

EXPORT ADMINISTRATION AMENDMENTS
OF 1977

REPORT
OF THE
COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY
S. 69
TOGETHER WITH
ADDITIONAL VIEWS



APRIL 26 (Legislative Day FEBRUARY 21), 1977.—Ordered to be printed

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1st Session }

SENATE

{ REPORT
No. 95-104

EXPORT ADMINISTRATION AMENDMENTS OF 1977

APRIL 26 (legislative day, FEBRUARY 21), 1977.—Ordered to be printed

Mr. STEVENSON, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 69]

The Committee on Banking, Housing, and Urban Affairs, to which were referred S. 69 and S. 92, bills to amend and extend the Export Administration Act of 1969, as amended, having considered the same, reports favorably on S. 69 with an amendment and an amendment to the title and recommends its passage.

HISTORY OF THE BILL

S. 69 and S. 92 were introduced in the Senate on January 10, 1977, and referred to the committee. The Subcommittee on International Finance held hearings on the measures on February 21, 22, and 28, 1977, and on March 16, 1977.¹ Testimony was heard from the Secretary of State, Cyrus Vance, the Secretary of Commerce, Juanita Kreps, and representatives of business, maritime, and Jewish organizations. Extensive hearings on predecessor measures were held in 1975 and 1976.² After meeting in open executive session on March 17,

¹ Hearings before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs on S. 69 and S. 92, 95th Cong., 1st Sess. (1977).

² For hearings and committee action on predecessor measures, see S. Rept. No. 94-917 on S. 3084, 94th Cong., 2d Sess. (1976); Hearings before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs on S. 3084, 94th Cong., 2d Sess. (1976); S. Rept. No. 94-632 on S. 953, 94th Cong., 2d Sess. (1976); Hearings before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs on S. 425, amendment No. 24 thereto, S. 953, S. 994, and S. 1303, 94th Cong., 1st Sess. (1975); and hearings before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs on the Foreign Investment Act of 1975, 94th Cong., 1st Sess. (1975).

29, 30, 1977, and April 5, 1977, the full committee agreed to report S. 69 with an amendment.

S. 69 as introduced was identical to the measure agreed upon by an informal conference between the House and the Senate in October of 1976 on S. 3084 and H.R. 15377, measures which passed the Senate and House respectively in the 94th Congress. Formal appointment of conferees was blocked in the closing days of the 94th Congress, and, hence, the conference measure was never considered by the full Senate or House. In most material respects, S. 92 was identical to S. 69. The differences were fully explored in the hearings and considered by the committee in acting on S. 69.

PURPOSE OF THE BILL

The bill contains two titles: Title I deals with the extension and improvement of export administration generally. Title II deals with compliance with foreign boycotts.

The purpose of title I of the bill is to extend the Export Administration Act to September 30, 1979; provide for a continuing analysis of national security export controls so that a country's Communist or non-Communist status is not the sole determinant of U.S. policy; provide for a review of national security export controls to determine whether modifications are necessary in light of evolving technology, the availability of restricted items from sources outside the United States, and other relevant matters; require a study of technology transfers to countries to which exports are restricted for national security or foreign policy purposes; improve the role of industry representatives in formulating and implementing national security export controls; speed the process of export licensing review and decision; permit agricultural commodities purchased for export to be stored in the United States free from future short-supply export limitations under specified conditions; increase the penalties applicable to violations of the Export Administration Act; and otherwise to improve the administration of U.S. export controls.

The purpose of title II of the bill is to prevent most forms of compliance with foreign boycotts; to prohibit U.S. persons from refusing to do business with blacklisted firms and boycotted friendly countries pursuant to foreign boycott demands; to prohibit U.S. persons from discriminating against other U.S. persons on grounds of race, religion, sex, or national origin in order to comply with a foreign boycott; to prohibit U.S. persons from furnishing information about another person's race, religion, sex, or national origin where such information is sought for boycott enforcement purposes; to provide for public disclosure of requests to comply with foreign boycotts; to require domestic U.S. persons who receive requests to comply with foreign boycotts to disclose publicly whether they are complying with such requests; to insure that the antiboycott provisions of the Export Administration Act apply to all domestic concerns and persons, including intermediaries in the export process; and otherwise to strengthen U.S. law against foreign boycotts and reduce their domestic impact.

A. EXPORT ADMINISTRATION

The Export Administration Act of 1969, as amended, is the basic statutory authority for regulating U.S. exports for national security, foreign policy, and short-supply purposes. The present law expired on September 30, 1976. Since then exports have been regulated pursuant to Presidential Executive order issued under the presumed authority of the Trading With the Enemy Act.

Title I of S. 69, as reported by the committee, would extend the act until September 30, 1979, and in connection therewith, make changes and improvements in its policy and implementation. Among them are the following:

(1) The bill would provide that in administering export controls for national security purposes, U.S. policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control re-transfers of U.S. exports in accordance with U.S. policy, and such other factors as the President may deem appropriate.

It would also require periodic Presidential review of U.S. policy toward individual countries to determine whether such policy is appropriate in light of these factors. The results of such periodic reviews would be reported to Congress annually.

(2) The bill would change the present responsibility of the Secretary of Defense to review exports to "controlled countries" (defined as the Communist countries designated in the Foreign Assistance Act of 1961) so that he is required instead to review exports to countries designated by the President pursuant to the periodic review of U.S. policy called for by the bill.

(3) It would require the Secretary of Commerce, in cooperation with the appropriate technical advisory committees established pursuant to statute, to review U.S. unilateral and multilateral export controls for purposes of determining whether such controls should be removed, modified, or added in order to protect the national security of the United States. Among the factors to be taken into account is the availability of restricted materials from sources outside the United States.

As part of such review, the Secretary of Commerce would be required to explore ways of simplifying and clarifying export control lists.

The results of such review would be reported to Congress within 12 months of the next COCOM² review.

(4) The bill would strengthen provisions of existing law to confirm and emphasize the intent of Congress that any export license application be approved or denied within 90 days of filing.

² International export control coordinating committee, consisting of Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom, and the United States.

(5) It would require an export license applicant to be informed in writing of the specific statutory basis for any denial of his application.

(6) It would increase to 4 years from 2 the terms of persons representing private industry on the technical advisory committees.

(7) It would add multilateral export controls to the matters on which technical advisory committees are to be consulted. In addition, it would require that the Government inform such committees of the reasons for not accepting any advice or recommendations which they may make or render regarding export controls within their areas of responsibility.

(8) It would require the Secretary of Commerce to conduct a study of (a) the transfer of technical data and other information to countries to which exports are restricted for national security purposes, and (b) the problem of technical data exports through publication or other means of public dissemination where such exports might prove detrimental to the national security and foreign policy of the United States. The results are to be reported within 6 months of enactment. In addition the bill would require the submission of a special report on the effectiveness of multilateral export controls within 12 months of enactment.

(9) The bill would require that before an export license application is referred for interagency review within the U.S. Government, the applicant, if he so requests, is to be given an opportunity to review the documentation to be submitted to such process for purposes of describing the proposed export in order to insure that it accurately describes the proposed export.

(10) It would permit agricultural commodities purchased by or for use in a foreign country to be stored in the United States free from short supply export limits which may be imposed after purchase if the Secretary of Commerce, in consultation with the Secretary of Agriculture, receives assurances: (i) that such commodities will eventually be exported; (ii) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact; (iii) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities; and (iv) that the purpose of such storage is to establish a reserve of such commodities for later use by the buyer, other than resale or delivery to another country.

(11) The bill would give the Congress an opportunity to revoke export controls placed on agricultural commodities for foreign policy purposes by passage of a concurrent resolution no later than 30 days after the controls are imposed.

(12) It would ban the export of horses by sea for slaughter.

(13) It would establish a new policy authorizing the use of export controls to encourage other countries to prevent the use of their territory or resources to aid persons who engage in acts of international terrorism.

(14) It would make it clear that monitoring of commodities in potential short supply as prescribed by existing law is to begin at a time which is sufficient to permit achievement of the policies of the act.

(15) It would provide that the confidentiality provisions of the Export Administration Act do not authorize the withholding of in-

formation from Congress. Instead such information would have to be transmitted to any appropriate committee of Congress upon request of the chairman of that committee.

(16) It would require annual disclosure statements by each Commerce Department employee who has policymaking responsibilities relating to export administration and who has any known financial interest in any person subject to, licensed under, or otherwise receiving benefits under the Export Administration Act.

(17) It would increase the maximum penalties for violations of the Export Administration Act as follows:

(a) Judicially imposed penalties for a knowing violation of the act or any rule or regulation thereunder: the first time \$25,000 (now \$10,000); the second and subsequent times, \$50,000 (now \$20,000);

(b) Judicially imposed penalties for exporting anything contrary to the act or any rule or regulation thereunder knowing that the export will be used for the benefit of any country designated by the President pursuant to the review of national security export control policy called for by the bill: \$50,000 (now \$20,000 where the violator knows that such export will be used "for the benefit of any Communist-dominated nation.");

(c) Administratively imposed penalties for violating the act or any rule or regulation thereunder: \$10,000 (now \$1,000).

The Government would be authorized to defray or suspend the payment of any penalty during any "probation" period.

(18) It would require a specific annual authorization for expenses to carry out the Export Administration Act starting with fiscal 1978.

B. FOREIGN BOYCOTTS

Section 3(5) of the Export Administration Act sets forth U.S. policy against foreign boycotts as follows:

It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against countries friendly to the United States [and] (B) to encourage and request domestic concerns engaged in . . . export . . . to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting . . . [such] . . . restrictive trade practices or boycotts . . .³

The act provides for implementation of this policy by requiring all domestic concerns receiving requests for the furnishing of information or the signing of agreements which have the effect of furthering or supporting a foreign boycott to report such receipt to the Secretary of Commerce for such action as he may deem appropriate.⁴ This is the only measure specifically required under the present act for carrying out U.S. antiboycott policy. Implementation of that policy is otherwise left to the broad discretion of the President and the Secretary of Commerce.

³ 50 U.S.C.A. App. § 2402(5) (Supp. 1977).

⁴ 50 U.S.C.A. App. § 2403(b) (1) (Supp. 1977).

Title II of S. 69, as reported by the committee, would expand and strengthen the implementation of U.S. antiboycott policy in a number of ways:

(1) It would prohibit any U.S. person from taking or agreeing to take any of the following actions with intent to comply with, further, or support a foreign boycott:

(a) Refusing or requiring any other person to refuse to do business with anyone pursuant to an agreement with, requirement of, or request from or on behalf of a boycotting country;

(b) Refusing or requiring any other person to refuse to employ (or otherwise discriminating against) any U.S. person on the basis of race, religion, sex, or national origin;

(c) Furnishing information with respect to the race, religion, sex, or national origin of any other U.S. person;

(d) Furnishing information about past, present, or prospective business relationships with boycotted countries or blacklisted persons;

(e) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports a boycotted country; and

(f) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any illegal boycott condition or requirement.

(2) The prohibitions of the bill are subject to exceptions for the following:

(a) Compliance with prohibitions on the import of goods or services from the boycotted country or goods or services produced or provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country;

(b) Compliance with prohibitions on the shipment of goods from the boycotting country to the boycotted country, on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(c) Compliance with import and shipping document requirements with respect to country of origin, the name of the carrier and route of shipment, and the name of the supplier of the shipment or the name of the supplier of services. Effective 1 year after enactment, no information knowingly furnished or conveyed in response such to requirements may be stated in negative, blacklisting, or similar exclusionary terms;

(d) Compliance with the export requirements of the boycotting country relating to the shipment or transshipment of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(e) Compliance by an individual with the immigration or passport requirements of a foreign country so as to permit a U.S. firm to proceed with a project in a boycotting country even if certain of its employees are denied entry for boycott reasons;

(f) Compliance with the unilateral selection by a boycotting country, its nationals, or residents (other than a U.S. person) of

(i) carriers, (ii) insurers, (iii) suppliers of services within the boycotting country, or (iv) specific goods which, in the normal course of business, are identifiable by source upon importation into the boycotting country. However, in no case may the U.S. seller comply if the designation is based on grounds of race, religion, sex, or national origin; and

(g) Compliance by a U.S. person resident in the boycotting country with the laws of that country with respect to his activities exclusively within that country. The bill further provides that rules and regulations may contain exceptions for compliance with the import laws of the boycotting country. In no event could this exception be used to permit discrimination on the basis of race, religion, sex, or national origin.

(3) The bill would preempt all State foreign boycott laws.

(4) It would provide a maximum of 210 days for rules and regulations to become finally effective.

(5) It would provide a 2-year grace period for agreements in effect on or before March 1, 1977, with three additional 1-year extensions available in cases where good faith efforts are being made to amend such agreements.

(6) It would require public disclosure of all boycott reports filed with the Department of Commerce and further require that the person making the report indicate whether he intends to comply with the boycott request he has received. However, commercial information regarding the value, kind, and quantity of goods involved in any reported transaction could be kept confidential if the Secretary of Commerce determines that disclosure of such information would put the domestic concern or person involved at a competitive disadvantage.

(7) The bill would apply to all activities of U.S. persons (including the activities of controlled foreign subsidiaries and affiliates of U.S. concerns) in the interstate or foreign commerce of the United States, and it would apply to any transaction or activity undertaken with intent to evade the provisions of the Export Administration Act regardless of whether such transaction or activity involves U.S. commerce.

(8) The bill would increase the administrative penalties applicable under the Act for a violation of its antiboycott provisions from \$1,000 to \$10,000 and make it clear that existing law authorizes the suspension of export privileges for violations of the antiboycott provisions of the act as well as any other provision of the act.

(9) It would require public disclosure of Commerce Department charging letters or other documents initiating administrative proceedings for the imposition of sanctions for failure to comply with the antiboycott provisions of the act.

(10) It would require the Commerce Department to provide the State Department with periodic reports on the information contained in the boycott reports filed with the Commerce Department.

(11) And the bill would require that the Commerce Department's semiannual reports to Congress under the act include an accounting of all action taken by the President and Secretary of Commerce to effect the antiboycott policy of the act.

NEED FOR THE LEGISLATION

Title I of this legislation is needed in order to extend the Export Administration Act and improve its administration so that its policies and procedures reflect the changing complexion of U.S. relations with other nations as well as the rapidly changing state of technological advance. Title I is also needed in order to permit foreign purchasers of agricultural commodities, under specified conditions, to establish a reserve of such commodities in the United States for export and use at a later date.

Title II of this legislation is needed in order to provide an effective means of enforcing U.S. policy against foreign boycotts and to mitigate their domestic impact.

A. TITLE I—EXPORT ADMINISTRATION

As pointed out in the report on S. 3084 in the 94th Congress, U.S. export controls are a powerful instrument for protecting the Nation's security, advancing its foreign policy, and protecting the domestic economy against excessive drains of scarce materials. Export controls are a double-edged sword, however, for, in the short-term at least, they reduce American economic opportunities abroad and deprive the American economy of the maximum possible benefits of international trade. It is, therefore, essential that export control policy reflect a clear perception of the national interest in light of changing conditions and changing relations among nations. It is also essential that export controls be administered in a manner which insures that national policy is fulfilled while inspiring the confidence and engendering the cooperation of those who are directly affected.

(1) Policy toward individual countries

A major issue in export administration is whether current national security export controls, which were erected in response to the Soviet threat following World War II, are appropriate to today's realities and whether they accurately reflect shifting alliances and changing military and strategic balances throughout the world. Current U.S. policy assumes that all Communist countries (with the exception of Yugoslavia) automatically pose a threat to the national security, and conversely that all non-Communist countries do not. Hence, identical policies apply to such diverse countries as the Soviet Union, Albania, Bulgaria, Czechoslovakia, Estonia, East Germany, Hungary, Latvia, Lithuania, Poland, Romania, and the People's Republic of China.⁵

This monolithic approach is encouraged by section 4(h) of the Act which requires the Secretary of Defense to review applications for exports to "controlled countries" to determine whether such exports will significantly increase the military capability of the recipient country.⁶ The term "controlled country" is defined to mean any "Communist country" as defined in section 620(f) of the Foreign Assistance Act of 1961.⁷ The latter designates Yugoslavia, Tibet, Outer Mongolia, North Korea, North Vietnam, South Vietnam, and Cambodia, in addition

⁵ 15 CFR § 385.1 (1976).

⁶ 50 U.S.C.A. App. § 2403(h) (Supp. 1976).

⁷ 50 U.S.C.A. App. § 2403(h)(4)(C) (Supp. 1976).

to those countries named above, as Communist countries.⁸ Hence, the Secretary of Defense must review applications for exports to Communist countries on the assumption that they all represent a threat to the national security, but he is under no obligation to review exports to other countries regardless of the potential threat they may pose. Moreover, he is required to treat Yugoslavia as a potential threat to the national security despite the fact that the United States applies to Yugoslavia the same export licensing criteria as are in effect for such countries as France, West Germany, and Italy.⁹

This straitjacketed and sometimes inconsistent approach does a disservice to the Nation's interest in maintaining flexibility in the scope and application of export controls. It does a disservice to the crucial need for export control policy to reflect the changing complexion of international relations. It forecloses or diminishes new market opportunities in Eastern Europe and Asia without regard to recent changes in Sino-Soviet relations as well as the changing character of relations between the Soviet Union and the nations of Eastern Europe. Meanwhile, it ignores the possibility, however remote, of potential threats to the Nation's security from entirely different parts of the world.

One of the major purposes of this legislation is to promote and encourage a continuing reexamination of export control policies and practices to insure that they reflect changing world conditions and the changing dimensions of national security. By expressly providing that U.S. policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status, the bill is intended to diminish the tendency for rigid cold war perceptions of national security to dominate the export control process. By requiring instead that U.S. policy toward individual countries take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with U.S. policy, and such other factors as the President deems appropriate, the bill is intended to bring all the factors which bear on the Nation's security into play in the development and implementation of national security export controls.

By requiring periodic Presidential review of U.S. policy toward individual countries, and by requiring that the results of such review be included in annual reports to the Congress, the bill is intended to bring about that continuing reassessment of export control policy which is essential to insuring its conformity with the Nation's interests in a rapidly changing world.

And finally, by refocusing the responsibility of the Secretary of Defense, so that he would review exports to countries designated by the President pursuant to his periodic review of U.S. policy, instead of to an arbitrarily specified group of "controlled countries" regardless of whether they pose a national security threat, the bill would relieve the Secretary of Defense of irrelevant duties while insuring that his military judgment is brought to bear on exports to countries which truly do pose national security problems.

⁸ 22 U.S.C.A. § 2370(f) (Supp. 1976).

⁹ 15 CFR § 385.4(e) (1976).

(2) *Commodity control lists, technology transfers, and export licensing procedures*

Two related issues have an important bearing on the efficacy of national security export controls: One is whether the items which are subject to controls are the ones which should be controlled in order to protect the national security, or whether some items can be removed and others should be added in light of industrial and technological developments both at home and abroad; the other is whether export control procedures focus efforts where they are most needed, and whether they provide clear, fair, and expeditious guidance to the exporting community, whose cooperation and confidence is essential to an effective export control program. On both scores, there is much apparent criticism.

