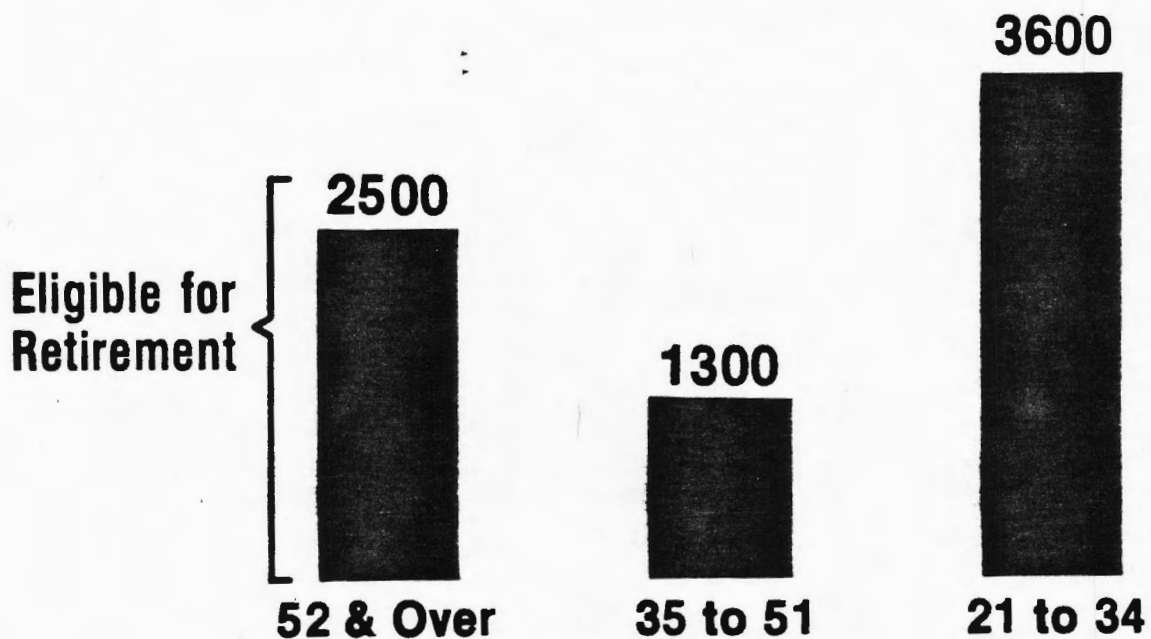
Fairless Work Force (In Thousands)



The demographics of that work force are very revealing. More than 2,500 of the workers are 52 years of age or older. All of these employees are now eligible for retirement and a pension. About

1300 are 35 to 51 years of age. Slightly more than thirty-six hundred are between the ages of 21 and 34. It is at once, a young and an old work force.

APPROXIMATE WORK FORCE DEMOGRAPHICS



$$\frac{\$2,500,000}{6,000} = \$333,333 = K/2$$

Conclusion: Option One — We could continue operating Fairless with the tools we have in place until about 1990, when the plant would be closed and all job opportunities would be lost. Clearly, such an option is undesirable and one which U. S. Steel very much wishes to avoid.

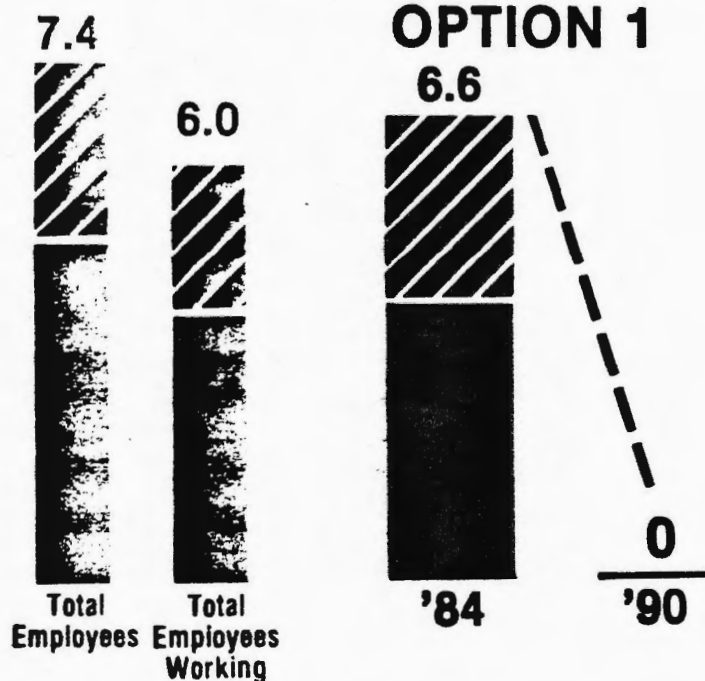
The second option open to us comprehends a modernized Fairless Works, rebuilt to the same capacity as today's plant. To make Fairless into a world-class and fully competitive integrated steel plant would cost more than \$1.9 billion.

Rebuilding only the steelmaking end would re-

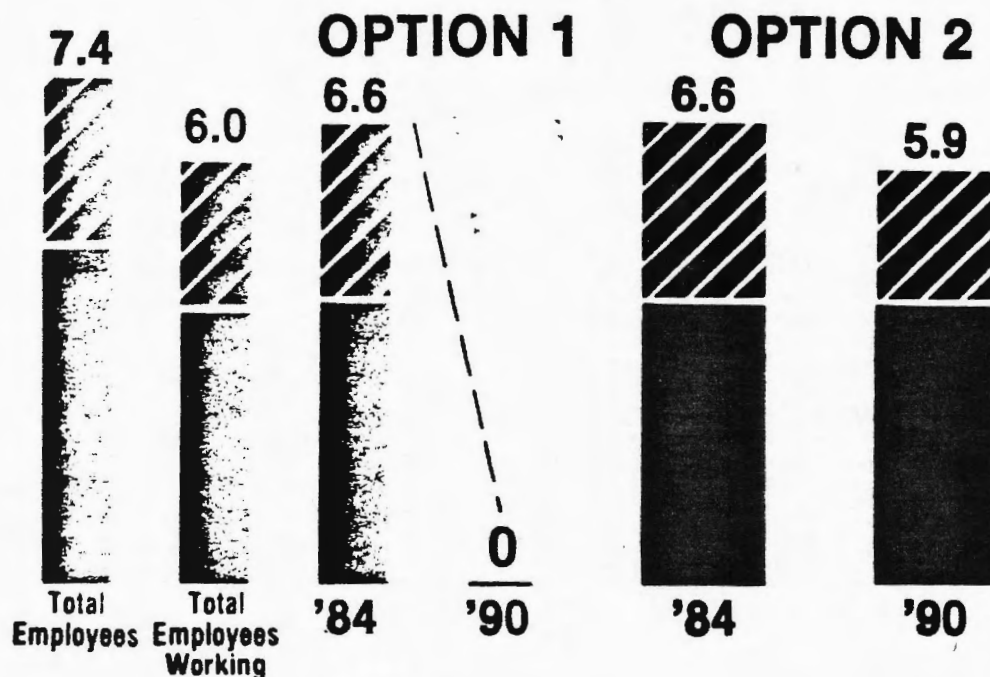
quire about \$1.5 billion of the total. Here is what is needed:

