

EXPORT ADMINISTRATION AMENDMENTS OF 1977

MAY 18, 1977.—Ordered to be printed

Mr. ZABLOCKI, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5840]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to 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 antiboycott provisions of that act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Amendments of 1977".

TITLE I—EXPORT ADMINISTRATION IMPROVEMENTS AND EXTENSION

EXTENSION OF EXPORT ADMINISTRATION ACT

SEC. 101. Section 14 of the Export Administration Act of 1969 is amended by striking out "September 30, 1976" and inserting in lieu thereof "September 30, 1979".

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. The Export Administration Act of 1969 is amended by inserting after section 12 the following new section 13 and redesignating existing sections 13 and 14 as section 14 and 15, respectively:

"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.*"

CONTROL OF EXPORTS FOR NATIONAL SECURITY PURPOSES; FOREIGN AVAILABILITY

SEC. 103. (a) *Section 4(b) of the Export Administration Act of 1969 is amended—*

(1) *by striking out the third sentence of paragraph (1);*

(2) *by striking out paragraphs (2) through (4); and*

(3) *by inserting the following new paragraph (2) immediately after paragraph (1):*

"(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 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."

(b) (1) Section 4(h) of the Export Administration Act of 1969 is amended by striking out "controlled country" in the first sentence of paragraph (1) and in the second sentence of paragraph (2) and inserting in lieu thereof "country to which exports are restricted for national security purposes".

(2) Section 4(h)(2)(A) of such Act is amended by striking out "controlled" and inserting in lieu thereof "such".

(3) Section 4(h)(4) of such Act is amended—

(A) by inserting "and" at the end of subparagraph (A); and

(B) by striking out the semicolon at the end of subparagraph (B) thereof and all that follows the semicolon and inserting in lieu thereof a period.

(4) The amendments made by this subsection shall become effective upon the expiration of ninety days after the receipt by the Congress of the first report required by the amendment made by subsection (a) (3) of this section.

(c) Section 4(h) of such Act is amended—

(1) in paragraph (1)—

(A) in the first sentence by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a significant contribution to the military potential of such country"; and

(B) in the second sentence by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country"; and

(2) in paragraph (2)(A), by striking out "significantly increase the military capability of such country" and inserting in lieu thereof "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".

(d) Section 6(b) of such Act is amended by striking out "Communist-dominated nation" and inserting in lieu thereof "country to which exports are restricted for national security or foreign policy purposes".

MONITORING OF COMMODITIES IN POTENTIAL SHORT SUPPLY

SEC. 104. Section 4(c)(1) of the Export Administration Act of 1969 is amended by inserting after the first sentence thereof the following: "Such monitoring shall commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of this Act."

EXEMPTION FOR CERTAIN AGRICULTURAL COMMODITIES FROM CERTAIN
EXPORT LIMITATIONS

SEC. 105. Section 4(f) of the Export Administration Act of 1969 is amended—

(1) by redesignating such section as section 4(f) (1); and

(2) by adding at the end thereof the following new paragraph:

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

CONGRESSIONAL REVIEW OF EXPORT CONTROLS ON AGRICULTURAL
COMMODITIES

SEC. 106. Section 4(f) of the Export Administration Act of 1969, as amended by section 105 of this Act, is further amended by adding at the end thereof the following new 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 (A) or (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.”

PERIOD FOR ACTION ON EXPORT LICENSE APPLICATIONS

SEC. 107. Section 4(g) of the Export Administration Act of 1969 is amended to read as follows:

“(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 Secre-

tary of Commerce or other official exercising authority under this Act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made.

“(2) (A) With respect to any export license application not finally approved or disapproved within 90 days of its receipt as provided in paragraph (1) of this subsection, the applicant shall, to the maximum extent consistent with the national security of the United States, be specifically informed in writing of questions raised and negative considerations or recommendations made by any agency or department of the Government with respect to such license application, and shall be accorded an opportunity to respond to such questions, considerations, or recommendations in writing prior to final approval or disapproval by the Secretary of Commerce or other official exercising authority under this Act. In making such final approval or disapproval, the Secretary of Commerce or other official exercising authority under this Act shall take fully into account the applicant’s response.