In a recent report on the Government's role in East-West trade, for example, the General Accounting Office observed:

There is no basic interagency agreement on criteria for export controls and on whether foreign policy, commercial, or defense considerations should dominate trade policy with Communist states. Executive branch agencies have fundamental differences regarding licensing standards and procedures to be followed in administering controls. . . .¹⁰

Commerce, OEA [the Office of Export Administration], and ACEP [the Advisory Committee on Export Policy] procedures are slow and awkward and needlessly dependent on unaccountable practices, unanimity rules, limited OEA discretion, arbitrary agendas, and unlimited discussion of exception requests. . . .¹¹

The United States has requested COCOM exceptions to export high-technology items to Communist states while opposing comparable but less sophisticated items proposed for export to the same countries by other COCOM members. . . .¹²

Foreign policy considerations dominate the entire structure of technology exchanges with Communist countries. Technical problems—degree of reciprocity, impact of transfer, monitoring and coordinating transfers in compliance with export controls, private technology exchange protocols, inadvertent or indirect transfers and marketing implications—are largely ignored. . . . The increased exposure of the Soviets to U.S. technology provided under the protocols makes the enforcement of controls totally dependent on industry cooperation.¹³

Similar concerns are echoed in a recent report by the Defense Science Board Task Force on the Export of U.S. Technology. Among its key findings are the following:

1. "The absence of established criteria for evaluating technology transfers reinforces the cumbersome case-by-case analysis of all export applications."

¹⁰ *Comptroller General of the United States, The Government's Role in East-West Trade; Problems and Issues; Summary Statement of Report to the Congress 42* (February 1976).

¹¹ *Id.* at 46.

¹² *Id.* at 47.

¹³ *Id.* at 36.

2. "‘Deterrents’ meant to discourage diversion of products to military applications are not a meaningful control mechanism when applied to design and manufacturing know-how."

3. Turnkey factories, joint ventures, training in high technology areas, licenses with teaching, technical exchanges with on-going contact, and processing equipment with know-how are highly effective mechanisms for transferring technology, and they demand tight control which they are not presently getting.¹⁴

Equally strong but broader criticism of the present system has been levelled by Graham Allison of the Kennedy School of Government at Harvard University. Allison was responsible for the portion of the Murphy Commission report dealing with export controls. Among his conclusions are the following:

(1) The current system is not achieving the U.S. national security objectives for which it is designed: It fails to prevent shipment to the Soviet Union of technological products of potential concern to the U.S., while restricting American companies from selling products of no strategic importance.

(2) The current system forfeits opportunities for a more deliberate use of trade as a bargaining chip in the developing relationships with the Soviet Union, Eastern Europe, and the People's Republic of China . . . [R]egular procedures include no consideration of . . . [foreign policy] . . . objectives and no individual knowledgeable about Administration strategy for bargaining with the Soviet Union or China.

(3) The current system neglects important economic problems . . . [S]ome U.S. companies have been willing to sell technology at a price that is profitable to them . . . but which fails to reflect other costs borne by the U.S. economy as a whole. . . . The monolithic nature of the Soviet system is such as to provide the Soviet Union with significant bargaining leverage over U.S. firms.

(4) The present system is too narrowly focused on items of military significance narrowly defined. It does not consider the broader implications of transactions like supplying a truck factory or making grain sales.

(5) The present system fails to take into account the role that European and Japanese competitors play in providing goods and technology needed by the Soviet Union. The effectiveness of U.S. export controls has thus been significantly eroded.¹⁵

Industry is equally outspoken in its criticism of the administration of export controls, with complaints about delays in export licensing, bureaucratic overlap, uncertainty about the criteria governing licensing decisions, and over-breadth in the control lists, with too much

¹⁴ Office of the Director of Defense Research and Engineering. *An Analysis of Export Control of U.S. Technology; A Report of the Defense Science Board Task Force on Export of U.S. Technology XV Passim* (February 4, 1976).

¹⁵ Hearings before the Subcommittee on International Trade and Commerce of the House Committee on International Relations on Export Licensing of Advanced Technology, 94th Cong., 2d Sess. (1976).

emphasis on items of little military or technological significance and corresponding insufficient attention to areas of rapidly evolving technology. Industry is critical, too, of what it perceives as a lack of adequate involvement in export licensing decisions despite the creation, pursuant to statute, of technical advisory committees to assist the Government on technical matters, licensing procedures, worldwide availability, and actual use of production technology.

These criticisms are cause for great concern, given the diversity of interests represented and the basic issues they raise about the efficacy of U.S. export controls. S. 69 would help resolve some of these issues by its requirement that the President review existing unilateral and multilateral controls to determine whether they should be removed, modified, or added with respect to particular articles, materials, and supplies, including technical data and other information, in order to protect the national security. Such a review would provide an occasion for carefully examining the criticisms raised by the GAO, the Defense Science Task Force, Professor Allison, members of industry, and others with a view to adopting whatever changes in the control lists and procedures may be appropriate to insure that the national interest is served. Such a review would also provide an occasion for assessing the implications for U.S. export control policy of rapidly evolving technology and the increasing availability of controlled high technology items from outside the United States.

To the extent that sophisticated high technology generates new products of potential military significance, existing control lists may have to be expanded. On the other hand, where rapidly evolving technology has made presently controlled items obsolescent, it may be possible to pare down existing control lists. By the same token, where U.S.-controlled items are generally available from other countries, continued U.S. control may be a useless gesture, although in that regard, and in connection with the review of U.S. policy toward other countries called for by the bill, the United States should explore all possible ways of securing the cooperation of other countries with U.S. policy.

The bill's requirement that the Secretary of Commerce conduct his review of existing controls in cooperation with the appropriate technical advisory committees and that he report the results of such review to the Congress within 12 months of the next COCOM review is intended to insure a timely review and the widest possible participation in that review by all interested members of the public. The requirement that ways of simplifying and clarifying control lists be explored as part of such review is intended to insure that attention is given to the formidable obstacles to export for those unfamiliar with the export control process. It is also intended to encourage concentration on items of true technological significance and to facilitate the elimination of technologically insignificant items from the control lists.

In the meantime, while this review is proceeding, the bill would accomplish a number of reforms which can and should be implemented immediately. The required study of technology transfers, inadvertent and otherwise, to nations which pose a threat to U.S. national security would make it possible to determine whether additional steps are necessary to prevent uncontrolled leakage of military significant technology through technological cooperation agreements or otherwise. If it is true, that technological cooperation agreements or scientific pub-

lications are vehicles, whether intended or not, for circumventing export controls or transferring technology which should be controlled but is not, then the information developed from such study should provide a basis for devising effective remedies.

The requirement that an applicant be informed in writing of the specific statutory basis for the denial of a license would end the Commerce Department's previous unsatisfactory practice of informing applicants that a license has been denied on grounds of "national interest" since there is no legal basis for denying export license applications on such ground. Application for export licenses may be denied under the Export Administration Act only for foreign policy, national security, or short-supply purposes. Interjection of a nonstatutory "national interest" test merely serves to obscure the basis for the Government's action. This reform, assuming, as the committee does, that the applicant is otherwise informed of why his application is denied, would increase the Government's accountability for its actions and thereby help sharpen its analysis of whether denial is justified.

In a similar vein, the requirement that the applicant be given an opportunity, if he so requests, to review the documentation to be submitted to interagency review for purposes of describing his proposed export would insure greater accuracy in the control process, increase the Government's accountability for its actions, and help instill greater confidence in the export control program.

The bill would further enhance Government accountability by requiring that the technical advisory committees be informed of the reasons why any advice or recommendations which they may make or render are rejected, and it would give the exporting community an opportunity for involvement in a part of the export process which is as vital as unilateral U.S. licensing procedures by adding multilateral controls to the matters on which such technical advisory committees are to be consulted. In addition, by lengthening the term of private industry representatives on the technical advisory committees from 2 to 4 years, the bill would provide a better opportunity for committee members to become knowledgeable about matters within their areas of responsibility and thereby make it possible for them to render more effective service.

Finally, by raising the monetary penalties for violations of the act, the bill would help restore the deterrent effect of penalties whose impact has been eroded by inflation.

One last point: the Committee has received numerous complaints from industry about delays in the processing of license applications. The issue is an important one. Delays which reflect bureaucratic inefficiency, administrative duplication, cumbersome procedures, or outmoded concepts and policies result in lost or discouraged export sales with no corresponding service to the national interest. Three years ago, the Committee recommended and the Congress enacted legislation requiring that license applications be approved or disapproved not later than 90 days after submission. The legislation also required that if additional time were required, the applicant was to be informed of the circumstances requiring such additional time.¹⁶

¹⁶ Public Law 93-500, 93d Cong., 2d Sess. § 5(a) (1974).

In recommending the measure the Committee observed :

This provision was added because of the increasing delays experienced by exporters seeking final action on license applications for exports of high technology goods and services. Such delays cause uncertainty, and ultimately impede United States export potential. By requiring a decision within ninety days, with reasons to be given if additional time is required, the Committee expects the situation to be rectified.¹⁷

In defense of the present situation, the Commerce Department has testified that according to a study done in the fall of 1975 approximately 85 percent of the export license applications it received during the study period were processed within 10 days; 90 percent within 20 days.¹⁸ On the other hand, high technology and machine tool industry representatives argue that the majority of the applications which they submit fall within the 10 percent not processed within those 20 days.¹⁹ Indeed, by the Commerce Department's own admission, 77 percent of the Communist country applications required up to 90 days for processing.²⁰

Shortly before the hearings on S. 3084 (S. 69's predecessor) in March of 1976, the International Finance Subcommittee wrote to the Department of Commerce requesting detailed information to help it evaluate the possible sources of delay. The letter and reply appear in the appendix.

The time it takes to secure a license application, whatever the reason, is a matter of concern to many. Continued efforts to reduce processing time, consistent with the fulfillment of the Government's export administration responsibilities, are essential. The issue is whether present procedures and policies truly reflect the Nation's interests in light of changing world conditions and technological developments, or whether outmoded concepts, policies, and procedures merely result in unwarranted delay and thereby distort the national interest. In that connection, the committee also expects the administration to take appropriate steps to insure that license applications involving national security issues are denied only after the fullest possible review and the most careful assessment of the proposed export's potential military implications. Such review and assessment should also afford the applicant the fullest possible opportunity to participate in the decision.

The committee takes note of recent improvements in export administration. However, the fact that industry complaints about delays continue does nothing to bolster the committee's confidence that such improvements are adequate or permanent. The committee expects and urges the administration to make continuous efforts to improve export administration and to examine and, as necessary, revise its practices to insure maximum efficiency and dispatch in the implementation of U.S. export control policy. Measures contained in this bill, particularly the provision which would deem any license application not finally acted on within 90 days as approved unless the applicant is notified of the circumstances requiring additional time, will provide a useful incen-

¹⁷ S. Rept. 93-1024, 93d Cong., 2d Sess. 6 (1974).

¹⁸ Hearings before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs on S. 3084 at 118, 94th Cong., 2d Sess. (1976).

¹⁹ *Id.* at 302, 341, and 359.

²⁰ *Id.* at 118.

tive for improved performance. And the bill's requirement that appropriations to carry out the Export Administration Act hereafter be specifically authorized will provide the Congress with a useful tool for effective oversight.

(3) Storage of agriculture commodities in the United States

The imposition of export controls on agricultural commodities has been a continuing source of controversy in recent years, starting with the soybean embargo in 1973 and continuing through the restraints on grain sales to the Soviet Union and Poland in the late summer and fall of 1975. Under the Export Administration Act, it is express U.S. policy to use export controls, including controls on agricultural commodities, for both foreign policy and national security purposes, as well as for purposes of protecting the domestic economy from the excessive drain of scarce materials and reducing the serious inflationary impact of foreign demand.²¹ On the other hand, except when controls are imposed for national security and foreign policy purposes, agricultural exports may not be restricted if the Secretary of Agriculture determines that the supply of such commodities is in excess of the requirements of the domestic economy.²²

Delicate judgments and careful forecasting are obviously involved in this area of great importance to the Nation's economy and its conduct of foreign policy. As the 1973 soybean embargo made clear, export controls on agricultural commodities can be enormously disruptive to American farmers, the Nation's allies, and other foreign customers. By the same token, grain agreements which limit potential future sales without extracting adequate purchase commitments, undermine the capacity of American agriculture to play a dominant role in meeting the world's food needs. For these reasons the committee is concerned about recent restrictions on agricultural exports which portray the lack of a coherent long-term agricultural policy.

§. 69 would remove a major cause of uncertainty in this area by permitting agricultural commodities purchased by or for use in a foreign country to be stored in the United States free from export limits which may be imposed subsequently for short supply purposes if the Secretary of Commerce in cooperation with the Secretary of Agriculture, receives assurances (i) that such commodities will eventually be exported, (ii) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (iii) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically-owned commodities and (iv) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by third countries.

This program would remove the uncertainty which foreign purchasers presently face because of the possibility that export controls will be imposed after purchase and frustrate their ability to ship the commodities they own from the United States. At the same time, by providing an incentive to create reserves of agricultural commodities, it could help smooth out fluctuations in worldwide demand and supply.

²¹ 50 U.S.C.A. App. § 2402(2) (Supp. 1976).

²² 50 U.S.C.A. App. § 2403(f) (Supp. 1976).

The protections and preconditions established under the bill would preserve existing authority to protect the domestic economy in times of short supply and would prevent foreign purchasers from using this device as a means of evading U.S. export policy or as a means of speculating with U.S. agricultural commodities in international markets to the detriment of the American consumer and farmer. Used wisely and with the caution intended by the committee and in a manner consistent with the Nation's foreign policy objectives, this authority could make a significant contribution toward increasing America's role in world agriculture and reducing the uncertainty with which agriculture is plagued.

S. 69 would also provide a check against the unwarranted imposition of export controls on agricultural commodities for foreign policy purposes. Under the bill, the Congress may terminate any controls imposed on agricultural commodities for foreign policy purposes by passage of a concurrent resolution within 30 days of the imposition of any such controls. This provision would help insure that the Congress plays a role in any foreign policy-based decision to restrict sales of American agricultural products abroad.

Finally, S. 69 will help induce more effective monitoring of commodities in potential short supply by expressly requiring that the monitoring mandated by existing law is to commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of the act.

In a different vein, the bill amends the act to make it expressly applicable to "services" as well as goods. This will conform the language of the act to the Trade Act of 1974, which defines "trade" as comprised of both goods and services. Services have always been implicit in the coverage of the act; this will make it explicit.

In addition to affecting export regulation, this change is intended to underscore the importance of promoting the export of services as well as goods. The service sector of the American economy is substantial, yet it is often ignored by Government agencies dealing with American trade. An example can be found in the regulations promulgated by the Treasury Department in 1975 permitting limited trade with Cuba by foreign subsidiaries of American firms. Those regulations permitted the sale of goods, but not services. Thus, America's very important service sector was denied the same opportunity as those sectors of the economy dealing in goods.

The committee hopes that the Treasury Department will immediately change these regulations to include services, and that the Department of Commerce will make efforts to facilitate the export of services as well as goods.

B. TITLE II—FOREIGN BOYCOTTS

1. *The domestic impact*

Title II of the bill is needed because of the growing domestic impact of the Arab boycott against Israel. While the boycott has been in effect since 1946, its impact on U.S. firms has begun to assume significantly greater proportions than in the past, and it could continue to grow in the future unless action is taken.

For example, in 1974, only 785 U.S. export transactions involved an Arab boycott demand, according to reports filed by U.S. firms with the Department of Commerce. However, for the six months ending September 30, 1976, alone, the number of such transactions jumped to 72,781 or almost one hundred times the number for all of 1974.²³ Twenty-three U.S. firms reported receipt of Arab boycott demands in 1974. During the 6 months ending September 30, 1976, the number jumped to 2,213 almost one hundred times the number for all of 1974.²⁴

Estimates by the Department of Commerce indicate that dollar value of goods involved in boycott-affected transactions in 1974 was \$9.9 million. According to a study by the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, which had access to the actual reports filed with the Commerce Department, the dollar value of goods involved in boycott-affected transactions for virtually all of 1975 (through December 5, 1975) amounted to almost \$630 million, or almost seventy times the value for 1974.²⁵ During the 6 months ending September 30, 1976, the dollar value of such transactions climbed to approximately \$5.5 billion, or more than 500 times the value for all of 1974.²⁶

The increase in boycott demands by the Arab States reflects continued political tensions in the Middle East and the dramatically enhanced economic power of the oil-producing states since the oil embargo of 1973. Increased petroleum prices and the accumulation of oil earnings have significantly changed the dimensions of the boycott. Its power and reach promise to grow as trade and investment with the West expand. As they do, the pressure on U.S. firms to comply with the boycott if they wish to do business with the Arab States will undoubtedly grow as well.

Substantial evidence of acquiescence to that pressure already exists. In reports filed with the Department of Commerce for the 6 months ending September 30, 1976, U.S. firms indicated that they intended to comply with Arab boycott demands in over 90 percent of their export transactions.²⁷ The Commerce Department estimates that during 1974, the value of U.S. exports shipped in compliance with boycott demands stood at a little over \$9.3 million. According to the study by the House Interstate and Foreign Commerce Subcommittee, the value of exports shipped in compliance with boycott demands for the first 11 months of 1975 (through December 5th of the year) stood at \$253 million, with U.S. firms indicating that they intended to take the action or furnish the information requested in over 90 percent of the affected transactions in the last quarter of 1975 (through the 5th of December).²⁸ For the 6 months ending September 30, 1976, according to Commerce, the value of exports shipped in compliance with boycott demands had reached \$4.4 billion, or almost 500 times the level as for all of 1974.²⁹

²³ Figures for 1974 appear in U.S. Department of Commerce Export Administration Report 17 (1st quarter 1974). Figures for the period April 1, 1976 to September 30, 1976 are not yet published but were supplied to the Committee by the Department of Commerce.

²⁴ *Ibid.*

²⁵ Letter from Representative John E. Moss to Senator William Proxmire, May 5, 1977.

²⁶ Letter from Under Secretary of Commerce John K. Tabor to Senator Williams, June 25, 1975.

²⁷ Unpublished data supplied to the Committee by the Department of Commerce.

²⁸ Letter from Representative John E. Moss, *supra* note 19.

²⁹ Letter to Senator Williams, *supra* note 19.

Several cases brought to the attention of the committee illustrate how the boycott affects business relations within the United States. One involved a U.S. company's contract to supply buses to an Arab State. As told to the committee, after the bus manufacturer placed an order with one of its suppliers to supply seats for the buses, it was advised that the supplier was on the Arab blacklist and that, as a consequence, buses incorporating seats made by the supplier would not be acceptable. The manufacturer's order with its supplier was subsequently terminated.

Other cases brought to the committee's attention illustrate the potential racial as well as political dimensions of the boycott. In one, Belvedere Products, Inc., a U.S. company and former subsidiary of the Revlon Co., discovered that it was on the Arab boycott list. It wrote to the League of Arab States asking what steps were necessary to secure its removal from the list. In response, the Arab League advised Belvedere that it would consider removing the company from the list if, among other things, it supplied a statement of the names and *nationalities* of its shareholders and directors. In addition, Belvedere was required to disclose whether it had any business dealings with its former parent, Revlon, a blacklisted company, the implication being that such dealings were prohibited.

In another case, Allied Van Lines International, according to testimony, distributed a brochure to potential customers regarding customs matters in various countries around the world. Under the heading "Arabian Countries," the brochure stated that "Shippers must check with the consulate for approval of items to be brought into this country. Items produced in Israel or *by Jewish firms or associates throughout the world are blacklisted.*" (Emphasis supplied) The implication that Allied would not ship the products of *Jewish*, not necessarily Israeli, firms to Arab States was clear.

In all three cases, the boycott directly and adversely affected or potentially affected the ability of firms operating in the United States to do business with each other.

Over 1,500 U.S. concerns are on various blacklists maintained by members of the League of Arab States. Firms on that list may not do business with the Arab States. More important for present purposes, other U.S. firms may not include blacklisted firms in their transactions with the Arab States. U.S. firms are thus put in the position of having to discriminate against others pursuant to the dictates of foreign governments.

2. *Enforcement of U.S. policy*

Despite the fact that it is explicit U.S. policy under existing law to oppose foreign boycotts, implementation of that policy has been largely weak and ineffective. With a few recent exceptions,³⁰ the only measure taken has been the statutorily mandated one of requiring U.S.