- environmental hardware mandated by law costing \$28 million;
- coke battery replacement or modernization at a cost of \$140 million;
- a new sinter plant at a cost of \$300 million;
- rehabilitation of the blast furnaces at a cost of \$335 million;
- a new basic oxygen steelmaking furnace and continuous slab caster costing \$750 million.

Fairless Work Force (In Thousands)



Fairless Work Force (In Thousands)



An additional \$440 million must be invested in the plant's finishing operations to bring them up to competitive standards. Included would be the hot strip mill, the cold reduction mills, the pickle lines and the annealing and tinning lines.

Assume for the moment that we committed the \$1.5 billion just to build new steelmaking facilities. Employment levels in that part of the

plant would still drop off. Basic oxygen steelmaking furnaces require fewer workers than open hearths. Continuous casters eliminate primary mills. Yields would increase. So, too, would productivity. The irony is that the advanced technology represented in these new facilities — all state-of-the-art — would cause the elimination of about 700 jobs in the plant's steelmaking end.

Conclusion: Option Two — To rebuild Fairless would cost \$1.9 billion. I am sure you will agree this is a staggering investment. This option is not financially viable since we do not believe we could ever recover the investment. We do not intend, therefore, to follow this course of action.

The third option available is to seek a joint venture with British Steel: Such an option would allow us to adjust to the new realities and to seek some innovative ways to serve the market — and serve it profitably. We believe that the joint venture would be a wise business decision in today's business environment. It would have many more pluses than drawbacks. It would be good for our company, our workers, our economy, and I think for the country.

With British Steel participating as a co-venture partner, Fairless Works would have a new lease on life.

As we've seen, the bulk of the costs necessary to modernize Fairless are in the steelmaking end. The finishing end is the best part of Fairless and requires the least investment to bring to top-notch, world-competitive grade. On the other hand, British Steel's Ravenscraig plant is already equipped with facilities Fairless doesn't have — a modern sinter plant, up-to-date blast furnaces, basic oxygen steelmaking furnaces and modern slab casters. These steelmaking facilities are

equipped to produce steel which possesses superior internal properties and which matches — or exceeds — the quality of steel produced anywhere in the world.

British Steel can supply semi-finished product from Ravenscraig at a cost less than we can make it at Fairless. And let me quickly point out that the price we would pay would be a fair price, one reflecting the true cost of production.

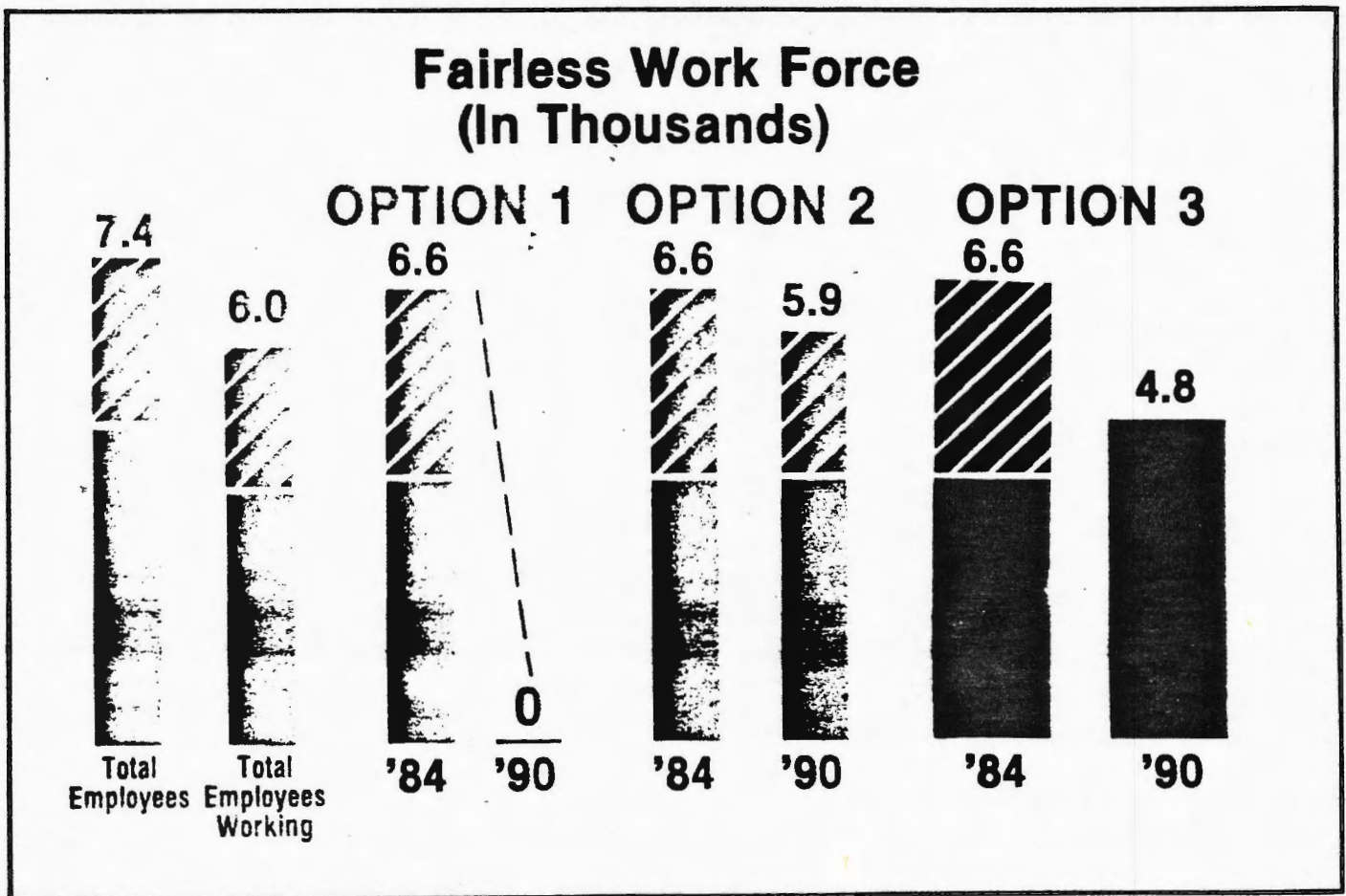
It would be our plan to plow back the first \$300 million to \$400 million of profits from the joint venture operation into the Fairless dock, the hot strip and finishing mills.

