

**U.S. EXPORT CONTROL POLICY AND EXTENSION OF  
THE EXPORT ADMINISTRATION ACT**

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**HEARING**  
BEFORE THE  
**SUBCOMMITTEE ON INTERNATIONAL FINANCE**  
OF THE  
**COMMITTEE ON**  
**BANKING, HOUSING, AND URBAN AFFAIRS**  
**UNITED STATES SENATE**  
NINETY-SIXTH CONGRESS  
FIRST SESSION

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**PART III**

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**S. 737**

TO PROVIDE AUTHORITY TO REGULATE EXPORTS, TO IMPROVE THE EFFICIENCY OF EXPORT REGULATION, AND TO MINIMIZE INTERFERENCE WITH THE RIGHT TO ENGAGE IN COMMERCE

**S. 977**

TO AMEND THE EXPORT ADMINISTRATION ACT OF 1969, AS AMENDED, AND FOR OTHER PURPOSES

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MAY 3, 1979

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Printed for the use of the  
Committee on Banking, Housing, and Urban Affairs





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# U.S. EXPORT CONTROL POLICY AND EXTENSION OF THE EXPORT ADMINISTRATION ACT

THURSDAY, MAY 3, 1979

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING,  
AND URBAN AFFAIRS,  
SUBCOMMITTEE ON INTERNATIONAL FINANCE,  
*Washington, D.C.*

The subcommittee met at 2:40 p.m. in room 5302, Dirksen Senate Office Building, Senator Adlai E. Stevenson (chairman of the subcommittee) presiding.

Present: Senators Stevenson and Stewart.

Senator STEVENSON. The subcommittee will come to order.

This afternoon we continue hearings on export controls with particular reference to S. 737, the bill which I have introduced with Senator Heinz, and S. 977, the bill introduced by request of the administration.

These bills extend or replace the Export Administration Act of 1969.

We will hear from Mr. Frank Weil, the Assistant Secretary of Commerce, and later from John F. O'Leary, Deputy Secretary of Energy, whose testimony will, I believe, be addressed to exports of Alaskan oil.

It's a pleasure for me to welcome an old friend of this subcommittee, Mr. Weil.

Please proceed. I'll request you, sir, and our other witness, if you can, to summarize your statements.

## STATEMENTS OF FRANK WEIL, ASSISTANT SECRETARY OF COMMERCE FOR INDUSTRY AND TRADE, ACCOMPANIED BY CONVERSE HETTINGER, DIRECTOR, SHORT SUPPLY DIVISION, OFFICE OF EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. WEIL. Mr. Chairman, I'm very pleased to be back before your subcommittee. I hope that we can shed some light on what is a complex subject.

I follow your request happily and submit for the record, a 26 page statement.

Senator STEVENSON. The statement will be entered in the record.

Mr. WEIL. What I might do is discuss briefly some of the questions that are raised in your letter of April 30. Because we just received your letter 2 days ago, we would like, with your indul-

gence, Mr. Chairman, to submit answers to each of the specific questions for the record of this hearing. (See p. 31.)

If I might, let's begin with the question of legislated decision deadlines and escalation procedures.

We must focus on the operational consequences of imposing definitive and even arbitrary decision points, as distinguished from procedure points.

I assume we begin from the same goal. Mr. Chairman, improving the Export Administration process without sacrificing the national security, and I think we have to be careful not to produce a result opposite from that which we intend.

If we were to mandate in the law definitive decision points, that is, a point in time at which an export license must be denied or granted, a number of applications might be denied although sufficient dialog between agencies could lead eventually to approval. We cannot make premature decisions on the very difficult cases that might jeopardize the national security or foreign policy of this country. Those are the cases that require more time and effort to resolve. Decision points mandated by law could prevent us from dealing effectively with them.

In that respect, we offer for your consideration the procedures we have now in place. Admittedly, they may have been encouraged to some extent by the wishes of this committee, as well as by sentiments expressed on the other side of the Hill, that we take further steps to expedite the process. I think these procedures are an important step toward expediting the process.

I should add that of the 60,000 to 70,000 cases we received last year, only about 3 percent currently exceed the 90-day time limit. Only about 1 percent, or 600 to 700 cases, require full-scale inter-agency review. However, I would be remiss if I didn't admit that I think the Department of Commerce alone, apart from the Department of Defense and any of the other agencies involved in export controls, can do a better job, and we will.

We are trying, but I think it would not serve the purpose of accomplishing that better job if we were required at a given point in time to make a final decision.

