

# EXPORT ADMINISTRATION AMENDMENTS OF 1977

REPORT

OF THE

COMMITTEE ON INTERNATIONAL  
RELATIONS

together with

ADDITIONAL VIEWS

[INCLUDING COST ESTIMATE AND COMPARISON OF THE CONGRESSIONAL  
BUDGET OFFICE]

ON

**H.R. 5840**

TO AMEND THE EXPORT ADMINISTRATION ACT OF 1969 IN  
ORDER TO EXTEND THE AUTHORITIES OF THAT ACT AND  
IMPROVE THE ADMINISTRATION OF EXPORT CONTROLS  
UNDER THAT ACT, AND TO STRENGTHEN THE ANTIBOY-  
COTT PROVISIONS OF THAT ACT



APRIL 6, 1977.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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## EXPORT ADMINISTRATION AMENDMENTS OF 1977

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Mr. ZABLOCKI, from the Committee on International Relations, submitted the following

### REPORT together with ADDITIONAL VIEWS

[To accompany H.R. 5840]

[Including cost estimate and comparison of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 5840) to amend the Export Administration Act of 1969 in order to extend the authorities of that act and improve the administration of export controls under that act, and to strengthen the anti-boycott provisions of that act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE

The purpose of H.R. 5840 is to extend the authority of the Export Administration Act of 1969 and to make various changes and additions to the act, including provisions aimed at improving the export licensing process and at strengthening the U.S. policy against compliance with foreign boycotts.

#### COMMITTEE ACTION

On May 19, 1975, the Secretary of Commerce forwarded to the Speaker of the House Executive Communication 1089, transmitting draft legislation providing for a 3-year extension of the authority of the Export Administration Act of 1969. This communication was referred to the Committee on International Relations. On June 5, 1975, Chairman Morgan introduced the draft legislation as H.R. 7665.

Full committee action on H.R. 7665 was preceded by extensive subcommittee hearings. The Subcommittee on International Trade and Commerce held hearings on March 6, 12, 13, and December 11, 1975,

on "Discriminatory Arab Pressure on U.S. Business" and on March 11, 15, 24 and 30, 1976, on "Export Licensing of Advanced Technology: A Review."

The full committee held hearings on the Export Administration Act on June 8, 9, 10, 11, 15, 16, August 10 and 24, 1976. Included among the witnesses were Members of Congress, officials from various executive departments, and representatives from business, labor, and academia. H.R. 7665 and various amendments to the Export Administration Act of 1969 were considered by the committee on August 26, 30, and September 1, 1976. On September 1, the committee voted out a clean bill, H.R. 15377, by voice vote, with an amendment strengthening controls on the export of U.S. nuclear technology and fuel.

H.R. 15377 passed the House on September 22, 1976, by a vote of 318-63. A companion bill, S. 3084, passed the Senate. However, final consideration of the extension of the Export Administration Act during the 94th Congress was prevented by the failure of the Senate to call for a conference on the bill.

In the 95th Congress, a new version of the extension of the Export Administration Act was introduced as H.R. 1561, which was drafted as a compromise between the Senate bill S. 3084 and the House bill H.R. 15377. The committee held hearings on H.R. 1561 on March 1, 7, 8, 9, and 14. The committee considered the bill on March 15 and 31, and instructed Chairman Zablocki to introduce a clean bill reflecting the amendments made by the committee. The clean bill (H.R. 5840) was introduced on March 31, 1977, and was referred to the Committee on International Relations. H.R. 5840 was ordered reported unanimously on the same day by a vote of 36-0.

#### BACKGROUND

Under the Committee Reform Amendments of 1974 (H. Res. 988), the Committee on International Relations received jurisdiction over export controls. Prior to this change, jurisdiction over export controls lay with the Committee on Banking and Currency. H.R. 5840 represents the first exercise of the Committee on International Relations' authority over export controls.

The principal authority for the imposition of export controls is derived from the Export Administration Act of 1969. That act replaced the Export Control Act of 1949.

The committee undertook hearings on the Export Administration Act in June and August of 1976 to consider extension of the Export Administration Act beyond its expiration date of September 30, 1976, and to consider various suggestions as to how the act could be strengthened and the export licensing process improved.

As the 94th Congress failed to complete consideration of the extension of the Export Administration Act, the act expired on September 30, 1976. Since that date the Department of Commerce has been using primarily the authorities invested in the President under the Trading With the Enemy Act to conduct the export administration functions that are specified in the Export Administration Act.

## IMPROVEMENT OF THE EXPORT LICENSING PROCESS

Sections 101-118 of the bill are aimed principally at improving the export licensing process. Many of these provisions were developed by Hon. Jonathan Bingham, chairman of the Subcommittee on International Trade and Commerce, on the basis of hearings before that subcommittee.

One hearing witness—a noted political scientist—characterized the export control and licensing system as a “shambles.” While that may be somewhat of an overstatement, major problems clearly exist. Some of these problems undoubtedly stem from lack of clarity in the act itself. Over the years, the Export Administration Act and its predecessor statute, the Export Control Act, have been successively amended. Inconsistent and even contradictory language has crept into the act, both confusing and leaving without sufficient guidance those who must administer export controls.

The committee attempts in this bill to begin the task of clarifying and making more consistent the policies and procedures of the act. The particular amendments it has approved address several broad concerns:

1. *Right of export.*—Under the original Export Control Act of 1949, virtually all trade with Communist countries was restricted. Gradually, changes in national policy have induced a loosening of such restrictions to the point where controls are now focused on items and commodities that might contribute to another country's military potential to the detriment of the national security of the United States. But the list of controlled items remains long because of the assumption from which it began—that everything is controlled. Items have had to be decontrolled with the burden of proof always on those seeking to remove an item from controls. This has created a presumption which, before 1949, would have seemed heretical—that exporting is a privilege granted by the Government only to the extent that good reason is shown that it should be granted, rather than that it is a right, like other rights, and should be abridged only for specific and overriding reasons, such as protection of the national security.

The difference in presumptions is more than theoretical. It deeply affects the manner in which U.S. export control programs are administered and may well be at the bottom of many of the problems of these programs. Several sections of the bill seek to treat exports more as a right than a privilege. For example, sections 117 and 103 direct the executive branch to further limit unilateral export controls. In section 113, the bill directs a simplification of export regulations which ultimately will require simplification of the control list and an end to the premise that all exports are subject to controls.

2. *Commodities, technology, and countries.*—Both the nature of the commodity and the country to which it is proposed to be exported are necessary considerations in export control decisions. Heaviest emphasis, however, both in the law and in practice, has long been on countries—particularly Communist countries. Section 103 of the bill attempts to reduce emphasis on Communist countries as the focus of export controls. Such a change recognizes that Communist countries

may vary in the extent to which they constitute a threat to the national security of the United States, and that non-Communist countries may also constitute such a threat.

Implicit in this reduction of emphasis on countries as the basis for export controls is the need to put greater emphasis on the nature of commodities to be exported. Greater use of available manpower and funds to identify the technology and commodities most likely to contribute to foreign threats to the national security of the United States if exported, and a focusing of export licensing procedures on such technology and commodities, would contribute substantially to increased efficiency and effectiveness in the export control process. Several provisions of title I are designed to stimulate rethinking by the Department of Commerce, in cooperation with the Departments of State and Defense, of the "countries—versus—commodities" question.

3. "*Sunshine*."—The fact that the export control process has, for a quarter century, been almost entirely closed to public and congressional scrutiny is another contributing factor to the problems with export control programs. While there is legitimate need for confidentiality to protect both trade and national security secrets, secrecy appears to have been carried farther than necessary. For that reason, section 106 gives export license applicants an opportunity under certain conditions to respond to objections raised by licensing officials. Section 112 reaffirms the right of Congress to obtain information acquired under the act. Section 110 requires that the executive branch account for its actions on matters on which it has received recommendations from the technical advisory committees. Section 113 seeks to make the export regulations more intelligible to the average businessman.

#### FOREIGN BOYCOTTS

A major focus of attention during the committee's hearings and markup in both 1976 and 1977 was the impact of foreign boycotts on U.S. domestic and foreign commerce. While a number of foreign countries may, from time to time, make political demands on American businesses with regard to business relations with a third country friendly to the United States, the Arab boycott of Israel is the major example of a foreign boycott having sustained and substantial effects on American business.

The Arab countries have conducted an organized economic boycott of Israel since the first days of the Jewish state. The effect of that boycott on U.S. foreign and domestic commerce has increased markedly since the Arab oil embargo and the dramatic increases in Arab oil prices.

The boycott takes three forms. The primary boycott involves Arab countries and companies refusing to do business with Israel and Israeli companies. This form falls outside U.S. jurisdiction and is generally recognized as a legitimate type of economic warfare under international law and practice. The United States has in the past imposed and is currently imposing such boycotts on several countries.

The secondary boycott involves the Arab Central Boycott Committee and Arab nations refusing to do business with third-country companies that deal with Israel. This type of boycott is subject to U.S. jurisdiction to the extent that the U.S. Government can regulate U.S.

company compliance with requests designed to implement such secondary boycott aspects.

The tertiary boycott involves U.S. companies refusing to do business with other U.S. companies or individuals because they fail to comply with the Arab boycott regulations or because of race, religion, or national origin. This type of boycott is clearly against the spirit and intent of U.S. law, including the civil rights and equal opportunity laws and the antitrust laws.

In 1965 the Congress adopted an amendment to the Export Control Act of 1949 (now found in sec. 3(5) of the Export Administration Act) stating that it is U.S. policy to oppose boycotts fostered by foreign countries against other countries friendly to the United States and to encourage U.S. companies to refuse to cooperate with such boycotts. Pursuant to this policy language, the executive branch has issued regulations prohibiting discrimination against Americans based on a foreign boycott and requiring reports by U.S. firms of boycott requests. It is the committee's judgment, however, that this policy statement and the regulations issued have not been effective in dealing with the impact on U.S. business of the Arab boycott of Israel and that a stronger stand is now required.

The purpose of title II of the bill is to provide such a stance principally through prohibiting U.S. citizens and companies from intentionally or knowingly complying with certain secondary or tertiary boycott requirements.

In general, it would prohibit U.S. persons, including U.S.-controlled subsidiaries and affiliates abroad, from discriminating against or refusing to do business with other persons in response to a foreign boycott request, requirement, or agreement. Several significant exceptions to these prohibitions are provided, however, to permit normal commercial practices to be followed, to avoid disruptions of business resulting from any intractable conflict of this proposed law with specific laws of foreign countries, and to interfere as little as possible with the right of any sovereign nation to conduct a direct, primary boycott of another nation, even a nation that is friendly to the United States and against which the United States does not itself conduct any form of boycott.

The antiboycott provision of H.R. 5840 (title II) is the product of lengthy consideration and discussion with major private interest groups, U.S. business interests, and the executive branch. In formulating the provision, the committee took particular note of a policy statement on foreign boycotts formulated by representatives of the Business Roundtable and major Jewish service organizations. Detailed consideration was also given to legislative language and proposals provided by individual firms with major business interests in the Middle East, by the Secretaries of State and Commerce, and by the Emergency Committee for American Trade. To a great extent, H.R. 5840 attempts to reflect and be responsive to the concerns and proposals put forth by these groups and officials.

A desire shared by all parties interested in this legislation was that prohibited actions be as specific and clear as possible so as to avoid uncertainties that could unduly inhibit U.S. international business interests and transactions. The committee has made every effort to achieve such a specific bill, and the legislative language should be interpreted accordingly. It is definitely not the intent of the commit-

tee that the legislation should extend to or restrict normal commercial practices, trade activities outside the context of any foreign boycott, or other actions not specifically prohibited. The committee does not intend, for example, to inhibit or restrict exploration of trade opportunities even with boycotting countries where, through discussion and negotiation, boycott demands might be waived and trade achieved, provided reasonable care is taken by U.S. persons to avoid supplying boycott-required information in the course of such trade explorations. Publication of information normally required for trade in nonboycott situations is not intended to be prohibited in the context of a foreign boycott even if some portions of such information might conceivably be relevant to the boycott.

