

INTERNATIONAL EMERGENCY
ECONOMIC POWERS LEGISLATION

REPORT
OF THE
COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE
TO ACCOMPANY
H.R. 7738



OCTOBER 3 (legislative day, SEPTEMBER 22), 1977.—Ordered to be printed

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(II)

INTERNATIONAL EMERGENCY ECONOMIC POWERS LEGISLATION

— Ordered to be printed —

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

REPORT

[To accompany H.R. 7738]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (H.R. 7738) with respect to the powers of the President in times of war or national emergency having considered the same, reports favorably thereon with amendment(s) and recommends that the bill as amended do pass.

HISTORY OF THE BILL

H.R. 7738 passed the House of Representatives on July 12, 1977 and was referred to the Senate Committee on Banking, Housing, and Urban Affairs on July 13, 1977. The Subcommittee on International Finance held a hearing on the bill on September 8, 1977. Testimony was heard from C. Fred Bergsten, Assistant Secretary of the Treasury for International Affairs and David J. Steinberg, President, U.S. Council for an Open World Economy. The full committee agreed in open markup on September 15, 1977, to report H.R. 7738 favorably to the Senate with amendments proposed by Senator Stevenson.

The amendments agreed to by the committee would do the following:

(1) Insure that Presidential determinations to terminate or extend existing uses of authorities conferred by section 5(b) of the Trading With the Enemy Act will not be interpreted to be subject to the provisions of title II of the National Emergencies Act, which provides that it shall govern unless specifically superseded by subsequent legislation, and includes provisions for ter-

(1)

mination of emergency authority by concurrent resolution of the Congress;

(2) Narrow the exemption of certain international economic transactions from emergency controls so as to restrict such exemption to donations by U.S. persons of nonmonetary articles intended to be used for humanitarian purposes;

(3) Remove a provision from the bill which would subject any regulation, or part of a regulation, issued pursuant to a national emergency declared under title II of the bill to possible congressional veto by concurrent resolution within a 30-day period after each regulation is reported to Congress;

(4) Provide for the separability of the provisions of title II of the bill.

PURPOSE OF THE BILL

The purpose of the bill is to revise and delimit the President's authority to regulate international economic transactions during wars or national emergencies. The bill is a response to two developments: first, extensive use by Presidents of emergency authority under section 5(b) of the Trading With the Enemy Act of 1917 to regulate both domestic and international economic transactions unrelated to a declared state of emergency, and second, passage of the National Emergencies Act of 1977 which provides safeguards for the role of Congress in declaring and terminating national emergencies, but exempts section 5(b) of the Trading With the Enemy Act from its coverage.

Four national emergency declarations were in effect prior to passage of the National Emergencies Act of 1976: President Roosevelt's declaration in 1933 to cope with the banking crisis; President Truman's declaration in 1950 during the Korean War; President Nixon's declaration in 1970 to deal with the Post Office strike and his declaration of a balance of payments crisis in 1971. Any emergency declaration may be used by the President in conjunction with section 5(b) of the Trading With the Enemy Act to regulate domestic or international economic transactions or control property for an indefinite period. Such emergency authority was used by President Johnson to place controls on U.S. direct investment abroad in 1968 (controls which continued until 1974), by President Nixon to impose a 10-percent surcharge on U.S. imports from August to December 1971, and most recently by President Ford to extend controls and regulations issued under the Export Administration Act when that act lapsed temporarily between September 30, 1976 and June 22, 1977. President Johnson's action was based on the continuing emergency declared during the Korean War. Presidents Nixon and Ford based their actions on the Korean emergency and the 1971 balance of payments emergency.

The National Emergencies Act of 1976 terminated emergency authority existing under declarations of national emergency in effect on September 14, 1976, the date the act became law, and specified the manner in which future national emergencies are to be declared and terminated, and emergency authorities to be exercised. Section 5(b) of the Trading With the Enemy Act was excluded from coverage by the National Emergencies Act. The act instructed Congress to study section 5(b) and propose such revisions as might be found necessary.

Exclusion of section 5(b) reflected concern for preserving existing regulations imposed under emergency authority, including the following:

(1) the foreign assets control regulations, which block the assets of, and limit transactions with, the People's Republic of China, North Korea, Vietnam, and Cambodia;

(2) the Cuban assets control regulations, which block the assets of, and limit transactions with, Cuba;

(3) the transaction control regulations, which prohibit U.S. persons from participating in shipping strategic goods to any of the following countries: Albania, Bulgaria, People's Republic of China, Cambodia, Czechoslovakia, German Democratic Republic and East Berlin, Hungary, North Korea, Outer Mongolia, Poland and Danzig, Romania, the Soviet Union, North Vietnam and South Vietnam; and

(4) the foreign funds controls regulations, which continue World War II blockage of the assets of Czechoslovakia, Estonia, the German Democratic Republic, Latvia, Lithuania, and their nationals.

SECTION-BY-SECTION ANALYSIS OF THE BILL

TITLE I—AMENDMENTS TO THE TRADING WITH THE ENEMY ACT

Title I of the bill would restrict the authority provided in section 5(b) of the Trading With the Enemy Act to wartime situations, but provide for continuation of existing exercises of authority under that section.

Section 101(a) would remove the authority under section 5(b) of the Trading With the Enemy Act to control certain economic transactions during a national emergency declared by the President.

Section 101(b) would grandfather the exercise of authorities already being exercised under section 5(b) until 2 years from date of enactment of the National Emergencies Act, that is, September 14, 1978. Such exercise could be extended for unlimited successive 1-year periods if the President determines that such extension is in the national interest. Section 101(b) would enable the President to continue to control transactions with certain countries (Cuba and Vietnam, for example) and to block assets of certain countries (the People's Republic of China, for example).