The procedure we have in place now causes the decision level to escalate only when a case is so difficult, so complex that its review must be extended. We then turn to the applicant and ask if it would prefer a negative decision quickly. We usually find that applicants allow us more time in order to reach a positive decision.

Would you like, Mr. Chairman, for me to pause on each one of these things and question me on the whole series of issues you have raised?

Senator STEVENSON. Let's go ahead on that basis.

I'll jump in from time to time. I don't have any questions on that subject. This is a familiar debate for the committee over the virtue of deadlines.

We have a deadline now.

Mr. WEIL. That's right.

The deadline we have worked with up until the past several weeks was simply the 90-day deadline. We have now instituted a series of administrative requirements which we believe will expedite many cases.

I think it is a procedural, administrative process which we can improve with experience.

But I don't think legislation will change the process. It might, in fact, cause the process to be counterproductive.

Senator STEVENSON. What happens if you don't reach the deadline under this procedure?

Mr. WEIL. The deadlines will escalate unresolved cases to the attention of successively senior officials within the Department. It thus expedites the administrative process.

When we get to the final part of that process, which is 88 days in the case of certain applications, we will ask the applicant if he wishes to pursue the license. We will say: "It's your choice. We can't give you a 'yes' today, we think there are reasons to be not optimistic necessarily, but we are willing to work on it to gain concurrence."

Senator STEVENSON. It sounds like the present procedure.

Mr. WEIL. In a fundamental sense it isn't that different, but it gives them checkpoints along the road. I should add that in most of these cases, with which I have been personally familiar, the applicants are generally fairly large companies. Most of them have personnel in the city, and they know more about where their case is than most of us. Even though they say in public that they would like to have a faster decision, when it comes down to the cutting edge, they always prefer to have more time rather than a "no" decision.

We can give "no" decisions quickly and easily. But the bulk of the cases that cause the delay are those cases involving a complex issue with a technical expert in the Defense Department. Sometimes it takes a while for the Defense people, the applicant, and ourselves to negotiate a modification of the scheme.

I'm in deep water as I start discussing this, Mr. Chairman, because these involve highly technical issues involving size and capacity of computers and other things of that sort.

In my position, as an executive, as I'm sure you understand, it's very difficult to exercise judgment on a technical security matter.

We always tend to play the safe side, as I would hope you would agree that we should.

Senator STEVENSON. Are you coming to availability later?

Mr. WEIL. Yes.

The second issue is the question of the exemption of this procedure from the Administrative Procedures Act.

Again, we would like to believe that we are conducting this exercise with as much due process as possible.

Given the facts that we expect 75,000 to 80,000 cases in 1979, and less than 3 percent are controversial, the additional work that would be required by the Administrative Procedures Act would seriously overburden the system.

As we have indicated in other testimony, we intend to publish in advance for comment our rulemaking and regulatory notices whenever possible. We will make exceptions only when national security is directly involved, and we are required to do things without notice.

We feel—I should add, Mr. Chairman, I really feel this personally—that making the Administrative Procedures Act apply in this

case would not speed up or simplify the Export Administration process.

With respect to the annual reviews, again we are limited by what we do with Cocom. As I understand it, the intention of your bill is to try to reduce the number of items subject to licensing requirements and to speed up and simplify the review. But I think it is not unlikely that an annual list review might expose us to more additions than to subtractions, particularly since we can't unilaterally subtract because of the Cocom limitations.

Let me move on to the subject of majority rule. The powers that are delegated in this law are delegated to the President. I don't know of a precedent in which a Presidential power is then limited to a majority rule.

Since the power of all the secretaries involved flows from the Presidential delegation, in practice majority rule wouldn't work because the President presumably would give instructions within the executive branch to each secretary involved, and their delegates, to follow the minority member of that group.

I think that even though that might have the intention of trying to speed up the process, it might do the reverse because it might give the 1 out of 3 the power to dictate to the majority. There might have to be, because of the way the executive branch works, an instruction, if only a tacit one, that if everybody doesn't agree, there is no agreement.

So as a practical matter I don't know whether majority rule would work.

Then we go on to the question of an additional type of license. We have proposed that it would be sufficient if the statute was amended to provide for such additional type of licenses as the Secretary of Commerce would from time to time deem necessary.

We don't think that it would necessarily be helpful to specify a third type of license at this point that would exceed the limits of the Cocom arrangement since we don't think we could get Cocom to agree.