Then, there is the up-front cash generated by the British Steel investment in a joint venture. Those investment dollars would be returned to our steel sector, to modernize facilities at other producing locations. For example, U. S. Steel must install some three to four new continuous casters in the next several years. A steel company that doesn't install casters is signaling its intent to leave the steel business. Casters conserve energy, and they result in a better grade of steel at savings of about \$50 per ton.

In turn, such a modernization program could mean preserving a substantial number of jobs throughout our steel business because of productivity and quality improvements.

Under a joint venture, of course, the steel-making end of Fairless Works would be phased out. This would not occur overnight. It would be accomplished over a period of a year or more. Jobs would also be phased out gradually.

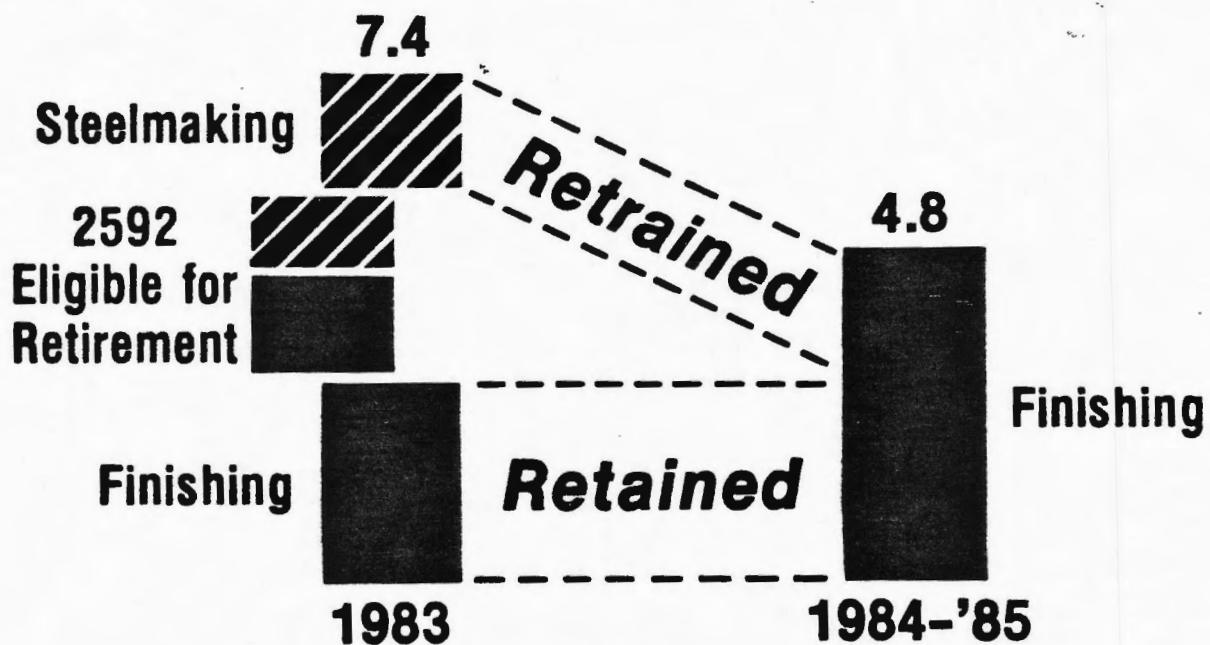
Because one-third of the plant's workers have already reached the age of 52 or over, retirement and normal attrition would absorb well over half of the jobs in the steelmaking side.



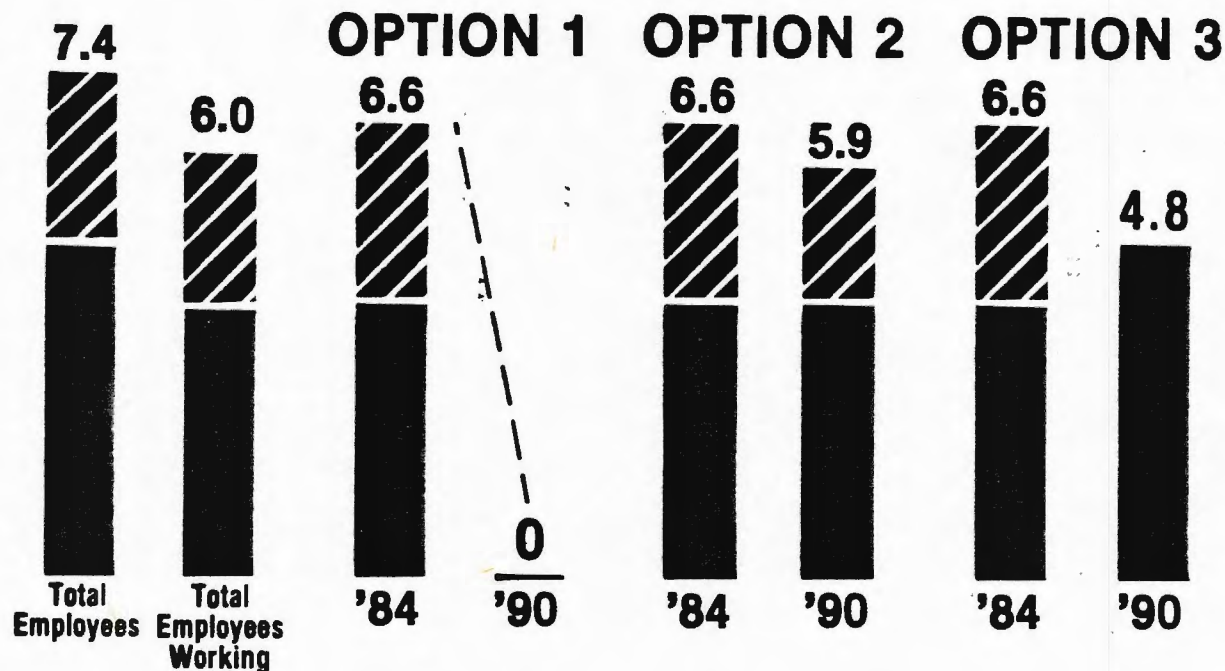
Conclusion: Option Three — The most significant and promising fact is that the restructuring under a joint venture would save about 5,000 steelworker jobs in the finishing departments of the plant. Younger workers displaced by

