

# TRADING WITH THE ENEMY ACT REFORM LEGISLATION

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REPORT

OF THE

COMMITTEE ON INTERNATIONAL  
RELATIONS

[INCLUDING COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE]

ON

H.R. 7738

WITH RESPECT TO THE POWERS OF THE PRESIDENT IN  
TIME OF WAR OR NATIONAL EMERGENCY



JUNE 23, 1977.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 7738]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 7738) with respect to the powers of the President in time of war or national emergency, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 4, strike out "June" and insert in lieu thereof "July".  
Page 6, line 6, insert "or" immediately after the semicolon; strike out lines 7 and 8; and in line 9, strike out "(3)" and insert in lieu thereof "(2)".

SUMMARY AND PURPOSE OF THE LEGISLATION

The purpose of the legislation is to redefine the power of the President to regulate international economic transactions in future times of war or national emergency. These powers are currently provided and defined in section 5 (b) of the Trading With the Enemy Act.<sup>1</sup> The proposed bill, H.R. 7738, would separate war and nonwar authorities and procedures, preserving existing Presidential powers in time of war declared by Congress, and providing somewhat narrower powers subject to congressional review in times of "national emergency" short of war.

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<sup>1</sup> U.S.C. 95a; 50 U.S.C. App. 5(b).

As described by the Department of Justice in testimony before the Subcommittee on International Economic Policy and Trade, the existing section 5(b) "confers upon the Executive four major groups of powers" in time of war or other national emergency declared by the President:

- (a) Regulatory powers with respect to foreign exchange, banking transfers, coin, bullion, currency, and securities;
- (b) Regulatory powers with respect to "any property in which any foreign country or a national thereof has any interest";
- (c) The power to vest "any property or interest of any foreign country or national thereof"; and
- (d) The powers to hold, use, administer, liquidate, sell, or otherwise deal with "such interest or property" in the interest of and for the benefit of the United States.<sup>2</sup>

Title I of the bill amends section 5(b) of the Trading With the Enemy Act to remove the authority of the President to use the authorities granted thereby in time of national emergency (other than a declared war), except that current uses of those authorities pursuant to an existing declaration of national emergency may continue, subject to an annual determination by the President that the continued exercise of the authorities is in the national interest. The effect of title I is to retain section 5(b) of the Trading With the Enemy Act for use during time of war declared by Congress, and also largely to "grandfather" those powers now being exercised under the act.

Title II of the bill, the "International Emergency Economic Powers Act," confers upon the President a new set of authorities for use in time of national emergency which are both more limited in scope than those of section 5(b) and subject to various procedural limitations, including those of the National Emergencies Act.<sup>3</sup>

Title III of the bill makes a series of conforming amendments to the Export Administration Act,<sup>4</sup> which transfer to that act the authority, heretofore exercised under section 5(b) of the Trading With the Enemy Act, to regulate exports of non-U.S.-origin goods and technology by foreign subsidiaries of U.S. concerns.

#### COMMITTEE ACTION

On March 29 and 30, April 19 and 26, and May 5, 1977, the Subcommittee on International Economic Policy and Trade held hearings, entitled "Emergency Controls on International Economic Transactions," on H.R. 1560, a bill to repeal section 5(b) of the Trading with the Enemy Act, and H.R. 2382, the Economic War Powers Act. Both bills were introduced by Hon. Jonathan B. Bingham, chairman of the subcommittee. On June 2, 8, 9, and 13, 1977, the subcommittee considered draft legislation reforming section 5(b) of the Trading with the Enemy Act, and on June 13, by voice vote, ordered the draft legislation reported favorably to the full Committee on International Relations.

<sup>2</sup> U.S. Congress, House, "Emergency Controls on International Economic Transactions," hearings before the Subcommittee on International Economic Policy and Trade of the Committee on International Relations, 95th Cong., 1st sess. (1977).

<sup>3</sup> 50 U.S.C. 1601.

<sup>4</sup> 50 U.S.C. App. 2401.

The draft legislation was introduced as a clean bill on June 13 by Representative Bingham and three cosponsors as H.R. 7738 and referred to the Committee on International Relations. The committee met in open session on June 16 to hear executive branch testimony on the bill from the Honorable C. Fred Bergsten, Assistant Secretary of Treasury for International Affairs, and on June 17 to consider amendments to the bill. Subsequently, on June 20, 1977, the committee met in open session and by voice vote, ordered H.R. 7738 favorably reported with two amendments.

#### PURPOSE OF COMMITTEE AMENDMENTS

The first amendment changed the "grandfather" provision to apply to authorities being exercised on July 1, 1977, rather than June 1, 1977 as in the original bill. The purpose of this amendment was to exclude from the grandfather provision the continuation in force of the Export Administration Regulations<sup>5</sup> under the authority of section 5(b). This use of section 5(b) will be terminated by July 1, 1977, as a result of the signing into law of the Export Administration Amendments of 1977 on June 22, 1977.

The second amendment struck out a provision specifying that the authorities of title II of the bill do not include the authority to regulate news gathering and dissemination by the news media. That provision was eliminated on the assumption that news media rights are sufficiently protected under the Constitution.

#### BACKGROUND

In an immediate sense, H.R. 7738 is a response to the requirement of section 502 of the National Emergencies Act that the committee with jurisdiction over section 5(b) of the Trading With the Enemy Act "make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress \* \* \*." More fundamentally, however, the bill is a response to 60 years of experience with section 5(b) since the passage of the Trading With the Enemy Act in 1917. This history is outlined below followed by a discussion of the requirements of the National Emergencies Act.