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

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

CERTAIN PETROLEUM EXPORTS

SEC. 108. Section 4 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection:

“(j) 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.”.

EXPORT OF HORSES

SEC. 109. Section 4 of the Export Administration Act of 1969, as amended by section 108 of this Act, is further amended by adding at the end thereof the following new subsection:

“(k) (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.”.

PROHIBITION OF CERTAIN PETROLEUM EXPORTS

SEC. 110. Section 4 of the Export Administration Act of 1969, as amended by sections 108 and 109 of this Act, is further amended by adding at the end thereof the following new subsection:

“(l) (1). Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920, no domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to such section 28 (except any such crude oil which (A) is exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States) may be exported from the United States, its territories and possessions, during the 2-year period beginning on the date of enactment of this subsection unless the requirements of paragraph (2) of this subsection are met.

“(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

“(A) the President makes and publishes an express finding that exports of such crude oil—

“(i) will not diminish the total quantity or quality of petroleum available to the United States,

“(ii) will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners,

“(iii) will be made only pursuant to contracts which may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened,

“(iv) are in the national interest, and

“(v) are in accordance with the provisions of this Act; and

“(B) the President reports such finding to the Congress as an energy action (as defined in section 551 of the Energy Policy and Conservation Act).

The Congressional review provisions of such section 551 shall apply to an energy action reported in accordance with this paragraph, except that for purposes of this paragraph, any reference in such section to a period of 15 calendar days of continuous session of Congress shall be deemed to be a reference to a period of 60 calendar days of continuous session of Congress and the period specified in subsection (f) (4) (A) of such section for committee action on a resolution shall be deemed to be 40 calendar days.”.

TECHNICAL ADVISORY COMMITTEES

SEC. 111. (a) Section 5(c) (1) of the Export Administration Act of 1969 is amended by striking out “two” in the last sentence thereof and inserting in lieu thereof “four”.

(b) The second sentence of section 5(c) (2) of such Act is amended to read as follows: “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 utiliza-

tion 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.”

(c) Section 5(c)(2) of such Act is further amended by striking out the third sentence and inserting in lieu thereof the following: “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 carry out the policies of this Act.”

PENALTIES FOR VIOLATIONS

SEC. 112. (a) Section 6(a) of the Export Administration Act of 1969 is amended—

(1) in the first sentence, by striking out “\$10,000” and inserting in lieu thereof “\$25,000”; and

(2) in the second sentence, by striking out “\$20,000” and inserting in lieu thereof “\$50,000”.

(b) Section 6(b) of such Act is amended by striking out “\$20,000” and inserting in lieu thereof “\$50,000”.

(c) Section 6(c) of such Act is amended by striking out “\$1,000” and inserting in lieu thereof “\$10,000”.

(d) Section 6(d) of such Act is amended by adding at the end thereof the following new sentence: “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.”

AVAILABILITY OF INFORMATION TO CONGRESS

SEC. 113. (a) Section 7(c) of the Export Administration Act of 1969 is amended by adding at the end thereof the following new sentences: “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.”

(b) Section 4(c)(1) of such Act is amended by inserting immediately before the period at the end of the last sentence thereof “and in the last two sentences of section 7(c) of this Act”.

SIMPLIFICATION OF EXPORT REGULATIONS AND LISTS

SEC. 114. Section 7 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection:

"(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."

TERRORISM

SEC. 115. Section 3 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new paragraph:

"(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 co-operation and agreement before resorting to the imposition of export controls."

SEMIANNUAL REPORTS

SEC. 116. (a) Section 10 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection:

"(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."

(b) (1) The section heading of such section 10 is amended by striking out "QUARTERLY".