the shutdown would, with retraining, constitute a skilled labor pool from which other departments might draw. Aside from those who may seek retirement, few, if any, steelworkers now working would lose their jobs. This is a viable plan.

Fairless Works/British Steel OPTION 3



Fairless Work Force (In Thousands)



So, regardless of the course we take, there will be worker attrition — a total loss of all jobs should we eventually be forced to abandon Fairless altogether; a loss of about 1,800 jobs, mainly through retirement or reassignment, if we enter a joint venture; and about 700 if the steel-making side of Fairless were fully rebuilt.

There is really no contest among options. The one that makes the most business sense to us is the one involving a joint venture. If, however, this business arrangement — or one like it — doesn't

come to pass, what will result? The prospects are anything but pleasant.

As is, Fairless has no long-term future. It is a victim of terminal obsolescence and can continue to operate at best until the end of this decade. By that time, there is no question that the quality of Fairless steel would become less competitive, and we would be facing, by then, irreversible losses that would dictate the permanent closing of the plant.

To lose Fairless entirely would be to lose for this country a coastal mill whose products are shipped mainly to customers along the eastern seaboard. The loss of Fairless would significantly increase our vulnerability to import penetration in that area. The loss would also cause hardship — an avoidable one — on our employees and their families.

The USS/BSC proposition is a window of opportunity that will not wait.

* * * * *

In summary, British Steel needs a market and can invest in a mill to insure one. U. S. Steel needs capital — up-front and from joint venture profits — to modernize our Fairless finishing mills and steelmaking and finishing facilities at other USS plants across the country.

Most of Fairless would remain in operation at increased levels of quality and profitability. There will be no sudden and precipitous drop in the plant's current employment level.

This is a unique opportunity made available by the confluence of economic circumstances. It is an accommodation that rescues us from our capital starvation and offers a new lease on life for Fairless. It also provides for accelerating our plans to modernize facilities at other producing locations.

It is a venture which meshes needs — those of our company and those of our employees.

It gives steelworkers, whose jobs would otherwise be in jeopardy, security for the future. It gives us the opportunity to be profitable in the steel business.

We view this as a positive step designed to modernize mills, permit profitability and, very importantly, save jobs.

I hope that upon review, you will see the inherent good sense in this arrangement.

And now for your questions . . .

Additional copies are available from
Earl W. Mallick, Vice President—Public Affairs
United States Steel Corporation
600 Grant Street, Room 1244
Pittsburgh, Pennsylvania 15230

D

Nippon Steel → CFIUS 5/26/83

get info on technology involved, and what limits on exports. are these tech available abroad already.

DOD and Commerce might know.

What is Special Metals' market share and stage of production

Antitrust issue too

Special Metals group. John Osterday has report on special metals
Defense Intelligence Services - DKLÉ

Metals are used in advanced military aircraft engines
Existing controls are probably not adequate. DOD has
refused joint research/production ventures on these
technologies.

1. what are technologies
2. are they or close substitutes readily available overseas
3. are existing regs adequate to protect security

697-3302 DOD rep. Bill George

June 3 deadline

CFIUS 6/17/83

If Nippon bought Specialty Metals then took technology and closed it, what would happen? GE and Pratt+Whitney say other firms could do it, except VADER. It might take a while for Cyclops, Carpenter et al to duplicate quality and volume of some technologies

60% of Specialty Steel's products go into DOD, mostly aircraft blades and engine blocks. DOD wants to stop the sale.

Allegheny has been selling off subsidiaries for past 2-3 yrs through Morgan Stanley, had 7-8 offers. Nippon gave them the best offer.

Sold off industrial gases CO_2 → Liquid Air for stock.
Chemotron → Air Liquide

See Business Week article on A-L

CFIUS



POLICY

THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

16 JUN 1983

In reply refer to:
I-11044/83

Honorable Marc E. Leland
Assistant Secretary for International Affairs
U.S. Department of the Treasury
Washington, D.C. 20220

Dear Marc:

This is in response to your request for Defense comments and recommendations related to the sale of Special Metals, Inc. by Allegheny International to Nippon Steel of Japan. It states the Defense position and recommendations based on our review of technology transfer and procurement security issues inherent in the proposed sale.

Specifically, we are most concerned with the probable adverse impact of the proposed foreign acquisition on several of our most closely held high technology processes for production of the world's finest military aircraft engines. We believe that the transfer of technology of strategic significance must continue to be carefully guarded and monitored.

Although Special Metals, Inc. is not the sole U.S. source for super duty alloys, they are the largest U.S. producer. Japan and Europe do not have this technology. In addition, Special Metals has a DoD contract, with Defense Advance Research Projects Agency (DARPA) to develop a new advanced state-of-the-art metal processing capability called "Vacuum Arc Double Electrode Remelting" (VADER). The new process will, in the near future, revolutionize and begin to replace current technology of metal powder processes.

Special Metals employees require outside access to classified information on defense products in order to produce high technology inputs for their customers. The existing Special Metals facility clearance is being reviewed and will be revoked before the sale becomes effective, unless, for example a separate U.S. board of directors is established. Since all individual security clearances will automatically be terminated when the facility clearance is revoked, Defense contractors will then no longer be able to use Special Metals as a source.

Ideally, U.S. interests should outbid Nippon Steel for U.S. ownership where U.S. security is so directly involved. However, we must protect sensitive strategic technology in the absence of that solution.

Based on our internal review, I find that sale of Special Metals to Nippon Steel would, in fact, result in transfer to Japan of the most sensitive strategic technology held by Special Metals, directly as a result of the sale which is inseparable from the total process of disclosure. Therefore, the Defense position is that a munitions license and a validated export license should be required for sale of this company to Nippon Steel, as a matter of policy.