With respect to crude oil, we think there is virtue in making it possible for the President of the United States to work out swaps of oil without necessarily having to make the findings required in the McKinney amendment. The findings as presently required are probably unattainable; thus the effect is to tie the hands of the President and make it impossible to make a swap when it might be in the national interest.

Mr. O'Leary will speak more to that point.

With respect to our objections to the Wolff-Miller bill, the question of critical technologies versus significant technologies is obviously a very fundamental one.

We think the exercise being conducted by the Defense Department now to develop a shorter list is desirable. But we think that to try to legislate a technical area and draw a fine line between two types of technologies would have the effect of severely limiting the export potential of many things whose export is in the national interest.

With respect to a transfer of this responsibility to the Department of Defense from the Department of Commerce, I can see the arguments pro and con.

I am tempted to show you a cartoon by the artist Saul Steinberg which I have hanging in my office. I brought it here today for the purpose of showing you why we don't think we should transfer to the Department of Defense the responsibility for making these decisions.

I don't know how we will get this in the record. Maybe you want to carry it up so the chairman can see it.

But I think, maybe, as the Chinese say, one picture is worth a few thousand words. I think maybe that describes it.

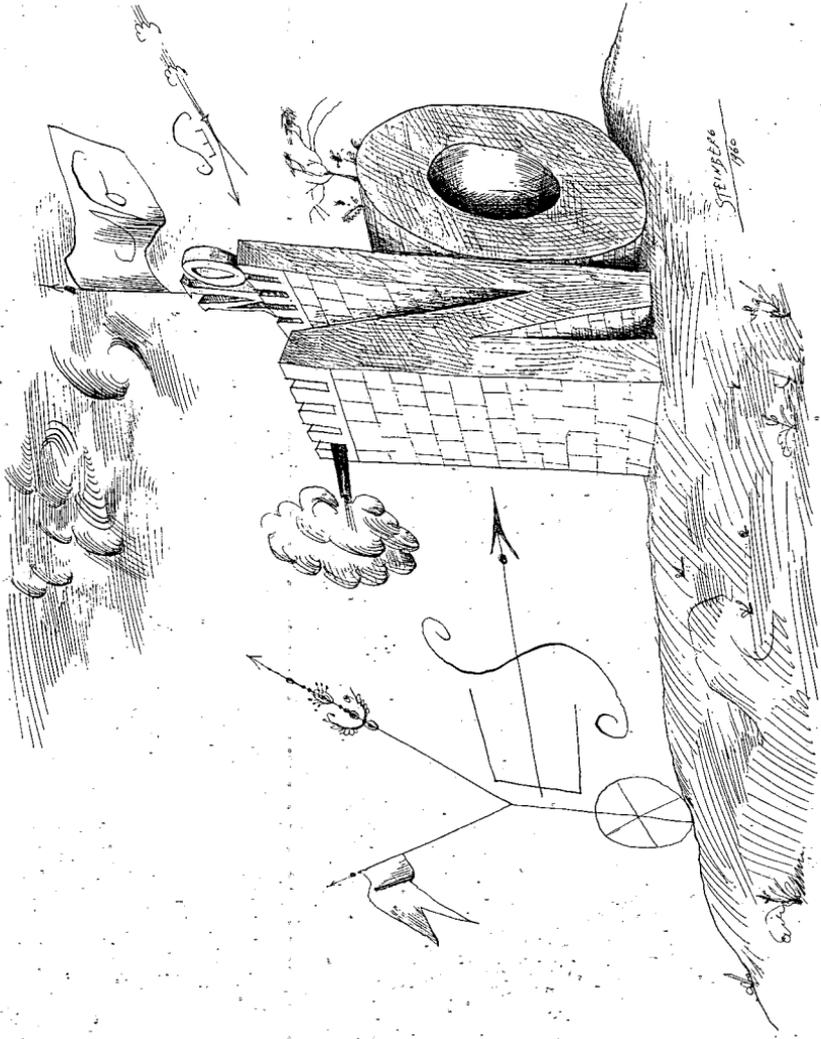
I should add, by the way, I think it describes a lot of other things, too.

Senator STEVENSON. Yes. I get the message. Did you bring that because it is easier or safer to convey it visually than by an oral—on the record. You really want that in the record?

Senator STEWART. Mr. Chairman, I am not on the subcommittee, but I move to put this in the record.

Senator STEVENSON. I don't want to get him in trouble.

[Copy of cartoon follows:]



Mr. WEIL. I believe you would have to check with the artist, Mr. Steinberg. That is the original, though.