³⁰ On Nov. 20, 1975, after the International Finance Subcommittee recommended S. 3084, the predecessor to S. 69, to the full committee, the White House announced that it was taking a number of measures in response to foreign boycott-based discrimination against Americans on the basis of race, color, religion, national origin, or sex. Among other things, the Secretary of Commerce was directed to amend the Export Administration Act regulations (i) to prohibit U.S. exporters from answering or complying with boycott requests which would cause discrimination against U.S. citizens on the basis of race, color, religion, sex, or national origin and (ii) to require banks, insurers, freight forwarders, and shipping companies which become involved in any boycott request to report such involvement to the Department of Commerce. In addition, reporting on compliance intentions has now been made mandatory, and boycott reports and charging letters, which initiate administra-

firms to file reports with the Department of Commerce upon receipt of a foreign boycott demand.

However, as late as the summer of 1975, Commerce Department report forms volunteered the advice that U.S. firms are "not legally prohibited from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting such restrictive trade practices or boycotts." And while those report forms asked U.S. firms to indicate whether they intended to comply with the boycott, they also pointed out that "[c]ompletion of the information in this item would be helpful to the U.S. Government *but is not mandatory*." (Emphasis supplied.)³¹ While neither statement was itself inaccurate, its appearance in an official U.S. Government form did little to convey an impression of vigorous U.S. opposition to the boycott.

Moreover, enforcement activities were such that not until congressional hearings in 1975 turned the spotlight on the Arab boycott and its growing domestic impact had any U.S. firms been penalized for failing to comply with even these limited reporting requirements. Even then, as of June 27, 1975, the Commerce Department sought to impose penalties against only 5 of the 105 firms found to be in violation of the act. Four of the five were each penalized \$1,000, and the remaining 100 were merely warned to comply with the law henceforth.³²

Since June of 1975, the Commerce Department has issued 444 warning letters but only 39 charging letters for alleged violations of the antiboycott provisions of the act. Of the 39 charged, only 21 have been fined, 6 have received admonishments, 1 case has been dismissed, and in 3 cases the charging letters were ordered to be changed to warning letters.³³

In 1976, the Justice Department brought an action against Bechtel for alleged acts of compliance with the Arab boycott in violation of the antitrust laws. That action has since been settled pursuant to consent decree.

The infrequency of legal action against firms complying with the Arab boycott reinforces the need for additional legislation.

3. *Inadequacy of existing law*

Existing U.S. law is inadequate to deal with the problem. According to testimony by the Justice Department, "[w]ith limited exceptions, none of which have significant application to the present problem, Federal civil rights laws do not prohibit private discrimination in the selection of contractors or the treatment of customers."³⁴

According to the same testimony, the Sherman Act is the only Federal antitrust statute having significant application to compliance with foreign boycotts, and there are serious impediments to its use.³⁵

tive proceedings for violations of the act, are now made public. To the extent that there is overlap between Executive Branch administrative action and S. 69, the latter would support such action by giving it an express statutory base even though present legal authority is adequate to support action taken by the Executive Branch to date.

³¹ U.S. Department of Commerce Form DIB-621 (Rev. 4-73).

³² As of June 1975, the case against the fifth had not yet been resolved, U.S. Department of Commerce, Export Administration Report 17 n. (1st quarter 1975).

³³ Letter from Melvin Schwechter to Stanley J. Marcuss, April 14, 1977.

³⁴ Hearings before the Subcommittee on International Finance on S. 425 et al., *supra* note 3 at 166.

³⁵ *Ibid.*

Among the impediments cited are (1) the “distinctive purpose” of the boycott, which exists for political reasons rather than for the purpose of securing commercial advantage; (2) the uncertainty of the economic impact and hence whether it is “so certain or severe as to justify application of the per se rule of illegality applied domestically;” (3) special legal considerations, such as the doctrine which precludes a sovereign State from being made a defendant in the courts of another; (4) the “act of State doctrine” which bars U.S. courts from examining the validity of acts performed by sovereign States within their own territory; and (5) the doctrine of “foreign governmental compulsion” which holds that a defendant “will not ordinarily be subject to sanctions in one jurisdiction for acts performed in another jurisdiction under pain of sanction by the latter.”³⁶ As a consequence, according to the Justice Department, “it has never been held that a foreign, politically motivated boycott of this sort violates the [Sherman] Act.”³⁷ Of significance, too, is the Department’s conclusion that while an express agreement by a U.S. company to refrain from doing business with other U.S. companies might be “suspect,” a unilateral refusal to deal “is not itself a violation.”³⁸ Settlement of the Bechtel antitrust action by consent decree prevented a judicial decision on the Sherman Act’s applicability to foreign boycotts.

4. Multidimensional character of the Arab boycott

The Arab boycott takes a number of different forms. In its simplest form, Arab governments refuse to have, and prohibit their nationals from having, economic relations with the State of Israel or Israeli nationals. That is the classic case of a primary boycott.

In its secondary aspect, the boycott extends its reach by attempting to interfere with economic relations between third parties and the State of Israel as a means of implementing the primary boycott. Thus, U.S. companies might be required to refrain from doing business with Israel or with Israeli companies or nationals as a condition of doing business with Arab States.

In its tertiary aspect, the boycott extends its reach still further by attempting to interfere with economic relations among third parties themselves. Thus, a U.S. company might be required to refuse to include in transactions with the Arab States companies which have economic relations with Israel, have Jewish ownership, management, or employees, or which for any other reason are blacklisted.

It can be argued that the tertiary boycott is really an aspect of the secondary boycott, since the boycotter’s objective is to avoid dealings with blacklisted persons indirectly where he is not willing to deal with them directly. But for analytical purposes the distinction is helpful, since an important element of a tertiary boycott is its enlistment of third parties in enforcement of the boycott against blacklisted persons.

5. The legislative response

The committee recognizes that the Arab States regard their boycott efforts as part of a continuing struggle against Israel. The committee also recognizes that the use of economic measures as a weapon in the Middle East struggle is likely to continue until there is a permanent

³⁶ Id. at 166–167.

³⁷ Id. at 167.

³⁸ Ibid.

political settlement. The committee is aware that primary boycotts are a common, although regrettable, form of international conflict and that there are severe limitations on the ability of outside parties to bring such boycotts to an end. However, the committee strongly believes that the United States should not acquiesce in attempts by foreign governments through secondary and tertiary boycotts to embroil American citizens in their battles against others by forcing them to participate in actions which are repugnant to American values and traditions. Accordingly, the bill reported by the committee directly attacks attempts to interfere with American affairs while creating mechanisms for more subtle and flexible pressure against the other dimensions of foreign boycotts.

The committee also recognizes that such legislation, however well intentioned, could unjustly interfere with the sovereignty of others and thus violate the very principle which this bill seeks to establish. Moreover, legislation which fails to recognize the political sensitivities of the Arab States themselves, most of which are as jealous of their prerogatives as the United States is of its own, could erode U.S. influence in the Arab world and undermine efforts toward peace. Given the reality of the world's dependence on Arab oil, a breakdown in those efforts would be dangerous in the extreme and could trigger a backlash which ultimately harms the very interests this legislation seeks in part to protect. And antiboycott legislation which prolongs the conflict in the Middle East could paradoxically prolong the boycott which this bill seeks to address.

Accordingly, the bill reported by the committee makes certain limited accommodations to the laws and rights of other nations, including boycotting nations, with the realization that where rights of nations conflict, each must make adjustments, however reluctantly, to avoid confrontations on "principles" which are as strongly opposed by others as they are deeply held by the United States. The goal of the bill is to defend American principles without unnecessarily interfering with the rights of others and without creating conditions which undermine U.S. influence or a settlement in the Middle East.

In addition, the committee is conscious of the legislation's global application and that disputes between nations friendly to the United States are not unusual. Accordingly, the legislation also aims to avoid unintended consequences in other parts of Africa as well as other parts of the world to which the law will inescapably apply.

(a) *Refusals to deal and discrimination on the basis of race, religion, sex, or national origin.*—By prohibiting U.S. persons from refusing to do business with anyone pursuant to boycott demands, and by prohibiting U.S. persons from discriminating against other U.S. persons on the basis of race, religion, sex, or national origin, S. 69 addresses the most repugnant dimensions of the boycott.

In the case of a primary boycott, where one country terminates its economic relations with another in order to achieve certain foreign policy objectives, the boycotting country bears the burden of disrupted economic relations. However, where the boycotting country extends the boycott to third parties, the matter has a direct and immediate impact on others not directly involved in the dispute. Their own policies and interests becomes directly engaged and their freedom of action, circumscribed. Where interference with third party relations

has racial or religious overtones, the challenge strikes at fundamental U.S. social and legal principles. Because of the growing and potential domestic impact of the Arab boycott and the impediments to legal action against its secondary and tertiary dimensions, the committee believes this change in the law is essential.

The prohibition against discrimination on the basis of race, religion, sex, or national origin, would, if vigorously enforced, impair the ability of foreign countries and their nationals to discriminate against U.S. firms and persons and impede their ability to enlist other U.S. firms and persons in those efforts. Similarly, the prohibition on refusals to do business pursuant to a boycott demand or requirement would seriously impair the ability of foreign governments to dictate business relationships among U.S. firms and persons. No longer would U.S. persons be free legally to submit to foreign domination in the choice of persons with whom they deal, and foreign nations would be put on notice that the U.S. Government will not tolerate such interference with its sovereignty.

The committee is sensitive to the difficulty of enforcing prohibitions on refusals to deal. The absence of business dealings without evidence of motive is obviously not proof of prohibited conduct. The danger of unwarranted allegations in this highly sensitive area has prompted the committee to leave enforcement in the hands of the Executive branch instead of creating a private right of action. In addition, any person accused of an illegal refusal to deal would be entitled to a full agency hearing on the record in accordance with provisions of the Administrative Procedure Act. The refusal to deal provisions of the bill, however, would neither substitute for nor limit the operation of the anti-trust or civil rights laws of the United States.

The committee is aware that there are severe limitations on the ability of the United States to dictate to foreign governments with whom they may or may not do business. No foreign country, if it is able and determined, would agree to do business with persons or countries whom it wishes to avoid for reasons of its own national policy. By the same token, no foreign country would agree to change its immigration laws because of the policies of another country. And clearly, no foreign country would tolerate disobedience with its own laws by persons within its jurisdiction. All are elements of the exercise of sovereignty, as precious to foreign countries as they are to the United States.

Accordingly, the bill reported by the committee carves out a number of limited exceptions from its general prohibitions. One would permit a U.S. person to comply with a foreign buyer's unilateral selection of (a) carriers, (b) insurers, (c) services to be performed in the boycotting country, and (d) goods which in the ordinary course of business are identifiable upon importation into the boycotting country.

The rationale for this exception is that the inability of a U.S. seller to comply with selections of identifiable goods and services gives rise to an impossibility. It is a simple matter for a foreign country to exclude a vessel from its waters or an aircraft from its landing fields. It is likewise a simple matter for a foreign country to exclude from its territory individuals whom it does not wish to afford entry. It is equally simple for a foreign country to exclude from entry goods which it can identify as having been made or supplied by persons who

are barred from doing business with it. Therefore, a U.S. seller who fails to comply with a foreign buyer's selection of such goods, services, carriers, or insurers, would simply find itself incapable of doing business.

Such a result is of benefit to no one. Blacklisted firms would sell no more goods in the boycotted country than otherwise, and other U.S. firms would be denied a business opportunity which they would otherwise have. Challenge on a point of obvious sensitivity to a foreign country, particularly where enforcement is such a simple matter, is confrontational in the extreme. Either the boycotting country must change its strongly-felt policy, or U.S. firms must cease doing business with that country. In the present context, the most likely result is a diversion of business to foreign countries which have few, if any, reservations about complying with the Arab boycott. Such adverse consequences for the United States could erode domestic support for Israel and undermine solicitude for persons presently denied business opportunities in the Arab States.

The case is otherwise where enforcement of a boycott is more difficult. It is for that reason that the committee confined the unilateral selection provision to the categories of goods and services it did. It is one thing for a foreign country to tell an American company that it will not take delivery of goods which it can easily identify as being made by a company ineligible to do business with it, or that it will not permit certain vessels to enter its ports to deliver goods which it has purchased. Such goods may easily be confiscated, and such carriers may easily be stopped from entering territorial waters.

But it is quite another thing for a foreign country to tell an American company that it may not use a particular engineer to design the tractor or that it may not use a particular manufacturer's paint or sheet metal in manufacturing the truck. Such dictation reaches into the heart of U.S. internal affairs, and it attempts to interfere with ordinary commercial decisions of American businessmen in circumstances where no reasonably enforceable interest of the foreign country is at stake.

It is for similar reasons that the committee barred compliance with such "unilateral selection" where the purpose is to discriminate against individuals on the basis of race, religion, sex, or national origin. If a foreign buyer tells an American company that it may not deal with individuals of a particular race, religion, sex, or national origin, or that it may not do business with a particular firm because its officers or employees are of a particular race, religion, sex, or national origin, no legitimate or reasonably enforceable interest of the foreign buyer is at stake and compliance should not be permitted.

It should be emphasized that unilateral selection does not mean a negative directive. The unilateral selection exception is available only where the foreign buyer, on his own, ~~without the assistance of the U.S. seller~~, affirmatively designates the supplier or manufacturer in question. He must state to his U.S. seller that a particular identifiable component is to be supplied by, say, company X before the U.S. seller may comply. The U.S. seller may not comply with an order that blacklisted companies in general, or that companies, say, A through C, are to be excluded from the transaction. Nor can he comply with an order that suppliers or subcontractors be chosen from so-called "white-

lists" of eligible firms. In other words, the buyer must assume the burden of affirmatively specifying what he wants. He cannot put the burden on the U.S. seller to exclude blacklisted firms from participating in the transaction. In many circumstances, particularly involving large and complicated transactions, this is a burden which the foreign buyer is unlikely to be willing or able to assume.

A corollary of the unilateral selection exception is the exception for compliance with the laws of the host country. Under that exception, a U.S. person resident in a boycotting country may comply with the laws of that country with respect to his activities exclusively therein. In addition, the President is authorized to permit such persons to comply with that country's import laws when importing goods or services into that country. This is in recognition of the fact that a U.S. company with operations in a boycotting country has no choice but to comply with those import laws if it wishes to continue doing business in that country. Here again, however, this exception may not be used in order to discriminate against U.S. persons on the basis of race, religion, sex, or national origin.

The third related exception is for compliance by an individual with the immigration or passport requirements of a foreign country. This is intended to permit an individual to supply whatever information is necessary in order to secure a visa, including, if necessary, information regarding his race, religion, sex, or national origin. The individual's employer may not supply such information in response to a boycott request, because that could have the effect of enlisting U.S. companies in racial or religious discrimination. But the individual, if he wishes to gain entry, has no choice but to comply with foreign immigration laws. The United States insists on no less. In addition, this provision means that even if certain of a U.S. company's employees are denied entry for boycott reasons, that company may nonetheless proceed with a project in the boycotting country. Every country insists on the right to control who may enter. It would be futile for the United States to demand otherwise.

¶ The fourth set of exceptions recognizes the futility of attempting to legislate against a primary boycott itself. No effort to force a country to trade with its enemy is likely to be successful. All countries, including the United States, insist on the right to refuse trade with their enemies. Accordingly, S. 69 expressly permits compliance with requirements prohibiting the import of goods or services from the boycotted country into the boycotting country or the shipment of goods of the boycotting country to the boycotted country, or the shipment of goods to the boycotting country on a carrier of the boycotted country or by a route other than that prescribed by the boycotting country. In addition, S. 69 expressly permits compliance with import and shipping document requirements with respect to the country of origin, the name of the carrier and the route of the shipment, and the name of the supplier of the shipment or the provider of other services. However, in order to prevent this exception from being used as a device for enforcement of the secondary or tertiary dimensions of a boycott, or to act as a psychological barrier to trade with the boycotted country or blacklisted firms, negative certifications would be banned after a 1-year adjustment period beginning on the date of enactment of the bill.

(b) *Information helpful to boycott enforcement.*—The prohibition on furnishing information about another person's race, religion, sex, or national origin would reinforce the antidiscrimination provisions of the bill. Similarly, the prohibition on furnishing information about who does and proposes to do business with a boycotted country or blacklisted person would bolster the refusal to deal provisions of the bill. Both are necessary to prevent a boycotting country from using U.S. persons to supply information necessary to boycott enforcement. Such information may very well be available through other sources, including information innocently supplied by U.S. firms in the course of ordinary business transactions. And in that regard the bill does explicitly permit the furnishing of normal business information in a commercial context as defined by the Secretary of Commerce. But there is little justification for permitting U.S. persons to supply information when they know it is being sought for boycott enforcement purposes. To do so would be to sanction active complicity in boycott implementation.

(c) *Public disclosure.*—By requiring that boycott reports filed by U.S. firms and persons be made public, the bill would give the present practice a statutory basis and give the public and the Congress an opportunity to monitor the behavior of U.S. business and the effectiveness of measures taken by the Government to implement U.S. anti-boycott policy. At the same time it would interject an element of public accountability in the responses of U.S. firms to boycott demands.

Until the fall of 1976, U.S. firms were free to comply with such demands without risking public scrutiny or the imposition of sanctions despite an official U.S. policy in opposition to such activity. Because their actions were cloaked in secrecy, the public and the Congress were deprived of an opportunity to know the degree to which U.S. business relations were being bent to the interests of foreign governments. Because they could comply with the boycott without telling the public, U.S. business did not need to give consideration to potential public disapproval of their actions. And because previous Secretaries of Commerce had repeatedly refused to make boycott reports available to the Congress, the opportunity to fashion appropriate legislative responses and to conduct effective oversight was seriously impaired.

The Committee is sensitive to the concern that public disclosure could subject U.S. citizens to harassment by private interests opposed to the Arab boycott. The Committee is also sensitive to the possibility that the mere filing of a boycott report may unfairly create an implication of wrong-doing. That danger was manifested when boycott reports were first made public in the fall of 1977. Those who had filed reports were treated by some as being guilty of wrong-doing merely because they had received a boycott request. Nonetheless, despite these concerns, the Committee has concluded that the potential adverse consequences are outweighed by the potential public benefit.

For one thing, only persons complying with the boycott risk serious adverse public reaction. Those who refuse stand to enjoy the benefits of public approval. For another, it is unlikely that the reaction to compliance will be adverse in every case; instead it will depend on the nature of compliance. In some instances, it will be recognized that the request pertains to aspects of the primary boycott over which the United States has little control. In any event, the possibility of adverse

reaction is not sufficient reason for withholding from the public important information regarding the reach and scope of a foreign boycott. The whole thrust of U.S. securities laws since the 1930's has been public disclosure regardless of whether disclosure may reflect badly on corporate behavior. So there is ample precedent.

But whatever the reaction, public disclosure would cause U.S. businesses to weigh public policy carefully in their decision-making processes. American business would still be free to comply with certain boycott demands but not without regard to overall U.S. interests. The bill would thus provide an incentive for conforming private behavior to public policy without compelling it in every circumstance and would, in addition, create an environment which would help U.S. citizens stand up to foreign pressure.

Equally important, public disclosure would aid enforcement of a measure which will be inherently difficult to enforce. It would give the public an opportunity to come forward with relevant information which might not be uncovered with the limited resources available for boycott law enforcement in the Commerce Department.

(d) *Letters of credit.*—By making the law expressly applicable to letters of credit, the bill would bring within the framework of the law one of the principal vehicles for securing boycott compliance. While banks are merely intermediaries in the transaction, the processing of letters of credit containing boycott conditions inevitably makes them instruments of enforcement. It is they who must insure compliance with the boycott conditions attached to a letter of credit. S. 69's prohibition on paying, honoring, confirming, or otherwise implementing a letter of credit that contains prohibited conditions will put an end to that role and insure that no U.S. person assists enforcement of boycott conditions made illegal by the law.