Recognizing the special operating problems of U.S. persons involved in international commerce, the committee has provided certain exceptions to the basic prohibitions of title II. Such exceptions provide for compliance with the requirements of boycotting countries' laws concerning imports from and exports to the boycotted country. Where compliance with other specific laws of any foreign country would put a U.S. person in violation of this legislation, provision is made for a possible Presidential waiver of the requirements of U.S. law where all reasonable private and diplomatic efforts have not obtained a waiver of the conflicting foreign law.

The most difficult exception for the committee to deal with was permitting boycotting countries to specify to a U.S. contractor that particular persons or components be used in transactions involving such boycotting countries. An exemption for "unilateral selection" is reasonable in that such specification is a normal trade practice. In the context of a foreign boycott, however, its effect may be to implement secondary and tertiary aspects of the boycott—the very aspects the proposed legislation seeks to inhibit. The committee, therefore, stipulates that compliance by U.S. persons with such "unilateral selection" by boycotting countries or firms is permitted unless the U.S. person has actual knowledge that the purpose of the specification is to further the boycott.

In September 1976 the Subcommittee on Oversight and Investigations, chaired by Congressman John E. Moss, of the House Committee on Interstate and Foreign Commerce, issued a report on "The Arab Boycott and American Business." This report describes the nature and extent of the Arab boycott and makes eight legislative recommendations. Title II of this bill reflects those recommendations.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1—SHORT TITLE

Section 1 provides that this bill may be cited as the Export Administration Amendments of 1977.

## TITLE I—EXPORT ADMINISTRATION IMPROVEMENTS AND EXTENSION

### SECTION 101—EXTENSION OF THE EXPORT ADMINISTRATION ACT

This section of the bill amends section 14 of the act to extend the authority granted by the act, which expired on September 30, 1976, to

September 30, 1979. This is consistent with the request of the Department of Commerce, with the period for which funds are authorized by section 102 of the bill, and with the desire of the committee to provide for periodic review of the act.

SECTION 102—AUTHORIZATION OF APPROPRIATIONS

This section of the bill adds a new section 13 to the act to require that funds to carry out export control functions be specifically authorized by law, and to authorize appropriation of such funds for fiscal years 1978 and 1979.

There is currently no language in the act specifically authorizing funds to carry out the purposes of the act. In previous years, funds have been appropriated annually without undergoing an authorizing process. Under section 102 of the bill, specific authorization would be required beginning with fiscal year 1978.

This provision is consistent with clause 2 of rule XXI of the rules of the House which stipulates that no funds shall be appropriated in a general appropriations bill "for any expenditure not previously authorized by law." Establishment of a regular authorizing process for export control programs would be consistent with the practice followed by the committee with respect to programs of the Department of State and other agencies and functions under the committee's jurisdiction.

Periodic authorization of funds for export control programs will better enable the committee and the Congress to provide close oversight of this important activity and to insure that the Appropriations Committee has the guidance necessary to evaluate the Commerce Department's budget requests for export control programs.

Section 102 of the bill authorizes \$14,033,000 for the export administration program for fiscal years 1978 and 1979. This authorization is based on Congressional Budget Office estimates and breaks down as follows: For fiscal year 1978, \$5.726 million to finance ongoing programs and \$1.5 million to finance increased activity required by H.R. 5840, for a total authorization of \$7.226 million; for fiscal year 1979, \$5.897 million to finance ongoing programs and \$0.910 million to finance increased activity required by H.R. 5840, for a total authorization of \$6.807 million.

The Department of Commerce estimates that the marginal increase in activity resulting from this bill will require \$1.32 million in fiscal year 1979. The lower committee figure of \$0.910 million reflects the fact, not taken into account in the Department's request, that implementation of sections 107, 113, and 117 of the bill must be substantially completed by the end of fiscal year 1978 and will not entail significant ongoing costs in fiscal year 1979.

Section 102 of the bill also authorizes appropriation of such sums as may be necessary for pay raises and other nondiscretionary costs mandated by law.

Approximately half of the increase in funds recommended by the committee for fiscal years 1978 and 1979 is to implement title II of this bill, and the committee intends that these funds will assure vigorous enforcement of title II provisions.

SECTION 103—CONTROL OF EXPORTS FOR NATIONAL SECURITY PURPOSES:  
FOREIGN AVAILABILITY AND POLICY TOWARD INDIVIDUAL COUNTRIES

Subsection (a) of this section of the bill amends section 4(b) of the act by repealing obsolete language, clarifying the language governing control of the export from the United States of goods freely available from other countries, and specifying the criteria on which to base U.S. export control policy toward individual countries.

Paragraphs (2) through (4) of section 4(b) of the act, which were added in 1972, called for a review of the commodity control list with a view to removing unilateral export controls on items freely available from other countries, especially those for which there are significant potential export markets, and for a special report by the Secretary of Commerce on actions taken to implement this provision. The required actions were taken and the special report submitted in 1973, and these paragraphs are now obsolete. They are repealed by paragraph (2) of section 103(a) of the bill.

Paragraphs (1) and (3) of 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.

The President would be required to 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 reported to the Congress by December 31, 1978, and included in every second semiannual report thereafter under the Export Administration Act.

Paragraph (3) of section 103(a) of the bill also makes the foreign availability language of existing section 4(b)(2) of the act a permanent part of the law. One of the most severe flaws in the export licensing system is the prohibition on export from the United States of items freely available from other countries. As a general policy, no purpose is served by this practice except to transfer business from American companies to their foreign competitors. Yet in section 4(b)(1) of the act, which contains the basic authorities granted to the President under the act, the stated policy is precisely that the President may impose national security controls on items "regardless of their availability" from other countries. Since 1972 the act has existed with this provision allowing unilateral controls followed by another provision directing their removal.

The foreign availability language of existing section 4(b)(2) of the act states the policy as it should be: That goods freely available elsewhere shall not be controlled for export from the United States unless it is demonstrated that the absence of controls would damage the national security. Such an approach would protect both national

security and commercial interests. Paragraph (3) of section 103(a) of the bill inserts this language, in place of the current foreign availability language, as one of the continuing authorities of the act. This amendment reverses of presumption in the section to clarify and strengthen the intent that export controls should not be applied on items available from other countries, except for overriding national security reasons.

Subsections (b) and (c) of this section of this bill amend section 4(h) of the act to bring it into conformity with the basic purposes and policies of the act as a whole, thereby providing the administration with more coherent policy guidance. This is accomplished by removing specific references to Communist countries, and by providing stricter guidelines for restricting exports on national security grounds.

Section 4(h) of the act was added in 1974. It directs the Secretary of Defense to review proposed exports to any Communist country and to recommend that an export be disapproved if he determines that it "will significantly increase the military capability of such country." The committee recognizes that it is reasonable to give the Secretary of Defense a special role in reviewing exports on national security grounds; these subsections of the bill preserve that role. However, the committee believes that this authority should be stated in terms which conform to the national security purposes of the act as a whole which, as stated in section 3(1), are "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."

That language suggests, and the committee perceives, no reason for limiting the Secretary's role under section 4(h) to Communist-country exports. Other exports have national security implications as well, and it makes sense for the Secretary to address those implications also. Subsection (b) of this section of the bill strikes all references to "controlled"—that is—Communist countries and authorizes the Secretary of Defense to review the exports to any "country to which exports are controlled for national security purposes." The effective date of this subsection is delayed in order to allow for the development of different criteria for country controls as required by section 103(a)(3) of the bill.

The language of section 3(1) of the act also provides a stricter standard for restricting exports on national security grounds than is required in section 4(h): the export must not only significantly increase the military potential of the recipient country, but must do so in a way which would prove detrimental to the national security of the United States. Section 4(h) requires that only the first of those two tests be met, thus, in effect, authorizing the restriction on national security grounds of exports which would not in fact affect the national security. The bill, in subsection (c) of section 103, permits the Secretary of Defense to continue to review any export which might make a significant contribution to the military potential of a country to which exports are restricted for national security purposes, but to recommend disapproval only where such a contribution to military potential would prove detrimental to the national security of the United States.

In short, subsections (b) and (c) of section 103 of the bill both broaden and narrow the authority of the Secretary of Defense, by enabling him to review exports to countries other than just Communist countries, but by allowing him to recommend disapproval only of those exports which would clearly be detrimental to the national security.

Section 6(b) of the act provides felony penalties for the export in willful violation of the act "with knowledge that such exports will be used for the benefit of any Communist-dominated nation". Again, it is the view of the committee that exports to Communist nations in violation of the act are not necessarily more serious than exports to other nations in violation of the act. Accordingly, and in conformity with the amendments to section 4(h) of the act, the bill in section 103(d) provides felony penalties for exports in willful violation of the act with knowledge that such exports will be used for the benefit of any "country to which exports are restricted for national security or foreign policy purposes."

It cannot be emphasized too strongly that the intent of this section is neither to increase the number of cases subject to review by the Secretary of Defense nor to further restrict exports on national security grounds. Either result would be contrary to the committee's intent, for the intent is precisely the contrary. Testimony suggests that in applying national security controls, the Department of Defense needs to move away from a country orientation and toward a technology and commodity orientation—that is, to pay less attention to the destination of an item and more attention to the basic capabilities of the item itself. It is not good enough to say that exports are restricted to Communist countries but everything else goes. The Secretary needs to develop better criteria for determining which exports should be controlled on national security grounds. It is the committee's intent that the Secretary develop and implement such criteria during the period for which the act is extended by this bill. It is the committee's expectation that such criteria will have the effect of both narrowing and tightening national security controls.

#### SECTION 104—STORAGE OF AGRICULTURE EXPORTS IN THE UNITED STATES

The Export Administration Act states that it is U.S. policy to use export controls to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand and to further U.S. national security and foreign policy objectives. Agricultural commodities fall within the export control authority of the act. Except when controls are imposed for national security and foreign policy purposes, the authority may not be used to restrict agricultural exports if the Secretary of Agriculture determines that the supply of such commodities is in excess of the requirements of the domestic economy.

With the growth of American farm sales abroad, and rising foreign dependence on such exports, the imposition of export controls on agricultural commodities has come under severe criticism. The soybean embargo in 1973 disrupted important markets for U.S. farmers, angered U.S. allies and other foreign customers, and stimulated soybean sales from elsewhere than the United States. Restraints on grain

sales to the Soviet Union and Poland in 1975 evoked strong protests from the American farm community. The committee is concerned over the imposition of controls on exports of agricultural commodities that might be undertaken without adequate advance assessment of the possible damaging impact on U.S. domestic and foreign interests. Potential short- and long-term impairment of U.S. farm sales, income, and overseas markets and harm to our foreign relations must be weighed fully against any perceived immediate benefits of such embargoes.

In the interest of America's farmers and of the Nation as a whole, and of promoting a more dependable long-term agricultural export policy, the committee included in H.R. 5840 a provision designed to remove a major element of uncertainty in this field while retaining all protections necessary to U.S. interests. Section 104 of the bill permits agricultural commodities purchased 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 conjunction with the Secretary of Agriculture finds that (1) such commodities will eventually be exported and (2) storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities.

Section 104 is intended to permit greater assurance to foreign buyers that agricultural commodities they have already paid for will not be subject to quantitative export limitations imposed after the purchase. It will also encourage acquisition of reserve supplies of U.S. farm commodities by foreign purchasers, with a resulting moderating effect on excessive price fluctuations that have hurt producers and consumers alike. The use of available U.S. storage capacity for agricultural commodities under this provision should mean more American jobs and further help for the U.S. balance of payments.

The protections maintained under this provision would preserve existing authority to safeguard the domestic economy in times of short supply. They also are designed to prevent foreign buyers from using the provision as a means of evading U.S. export policy, or for speculating with U.S. farm commodities to the detriment of American farmers and consumers.

The Secretary of Commerce is given 30 days in which to act upon a request, after which period the exemption is deemed approved.