#### TRADING WITH THE ENEMY ACT

This discussion of the legislative history and executive use of section 5(b) of the Trading With the Enemy Act is based principally on a memorandum prepared by the Department of Justice for the Senate Special Committee on the Termination of the National Emergency.<sup>6</sup> The memorandum observes that—

section 5(b) of the act has been the statutory foundation for control of domestic as well as international financial transactions and is not restricted to "trading with the enemy." Its

<sup>5</sup> 15 CFR 368-399.2.

<sup>6</sup> Memorandum of the Department of Justice for the Special Committee on the Termination of the National Emergency, May 21, 1973, in Congressional Record, Senate, Oct. 7, 1974.

use over the years provides an interesting study in the evolution of a statute as a result of continuing interplay between the Executive and Congress.

The Justice Department memorandum contains the following description of the original legislative intent of section 5(b):

The act was passed in 1917 to "define, regulate, and punish trading with the enemy." \* \* \* Section 5(b) gave the President power to regulate transactions in foreign exchange, the export or hoarding of gold or silver coin or bullion or currency and transfers of credit in any form "between the United States and any foreign country." \* \* \* Section 5(b), at that time, exempted "transactions to be executed wholly within the United States," thus appearing to limit its use as a basis for domestic controls. It did not include a provision permitting use of the act during periods of national emergency nor was its use restricted by its terms to the duration of the First World War or any specific term after the end of the war. A law passed in 1921 terminating certain war powers specifically exempted the act from termination because of the large amount of property held under the act by the Alien Property Custodian at that time.

In 1933 President Roosevelt, citing the authority of section 5(b), declared a national emergency and, under that emergency, a bank holiday to prevent hoarding of gold, despite the fact that at the time section 5(b) was explicitly limited by its terms to wartime use.<sup>7</sup> In the first days of its 1933 session, Congress passed the Emergency Banking Act, which retroactively approved the President's action and amended section 5(b) to provide that its authorities could be used in time of national emergency declared by the President and to remove the exclusion of domestic transactions from its scope.

As the Justice Department memorandum points out:

The legislative history of the Emergency Banking Act is short; only eight hours elapsed from the time the bill was introduced until it was signed into law. There were no committee reports. Indeed, the bill was not even in print at the time it was passed.

As the debate on that day makes clear, Congress recognized that it was conferring unusual powers on the President which were justified by the gravity of the situation which the country faced, but which should not normally be available to Presidents in peacetime.<sup>8</sup> The emergency banking regulations<sup>9</sup> issued by the President under section 5(b) of the Trading With the Enemy Act, as amended by the Emergency Banking Act, were subsequently ratified by Congress in 1934 by section 13 of the Gold Reserve Act.<sup>10</sup> They remain in effect, as does the 1933 declaration of national emergency.

<sup>7</sup> Executive Proclamation No. 2039, Mar. 6, 1933.

<sup>8</sup> See U.S. Congress, House, "Trading With the Enemy: Legislative and Executive Documents Concerning Regulation of International Transactions in Time of Declared National Emergency," prepared by the Subcommittee on International Trade and Commerce of the Committee on International Relations, 94th Cong., 2d sess. (1976), pp. 242ff.

<sup>9</sup> 31 CFR parts 120-127.

<sup>10</sup> 12 U.S.C. 1213.

The next major uses of section 5(b) occurred in connection with World War II. In 1940 and 1941 President Roosevelt issued a series of Executive Orders freezing the U.S.-held assets of countries occupied by the Axis Powers in order to prevent withdrawal of the assets under duress, and finally freezing the assets of the Axis Powers themselves.<sup>11</sup> These freezing orders were also ratified by act of Congress on May 7, 1940.

In August 1941 the President ordered imposition by the Federal Reserve Board of consumer credit controls as a measure to fight inflation.<sup>12</sup> Finding the authority of section 5(b) to regulate transactions involving "banking institutions" to extend even to "a vendor of consumer durable goods" engaged in extending credit.

Although this action would appear also to be beyond the authority of section 5(b), it, too, was ratified retroactively by Congress in the First War Powers Act of 1941.

Two significant new uses for section 5(b) have been exerted since World War II. In 1968 President Johnson imposed foreign direct investment controls on U.S. investors, citing the authority of section 5(b) and the continued existence of the national emergency declared by President Truman in 1950 with respect to hostilities in Korea.<sup>13</sup> These controls went out of existence by legislation in 1974. And on four occasions the Export Administration Regulations have been continued in effect during lapses in the Export Administration Act, under executive orders citing the 1950 emergency and the 1971 emergency referred to below.<sup>14</sup>

Finally, section 5(b) came into play when, on August 15, 1971, President Nixon declared a national emergency with respect to the balance-of-payments crisis and under that emergency imposed a surcharge on imports.<sup>15</sup> In that case, section 5(b) was not among the statutes cited in the President's proclamation as authority for the surcharge, but was so cited later by the Government in response to a suit brought in Customs Court by Yoshida International challenging the surcharge. The court's decision then rested on whether section 5(b) authorized imposition of duties. Although the lower court held that it did not, the Appeals Court reversed on the grounds that the existence of the national emergency made section 5(b) available for purposes which would not be contemplated in normal times.<sup>16</sup>

Section 5(b) of the Trading With the Enemy Act is cited as the authority for four different activities now in effect. The national emergency pursuant to which all of these authorities are being exercised was declared by President Truman in 1950 at the time of the Korean

<sup>11</sup> Executive Order 8389, Apr. 10, 1940; Executive Order 8405, May 10, 1940; Executive Order 8446, June 17, 1940; Executive Order 8484, July 15, 1940; Executive Order 8565, Oct. 10, 1940; Executive Order 8701, Mar. 4, 1941; Executive Order 8711, Mar. 13, 1941; Executive Order 8721, Mar. 24, 1941; Executive Order 8746, Apr. 28, 1941; Executive Order 8785, June 14, 1941; Executive Order 8832, July 26, 1941; Executive Order 8963, Dec. 9, 1941; Executive Order 8998, Dec. 26, 1941.