(e) *Application of the law to export intermediaries.*—Similarly, S. 69's new definition of U.S. person for purposes of the Export Ad-U.S. persons, including banks, other financial institutions, insurers, freight forwarders, and shipping companies.

ministration Act will remove any doubt that the law applies to all

Present law makes no exemption for banks and other export intermediaries. By its express terms it applies to all domestic concerns. Yet, in the past, with official blessing, U.S. banks, shipping companies, and other intermediaries have regarded themselves as exempt from the law. As a result, the public has been deprived of essential information regarding the workings of the boycott. The exemption of export intermediaries from the requirements of the act would leave a significant section of the economy free from U.S. antiboycott law. Since they often see to it that the exporter has met all boycott requirements, they are in a unique position to enforce foreign boycott efforts. The bill would preserve the original intent that the law apply to all domestic concerns.

(f) *Activities in U.S. commerce.*—By limiting the reach of the law to activities of U.S. persons in the interstate or foreign commerce of the United States, S. 69 would avoid unwarranted intrusions into the affairs of foreign countries not participating in a foreign boycott. A subsidiary of a U.S. company in Canada, for example, is, from the Canadian and every legal point of view, a Canadian citizen. U.S. restrictions on that company's ability to trade or do business with the Middle East would be deeply resented, as were recently ended U.S.

efforts to prohibit Canadian subsidiaries of U.S. firms from trading with Cuba.

Such restrictions can be justified where U.S. commerce is involved, for example where a U.S. company's Canadian subsidiary purchases goods or services from the United States in connection with its Middle East trade. There a direct U.S. interest is involved. But otherwise the interest is tangential and attempts to pursue it in such circumstances unnecessarily intrude upon the sovereignty of others.

Equally relevant are the serious obstacles to enforcement of U.S. law against foreign companies not engaged in U.S. commerce. The fact that they may happen to be subsidiaries of U.S. concerns does not resolve the problem. It is difficult, if not impossible, in most instances to secure the requisite jurisdiction over a foreign company with no connection with U.S. commerce. Where the U.S. parent commands the illegal action, the parent itself would be liable, and no unusual jurisdictional problems are presented. But where the subsidiary acts on its own and the transaction has no connection with U.S. commerce, the jurisdictional hurdles may be insuperable. Hence, S. 69 goes as far as it is realistically possible to go by limiting its reach to transactions which involve U.S. commerce.

To insure against the use of foreign subsidiaries or other devices for evasion, the bill expressly provides that the act shall apply to any transaction or activity undertaken with intent to evade the provisions of the act regardless of whether such transaction or activity involves the interstate or foreign commerce of the United States. With this safeguard, for example, a U.S. company could not escape the law by directing to a foreign country a sale which otherwise might have been executed in the United States. That transaction would continue to be governed by U.S. law, and the U.S. person making or causing the diversion, would be required to insure that the transaction conforms with that law.

(g) *Delayed effective date and grace period.*—By providing 90 days for the issuance of regulations and an additional 120 days for their effective date, the bill will provide all affected parties an opportunity to make necessary adjustments in existing practices. In addition, by providing a 2-year grace period for agreements in effect on or before March 1, 1977, with the possibility of three additional 1-year extensions for such agreements, the bill should provide ample time for all necessary adjustments under existing contract.

(h) *Penalties.*—By increasing from \$1,000 to \$10,000 the administrative penalties which may be imposed for violations of the anti-boycott provisions of the act, by increasing from \$10,000 to \$25,000, and from \$20,000 to \$50,000 the penalties applicable to knowing violations for first and subsequent offenses respectively, and by making it clear that existing law permits suspension or revocation of export privileges for a violation of such provisions, the bill would give significantly greater meaning and potential effectiveness to the anti-boycotting provisions of the Act.

Present practice and existing limitations on penalties render them practically worthless in securing compliance. A \$1,000 fine is of little significance to a multimillion dollar company. The problem is exacerbated by the practice of issuing warnings to first offenders. The failure to suspend or revoke a firm's export privileges for a violation of anti-

boycott law, despite adequate authority to do so, undermines enforcement efforts further. Increased monetary penalties and vigorous enforcement efforts, would significantly enhance the incentives for compliance with U.S. antiboycott law.

(i) *Disclosure of charging letters.*—By requiring public disclosure of charging letters or other documents initiating proceedings for enforcement of the antiboycott provisions of the Act, the bill would give the public as well as aggrieved persons an opportunity to come forward with evidence bearing on allegations of illegal conduct. In addition, it would provide a means of scrutinizing the enforcement efforts of the executive branch. The previous practice of keeping such proceedings secret impeded the gathering of all relevant evidence and deprived the public of an opportunity to assess the seriousness and vigor of enforcement action. S. 69 would codify the change made by recent regulation.

(j) *Reports to the State Department.*—By requiring the Commerce Department to report periodically to the State Department on the information disclosed in the boycott reports, the bill would establish a mechanism for focusing State Department attention on the nature and magnitude of boycott problems and generating intensified efforts to bring an end to foreign boycotts. Those engaged in U.S. diplomatic efforts relating to foreign boycott activities should be fully cognizant of how such boycotts operate and the impact they have on U.S. citizens. The Commerce Department is in a position to assist in generating such understanding by making information on the boycott available to the highest levels of government.

(k) *Reports to Congress.*—By requiring that the semiannual reports to Congress under the act include an accounting of actions taken by the President and the Secretary of Commerce to effect U.S. antiboycott policy, the bill would provide the Congress with a better picture of the precise measures taken and the earnestness of the President's efforts to carry out U.S. antiboycott policy.

SECTION-BY-SECTION ANALYSIS OF THE BILL

SHORT TITLE

Section 1 of the bill would provide that the bill may be cited as the Export Administration Amendments of 1977.

TITLE I—EXPORT ADMINISTRATION

EXTENSION

Section 1 of the bill would extend the Export Administration Act from September 30, 1976, to September 30, 1979.

AUTHORIZATION FOR APPROPRIATIONS

Section 102 of the bill would add a new section 13 to the act to provide that notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this act for any fiscal year commencing on or after October 1, 1977, unless previously and specifically authorized by legislation enacted after the enactment of this section. Hence, for fiscal years 1978 and thereafter, all appropriations

to the Department of Commerce for Export Administration Act purposes would be subject to prior congressional authorization.

POLICY TOWARD INDIVIDUAL COUNTRIES

Section 103(a) of the bill would amplify existing law by providing that in administering export controls for national security purposes, U.S. policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of U.S. exports in accordance with U.S. policy, and such other factors as the President may deem appropriate.

Section 103(a) would further require that the President periodically review U.S. policy toward individual countries to determine whether such policy is appropriate in light of the factors mentioned above. The results of such review, together with the justification for U.S. policy in light of such factors, would be required to be included in the second semiannual report of the Secretary of Commerce under the Export Administration Act following enactment of this bill and in every second report thereafter.

FOREIGN AVAILABILITY

In addition, section 103(a) of the bill would provide that controls shall not be imposed for national security purposes on exports which the President determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the U.S. unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the national security of the United States. The nature of such evidence is to be included in the annual report required by the act. Where export controls are imposed for national security purposes despite the foreign availability of the materials made subject to such controls, the President would be required to take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such foreign availability.

Under existing law, there is no constraint against the imposition of export controls despite foreign availability. The only requirement is that whenever export controls are imposed on the ground that considerations of national security override considerations of foreign availability, the reasons for imposing such controls are to be reported to Congress to the extent considerations of national security and foreign policy permit.

The change in emphasis made by the bill reflects the committee's judgment that it is futile to impose national security export controls where the materials in question are freely available from foreign sources and that such controls are warranted only where the President expressly determines that the absence of such controls would harm the national security. In such circumstances negotiations with govern-

ments of foreign countries from which such materials are freely available should begin immediately in order to eliminate such availability and develop a consistent policy among U.S. friends and allies.

DEPARTMENT OF DEFENSE REVIEW

Section 103(c) of the bill would change the present responsibility of the Secretary of Defense to review exports to "controlled countries" (defined to mean any Communist country as defined under section 620(f) of the Foreign Assistance Act of 1961) so that he is required instead to review exports to those countries designated by the President pursuant to his report to Congress on the periodic review of U.S. policy toward individual countries as called for by section 103(a) of the bill. This change is consistent with the bill's intent that a country's Communist or non-Communist status not be the sole determinant of U.S. policy. The effective date of this change would be 90 days after receipt by the Congress of the second semiannual report of the Secretary of Commerce following enactment of this bill. As under present law, the Secretary of Defense could determine in advance which categories of exports to the designated countries he needs to review in order to fulfill his responsibilities under the act and delegate authority to other agencies of the Government on license applications for all other categories of exports.

Section 103(c) of the bill would also alter the standard which governs the review of exports by the Secretary of Defense and his decision to recommend disapproval of the exports. Under present law the Secretary is to assess whether an export will significantly increase the military capability of the country in question and if so to recommend disapproval. Under the bill, the assessment to be made is whether the export in question will significantly increase the recipient country's military potential, not necessarily its present capability, and if so to recommend disapproval but only where that increased potential would prove detrimental to the national security. Hence, the new assessment requires a further look into the future, but it also constrains the Secretary of Defense to recommend disapproval only where there is an adverse consequence for the national security. The recipient's increased military potential alone would not be sufficient.

TECHNICAL CONFORMING CHANGE

Section 103(d) of the bill would amend section 6(b) of the act which imposes a special penalty for willfully violating the law by making a prohibited export to a "Communist-dominated nation." To conform to the new policy described above, the phrase "Communist dominated nation" would be changed to "country to which exports are restricted for national security or foreign policy purposes."

STORAGE OF AGRICULTURAL EXPORTS IN THE UNITED STATES

Section 104 of the bill would provide that upon approval of the Secretary of Commerce, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date

without being subject to any quantitative limitations on export which may be imposed subsequently in order to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand. Such approval would be granted or denied after application, and more than one approval for any given transaction would not be required.

The Secretary of Commerce could not grant approval for such storage unless he receives adequate assurance (i) that such commodities will eventually be exported, (ii) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (iii) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (iv) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary of Commerce would be authorized to issue such rules and regulations as may be necessary to implement these provisions.

Agricultural commodities stored in the United States pursuant to this section are intended to be treated as exported for statistical purposes.

CONGRESSIONAL REVIEW OF CERTAIN EXPORT CONTROLS ON AGRICULTURAL COMMODITIES

Section 104 of the bill would provide that if controls on agricultural commodities are imposed for foreign policy purposes, the President shall immediately report such action to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after receipt of such report, adopts a concurrent resolution of disapproval, such controls shall cease to be effective immediately. In computing such 30-day period, the days on which either House is not in session because of an adjournment of more than 3 days to a day certain, or because of an adjournment of the Congress sine die, are not to be counted.

PERIOD FOR ACTION ON EXPORT LICENSE APPLICATIONS

Section 106 of the bill would provide that it is the intent of Congress that any export license application be approved or disapproved within 90 days of its receipt. At the end of such 90 days, any export license application which has not been approved or denied shall be deemed approved and the license issued unless the Secretary of Commerce or other official exercising authority under the act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made. This provision thus expresses a congressional desire that all license applications be acted on within 90 days. If not approved or denied within that period, the Secretary would have an obligation to inform the applicant in writing of the circumstances requiring additional time and the estimated date of decision in order to forestall an export without the proper licensing decision having been made. Such communication could be made at any time prior to actual export, and as soon as such communication is issued, any export privilege which might arise by reason of this provi-

sion shall terminate. But unless such communication is made, the export may be made as if the license had been approved.

REASONS FOR DELAY IN PROCESSING LICENSE APPLICATIONS

Section 106 of the bill further provides that with respect to any export license application not finally approved or denied within 90 days of its receipt, the applicant is to be specifically informed in writing of questions and negative considerations raised or recommendations made by any agency or department of the Government with respect to such license application to the maximum extent consistent with the national security. Further, the applicant is to be accorded an opportunity to respond to such questions, considerations, or recommendations in writing prior to final action on the license application. The applicant's response is to be taken fully into account in taking such final action.

REASONS FOR DENIAL OF LICENSE

Section 106 of the bill would require that in any denial of an export license application, the applicant be informed in writing of the specific statutory basis for such denial. Such vague nonstatutory criteria as "national interest" would not suffice.

REVIEW OF DOCUMENTS SUBMITTED TO INTERAGENCY REVIEW

Section 106 of the bill also requires that whenever an export license application is to be submitted to interagency review within the U.S. Government prior to final action, the applicant, if he so requests, is to be given an opportunity to review the documentation to be submitted to such process for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

EXPORT OF HORSES

Section 107 of the bill provides that notwithstanding any other provision of the Export Administration Act, no horse may be exported by sea from the United States, its territories, or possessions unless such horse is part of a consignment which the Secretary of Commerce, in consultation with the Secretary of Agriculture, has determined contains no horse being exported for purposes of slaughter.

TECHNICAL ADVISORY COMMITTEES

Section 108(a) of the bill would lengthen the term of industry representatives on the technical advisory committees from 2 to 4 years.

Section 108(b) of the bill would add exports subject to multilateral controls to the matters on which technical advisory committees are to be consulted. Section 108(b) would also require that the technical advisory committees be informed of the reasons for any failure to accept any advice or recommendations which they may make or render to the Government.

Section 108(c) of the bill would require that the semiannual reports of the Secretary of Commerce contain an accounting of consultations with the technical advisory committees, the use made of the advice rendered by such committees, and the contributions of such committees to carrying out the policies of the act.

PENALTIES

Section 109 of the bill would increase the maximum penalties applicable for violations of the act as follows:

a. Judicially imposed penalties for a knowing violation of the act or any rule or regulation thereunder: the first time \$25,000 (now \$10,000); the second and subsequent times, \$50,000 (now \$20,000).

b. Judicially imposed penalties for exporting anything contrary to the act or any rule or regulation thereunder knowing that the export will be used for the benefit of any country designated by the President pursuant to the report to Congress called for by section 4(b)(1) of the act, as amended by section 103(a) of the bill: \$50,000 (now \$20,000 where violator knows that such export will be used "for the benefit of any Communist-dominated nation.").

c. Administratively imposed penalties for violating the act or any rule or regulation thereunder: \$10,000 (now \$1,000).

In addition, authority would be given to the Government to defray or suspend the payment of any penalty during any "probation" period. However, such deferral or suspension would not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

AVAILABILITY OF INFORMATION TO CONGRESS

Section 110 of the bill provides that nothing in the Export Administration Act shall be construed as authorizing the withholding of information from any committee of the Congress having appropriate jurisdiction if the chairman of the committee makes a request for such information. Such information is to be accorded confidential treatment by the committee and may be disclosed only upon a determination by the committee that the withholding thereof is contrary to the national interest.

SIMPLIFICATION OF EXPORT REGULATIONS AND LISTS

Section 111 of the bill would require the Secretary of Commerce, in consultation with appropriate U.S. Government departments and agencies and with appropriate technical advisory committees, to review the rules and regulations issued under the Export Administration Act together with the lists of articles, materials, and supplies which are subject to export controls in order to determine how compliance with the provisions of the act can be facilitated by simplifying such rules and regulations, by simplifying or clarifying such lists, or by any other means. Not later than 1 year after enactment, the Secretary is to report to Congress on actions taken on the basis of such re-

view. Such report may be included in the Secretary's semiannual report to Congress.

TERRORISM

Section 112 of the bill adds a new policy statement to the act to the effect that it is U.S. policy to use export controls to encourage other countries to take immediate steps to prevent the use of their territory or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. The President is to make every reasonable effort to secure the removal or reduction of such assistance through international cooperation and agreement before resorting to the imposition of export controls.

SEMIANNUAL REPORTS

Section 113(a) of the bill would require that each semiannual report of the President on the administration of export controls include an accounting of (1) any organizational and procedural changes instituted, any reviews undertaken, and any means used to keep the business sector of the Nation informed about changes in export control policy and procedures; (2) any changes in the exercise of export control authority; (3) any Presidential delegations of export control authority to executive branch departments and agencies; (4) the disposition of export license applications pursuant to the act; (5) consultations with the technical advisory committees; (6) violations of the provisions of the act and any penalties imposed; and (7) a description of actions taken by the President and the Secretary of Commerce to effect the antiboycott policies of the act.

Section 113(b) of the bill would make a necessary technical change in section 10 of the act to delete an obsolete reference to quarterly reports by the President. Such reports are to be submitted on a semiannual basis.

SPECIAL REPORT ON MULTILATERAL EXPORT CONTROLS

Section 114 of the bill provides that not later than 12 months after enactment, the President is to submit to the Congress a special report on multilateral export controls in which the U.S. participates pursuant to the Export Administration Act and the Mutual Defense Assistance Control Act of 1951. The purpose of such report is to assess the effectiveness of such multilateral export controls and to formulate specific proposals for increasing their effectiveness. The report is to include:

- (1) the current list of commodities controlled for export by agreement of the group known as the coordinating committee of the consultative group ("COCOM") together with an analysis of the process of reviewing such list and the changes which result from such review;
- (2) data on the analysis of requests for exceptions to such list;
- (3) a description and an analysis of the process by which decisions are made by COCOM on whether to grant such requests;
- (4) an analysis of the uniformity of interpretation and enforcement by COCOM's participating countries (including controls

over the reexport of such commodities from countries not participating in COCOM), and information on each case where such participating countries have acted contrary to U.S. interpretations of COCOM policy together with the responses of such countries in such cases;

(5) an analysis of the problem of exports of advanced technology by countries not participating in COCOM, including such exports by subsidiaries or affiliates of U.S. businesses in such countries;

(6) an analysis of the effectiveness of procedures employed in cases where an exception for a listed commodity is granted by COCOM in order to determine whether conditions on the use of the excepted commodity are being complied with; and

(7) detailed recommendations for improving the effectiveness of multilateral export controls, including recommendations for the development of more precise criteria and procedures for collective export decisions and more detailed and formal enforcement mechanisms in order to assure uniform interpretation of, and compliance with, multilateral export controls.

REVIEW OF CONTROL LISTS

Section 117 of the bill would require the Secretary of Commerce, in cooperation with the appropriate technical advisory committees, to undertake an investigation to determine whether U.S. controls or the multilateral controls in which the United States participates should be removed, modified, or added with respect to particular articles, materials, and supplies, including technical data and other information, in order to protect the national security. Such investigation is to take into account such factors as the availability of such articles, materials, and supplies from other nations and the degree to which the availability of the same from the United States or from any country with which the United States participates in multilateral controls would make a significant contribution to the military potential of any nation threatening or potentially threatening the national security of the United States.

As part of such investigation, the Secretary of Commerce would be required to explore ways of simplifying and clarifying the lists of materials subject to controls.

The results of such investigation would be required to be reported to the Congress not later than 12 months after completion of the next COCOM review.

REPORT ON TECHNICAL DATA TRANSFERS

Section 116 of the bill would require the Secretary of Commerce to conduct a study of the transfer of technical data and other information to countries to which exports are restricted for national security purposes. The study is also to include a study of the problem of export, by publication or any other means of public dissemination, of technical data or other information where such export might prove detrimental to the national security or foreign policy of the United States. Not later than 6 months after enactment, the Secretary is to report to the

Congress his or her assessment of the impact of the export of such technical data or other information on the national security and foreign policy of the United States together with recommendations for monitoring such exports without impairing freedom of speech, freedom of press, or the freedom of scientific exchange. Such report may be included in the Secretary's semiannual report on export controls.