- (2) *Subsection (b) of such section is amended—*
 (A) *by striking out “quarterly” each time it appears; and*
 (B) *by striking out “second” in the first sentence of paragraph (1).*

SPECIAL REPORT ON MULTILATERAL EXPORT CONTROLS

SEC. 117. Not later than 12 months after the enactment of this section, the President shall submit to the Congress a special report on multilateral export controls in which the United States participates pursuant to the Export Administration Act of 1969 and pursuant to the Mutual Defense Assistance Control Act of 1951. The purpose of such special report shall be to assess the effectiveness of such multilateral export controls and to formulate specific proposals for increasing the effectiveness of such controls. That special report shall include—

(1) the current list of commodities controlled for export by agreement of the group known as the Coordinating Committee of the Consultative Group (hereafter in this section referred to as the “Committee”) and an analysis of the process of reviewing such list and of the changes which result from such review;

(2) data on and analysis of requests for exceptions to such list;

(3) a description and an analysis of the process by which decisions are made by the Committee on whether or not to grant such requests;

(4) an analysis of the uniformity of interpretation and enforcement by the participating countries of the export controls agreed to by the Committee (including controls over the re-export of such commodities from countries not participating in the Committee), and information on each case where such participating countries have acted contrary to the United States interpretation of the policy of the Committee, including United States representations to such countries and the response of such countries;

(5) an analysis of the problem of exports of advanced technology by countries not participating in the Committee, including such exports by subsidiaries or affiliates of United States businesses in such countries;

(6) an analysis of the effectiveness of any procedures employed, in case in which an exception for a listed commodity is granted by the Committee, to determine whether there has been compliance with any conditions on the use of the expected commodity which were a basis for the exception; and

(7) detailed recommendations for improving, through formalization or other means, the effectiveness of multilateral export controls, including specific recommendations for the development of more precise criteria and procedures for collective export decisions and for the development of more detailed and formal enforcement mechanisms to assure more uniform interpretation of and compliance with such criteria, procedures, and decisions by all countries participating in such multilateral export controls.

REVIEW OF UNILATERAL AND MULTILATERAL EXPORT CONTROL LISTS

SEC. 118. The Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the

appropriate technical advisory committees established pursuant to the Export Administration Act of 1969, shall undertake an investigation to determine whether United States unilateral controls or multilateral controls in which the United States participates should be removed, modified, or added with respect to particular articles, materials, and supplies, including technical data and other information, in order to protect the national security of the United States. Such investigation shall take into account such factors as the availability of such articles, materials, and supplies from other nations and the degree to which the availability of the same from the United States or from any country with which the United States participates in multilateral controls would make a significant contribution to the military potential of any country threatening or potentially threatening the national security of the United States. The results of such investigation shall be reported to the Congress not later than December 31, 1978.

TECHNOLOGY EXPORT STUDY

SEC. 119. (a) The President, acting through the Secretary of Commerce, the Secretary of Labor, and the International Trade Commission, shall 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 of 1969. Such study shall 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.

(b) The results of the study conducted pursuant to subsection (a) will be reported to the Congress within one year after the date of enactment of this Act.

REPORT ON TECHNICAL DATA TRANSFERS

SEC. 120. The Secretary of Commerce shall conduct a study of the transfer of technical data and other information to any country to which exports are restricted for national security purposes and the problem of the export, 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 this section, 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 the Export Administration Act of 1969.

TITLE II—FOREIGN BOYCOTTS

PROHIBITION ON COMPLIANCE WITH FOREIGN BOYCOTTS

SEC. 201. (a) The Export Administration Act of 1969 is amended by redesignating section 4A as section 4B and by inserting after section 4 the following new section:

"FOREIGN BOYCOTTS"

"SEC. 4A. (a) (1) For the purpose of implementing the policies set forth in section 3(5) (A) and (B), the President shall issue rules and regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

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

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

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

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

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

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

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

“(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country, or a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

“(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, black-listing, or similar exclusionary terms after the expiration of 1 year following the date of enactment of the Export Administration Amendments of 1977 other than with respect to carriers or route of shipment as may be permitted by such rules and regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

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

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

“(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

“(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such rules and regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trade-marked, trade-named, or similarly specifically identifiable products or components of products for his own use, including the performance of contractual services within that country, as may be defined by such rules and regulations.