I think the Congress in its wisdom put this responsibility in the Department of Commerce with the belief that there would be more balance, that it is easier to say "no," as that cartoon suggests, than it is to say, "yes". And that same wisdom holds true today.

I recognize that there are people who feel that we should be more rather than less restrictive. But I think that given our trade issues with which this committee is fully familiar, that would be an unwise step at this time.

As far as the proposal made in the Wolff-Miller bill that there be national security impact statements, I think that almost speaks for itself as being impractical.

If we were to have national security impact statements, we might just as well have my port impact statements as well as all kinds of other such statements. I think we are beginning to get to the point where, if we are not careful, we will have impact statements on everything, at which point we might want to go back to ground zero.

Now, if I might, I would like to turn to the first six questions in your letter which address the subject of export controls for strategic or inflation-related reasons.

Those questions raise the basic issue as to whether or not we should be mandated by the law to be more aggressive and more premature in imposing export controls on certain commodities in order to reduce their price.

We had a recent case which I think vividly illustrates the fundamental problem that such proposals involve.

The price of ferrous scrap over the last 6 months had risen—from some \$70-odd a ton to around \$130 a ton at the end of February and early March.

I don't think you want to take a lot of time to go into the background of this case. But in 1978, in part because of the trigger price system with respect to steel imports and in part because of the stronger economy, the general consumption of scrap in the United States rose. And in part because we have been encouraging the Japanese and others to increase their imports from the United States, the level of scrap exported from the United States rose from its low in 1977 of around 6 million tons to close to 9 million tons in 1978.

By the middle of the winter the price of scrap had gotten rather high and the steel producers in this country that use scrap primarily, or exclusively in some cases, as the raw material, were feeling the pinch very severely.

We came under severe pressure from two sides. One, to impose controls, as your question suggests, in order to limit the amount of scrap exported so as to reduce the demand pressure and thus to reduce the price. Others argued that we should maintain the situation without controls because of belief in the free market and the belief that the controls wouldn't have the desired effect.

I urge you to look at that chart. You will see at this point in time, in 1973, where the circumstances were fairly similar, the prior administration imposed controls, and this did not keep the

price from later going up and staying up. Only when the controls were about to come off, did the price begin to come down.

This past winter, because the phenomena that led to the imposition of controls in 1973 were similar, the ferrous scrap market began to entertain the possibility that controls would be imposed. It was clear to us as we studied the subject very carefully that until we rid the market of that expectation or put on a level of controls, which was unwarranted in the light of the national interest, the price might continue to rise.

On March 2 we said that we didn't think the circumstances warranted controls or formal monitoring. Formal monitoring is a preliminary step which, in 1973, was soon followed by controls. The date that we made the decision not to monitor or to control, the price was \$129 a ton—actually the price of some ferrous scrap products was higher—and as of today it is \$95 a ton.

An article in the American Metal Market states that scrap dealers expect the price to go down to less than \$80 a ton over the next several weeks.

In fact, the volume of exports has decreased and so has the price level.

But the fact is that the method of controlling export volume and price by an export control system is at best a crude method. I think that this case is an example of what we must all try to do more and more in this whole governmental process: A little less government is sometimes better for the whole system.

This was not an easy decision to make because we were under a lot of pressure from many of your colleagues on the other side of the Hill to impose controls.

It is not often that one gets as wickedly convincing a piece of evidence to justify the decision that was made.

Senator STEWART. Can I ask a question of the Secretary of this S AO EU M?

Senator STEVENSON. Sure.

Senator STEWART. Where do you all get your estimates as to price? How do you monitor them? What markets did you use to get those figures?

Mr. WEIL. I don't think you use all of them. You use three areas, don't you?

Mr. HETTINGER. We use the No. 1 heavy melting composite price for Chicago, Philadelphia, and Pittsburgh. That's generally considered to be the bellwether for scrap prices.

Senator STEWART. By who, you?

Senator STEVENSON. Will you identify yourself for the record, please?

Mr. HETTINGER. I am Converse Hettinger, Director of the Short Supply Division, Office of Export Administration, Department of Commerce.

Industry has told us regularly that they watch that most frequently.

Senator STEWART. They haven't told me. That is the reason I am asking you the question. I want to know what other element you could use to monitor the price. You don't use them, but what other market or what other prices and other markets could you use?

Mr. HETTINGER. Well, I think, Senator, as you are probably aware, the American Metal Market publishes daily, five times a week, a full page of scrap prices. I believe there are about 43 different grades and cities involved in the listing.