SUNSHINE IN GOVERNMENT

Section 117 of the bill would require each officer or employee of the Department of Commerce who performs any function or duty under the Export Administration Act, and has any known financial interest in any person subject to that act, or in any person who obtains any benefit under that act, to file with the Secretary of Commerce beginning on February 1, 1978, an annual written statement concerning all such interests during the preceding calendar year. Such statements are to be available to the public.

Within 90 days of enactment, the Secretary of Commerce is to define the term "known financial interest" for purposes of this provision and establish the methods by which the requirements of this provision will be monitored and enforced. On June 1 of each calendar year the Secretary of Commerce is to report to Congress on such disclosures and any actions taken with regard to them during the preceding calendar year.

The Secretary may identify specific positions within the Department of Commerce which are of a nonregulatory or nonpolicymaking nature and exempt officers or employees occupying such positions from the requirements of this provision.

Any officer or employee who is subject to, and knowingly violates, this provision is to be fined not more than \$2,500 or imprisoned not more than 1 year, or both.

MONITORING OF COMMODITIES IN POTENTIAL SHORT SUPPLY

Section 118 of the bill amplifies the present requirement that commodities in potential short supply be monitored by providing expressly that such monitoring shall commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of the act. This is not intended to create any new substantive standard for monitoring. But it is intended to emphasize the Committee's desire that monitoring be used in a manner which insures the gathering of information necessary to intelligent and informed decisions about the need for short supply export controls.

TITLE II—FOREIGN BOYCOTTS

PROHIBITIONS ON COMPLIANCE WITH FOREIGN BOYCOTTS—GENERAL

Section 201(a) of the bill would amend the Export Administration Act by redesignating section 4A as section 4B and inserting after section 4 a new section 4A. New paragraph 4A(a)(1) would require the President to issue rules and regulations prohibiting any U.S. person, with respect to his activities in the interstate or foreign commerce of

the United States, from taking or knowingly agreeing to take certain specified actions with intent to comply with further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which itself is not the object of any form of boycott pursuant to U.S. law or regulation.

There are, thus, at least two conditions which must exist before a violation of the law may be found. The activities in question must be in the interstate or foreign commerce of the United States. And any action or agreement must be taken with intent to further or support a foreign boycott. Moreover, any prohibited agreement must be a knowing agreement. For example, the accidental inclusion of a boycott provision in a bid or tender document, where the U.S. seller does not know of its presence and has no intention of complying with its terms, would not be sufficient to establish a violation.

What constitutes an activity in the interstate or foreign commerce of the United States will have to be spelled out in detail in the regulations. The clearest case is where a U.S. corporation sells goods or supplies services directly from the United States. U.S. commerce is obviously involved. Equally clear is the case where a foreign subsidiary of a U.S. firm purchases or uses goods or services from the United States for shipment to a boycotting country, or for processing or incorporation into another product for shipment to a boycotting country.

On the other hand where a foreign subsidiary of a U.S. corporation, acting entirely on its own, engages in a transaction no part of which involves the supply of goods or services from the United States or from another U.S. person which in turn utilizes goods or services from the United States for that transaction, the bill would not apply to that subsidiary. However, the bill would apply to the subsidiary's U.S. parent if the parent directed the subsidiary to refuse to do business with a boycotted country or with blacklisted firms in conformity with a foreign boycott request. The liability arises in that case not because the subsidiary is involved in U.S. commerce with respect to that transaction but because the parent would have required another person, within the meaning of subparagraph 4A(a)(1)(A) of the act, to refuse to do business.

It should be emphasized that title II inherently involves difficult questions of interpretation and application. It is not possible in a bill to identify and deal with every nuance and possible circumstance which this legislation may affect. It is, therefore, essential that the regulations which implement the bill provide clear and precise guidance to those affected by the legislation. Precision and clarity are essential so that those potentially covered by the bill can determine with the highest possible degree of certainty whether and how a given transaction or activity is governed by the law. No one is served by vagueness, especially those who must plan their activities to conform to the law. The committee, therefore, expects that the rules and regulations will be drawn with the highest possible delineation of the circumstances where the law will and will not apply and what is or is not permissible.

REFUSALS TO DO BUSINESS

The first of the specified prohibitions is contained in new subparagraph 4A(a)(1)(A) of the act as added by section 201(a) of the bill.

This encompasses both the secondary and tertiary dimensions of a foreign boycott. It prohibits refusing or requiring any other person to refuse to do business with or in the boycotted country, with any business concern organized under the law of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, requirement of, or request from or on behalf of the boycotting country. The mere absence of a business relationship does not indicate the existence of the intent required to establish a violation of this provision. Instead there must be a specific occasion where a business opportunity was offered and refused, or where a business opportunity existed and was refused and the refusal was because of an agreement with, requirement of, or request from or on behalf of a boycotting country.

For example, if a U.S. business firm in the ordinary course of its business never has occasion to deal with blacklisted firms, there would be no violation of the law if that pattern or practice were to continue with respect to its dealings with or in a boycotting country. The bill establishes no affirmative obligation to seek or secure business with blacklisted firms or boycotted countries.

By the same token, the bill is in no way intended to penalize business firms which explore business opportunities with blacklisted firms or with a boycotted country and then decide for nonboycott reasons not to pursue the transaction. Such action does not constitute an illegal refusal to do business. The refusal must be boycott based. The refusal to pursue the transaction must be because of a requirement or request of the boycotting country before any violation may be found.

On the other hand, if it were a U.S. firm's policy to avoid dealings with blacklisted persons, such as by maintaining a boycott-based list of persons eligible to do business with it, (a so-called whitelist) by using the components of blacklisted firms in transactions in other parts of the world and switching to components made by nonblacklisted firms in transactions with a boycotting country, or by refusing to entertain business offers from blacklisted firms because they are blacklisted, then such actions, if undertaken in order to comply with a foreign boycott, would constitute a violation of the law.

DISCRIMINATION OF THE BASIS OF RACE, RELIGION, SEX,
OR NATIONAL ORIGIN

The second specified prohibition is contained in new subparagraph 4A (a) (1) (B) of the act as added by section 201(a) of the bill. It prohibits refusing or requiring any other person to refuse to employ (or otherwise discriminating against) any U.S. person on the basis of race, religion, sex, or national origin or on the basis of the race, religion, sex, or national origin of any owner, officer, director, or employee of a U.S. firm or corporation.

Here, as with respect to all other prohibitions of the bill, the action must be boycott-based in order for any violation to be found. Hence, if a U.S. person should refuse to employ a particular individual or if he should exclude a particular firm from participation in a transaction because of an individual's race, religion, sex, or national origin, then that action, if taken with intent to comply with, further, or sup-

port a boycott, would be a violation of the law. However, racial, religious, or sex discrimination which is not boycott-based would not be governed by the bill. It would continue to be governed, as appropriate, by other statutes. Paragraph 4A(a)(4) as added by the bill expressly provides that nothing in subsection 4A(a) may be construed to supersede or limit the operation of the civil rights laws of the United States.

FURNISHING INFORMATION REGARDING RACE, RELIGION, SEX, OR
NATIONAL ORIGIN

The third specified prohibition is contained in new subparagraph 4A(a)(1)(C) of the act as added by section 201(a) of the bill. It prohibits furnishing information with respect to the race, religion, sex, or national origin of any other U.S. person or the race, religion, sex, or national origin of any owner, officer, director, or employee of any U.S. firm or corporation where such information is furnished with intent to comply with, further, or support a foreign boycott. This provision would not prohibit the furnishing of such information about oneself, only about others.

For example, an individual would be permitted to furnish information about his own race, religion, sex, or national origin in connection with an application for a visa or for employment, even where he knows that such information is sought for boycott enforcement purposes. However, a U.S. corporation would not be permitted in such circumstances to supply such information with respect to its own employees, since for purposes of this paragraph, that would be boycott-based information about "any other United States person."

FURNISHING INFORMATION ABOUT DEALINGS WITH BLACKLISTED PERSONS
OR BOYCOTTED COUNTRIES

The fourth specified prohibition is contained in new subparagraph 4A(a)(1)(D) of the act as added by section 201(a) of the bill. It prohibits furnishing information about whether any person has, has had, or proposes to have any business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person known or believed to be restricted from having any business relationship with or in the boycotted country. The purpose of this provision is to prohibit U.S. persons from supplying information about whether they have business dealings with boycotted countries or blacklisted persons where such information is supplied with intent to comply with, further, or support a boycott. However, nothing in paragraph 4A(a)(1) is to prohibit the furnishing of normal business information in a commercial context as defined by the Secretary of Commerce.

The most common example of prohibited information in the present context is a boycott questionnaire designed to elicit information about dealings with the boycotted country or blacklisted persons. The boycott questionnaire typically has no legitimate business purpose. It is intended to establish categories of eligibility for dealings with the boycotting country based on the subject's dealings with third parties.

This provision prohibits the supply of that information in such a context.

On the other hand, the same kind of information might be disclosed in an ordinary commercial context. For example, a general contractor or professional engineer or architect might be asked for purposes of obtaining a profile of his experience and qualifications to describe other projects in which he has been engaged. Such information might incidentally disclose whether that person has business relationships with the boycotted country or with blacklisted persons. Similarly, such ordinary commercial documents as a corporation's annual report might disclose the presence or absence of business dealings with a boycotted country or with blacklisted persons. So long as the person supplying the information does not do so with intent to comply with, further, or support a boycott, no violation of the law would occur.

Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes. The questionnaire, which on its face, or in the circumstances in which it is supplied, is designed only to elicit information about whether one has dealings with blacklisted persons or boycotted countries presents the clearest case. On the other hand where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed. In a specific case, all the facts and circumstances, including ordinary commercial practice, would govern. The Secretary of Commerce will be responsible for spelling out in great detail what does and does not constitute normal business information in a commercial context so as to provide the greatest possible certainty to those affected by this provision.

FURNISHING INFORMATION ABOUT ASSOCIATION WITH CHARITABLE ORGANIZATIONS

The fifth specified prohibition is contained in new subparagraph 4A(a)(1)(E) of the act as added by section 201(a)(1) of the bill. It prohibits furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country. The considerations which apply here are similar to those which apply to the prohibition on furnishing information about business relationships with the boycotted country or blacklisted persons.

In some circumstances, the disclosure of such information could be incidental to a nonboycott related request. A résumé, for example, could disclose information about relationships with fraternal organizations which support a boycotted country. The fact that such information could be used for boycott purposes does not give rise to a violation of the law. The person supplying the information must know, from all the facts and circumstances, that the information is sought for boycott purposes before the intent necessary to establish a violation of the law can be found.

LETTERS OF CREDIT

The sixth specified prohibition is contained in new subparagraph 4A(a)(1)(F) of the act as added by section 201(a) of the bill. It would prohibit paying, honoring, confirming or otherwise implementing a letter of credit which contains conditions or requirements with which a U.S. person may not legally comply under the bill. This means that a U.S. bank, including its foreign branches, may not provide a letter of credit facility in favor of a U.S. person in implementation of a transaction in which such person may not engage by reason of the bill.

As with all other prohibitions of the bill, there must be an intent to comply with, further, or support a foreign boycott before a violation may be found. Hence, a bank which accidentally implements a letter of credit containing an illegal condition would not violate the law, but it would be under an obligation to take steps to guard against such occurrences. Failure to take such steps could give rise to a presumption of intent.

As is also the case with all other prohibitions of the bill, the transaction in question must be in the interstate or foreign commerce of the United States before the bill applies. Hence, it will be necessary in the first instance to determine whether the transaction to which the credit applies involves the interstate or foreign commerce of the United States. A further threshold question in each case is whether the beneficiary is a U.S. person. If the beneficiary is not a U.S. person or the transaction in question does not involve U.S. commerce, the bill would not apply.

The rules and regulations issued pursuant to the bill should provide standards and guidelines sufficient to permit U.S. banks and other persons governed by this provision to determine with a high degree of certainty whether the beneficiary is a U.S. person and whether U.S. commerce is involved. Otherwise the provision could have the effect of requiring U.S. banks to terminate participation in all letter of credit transactions involving boycott conditions.

For example, if a bank cannot determine whether a German company, which may be a subsidiary of a U.S. company, is a "U.S. person" for purposes of the bill, or, having resolved that question, is unable to determine whether the transaction to which the credit relates involves U.S. commerce, it will have no choice but to reduce the business. Such a result would be both unfair and inconsistent with the intended scope and reach of the bill.

A bank located in the United States can reasonably be expected to presume that the beneficiary is a U.S. person and that U.S. commerce is involved where the letter of credit is in favor of a beneficiary with an address in the United States unless there is reasonable cause to conclude otherwise. And the rules and regulations could so provide. However, for a U.S. bank office outside the United States, the rules and regulations could reasonably permit conclusions to be drawn on the basis of the letter of credit documents, unless circumstances clearly indicate that a different conclusion is warranted.

Thus, a U.S. bank's foreign branch could reasonably be expected to presume that U.S. commerce is involved and that a U.S. person is the beneficiary if the letter of credit specifies a U.S. address for the beneficiary, calls for documents indicating shipment from a U.S. port, or if the documents called for otherwise indicate that the goods are of U.S. origin. In other circumstances, the bank could reasonably presume that no U.S. commerce is involved or that the beneficiary is not a U.S. person unless a U.S. foreign subsidiary is the beneficiary or other facts and circumstances indicate otherwise.

New subparagraph 4A(a)(1)(F) of the bill also provides that no U.S. person shall as a result of the application of paragraph 4A(a)(1) be obligated to pay, or otherwise honor or implement a letter of credit containing an illegal boycott condition. This is intended to insure that the beneficiary of a letter of credit cannot enforce payment of, or secure reformation of, a letter of credit containing such conditions. The letter may not be paid, and a bank may not be required to pay.

EXCEPTIONS

New section 4A(a)(2) of the act as added by section 201(a) of the bill sets both a series of exceptions to the prohibitions of the bill.

COMPLIANCE WITH IMPORT AND EXPORT REQUIREMENTS

The first exception is contained in new subparagraph 4A(a)(2)(A) of the act as added by section 201(a) of the bill. This is an exception for complying or agreeing to comply with requirements prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country. The exception also permits complying or agreeing to comply with requirements prohibiting the shipment of goods to the boycotted country, on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment.

This means that a U.S. person subject to the bill may refuse or agree to refuse to import into the boycotting country goods produced or services provided by the boycotted country, its nationals, or residents. He may also refuse or agree to refuse to export goods from the boycotted country to the boycotting country. In addition, he may refuse or agree to refuse to ship goods to the boycotting country on a carrier of the boycotted country. And he may also agree to ship goods to or from the boycotted country via a route prescribed by the boycotting country. All such actions are regarded as aspects of a primary boycott, viz. an attempt by one country to protect itself against direct or indirect transactions with the boycotted country, and the bill makes no attempt to interfere with such efforts.

COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

The second exception is contained in subparagraph 4A(a)(2)(B) of the act as added by section 201(a) of the bill. It is a corollary of the first and permits complying or agreeing to comply with import

and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services. This means that documentary requirements with respect to country of origin, the name of the carrier (*i.e.* "X steamship company") and route of shipment, and the name of the supplier of the shipment or provider of other services, such as the insurer or freight forwarder, may be supplied even if sought for boycott purposes and notwithstanding the fact that such information might disclose whether a U.S. person has dealings with blacklisted persons or with a boycotted country.

However, no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms after a year from enactment of the bill. From that point onward, negative certifications (for example, "this shipment contains no goods made in X country") would be barred. Thereafter, such certifications must be stated in positive terms (for example, "the goods herein were made in the U.S.A.>").

COMPLIANCE WITH UNILATERAL SELECTION

The third exception is contained in new subparagraph 4A (a) (2) (C) of the act as added by section 201 (a) of the bill. It permits complying or agreeing to comply with the unilateral selection by a boycotting country, or national or resident thereof (other than a U.S. person) of carriers, insurers, suppliers of services within the boycotting country or of specific goods which in the normal course of business are identifiable by source upon importation. This exception is a concession to the relative ease with which a boycotting country may bar entry of a particular carrier to its waters; the ease with which it can exclude the entry of any individual to its territory; the ease with which goods which are identifiable by manufacturer or supplier may be confiscated by a customs agent at the port or other point of entry; and the practical impossibility of securing insurance cover with a company which is barred from effecting cover in favor of a boycotting country or its nationals.

This exception would not permit a U.S. person to comply with selections stated in negative or blacklisting terms. A U.S. person, under this exception, may not comply with a directive to the effect that the shipment may not contain goods, or the product may not contain components, made by X company, or by the companies listed in a blacklist or similar exclusionary listing. The selection must be stated affirmatively, and it must be specific with respect to a particular supplier and with respect to a particular phase or aspect of the transaction.

For example, if the foreign buyer states to X tractor company that it will buy X's tractors if they contain tires made by Y, then X may comply. But if the buyer says to X that he will buy his tractors only if they do not contain tires made by Z, or only if they do not contain tires made by companies A through M, then X may not comply. Similarly, X may not comply where the buyer designates a list of companies as eligible suppliers, where the list is compiled on a boycott basis, and tells X that he may choose only from among that list. The buyer must

assume the burden of affirmative choice before this exception can apply. And he must do so on his own, without the assistance of the U.S. seller.

It is expected that the rules and regulations issued pursuant to the bill will provide detailed guidance regarding which categories of goods "in the normal course of business are identifiable by source when imported into the boycotting country". Tractor tires which normally bear the name of the manufacturer constitute one example. Another might be aircraft engines which normally bear the manufacturer's name stamped upon the assembly. A third might be heavy machinery such as drill presses which normally bear the manufacturer's name engraved in the metal.

On the other side of the line might be the sheet metal which goes into the tractor, the cast iron which goes into the machinery, the paint which is applied to the automobile, or the wheat which is ground into flour.

The test is whether it is generally possible, in the normal of business, for the buyer or a customs agent or similar official to identify the supplier or manufacturer of a particular product or component by inspection of the product itself. Products which do not normally bear the manufacturer's identification may not be labelled in order to take advantage of this exception. Ordinary business practice, as prescribed by the regulations, is to govern.

The exception is not available under any circumstances, however, where the selection is made by a U.S. person. Unilateral selection by U.S. persons are expressly excluded from the exception. Thus, under this provision, while the U.S. tractor company may comply with a boycotting country's boycott-based designation of the tire manufacturer, it may not do so if the designation is made by a U.S. person resident in the boycotting country.

The unilateral selection exception is a necessary, but limited, bow to reality. The committee regards the case where two U.S. firms act in concert to deny a business opportunity to a third as particularly offensive and has thus limited the application of this exception to designations by boycotting countries, their nationals, and their non-U.S. residents.

COMPLIANCE WITH EXPORT REQUIREMENTS

The fourth exception is contained in new subparagraph 4A(a)(2)(D) of the act as added by section 201(a) of the bill. It permits complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycott country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country.

This means that a U.S. person exporting goods or services from the boycotting country may comply with restrictions of the boycotting country designed to insure that such goods or services are not delivered to the boycotted country, its residents or nationals, or to business concerns of or organized under the laws of the boycotted country. Such restrictions could include prohibitions on direct exports from the boycotting country to the boycotted country as well as on indirect exports

from the boycotting country to the boycotted country via third parties. The purpose is to permit compliance with the boycotting country's efforts to control the ultimate destination or end-use of its own exports.

COMPLIANCE WITH IMMIGRATION OR PASSPORT REQUIREMENTS

The fifth exception is contained in new subparagraph 4A(a)(2)(E) of the act as added by section 201(a) of the bill. It permits compliance by an individual or agreement by that individual to comply with the immigration or passport requirements of any country. This means that an individual can do or agree to do what is necessary for him to comply with the boycotting country's passport or immigration requirements. However, insofar as such requirements are for the purpose of enforcing a boycott, the employer of such individual may not so comply. For example, an employer may not submit lists of individuals for prospective employment in a boycotting country when such lists are required in order to screen individuals for boycott enforcement purposes. On the other hand, this amendment is intended to permit a U.S. firm to proceed with a project in a boycotting country even if certain of its employees are denied entry for boycott reasons. However, this provision does not mean that employees may be selected in advance in a manner designed to comply with a boycott.