<sup>12</sup> Executive Order 8843, Aug. 9, 1941.

<sup>13</sup> Executive Order 11387, Jan. 1, 1968.

<sup>14</sup> Executive Order 11677, Aug. 1, 1972; Executive Order 11683, Aug. 29, 1972; Executive Order 11796, July 30, 1974; Executive Order 11798, Aug. 14, 1974; Executive Order 11810, Sept. 30, 1974; Executive Order 11818, Nov. 5, 1974; Executive Order 11940, Sept. 30, 1976.

<sup>15</sup> Proclamation 4074, Aug. 15, 1971.

<sup>16</sup> *Yoshida International, Inc., v. United States*, 378 F. Supp. 1155 (Cust. Ct. 1974); *United States v. Yoshida International, Inc.*, 526 F. 2d 560 (C.C.P.A. 1975).

war.<sup>17</sup> First, under the Foreign Assets Control Regulations, all transactions between the United States and China, North Korea, Vietnam, and Cambodia are prohibited except by license of the Department of the Treasury.<sup>18</sup> On May 8, 1971, the Department licensed most subsequent transactions with China, while continuing the blocking of Chinese assets in U.S. hands before that date. This had the effect of lifting the U.S. trade embargo of China. However, the embargoes of North Korea, Vietnam, Cambodia, and Cuba continue.

Second, under the Cuban Assets Control Regulations, all transactions between the United States and Cuba are similarly prohibited, with certain exceptions.<sup>19</sup>

Third, under the Transaction Control Regulations any "person within the United States" (defined to include foreign subsidiaries of U.S. concerns) is prohibited from purchasing from any foreign country strategic commodities destined for a Communist country.<sup>20</sup>

Fourth, under the Foreign Funds Control Regulations, the assets of East Germany, Czechoslovakia, Latvia, Lithuania, and Estonia, which were blocked during World War II, continue to be blocked pending settlement of claims by U.S. citizens for compensation for property confiscated by the Communist governments of those countries.<sup>21</sup>

Under Executive Order 11940 of September 30, 1976, the Export Administration Regulations were continued in effect notwithstanding the expiration of the Export Administration Act on that date. With reenactment of the Export Administration Act on June 22, 1977, this use of section 5(b) will be terminated.

#### THE NATIONAL EMERGENCIES ACT

On September 14, 1976, the National Emergencies Act became law. Under that act, all powers and authorities possessed by the executive branch as a result of any declaration of national emergency in effect on the date of enactment are terminated 2 years from the date of enactment. Now procedures are provided for the declaration, conduct, and termination of future national emergencies, including provision for termination of a national emergency by Congress by concurrent resolution. The act requires that the President specify the provisions of law under which he proposes to act pursuant to a declaration of national emergency. The President's accountability and reporting requirements are set forth, and certain obsolete emergency power statutes are repealed.

However, certain other emergency power statutes currently in use and deemed important for the continued day-to-day functioning of the Government are exempted from the provisions of the National Emergencies Act. In view of the current uses of these statutes, the exemption was provided to allow for a careful study of how to revise them in accordance with the intent of the National Emergencies Act without disrupting policies currently in effect under their authority. Of these

<sup>17</sup> Proclamation 2914, Dec. 16, 1950.

<sup>18</sup> 31 CFR part 500.

<sup>19</sup> 31 CFR part 515.

<sup>20</sup> 31 CFR part 505.

<sup>21</sup> 31 CFR part 520.

statutes, the most important from a policy standpoint and the most complex from a legal standpoint is section 5(b) of the Trading With the Enemy Act.

The study of how to revise section 5(b) has been the responsibility of the Committee on International Relations and its Subcommittee on International Economic Policy and Trade.

#### NEED FOR THE LEGISLATION

The need for this legislation is apparent from the background discussed above. As that background shows, the legislation is necessitated by two factors. First, through usage and amendment, section 5(b) has become essentially an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review. These powers may be exercised so long as there is an unterminated declaration of national emergency on the books, whether or not the situation with respect to which the emergency was declared bears any relationship to the situation with respect to which the President is using the authorities. Second, the National Emergencies Act requires that the committee take account of this situation and recommend to the House ways in which section 5(b) can be revised to conform to the intent of the National Emergencies Act.

In hearings before the Subcommittee on International Economic Policy and Trade, four distinguished legal scholars elaborated on the need for legislation reforming the Trading With the Enemy Act. Prof. Stanley D. Metzger of Georgetown University Law Center, formerly Assistant Legal Adviser for Economic Affairs in the Department of State, testified as follows:

Section 5(b) is a very broad grant of power by Congress to the President. It has been used generally for purposes related to the national security and the conduct of the foreign relations of the United States. Available to be used in time of war or national emergency declared by the President, with no time limitation on the power granted, it authorizes the President to block the assets subject to U.S. jurisdiction of any designated foreign country or resident, and to block any transactions by any person subject to U.S. jurisdiction with any designated foreign country or resident or anyone acting for or on behalf of such country or resident \* \* \*.