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

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

“(5) Rules and regulations pursuant to this subsection shall be issued not later than 90 days after the date of enactment of this section and shall be issued in final form and become effective not later than 120 days after they are first issued, except that (A) rules and regulations prohibiting negative certification may take effect not later than 1 year after the date of enactment of this section, and (B) a grace period shall be provided for the application of the rules and regulations issued pursuant to this subsection to actions taken pursuant to a written contract or other agreement entered into on or before May 16, 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).

“(6) This Act shall apply to any transaction or activity undertaken, by or through a United States or other person, with intent to evade the provisions of this Act as implemented by the rules and regulations issued pursuant to this subsection, and such rules and regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

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

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

(b) Section 4(b) (1) of such Act is amended by striking out the next to the last sentence.

(c) Section 7(c) of such Act is amended by striking out "No" and inserting in lieu thereof "Except as otherwise provided by the third sentence of section 4A(b)(2) and by section 6(c)(2)(C) of this Act, no".

STATEMENT OF POLICY

Sec. 202. (a) Section 3(5)(A) of the Export Administration Act of 1969 is amended by inserting immediately after "United States" the following: "or against any United States person".

(b) Section 3(5)(B) of such Act is amended to read as follows: "(B) to encourage and, in specified cases, to require United States persons engaged in the export of articles, materials, supplies, or information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person,".

ENFORCEMENT

Sec. 203. (a) Section 6(c) of the Export Administration Act of 1969 is amended—

(A) by redesignating such section as section 6(c)(1); and

(B) by adding at the end thereof the following new paragraph:

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

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

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

(b) Section 8 of such Act is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 6(c)(2), the".

DEFINITIONS

Sec. 204. Section 11 of the Export Administration Act of 1969 is amended to read as follows:

"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' means any United States resident or national (other than an individual resident outside the

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

PREEMPTION

SEC. 205. The amendments made by this title and the rules and regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, and of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementaton of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the House bill.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
BENJAMIN S. ROSENTHAL,
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Managers on the Part of the House.

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Managers on the Part of the Senate.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to 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 antiboycott provisions of that act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE OF THE ACT

The House bill established the title of the act as "An Act 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 antiboycott provisions of that Act".

The Senate amendment established the title of the act as "An Act to amend and extend the Export Administration Act of 1969".

The conference committee agreed to the House title.

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1978 AND FISCAL YEAR 1979

The House bill authorized the appropriation of \$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 year 1978 and 1979 to carry out the purposes of the Export Administration Act.

The Senate amendment contained no such authorization and required that any such authorization be enacted after the enactment of this act.

The conference committee adopted the House provision.

REPORT ON REVIEW OF EXPORT CONTROLS FOR NATIONAL SECURITY PURPOSES

The House bill required that the report on the review of export controls for national security purposes be submitted to Congress not later than December 31, 1978, as part of the semiannual report of the Secretary of Commerce now required by existing law.

The Senate required that such report be included in the second semiannual report of the Secretary of Commerce following enactment of this Act.

The conference committee accepted the date in the House bill.

BASIS FOR RECOMMENDATION BY SECRETARY OF DEFENSE THAT AN EXPORT BE DISAPPROVED FOR NATIONAL SECURITY PURPOSES

The House bill amended section 4(h) (1) of the Export Administration Act to provide that it is the purpose of section 4(h) to authorize the Secretary of Defense to recommend disapproval of an export license application whenever he determines that the export would make a contribution, detrimental to U.S. national security, to the military potential of the recipient country or any other country to which exports are restricted for national security purposes.

The Senate amendment amended section 4(h) (1) to provide that it is the purpose of section 4(h) to authorize disapproval if the export would make a contribution, detrimental to U.S. national security, to the military potential of the recipient country only.