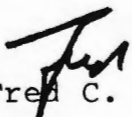
Our General Counsel has determined that sale of Special Metals to Nippon Steel could legally be defined as an export of the strategic technology held by that corporation requiring a validated license. However, the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) would have to be amended by the Secretaries of State and Commerce respectively, in order to accomplish this (Tab A).

There is to be a ceremonial closing of the Allegheny/Nippon Steel agreement on June 30, following actual signature of legal documents completing the sale at least a week earlier. Therefore, immediate action is needed to amend the ITAR and EAR by Tuesday, June 21, in order to protect our national security interests.

Secretary Weinberger has written to George Shultz and Malcolm Baldrige recommending: (1) they each take immediate action to make a similar finding (2) Secretary Shultz use his authority to amend the ITAR to require a munitions license and Secretary Baldrige use his authority to amend the EAR, by Tuesday, June 21 to require a validated license, prior to sale of Special Metals (Tab B).

In addition, due to the significant Defense sensitivities involved, Secretary Weinberger has requested that this department be given the opportunity to review any application for a munitions license, or a validated export license, subsequently filed by Special Metals, Inc.

Therefore, I recommend you recommend to Secretary of the Treasury Donald Regan that he: (1) support the Defense position that the sale could be legally defined as an export of the strategic technology held by Special Metals and (2) call Secretaries Shultz and Baldrige to let them know of his support and urge their immediate action to amend the ITAR and EAR, by Tuesday, June 21, to require licenses prior to sale.


Fred C. Ikle

Attachment



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301

17 JUN 1983

MEMORANDUM FOR THE UNDER SECRETARY OF DEFENSE (POLICY)

SUBJECT: Sale of Special Metals, Inc. to Nippon Steel

This responds to your memorandum of 2 June 1983 requesting that I examine whether the sale of Special Metals, Inc. to Nippon Steel would amount to an export of the sensitive strategic technology possessed by that corporation and whether, therefore, a munitions export license can be required for the sale of that company. The information provided to me indicates that most of the technology held by Special Metals, Inc. is subject to the export jurisdiction of the Commerce Department, while a lesser portion is subject to State Department licensing. However, the export control regulations of those two departments currently do not enable them to require either a munitions license (State) or a validated license (Commerce) prior to the sale of Special Metals, Inc. to Nippon Steel. Nevertheless, the Secretaries of State and Commerce appear to have authority under their enabling statutes to amend their respective regulations to require export licenses for the sale of Special Metals, Inc. Ideally, this could be done immediately upon signature of a minor change to each regulation as public comment can be dispensed with pursuant to either 5 USC §553 (a)(1) or (b)(B).

The information I have been provided indicates that a large portion of the technology possessed by Special Metals Inc. and with which we are concerned is of a dual-use nature under the jurisdiction of the Department of Commerce. The statute which gives the Secretary of Commerce the authority to control exports is the Export Administration Act of 1979 (EAA), P.L. 96-72, 93 Stat. 503 as amended. Section 5 of that Act states that "...the President may...prohibit or curtail the export of any goods or technology...". The President's authority under this act was subsequently delegated to the Secretary of Commerce by Executive Order 12214 of May 2, 1980. In implementation of this authority the Secretary of Commerce promulgated the Export Administration Regulations 15 CFR, Part 368, et seq. A review of these regulations to determine if the sale of a corporation possessing controlled items or related technical data is

tantamount to an export and thus requires an export license reveals that there is no definition of the term "export" in the regulations. However, there is a definition of "Export of technical data". Section 379.1(b) states,

"Export of technical data" means (i) an actual shipment or transmission of technical data out of the United States; or (ii) any release of technical data in the United States with the knowledge or intent that data will be shipped or transmitted from the United States to a foreign country; or (iii) any release of technical data of U.S.-origin in a foreign country.

Under this definition, the mere sale of the company would apparently not constitute an "actual shipment" or "release of technical data... with the knowledge... that the data will be shipped... from the United States." These definitions of export of technical data would have to be expanded upon in order to cover the impending sale of Special Metals, Inc. to Nippon Steel.

Similar to the Export Administration Act, the Arms Export Control Act (AECA) P.L. 90-629, 82 Stat. 1230 (as amended) appears to give the Secretary of State the authority to control sale of a domestic corporation to a foreign buyer if he defines such transactions as an export. Section 38 of that Act gives the President the authority to control the Export of defense articles and defense services and to promulgate regulations therefore. Executive Order 11958 of January 18, 1977 delegates that authority to the Secretary of State. The Secretary of State has promulgated the International Traffic in Arms Regulations 22 CFR, Part 121 et seq. to regulate munitions exports. These regulations do define the term "export" as

...the sending or taking out of the United States in any manner, any article, equipment or technical data on the U.S. Munitions List ... (§121.19)

This definition does not appear to contemplate the sale of a corporation as a transaction which would amount to an export. This interpretation is confirmed by Section 123.08 "Export of vessels of war and military aircraft." That section specifically states,

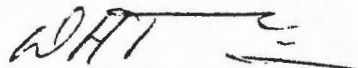
the transfer of a privately owned vessel of war... or a privately owned military aircraft...from the United States to foreign registry shall constitute an

export for which an approval or license from the Department of State shall be required.

This section singles out the transfer to foreign registry of vessels of war or military aircraft as constituting an export without the requirement of removing such items from the United States. In view of the definition of "export" previously quoted which applies throughout these regulations and which requires the "sending or taking out of the United States" of a controlled article, any transaction analagous to exporting a privately owned vessel of war or military aircraft where the item to be controlled is not removed from the United States would also have to be specifically noted and authorized by the regulations. Thus, as in the case of the Department of Commerce regulations, the Secretary of State would have to amend the ITAR to include the sale of a corporation as requiring a munitions license.