#### SECTION 105—CONGRESSIONAL REVIEW OF EXPORT CONTROLS ON AGRICULTURAL COMMODITIES

This section of this bill amends section 4 (f) of the act to provide that if export controls are placed on agricultural commodities for purposes of furthering U.S. foreign policy or to fulfill international responsibilities of the United States, then the President shall immediately report such export controls to the Congress and explain the reasons for the controls. Furthermore, the section provides that within 30 days of the date of receipt by the Congress of such a report from the President, the Congress can veto the export controls by a concurrent resolution of disapproval. In computing the 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.

## SECTION 106—PERIOD FOR ACTION ON EXPORT LICENSE APPLICATIONS

This section of the bill amends section 4(g) of the act to provide that: (1) any export license application not acted upon within 90 days of receipt is "deemed to be approved and the license shall be issued" unless a finding is made that additional time is required and the applicant notified in writing of the specific reasons for the delay and given an estimate of when the decision will be made; (2) when an application is not acted upon within 90 days of receipt of the application, the applicant shall "be specifically informed in writing of any substantial questions \* \* \* and negative considerations or recommendations" which came up in the review process and given an opportunity to respond; (3) the applicant shall be permitted upon request to review for accuracy the documentation supporting any application to be submitted to an interagency review process for approval; and (4) the applicant shall be informed in writing of the specific statutory basis of any denial of his application.

Section 4(g) of the act, which was added in 1974, resulted from congressional concern over inordinate delays in the export licensing process, and clearly expresses the intent of Congress that licenses be approved within 90 days except in unusual circumstances which are meaningfully explained to the applicant. Apparently, however, the language of section 4(g) is not strong enough, because applications still languish in the bureaucracy, unaccounted for, for months. For example, a study conducted by a Presidential task force shows the following: (1) A random sample of 34 relatively simple applications which did not have to be referred to the formal interagency review process took an average of 93 days to decide; (2) a random sample of computer applications referred to the Department of Defense under section 4(h) of the act took an average of 4 months to decide; and (3) in 1975, 1,105 applications, which included nearly 20 percent of the Communist-destination applications, took more than the statutory 90 days to decide, and 18 took over a year. Typically, objections to an export license application are raised in the confines of the bureaucracy; the applicant is neither meaningfully informed of the causes of the delay nor given a chance to respond.

The purpose of paragraph (1) of revised section 4(g) of the act is to put an end to the practice of retaining license applications in the bureaucracy for long periods of time without justifying the delay. It requires that the Secretary of Commerce or other official exercising authority under the act take one of two actions within 90 days of receipt of an export license application: either make a decision on the application, or meaningfully inform the applicant of why additional time is needed. As an incentive to the Secretary or other official to take one of the required actions within the stipulated time period, the paragraph provides that in the absence of such action the application must be approved and the license issued.

While agreeing with the intent of this paragraph, the Department of Commerce has objected to it on the grounds that it automatically vests in the applicant the right to export after 90 days in the absence of the required action by the Department. The Department has argued that this creates the risk that exports damaging to the national secu-

urity might automatically go forward through inadvertence, such as, if an application is lost in the Department or a notification lost in the mail.

The committee wishes to state emphatically that this interpretation of paragraph (1) of revised section 4(g) of the act is at variance with the committee's intent. That intent is to require the Department to make all reasonable effort to process export license applications as expeditiously as possible, to focus at an early stage on those problematic applications which will require extensive review and so notify the applicant, and in general to exercise sufficient administrative control so that applications are not lost or delayed indefinitely at some stage of the licensing process. The committee emphasizes that if the Department institutes necessary reforms in licensing policies and processes, these requirements can be easily met.

The intent of the committee is not to remove any discretion over the issuance of licenses where the 90-day notification requirement is not met, but to give the applicant recourse and to place the burden of proof on the Department where it belongs. Under no circumstances does this paragraph authorize shipment without a license of items which by law require a license. The Department retains the licensing power. It is the presumption and the intent of the subcommittee that if appeal to a court were necessary to implement this provision, the court would not be compelled to permit the export in question, but only to require the Department to show cause why a license should not be required to be issued. There can be no question of inadvertent exports under this paragraph.

Paragraph (2) (A) of revised section 4(g) of the act introduces an element of "due process" into the export licensing procedure. It provides that in those cases where the administration makes the required finding that more than 90 days will be needed to reach a decision on an application, the applicant shall have an opportunity to confront and seek to counter objections raised by licensing officials. This provision guards, for example, against the possibility that the objection to the application is based on a misunderstanding or misinterpretation of the documentation submitted by the applicant. Again, the administration's right to take as long as necessary to reach its decision, and to deny applications when necessary, is in no way abridged. All that is required is that the administration be to some minimal degree accountable for its actions.

Paragraph (2) (A) also contains a limited authorization to withhold information from the applicant on national security grounds. It is the intent of the committee that this authority not be invoked routinely, but only when absolutely necessary, and that applicants with the required security clearance be deemed to have a "need-to-know" such classified information pertinent to the licensing decision as may be necessary for effectuating the purposes of this paragraph.

Paragraph (2) (A) is designed to add to the existing right of administrative appeal of negative licensing decisions, a right to be heard during licensing deliberations on those particularly difficult cases which take more than 90 days to decide. It is not meant to preclude efforts by the administration to keep the business sector as fully and

currently informed as possible of the considerations involved in all licensing decisions.

During markup, the committee amended paragraph (2) (A) to insert the words "any substantial" in the first sentence. The committee stresses that this amendment is designed to clarify, not to change, its intent. That intent is that the word "substantial" be construed broadly to include any question, consideration, or recommendation affecting the licensing decision.

Paragraph (2) (B) of revised section 4(g) of the act requires that the applicant be given an opportunity, if he so requests, to review the documentation to be submitted to any interagency review process for purposes of describing the proposed export. This will 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.

Paragraph (3) of revised section 4(g) of the act requires that an applicant be informed in writing of the specific statutory basis for denial of his license. This provision will end the Commerce Department's present unsatisfactory practice of informing applicants that a license has been denied on grounds of "national interest," which under the Export Administration Act is not a criterion for denying license applications. Application for export licenses may be denied under the act only for foreign policy, national security, or short supply purposes. Interjection of a "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.

#### SECTION 107—EXPORTS OF TECHNICAL INFORMATION

This section of the bill adds a new subsection (j) to section 4 of the act, providing for a study by the Secretary of Commerce of the problem of the transfer of sensitive national security information by technology exchange agreements and by scientific publications and other means of public dissemination.

Testimony, particularly by the General Accounting Office, has indicated that significant technology transfer from the United States takes place by means not subject to the export licensing process, especially through the consummation and implementation of technology exchange agreements. The committee is also aware of some concern, perhaps most notably expressed by Dr. Fred C. Ikle, former Director of the Arms Control and Disarmament Agency, that sensitive national security information may reach unintended destinations in scientific papers. It is the intent of this provision not to prejudge the severity of these problems, much less to solve them, but merely to provide for the acquisition of the information necessary for determining the dimensions of the problems and for developing solutions, if and as appropriate. As the very language of this section makes clear, the committee is fully cognizant of the first amendment implications of this provision and has no intention of violating constitutional rights of freedom of expression.

## SECTION 108—PETROLEUM EXPORTS

This section of the bill adds a new subsection (k) to section 4 of the act, providing that petroleum products refined in U.S. foreign trade zones or in the U.S. territory of Guam from foreign crude oil may be excluded from quantitative export controls imposed for domestic short supply reasons unless the Secretary of Commerce determines that a product is in short supply, in which case he may restrict its export.

It is the committee's judgment that export controls should apply primarily to products that originate in the United States, rather than those that originate abroad and are processed here. Export controls on petroleum products are designed to insure adequate domestic supplies of petroleum products and should not necessarily apply to petroleum imports. The purpose of a foreign-trade zone is to attract foreign supplies and commodities that can be processed and then reexported, either to the United States or to a foreign country. This exemption applies only to products refined from foreign crude oil. Export controls would still be an option on such products in case of domestic short supply of a particular product.

It is the committee's understanding that this amendment to the Export Administration Act would affect only two refineries. There is only one refinery located in a foreign-trade zone, which is in Hawaii, and there is a refinery in Guam. These two refineries have excess capacity and excess production, and both the refineries and the economies of Hawaii and Guam would benefit from the refineries being allowed to utilize that excess capacity to reexport petroleum products refined from imported petroleum.

## SECTION 109—EXPORT OF HORSES FOR SLAUGHTER

This section of the bill adds a new subsection (l) to section 4 of the act, prohibiting the export by sea of horses from the United States for purposes of slaughter.

Most horses which are exported for purposes other than slaughter are transported by air. However, an increasing number of American horses are being exported for slaughter, especially to Europe, and they almost always travel by sea under deplorable conditions. Since the animals will be slaughtered when they reach their destination and their economic value is rather low, little effort is made to insure their humane treatment during the 2-week voyage. Those that die along the way are merely thrown overboard. Those horses that survive the trip often arrive emaciated, sick, and with broken legs or spines.

At least one case has been cited where a European horse dealer refused to put an animal with a damaged spine out of its misery until it was transported to the slaughterhouse because he did not want to decrease the economic value of the carcass.

The Government of Canada imposed a ban on the export of horses by sea in July 1974. One result of this ban has been to increase the export of live horses from the United States.

The Department of Agriculture's National Horse Industry Advisory Committee recommended in December 1975, "that horses not be exported by water for slaughter in other countries." A similar ban has

been endorsed by the U.S. Humane Society, the American Horse Council, the Society for Animal Protective Legislation, and the National Horsemen's Association.

#### SECTION 110—TECHNICAL ADVISORY COMMITTEES

This section of this bill amends section 5 (c) of the act to (1) increase the terms of the industry representatives on the industry-government Technical Advisory Committee (TAC's) from 2 to 4 years; (2) add multilateral controls to the matters on which the TAC's are to be consulted; and (3) require that the Secretary of Commerce include in his semiannual reports to Congress an accounting and analysis of the consultations undertaken with the TAC's, the use made of their advice, and their contributions to carrying out the purposes of the act.

The TAC's were authorized as part of the 1972 amendments to the act to advise the Department of Commerce on technical matters, foreign availability, and licensing procedures, and in general to facilitate communication between the business and government sectors. Lengthening the term of industry representatives on the TAC's will enable them to become more knowledgeable about matters within their areas of responsibility and thereby make it possible for them to render more effective service. The addition of multilateral controls to the responsibility of the TAC's will give the exporting community an opportunity for involvement in a part of the export licensing process which is as vital as unilateral U.S. licensing procedures. The requirement that the Secretary report to Congress on the use and impact of the TAC's will result in provision to the committee of information necessary to evaluate the accomplishment of the objectives of section 5(c) of the act, particularly in view of complaints by industry that the TAC's are not taken seriously.

The committee notes that it considered and rejected recommendations by industry that the Government be required to justify directly to the TAC's any refusal to accept their advice. The committee views such a requirement as an unwarranted intrusion of the private sector into governmental decisionmaking. The committee bill preserves the requirement that the Government be accountable for its actions, without creating a presumption that the Government is constrained to accept the advice of any single interest group.

#### SECTION 111—PENALTIES

This section of the bill increases maximum fines for violations of the act and increases administrative flexibility in collecting civil penalties in conjunction with export license suspensions and probations.

The deterrent effects of fines presently authorized by the Export Administration Act of 1969 have been severely eroded by inflation. Experience with these sanctions suggests that, particularly for large exporters and export transactions, they are not sufficient to deter violations. In the case of large exports, at least, it has proved possible to "pad" contracts to cover the costs of any fines that might be incurred.

The committee concurs with executive branch recommendations that these penalties be increased. Under this bill maximum first-offense

criminal fines would be increased from \$10,000 to \$25,000, and for subsequent offenses from \$20,000 to \$50,000. The maximum civil penalty would be increased from \$1,000 to \$10,000.