The conference committee agreed to the House language.

STORAGE OF AGRICULTURAL EXPORTS IN THE UNITED STATES

The House bill exempted from future export controls agricultural commodities stored in the United States upon a finding that the 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. The House bill further provided that the Secretary of Commerce must grant or deny approval within 30 days after receiving an application for such an exemption and that, unless the Secretary acts within 30 days, approval shall be deemed to be granted and the applicant shall be notified that approval has been granted.

The Senate amendment required, in addition to the findings required by the House bill, findings that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact and that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Senate amendment contained no specific time for action by the Secretary.

The conference committee adopted the Senate provision and strongly urged the Secretary of Commerce to process such applications as expeditiously as possible.

CONGRESSIONAL REVIEW OF EXPORT CONTROLS ON AGRICULTURAL COMMODITIES

(a) The House bill provided for congressional review of export controls placed on agricultural commodities for foreign policy reasons.

The Senate amendment provided for congressional review of export controls placed on agricultural commodities for foreign policy and for short supply reasons.

The conference committee adopted the Senate provision.

(b) The House bill provided that export controls will be effective for 30 days only unless Congress approves the controls by concurrent resolution. The 30-day period would be extended to 60 days if the controls are modified during the original 30-day period.

The Senate amendment provided that the export controls cease to be effective if the Congress adopts a concurrent resolution of disapproval within 30 legislative days after the controls are reported to the Congress.

The conference committee adopted the Senate provision.

RIGHT OF AN APPLICANT TO BE INFORMED OF ISSUES RAISED IN REVIEW OF EXPORT LICENSE APPLICATION

The House bill provided that if an application for an export license is not acted upon within 90 days, the applicant must be informed of "any substantial" questions raised and negative considerations or recommendations made in order that the applicant may respond.

The Senate amendment did not require that the questions, considerations, or recommendation be "substantial."

The conference committee agreed to the Senate provision.

STUDY OF EXPORT OF TECHNICAL INFORMATION

(a) The House bill required that the Secretary of Commerce conduct a study of the problem of the export, by agreements for scientific or technical cooperation or exchange entered into by any U.S. person (including any college, university, or other educational institution) and my 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.

The Senate amendment was similar but did not require a study of exports of information by agreements for scientific or technical cooperation; instead, it required a general study of transfers of technical data and other information to any country to which exports are restricted for national security purposes.

The conference committee adopted the Senate provision.

(b) The House bill required that the results of this study are to be reported to Congress within 12 months of enactment of this act.

The Senate amendment required that the results are to be reported within 6 months of enactment.

The conference committee adopted the House time period.

EXCLUSION OF CERTAIN PETROLEUM PRODUCTS FROM EXPORT LIMITATIONS

The House bill provided that petroleum products refined in U.S. foreign trade zones or in Guam shall be excluded from any quantitative limitations imposed for short supply purposes unless the Secretary of Commerce limits such exports for short supply purposes.

The Senate amendment contained no comparable provision.

The conference committee adopted the House provision.

EXPORT OF ALASKAN OIL

The House bill prohibited the exportation of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28, except (1) for oil that is exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state or (2) for oil that is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States. This prohibition would be in effect for 2 years after the date of enactment.

The Senate amendment contained no comparable provision.

The conference committee agreed to a substitute which is similar in nature to the House provision and which substantially strengthens existing law.

The substitute prohibits the export of oil transported by pipeline over a right-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920 except (1) for exchanges of crude oil in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or for oil that is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or (2) where the President makes and publishes an express finding that the export of such oil will not diminish the total quantity or quality of petroleum available to the United States, that such export will have a positive effect on consumer oil prices by decreasing the average of refiners' crude oil acquisition costs as a result of allowing such exports, and that such export is in the national interest and is in accord with the provisions of the Export Administration Act of 1969. The President must submit such findings to the Congress, and the export may not take place until the expiration of a 60-legislative-day period during which either House of Congress may veto the proposed export by the passage of a resolution of disapproval. Any such resolution shall be considered under expedited procedures. The substitute further requires that any contract for the export or sale of such oil may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened. This provision shall be in effect for 2 years.