Such amendments to the EAR and ITAR would most likely focus on a foreign interest acquiring "control" of a domestic corporation, as a number of transactions which do not constitute a complete sale of a domestic corporation would nonetheless result in the effective transfer of sensitive technology held by it. For example, DoD's Industrial Security Regulation (DoD 5220.22-R, Section II, Part 2, attached) requires that a firm's eligibility to hold a classified information facility clearance be reviewed whenever a foreign interest acquires controlling ownership, accedes to controlling management positions such as directors or executive officers, acquires the ability to elect or appoint corporate executives, or holds significant debt of a domestic corporation. Similarly new EAR and ITAR provisions could require that an export license would have to be applied for prior to a domestic corporation taking any action that would result in a foreign corporation or individual acquiring control through similar means. As with the Industrial Security Regulations the effective transfer of control of a domestic corporation to a foreign interest would not automatically be prohibited. A license would only be required where the domestic corporation possessed technology controlled by either the Munitions List, the Commodity Control List or other provision of the ITAR and EAR. In given cases assurances against reexport may be sufficient condition for granting of a license. In other instances the amount or particular sensitivity of the technology possessed by the domestic corporation would warrant the establishment of a voting trust agreement or proxy agreement to insulate the corporation from foreign control (vice foreign ownership) prior to the granting of a license. See DoD 5220.22-R, Section II, Part 2 (2-205).

In summary, I believe the Secretaries of Commerce and State have authority under the EAA and AECA respectively to amend their regulations to require export licenses for the sale or other transfer of control of corporations like Special Metals, Inc. which possess technology under the jurisdiction of those departments.

A handwritten signature in dark ink, appearing to read 'WHT' followed by a horizontal line and a small flourish.

William H. Taft, IV

Attachment

DEPARTMENT OF DEFENSE
INDUSTRIAL SECURITY REGULATION

DoD 5220.22-R
January 1983

Section II. CLEARANCE PROCEDURES

Part 2. U.S. FACILITIES THAT ARE FOREIGN OWNED, CONTROLLED OR INFLUENCED

2-200 Application. This Part establishes the criteria for determining whether facilities located within the United States, Puerto Rico, and a U.S. possession or trust territory are under FOCI when examining their eligibility for a facility security clearance. This Part outlines the procedures and practices to be followed in making this determination.

2-201 General Policy.

a. Except as prescribed in paragraph c, below, facilities which are determined to be under FOCI shall be ineligible for a facility security clearance.

b. A facility will be considered to be under FOCI when the degree of ownership, control or influence from a foreign source is such that a reasonable basis exists for concluding that compromise of classified information or adverse impact on the performance of classified contracts may result.

c. In the case of those facilities where the FOCI stems solely from a citizen of, or a source located in, a country with which the U.S. Government has entered into a Reciprocal Industrial Security Agreement, the following applies:

(1) The procedures outlined in this Part shall be followed if it appears to the cognizant security office, that pursuant to these procedures the determination will be that the facility is not under FOCI.

(2) The procedures outlined in paragraph 2-117 shall be followed, instead of this Part, if it appears to the cognizant security office, that pursuant to this Part the facility will be found ineligible for a facility security clearance because of FOCI.

2-202 Criteria. The following factors, applicable to all forms of business organizations, including colleges and universities, shall be considered in arriving at a determination:

- a. Foreign interest ownership or beneficial ownership of five percent or more of the organization's securities.
- b. Organizational ownership of any foreign interest in whole or in part.
- c. Organizational positions held by foreign interests such as directors, officers or executive personnel.
- d. Foreign interests control or influence or are in a position to control or influence the election, appointment, or tenure of directors, officers, or executive personnel of the organization.
- e. Organizational contracts, agreements, understandings or arrangements with a foreign interest(s).
- f. Organizational indebtedness to foreign interests.
- g. Organizational income derived from Communist countries or income in excess of 10 percent of gross income from non-Communist foreign interests.
- h. Five percent or more of any class of the organization's securities are held in "nominee shares" in "street names" or in some other method which does not disclose the beneficial owner of equitable title.
- i. The organization has interlocking directors with foreign interests.
- j. Citizens of foreign countries are employed by or who may visit the facility(s) in a capacity which may permit them to have access to classified information (excluded are cleared immigrant aliens).
- k. The organization has other foreign involvement not otherwise covered.

2-203 Procedures.

- a. If any of the factors outlined in paragraph 2-202 are present, the facility may not be granted a facility security clearance by the cognizant security office except as provided for below. The cognizant security office may grant a facility security clearance in the following types of cases provided

there is a favorable finding by the Director of Industrial Security and provided further the elements of FOCI do not stem from a Communist country. The types of cases where this authority is delegated are:

(1) If the foreign interests have options to purchase, own or have beneficial ownership in less than five percent of the contractor's voting stock and such minority holdings do not enable the foreign interest to control the appointment and tenure of any of the contractor's OODEPs or otherwise exercise control or influence.

(2) If the interlocking directorate which exists with a foreign interest pertains only to a firm which is represented by (i) a cleared OODEP of the U.S. contractor or (ii) an official of the U.S. contractor who does not require access to classified information, provided the firm certified that such official can be effectively excluded from access and does not occupy a position that would enable him/her to affect adversely the contractor's policies or practices in the performance of classified contracts for the User Agencies.

(3) If licensing, patent, sales or trade secret agreements exist or are entered into with any foreign interest, including a subsidiary of the contractor, the contractor's SPP includes adequate provisions to insure that representatives of the foreign interest who are parties to such agreements shall be effectively denied access to all classified records, information, and material and to controlled areas. In all such cases the contractor shall be informed of his/her obligation to comply with the State Department's ITAR (reference (i)) as it pertains to such agreements with foreign interests. However, if because of the nature or the number of licensing agreements with foreign interests, the cognizant security office concludes that the facility may be under FOCI, within the meaning of paragraph 2-201b, a facility security clearance shall not be granted and the case shall be referred to the Director DIS, ATTN: Deputy Director (Industrial Security) through the Region Director in accordance with paragraph b, below.

(4) If financial support from foreign sources consists only of income from non-Communist countries and does not exceed 10 percent of gross income.

(5) If the contractor has ownership in foreign subsidiaries or affiliates which are located in non-Communist countries.

b. All cases, except as provided for in paragraphs a.(1) through (5), above, shall be referred to the Director DIS, ATTN: Deputy Director (Industrial Security) for determination as to eligibility for a facility security clearance. The facility case file shall be documented to set forth the elements of FOCI, and, in addition, shall contain the contractor's proposed plan of action designed to divest itself of the FOCI or a notation that the facility does not desire to submit such a plan. The case file shall also contain the cognizant security office's evaluation, and recommendation and opinion of counsel. If legal advice is required in the processing of the case, the Director of Industrial Security should consult with the office of counsel of the DCASR servicing the area.

c. The Director, DIS, will cause a review to be made of the case. Based upon the review, the Director, DIS, will make a determination as to

whether the facility is under FOCI. This authority may be delegated to the Deputy Director (Industrial Security), HQ DIS, (or his/her Assistant), except however, in the following categories of cases the authority may not be delegated.