Section 103(d) of the bill, discussed above, would make criminal penalties presently reserved for violations involving illegal exports to Communist-dominated countries applicable more broadly to such exports to any country to which exports are restricted for the national security purposes. Maximum fines for such violations would be increased under this section of the bill from \$20,000 to \$50,000.

#### SECTION 112—AVAILABILITY OF INFORMATION TO CONGRESS

This section of the bill amends section 7(c) of the act to: (1) Reaffirm congressional intent that the secrecy provisions of the act do not abridge the inherent right of Congress to acquire information obtained under the act; (2) require the provision of such information upon request to any committee or subcommittee of Congress of appropriate jurisdiction; and (3) provide appropriate safeguards to protect the confidentiality of information submitted to Congress by stipulating that Congress shall receive confidential information under the same constraints that apply to the Secretary of Commerce under existing law, that is, the information shall not be disclosed unless the full committee determines that withholding it would be contrary to the national interest.

Section 7(c) currently provides that:

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.

The executive branch has interpreted this language as applying to the disclosure of information to Congress. The Department of Commerce has refused to provide specific information obtained under the act to Congress except upon the stipulated national interest determination by the Secretary or upon receipt of a waiver of confidentiality by the firm supplying the information, and except under conditions specified by the Department. In 1975 former Secretary Morton submitted Arab boycott information to the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, only under threat of contempt proceedings, and only after a long attempt to place restrictions on the use the subcommittee could make of the information. In 1976 the Department refused to testify before the International Relations Subcommittee on International Trade and Commerce—even in executive session—on allegations that machine tools licensed for sale to the Soviet Union had been instrumental in Soviet MIRV production, until it obtained a release from the company which made the sale.

The committee finds it incomprehensible that Congress intended by section 7(c) to deny itself access to such information as it might later deem necessary for the effective exercise of its legislative and oversight responsibilities, to delegate to the administration the authority

to determine the disposition by Congress of such information, or to give private industry a veto over the provision of such information. The committee concurs in the statement by Hon. John Moss, chairman of the Commerce Subcommittee on Oversight and Investigations, on the basis of testimony by leading experts on constitutional law, that: "Section 7(c) does not in any way refer to the Congress and no reasonable interpretation of that section should support the position that Congress by implication had surrendered its legislative and oversight authority under article I of the Constitution."

This amendment should not be necessary. It is made necessary only by the decision of the executive branch to interpret section 7(c) in a manner inconsistent with the intent of Congress. The committee presumes that the rights of Congress reaffirmed by this amendment already exist and would exist without this amendment. The addition of this language to this statute is not meant to imply that the absence of similar language in other statutes in any way limits the right of Congress to acquire information.

By letter of March 15, 1977, from Arthur T. Downey, Deputy Assistant Secretary for East-West Trade, to Hon. Jonathan B. Bingham, the Department of Commerce has agreed that "appropriate jurisdiction" is a matter for determination by the House and Senate parliamentarians.

The committee wishes to take note of the Department's contention in the same letter that, in order to maintain confidentiality of information acquired under the act in view of the requirements of the Freedom of Information Act (5 U.S.C. 552), as amended by the Government in the Sunshine Act (Public Law 94-409), it is necessary to specify the types of information with respect to which confidentiality must be maintained.

The committee is not persuaded by this argument. The committee finds the list of types of information proposed by the Department for confidential treatment to be virtually all-inclusive, and actually to expand the secrecy provisions of the act, rather than reduce them as is the intent of the committee. It is not the intent of the committee to require disclosure of trade secrets and commercial and financial information which is legitimately confidential or the public release of which could cause competitive harm or the disclosure of intra-agency, interagency, or intergovernmental deliberations with respect to which secrecy is truly necessary on the grounds of national defense, foreign policy, or business confidentiality. The committee considers the various exemptions granted by the Freedom of Information Act, together with the existing provisions of section 7(c) of the act, to be adequate for the protection of such information.

For the same reason, the committee does not accept the Department's argument that it is necessary to grant a blanket exemption from the provisions of the Freedom of Information Act with respect to all information received by the Department before the effective date of the Government in the Sunshine Act. Any such information which is legitimately confidential is, in the opinion of the committee, adequately protected by the exemptions of the Freedom of Information Act and section 7(c) of the Export Administration Act.

## SECTION 113—SIMPLIFICATION OF EXPORT REGULATIONS AND LISTS

This section amends section 7 of the act by adding a new subsection providing for a review of the Export Administration Regulations and the export control lists with a view to simplifying them. A report on the results is to be provided to the Congress within a year after enactment of this section.

The regulations currently comprise some 400 pages, of which over 100 are taken up with the Commodity Control List itself and its interpretations. Mastery of these complex and constantly changing regulations is costly for any business and is particularly difficult for small businesses which cannot afford to maintain staffs of experts on export regulations. Testimony suggests that much noncompliance is probably inadvertent, the result of an inability to determine what the requirements are. This section of the bill directs the Secretary of Commerce to see what can be done to simplify the regulations so as to facilitate compliance and reduce its cost.

The export control lists, which are part of the regulations, are themselves complex. The requirement that ways of simplifying and clarifying the lists be explored as part of the review is intended to insure that attention is given to the formidable obstacles which overly complex control lists may pose for potential exporters unfamiliar with the export control process. It is also intended to encourage concentration on truly significant aspects of technology and to facilitate the elimination of less significant aspects from the control lists.

## SECTION 114—TERRORISM

This section of the bill amends the policy statement in section 3 of act to specify 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 assist or give sanctuary to persons involved in supporting or participating in acts of international terrorism. It also states that the President should first make every reasonable effort to achieve this goal through international cooperation and agreement before resorting to the use of export controls for such purpose.

## SECTION 115—SEMIANNUAL REPORTS

This section of the bill adds a new subsection (c) to section 10 of the act which specifies the information to be included in the semiannual reports to Congress by the Department of Commerce which are already required by section 10(a) of the act. It is the intent of the committee that these reports include all data and analysis which in the judgment of the Department are necessary for Congress to reach informed judgments on the degree to which the purposes of the act are being achieved and on the necessity of further legislation.

Section 115 of the bill consolidates existing scattered reporting requirements in the act. It includes information relating to such matters as: organization changes; efforts to keep business informed of the export control rules and regulations; changes in the exercise of the

authorities under the act; the disposition of export license applications; consultations with the technical advisory committees; and violations of the act and penalties imposed for such violation. To a large extent, most of this information is already included in the semi-annual report to the Congress. The purpose of this section is to give a clear indication of the continued interest of the Congress in receiving such information. This section should not be read to exclude the inclusion of other information in the semiannual report to the Congress.

This section of the bill also makes technical amendments to the act to bring all of the reporting requirements into conformity with the semiannual reporting requirement to Congress (the reports were furnished quarterly until 1974).

#### SECTION 116—SPECIAL REPORT ON COCOM

This section of the bill requires the submission within 12 months of a special report on multilateral export controls.

In the field of export administration, few problems are more troublesome than those involved in implementing multilateral export controls. The current embodiment of these controls is a coordinating committee known as COCOM, which was set up in 1949 in recognition of the fact that the United States could not alone control the flow of technology to the Communist countries. This informal, 15-nation group (consisting of the NATO countries, minus Iceland, plus Japan) operates entirely in secrecy, without formal rules of procedure or enforcement powers.

The evidence is that COCOM does not work very well. It is inefficient. There are allegations that the participating governments do not uniformly interpret and enforce the COCOM controls, to the disadvantage of those countries—especially the United States—which apply the controls strictly. Not all countries producing advanced technology are members of COCOM and subject to its control list, and the nonmember countries are of course at an advantage in the international marketplace. The committee has heard charges that COCOM's end-use safeguards are ineffective. For these and other reasons, indications are that the COCOM control list does not accurately reflect advances in technology, that COCOM procedures have an adverse impact on U.S. business, and that COCOM does not effectively prevent the export of technology to destinations which are supposed to be controlled. COCOM is a quarter-century old. It is time to rethink the whole system.

This section of the bill directs a detailed study of the operations of COCOM, including analyses of: the process of reviewing the COCOM list; the process for making exceptions to the list; the uniformity of interpretation and enforcement by the participating countries; the problem of exports by countries not participating in COCOM; the effectiveness of compliance procedures for exceptions; and means of improving the effectiveness of multilateral export controls. This section is designed to stimulate a rethinking of U.S. participation in COCOM on the part of the executive branch and to provide data for such rethinking in Congress.

**SECTION 117—REVIEW OF UNILATERAL AND MULTILATERAL EXPORT CONTROL LISTS**

This section of the bill requires the Secretaries of Commerce and State, in cooperation with other appropriate agencies and the technical advisory committees, too conduct a study to determine whether any export controls imposed unilaterally by the United States or on a multilateral basis should be removed, modified, or added in the interest of national security, taking into account such factors as foreign availability and the impact of the controls on the military capability of any country threatening the national security of the United States, and to report to Congress by December 31, 1978.

One of the key issues in export administration 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, in light of industrial and technological developments at home and abroad, some controls should be added and others removed. In the 94th Congress, this question was explored in depth in hearings by the Committee on International Relations and its Subcommittee on International Trade and Commerce. The list review required by this section of the bill would provide an occasion for carefully examining criticisms made in those hearings with a view to adopting whatever changes in the control lists may be appropriate to insure that the Nation's security and commercial interests are 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.

**SECTION 118—TECHNOLOGY EXPORT STUDY**

This section of the bill directs the President, through the Secretary of Commerce, the Secretary of Labor, and the International Trade Commission, to conduct a study of the domestic economic impact of exports from the United States of industrial technology whose export requires a license under the Export Administration Act. Concern has arisen that the United States is losing its international competitive advantage through the export of its advanced technology, with a resulting loss of employment in the United States. The study is to include an evaluation of current exporting patterns on the international competitive position of the United States in advanced industrial technology fields and an evaluation of the present and future effect of these exports on domestic employment. The results of the study are to be reported to the Congress within 1 year of enactment of this bill.

**TITLE II—FOREIGN BOYCOTTS**

**SECTION 201 (a)—PROHIBITIONS ON COMPLIANCE WITH FOREIGN BOYCOTTS**

This section of the bill adds a new section 4A to the act, containing the following provisions:

*Section 4A (a) (1)—Prohibited Actions*

New section 4A (a) (1) of the act directs the President to issue rules and regulations to prohibit any U.S. person from willfully taking or agreeing to take certain actions (discussed below) to comply with, to further, or to support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States, unless that country is the object of a boycott under U.S. law. This prohibition covers actions which are taken or are agreed to be taken (1) pursuant to an agreement with the boycotting country (including any company, national, or resident thereof), (2) to comply with a requirement of the boycotting country, or (3) to comply with a request from or on behalf of the boycotting country. The prohibition covers written and unwritten agreements and actions taken both directly pursuant to an agreement and in response to a requirement of a boycotting country.

The prohibited actions are :

(A) Refraining from doing business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country. However, the mere absence of a business relationship does not by itself indicate support for a foreign boycott or establish a violation of this prohibition.

(B) Refraining from doing business with any person not covered under (A). However, the mere absence of a business relationship does not by itself indicate support for a foreign boycott or establish a violation of this prohibition.

(C) Refraining from employing or otherwise discriminating against any U.S. person on the basis of race, religion, sex, or national origin.

(D) Furnishing information with respect to the race, religion, sex, or national origin of any other U.S. person. This prohibition does not prevent an individual from providing such information about himself or his family, such as information to meet immigration and passport requirements.

(E) Furnishing information about whether any person has, has had or plans to have any business relationship with or in the boycotted country, with any business concern, 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 boycotting country. This prohibition extends to information regarding relationship by way of sale, purchase, legal or commercial representation, shipping or other transportation, insurance, investment, or supply. This prohibition in no way prohibits a person from responding to requests for ordinary business information in a normal commercial context.

(F) Furnishing information about whether any person has a connection with a charitable or fraternal organization which supports the boycotted country, be that connection by way of membership, contribution, or other association or involvement in its activities.