It is the opinion of the committee of conference that this provision for possible oil swaps should be utilized only under circumstances where it is clearly in the interest of the United States and of U.S. oil consumers and where there will clearly be no potential danger to long-term U.S. energy interests.

TECHNICAL ADVISORY COMMITTEES

The Senate amendment required that the Technical Advisory Committees be informed of the reasons for failure to accept their advice or recommendations.

The House bill contained no comparable provision.

The conference committee accepted the House position.

AVAILABILITY OF INFORMATION TO CONGRESS

The House bill provided that information obtained under the Export Administration Act shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction.

The Senate amendment provided that nothing in the Export Administration Act shall be construed as authorizing the withholding of information from any committee of Congress having appropriate jurisdiction upon the request of the committee chairman.

The conference committee adopted the House provision.

REVIEW OF UNILATERAL AND MULTILATERAL EXPORT CONTROLS

(a) The House bill specified that both the Secretary of State and the Secretary of Commerce shall review U.S. unilateral and multilateral export controls, in cooperation with other appropriate U.S. agencies.

The Senate amendment directed the Secretary of Commerce to undertake this review, in cooperation with other appropriate U.S. agencies.

The conference committee adopted the Senate provision.

(b) The House bill required that the results of the review be reported to Congress by December 31, 1978.

The Senate amendment required that the results be reported to Congress not later than 12 months after the completion of the first revision, after the date of enactment of this act, of the list of items controlled, by agreement of the Coordinating Committee of the Consultative Group.

The conference committee adopted the House provision.

FINANCIAL DISCLOSURE BY COMMERCE DEPARTMENT OFFICERS AND EMPLOYEES

The Senate amendment required annual disclosure statements by each Commerce Department employee who has policymaking responsibilities relating to export administration and who has any known financial interest in any person subject to, licensed under, or otherwise receiving benefits under the Export Administration Act. Criminal penalties were provided for knowing violations.

The House bill contained no comparable provision.

The conference committee accepted the House position.

TECHNOLOGY EXPORT STUDY

The House bill directed 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. The study was 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 were to be reported to the Congress within 1 year of enactment of this act.

The Senate amendment contained no comparable provision.

The committee of conference agreed to the House provision.

MONITORING OF COMMODITIES IN POTENTIAL SHORT SUPPLY

The Senate amendment required that monitoring of exports for short supply purposes commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of the Export Administration Act.

The House bill contained no provision on this issue.

The conference committee adopted the Senate provision. The conference committee recognized that formal monitoring can have a disruptive effect on the market because it can lead to excess ordering abroad in anticipation of controls, resulting in export restrictions which would not have been imposed but for the monitoring. Therefore, it is the understanding of the conference committee that this provision would not create any new substantive criteria for monitoring, but clarified that the Department of Commerce is to gather information at a time adequate to permit intelligent and informed decisions about the need for short supply export controls.

TITLE II—"FOREIGN BOYCOTTS"

GENERAL REQUIREMENTS FOR A VIOLATION

In setting forth the general requirements for a violation under the new "Foreign Boycotts" section of the Export Administration Act, the House bill prohibited a U.S. person from willfully taking or agreeing to take certain actions to comply with, further, or support any boycotts 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.

The Senate amendment prohibited any U.S. person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take certain actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation.

The conference committee adopted the Senate provision.

PROHIBITED ACTIONS

The House bill specified the actions which would be prohibited pursuant to a boycott. These actions include: refraining from doing business with the boycotted country or any other person; refraining from employing or otherwise discriminating against any U.S. person on the basis of race, religion, sex, or national origin; furnishing informa-

tion with respect to the race, religion, sex, or national origin of any other U.S. person; and, using a foreign person in order to circumvent the antiboycott prohibitions.

