could be implanted into any auction scheme. By definition, an auction treats all bidders with the severe equality of equal opportunity to use sheer financial power in bidding.

Even if an effort is made to accord some form of special treatment to those refiners classified as "small business" by the Small Business Administration.[12] it is doubtful that a graduated scale can be applied, since the Small Business Administration makes no distinction between refiners of different size within its definition. Also, clearly those independent refiners not classified as "small business" would be placed in the same bidding category as their major company competitors even though they are much smaller in size and lack the resources of their major company competitors. However, the essential overriding economic and national security fact that has consistently been recognized is the distinction between *all* nonintegrated independent refiners and the major oil companies, and a graduated scale, inconsistent with auction procedures, has consistently been recognized as the way to preserve the distinction.

IV. THE IMPORTS AUCTION SCHEME IS BAD POLICY IN OTHER SERIOUS RESPECTS

A. The Auction Scheme Constitutes a Tax Ultimately Payable by the Consumer

A prime purpose of the auction scheme is to transfer the huge values involved in the price differential between domestic and foreign crude oil to the Federal Government. As noted above, these values will only be partially transferred to the Federal Government—the rest being transferred to the few companies who will gain most by imports and thus bid the highest. But one thing is clear—a transfer of vast sums from the rest of the oil industry will be accomplished.

How will the transfer of such vast sums be offset? Like any other tax or cost of doing business, the exaction of this huge sum from the oil industry must inevitably be borne by higher product prices paid by the consumer. The other alternative would be for domestic crude oil prices to yield and this would strike directly at a fundamental objective of the program.

Insofar as this sum is to be assessed against the consumers of petroleum products we submit that it is bad policy (in view of the large tax burden already imposed on oil users) as well as devious administration (avoiding the normal Congressional approval required for the imposition of taxes).

B. The Imports Auction Scheme Is a Breach of Faith With the Industry Which Will Hurt Our Mobilization Base

While no person or industry has a vested right in a certain type of government action (in the absence of a contract therefor) it is still sound public policy to avoid drastic shifts in programs regulating activities where substantial investments are involved. The auction scheme is a drastic change in the rules of the game rather than a further step in improvement. Plant construction and modification have proceeded for almost ten years on certain assumptions as to the nature and direction of government action which must now be jettisoned.

Besides its disquieting influence generally inhibiting plant construction, if the auction scheme is to be the new policy, it will encourage the very type of refinery construction in the future which is *least* desirable as a matter of national security—on tidewater.

It is pertinent to note that the government's reluctance to effect drastic alterations has justified the persistence for almost ten years of the "historical" quotas. But what about the position of those refiners who relied on express government policy as it has developed in the last ten years? Are they to be treated any less favorably?

C. The Imports Auction Scheme Is Contrary to Trade Expansion Policy

An auction price is for all practical purposes a duty or tariff, albeit variable, and as such contrary to the trade expansion policies. It is much more than an "adjustment" of imports so as not "to impair the national security", which is what, and only what, the statute permits. It is inconsistent with the status of import controls as a very limited national security exception to trade expansion policy.

V. THE IMPORTS AUCTION SCHEME IS PROBABLY ILLEGAL

While we appreciate the present-day tendency to give the Executive maximum leeway within the scope of his statutory authority and we recognize also that

[12] Discussed in some of the press reports on this subject.