(G) Paying, honoring, advising, confirming, processing, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited under this legislation. There is no intent to preclude careful and detailed examination

of a letter's provisions in order to establish whether they contain any such condition or requirement with which compliance is prohibited.

(H) Using a foreign person, including a subsidiary or affiliate of a U.S. person, in order to circumvent the rules and regulations implementing the prohibitions against complying with, furthering or supporting a foreign boycott.

Nothing in this bill should be interpreted as prohibiting a U.S. person from agreeing to a contract which includes a general provision that the contract will be implemented under the laws of the host nation. However, this bill would prohibit the U.S. person from taking an action pursuant to that contract which would be prohibited under this bill.

*Section 4A (a) (2)—Exceptions to Prohibitions*

New section 4A (a) (2) of the act provides that there shall be various exceptions to the prohibitions against taking or agreeing to take actions to comply with, further or support a foreign boycott against a country friendly to the United States. These exceptions are:

(A) Compliance with the requirements (including laws and regulations) (i) prohibiting the importation of goods and services from the boycotted country or of goods and 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 boycotting 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) Compliance with import and shipping document requirements with respect to positive designation of country of origin and with respect to the name and nationality of the carrier and the route of shipment, and the name and supplier of the shipment. With respect to negative designation of country of origin, compliance with requests for such certification will be permitted during the first year following the effective date of the rules and regulations implementing the prohibitions in this legislation and shall be prohibited thereafter.

There have been expressions of concern that this legislation will place American carriers at a disadvantage in competing with foreign carriers. The bill will have equal and nondiscriminatory effect upon all carriers by air, water, or land in the foreign commerce of the United States.

(C) Compliance with export requirements of the boycotting country relating to shipments or transshipments of exported goods to the boycotted country.

(D) Compliance with the designation by the boycotting country of specific products or subcontractors to be included in a purchase or contract. This process, known as unilateral selection, entails designation of products or subcontractors by the boycotting country itself, by a business concern organized in that country, or by a national or resident of the boycotting country. The selection may designate a specific person or product to be included in a particular aspect of a transaction. The designation may select the person who is to act as seller, manufacturer, subcontractor, insurance carrier, financial institution, or freight forwarder. However, this exception does not apply where the U.S. person has actual knowledge that the sole purpose of the designation is to implement the boycott.

(E) The refusal of a U.S. person to process or honor a letter of credit if the beneficiary fails to comply with the conditions or requirements of the letter. The prohibitions in new section 4A (a) (1) (B) (re-fraining to deal with any person) could be read as prohibiting a bank from refusing to honor or process a letter of credit, even if the beneficiary failed to fulfill the conditions of the letter. Such is not the intention of section 4A (a) (1) (B), and this exception is intended to clarify that point.

*Section 4A (a) (3)—Presidential Waiver for Conflict of Law*

In an instance where requirements of this legislation would require a U.S. person resident in another country to violate the laws of that country, the President may grant an exemption from those specific requirements of this legislation. It is intended that the President may issue rules and regulations spelling out these specific exemptions rather than having to grant an exemption for each instance in which a U.S. person is caught between conflicting national laws. Waivers should be granted as narrowly as is feasible and only where both private and diplomatic efforts have failed to obtain the waiver of objectionable requirements. It is also expected that the President in issuing exemptions will give full consideration to the important principles reflected in the antiboycott provisions of this bill. Waivers should not be used to circumvent the requirement of section 4A (a) (1) (H), which prohibits a U.S. person from using a foreign subsidiary to circumvent the prohibitions in section 4A (a) (1) against complying with or supporting a foreign boycott. Nor should this waiver authority be used to grant blanket exemptions from the prohibitions in section 4A (a) (1).

*Section 4A (a) (4)—Existing U.S. laws*

New section 4A (a) (4) (A) of the act provides that nothing in this legislation is intended to supersede or limit the operation of the U.S. antitrust laws.

New section 4A (a) (4) (B) provides that the new antiboycott provisions of the act preempts and supersedes state antiboycott laws. In the past year some six States have enacted laws prohibiting their residents from complying with foreign boycotts of countries friendly to the United States; other States are considering similar laws. In order to provide for a uniform national policy—in an area (foreign policy and foreign commerce) which is appropriately under Federal jurisdiction—this legislation preempts all State laws which have the same purpose and goal. Accordingly, it preempts all State laws to the extent they relate to foreign boycotts. It does not preempt State laws which are not aimed at prohibiting U.S. persons from complying with foreign boycotts; in other words, it does not preempt those aspects of general anti-discrimination, antitrust, and civil rights laws which do not pertain to foreign boycotts.

*Section 4A (a) (5)—Rules and regulations*

Rules and regulations implementing these new antiboycott provisions shall be issued and become effective no later than 120 days after the date of enactment of this bill, except with respect to written contracts and other written agreements entered into on or before April 1, 1977. There shall be a grace period through December 31, 1978, for such contracts and agreements so that a U.S. person will not be liable

for violations of the new antiboycott requirements because of actions taken pursuant to such contracts until after December 31, 1978. The purpose of this grace period is to provide a period of time sufficient for such contracts to be completed or for any provisions of such contracts that are inconsistent with these new antiboycott requirements to be removed from the contract.

However, the Secretary of Commerce has the authority to extend this grace period for 1 additional year in any instance in which the Secretary finds that (1) a U.S. person would be liable for a violation of this legislation because of an offending clause in a particular contract or agreement and (2) the U.S. person has in good faith attempted to renegotiate the contract to remove the offending clause but has failed to do so.

The intention of this grace period provision is to provide U.S. persons with the incentive to attempt to remove any existing contract provisions that are contrary to the prohibitions of this legislation and to prevent a situation where a U.S. person is faced with either having to violate this legislation or breach a contract or agreement.

*Section 4A(b)—Implementation of Policy Statement and Reporting Requirement*

New section 4A(b)(1) of the act provides that rules and regulations shall be issued to implement the antiboycott policies set forth in section 3(5) of the act.

New section 4A(b)(2) of the act places various reporting requirements on U.S. persons. It requires the reporting of a request for the taking of any of the actions prohibited in subsection (a)(1) to the Secretary of Commerce, together with such additional information concerning the request as the Secretary may deem appropriate for the effective enforcement of the prohibitions. Furthermore, regarding other boycott-related requests or actions that are discouraged by section 3(5) but not actually prohibited, the Secretary of Commerce may require U.S. persons to file reports on such actions or requests as the Secretary deems appropriate for carrying out the policies set forth in section 3(5). The intention is that certain actions (such as positive certification of country of origin, the name and nationality of the carrier and route of shipment of a cargo, and the furnishing of immigration and passport information) which are normal practices of commercial or diplomatic relations should not be reported, in order not to place unnecessary reporting burdens on U.S. persons or on the Commerce Department. However, in order to be able accurately to monitor the impact of foreign boycotts on U.S. persons, the Department of Commerce should require the reporting of actions and requests which are related to the boycott, which clearly are not normal business or diplomatic practices and for which reporting would serve a useful informational purpose. Practices which should be required to be reported include requests for negative certification of country of origin and designation of specific persons to be included in a transaction.

Any person required to report a request pursuant to this legislation must indicate whether he intends to comply or has complied with the request.

Any report filed after the date of enactment of this bill must be made available promptly for public inspection and copying, except that information of a proprietary or commercial nature shall be kept

confidential if the Secretary of Commerce determines that its disclosure would place the U.S. person at a competitive disadvantage. Such information includes information regarding the quality, description, and value of any articles, materials, and supplies (including technical data) and the identity of any party to any business transaction to which the report relates. This confidentiality provision covers the identity of the U.S. person filing the report, unless a charging letter or other document has been issued initiating proceedings against such person.

The Secretary of Commerce shall periodically transmit summaries of the information contained in these 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 the act.

#### SECTION 201(b)—DELETION OF EXISTING REPORTING REQUIREMENT

This section of the bill deletes the next to the last sentence in section 4(b)(1) of the act. That sentence establishes the reporting requirements regarding boycott requests, and new section 4A(b)(2) discussed above replaces that reporting requirement.

#### SECTION 201(c)—DISCLOSURE OF REPORTS AND CHARGING LETTERS

This section of the bill makes a technical amendment to section 7(c) of the act in conformity with the amendments made by sections 201(a) and 203(a) of the bill. Section 7(c) provides that certain information deemed confidential shall not be publicly disclosed. Section 201(c) of the bill amends section 7(c) to provide for the public disclosure of reports filed pursuant to new section 4A(b)(2) and charging letters or other documents initiating proceedings for the imposition of sanctions for violation of the boycott-related actions prohibited in new section 4A(a)(1) of the act.

#### SECTION 202—STATEMENT OF POLICY

This section of the bill amends section 3(5)(A) and (B), the boycott policy statement, of the act. Section 3(5)(A) currently states that it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. This statement is amended to read that, in addition to opposing such practices imposed against foreign countries friendly to the United States, it is also U.S. policy to oppose such practices if directed against any U.S. person.

Existing section 3(5)(B) of the act directs that it is also U.S. policy to encourage and request U.S. concerns not to comply or support such restrictive trade practices. This policy statement is replaced by a policy statement which reflects the changes made by this bill. The new clause (B) would state that it is U.S. policy to prohibit certain actions and to discourage other actions by U.S. persons to comply with, further, or support boycotts fostered and imposed by any foreign country against a country friendly to the United States or against any U.S. person.

A new clause (C) is added to the policy statement to state that it is U.S. policy to discourage the use of negative certificates of origin and to urge the President to negotiate with other countries for the purpose of eliminating the practice of requiring negative certificates of origin.

The existing clause (C) becomes clause (D) with the addition of the new language in clause (C).

#### SECTION 203—ENFORCEMENT

Section 203(a) of the bill amends section 6(c) of the act by adding a new paragraph 2. This new paragraph specifies that the authority in the act to suspend and revoke the export authority of any U.S. person may be used as a sanction against violations of the rules and regulations issued pursuant to the antiboycott prohibitions in new section 4A(a) of the act. It further states that any administrative sanction imposed for a violation of those rules and regulations 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 of the U.S. Code, commonly referred to as the Administrative Procedure Act.

This new paragraph of the act further provides that any charging letter or other document initiating proceedings for the imposition of administrative sanctions for violations of the rules and regulations implementing to the antiboycott prohibitions in new section 4A(a) of the act shall be made available for public inspection and copying.

Section 203(b) of the bill amends section 8 of the act, which excludes functions exercised under the act from certain operations of the Administrative Procedure Act. In light of the new section 6(c) (2) which provides for following certain of those procedures for the purpose of imposing administrative sanctions, section 8 is amended to provide for that exception.

#### SECTION 204—DEFINITIONS

Section 11 of the act currently defines the term "person" to include the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof. This section of the bill adds a definition of "United States person," which includes: any U.S. resident or national; any domestic concern (including any subsidiary or affiliate of any foreign concern with respect to its activities in the United States); and, with respect to its activities which affect the foreign and interstate commerce of the United States, any foreign subsidiary or affiliate of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

#### COST ESTIMATE

The committee estimates that, assuming the full appropriation of the amounts authorized in this bill, the total cost of carrying out the provisions of H.R. 5840 will be approximately \$14,895,000. This estimate includes the \$14,033,000 authorized to be appropriated for fiscal years 1978 and 1979 plus \$862,000 in Federal pay and benefit increases and other nondiscretionary costs mandated by law. The fiscal year al-

location of the total cost is set forth in the Congressional Budget Office estimate below. The committee agrees with the projected cost estimate of the Congressional Budget Office.

### INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 5840 would not have an inflationary impact on the Nation's economy. On the contrary, enactment of H.R. 5840 extends the authorities of the Export Administration Act of 1969, which has among its purposes the mandate to assure that (1) the inflationary impact of foreign demand is reduced and (2) that restrictions on access to foreign supplies that have or may have a serious domestic inflationary impact are removed. Thus H.R. 5840 could be characterized as counterinflationary.