Because the timing trigger—time of war or Presidentially declared emergency—is so broad and because of the circumstances of the past four decades, section 5(b) in its older (pre-World War II) form, and in its present version, has been continually available for use for the past 44 years.

No statement of findings and policy, and no standards to guide its administration are set forth in section 5(b). There is no provision for congressional participation in the decisions to engage in blocking the assets of, or transactions with a foreign country or countries. There is no provision for congressional consideration of whether a particular action remains provident after it is taken, and to terminate it if

not. There is no provision for Presidential reporting at intervals concerning actions he has taken under section 5(b), with reasons for his actions. Above all, there is no fixed duration, such as 3 or 4 years, for the existence of the power in order that, in the course of renewal authorization hearings, detailed explanations of actions can be sought and supplied, and amendments that seem to be called for can be made.

After reviewing our historical experience with section 5(b), Professor Metzger continued:

The common denominator of all these experiences of 5(b) use is the seemingly unilateral consideration by the executive branch whether to impose the 5(b) controls. I was unaware of any congressional consultation before the decisions were made; indeed, I never heard that matter discussed. \* \* \* It is safe to state categorically that there was no institutional, organized consultative mechanism or process for such consultation.

As a result, Professor Metzger concludes:

Since, like Ol' Man River, the controls rolled on for 25 years in the case of China, and now for 15 years in the case of Cuba, with no organized, ongoing mechanism of executive congressional consultation, for their reexamination, no organized effort has been made to examine whether there has been justification for the continued control or the level of the control if some control were thought to be justified.

There has also been no reexamination until now, whether 5(b) in its present form is necessary or desirable.

Prof. Andreas F. Lowenfeld of New York University Law School echoed the same theme in his testimony before the subcommittee, noting that section 5(b) is different from other congressionally authorized controls on U.S. foreign economic policy such as import and export controls:

First, there seems to be no way under existing law to terminate a state of emergency proclaimed by the President except by another Presidential proclamation; and no practical constraint limiting actions taken under emergency authority to measures related to the emergency. The Trading With the Enemy Act itself, and particularly section 5(b), is legislation without limit of time. It has been in effect in its present form since 1941 and has had no expiration date or requirement of congressional scrutiny or review. Second, the delegated authority is not only broad: there are no criteria at all. Subject only to the existence of a national emergency, the power of the President, acting "through any agency he may designate" to affect property or transactions is virtually unlimited, provided there is at least some foreign connection in the property or transaction affected.

Successive Presidents have seized upon the open-endedness of section 5(b) to turn that section, through usage, into something quite

different from what was envisioned in 1917. As Prof. Harold G. Maier of Vanderbilt University Law School noted before the subcommittee:

Section 5 (b)'s effect is no longer confined to "emergency situations" in the sense of existing imminent danger. The continuing retroactive approval, either explicit or implicit, by Congress of broad executive interpretations of the scope of powers which it confers has converted the section into a general grant of legislative authority to the President permitting the executive branch by order, rule, and regulation to make laws concerning almost any subject matter which can conceivably be brought within the terms of section 5 (b). Section 5 (b) permits the President to define any of the terms of the section. Only an outstanding declaration of the existence of a "national emergency" as defined by the President is required to bring those powers into being.

Mr. Peter Weiss, vice president, Center for Constitutional Rights, was more emphatic:

The Trading With the Enemy Act is a prime example of the unchecked proliferation of Presidential power for purposes totally unforeseen by the creators of that power.

In testimony before the Subcommittee on International Economic Policy and Trade, the administration admitted the need for changes in section 5 (b). Assistant Secretary of the Treasury C. Fred Bergsten testified as follows:

\* \* \* we recognize that the 60-year history of the section has revealed the desirability of reforms in the way its non-wartime national emergency powers are exercised. Indeed, the authority of the section is so broad that this administration strongly believes that the powers should only be used on a truly emergency basis. Accordingly, the administration proposes several changes in the way the section is used.

Secretary Bergsten proposed that future use of section 5 (b) be made subject to the requirements of the National Emergencies Act in several respects. First, "the President should be required \* \* \* to proclaim a new national emergency to deal with any future crisis calling for a new application of section 5 (b)," as a means of "encouraging circumspect use of the section." Second, declarations of national emergency under section 5 (b) should automatically expire unless they are renewed by the President. Third, "the President could be required to transmit a report to Congress every 6 months on the activities conducted pursuant to section 5 (b)."

#### THE APPROACH OF THE BILL

Certain current uses of the authorities affected by H.R. 7738 are controversial—particularly the total U.S. trade embargoes of Cuba and Vietnam. The committee considered carefully whether to revise, or encourage the President to revise, such existing uses of international

economic transaction controls, and thereby the policies they reflect, in this legislation. The committee decided that to revise current uses, and to improve policies and procedures that will govern future uses, in a single bill would be difficult and divisive. Committee members concluded that improved procedures for future use of emergency international economic powers should take precedence over changing existing uses. By "grandfathering" existing uses of these powers, without either endorsing or disclaiming them, H.R. 7738 adheres to the committee's decision to try to assure improved future uses rather than remedy possible past abuses.