COMPLIANCE WITH HOST COUNTRY LAW

The last exception is contained in new subparagraph 4A(a)(2)(F) of the act as added by section 201(a) of the bill. It permits compliance by a U.S. person resident in a boycotting country, or agreement by such person to comply, with the laws of that country with respect to his activities exclusively therein. Such activities would include, for example, employment of individuals within the boycotting country as well as purchases and sales within that country. For example, a U.S. bank branch located in a boycotting country could comply with that country's laws barring or restricting employment in that branch of individuals who have certain connections with the boycotted country. Similarly, such bank branch could comply with the host country's laws barring purchases from local merchants of, say, typewriters manufactured by blacklisted firms for use in that branch.

The exception further provides that regulations issued pursuant to the bill may contain exceptions for compliance with the import laws of the boycotting country. This means that if the President uses his authority to grant such an exception, a U.S. person resident in the boycotting country may purchase goods and services for importation into the boycotting country either himself or through an agent and, in so doing, exclude from his purchases goods or services which, under local law, are not importable. Thus, if the rules and regulations so permit, a U.S. oil company resident in a boycotting country could purchase drilling rigs to be used in its oil operations in that country exclusively from nonblacklisted firms if the import laws of that country so require. Similarly, if the rules and regulations so permit, a U.S. company which imports goods for resale in a retail operation within the boycotting country, or a U.S. construction company which imports materials for incorporation into a building or highway to be

turned over to the boycotting country upon completion could purchase goods or materials exclusively from nonblacklisted firms if the boycotting country's import laws so require.

The committee considered limiting the exception to the importation of goods or services for the buyer's own use, not including resale, but decided to leave that decision to the discretion of the President. The committee recognizes that there may be circumstances where resale is an integral part of the operations of a U.S. company in a boycotting country. There are other circumstances where the concept of importation for the buyer's own use is unworkable. For example, does a construction company which imports cement for a building being constructed for a national of the boycotting country purchase such cement for its own use?

What the committee intends is that the President use the discretion provided by this exception to accommodate those circumstances where the inability to comply with local import laws would seriously affect economic and other relations between the United States and the boycotting country in a manner adverse to the national interest. Effective use of that discretion requires that the exception not be made available on an across-the-board basis.

It should be emphasized that this exception pertains to what is permissible for a U.S. person resident in the boycotting country. The exception for so-called unilateral selections contained in new paragraph 4A(a)(2)(C) pertains to what is permissible for the recipient of an order or other directive from a boycotting country, its nationals, or residents other than U.S. persons where that order or directive relates to goods or services supplied by third parties. The two exceptions pertain to different circumstances. In no event does anything in the bill prohibit or restrict a U.S. person from filling an order himself even if he is selected on a boycott basis by the buyer so long as that order does not require him to refuse to do business or in any other way comply with a boycott in filling the order.

It should also be emphasized that this exception pertains to compliance with the laws of a foreign country. It is not intended to be available for compliance with presumed policies or understandings of policies unless those policies are reflected in the law.

LIMITATIONS ON EXCEPTIONS

New paragraph 4A(a)(3) as added by section 202(a) of the bill would provide that rules and regulations issued pursuant to the unilateral selection and compliance with host country law exceptions shall not provide exceptions from the prohibitions against discrimination on the basis of race, religion, sex, or national origin contained in new paragraph 4A(a)(1)(B) of the act or the prohibition against furnishing information with respect to race, religion, sex, or national origin contained in new subparagraph 4A(a)(1)(C) of the act.

This means that no unilateral selection or boycotting country law may be complied with where it requires boycott-based discrimination against a U.S. person on the basis of race, religion, sex or national origin. In addition, no unilateral selection or boycotting country law may be complied with where it requires furnishing information about

another U.S. person's race, religion, sex, or national origin for boycott enforcement purposes.

For example, assume a U.S. seller, who would normally use components made by X, receives an order from a boycotting country designating that the components are to be supplied by Y instead because X is Jewish and dealings with Jews are prohibited under that country's boycott policy. In that circumstance, the U.S. seller could not comply. Similarly, a U.S. person resident in a boycotting country could not refuse to deal with American Jews in importing goods into that country in order to comply with that country's boycott law.

ANTITRUST OR CIVIL RIGHTS LAWS

New paragraph 4A(a)(4) of the act as added by section 201(a) of the bill would provide that nothing in subsection 4A(a) may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States. Both bodies of law would in no way be affected by the passage of this legislation.

EFFECTIVE DATE OF REGULATIONS

New paragraph 4A(a)(5) of the act as added by section 201(a) of the bill provides that rules and regulations pursuant to new subsection 4A(a) of the act shall be issued not later than 90 days after enactment of new section 4A. Such rules and regulations are to be issued in final form and become effective not later than 120 days after they are issued. However, in conformity with new paragraph 4A(a)(2)(B), it is expressly provided that rules and regulations prohibiting negative certifications may take effect not later than 1 year after enactment of new section 4A. Furthermore, a grace period is to be provided for the application of the rules and regulations to actions taken pursuant to contracts or other agreements in effect on or before March 1, 1977. Such grace period shall be for 2 years from enactment of new section 4A and may be extended for three additional 1-year periods in cases in which good faith efforts are being made to amend such contracts or agreements.

The purpose of the grace period is to permit contracts or agreements entered into on or before March 1, 1977 to be brought into conformity with the new law. However, the mere existence of such contract or agreement containing boycott conditions or provisions made illegal by this bill would not be a violation of the law. Such violation would occur only if the illegal boycott conditions or provisions of such contract or agreement were reaffirmed or implemented after the effective date of the new rules or regulations. For example, if a U.S. person had made a contract or commitment in, say, 1974, not to establish a facility in a boycotted country, such commitment would be a violation of the law only if reaffirmed after the effective date of the rules and regulations or if a boycott-based refusal to establish such a facility were to occur subsequent to such effective date.

EVASION OF THE LAW

New paragraph 4A(a)(5) of the act as added by section 201(a) of the bill provides that this act shall apply to any transaction or activity

undertaken with intent to evade the provisions of this act regardless of whether such transaction or activity involves the interstate or foreign commerce of the United States. For example, if a U.S. person, for purposes of evading the Export Administration Act, should divert to a foreign subsidiary a boycotting country's purchase order and cause it to be filled entirely from outside the United States, the law would apply to the foreign subsidiary despite the absence of any other involvement of such subsidiary in U.S. commerce with respect to that transaction. The act of diverting the order would also constitute a violation of the law by the U.S. person causing the diversion.

IMPLEMENTATION OF U.S. ANTIBOYCOTT POLICY

New paragraph 4A(b)(1) of the act as added by section 201(a) of the bill would mandate the issuance of rules and regulations to carry out the antiboycott policies of the Export Administration Act. This merely carries forward a similar provision in paragraph 4(b)(1) of existing law although the wording of this new provision is intended to make it clear that the committee expects full implementation of the antiboycott policies of the act.

REPORTS ON FOREIGN BOYCOTT DEMANDS

New subparagraph 4A(b)(2) carries forward in modified form the requirements of existing law with respect to reporting the receipt of foreign boycott demands. Under the bill, rules and regulations are to require any U.S. person receiving a request for the furnishing of information, the entering into or implementing of agreements, of the taking of any action referred to in the basic policy provision of the act (section 3(5)), to report that fact to the Secretary of Commerce together with such other information as the Secretary may require for such action as he or she may deem appropriate for carrying out the antiboycott policy of the act.

Reports under this subparagraph are to include reports on actions taken or information furnished pursuant to the exceptions of the act, including the unilateral selection and compliance with local law exceptions contained in subparagraphs 4A(a)(2)(C) and (F) of the act, to the same extent as otherwise required pursuant to the act.

Subparagraph 4A(b)(2) would further require U.S. persons receiving such requests to report to the Secretary of Commerce on whether they intend to comply and whether they have complied with such requests. In addition, any such reports made after enactment of the bill would be required to be made available promptly for public inspection and copying. However, information regarding the quantity, description, and value of any articles, materials, or supplies (including technical data and other information) to which such reports relate could be kept confidential if the Secretary determines that disclosure thereof with respect to any particular U.S. person would place that person at a competitive disadvantage.

Subparagraph (4) A(b)(2) would also require that the Secretary of Commerce report the results of these boycott reports to the Secretary of State on a periodic basis for such action as he, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the antiboycott policy of the act.

TECHNICAL CONFORMING CHANGES

Subsection 201(b) of the bill would amend section 4(b)(1) of the Export Administration Act by striking out the next to the last sentence thereof. That sentence constitutes the existing authority for the issuance of rules and regulations to implement the antiboycott policy of the act. Since such authority is transferred by the bill to a new subsection 4A(b), the existing sentence becomes surplusage.

Section 201(c) of the bill would amend section 7(c) of the act to conform it to the public disclosure requirements imposed by the bill. Section 7(c) currently provides that "[n]o department, agency, or official exercising any functions under this act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest." Since the bill would require that certain reports and documents be made public, section 201(c) of the bill would provide that section 7(c) of the act applies "except as otherwise provided."

STATEMENT OF POLICY

Section 202(a) of the bill would amend section 3(5)(A) of the Export Administration Act to make it clear that it is U.S. policy to oppose foreign boycotts when directed against domestic concerns as well as when directed against countries friendly to the United States. Section 3(5)(A) of the act presently states that it is U.S. policy "to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States * * *." Since the Arab boycott includes a boycott of black-listed U.S. firms as well as the State of Israel, amplification of the present statutory statement of policy would make it clear that the United States opposes attempts to extend foreign boycotts to its own internal affairs.

Section 202(b) of the bill would amend section 3(5)(B) of the act to provide that it is U.S. policy to encourage and, in specified cases, to require U.S. persons engaged in the export of articles, materials, supplies, or information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any U.S. person.

Present law states that it is U.S. policy to "encourage and request" domestic concerns to refuse to comply with foreign boycotts. The proposed change is necessary to reflect the fact that the new law would expressly prohibit certain actions.

PENALTIES

Section 203(a) of the bill would amend section 6(c) of the act by adding a new subparagraph (2)(A) to make it clear that export license privileges may be suspended or revoked for violations of the antiboycott provisions of the act. The authority to suspend or revoke export privileges for any violation of the act exists under present law

and, thus, it applies to violations of the antiboycott provisions of the act. However, the Committee wishes to emphasize that its use in cases of violations of such provisions may make a significant contribution to effective enforcement of U.S. antiboycott policy. Accordingly, the Committee encourages its application in circumstances which will help achieve that end.

ENFORCEMENT PROCEDURE

Section 203(a) of the bill would further amend section 6(c) of the act by adding a new subparagraph 2(B) to provide that any civil penalty (including any suspension or revocation of a firm's authority to export) for a violation of the rules and regulations issued pursuant to subsection 4A(a) of the act may be imposed only after notice and an opportunity for an agency hearing on the record in accordance with sections 5 through 8 of the Administrative Procedure Act.

DISCLOSURE OF CHARGING LETTERS

Section 203(a) of the bill would further amend section 6(c) of the act to add a new subparagraph (2) (B) to require that any charging letter or other document initiating administrative proceedings after enactment of the bill for the imposition of sanctions for violations of the antiboycott provisions of the act be made available for public inspection and copying.

TECHNICAL AND CONFORMING CHANGE

Section 302(b) of the bill would amend section 8 of the act to reflect the applicability of the Administrative Procedure Act to proceedings for violations of new section 4A(a) of the act. Section 8 currently provides a blanket exception from the APA for all functions exercised under the act.

DEFINITIONS

Section 204 of the bill would amend section 11 of the act to provide that, as used in the act, (a) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof; and (b) the term "United States person" means any U.S. resident or national (other than an individual resident outside the United States and employed by other than a U.S. person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

Under the definition of "United States person," branches of foreign banks in the United States and branches of U.S. banks abroad would be covered by the act as permanent domestic establishments of any foreign concern and permanent foreign establishments of any domestic concern respectively under amended section 11.

The question of whether a foreign subsidiary, affiliate, or permanent foreign establishment of any domestic concern is "controlled in fact" is to be determined in accordance with the regulations. To provide

greater certainty and predictability to those potentially governed by the act, such regulations could reasonably include tests of control based on proportions of equity ownership, but any such test should be rebuttable in the event that all the facts and circumstances show that control exists despite equity ownership below the proportions established under standards of general applicability.

PREEMPTION OF STATE AND LOCAL LAWS

Section 205 of the bill would provide that the amendments made by title II of the bill and the rules and regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, and any of the territories or possessions of the United States, or of any governmental subdivision thereof, where such law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

FISCAL IMPACT STATEMENT

In accordance with section 252(a) of the Legislative Reorganization Act of 1970, the committee estimates that the cost of administering the Export Administration Act, as extended and amended by this bill, will be \$7.5 million in fiscal year 1978 and \$7.8 million in fiscal year 1979. This is in accordance with the Administration's cost estimate and is \$0.1 million and \$0.4 million higher than the Congressional Budget Office estimate for fiscal years 1978 and 1979 respectively. The committee's concurrence with the administration's estimate reflects its judgment that the higher amounts are necessary for effective enforcement of the antiboycott provisions of the bill.

The Congressional Budget Office's estimate follows:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 69.
2. Description of bill: This legislation amends the Export Administration Act of 1969, as amended, to:
 - (a) Extend the authority of the act from September 30, 1976 to September 30, 1979;
 - (b) Require a review of export control lists within 1 year of enactment;
 - (c) Require a review of rules and regulations issued under this act within 1 year of enactment;
 - (d) Exempt agricultural commodities purchased for export and stored in the United States from subsequent export restrictions;
 - (e) Require a study of the national security impact of the export of technical information to restricted countries within 6 months of enactment;
 - (f) Add reporting and notification requirements and otherwise improve the administration of the act; and
 - (g) Prohibit U.S. persons or firms from cooperating with foreign boycotts of countries friendly to the United States.

3. Budget impact :

| | |
|---|------------|
| Budget function 400 ; estimated costs : | (Millions) |
| Fiscal year 1978 | \$7.0 |
| Fiscal year 1979 | 7.4 |
| Fiscal year 1980 | .4 |
| Fiscal year 1981 | |
| Fiscal year 1982 | |

4. Basis for estimate: This estimate assumes the enactment of this legislation on or before September 30, 1977. This legislation authorizes no funds to finance any costs associated with this legislation. The estimated costs of this legislation, therefore, are subject to subsequent authorization and appropriations.

The estimated costs are based on projections of the amounts required to maintain the fiscal year 1977 level of activity of the Office of Export Administration (Department of Commerce) with adjustments for the marginal increase in activity required by this legislation. The amounts estimated to be required are as follows:

| | Fiscal year 1978 | Fiscal year 1979 |
|---|---------------------|---------------------|
| To finance ongoing programs (item a) | 5.7 | 5.7 |
| To finance increased activity (items b through d) | 1.4 | .9 |
| Allowance for pay increases | .3 | .6 |
| Allowance for price increase | ----- | .2 |
| Total | 7.4 | 7.4 |

Pay and price adjustments are based on CBO April economic assumptions. The review of rules and regulations, control lists, and the study of the export of technical information are assumed to be one-time events in 1978. As a result, the funds required for items b through g decrease in 1979.

Estimated costs are derived by applying historical outlay rates to the amounts above.

5. Estimate comparison: The Office of Export Administration estimates that the marginal increase of activity resulting from this legislation will require an additional 52 positions, and cost \$1.5 million in fiscal year 1978 and \$1.32 million in fiscal year 1979.

The CBO estimate differs by (1) removing resources for monitoring the export of technical data or information, as amended in markup; and (2) assuming the review of rules and regulations, and control lists, and the study on the export of technical information are nonrecurring costs in 1978, while the agency estimate assumes they are ongoing functions.

6. Previous CBO estimates: Two estimates were prepared for the House of Representatives. The estimate for H.R. 1561, dated March 15, 1977, was based on an authorization for 1978 only. H.R. 5840 authorized \$14.033 million plus such sums as necessary for mandatory pay increases for fiscal years 1978 and 1979. H.R. 5840 also requires an enlarged study of the export of technical data and the training of foreign nationals in the United States, and extends the review of export control lists into fiscal year 1979.

7. Estimate prepared by: Joseph Whitehill (225-4844).

8. Estimate approved by : _____ for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: existing law proposed to be omitted is enclosed in brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman.

EXPORT ADMINISTRATION

THE EXPORT ADMINISTRATION ACT OF 1969, AS AMENDED

Public Law 91-184 [H.R. 4293], 83 Stat. 841, approved December 30, 1969 as amended by Public Law 92-37 [S.J. Res. 118], 85 Stat. 89, approved June 30, 1971; Public Law 92-150 [S.J. Res. 167], 85 Stat. 416, Public Law 92-284 [S.J. Res. 218], 86 Stat. 133, approved April 29, 1972; Public Law 92-412 [S. 3726], 86 Stat. 644, approved August 29, 1972; Public Law 93-327 [H.J. Res. 1057], 88 Stat. 287, approved June 30, 1974; Public Law 93-372 [H.J. Res. 1104], 88 Stat. 444, approved August 14, 1974; Public Law 93-500 [S. 3792], 88 Stat. 1552, approved October 29, 1974, and by Public Law 93-608 [H.R. 14718], 88 Stat. 1967, approved January 2, 1975

AN ACT To provide for continuation of authority for regulation of exports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1969".

FINDINGS

SEC. 2. The Congress makes the following findings :

(1) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(2) The unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States.

(3) The unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments, particularly when export restrictions applied by the United States are more extensive than export restrictions imposed by countries with which the United States has defense treaty commitments.

(4) The uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

(5) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations:

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President ~~to be~~ against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities, and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(3) It is the policy of the United States (A) to formulate, reformulate, and apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to formulate a unified trade control policy to be observed by all such nations.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States *or against any United States person*, [(B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States. and] (B) *to encourage and, in specified cases, to require United States persons engaged in the export of articles, materials, supplies, or information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against any United States person.* (C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular articles, materials, or supplies, including technical data or other information, to United

States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and qualified experts from private industry.

(7) It is the policy of the United States to use export controls including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make every reasonable effort to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before resorting to the imposition of controls on the export of materials from the United States: *Provided*, That no action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) *It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territory or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.*

AUTHORITY

SEC. 4. (a)(1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarter) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.

(b) (1) To effectuate the policies set forth in section 3 of this Act, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. [Rules and regulations may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States, regardless of their availability from nations other than any nation or combination of nations threatening the national security of the United States, but whenever export licenses are required on the ground that considerations of national security override considerations of foreign availability, the reasons for so doing shall be reported to the Congress in the quarterly report following the decision to require such licenses on that ground to the extent consideration of national security and foreign policy permit. The rules and regulations shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in that section must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purpose of that section.] In curtailing the exportation of any articles, materials, or supplies to effectuate the policy set forth in section 3(2) (A) of this Act, the President is authorized and directed to allocate a portion of export licenses on the basis of factors other than a prior history of exportation.

[(2) the Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established under section 5(c), shall undertake an investigation to determine which articles, materials, and supplies, including technical data and other information, should no longer be subject to export controls because of their significance to the national security of the United States. Notwithstanding the provisions of paragraph (1), the President shall remove unilateral export controls on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, except that any such control may remain in effect if the President determines that adequate evidence has been presented to him demonstrating that the absence of such a

control would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the special report required by paragraph (4).