### STATEMENTS REQUIRED BY CLAUSE 2(1)(3) OF HOUSE RULE XI

#### (A) OVERSIGHT FINDINGS AND RECOMMENDATIONS

Under the House Committee Reform Amendments of 1974, jurisdiction over export controls was transferred to the Committee on International Relations. Among laws in this category is the Export Administration Act of 1969. In carrying out its oversight responsibilities for this legislation, the full committee and its appropriate subcommittees have conducted numerous hearings on subjects relating to the act and have reviewed studies of the act conducted by the Congressional Research Service at the Library of Congress and the General Accounting Office. Based on the findings of these oversight activities, the committee recommends that the Export Administration Act of 1969, as amended by H.R. 5840, be extended through fiscal year 1979.

#### (B) BUDGET AUTHORITY

H.R. 5840 does not create any budget authority.

#### (C) COMMITTEE ON GOVERNMENT OPERATIONS SUMMARY

No oversight findings and recommendations which relate to this measure have been received from the Committee on Government Operations under clause 4(c)(2) of rule X of the rules of the House.

#### (D) CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND COMPARISON

Date: April 1, 1977.

1. Bill number: H.R. 5840.

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, 1977, to September 30, 1979;

(b) require a review of export control lists by December 31, 1978;

(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 through published material and the training of foreign nationals in the United States;

(f) add reporting and notification requirements and otherwise improve the administration of the act;

(g) prohibit U.S. persons or firms from cooperating with foreign boycotts of countries friendly to the United States; and

(h) authorize \$14.033 million plus such funds necessary for mandatory pay raises to be appropriated for fiscal years 1978 and 1979 to carry out the purposes of this legislation.

### 3. Budget impact:

#### *Budget function 400*

[Dollars in millions]

#### Authorization Amounts (fiscal year) :

1978 -----	7. 532
1979 -----	7. 363
1980 -----	
1981 -----	
1982 -----	

#### Estimated costs (fiscal year) :

1978 -----	7. 095
1979 -----	7. 373
1980 -----	. 427
1981 -----	
1982 -----	

4. Basis for estimate: This estimate assumes enactment of this legislation on or before September 30, 1977. This legislation authorizes \$14.033 million to finance the activities of the Office of Export Administration, Department of Commerce, for fiscal years 1978 and 1979, plus such sums as may be necessary for mandatory pay, retirement and other benefit increases. The \$14.033 million is assumed to be required as follows:

Fiscal year 1978:	<i>Millions</i>
To finance ongoing programs (item a) -----	\$5. 726
To finance increased activity (items b through g) -----	1. 500
<b>Total -----</b>	<b>7. 226</b>

<b>Fiscal year 1979:</b>	
To finance ongoing programs (item a) -----	\$5. 897
To finance increased activity (items b through g) -----	. 910
<b>Total -----</b>	<b>6. 807</b>

The \$14.033 million is assumed to be appropriated in two installments, \$7.226 million for fiscal year 1978 and \$6.807 million for fiscal year 1979.

CBO estimates that the funds authorized in this legislation for mandatory pay, retirement and other employee benefit increases will total \$0.3 million and \$0.6 million in fiscal years 1978 and 1979 respectively. These estimates are based upon CBO economic assumptions of February 1977. The funds are assumed appropriated for fiscal year 1978 and fiscal year 1979.

Authorization amounts equal the amounts assumed to be appropriated in each year.

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

5. Estimate comparison: The Office of Export Administration estimates the marginal increase in activity resulting from this legislation will require \$1.5 million in fiscal year 1978 and \$1.32 million in 1979. The first year costs are consistent with the CBO estimate. Second year costs differ in that CBO assumes items b, c, and e above are one-time occurrences, with only part of the review of control lists extending into fiscal year 1979, while the Office of Export Administration assumes they are ongoing activities.

6. Previous CBO estimate: The version of this bill numbered H.R. 1561, for which an estimate dated March 15, 1977 was prepared, authorized funds for fiscal year 1978 only. H.R. 5840 authorizes funds for 2 years and includes other miscellaneous adjustments.

7. Estimate prepared by Joseph Whitehill.

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

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### EXPORT ADMINISTRATION ACT OF 1969

\* \* \* \* \*

#### DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) \* \* \*

\* \* \* \* \*

(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 (C)] *(B) to discourage and, in specified cases, to prohibit United States persons engaged in the export of articles, materials, supplies, or information from taking or agreeing to take actions to comply with, further, or support boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person, (C) to discourage the use of negative certificates of origin (and accordingly the President should negotiate with other countries for the purpose of eliminating such practice), and (D) to foster international cooperation and the development*

of the international rules and institutions to assure reasonable access to world 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) \* \*

\* \* \* \* \*

(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 retransfers 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 reported to Congress not later than December 31, 1978, in the semiannual report of the Secretary of Commerce required by section 10 of this Act, 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 produced 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 adverse impact on the economy or any sector thereof. 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 two sentences 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.

\* \* \* \* \*

(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)(A) 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 only grant such approval if he receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds that such commodities will eventually be exported

and that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities.

(B) The Secretary of Commerce shall grant or deny approval under subparagraph (A) within 30 days after receiving an application for such approval. Unless the Secretary denied approval within 30 days, approval shall be deemed to be granted and the applicant shall be notified that approval has been granted.

(C) 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 any substantial 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 to which exports are controlled 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] *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 any 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 to which exports are controlled 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].

(i) 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) *The Secretary of Commerce shall conduct a study of the problem of the export, by agreements for scientific or technical cooperation or exchange entered into by any United States person (including any college, university, or other educational institution) and by publications or any other means of public dissemination, of technical data or other information from the United States, the export of which might prove detrimental to the national security or foreign policy of the United States. Not later than 12 months after the enactment of the subsection, the Secretary shall report to the Congress his assessment of the impact of the export of such technical data or other information by such means on the national security and foreign policy of the United States and his 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 semiannual report required by section 10 of this Act.*

(k) *Petroleum products refined in United States Foreign-Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed pursuant to section 3(2)(A) of this Act, except that, if the Secretary of Commerce finds that a product is in short supply, the Secretary of Commerce may issue such rules and regulations as may be necessary to limit exports.*

(l)(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 sections 3(5) (A) and (B), the President shall issue rules and regula-*

tions prohibiting any United States person from willfully taking or agreeing to take any of the following actions 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 embargo by the United States, if such action is taken or agreed to be taken pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country:

(A) Refraining from doing business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country. The absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, or with any national or resident of the boycotted country, does not alone establish a violation of rules and regulations issued to carry out this subparagraph.

(B) Refraining from doing business with any person (other than the boycotted country, any business concern organized under the laws of the boycotted country, or any national or resident of the boycotted country). The absence of a business relationship with a person does not alone establish a violation of rules and regulations issued to carry out this subparagraph.

(C) Refraining from employing or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin.

(D) Furnishing information with respect to the race, religion, sex, or national origin of any other United States person.

(E) 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 boycotting country.

(F) 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.

(G) Paying, honoring, advising, confirming, processing, 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.

(H) Using a foreign person, including a subsidiary or affiliate, in order to circumvent the rules and regulations issued pursuant to this paragraph.

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

(A) compliance with requirements (i) prohibiting the import of goods or services from the boycotted country or of 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 boycotting

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) compliance with import and shipping document requirements with respect to a positive designation of country of origin (except that, during the 1-year period beginning on the date on which rules and regulations issued pursuant to paragraph (1) first become effective, a negative designation of country of origin may be furnished), the name and nationality of the carrier and route of shipment, and the name of the supplier of the shipment;

(C) compliance with export requirements of the boycotting country relating to shipments or transshipments of exported goods to the boycotted country, to any business concern organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(D) compliance with the designation by the boycotting country, by a business concern organized under the laws of the boycotting country, or by a national or resident of the boycotting country, of a specific person to be involved in a particular aspect of a transaction, including the specific person who is to act as seller, manufacturer, subcontractor, insurance carrier, financial institution, or freight forwarder, except that this exception shall not apply in any case in which the United States person has actual knowledge that the sole purpose of the designation is to implement the boycott; and

(E) the refusal of a United States person to pay, honor, advise, confirm, process, or otherwise implement a letter of credit in the event of the failure of the beneficiary of the letter to comply with the conditions or requirements of the letter.

(3) The President may grant exemptions from any requirement of the rules and regulations issued pursuant to paragraph (1), other than rules and regulations issued to carry out paragraph (1)(H), in order to permit compliance with a specific provision of the laws of a foreign country which requires the taking of an action in that country which would, in the absence of such an exemption, be prohibited by such rules and regulations.

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

(B) The rules and regulations issued pursuant to paragraph (1) shall preempt and supersede any provision of law or regulation of any State or political subdivision thereof which is directed to compliance with, furtherance of, or support for any boycott fostered or imposed by a foreign country against another foreign country; and no State or political subdivision thereof may establish, continue in effect, or enforce any such provision of law or regulation.

(5) Rules and regulations pursuant to this subsection and section 11(2) shall be issued and become effective not later than 120 days after the date of enactment of this section, except that rules and regulations issued pursuant to this subsection shall provide a grace period during which the rules and regulations issued pursuant to paragraph (1) will not apply to actions taken pursuant to a written contract or other agreement entered into on or before April 1, 1977. Such grace period shall end on December 31, 1978, except that the Secretary of Commerce may extend the grace period for not to exceed 1 additional year in any case in which the Secretary finds that good faith efforts are being made to renegotiate the

contract or agreement in order to eliminate the provisions which are inconsistent with the rules and regulations issued pursuant to paragraph (1).

(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 taking of any action prohibited by the rules and regulations issued pursuant to subsection (a)(1) shall report that fact to the Secretary of Commerce, together with such other information concerning the request as the Secretary may deem appropriate for the effective enforcement of those rules and regulations. In addition, such rules and regulations may also require that any United States person receiving a request for the taking of any other action referred to in section 3(5) but not prohibited under subsection (a)(1) shall report that fact to the Secretary of Commerce, together with such other information concerning the request as the Secretary may require for such action as the Secretary may deem appropriate for carrying out the policies of that section. Any person reporting a request pursuant to either of the two preceding sentences 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 quality, description, and value of any articles, materials, and supplies, including technical data and other information, to which such report relates and the identity of any party to any business transaction to which such report relates (including the identity of the United States person filing such report unless a charging letter or other document has been issued initiating proceedings against such person), shall 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) \* \* \*

\* \* \* \* \*

(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 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 include 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.

\* \* \* \* \*

#### 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)(1) 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 proceedings for the imposition of administrative 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 a 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.*

\* \* \* \* \*

#### ENFORCEMENT

SEC. 7. (a) \* \* \*

\* \* \* \* \*

(c) **[No]** *Except as otherwise provided by the fourth 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 Congress, and*

*any information obtained under this Act, including any report or license application required under section 4(b), shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction. No such committee or subcommittee shall disclose any information obtained under this Act which is submitted on a confidential basis unless the full committee determines 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 one 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.*

\* \* \* \* \*

#### **[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 sections 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.】

#### DEFINITIONS

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" includes any United States resident or national, any domestic concern (including any subsidiary or affiliate of any foreign concern with respect to its activities in the United States), and, with respect to its activities which affect the foreign commerce of the United States, any foreign subsidiary or affiliate 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 construed 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. (a) 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.*

*(b) There is hereby authorized to be appropriated to the Department of Commerce \$14,033,000 (and such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs) for fiscal years 1978 and 1979 to carry out the purposes of this Act.*

## 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] 1979 or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.



## ADDITIONAL VIEWS OF HON. BENJAMIN S. ROSENTHAL

In 1965, the Congress thought it was ending American participation in foreign boycotts, including the Arab boycott of Israel, when it made such participation against U.S. policy and it gave strong authority to the Commerce Department to enforce this policy. As the years passed, we in the Congress waited vainly for the Commerce Department to take strong action. Instead we witnessed an almost geometric growth in Arab and other boycott demands against American businesses. Discrimination against American businesses spread. The Arab blacklist swelled until it today includes over 1,500 American firms and individuals.