H.R. 7738 is an expression of the intent of the committee, based on extensive staff analysis, hearings, and markup sessions, that a new approach to international emergency economic powers should include the following:

First, section 5(b) of the Trading With the Enemy Act should revert to what it originally was: a set of authorities for use by the President in time of war declared by Congress, in conformity with the Trading With the Enemy Act as a whole.<sup>22</sup>

Second, a new set of international economic powers, more restricted than those available during time of war, should be created and conferred upon the President as standby authority for use in time of national emergency declared by the President. The committee did not adopt the approach of entirely repealing the President's international emergency economic powers, or making them routine, nonemergency powers.

Third, these new authorities should be sufficiently broad and flexible to enable the President to respond as appropriate and necessary to unforeseen contingencies. For that reason, the committee did not adopt, for example, recommendations that it place a definite time limit on the duration of any state of national emergency.

Fourth, given the breadth of the authorities and their availability at the President's discretion upon a declaration of national emergency, their exercise should be subject to various substantive restrictions. The main one stems from a recognition that emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems. A national emergency should be declared and emergency authorities employed only with respect to a specific set of circumstances which constitute a real emergency, and for no other purpose. The emergency should be terminated in a timely manner when the factual state of emergency is over and not continued in effect for use in other circumstances. A state of national emergency should not be a normal state of affairs.

As a further substantive constraint, the scope of the authorities should be clearly limited to the regulation of international economic

<sup>22</sup> The Trading With the Enemy Act, in its original 19 sections, provides general prohibitions against trading and other forms of intercourse with the enemy; authorizes the President to regulate and prohibit international economic transactions except by license; provides for submission of lists of enemy officers, directors, or shareholders of U.S. corporations; establishes the office of Alien Property Custodian to administer U.S.-held foreign property; sets up procedures for claims to such property by non-enemy persons; specifies permitted acts in the patent, trademark, and copyright area; specifies prohibited imports; and provides related regulatory authorities. Sections added subsequently deal generally with the administration of money and property seized during wartime. It should be emphasized that, except for section 5(b), the entire act applies exclusively during time of war declared by Congress.

transactions. Therefore the bill does not include authorities more appropriately lodged in other legislation, such as authority to regulate purely domestic transactions or to respond to purely domestic circumstances, or authority to control noneconomic aspects of international intercourse such as personal communications or humanitarian contributions.

Fifth, given the history of expansive use of emergency powers, the exercise of the emergency economic authorities should also be subject to strict procedural limitations, including consultation with Congress, periodic reporting requirements, and provision for termination of states of emergency by Congress and for veto by Congress of regulations promulgated under the international emergency economic powers statute. This should be accomplished at a minimum by conforming the use of the authorities to the procedural requirements of the National Emergencies Act. Where appropriate and necessary, additional procedural safeguards should be written into the new statute.

Sixth, exercises of emergency powers under section 5(b) which are currently in progress should be generally exempted from the provisions of the new statute. Since few if any of the current uses could be justified as responding to an existing emergency situation, but rather are holdovers from emergencies which are long past, to make them subject to this act would be, in effect, automatically to terminate them. The committee feels that this would violate the intent of the National Emergencies Act and would be inappropriate to legislation attempting to legislate for the future not to judge the past. Current uses of section 5(b) should be considered individually, on their merits, in separate legislation. The purpose of the new statute should be to set forth authorities and procedures for future emergency situations.

Seventh, whenever possible, authority for routine, nonemergency regulation of international economic transactions which has heretofore been conducted under section 5(b) should be transferred to other legislation.

Eighth, while it should be the purpose of the legislation to authorize tight controls in time of national emergency, these controls should not extend to the total isolation of the people of the United States from the people of any other country. Such isolation is not only unwise from a foreign policy standpoint, but enforcement of such isolation can also entail violation of First Amendment rights of freedom of expression if it includes, for example, prohibitions on exchange of printed matter, or on humanitarian contributions as an expression of religious convictions.

#### ADMINISTRATION POSITION

On May 20, 1977, the administration submitted to the subcommittee, on an informal basis, a draft bill in the nature of a "technical drafting aid." This draft bill and a subcommittee staff aid." This draft bill and a subcommittee staff draft served as the basis of extensive, informal consultations between representatives of the administration and the subcommittee in the weeks preceding presentation of draft legislation to the subcommittee on June 2. While the draft presented to the subcommittee was a staff draft rather than the administration draft, it

incorporated many of the features of the administration draft, especially the administration's basic approach of leaving section 5(b) relatively untouched and writing a new emergency economic powers statute. The administration did not formally submit a bill until June 2, the first day of subcommittee markup. This formal draft was before the members of the subcommittee and the full committee during their consideration of the legislation, but was not introduced or marked up.

In testimony before the full committee on behalf of the administration, Assistance Secretary of the Treasury, C. Fred Bergsten generally supported H.R. 7738, with certain reservations. Citing his previous testimony before the Subcommittee on International Economic Policy and Trade, he reiterated "the belief of this administration that procedural reforms are desirable in the way section 5(b) powers are exercised". He expressed pleasure that the bill incorporated all three of the administration's recommendations to the subcommittee; that "in the future, the President be required to proclaim a new national emergency for a new application of section 5(b) powers"; that "annual review and renewal of future national emergencies would be appropriate"; and that Congress and the public should be kept "informed on the uses of section 5(b)."