[(3) In conducting the investigation referred to in paragraph (2) and in taking the action required under such paragraph, the Secretary of Commerce shall give priority to those controls which apply to articles, materials, and supplies, including technical data and other information, for which there are significant potential export markets.

[(4) Not later than nine months after the date of enactment of the Equal Export Opportunity Act, the Secretary of Commerce shall submit to the President and to the Congress a special report of actions taken under paragraphs (2) and (3). Such report shall contain—

[(A) a list of any articles, materials, and supplies, including technical data and other information, which are subject under this Act to export controls greater than those imposed by nations with which the United States has defense treaty commitments, and the reasons for such greater controls; and

[(B) a list of any procedures applicable to export licensing in the United States which may be or are claimed to be more burdensome than similar procedures utilized in nations with which the United States has defense treaty commitments, and the reasons for retaining such procedures in their present form.]

(2) (A) *In administering export controls for national security purposes as prescribed in section 3(2) (C) of this Act, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control transfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate. The President shall periodically review United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence. The results of such review, together with the justification for United States policy in light of such factors, shall be included in the second semiannual report of the Secretary of Commerce required by section 10 of this Act following the date of enactment of the Export Administration Amendments of 1977 and in every second such report thereafter.*

(B) *Rules and regulations under this subsection may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories, and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States. The President shall not impose export controls for national security purposes on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those pro-*

duced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the semiannual report required by section 10 of this Act. Where, in accordance with this paragraph, export controls are imposed for national security purposes notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability.

(c) (1) To effectuate the policy set forth in section 3(2) (A) of this Act, the Secretary of Commerce shall monitor exports, and contracts for exports, of any article, material, or supply (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious impact on the economy or any sector thereof. *Such monitoring shall commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of this Act.* Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection *and in the last sentence of section 7(c) of this Act.*

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each article, material, or supply monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(d) Nothing in this Act, or in the rules and regulations hereunder shall be construed to require authority or permission to export, except where required by the President to effect the policies set forth in section 3 of this Act.

(e) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(f) (1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by him to be in excess of the requirements of the domestic economy, except to the extent the President determines that such exercise of authority is required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

(2) *Upon approval of the Secretary of Commerce, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on*

export which may be imposed pursuant to section 3(2) (A) of this Act subsequent to such approval. The Secretary of Commerce may not grant approval hereunder unless he receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds that such commodities will eventually be exported, that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary of Commerce is authorized to issue such rules and regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section is exercised to prohibit or curtail the exportation of any agricultural commodity in order to effectuate the policies set forth in clause (B) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(g) Any export license application required by the exercise of authority under this Act to effectuate the policies of section 3(1) (B) or 3(2) (C) shall be approved or disapproved not later than 90 days after its submission. If additional time is required, the Secretary of Commerce or other official exercising authority under this Act shall inform the applicant of the circumstances requiring such additional time and give an estimate of when his decision will be made.]

(g) (1) It is the intent of Congress that any export license application required under this Act shall be approved or disapproved within 90 days of its receipt. Upon the expiration of the 90-day period beginning on the date of its receipt, any export license application required under this Act which has not been approved or disapproved shall be deemed to be approved and the license shall be issued unless the Secretary of Commerce or other official exercising authority under this Act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made.

(2) (A) With respect to any export license application not finally approved or disapproved within 90 days of its receipt as provided in paragraph (1) of this subsection, the applicant shall, to the maximum extent consistent with the national security of the United States, be specifically informed in writing of questions raised and negative considerations or recommendations made by any agency or department of the Government with respect to such license application, and shall be accorded an opportunity to respond to such questions, considerations, or recommendations in writing prior to final approval or disapproval

by the Secretary of Commerce or other official exercising authority under this Act. In making such final approval or disapproval, the Secretary of Commerce or other official exercising authority under this Act shall take fully into account the applicant's response.

(B) Whenever the Secretary determines that it is necessary to refer an export license application to any interagency review process for approval, he shall first, if the applicant so requests, provide the applicant with an opportunity to review any documentation to be submitted to such process for the purpose of describing the export in question, in order to determine whether such documentation accurately describes the proposed export.

(3) In any denial of an export license application, the applicant shall be informed in writing of the specific statutory basis for such denial.

(h) (1) The Congress finds that the defense posture of the United States may be seriously compromised if the Nation's goods and technology are exported to a [controlled country] country to which exports are restricted for national security purposes without an adequate and knowledgeable assessment being made to determine whether export of such goods and technology will [significantly increase the military capability of such country] make a significant contribution to the military potential of such country. It is the purpose of this subsection to provide for such an assessment and to authorize the Secretary of Defense to review any proposed export of goods or technology to any such country and, whenever he determines that the export of such goods or technology will [significantly increase the military capability of such country] make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the export control office to which licensing requests are made, the types and categories of transactions which should be reviewed by him to carry out the purpose of this subsection. Whenever a license or other authority is requested for the export of such goods or technology to any [controlled country] country to which exports are restricted for national security purposes, the appropriate export control office or agency to whom such request is made shall notify the Secretary of Defense of such request, and such office may not issue any license or other authority pursuant to such request prior to the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider all notifications submitted to him pursuant to this subsection and, not later than 30 days after notification of the request shall—

(A) recommend to the President that he disapprove any request for the export of any goods or technology to any [controlled] such country if he determines that the export of such goods or technology will [significantly increase the military capability of such country] make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify such office or agency that he will interpose no objection if appropriate conditions designed to achieve the purposes of this Act are imposed; or

(C) indicate that he does not intend to interpose an objection to the export of such goods or technology.

If the President notifies such office or agency, within 30 days after receiving a recommendation from the Secretary, that he disapproves such export, no license or other authorization may be issued for the export of such goods or technology to such country.

(3) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense pursuant to this section, the President shall submit to the Congress a statement indicating his decision together with the recommendation of the Secretary of Defense.

(4) As used in this subsection—

(A) the term “goods or technology” means—

(i) machinery, equipment, capital goods, or computer software; or

(ii) any license or other arrangement for the use of any patent, trade secret, design, or plan with respect to any item described in clause (i); *and*

(B) the term “export control office” means any office or agency of the United States Government whose approval or permission is required pursuant to existing law for the export of goods or technology [and

(C) the term “controlled country” means any Communist country as defined under section 620(f) of the Foreign Assistance Act of 1961.]

(1) In imposing export controls to effectuate the policy stated in section 3(2)(A) of this Act, the President’s authority shall include but not be limited to, the imposition of export license fees.

(j) (1) *Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.*

(2) *The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue rules and regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.*

FOREIGN BOYCOTTS

SEC. 4A. (a) (1) For the purpose of implementing the policies set forth in section 3(5) (A) and (B), the President shall issue rules and regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is

friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) *Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of rules and regulations issued to carry out this subparagraph.*

(B) *Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.*

(C) *Furnishing information with respect to the race, religion, sex, or national origin of any other United States person or of any owner, officer, director, or employee of such person.*

(D) *Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotted country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary of Commerce.*

(E) *Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.*

(F) *Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by rules and regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.*

(2) *Rules and regulations issued pursuant to paragraph (1) shall provide exceptions for—*

(A) *complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country, on a carrier*

of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms after the expiration of one year following the date of enactment of the Export Administration Amendments of 1977;

(C) complying or agreeing to comply with the unilateral selection by a boycotting country, or national or resident (excluding a United States person) thereof of carriers, insurers, suppliers of services within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such rules and regulation may contain exceptions for compliance with import laws of that country.

(3) Rules and regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) Rules and regulations pursuant to this subsection shall be issued not later than 90 days after the date of enactment of this section and shall be issued in final form and become effective not later than 120 days after they are first issued, except that (A) rules and regulations prohibiting negative certification may take effect not later than one year after the date of enactment of this section, and (B) a grace period shall be provided for the application of the rules and regulations issued pursuant to this subsection to actions taken pursuant to contracts or other agreements in effect on or before March 1, 1977. Such grace period shall be two years after the date of enactment of this section and may be extended for three additional one-year periods in cases in which good faith efforts are being made to amend such contracts or agreements.

(6) This Act shall apply to any transaction or activity undertaken with intent to evade the provisions of this Act regardless of whether such transaction or activity involves the interstate or foreign commerce of the United States.

(b) (1) *In addition to the rules and regulations issued pursuant to subsection (a) of this section, rules and regulations issued under section 4(b) of this Act shall implement the policies set forth in section 3(5).*

(2) *Such rules and regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary of Commerce, together with such other information concerning such request as the Secretary may require for such action as he may deem appropriate for carrying out the policies of that section. Such person shall also report to the Secretary of Commerce whether he intends to comply and whether he has complied with such request. Any report filed pursuant to this paragraph after the date of enactment of this section shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, any value of any articles, materials, and supplies, including technical data and other information, to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary of Commerce shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies set forth in section 3(5) of this Act.*

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. [4A] 4B. (a) Any person who, in his domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a commodity historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a commodity, may transmit a petition of hardship to the Secretary of Commerce requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary of Commerce shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Not later than 30 days after receipt of any petition under subsection (a), the Secretary of Commerce shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary deems appropriate.

(c) For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of controls shall reflect the Secretary's consideration of such factors as—

(1) Whether denial would cause a unique hardship to the applicant which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary will take into account:

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the commodity under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular commodity.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits will not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the appellant.

CONSULTATION AND STANDARDS

SEC. 5. (a) In determining what shall be controlled or monitored under this Act, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall fully cooperate in rendering such advice and information. Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations. In addition, the Secretary of Commerce shall consult with the Federal Energy Administration to determine whether monitoring under section 4 of this Act is warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(b) (1) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving

consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provision shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

(2) Upon imposing quantitative restrictions on exports of any article, material, or supply to carry out the policy stated in section 3(2)(A) of this Act, the Secretary of Commerce shall include in his notice published in the Federal Register an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(c) (1) Upon written request by representatives of a substantial segment of any industry which produces articles, materials and supplies, including technical data and other information, which are subject to export controls or are being considered for such controls because of their significance to the national security of the United States, the Secretary of Commerce shall appoint a technical advisory committee for any grouping of such articles, materials, and supplies, including technical data and other information, which he determines is difficult to evaluate because of questions concerning technical matters, worldwide availability and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, and, when appropriate, other Government departments and agencies. No person serving on any such committee who is representative of industry shall serve on such committee for more than **[two]** *four* consecutive years.

(2) It shall be the duty and function of the technical advisory committees established under paragraph (1) to advise and assist the Secretary of Commerce and any other department, agency, or official of the Government of the United States to which the President has delegated power, authority, and discretion under section 4(d) with respect to actions designed to carry out the policy set forth in section 3 of this Act. **[Such committees shall be consulted with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to any articles, materials, or supplies, including technical data or other information, and including those whose export is subject to multilateral controls undertaken with nations with which the United States has defense treaty commitments, for which the committees have expertise.]** *Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any articles, materials, and supplies, including technical data or other information, and (D) exports subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. Such committees shall be informed of the reasons for the failure to accept any advice or recommendation which such committees have rendered or made to any officer*

or agency of the United States Government. [Such committees shall also be consulted and kept fully informed of progress with respect to the investigation required by section 4(b)(2) of this Act.] *The Secretary shall inquire in each semiannual report required by section 10 of this Act an accounting of the consultations undertaken pursuant to this paragraph, the use made of the advice rendered by the technical advisory committees pursuant to this paragraph, and the contributions of the technical advisory committees to carrying out the policies of this Act.* Nothing in this subsection shall prevent the Secretary from consulting, at any time, with any person representing industry or the general public regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary of Commerce, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if he determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by him in connection with his duties as a member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the Chairman, unless the Chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this Act. Each such committee shall be terminated after a period of two years, unless extended by the Secretary for additional periods of two years. The Secretary shall consult each such committee with regard to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary of Commerce, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the grouping of articles, materials, and supplies with respect to which that committee furnishes advice.

VIOLATIONS

SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than ~~[\$10,000]~~ \$25,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or ~~[\$20,000]~~ \$50,000, whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any ~~[Communist-dominated nation]~~ *country to which exports are restricted for national security or foreign policy purposes*, shall be fined not more than five times the value of the exports involved or ~~[\$20,000]~~ \$50,000, whichever is greater, or imprisoned not more than five years, or both.

~~[(c)]~~ (c) (i) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a

civil penalty not to exceed ~~[\$1,000]~~ \$10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(2) (A) *The authority of this Act to suspend or revoke the authority of any United States person to export articles, materials, supplies, or technical data or other information, from the United States, its territories or possessions, may be used with respect to any violation of the rules and regulations issued pursuant to section 4A(a) of this Act.*

(B) *Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the rules and regulations issued pursuant to section 4A(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.*

(C) *Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the rules and regulations issued pursuant to section 4A(a) of this Act shall be made available for public inspection and copying.*

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for the period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. *In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.*

(e) Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Nothing in subsection (c), (d), or (f) limits

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 7. (a) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. 46) shall apply with respect to any individual who specifically claims such privilege.

(c) **[No]** *Except as otherwise provided by the third sentence of section 4A(b)(2) and by section 6(c)(2)(C) of this Act, no department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest. Nothing in this Act shall be construed as authorizing the withholding of information from any committee of the Congress having appropriate jurisdiction upon the request of the Chairman of such committee. Such information shall be accorded confidential treatment by the committee and may be disclosed only upon a determination by the committee that the withholding thereof is contrary to the national interest.*

(d) In the administration of this Act, reporting requirements shall be so designated as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible

consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first quarterly report made pursuant to section 10 after such action is taken.

(e) The Secretary of Commerce, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(c), shall review the rules and regulations issued under this Act and the lists of articles, materials, and supplies which are subject to export controls in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such rules and regulations, by simplifying or clarifying such lists, or by any other means. Not later than 1 year after the enactment of this subsection, the Secretary of Commerce shall report to Congress on the actions taken on the basis of such review to simplify such rules and regulations. Such report may be included in the semiannual report required by section 10 of this Act.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE
PROCEDURE AND JUDICIAL REVIEW

SEC. 8. [The] *Except as provided in section 6(c) (2), the functions exercised under this Act are excluded from the operation of sections 551, 553-559, and 701-706, of title 5 United States Code.*

INFORMATION TO EXPORTERS

SEC. 9. In order to enable United States exporters to coordinate their business activities with the export control policies of the United States Government, the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this Act shall, if requested, and insofar as it is consistent with the national security, the foreign policy of the United States, the effective administration of this Act, and requirements of confidentiality contained in this Act—

(1) inform each exporter of the considerations which may cause his export license request to be denied or to be the subject of lengthy examination;

(2) in the event of undue delay, inform each exporter of the circumstances arising during the Government's consideration of his export license application which are cause for denial or for further examination;

(3) give each exporter the opportunity to present evidence and information which he believes will help the agencies, departments, and officials concerned to resolve any problems or questions which are, or may be, connected with his request for a license; and

(4) inform each exporter of the reasons for a denial of an export license request.

【QUARTERLY】 REPORT

SEC. 10. (a) The head of any department or agency, or other official exercising any functions under this Act, shall make a semiannual report, to the President and to the Congress of his operations hereunder.

(b) (1) The **【quarterly】** report required for the first quarter of 1975 and every **【second】** report thereafter shall include summaries of the information contained in the reports required by section 4(c)(2) of this Act, together with an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for articles, materials, or supplies subject to monitoring under this Act, (B) the worldwide supply of such articles, materials, and supplies, and (C) actions taken by other nations in response to such shortages or increased prices.

(2) Each such **【quarterly】** report shall also contain an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970, (B) the worldwide supply of such commodities, and (C) actions being taken by other nations in response to such shortages or increased prices. The Secretary of Agriculture shall fully cooperate with the Secretary of Commerce in providing all information required by the Secretary of Commerce in making such analysis.

(c) *Each semiannual report shall include an accounting of—*

(1) *any organizational and procedural changes instituted, any reviews undertaken, and any means used to keep the business sector of the Nation informed, pursuant to section 4(a) of this Act;*

(2) *any changes in the exercise of the authorities of section 4(b) of this Act;*

(3) *any delegations of authority under section 4(e) of this Act;*

(4) *the disposition of export license applications pursuant to section 4(g) and (h) of this Act;*

(5) *consultations undertaken with technical advisory committees pursuant to section 5(c) of this Act;*

(6) *violations of the provisions of this Act and penalties imposed pursuant to section 6 of this Act; and*

(7) *a description of actions taken by the President and the Secretary of Commerce to effect the policies set forth in section 3(5) of this Act;*

【DEFINITION】

【SEC. 11. The term “person” as used in this Act includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

DEFINITION

SEC. 11. As used in this Act—

(1) *the term “person” includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof; and*

(2) *the term “United States person” means any United States resident or national (other than an individual resident outside the*

United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

EFFECT ON OTHER ACTS

SEC. 12. (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be constructed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act for any fiscal year commencing on or after October 1, 1977, unless previously and specifically authorized by legislation enacted after the enactment of this section.

EFFECTIVE DATE

SEC. ~~13.~~ 14. (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714), shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

TERMINATION DATE

SEC. ~~14.~~ 15. The authority granted by this Act terminates on ~~September 30, 1976~~ *September 30, 1979* or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

APPENDIX

MARCH 17, 1976.

MR. ARTHUR DOWNEY,
*Director, Bureau of East-West Trade, Department of Commerce,
Washington, D.C.*

DEAR MR. DOWNEY: For purposes of the upcoming International Finance Subcommittee hearings on the Export Administration Act, I would appreciate it if you would supply answers to the following questions:

1. What was the annual number of license applications for exports to Eastern Europe and the Soviet Union for the period 1970 to the present? What was the value of exports represented by such applications?

How many of such applications were granted each year and how many rejected? What was the value of exports represented by approved and rejected applications respectively?

What is the breakdown by commodity of the applications granted and those denied each year during the indicated period?

2. Of those applications which were rejected during the period 1970-75, what were the reasons given for such rejections? (Please give breakdown on an annual basis.)

3. For each of the years from 1970-75, with respect to those approved and those denied, what was the average length of time from receipt of the application by the Department of Commerce to final answer to the applicant?

4. For each of the years from 1970-75, what proportion of U.S. license applications required COCOM approval? How many of such applications received COCOM approval, and how many did not? What was the value of exports represented by approved rejected applications respectively?

What is the breakdown by commodity of such U.S. origin exception requests approved each year and rejected each year, respectively, during the indicated period?

5. For each of the years 1970-75, what was the number of COCOM exception requests from non-U.S. sources? What was the value of exports represented by such requests?

How many of such applications received COCOM approval and how many did not? What was the value of exports represented by approved and rejected applications?

What is the breakdown by commodity of such non-U.S. origin requests approved each year and rejected each year, respectively, during the indicated period?

I thank you for your cooperation.

With best wishes,

Sincerely,

ADLAI E. STEVENSON.

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR DOMESTIC
AND INTERNATIONAL BUSINESS,
Washington, D.C., May 20, 1976.

HON. ADLAI E. STEVENSON III,
*Chairman, Subcommittee on International Finance, Committee on
Banking, Housing, and Urban Affairs, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter to me of March 17, 1976, requested the Department of Commerce to furnish your Senate subcommittee with statistics concerning the number, value, and commodity breakdown of transactions submitted to COCOM by the United States and the other member countries as ad hoc exceptions requests to the international COCOM embargo. Those figures were to cover the period of 1970-75 and were to include cases denied as well as approved. This information was requested in connection with your subcommittee's hearing concerning the Export Administration Act. We were unable to supply the requested information in time for the hearings and undertook to provide it at a later date. The four attached tables contain the data that we have been able to work up.

The statistical data upon which these tables are based was obtained from the annual analyses of COCOM exceptions requests prepared by the U.S. delegate to COCOM. The report for 1975 has not yet been received; for that year we have had to rely on our own incomplete data.