Figures released by the Commerce Department to the Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs which I chair reveal how pervasive the pressures against American businesses have become. Banks are the principal enforcers of the Arab boycott. They are the ones who exact compliance with the boycott as the price for payment by the Arab importer. According to the Department, during the period from April 1 through June 30, 1976, 131 U.S. banks reported that they had engaged in 8,026 transactions involving 15,392 requests to enforce restrictive trade practices. The total amount involved in these transactions was \$479 million. Equally troubling, the number of transactions conditioned on compliance with the boycott had grown by over 25 percent from the immediately preceding 4-month period.

Based upon statistics such as the above, the Los Angeles Times recently made a dire prediction :

Not too many years in the future, the Nation could have two kinds of auto companies, steel makers, trading firms and banks: those that deal with the Arabs, and those that don't. If that happened, the two groups would be hampered by the blacklist in their dealings with each other. Imagine the effects on the Nation's economy, its sense of nationhood, its integrity.

Not surprisingly, the mushrooming of discriminatory boycott demands has aroused considerable public concern. A recent national opinion poll showed that over 75 percent of Americans feel that legislation should be enacted to resist these boycott pressures. In answers to a detailed questionnaire circulated in November by the Gallagher President's Report, fewer than 10 of the 330 presidents of American companies who responded felt that such boycott demands were understandable or acceptable. This compares to the 135 presidents who said they were totally opposed to such demands. President Carter in December spoke "of the right of Americans to engage in international commerce without being subjected to discrimination on grounds of their race, their religion or the countries with which they trade." This concern was reiterated in testimony before the committee by Secretaries Krepes and Vance. The sentiment in support of strong antiboycott legislation has been overwhelming.

## BOYCOTT BACKGROUND AND THEORY

It is important to understand how the boycott of American business operates. Virtually from the founding of Israel in 1948, Arab States ceased to do business with that state. While an unfortunate consequence of the hostilities in the Middle East, this severance of economic relations has precedents in international relations, including U.S. policy with respect to countries such as Cuba, Vietnam, and North Korea. But the Arab States carried this practice further and elected to include innocent third parties, including American businesses, not otherwise involved in the Middle East dispute. This escalation led to the development of a list of mostly American companies and individuals allegedly connected in some way with Israel with which no Arab State or company could do business. This is the Arab blacklist which, in the 1970 Saudi Arabian version made public by the Senate Subcommittee on Multinational Corporations, contains the names of over 1,500 U.S. companies, financial institutions, and individuals.

The theory of the boycott is simple. No company on the blacklist should expect to do business with any Arab State or business. Conversely, any company doing business with an Arab State or business cannot do business with Israel. In practice, as a condition of doing business with Arab interests:

Exporters are asked to certify that they do not sell to Israel,  
Manufacturers must stipulate that they have no Israeli operations and their products contain no Israel-made components,

Banks honor certain letters of credit only for customers who certify they have no dealings with Israel.

This economic pressure by Arabs directly against U.S. firms has been called the secondary boycott.

But the reach of the boycott can be far wider to encompass not only doing business with Israel but also doing business with any company which does business with Israel. U.S. firms are thus put in the position of discriminating against other U.S. firms pursuant to the dictates of foreign governments. In any form it is equally repugnant in restricting the freedom of American concerns to do business with whom they wish.

## BOYCOTT IMPACT

The Arab boycott is having an enormous impact upon American business. The House Commerce Investigations Subcommittee reported in May 1976 that American firms are complying with over 90 percent of the boycott requests as the cost of doing business with Arab States. The subcommittee, headed by Representative Moss, also found that during 1974 and 1975, 637 U.S. exporters sold at least \$352.9 million and as much as \$781.5 million in goods and services under boycott conditions. The actual figure is unknown since many firms reporting to the Commerce Department on boycott pressures refused to admit whether they had given in. The Commerce Department has required information as to compliance only since late 1975.

In the hearings before my subcommittee, banks gave graphic evidence of the pervasiveness of boycott requests. The resident counsel of Morgan Guaranty testified that in the 4 months from December 1975 to April 1976, his bank had received 824 letters of credit in a total amount of \$41,237,815 containing boycott clauses. These letters of

credit were issued not only by Arab banks but also by banks in other Asian and African countries which have joined the boycott against American businesses. In each of these instances, Morgan Guaranty exacted compliance with the boycott as a condition of payment to the American exporter under the letter of credit.

Appearing on the boycott list can have a significant effect upon a U.S. company's business. RCA Corp. offers a typical example. Prior to being included on the blacklist, RCA did about \$10 million worth of business annually with the Arab world. The company had every reason to believe, it has said, that its sales would have increased substantially over this figure. As a consequence of being boycotted, RCA operations in Arab countries precipitously shrank to under \$1 million, a loss of over \$9 million a year.

The boycott not only is hurting American businesses which must choose between doing business with Arabs or Israelis, it is also having a dire impact upon Israel. This impact has been greatest in certain high technology areas where the compliance of a few American firms with the boycott precludes access to vital new developments. In the area of energy exploration, for example, Israel has found it difficult to draw upon the services of the American petroleum giants for assistance in finding new sources of oil. This has forced Israel into a partnership with a non-American company and has prompted strict secrecy as to the identity of this company for fear of reprisal.

This impact on both U.S. companies and Israel threatens to increase substantially unless strong action is taken to curb the boycott. A Saudi Arabian minister was recently in the United States exploring American investment in a Saudi development plan. In an interview, he made it clear that investors would have to make boycott declarations and certifications, thereby excluding the 1,500 American companies on the blacklist and undoubtedly widening the number of companies which will feel constrained to avoid business with Israel. The Commerce Department has estimated that Arab-American trade, which amounted to \$5.5 billion in 1975, will double by 1980. Action is urgently required before large segments of American industry are divided into two groups, each one excluded from the other's Mideast market.

#### BOYCOTT AS EXTORTION

It is important to point out that the Arab boycott is not an ironclad and impermeable structure. Indeed, the many leaks in the boycott create an evil of their own in that they have created a new cottage industry based on evading the boycott or getting off the boycott list.

There is no single boycott list. Although there is a coordinating body based in Damascus which has power to recommend addition or deletion from the blacklist, each of 20 Arab countries and the Arab League itself has its own blacklist with its own wrinkles. The situation is further complicated by the length and complexity of the boycott regulations which contain 100 pages of detailed rules. Finally, confusion is guaranteed by the secrecy surrounding the list and the regulations. The boycott office has refused to make available copies of either. The only published versions, dated 1970 and 1972 respectively, were first made public in February 1975 by the Senate Subcommittee on Multinational Corporations.

The nature of the boycott as a capricious and extortionist device is clear from the reactions of some American companies to the discovery that they were on the 1970 Saudi Arabia list. A spokesman for the Hertz system, which has licensed auto rental outlets in both Israel and Egypt, declared: "We are puzzled to find ourselves listed. From time to time we get applications from parties in Arab lands for licenses." The chairman of Lord & Taylor department store chain said that he first learned of the blacklist in 1971 when a shipment of goods was impounded in Saudi Arabia. "So we know we are on the list," he said. "But we don't know why, never having been told." A Burlington Industries spokesman noted, "I did not know we were on any blacklist and don't know why we should be. We are shocked to hear it. We do business with both Israel and the Arab world—far more business in the Arab world, in fact." The Republic Steel Corp. observed that it had been put on the list "although we have neither any investments or interest in the Mideast." American Electric Power Co. spokesmen were similarly bewildered as to their company's appearance on the list.

Those companies which could ascribe reasons to their being blacklisted disclosed a catalog of capricious and arbitrary actions by Arab boycott administrators. Xerox Corp. attributed blacklisting to a documentary on Israel sponsored in 1966. Coca-Cola was on because it granted a franchise to an Israeli bottling company in the mid-1960's. Sears, Roebuck & Co. said its inclusion was due to the mistaken impression that a British company, Sears Holding, Ltd., was in some way an affiliate. It is not. General Tire & Rubber appeared because a subsidiary, since sold, once had a service arrangement with an Israeli company.

Fortune magazine has noted that dozens of firms listed cannot be found and some no longer exist. A spokesman for Laurance Rockefeller speculated that Laurance Rockefeller Associates (which never existed) is mentioned because Rockefeller and a few colleagues once had a minor interest in Elron Electronics Industries, an Israel company, which they sold in 1967.

The experience of American companies in trying to get their names off or keeping their names off the blacklist throws a different cast upon the nature of the boycott. Instead of being a weapon in the war against Israel, the boycott appears more as a means of extorting bribes and additional business from U.S. concerns. Last year, the SEC accused General Tire & Rubber Co. of failing to disclose that it had paid \$150,000 to a Saudi Arabian to get its name off the boycott list. The alleged recipient was none other than Adnan Khashoggi, the same individual who has been implicated in other Mideast "commissions." General Tire subsequently agreed to a court injunction barring future violations.

Bulova had a similar experience. Despite having no dealings in the Middle East apart from its watches being on sale at duty free shops. Bulova was placed on the blacklist. Later a Syrian lawyer approached the company and offered for a retainer to get its name removed. Unfortunately, the lawyer was executed in a Damascus public hanging before he could fulfill his promise.

Undoubtedly other American companies have been forced to resort to similar payoffs to get themselves off the blacklist. But the usual method of "negotiation" to expunge a name or keep it off is somewhat

subtler. What appears to be required is a willingness to make an appropriate contribution to the economies of the Arab world. Sometimes the contribution reportedly can be a strict quid pro quo. Then Secretary Simon testified to this extortionist arrangement before the committee.

Hence, Xerox has negotiated to have its name stricken. The documentary film about Israel which prompted the blacklisting cost the company \$230,000 to produce. Xerox was reportedly told that an investment of a like amount in an Arab State would suffice for delisting. Ford Motor Co. was reportedly talking with the Egyptians about a similar arrangement—assembling in Egypt automobiles to offset the 5,000 Ford cars annually produced by an Israeli concern. The New York Times has reported that SONY was approached with a like arrangement—an electronics enterprise in an Arab country to “compensate” for one in Israel.

Sometimes exceptions are made without explicit agreement due to the bargaining position of the American concern. Thus, defense contractors such as McDonnell Douglas, United Aircraft, General Electric, Hughes Aircraft, and Texaco do business in both Israel and the Arab States without any apparent boycott interference. This is also true of Hilton and IBM. But how many smaller American exporters or manufacturers can afford to enter into similar agreements with the Arabs? And why should they be forced to submit to such extortion which is a violation of express U.S. policy?

According to recent indications, this bribery could become even more widespread. An article by the Arab Press Service cites pressures on the Central Boycott Office being exerted by individual Arab States to allow multinational companies to buy their way off the blacklist by making investments twice the size of their investments in Israel. This would institutionalize the current informal extortion and bribery which characterizes the listing and delisting process.

#### TERTIARY BOYCOTT

Thus far I have dealt with the direct impact of the boycott on American firms—the so-called secondary boycott. I would like now to turn to an aspect of the boycott which has occasionally been called the tertiary boycott—the discrimination of certain American firms against other American and European firms under pressure from Arab States. This form of compliance with the boycott is illustrated by the following examples:

According to the testimony of then SEC Chairman Hills before my subcommittee, a “\$30-40 million American company” interested in receiving Arab investments felt compelled to end its sizable account with an American investment banking firm because of the latter firm’s close relations with Israel.

A U.S. bus manufacturer had its contract to sell buses to an Arab State terminated when it was learned that the seats were to be made by an American company on the blacklist.

Two American investment banking firms were disciplined by the National Association of Security Dealers (NASD) for violating that organization’s rules of fair practice in substituting nonblacklisted affiliates for blacklisted firms in underwritings with Arab participation.

Bechtel Corp. was sued by the Justice Department for violating the Sherman (Antitrust) Act in refusing to deal with blacklisted American subcontractors and requiring American subcontractors to refuse to deal with blacklisted persons or entities. A consent agreement is pending which would bar Bechtel from future such actions.