Section 101(c) would provide that section 101(b) supersedes the National Emergencies Act insofar as the former is inconsistent with the latter. Section 101(c) insures that Presidential determinations to extend or terminate existing uses of authorities conferred by section 5(b) of the Trading With the Enemy Act will not be interpreted to be subject to the provisions of section 101(a) or title II of the National Emergencies Act, which include provisions for termination of emergency authority by concurrent resolution of the Congress. Section 101(c) is necessary because the National Emergencies Act provides that its provisions shall govern unless specifically superseded by subsequent legislation.

Section 101(d) would repeal the exclusion of section 5(b) of the Trading With the Enemy Act from coverage by the National Emergencies Act.

Section 102 would repeal two vague phrases in section 5(b)(1) of the Trading With the Enemy Act.

Section 103 would increase the maximum criminal fine for violation of the Trading With the Enemy Act to \$50,000, the same as provided for violation of the Export Administration Act.

TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS

Title II of the House bill would grant authority to the President to regulate certain categories of international economic transactions during future national emergencies, and prescribe procedures to be observed in the exercise of such authority.

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

Section 202 would authorize the exercise of the emergency authority granted under title II only to deal with 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." The President could declare a national emergency and exercise the authorities granted in this title only with respect to such threat.

Section 203(a) would grant the President emergency authority to regulate foreign exchange transactions, transfers of credit or payments between banking institutions where a foreign interest is involved, import or export of currencies or securities, and to control or freeze property transactions where a foreign interest is involved, and to require records to be kept or produced as necessary to the exercise of authorities under this title. Authority to vest property, seize records and regulate purely domestic economic transactions would not be granted. Persons administering authority under this title in good faith would be held harmless.

Section 203(b) would exclude from the President's emergency authority the regulation or prohibition of: personal communications not involving transfers of anything of value, and "donations, by persons subject to the jurisdiction of the United States, of articles, including food, clothing, and medicine, intended to be used solely to relieve human suffering," unless the President determines that (a) such exclusion would seriously impair his ability to deal with the unusual and extraordinary threat, which gave rise to the declared emergency or (b) the transfers were the result of coercion, or, (c) such exclusion would endanger U.S. Armed Forces during hostilities underway or imminent. This section as approved by the House, would have excluded from the exercise of emergency controls, all "uncompensated transfers of anything of value" unless the President made a determination in accordance with one or more of the three clauses referred to above. The amendment adopted by the committee would enable the President to apply emergency controls to transfers of funds, transfers by non-U.S. nationals, or transfers of articles clearly not intended to serve humanitarian purposes, without making such special determination.

The exercise of emergency controls would be restricted in order to enable U.S. persons to make humanitarian contributions in accordance with their consciences, but not to permit transfers which subvert, contravene, or preclude effective exercise of emergency authority. Monetary contributions may be intended to serve humanitarian purposes, but the person making the contribution has no control over the end use of the funds. Donations of articles, on the other hand, are far more likely to serve their intended purpose. The contributors of such articles should be U.S. persons, not foreign nationals, because the free exercise of conscience cannot usually be presumed in the latter case. The committee intends that donations of articles by U.S. persons be presumed to be intended to be used solely to relieve human suffering when that is the stated intention of the donor and when the articles might reasonably be expected to serve that end.

Section 204 would require the President to consult with Congress prior to and during the exercise of emergency authority, and to provide detailed reports on the basis for emergency authority and his exercise of such authority. Reports would be required when the emergency is first declared and each 6 months thereafter. The consultation and reporting requirements of this section would be in addition to those contained in title IV of the National Emergencies Act.

Section 205 would authorize the President to issue such regulations, including definitions, as may be necessary to exercise the authorities granted by title II.

Section 206 would provide a maximum civil fine of \$10,000 for violation of regulations issued under this title, and maximum penalties of \$50,000 in fines or 10 years imprisonment for willful violation.

Section 207 would provide that blocked assets may continue to be blocked by the President despite termination of a state of emergency, the National Emergencies Act notwithstanding, unless Congress specifies otherwise. Nothing in this act is intended by the committee to interfere with the authority of the President to continue blocking assets which are presently blocked, or to impede the settlement of claims of U.S. citizens against foreign countries.

Section 208 would provide that the remainder of title II remain in force even if portions are held invalid.

TITLE III—AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1969—
AUTHORITY TO REGULATE EXTRATERRITORIAL EXPORTS

Title III would amend the Export Administration Act to confer nonemergency authority under the act to control non-U.S.-origin exports by foreign subsidiaries of U.S. concerns. Such authority has been exercised under the emergency authority of section 5(b) of the Trading With the Enemy Act. Export controls of this kind could be implemented in future emergencies under the authority of section 203(a)(1) of title II.

FISCAL IMPACT STATEMENT

In accordance with section 252(a) of the Legislative Reorganization Act of 1970, the committee estimates that the bill will have no budgetary impact. This concurs with the estimate by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,

Washington, D.C., September 16, 1977.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7738 as ordered reported by the Committee on Banking, Housing, and Urban Affairs on September 15, 1977. This legislation, if enacted,

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. This bill is estimated to have no budgetary impact.

Should the committee so desire, we would be pleased to provide further detail on this cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director*.

CHANGES IN EXISTING LAW

In compliance with paragraph (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; 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, transfered 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: ¹ *Provided, however,* That the foregoing shall not be constructed 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.

* * * * *

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 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.

[(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.

* * * * *

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 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,] *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.”.

VIOLATIONS

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.

* * * * *