The annual reports from the U.S. delegate contain data concerning the number and value of both U.S. and other member country requests on an approved and denied basis. These reports also have two additional categories—withdrawn and pending—which we have incorporated in our tables dealing with this aspect of COCOM transactions for 1970 through 1975. The “withdrawn” category covers such situations as the cancellation or loss of an order, duplicate orders, withdrawal in order to circumvent an objection from one or more COCOM members, et cetera. Cases in the “pending” category are those on which members have requested additional information or cases whose consideration in COCOM has been delayed for various reasons. Cases in the “pending” category can be carried over from one year to another, inflating actual year-by-year case counts. The statistics in these reports, supplemented by our own figures for 1975, appear as tables 1 and 3, the former covering U.S. exception requests, the latter those submitted by the other COCOM members.

We found it infeasible to extract from the U.S. delegate's reports all the information requested by the subcommittee regarding approval and denials on a commodity breakdown basis. The U.S. delegate's analyses for the years up to 1971 contained two sets of statistics concerning commodity breakdowns. One was arranged according to the number and value of such exceptions requests submitted by each COCOM member but did not separate approvals from denials. The other contained the same information arranged according to the communist country which was to be the recipient of the equipment covered by the COCOM exceptions request. As in the former set of statis-

tics, approvals and denials were not specified. Moreover, beginning with its 1972 analysis, the delegation streamlined its yearly reports and retained only that set of commodity breakdown statistics arranged according to recipient communist country, making it difficult to arrive at the identity of the COCOM country which submitted the exception request or the number of approved and denied cases.

Tables 2 and 4, therefore, reflect the data concerning commodity breakdowns which is readily available to us. Table 2 covers U.S. exceptions requests; table 4 those submitted by the other COCOM members. The figures in these tables for the years 1972 through 1974 are estimates derived by extrapolations from the information provided by the U.S. delegate to COCOM combined with our own data. Those for 1975 are estimates based on data extracted from our files. The statistics in these two tables should be viewed as indications of trends rather than as accurate figures. We cannot obtain more accurate data without examining the records in our files of approximately 6,200 individual transactions.

I hope the information provided in these four tables will satisfy the needs of the subcommittee. While it falls short in some specific areas, it, nevertheless, establishes a pattern for the volume and type of commodity submitted for COCOM approval during the 5-year period. If I can be of further help to you or your subcommittee concerning strategic trade control matters, please call me.

Sincerely,

ARTHUR T. DOWNEY,
*Deputy Assistant Secretary
for East-West Trade.*

TABLE 1.—COCOM EXCEPTIONS REQUEST SUBMITTED BY THE UNITED STATES, BY NUMBER OF SUBMISSIONS AND VALUE

[Dollar amounts in thousands]

| Exception requests | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 |
|--------------------|----------|----------|----------|----------|----------|-----------|
| Approved: | | | | | | |
| Number..... | 207 | 246 | 481 | 477 | 532 | 790 |
| Value..... | \$23,006 | \$18,100 | \$69,163 | \$40,083 | \$58,493 | \$155,275 |
| Denied: | | | | | | |
| Number..... | | 2 | | | | |
| Value..... | | \$16 | | | | |
| Withdrawn: | | | | | | |
| Number..... | | 2 | 14 | 6 | 5 | 8 |
| Value..... | | \$953 | \$888 | \$50 | \$272 | \$34 |
| Pending: | | | | | | |
| Number..... | 1 | 6 | 28 | 36 | 30 | |
| Value..... | \$574 | \$1,095 | \$5,085 | \$7,209 | \$37,118 | |
| Total: | | | | | | |
| Number..... | 208 | 256 | 523 | 519 | 567 | 798 |
| Value..... | \$23,581 | \$20,163 | \$75,137 | \$47,342 | \$95,881 | \$155,310 |

TABLE 2.—BREAKDOWN OF U.S. COCOM SUBMISSION BY MAJOR COMMODITY CATEGORIES
 [Dollar amounts in thousands]

| Commodity categories | 1970 | 1971 | ¹ 1972 | ¹ 1973 | ¹ 1974 | ¹ 1975 |
|--|----------|---------|-------------------|-------------------|-------------------|-------------------|
| Metalworking machinery: | | | | | | |
| Number..... | | | 3 | 2 | 14 | |
| Value..... | | | \$1,054 | \$41 | \$1,893 | |
| Chemical and petroleum: | | | | | | |
| Number..... | 2 | 2 | 2 | | 2 | |
| Value..... | \$5 | \$1 | \$6 | | \$2,250 | |
| Electrical and power-generating equipment: | | | | | | |
| Number..... | | | | | | 1 |
| Value..... | | | | | | \$62 |
| General industrial equipment: | | | | | | |
| Number..... | | 3 | 10 | 12 | 8 | 9 |
| Value..... | | \$24 | \$232 | \$2,335 | \$613 | \$1,566 |
| Transportation equipment: | | | | | | |
| Number..... | 1 | 2 | | | 1 | 1 |
| Value..... | \$19 | \$246 | | | \$6 | \$45 |
| Electronic and precision instruments: | | | | | | |
| Number..... | 212 | 127 | 283 | 236 | 204 | 310 |
| Value..... | \$10,367 | \$1,688 | \$63,030 | \$9,135 | \$41,386 | \$22,142 |
| Computers: | | | | | | |
| Number..... | 74 | 109 | 176 | 241 | 306 | 447 |
| Value..... | \$18,455 | \$8,448 | \$34,634 | \$26,174 | \$42,175 | \$98,640 |
| Metals, minerals and manufactures: | | | | | | |
| Number..... | | | 1 | 3 | 1 | 1 |
| Value..... | | | \$5 | \$19 | \$1 | \$8 |
| Chemicals, metalloids and petroleum products: | | | | | | |
| Number..... | 1 | 3 | 18 | 25 | 22 | 12 |
| Value..... | \$15 | \$37 | \$184 | \$81 | \$2,196 | \$927 |
| Rubber and rubber products: | | | | | | |
| Number..... | | | | | 2 | |
| Value..... | | | | | \$3 | |
| Miscellaneous: | | | | | | |
| Number..... | 2 | 3 | | | | |
| Value..... | \$2 | \$47 | | | | |
| Munitions items: | | | | | | |
| Number..... | 4 | 5 | 5 | | | 1 |
| Value..... | \$14 | \$61 | \$48 | | | \$2 |
| Atomic energy items: | | | | | | |
| Number..... | 1 | 2 | 3 | 2 | 3 | 8 |
| Value..... | (?) | \$5 | \$16 | \$4,002 | \$130,010 | \$31,88 |

¹ Estimate.

* No value.

TABLE 3.—COCOM EXCEPTION REQUESTS SUBMITTED BY OTHER COCOM MEMBERS, BY NUMBER OF REQUESTS AND DOLLAR VALUE

[Dollar amounts in thousands]

| Exception requests | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 |
|--------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Approved: | | | | | | |
| Number..... | 651 | 594 | 723 | 649 | 701 | 929 |
| Value..... | \$88,480 | \$70,138 | \$155,547 | \$83,052 | \$94,248 | \$478,000 |
| Denied: | | | | | | |
| Number..... | 11 | 22 | 14 | 16 | 12 | 27 |
| Value..... | \$12,461 | \$18,006 | \$1,976 | \$872 | \$943 | \$3,650 |
| Withdrawn: | | | | | | |
| Number..... | 15 | 14 | 27 | 13 | 11 | 44 |
| Value..... | \$556 | \$524 | \$6,431 | \$572 | \$690 | \$5,080 |
| Pending: | | | | | | |
| Number..... | 52 | 41 | 52 | 71 | 78 | |
| Value..... | \$21,521 | \$15,405 | \$32,163 | \$151,149 | \$587,484 | NA |
| Total: | | | | | | |
| Number..... | 729 | 671 | 825 | 749 | 802 | 1,000 |
| Value..... | \$123,018 | \$104,072 | \$196,118 | \$235,645 | \$683,365 | \$487,000 |

TABLE 4.—BREAKDOWN OF COCOM SUBMISSIONS BY OTHER COCOM MEMBERS BY MAJOR COMMODITY CATEGORIES

[Dollar amounts in thousands]

| Commodity categories | 1970 | 1971 | 1972 ¹ | 1973 ¹ | 1974 ¹ | 1975 |
|--|----------|----------|-------------------|-------------------|-------------------|-----------|
| Metalworking machinery: | | | | | | |
| Number..... | 2 | 3 | 4 | 2 | 7 | 6 |
| Value..... | \$838 | \$6,823 | \$2,770 | \$442 | \$4,316 | \$4,800 |
| Chemical and petroleum equipment: | | | | | | |
| Number..... | 1 | 5 | 4 | 4 | 6 | 3 |
| Value..... | \$5 | \$14,921 | \$1,683 | \$2,575 | \$911 | \$4 |
| Electrical and power-generating equipment: | | | | | | |
| Number..... | 1 | 3 | 1 | 1 | 1 | 1 |
| Value..... | \$1,090 | \$3,059 | \$15 | \$3 | \$4 | \$9 |
| General industrial equipment: | | | | | | |
| Number..... | 1 | 12 | 10 | 16 | 11 | 19 |
| Value..... | \$614 | \$18,541 | \$1,455 | \$6,421 | \$846 | \$2,210 |
| Transportation Equipment: | | | | | | |
| Number..... | | 4 | 5 | 7 | 3 | 1 |
| Value..... | | \$58 | \$17,324 | \$118,144 | \$21,660 | \$8,800 |
| Electronic and precision instruments: | | | | | | |
| Number..... | 229 | 307 | 405 | 310 | 306 | 314 |
| Value..... | \$13,762 | \$33,264 | \$5,128 | \$42,249 | No figures given | \$28,400 |
| Computers: | | | | | | |
| Number..... | 298 | 223 | 172 | 296 | 379 | 508 |
| Value..... | \$52,051 | \$30,726 | \$57,185 | \$30,447 | \$111,003 | \$104,000 |
| Metals, minerals, and manufactures: | | | | | | |
| Number..... | 14 | 16 | 13 | 23 | 10 | 5 |
| Value..... | \$108 | \$271 | \$1,706 | \$549 | \$204 | \$42 |
| Chemicals, metalloids, and petroleum products: | | | | | | |
| Number..... | 48 | 47 | 49 | 33 | 40 | 29 |
| Value..... | \$425 | \$370 | \$1,055 | \$225 | \$1,065 | \$3,630 |
| Rubber and rubber products: | | | | | | |
| Number..... | | | | | | |
| Value..... | | | | | | |
| Miscellaneous: | | | | | | |
| Number..... | 2 | 2 | 3 | | | |
| Value..... | \$10 | \$47 | \$59 | | | |
| Munitions items: | | | | | | |
| Number..... | 23 | 15 | 16 | 10 | 10 | 9 |
| Value..... | \$56 | \$1,101 | \$8,529 | \$383 | \$1,649 | \$1,620 |
| Atomic energy items: | | | | | | |
| Number..... | 23 | 30 | 33 | 45 | 33 | 34 |
| Value..... | \$11,829 | \$1,154 | \$515 | \$65 | \$434 | \$324,000 |

¹ Estimate.

ADDITIONAL VIEWS OF SENATOR STEVENSON

The foreign boycott title of this legislation has evoked intense, emotional, and sometimes bitter debate. It raises complex, difficult, and sensitive issues on which reasonable men can and do differ.

As the author of this legislation, my goal has been to secure a realistic, sensible and enforceable law, which is in the best interests of all the American people—Jews and non-Jews, business and labor, and ordinary American citizens—and preserves American influence in the Middle East while doing nothing to undermine prospects for a settlement, a law which all Americans can support and will obey.

Over the past two months, representatives of business, acting through the Business Roundtable, and representatives of American Jews, acting through the Anti-Defamation League, the American Jewish Committee, and the American Jewish Congress, have been engaged in constructive and statesmanlike efforts to develop a consensus on anti-boycott legislation. Their first efforts produced a set of "principles" which were of assistance in the final formulation of this legislation. Those efforts continued after the committee ordered the bill reported. Their goal was to resolve differences of interpretation and to reconcile other divergent points of view in order to produce the broadest possible consensus and bring an end to the divisiveness which has characterized much of the debate.

Such efforts are to be commended, for the ultimate test of this legislation is the support and good will it commands. It is tempting and too easy to characterize one proposal or the other as "too tough" or "too weak," to characterize necessary reflections of reality as "loop-holes" or "cop-outs." It is quite another thing to devise sound, workable legislation which unites rather than divides the American people. I am heartened by the continuing efforts of the Business Roundtable and representatives of American Jewish organizations to find the common ground which is essential to the preservation of American principles and the best interests of the United States. I urge the administration and the Congress to give their latest efforts the recognition and consideration they deserve. This legislation may still be improved.

ADLAI E. STEVENSON.

ADDITIONAL VIEWS OF WILLIAM PROXMIRE, THOMAS
J. McINTYRE, DON REIGLE, PAUL SARBANES, HARRI-
SON A. WILLIAMS, JR., AND ALAN CRANSTON

We believe the committee has seriously weakened the anti-boycott provisions of Title II of the bill compared to the legislation that passed both houses of Congress last year by overwhelming margins. The practical effect of the weakening amendments approved in committee will be to permit many U.S. companies to continue to participate in the Arab boycott against the State of Israel.

The central thrust of title II, as originally introduced, was to prohibit U.S. firms from participating in the so-called secondary or tertiary aspects of a foreign boycott. Under the secondary dimensions of the Arab boycott against Israel, U.S. firms are pressured not to trade with Israel as a condition of doing business with the Arab nations. Under the tertiary dimensions of the boycott, U.S. firms are told they cannot do business with other U.S. companies on the blacklist if they want to sell to the Arab countries. Over 1,500 American firms are on the Arab black list for one reason or another.

Arab countries can of course directly impose a primary boycott against Israel by not importing Israeli products. Primary boycotts are imposed by many countries as a recognized instrument of national sovereignty and this legislation does not address such boycotts. In contrast, secondary and tertiary boycotts interfere with our own sovereignty and impair freedom of trade between American companies. U.S. firms are forced to abandon their own business judgments, to discriminate against other U.S. firms for boycott reasons, and to become agents for carrying out the political objectives of foreign countries.

When the Senate debates S. 69, it will thus be deciding an important principle. The issue is not whether we should try to protect Israel from the primary Arab boycott. The real issue is whether we should protect our own economic sovereignty and preserve freedom of trade for U.S. companies.

In addressing this issue, we must be mindful of the practical consequences of insisting upon the importance of our own economic sovereignty. There may be some short term risks involved in the way of reduced trade with the Arab countries if we forbid U.S. firms to comply with all secondary or tertiary demands. On the other hand, if we soften our principles in the name of expediency, we run the risk of setting a precedent that could be exploited in the future by the Arabs as well as other foreign countries. If more and more American business decisions are made for the political reasons of foreign countries, the efficiency and indeed the very working of our free enterprise system can be irreparably impaired. The long term reduction in productive efficiency can substantially outweigh any short term loss in trade.

Given this view of the issue, we are concerned that the bill reported by the committee errs too far on the side of expediency. The committee narrowly approved a number of amendments which will

substantially weaken the bill compared to S. 69 as originally introduced, and compared to the legislation overwhelmingly approved by both houses of Congress last year. We hope that the exemptions adopted in committee are truly designed to cover "narrow" situations as indicated in the committee's report. However, we are concerned that these narrow exemptions might become substantially widened through the regulatory process or cause a restructuring of trade patterns in order to take advantage of the exemptions.

The two exemptions that give us the most concern are those dealing with unilateral selection and compliance with host country law. The unilateral exemption provision allows U.S. companies exporting goods to the Arab nations to comply with the boycott by excluding parts or components from U.S. blacklisted firms. Such compliance would have been prohibited by the refusal to deal provisions of the bill passed by the Senate last year and by S. 69 as originally introduced. Under the exemption, a U.S. exporter may lawfully comply with the boycott when the buyer makes a unilateral selection of a supplier or component. Thus, instead of the U.S. seller negatively excluding blacklisted suppliers, the bill, as reported, permits the foreign buyer to positively select white listed suppliers. And it is clear that the U.S. seller can agree to a unilateral selection by a foreign buyer even if it is known that the reason for the selection is to enforce the boycott by excluding blacklisted U.S. suppliers. While the burden of selection is thus shifted from the U.S. seller to the foreign buyer, the practical result is the same. U.S. firms are precluded from doing business with other U.S. firms by reason of the boycott.

The committee provided that the exemption would apply only in those cases where the goods selected are identifiable by source in the normal course of business when imported into the boycotting country. In the committee's discussion of this provision, it was argued that the make of the tires on a tractor would be identifiable in the normal course of business but the piston rings would not. Thus, a tractor company selling to an Arab country could agree to a unilateral selection of the tires by the buyer when made for boycott reasons but could not agree to a similar unilateral selection of the piston rings.

Stated another way, a U.S. firm can participate in boycotting some blacklisted U.S. firms but cannot participate in boycotting other blacklisted U.S. firms. The rationale for this double standard, according to the committee report, is the ease with which some goods may be identified at the port of entry and subjected to confiscation by customs agents. Under the committee's formulation, the principles of free trade among Americans will now come to rest on the lap of an Arab customs agent. Free markets are ordinarily regulated by price, quality, and the servicing of goods offered for sale by suppliers. To these three factors the committee adds a fourth: the dexterity of American firms in masking their identity as a precondition to participating in Arab trade.

The committee's action will not forestall a confrontation with the Arabs. It will merely shift the focus of the confrontation. Without the unilateral exemption of the focus would be on the principles of free trade among American firms. With the exemption of the President will be put in the position of reviewing each Arab trade restriction to determine whether or not the restrictions on particular goods

do or do not involve goods identifiable by source in the normal course of business. Under the committee's formulation the President will be thrust into the heart of the boycott controversy on a continuing basis.

The second exemption that concerns us is the exemption permitting the President to allow a U.S. company resident in a boycotting country to comply with the local import laws of that country even when those import laws preclude the resident U.S. company from doing business with blacklisted U.S. firms when it imports goods into the boycotting country. As the committee report indicates, the committee intends this exemption authority to be used sparingly by the President. Nonetheless, we are troubled by the precedent that would be set whenever such an exemption might be granted. Such an exemption would constitute explicit and official recognition that the laws of a foreign country can preempt our own laws establishing freedom of trade between American companies.

A Presidential waiver makes the U.S. Government a party to the boycott as well as the U.S. company involved in the transaction. This is the committee's practical response to the risks of lost trade in the absence of such an exemption. However, the risks of reduced trade are by no means a foregone conclusion. It should be seriously doubted that the Arab countries, if deprived of their ability to play-off American firms against one another for boycott reasons, would ever choose to do business with none of them.

WILLIAM PROXMIRE.
THOMAS J. McINTYRE.
DON REIGLE.
PAUL SARBANES.
HARRISON A. WILLIAMS, Jr.
ALAN CRANSTON.

ADDITIONAL VIEWS OF EDWARD W. BROOKE

S. 69, as reported by the Banking Committee, represents a retreat from the principles established last year during the informal conference between the House and the Senate on S. 3084, Amendments to the Export Administration Act. That bill sought to prohibit participation in foreign boycotts by American firms, while at the same time not unduly restricting American commerce with the boycotting countries.

Any measure designed to protect the freedom of Americans to do business with any firm or country they choose must, of course, conflict with the secondary and tertiary aspects of foreign boycotts. What is involved is a balancing of the interests of the boycotting country and freedom of trade for American firms. But in my view, S. 69 defers far too much to the interests of the boycotting countries to the detriment of the rights of American citizens freely to do business among themselves and with other nations. It is my hope that when the Senate takes up this bill, it will strengthen the U.S. commitment to free and open economic relationships.

EDWARD W. BROOKE.