Senator STEWART. You use three, and only that upper level, what, No. 1 melting; is that correct?

Mr. HETTINGER. No. 1 heavy melting.

Senator STEWART. You use that. That's all you use. And yet there are 43—

Mr. HETTINGER. No. We average three cities, three principal markets.

Senator STEWART. And one grade; right?

Mr. HETTINGER. That's correct, Senator.

Senator STEWART. Wouldn't that give you a rather skewed curve as to what pricing would be? Wouldn't it be better for you, if you are going to make a decision about pricing, to use a composite?

But you are using one number.

Mr. WEIL. But this constitutes between one-third and one-half—

Senator STEWART. How many principal grades?

Mr. HETTINGER. There are probably about 10 different principal grades.

Senator STEWART. There are 10 different grades, 43 markets. You are using one grade and three markets. What is the price of ferrous scrap metal in Birmingham, Ala., today to some of my folks? What are they paying per ton? Do you know? Do you have any idea?

Mr. HETTINGER. That will vary from city to city.

Mr. WEIL. He asked about Birmingham, Ala. Can you find out? Give them a phone call?

Mr. HETTINGER. Sure.

Senator STEWART. That's the problem. You are taking the price from one grade—

Mr. WEIL. Senator, are you suggesting that the price in Birmingham is substantially different from these prices?

Senator STEWART. It has been in the past. When you had this in the past, it was much higher than these prices.

Mr. WEIL. Perhaps you have more information than we have.

Senator STEWART. You are going to have more information. I think you are missing the point is what I'm saying to you.

You've got an industry that provides jobs in this country and you can say whatever you want to, but they have had some good experiences at the time the controls were put on. Unless they are misinforming me. If they are, I stand corrected.

But they are not pleased with the prospects, neither the folks who work there or the folks engaged in the industry that you all are exercising.

And I think you can be congratulated to your stonewall approach against their efforts to improve their competitiveness in the world market.

All we are asking for is a procedure for them to be heard and frankly, a procedure for your activities to be sunshined so we can have some idea as to how you all arrive at these decisions that

affect an industry, that affect people who work there, that affect our capability, frankly, to export.

Because based on the information that I have—I don't have a chart, but I do have some idea that these folks manufacture products which they export which they want to be competitive.

If you allow our ferrous scrap to be exported in the manner in which you are doing, then all you are doing is shipping that to another country and you are forcing the price up here.

Unless the laws of economics just don't apply to this situation. It may be that you have some charts and graphs that you all put together over there that just deny the normal laws of economics.

It would be my opinion that when you reduce the amount available in the marketplace, you are going to run the price up. That's what these folks who are involved on a day-to-day basis in purchasing this particular product are telling me is happening to them.

That's the real world.

It may be different in your office where you put these charts and graphs together. But that's the real world as far as they are concerned.

Mr. WEIL. Senator, I come from the real world. I spent my whole career until 2 years ago on Wall Street.

Senator STEWART. Well, it would be questionable whether some parts of Wall Street are the real world. Yours may be—

Mr. WEIL. Well, it's a world where markets are the essence of what goes on. Let me tell you, Senator, in terms of sunshine, I don't know particularly which of your constituents you have in mind, but I saw a lot of people from the steel industry and they knew an awful lot about what's going on.

And we in government are charged sometimes with making tough decisions.

Senator STEWART. So are we.

Mr. WEIL. But in the final analysis, when you make a decision like this, you know people are going to make or lose money on the decision. It's not a pleasant thing to do.

But the most important thing that I asked every one of those steel people who came in to see me was their general view of government intervention in the market process.

And every one of them said they believed that the Government should get out of their business.

And every one of them says that and they make speeches from time to time that government should get out of the market.

But when their interests are involved and if they think the Government has a power that may benefit them, they'll holler like hell for it.

And that's what was happening here.

The judgment that we made has been proven correct.

By opting in this case not to involve the Government in the economic process, we brought about the result that they all wanted.

Senator STEWART. All we are asking for in the amendments that I'm seeking is a petitioning process to allow a decision to be made right out there where everybody sees it.

If you object to that, I want that out on the record.

Mr. WEIL. I have no objection to that.

Senator STEWART. In other words, you would support that amendment?

Mr. WEIL. No, I said we made that decision out there for everybody to see it and the decision was published as soon as it was made.