The Senate amendment specified similar prohibited actions, but in slightly different language. Rather than prohibiting "refraining", it prohibited "refusing, or requiring any other person to refuse" to do business with any person or to employ or otherwise discriminate against any U.S. person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person; it further prohibited furnishing information with respect to the race, religion, sex, or national origin of any other U.S. person or of any owner officer, director, or employee of such person, and prohibited the taking of any action with the intent of evading the anti-boycott provisions of this legislation.

The conference committee adopted the Senate language, with an amendment that the prohibition against furnishing information cover information on "any person" rather than "any other person" and that the exception for compliance with passport or immigration requirements be amended to permit compliance with requests for information pertaining to securing or maintaining employment in a boycotting country (see below).

The conference committee further agreed to accept as part of the "Statement of Managers" the explanation of the scope of the word "refusing" included in the Senate Report (No. 95-104) on S. 69:

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

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

EXCEPTIONS TO THE PROHIBITIONS

a. "Compliance" or "complying or agreeing to comply"

The House bill stated the exceptions to the prohibitions in terms of "compliance with" various requirements or actions.

The Senate amendment used the language "complying with or agreeing to comply with" various requirements or actions.

The conference committee adopted the Senate language.

b. Certification

The House bill contained a provision which allowed compliance with import and shipping document requirements with respect to designation of country or origin, name and nationality of the carrier, and route of shipment, and the name of the supplier. It prohibited compliance with negative certificates of country of origin beginning 1 year after the effective date of the rules and regulations.

The Senate amendment allowed compliance with respect to country of origin, the name of the carrier and route of shipment, and the name of the shipper or the provider of other services. However, beginning 1 year after the enactment of this act, such information could not be provided if stated in negative, blacklisting, or similar exclusionary terms, except with respect to carriers or route of shipment as may be necessary to comply with precautionary requirements protecting against war risks and confiscation.

The conference committee adopted the Senate provisions.

c. Unilateral selection

The House bill permitted compliance with the designation of a specific person to be involved in a particular aspect of a transaction, unless the U.S. person has actual knowledge that the sole purpose of the designation is to implement the boycott.

The Senate amendment permitted a U.S. person to comply or agree to comply with the unilateral and specific selection by the boycotting country or a national or resident thereof of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country.

The conference committee adopted the Senate provision.

d. Letters of credit

The House bill prohibited the paying, honoring, confirming, advising, processing or otherwise implementing a letter of credit containing an illegal boycott condition. The House bill also stated that a U.S. person may refuse to pay, honor, advise, confirm or otherwise implement a letter of credit if the beneficiary fails to comply with the conditions thereof.

The Senate amendment prohibited the paying, honoring, confirming or otherwise implementing such letter of credit. It also stated that a U.S. person is not obligated, because of the antiboycott prohibitions, to pay or otherwise honor or implement a letter of credit containing a condition or requirement compliance with which is prohibited by the antiboycott prohibitions.

The conference committee adopted the Senate provision.

e. Compliance with local law

The House bill provided for Presidential waivers of the rules and regulations (other than those prohibiting the use of a foreign person to circumvent the prohibitions) 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 be prohibited by these antiboycott provisions. The President would be required to report the use of this authority promptly to the Congress.

The Senate amendment permitted a U.S. person resident in a foreign country to comply with the laws of that country with respect to the activities of such person exclusively in that country. In addition, the amendment also provided for exceptions by regulation for a U.S. person resident in a foreign country to comply with the laws of that country governing imports of trademarked, trade-named, or similarly specifically identifiable products or components for his own use, including the performance of contractual services within that country.

The conference committee agreed to the Senate provision.

f. Additional Exceptions

The Senate amendment contained three additional exceptions. It specified that normal business information could be furnished in a commercial context and allowed compliance with immigration or passport requirements with respect to one's self or members of one's family. It further provided that the exceptions with respect to unilateral selection and compliance with local law not apply to the prohibitions against discriminating or furnishing information with respect to race, religion, sex, or national origin.