(1) Foreign interests own or have options to acquire stock in excess of 20 percent.

(2) Stock ownership by foreign interests where a Voting Trust Agreement, Proxy Agreement, or Board Resolution is necessary to effectively insulate the cleared facility.

(3) Foreign indebtedness exists amounting to 15 percent or more of the current assets of the corporation, or where over 20 percent of the stock in the U.S. corporation has been pledged to a foreign interest as collateral.

(4) More than five percent income is derived from Communist countries.

d. In any case where there is a reasonable doubt as to whether the degree of FOCI is such that a reasonable basis exists for concluding that compromise of classified information may result, the Director, DIS, shall forward the case with appropriate recommendations to the DUSD(P), ATTN: DSP&P for final determination.

e. Cases in which the elements of FOCI are extensive, i.e., a Voting Trust Agreement or some other arrangement may be necessary to isolate the cleared facility from the foreign interest, will be reported immediately to the Director, DIS, ATTN: Deputy Director (Industrial Security), concurrent with invalidation of the facility clearance in accordance with paragraph 2-118k.

f. In cases involving parent subsidiary organizations initial action under this Section shall be taken by the cognizant security office which has been assigned security cognizance of the parent organization. The processing of a subsidiary organization for a facility security clearance should not be delayed pending the outcome of the clearance determination for the parent organization. A facility security clearance shall not, however, be granted to the subsidiary until and unless a facility security clearance is first granted to the parent organization, or the parent is excluded after the parent has been determined not to be under FOCI. In cases involving a multiple facility organization, action under this Part shall be taken by the cognizant security office which has security cognizance of the home office facility (HOF) of the firm. Separate action is not required under this Part to determine eligibility for a facility security clearance of any other facility of the multiple facility organization.

g. The cognizant security office may, at any time suggest to the facility methods that may be employed to remove or nullify the effect of FOCI. If management adjusts to comply with the suggestions, the case may be further considered. Concurrence of the Deputy Director (Industrial Security), HQ DIS, shall be obtained prior to requesting a contractor to establish a Voting Trust Agreement or Proxy Agreement.

2-204 Assistance. Whenever requested by the contractor or on receipt of the report required by paragraph 6a(4)(f) ISM, the cognizant security office or the Deputy Director (Industrial Security), HQ DIS, as appropriate, will provide to the contractor, in writing, the DoD policy regarding FOCI as contained in paragraphs 2-201 and 2-202, and will consult with the contractor as needed to provide additional advice and guidance concerning the effect of FOCI. On request, the cognizant security office or the Deputy Director (Industrial Security), HQ DIS, as appropriate, may discuss procedures or methods which the contractor may elect to employ to counteract the effect of FOCI. If not previously involved, the Deputy Director (Industrial Security), HQ DIS, should be consulted and should participate in the matter whenever this expanded participation is indicated by the facts. Documents relating to these discussions and reports made pursuant to the foregoing are presumptively proprietary when appropriately marked by the contractor and will be protected from unauthorized disclosure and handled on a strict need-to-know basis. When such reports are submitted in confidence, exemptions to DoD Directive 5400.7 (reference (1)), to the extent applicable, will be invoked to withhold them from public disclosure. Such reports will be marked "FOR OFFICIAL USE ONLY."

2-205 Methods to Remove or Negate the Effects of FOCI. A facility which is under FOCI may become eligible for a facility security clearance only if the facility can be effectively insulated from the foreign interest. In the case of foreign ownership, this may be possible by any of the following methods depending upon the circumstances.

a. Voting Trust Agreement. Under this arrangement, the foreign stockholder(s) must not only transfer legal title of foreign-owned stock to the Trustees, but more importantly all management prerogatives flowing from stock ownership must also be conveyed to the Trustees. The Voting Trust arrangement must unequivocally provide for the absolute exercise of all prerogatives of ownership with complete freedom to act independently without consultation with, interference by, or influence from foreign stockholders. Except, however, the trust agreement may limit the authority of the Trustees by requiring that approval be obtained from the foreign stockholder(s) with respect to: (i) the sale or disposal of the corporation's assets or a substantial part thereof; (ii) pledges, mortgages or other encumbrances on the capital stock which they hold in trust; (iii) corporate mergers, consolidations, or reorganizations; (iv) the dissolution of the corporation; and (v) the filing of bankruptcy petitions. The Trustees must assume full responsibility for the voting stock and for exercising all management prerogatives relating thereto in such a way as to ensure that the foreign stockholders, except for the approvals just enumerated, will be totally and effectively isolated from the cleared facility and continue solely in the status of beneficiaries. The facility must be organized, structured and financed so as to be capable of operating as a viable business entity independent from the foreign stockholders. Trustees must become members of the Board of Directors. In addition, Trustees must:

(1) Be responsible U.S. citizens residing within the United States, and be capable of assuming full responsibility for voting the stock and exercising the management prerogatives relating thereto in such a way as to ensure that the foreign stockholders will be effectively isolated from the cleared facility.

(2) Be completely disinterested individuals with no prior involvement with either the facility or the corporate body in which it is located, or the foreign interest.

(3) Be eligible for and issued a personnel security clearance to the level of the facility security clearance. There shall be a minimum of three Trustees for each Voting Trust Agreement. When a vacancy occurs, a successor Trustee shall be appointed by the remaining Trustees. Prior to being accepted as Trustees by the Director, DIS, the Trustees must be advised in writing by the cognizant security office of the duties and responsibilities they are undertaking on behalf of the U.S. Government to insulate the cleared facility from the foreign interests. Moreover, the Trustees must indicate in writing their willingness to accept this responsibility.

b. Proxy Agreement. Under this arrangement, the voting rights of stock owned by foreign interests are conveyed to the Proxy Holders by means of an irrevocable Proxy Agreement. Legal title to the stock remains with the foreign interests. All other provisions of the Voting Trust as applies to Trustees and the terms of the agreement shall apply to the Proxy Holders in the case of a Proxy Agreement.

c. Board Resolution. In certain situations, the effects of foreign ownership may be mitigated by a resolution of the Board of Directors whereby the cleared firm recognizes the elements of FOCI and acknowledges its continuing obligations under the DoD Security Agreement (DD Form 441). The resolution must include a certification that the foreign interests shall not require, shall not have, and can be effectively excluded from, access to all classified information in the possession of the cleared facility and do not occupy positions that would enable them to affect adversely the organization's policies and practices in the performance of classified contracts or programs for the User Agencies. All of the following factors must be present in order for a Board Resolution to be utilized.