I want to go one step beyond. Some of the decisionmaking with respect to short supply that you want or others of your colleagues want in the hands of the executive branch go to issues that cannot be always exposed fully to sunlight.

They may involve national security, national defense, or in some cases, foreign policy decisions.

Senator STEWART. Are you saying for the record that this does?

Mr. WEIL. This case did not. But in this case, in fact, this issue was discussed out in the open.

We had meeting after meeting. We had hearings, not formal hearings, but we had hearings up here—

Senator STEWART. How did those come about?

Mr. WEIL. Because as we respond to the needs of the citizens of this country or the taxpayers to be heard on a matter involving their interests, we see them.

Senator STEWART. Is there any formal petitioning process that's available to them?

Mr. WEIL. I'm not aware of any. Is there any?

Mr. HETTINGER. No, there's not.

Senator STEWART. Are you saying that the Commerce Department would be opposed that an industry that's affected by a decision that you made or didn't make—a decision that's not made sometimes affects folks as much as decisions that are made—are you saying you would be opposed to a formal petitioning process by which they could be heard?

Mr. WEIL. Senator, I don't know that a formal petitioning process would make it a better process.

Senator STEWART. How would it harm it?

Mr. WEIL. The only way in which it might harm it is it might produce, again, the kind of result I don't think you have in mind—more government.

Senator STEWART. For them to be heard by you?

Mr. WEIL. They are heard, Senator.

Senator STEWART. If they are heard, what would be wrong in a petitioning process where you had to make your decision within a stated period of time once they petitioned you?

What would be wrong with that? That would give you some certainty and it would give me some certainty that my folks would be heard.

Mr. WEIL. Senator, your reasoning is very seductive. And it's very hard to argue with openness, and I have no argument with that.

It's very hard to argue with due process. And it's very hard to argue with timeliness.

The fact of the matter is in this particular case, although I can't attest to it in all cases, I can tell you that without formal petitioning requirements and without a formal requirement for a time limit, the issue was openly discussed.

Senator STEWART. Mr. Secretary, if you had somebody over there who didn't have any great personality or your concern for people—he just wasn't helped? You know, you are not going to live forever, I'm not going to live forever, people in positions there today may not be there tomorrow.

Mr. WEIL. You don't know how right you are.

Senator STEWART. And it might be a wise decision for us just to implement some form of formal petitioning process.

It should be available.

Mr. WEIL. I urge you, Senator, in considering this issue, to be careful that we don't add to the general problem of which we are all conscious, of which the voters all seem to be conscious, which is that they want less government rather than more.

Senator STEWART. I'm not asking for less government. I'm asking for folks to have a right to petition a branch of their government that makes decisions that adversely affects you from time to time.

Ye gods, I can't understand why an administration which gets elected by the people in the first place like I did, would object to that.

Mr. WEIL. The way you put it, it's very hard to argue it.

Senator STEWART. I hope my colleagues feel the same way. That's the way I'm going to put it to them.

Mr. HETTINGER. Senator, the price of No. 1 heavy melting in Birmingham yesterday was \$91.50.

Mr. WEIL. It's even lower than I have heard.

Senator STEWART. It's the first time you heard it, that's the problem.

Mr. WEIL. I have been posted since March 2, and since my deputy was out of the country, I happened to handle this particular one myself. I have taken a personal interest and, as my staff will tell you, they don't get out of the office until they tell me what the price of scrap was that day.

I don't know what it was in Birmingham.

Mr. Chairman, I would like to, if you will, rest the response with respect to the scrap issue on this presentation.

We will submit for the record more detailed responses to your specific questions in the letter of April 30.

If you like, I would be glad to respond to any questions you have.

Senator STEVENSON. Very good.

Continuing with Senator Stewart's question, is it possible that a procedure which invited petitions when the Government failed to intervene would give petitioners some influence in the market?

That is to say, when petitions were filed under such a procedure with a cut-off date buyers and sellers of, for example, scrap would end up betting on the action of the Government as opposed to the normal forces and influences in the market. Such a procedure could have unintended market consequences?

Mr. WEIL. That is absolutely right.

In fact, that is in part what I believe was happening this past winter.

There was an expectation that we were going to institute monitoring and/or controls. This was sheer speculation, unfounded. In fact, there were such reports in the American Metal Market and other newspapers. There were rumors around, and I'll be candid

and tell you, Senator, that a lot of the staff in the Department of Commerce had a strongly held view that we should have monitored and instituted controls. In fact, I would say the majority opinion among some of the people in the executive branch would have been to do that.