Secretary Bergsten specifically supported "the approach of the bill which separates the wartime from the national emergency powers by leaving the wartime powers in section 5(b) and placing the emergency powers in a separate statute"; the "procedure for continuing existing uses of section 5(b)"; and the emphasis in the bill that emergency powers "should be available only in true emergencies." He took exception, however, to provisions in the bill which permit congressional termination of emergencies and veto of regulations by concurrent resolution, and which preclude "the regulation or prohibition under the act of uncompensated transfers of anything of value."

## SECTION-BY-SECTION ANALYSIS

### TITLE I—AMENDMENTS TO THE TRADING WITH THE ENEMY ACT

Title I of the bill makes certain amendments to the Trading With the Enemy Act, but provides conditions under which current uses of section 5(b) of that act may continue notwithstanding those amendments.

#### *Section 101—Removal of certain emergency powers under the Trading With the Enemy Act*

Section 101(a) of the bill amends section 5(b) of the act to remove the provision making the authorities to control economic transactions available to the President in time of national emergency declared by him, but retains intact these broad authorities for use in time of war declared by Congress.

Section 101(b) of the bill provides that uses of the authorities of section 5(b) of the Act with respect to specific countries, which are in effect on July 1, 1977 (such as for the embargoes of Cuba, Vietnam, and other countries, and the freeze on assets of Czechoslovakia, the People's Republic of China, and other countries), will terminate on September 14, 1978—the date specified by the National Emergencies

Act for termination of all existing emergency authorities—unless extended by the President. The existing uses of the authorities of section 5(b) may be extended by the President for successive 1-year periods upon determination by the President that such extension is in the national interest. It is the intent of the committee that the President report each such determination and the reasons therefor to the Congress.

H.R. 7738 originally specified that this grandfather provision applied to uses of section 5(b) in effect on June 1, 1977. The committee amended that date to July 1, 1977. This change was made because the committee does not wish to grandfather the use of section 5(b) as authority for the continuation in force of the Export Administration Regulations. This use of section 5(b) was in effect on June 1, 1977, but will terminate as a result of the signing into law of the Export Administration Amendments of 1977 on June 22, 1977.

The committee rejected administration recommendations that it make the Export Administration Act permanent legislation, because it feels that such important regulatory legislation should be periodically reviewed. The committee expects that future lapses of the Export Administration Act can and will be avoided, if necessary, by means of continuing resolutions. Should a lapse occur, however, the authority of title II of this bill could be used to continue the Export Administration Regulations in effect if, and to the extent that, the President declared a national emergency as a result of such lapse according to the procedures of the National Emergencies Act.

Section 101(c) of the bill repeals section 502(a)(1) of the National Emergencies Act, which exempts from the provisions of that act section 5(b) of the Trading With the Enemy Act and which is superseded by this bill.

#### *Section 102—Wartime authorities*

Section 102 of the bill amends section 5(b) of the Trading With the Enemy Act to remove two broad and unclear phrases. This is the only change made by the bill in the President's wartime authorities under section 5(b) of the act.

#### *Section 103—Criminal penalties*

Section 103 of the bill amends section 16 of the Trading With the Enemy Act to increase the maximum criminal fine for violation of the provisions of the act from \$10,000 to \$50,000 and makes a conforming amendment to section 5(b)(3) of the act by striking out a duplicative penalty provision. The fines have not been increased since original passage in 1917. This amendment brings the criminal fines of the Trading With the Enemy Act into conformity with those for violation of the national security and foreign policy provisions of the Export Administration Act.

### TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS

Title II of the bill confers upon the President authority to exercise controls on international economic transactions during future national emergencies, and establishes policies and procedures to govern the use of those authorities.

*Section 201—Short title*

Section 201 provides that title II may be cited as the "International Emergency Economic Powers Act."

*Section 202—Situations in which authorities may be exercised*

Section 202 defines national emergency as an "unusual and extraordinary threat which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." This section provides that the authorities granted to the President by this title may be used to deal with such a threat if the President declares a national emergency with respect to the threat, that they may only be used to deal with that threat and not for any other purpose, and that the exercise of the authorities to deal with any new threat would require a new declaration of national emergency.

By its own terms, and with repeal by section 101(c) of this bill of the temporary exemption for section 5(b), the provisions of the National Emergencies Act are applicable to any exercise of authorities pursuant to any declaration of national emergency. Pertinent provisions of the National Emergencies Act provide that: (1) the President may declare a national emergency with respect to acts of Congress authorizing special or extraordinary power during time of national emergency, and that such declaration must be immediately transmitted to Congress and published in the Federal Register; (2) emergency authorities conferred by such acts of Congress are effective only when the President specifically declares a national emergency, and only if exercised in accordance with the National Emergencies Act; (3) national emergencies may be terminated by Presidential proclamation or by concurrent resolution of the Congress; (4) every 6 months that a national emergency remains in effect, each House must vote on a concurrent resolution on whether to terminate the emergency; (5) any national emergency declared by the President and not otherwise previously terminated will terminate on its anniversary date if, within 90 days prior to each anniversary date, the President does not publish in the Federal Register and transmit to Congress a notice that the emergency will continue in effect; (6) the President may not exercise any emergency power conferred by statute without specifying the statutory basis for his action; (7) the President must keep and promptly transmit to Congress adequate records of all Executive orders and proclamations, rules and regulations, issued pursuant to a declaration of war or national emergency; and (8) during time of war or national emergency the President must transmit to Congress every 6 months a report on expenditures directly attributable to the exercise of emergency authorities. Whenever a President declares a national emergency under section 202 of the bill, all of the above provisions automatically apply to the exercise of the authorities of section 203 of the bill under that declaration of national emergency.