(1) The percentage of voting stock owned by foreign interests is not more than 15%.

(2) The amount of stock owned by the foreign interests is not sufficient to elect representation to the Board.

(3) There is no agreement whereby the foreign interest is permitted to have representation on the Board.

(4) The Deputy Director (Industrial Security), HQ DIS, makes a determination that, based on all of the available facts, a Board Resolution represents a satisfactory resolution of the case.

2-206 Visitation Agreements. In every case where a Voting Trust Agreement or Proxy Agreement is employed to negate foreign ownership, a Visitation Agreement shall be executed between the facility, the foreign interest, the cognizant security office, and as appropriate, Trustees or Proxy Holders. Visitation Agreements must identify who may visit, for what purposes, when advance approval is necessary and the approval authority. The Trustees or Proxy Holders shall have approval authority in Trust and Proxy Agreement cases. The facility shall submit individual requests to the approval authority

for each visit. The Visitation Agreement shall provide that, as a general rule, visits between the foreign stockholder and the cleared U.S. firm are not authorized; however, as an exception to the general rule, the Trustees or Proxy Holders may approve such visits in connection with regular day-to-day business operations pertaining strictly to purely commercial products or services and not involving classified contracts or executive direction or managerial matters.

2-207 Certification. At the inception of a Voting Trust Agreement or Proxy Agreement, and at least once each year thereafter, representatives of the cognizant security office, DIS HQ, the Trustees or Proxy Holders, Management Officials of the facility, and if requested, the foreign interest, will meet to review the purpose of the Agreement and to establish common understanding of the operating requirements. These FOCI reviews will be expressly aimed at insuring compliance with all special controls, practices and procedures established to insulate the facility from the foreign interest generally, and to discuss matters pertaining to the compliance or acts of non-compliance with the terms of Voting Trust Agreements or Proxy Agreements specifically. More frequent meetings for this purpose may be held at the request of any party and may include any or all of the principals identified above, except that any meeting including the foreign interest will be attended by all. At the end of each year of operation, the Trustees or Proxy Holders shall submit to the cognizant security office an annual report of Agreement implementation executed by the Trustees or Proxy Holders and the Chief Executive Officer of the facility.

2-208 Utilization of Facilities.

a. FOCI facilities located within the United States, Puerto Rico, and a U.S. possession or trust territory determined to be ineligible for a facility security clearance under the procedures established in this Part may be utilized as a source of either material or services. However, if the release of classified information is required, a condition precedent to such utilization is a finding by the Head of the User Agency concerned that there is an impelling necessity therefore and that no clearable facility capable of providing the required material or service is available within time limitations considered militarily or operationally necessary. The authority to make this finding shall not be delegated below the Assistant Secretary or comparable level of the User Agency. The word "capable" as used in this paragraph shall include no consideration of the elements of cost.

b. Where a finding is made, as provided in paragraph a, above, and a release is authorized, such access is beyond the scope of the Defense Industrial Security Program and shall not constitute a facility security clearance nor authorize the disclosure of classified information on a continuing basis, except as it relates to the particular finding, nor shall such release be binding on any other User Agency.

c. The action by one User Agency as outlined in paragraph a., above, does not constitute the authorization to release classified information pertaining to any other User Agency. If the classified information to be released pertains to more than one User Agency, authorization from the Head of such User Agency is required prior to the disclosure.

2-209 Effects of This Part on Prior Facility Security Clearances. The procedures established in this Part shall be applicable in those cases where previously facility security clearances have been granted. Facilities which fail to qualify under the foregoing provisions shall have their existing facility security clearances revoked.

2-210 Appeals. Actions taken under this Part are not appealable.

Part 3. PERSONNEL SECURITY CLEARANCES AND DENIALS FOR CONTRACTOR PERSONNEL

2-300 Application. This Part establishes policy and procedures for the granting of personnel security clearances for U.S. contractor personnel, including immigrant aliens, security assurances for U.S. citizens in Canada, the U.K., or the FRG and security assurances for Canadian, U.K., or FRG citizen employees of U.S. contractors, and for the granting of access authorizations to NATO classified information. In addition, this Part sets forth procedures for the recommendation for suspension, revocation or denial of personnel security clearances.

2-301 Security Clearances for Personnel

a. General. A personnel security clearance is an administrative determination that an individual is eligible, from a security point of view, for access to classified information of the same or lower category as the level of the personnel security clearance being granted. A personnel security clearance granted by the DoD or by a contractor for access to classified information is valid for access to classified information of the same or lower category. A personnel security clearance (or an interim personnel security clearance) is required for contractor personnel prior to granting them access to classified information. Personnel shall not be cleared for access to classified information of a higher category than the level of security clearance of the facility at which they are employed except--

(1) Consultants, as provided for in paragraph 2-106.

(2) Employees of a multiple facility organization (including those employed or physically located at uncleared facilities) who (i) require access to a higher category of classified information in connection with the performance of their duties at another cleared facility or at a government installation, or (ii) are transferred to an uncleared facility or to a facility with a lower level of clearance within the multiple facility organization, provided the contractor desires to retain the Letter of Consent at the higher level so it will be available in the event the individual is transferred back to a facility at which the clearance will be needed. A clearance granted under this authority shall not be of a higher category than the facility clearance of the home office or appropriate principal management facility of the contractor, and the Letter of Consent will be issued or forwarded to the home office or principal management facility.

b. Interim Clearances. In an emergency situation, in order to avoid crucial delays in precontract negotiations, or contract negotiations, on performance of a contract or under the conditions described in paragraph 2-307h, 2-308e(2), 2-308g(2), or 2-111b(4), this Chapter, a personnel security clearance based on lesser investigative requirements as prescribed by this Regulation may

2-209 Effects of This Part on Prior Facility Security Clearances. The procedures established in this Part shall be applicable in those cases where previously facility security clearances have been granted. Facilities which fail to qualify under the foregoing provisions shall have their existing facility security clearances revoked.

2-210 Appeals. Actions taken under this Part are not appealable.