But we made a decision. We had an interagency meeting. We had the benefit of advice from the Treasury and the Council on Wage and Price Stability and made this decision against the advice of a lot of people.

In fact, in this case we caught the market with its pants down, and I think that's one of the reasons why the price fell so sharply.

But our responsibility was to take action that would best serve the national interest in terms of our exports and the price of scrap.

It's too soon to draw a conclusion from the actions taken on March 2, but it would appear that the action taken served that purpose.

Senator STEVENSON. I assume that if any such procedure was made available for scrap, it should also be made available in instances where the Government refused to intervene in the marketplace to prevent exports of other commodities including lumber, hides, molybdenum, cobalt, copper scrap, aluminum—and that the same influences might be felt in the markets for those commodities.

Mr. WEIL. Absolutely right. And formal hearings would, as you suggest, Senator, exacerbate the market's anticipation and would thus have an influence on the market.

In the final analysis, if there were a lot of formal hearings and there were very few instances where the decision was made to monitor and/or control, the market might not always expect them.

Senator STEVENSON. I had understood that Senator Stewart was interested in—I am sorry he is not here—in monitoring of basic commodities. I can understand your point about the effect on the market of such an action as monitoring. But many of these commodities are critical. Their short supply could have serious adverse consequences, including inflationary consequences, for the economy.

That being the case, and acknowledging that the imposition of monitoring can by itself have market consequences, why doesn't the Commerce Department institute a system for permanent monitoring of basic commodity exports?

Mr. WEIL. We have considered it as a general proposition in the light of the recent experience, and there are various levels at which that can be done.

There are certain commodities with a greater need for permanent monitoring than others. The benefit of permanent monitoring of a whole group of commodities is that the act of monitoring would be less significant in a particular case and would thus have less potential effect upon the market. I don't want to over-emphasize this or state that we are going to do it as I don't want to inflame the market.

The detriment that results, is more Government in the marketplace.

Monitoring, under this law, means the filing of information with the Government before an export is made.

In most cases information available to us without formal monitoring without the accumulation of a lot of papers and without a lot of expense and administrative processes, is sufficient. Our judgment both in terms of budgetary constraints and as a general proposition is that, again, less governmental involvement is preferable. Monitoring is not necessary at this time, and it is not desirable to institute such a formal monitoring procedure for any listed commodities.

It is a fairly close question, and I think we are caught with conflicting objectives.

Senator STEVENSON. What criteria does the department now use in determining whether to monitor exports of commodities such as those I have mentioned and whether to apply controls?

Mr. WEIL. With respect to ferrous scrap we have been watching carefully on a daily, weekly, monthly basis the movements in the market at both the levels of volumes as well as the levels of prices.

It has been our judgment that we have sufficient information to make our decision well enough in advance of a crisis without monitoring: That is to say, without requiring every exporter to file a piece of paper.

I am advised by our staff that we have the same capacity with respect to these other commodities. The circumstances under which we would require monitoring in my opinion are substantially more serious than the circumstances that prevailed on March 2 with respect to scrap steel.

It is impossible to give an exact formula of the circumstances where one would require monitoring. However, if we find that our information is significantly different from the information which is ultimately published, and that both export levels and prices increase despite our most objective estimates, I think perhaps it would be appropriate, either because of inflationary factors or because of concern for the loss of material itself, to institute monitoring and perhaps at some point controls.

I think because historically monitoring has only been used in extreme cases and has almost invariably been followed by controls, the market expected in this case that if we monitored we would eventually also have control. That is why there was anticipatory buying and that is why the price decreased instead of increasing after we announced that we would not institute formal monitoring.

Senator STEVENSON. And those extremes don't exist with respect to molybdenum, hides, lumber, copper, other raw materials?

Mr. WEIL. Mr. Chairman, I am not an expert on all of those commodities. I wish I were. If I were I might not be here. But I am advised that those extremes do not exist at this time.

Senator STEVENSON. Now, turning to foreign policy and national security controls, what controls for such purposes, both national security and foreign policy, have been imposed on goods available without restriction from foreign sources?

Mr. WEIL. You mean on things in this country which are not subject to Cocom?

Senator STEVENSON. For national security or foreign policy purposes which are available from other countries without restriction.

Mr. WEIL. Mr. Chairman, in summary, there are 43 commodities which are not covered by Cocom but which for national security purposes we control unilaterally.