*Section 203—Grant of authorities*

Section 203(a) of the bill defines the international emergency economic authorities available to the President in the circumstances specified in section 202. This grant of authorities basically parallels

section 5(b) of the Trading With the Enemy Act. Paragraph (1) (A) authorizes the President to regulate transactions in foreign exchange, banking transactions involving any interest of any foreign country or a national thereof, and the importing or exporting of currency or securities, and to regulate or freeze any property in which any foreign country or a national thereof has any interest. Paragraph (1) (B) authorizes the President to require any person to keep and furnish records necessary to enforce these provisions. Section 203(a) also holds harmless from suit any person carrying out or administering these authorities in good faith.

This grant of authorities does not include the following authorities which, under section 5(b) of the Trading With the Enemy Act, as amended by title I of this bill, are available to the President in time of declared war: (1) the power to vest, i.e., to take title to foreign property; (2) the power to regulate purely domestic transaction;<sup>23</sup> (3) the power to regulate gold or bullion; and (4) the power to seize records.

Section 203(b) of the bill states that the authority granted to the President by this section does not include the authority to regulate or prohibit, and should not be used with the effect of regulating or prohibiting, personal communications which do not involve the transfer of anything of value, or uncompensated transfers of anything of value except if the President determines that such transfers would seriously impair his ability to deal with the emergency, are in response to coercion against the recipient or donor, or would endanger U.S. Armed Forces. It is the intent of the committee by this provision to reserve title II of the bill as an authority for the regulation of international commercial and financial transactions as necessary to protect the national security, foreign policy, or economy of the United States. The authority of title II does not extend to the interruption or hindrance, direct or indirect, of private communications, which are not commercial or financial transactions, between the citizens of the United States and those of any other country, regardless of the other country's relationship to the United States. Neither does the authority of title II extend to the interruption or hindrance, direct or indirect, of free, uncompensated transfer of anything of value, such as humanitarian contributions, by U.S. citizens to any other country, regardless of that country's relationship to the United States. In the case of uncompensated transfers of anything of value, there is provision for the President to regulate or prohibit such transfers in certain exceptional circumstances. It is the intent of the committee that these exceptions be narrowly construed, and that any doubt be resolved in favor of permitting such transfer to occur.

The Committee deleted from the bill a provision that the authority of this section does not include the authority to regulate or prohibit the collection and dissemination of news by the news media. The committee does not intend by this deletion to authorize regulation or prohibition of the collection and dissemination of news. The news media have long maintained that the First Amendment to the Con-

<sup>23</sup> Examples of purely domestic transactions which in the past have been regulated under section 5(b) include hoarding of gold by U.S. citizens and the extension of consumer credit by U.S. businesses.

stitution provides adequate and complete protection of freedom of the press, and the committee, therefore, considered further statutory protection of that freedom unnecessary, redundant, and inappropriate.

The provisions of section 203(b) are designed both to preserve First Amendment freedoms of expression, and to preclude policies that would totally isolate the people of the United States from the people of any other country.

*Section 204—Consultation and reports*

Section 204 of the bill (a) requires that the President consult with Congress whenever possible before exercising any of the authorities of this title, and continue to consult regularly with Congress so long as such authorities are being exercised; (b) requires that the President transmit to Congress, immediately upon beginning to exercise any of the authorities of this title, a report (1) defining the circumstances which necessitate the exercise of authority; (2) stating why those circumstances constitute a national emergency within the meaning of section 202(a) of the bill; (3) specifying the authorities to be exercised and the actions to be taken; (4) justifying the necessity for such actions; and (5) designating the foreign countries toward which such actions are directed; (c) requires that the President update the report every 6 months; and (d) states that these requirements are supplemental to the reporting requirements of the National Emergencies Act. Nothing in this section should be construed as requiring submission of a report as a precondition of taking action where circumstances require prompt action prior to or simultaneously with submission of a report.

*Section 205—Authority to issue regulations*

Section 205 authorizes the President to issue regulations and prescribe definitions necessary for exercising the authorities conferred upon him by this title.

*Section 206—Congressional review of regulations*

Section 206 provides that all regulations issued under this title must be reported to Congress, and the Congress may by concurrent resolution veto any regulation in whole or in part within 30 legislative days of its report to Congress, the regulation becoming ineffective at the time of the veto. This provision is considered necessary in view of past instances in which Presidents have used the authority to issue regulations as a means of expanding the scope of section 5 (b), as in President Roosevelt's inclusion of vendors of consumer durable goods within the meaning of "banking institution" in order to impose consumer credit controls. The committee recognizes that the President must have latitude and flexibility to deal by regulation with future emergency situations, and it does not favor congressional veto of routine administrative regulations as a general practice. But the regulations promulgated under the International Emergency Economic Power Act will be both infrequent and extremely important, which makes it both feasible and necessary for Congress to reserve for itself the right to veto regulations and definitions which go beyond the purposes and authorities of the act.

*Section 207—Penalties*

Section 207 provides a civil penalty of not more than \$10,000, and a criminal penalty of not more than \$50,000 and 10 years imprisonment, for violations of the provisions of this title. These penalties are comparable to those contained in the Export Administration Act, which provides related export regulation authorities, and to the criminal penalties of the Trading With the Enemy Act as amended by this bill.