The House bill did not contain comparable provisions.

The conference committee agreed to the Senate provisions, with an amendment to permit compliance by an individual with requests for information regarding requirements of employment within the boycotting country.

CIVIL RIGHTS AND ANTITRUST LAWS

The House bill stated that the prohibitions and exceptions provided for in the subsection shall not be construed to supersede or limit the operation of the antitrust laws of the United States.

The Senate amendment contained a provision which was almost identical to the House bill with respect to the operations of the anti-trust laws and also extended the coverage to include the civil rights laws of the United States.

The conference committee adopted the Senate provision.

PREEMPTION

The House bill preempted and superseded any State or local law which is directed to compliance with, furtherance of, or support for any boycott fostered or imposed by a foreign country against another foreign country.

The Senate amendment preempted any State, District of Columbia, territorial, or local law, rule, or regulations which pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

The conference committee adopted the Senate provision.

EFFECTIVE DATE OF RULES AND REGULATIONS

The House bill required that rules and regulations implementing the prohibitions be issued and become effective within 120 days of enactment.

The Senate amendment required that rules and regulations implementing the prohibitions (except the prohibition against negative certificates) shall be issued within 90 days of enactment and be issued in final form and become effective within 120 days after being first issued. The rules and regulations implementing the prohibition against negative certificates would take effect within 1 year of enactment.

The conference committee adopted the Senate provision.

GRACE PERIOD

The House bill provides a grace period through December 31, 1978, for written contracts entered into as of April 1, 1977; the grace period could be extended to 1 additional year where there are good-faith negotiations to eliminate provisions that are inconsistent with the anti-boycott prohibitions of this legislation.

The Senate amendment provides a grace period of 2 years from enactment for contracts in effect as of March 1, 1977, extendable for three additional 1-year periods where there are good faith efforts made to amend such contracts.

The conference committee adopted the House provision, with an amendment that the provision cover contracts entered into on or before May 16, 1977.

REPORTING REQUIREMENT

The House bill required the reporting of any request for taking a prohibited action and provided that the rules and regulations might also require the reporting of any other action described in the policy statement. It further provides that certain information in the required reports, including the identity of reporting parties, shall be kept confidential if the Secretary of Commerce determines that disclosure thereof would place the U.S. person at a competitive disadvantage.

The Senate amendment required the reporting of any request for taking any action described in the policy statement. It provided that the Secretary of Commerce could keep certain information in the report confidential if the Secretary determines that the disclosure would place the U.S. person at a competitive disadvantage.

The conference committee adopted the Senate provision.

STATEMENT OF POLICY

The House bill amended the policy statement in section 3(5) of the Export Administration Act to declare it to be U.S. policy to discourage, and in certain cases to prohibit, U.S. persons from taking or agreeing to take actions to comply with or support boycotts fostered by any foreign country against a country friendly to the United States or against any U.S. person, and to discourage the use of negative certificates of origin.

The Senate amendment amended section 3(5) to declare it to be U.S. policy to encourage, and in certain cases to require, U.S. persons to refuse to take actions, including the furnishing of information or entering into agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any

foreign country against a country friendly to the United States or against any U.S. person.

The conference committee adopted the Senate provision.

DEFINITION OF A U.S. PERSON

The House bill defined the term "U.S. person" as including 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 U.S. foreign commerce, any foreign subsidiary or affiliate controlled in fact by a domestic concern.

The Senate amendment defined the term "U.S. person" as meaning any U.S. resident or national (other than an individual resident outside the United States and employed by other than a U.S. person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) controlled in fact by a domestic concern.

The conference committee adopted the Senate provision.

REPORTING REQUIREMENTS

The conference committee further urged that in the review of current regulations and the development of new regulations pursuant to this act, great care shall be taken to minimize to the greatest extent feasible the amount of paperwork required of those reporting to the Secretary of Commerce.

CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
BENJAMIN S. ROSENTHAL,
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