#### UN-AMERICAN PRESSURES

I have so far addressed myself to the economic aspects of the boycott. There is another side. Few people seriously maintain that the boycott is not also anti-Jewish. Senate investigators and others have uncovered numerous instances where American individuals or companies were apparently denied business with Arab States solely because they or their officers, employees or shareholders were Jewish. Two colonels in the Army Corps of Engineers admitted to a Senate subcommittee that the Corps had given in to Arab pressure to exclude Jewish personnel from projects in Saudi Arabia. They admitted that private U.S. companies were subject to the same anti-Jewish requirement. I will not, however, dwell on this important aspect of the boycott because I feel it has been well-documented and is the subject of the executive memorandum November 20, 1975. I wish only to say that the illegality of such discrimination based on religion, national origin, sex, or race should be clarified and expanded to all American companies as this bill does.

#### DENUNCIATIONS OF THE ECONOMIC BOYCOTT

Many American businesses have joined in the denunciation of the Arab boycott which has put them in the unconscionable position of having to refuse to do business with an ally and major trading partner of the United States—Israel—in return for business from the Arab world. They have urged the passage of legislation such as this which, once and for all, will enable, indeed require, them to turn down such requests. Among the American firms reported taking this position are General Mills, Bausch and Lomb, Pillsbury, First National Bank of Chicago, Northwestern National Bank of Minneapolis, Provident National Bank of Philadelphia, and the Marine National Exchange Bank of Milwaukee. I think it is fair to say that these sentiments are shared by large segments of the American business community.

#### PROJECTED IMPACT OF THIS BILL

Concern has been expressed in some quarters that outlawing compliance with the boycott may adversely affect U.S. trade and diplomatic relations with the Arab world. I would be naive if I did not admit some risk in the course of action pursued by this committee. But there are several grounds for optimism that any disruption of trade would be neither severe nor long term.

First, the longstanding and generally amicable commercial relations between this country and the Arab states have survived earlier political vicissitudes. Iraq currently offers a good example where radical rhetoric and divergent political philosophies have not interfered with a growing American business relationship. The Arabs have become used to the high quality goods and services which only this Nation can

provide in such abundance. Any major shift in commercial dealings would, I believe, work an unacceptable hardship upon the Arab business community and its customers.

Second, numerous Arab businessmen have expressed private misgivings about the operation of the boycott. They feel it unnecessarily restricts their dealings with blacklisted companies. It also alienates executives of nonblacklisted American companies who resent being questioned about their company's business relations or who find it morally repugnant. No fewer than 22 large American firms have recently pledged not to comply with Arab boycott demands. These include American Brands, Beatrice Foods, El Paso Natural Gas, General Motors, Greyhound, Kennecott Copper, G. D. Searle, Texaco, Textron, and U.S. Gypsum. Typical of this pledge was that of the chairman of General Motors, T. A. Murphy, who said:

General Motors has received occasional requests from Arab countries that it agree not to participate in future dealings with Israel or with Israeli companies. \* \* \* General Motors has made no such agreements and would not make any such agreements.

Third, Arab companies have demonstrated in past dealings that an objection to a boycott request would not necessarily lead to a termination of relations. When the Commerce Department in November 1975 outlawed compliance with requests involving discrimination on ethnic or religious grounds, banks were forced to reject letters of credit containing objectionable language. Morgan Guaranty testified before my subcommittee that in 23 of the 24 instances where the bank refused to process such letters of credit the offensive boycott language was voluntarily stricken by the Arab or other foreign banks involved. There is considerable reason to believe that Arab countries would waive boycott conditions rather than deprive themselves of vital American goods and services.

Fourth, it is by no means clear that all European and developed countries would welcome compliance with the Arab boycott as a price for additional Arab trade. Indeed, some developed countries appear to have taken a harder line against boycott compliance than the United States.

Germany offers a fine example. It is Israel's largest trading partner after the United States. It is also the principal competitor of the United States in the sale of high technology equipment and services to the Arabs. Yet German industry has vigorously opposed compliance with Arab boycott conditions. As recently as March 1976, the Hamburg Chamber of Commerce labeled the Arab boycott as a "particularly grotesque strain of discrimination against freedom of trade." Since 1965, West German chambers of commerce have generally refused to validate all so-called negative certificates of origin, that is, declarations that goods are not of Israeli origin. This position has the support of most German business organizations. This resolve has evidently been successful since Bonn's Economic Ministry claims to have no record of any export contract breach resulting from this refusal to validate boycott documents. Although there are reportedly 200 German firms on the Arab blacklist, many businesses maintain parallel links with the Israelis and the Arabs.

One highly publicized instance of German resistance to boycott pressures involves a recent license granted by Volkswagen to an Israel firm for the production of the Wankel rotary engine. The Arab Boycott Committee had responded by threatening to place Volkswagen on the blacklist. Volkswagen refused to withdraw the license and to the best of my knowledge maintains its opposition to any Arab dictation related to its substantial Israeli trade.

The Common Market has also been outspoken in its opposition to the Arab boycott. Article 85 of the Treaty of Rome establishing the EEC prohibits "the conclusion of contracts subject to acceptance by other parties of supplementary obligations which \* \* \* have no connection with the subject of such contracts." In trade agreements concluded or being negotiated with Arab states, the EEC is insisting upon insertion of clauses outlawing discrimination among nationals, companies, or firms of the Common Market. While the Arab signators, including Tunisia, Egypt, Lebanon, Morocco, and Algeria, have issued reservations against these clauses, the EEC has informed Egypt that it considers a proper respect for the nondiscrimination clause essential to the full implementation of the trade agreement. As one member of the EEC Commission put it, "The Commission considers [that] Arab discriminatory boycott measures are contrary to the principles of cooperation which the community wishes to establish with the Arab countries. \* \* \*"

The British position on the boycott was expressed in November 1975 by the then Secretary of State for Trade, Peter Shore, as follows: "This Government deplores and is opposed to any boycott that lacks international support and authority." In a celebrated case last winter, the British Foreign Office Race Relations Board required Gulf Oil Co. to award compensation and to reinstate a secretary whose promotion had been withdrawn when Gulf had discovered that she had married a Jew. British efforts directed against the boycott are coordinated by a committee composed of numerous influential businessmen and civic leaders.

Other examples of European opposition to the boycott include the Dutch Government's prohibiting notaries from validating boycott documents. This has not prevented widespread and growing relations between Dutch industry and the Arabs. According to press reports, Saudi Arabia has recently placed huge orders with Dutch firms for the construction of harbors in Damman and Jubail and for the expansion of the Saudi telephone system. Moreover, Egypt is expected to place an important order for the construction of ships in Dutch shipyards.

In Canada, the Government has instructed its overseas commercial representatives and its Board of Trade to refuse any assistance to any Canadian firm participating in the boycott.

The impression I and my staff gather from numerous conversations with foreign diplomatic officials is that the Arab boycott is a matter of great concern to other developed countries. Representatives of countries which have not outlawed compliance with the boycott expressed considerable interest in the prospect that a strong American initiative might prompt their countries to do likewise.

The above analysis should lay to rest the speculations of those who fear that U.S. opposition to the boycott would send the Arabs into the

arms of a welcome and compliant Europe. Indeed should some developed countries be slow to follow the American lead, the United States is not without recourse. The General Agreement on Tariffs and Trade (GATT) to which not only developed countries but even Egypt and Kuwait are parties almost certainly forbids the imposition of discriminatory boycotts such as the Arabs' against third parties to a conflict. As long as the United States submitted to boycott pressures, it was naturally reluctant to raise these prohibitions with other developed countries. This reluctance should end with the passage of strong domestic antiboycott legislation such as this.

While no one can predict to a certainty the impact on United States/Arab trade relations of antiboycott legislation, the evidence suggests any trade diversion would be small and short lived. The Arabs are highly unlikely to allow enforcement of a secondary boycott to interfere with their long-term development plans, and they are not going to find that other developed countries are substantially more willing than the United States over the long run to tolerate such discriminatory and anticompetitive practices.

These supplemental views are long but I feel compelled to make the strongest possible case for the prompt and favorable consideration of this bill. Our Nation must no longer acquiesce in the pressures of the Arab boycott or of any similar boycott which offends American principles of free trade and fair play and which have a highly destructive, divisive and anticompetitive effect upon American business.

BENJAMIN S. ROSENTHAL.



## ADDITIONAL VIEWS OF HON. PAUL FINDLEY ON TITLE II

The boycott is a recognized instrument of foreign policy and is supported or opposed by the United States, depending on circumstances.

For example, the United States supports the United Nations boycott of Rhodesia and maintains its own boycott of Cuba but opposes the Arab boycott of Israel.

U.S. opposition to the Arab boycott of Israel has resulted in title II of H.R. 1561, the antiboycott provisions of the Export Administration Act. Unfortunately, however, title II will do more harm than good to Israeli interests, not to mention U.S. interests.

Enactment of this language will make more difficult a general settlement of issues in the Middle East, and therefore will be harmful to Israel. In making that declaration I realize that I am inviting broad criticism. I would like to be regarded as a friend of Israel. I believe I am. In fact, I am perhaps the only Congressman ever to propose in legislation that the United States pledge its good name as the guarantor of a general settlement in the Middle East.

Israel deserves a just peace with its neighbors. This can come about only through negotiation and conciliation—not through confrontation. Although better than its earlier version, title II remains strongly confrontational. It will exacerbate relations between the United States and the Arab states whose cooperation is crucial to the general settlement. Arab leaders consider the boycott to be a justified means of nonmilitary pressure against Israel to cause it to return Arab lands taken by force of arms.

I am convinced a just peace in the Middle East can come about only through the diplomatic leadership of the United States. Diplomatic efforts have already produced significant positive steps to mitigate the effects of the boycott. Several of the Arab countries have moved from requiring a negative certificate of origin to positive certification, although the threat of this legislation has caused one or two countries to reverse themselves and move back to requiring negative certificates. U.S. companies have noted that they have been able with increasing frequency to remove boycott provisions from contracts through negotiation. Instances of discrimination against U.S. citizens have been extremely rare. Notably, the vast majority of the requests for compliance with the Arab boycott reported to the Commerce Department in 1976 involved the primary boycott rather than the secondary or tertiary boycott against which title II legislates. Title II could reverse this trend.

Moreover, Israel has never been genuinely concerned over the Arab boycott because it has been ineffectual. Despite the boycott, Israel has been able to purchase at competitive prices whatever supplies and equipment it needs, including petroleum. While the boycott is no significant problem to Israel, the continuing state of war consumes over 40

percent of Israel's budget, not to mention the heavy load—over \$2 billion a year—it imposes on the U.S. budget.

A powerful economic case could be made against title II. Without question, it will be an impediment of U.S. trade. And trade signifies not only economic gain for the United States, but the opportunity for the United States to extend useful political influence as well. Three administrations have now moved forthrightly to exercise that influence and to use it to the fullest to help bring about peace in the Middle East. To some extent, title II will make the new Carter administration's task more difficult.

Finally, title II undoubtedly will have an adverse impact upon the U.S. economy. Our balance of trade last year showed a \$9.6 billion deficit. This year it is still heavily in the red. At best, title II will be a serious encumbrance to U.S. firms wishing to do business with the 18 Arab nations to which U.S. exports in 1976 totaled \$6.9 billion.

But I base my argument against title II not on economic considerations but on the inevitably adverse impact it will have upon human rights and conditions in the Middle East.

It would be far better to substitute for this title language which would: (1) declare congressional opposition to the Arab boycott; and (2) encourage the administration to keep up its good work in countering the boycott.

Since such an amendment is unlikely, I would urge the administration to demonstrate flexibility in its enforcement of the provisions of title II. Commendably, this legislation does permit flexibility in the restrictions relating to unilateral selection, compliance with local laws, and the date of application of title II provisions to existing contracts. Applying this new law with restraint and understanding will be necessary in order to avoid rupturing America business ties with the Arab States and to preserve friendly U.S. relations with states vital to Middle East peace efforts.

PAUL FINDLEY.