*Section 208—Savings provision*

Section 208 of the bill provides that, notwithstanding the termination of a national emergency under the National Emergencies Act, the President may continue to block any assets of a foreign country that were blocked on the date of the termination of the national emergency, if he determines that the continued blocking of those assets is necessary because of U.S. claims against the country involved, unless Congress specifies in a concurrent resolution terminating a national emergency that the assets may not continue to be blocked. Under subsection (a) (2) of section 208, notwithstanding the termination of a currently existing U.S. trade embargo of another country under section 101 (b) of the bill, assets of that country which are blocked on the date of the termination of the trade embargo may continue to be blocked for the same reason. The President is required to report to Congress every 6 months on the reasons for continuing to block the assets of a foreign country under this section.

Holding the assets of a foreign country is generally the most effective means of achieving settlement of U.S. claims. The need to continue to block assets has prompted Presidents to continue a legal state of emergency in effect long after the factual state of emergency has passed. It is the intent of the committee by this section to enable the timely termination of states of emergency, and a return to government under normal law, without prejudicing the ability of U.S. citizens to recover claims against foreign countries.

## TITLE III—AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1969

*Section 301—Authority to regulate extraterritorial exports*

Title III of the bill (section 301) amends the Export Administration Act of 1969 to provide authority for control over exports of non-U.S.-origin goods and technology by foreign subsidiaries of U.S. concerns. This is in addition to the authority currently provided in the Export Administration Act for control over the export of U.S.-origin goods and technology, whether from the United States or abroad. Section 5(b) has heretofore been cited as authority for regulation of the export of non-U.S.-origin goods. However, this is neither a wartime nor an emergency authority, and it belongs in the nonemergency statutory context of the Export Administration Act.

## COST ESTIMATE

—H.R. 7738, with committee amendments, does not authorize the appropriation of any funds. According to the Congressional Budget

Office cost estimate below, the enactment of this legislation will have no budget impact. The committee agrees with the CBO assessment.

### INFLATIONARY IMPACT STATEMENT

The enactment of H.R. 7738, with committee amendments, will have no impact on inflationary forces.

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

##### (A) OVERSIGHT FINDINGS AND RECOMMENDATIONS

Under clause 1(k) (16) of Rule X of the Rules of the House of Representatives, the Committee on International Relations is assigned jurisdiction over trading with the enemy.

In performing its responsibility with respect to such jurisdiction, the committee, under the auspices of the full committee and the Subcommittee on International Economic Policy and Trade has conducted extensive hearings and research on existing laws, regulations, and associated issues involving trading with the enemy. Based on these oversight activities, the committee recommends that the powers of the President to regulate nonwartime transactions be removed from the Trading With the Enemy Act of 1917, as amended, and redefined within the framework of a new International Economic Emergency Powers Act as provided in H.R. 7738 as amended by the committee.

##### (B) BUDGET AUTHORITY

The enactment of H.R. 7738 will create no new budget authority.

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

No oversight findings and recommendations relating to this measure have been received from the Committee on Government Operations.

##### (D) CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE, JUNE 17, 1977

1. Bill Number: H.R. 7738
2. Bill Title: A bill to amend the Trading With the Enemy Act of 1917, as amended, and for other purposes.
3. Bill status: As ordered reported by the House Committee on International Relations on June 20, 1977.
4. Description of bill: This legislation amends the Trading With the Enemy Act of 1917, as amended, the National Emergencies Act, and the Export Administration Act of 1969, as amended, and establishes the International Economic Powers Act to redefine the powers of the President to react to external threats.
5. Budget Impact:

[Dollars in millions]

Authorization amounts and estimated costs:

Fiscal year:

1977	-----	-----
1978	-----	-----
1979	-----	-----
1980	-----	-----
1981	-----	-----

6. Basis for estimate: This legislation would remove the powers of the President to regulate nonwartime transactions from the Trading With the Enemy Act of 1917, as amended, and would redefine those powers in an International Emergency Economic Powers Act. It would also require congressional consultation and review of the exercise of the authority contained in this legislation. This legislation is estimated to have no budget impact.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Joseph Whitehill.

10. Estimate approved by:

C. G. NUCKOLS  
(For 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 italics, existing law in which no change is proposed is shown in roman):

#### TRADING WITH THE ENEMY ACT

##### SECTION 5(a) \* \* \*

(b)(1) During the time of war [or during any other period of national emergency declared by the President], the President may, through any agency that he may designate, [or otherwise,] and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the

form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person [ ] ; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision].

\* \* \* \* \*

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: <sup>1</sup> *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. [Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.] As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

SEC. 16. That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than [ \$10,000 ] \$50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

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<sup>1</sup> Words "including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas" immediately preceding the proviso in subsection (b) (3) of this section, have been omitted on the authority of 1946 Proclamation No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

## SECTION 502 OF THE NATIONAL EMERGENCIES ACT

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- [(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));]
- (2) Act of April 28, 1942 (40 U.S.C. 278b);
- (3) Act of June 30, 1949 (41 U.S.C. 252);
- (4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);
- (5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);
- (6) Public Law 85-804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431-1435);
- (7) Section 2304(a)(1) of title 10, United States Code;
- (8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

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**EXPORT ADMINISTRATION ACT OF 1969**

\* \* \* \* \*

**AUTHORITY**

SEC. 4. (a) \* \* \*

(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, *of any articles, materials, or supplies, including technical data or any other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States.*

\* \* \* \* \*

(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 sen-

tence. 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,] *which would be subject to such controls*, 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.”

VIOLETIONS

SEC. 6. (a) (1) \* \* \*

\* \* \* \* \*

(2) (A) The authority of this Act is 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.

\* \* \* \* \*