There are several types of foreign policy controls, both with respect to specific countries and with respect to commodities. These include crime control and detection equipment, oil and gas equipment—equipment useful in abetting terrorism, and equipment which could contribute to nuclear capabilities and military delivery vehicle systems.

We will supply you the precise information for the record. But there are a series of items which we unilaterally control without regard to the Cocom limitations, under both national security as well as foreign policy.

Senator STEVENSON. I would like to have the full answer for the record, if you will.

[The information follows:]



Attn: Edward C. Dicks, Editor  
**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Industry and Trade**  
Washington, D.C. 20230

JUN 19 1979

Honorable Adlai E. Stevenson  
Chairman, Subcommittee on International Finance  
Committee on Banking, Housing and Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

As you requested during my testimony before your Subcommittee on May 3, I am forwarding to you a list of unilaterally controlled items on the Commodity Control List.

There are 73 items on this list. This list includes several nuclear-related items which we put under unilateral control in March; it also includes several items whose export is embargoed. The number thus exceeds the 43 which we have frequently cited in the past.

I apologize for the delay in responding to you and hope the information is useful.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank A. Weil".

Frank A. Weil  
Assistant Secretary for  
Industry and Trade

Enclosure

Export Control Commodity Number and Commodity Description	Unit	Process- ing Code	Validated Licenses Required	CLV & Value Limits		
				T	V	Q

GROUP O—METAL-WORKING MACHINERY<sup>1</sup>*Other Metal-Working Machinery:*

5091D<sup>2</sup> Measuring instruments designed: ||-----|| MG || QSWYZ<sup>1</sup> || — || — || 0

(a) With a short range (0.20 inch or less) linearity of less than 0.1 percent and readout (over ranges greater than 0.20 inch) of 50 millionths of an inch and finer; or

(b) With an angular measuring capability of one second arc and finer; and

(c) Parts and accessories therefor.

6098F Other machinery and equipment (including tools, fixtures, and jigs) specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor, as follows:

Dowel hole drilling machines,  
Cone bit drilling machines,  
Cone bit milling machines,  
Bit-arm milling machines,  
Pipe perforating machines,

Liner mills,  
Casing mills,  
Cone buster mills,  
Collar mills,  
Packer mills, and

Machinery and equipment, n.e.s., specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas.

6099G<sup>2</sup> Other metal-working machinery, n.e.s.; and parts and accessories, n.e.s. ||-----|| MG || SZ<sup>1</sup> || — || — || —

GROUP I—CHEMICAL AND PETROLEUM EQUIPMENT<sup>3</sup>*Pumps and Valves:*

4127B Valves, 0.5 cm to 3 cm in diameter, with bellows seal, wholly made of or lined with aluminum, nickel, or alloy containing 60 percent or more nickel. ||-----|| MG || QSTVWYZ || 0 || 0 || 0  
and Canada

*Other Chemical and Petroleum Equipment:*

6191F Equipment utilized for the exploration or production of petroleum or natural gas; and specially designed parts and accessories therefor. ||-----|| MG || SZ and the || — || — || —  
USSR<sup>1</sup>

(See § 399.2, Interpretation 30, for illustrative list of commodities included in this entry.)

6199G<sup>2</sup> Other chemical and petroleum equipment, n.e.s.; and parts and accessories, n.e.s. ||-----|| MG || SZ<sup>1</sup> || — || — || —

GROUP 2—ELECTRICAL AND POWER-GENERATING EQUIPMENT<sup>3</sup>

4240E Particle accelerators having all of the following specifications: ||-----' || EE || QSTVWYZ || 500 || 500 || 0

lowing specifications:

- (a) Peak beam power exceeding 500 MW,
- (b) Output energy exceeding 500 kV, and
- (c) An output beam intensity exceeding 2,000 amperes with a pulse width of 0.2 microsecond or less, and
- (d) Specially designed parts and accessories therefor.

6299G<sup>1</sup> Other electrical and power generating equipment, n.e.s.; and parts and accessories, n.e.s. ||-----|| MG || SZ<sup>1</sup> || -- || -- || --

### GROUP 3—GENERAL INDUSTRIAL EQUIPMENT<sup>2</sup>

#### Equipment for Other Specific Industries:

5391D<sup>1</sup> Other general industrial equipment, n.e.s., except those listed in § 399.2, Interpretation 29; and parts and accessories, n.e.s. ||-----|| MC || QSWYZ<sup>2</sup> || -- || -- || 1,000

6390F Other machinery and equipment (including tools, fixtures, and jigs) specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor, as follows: ||-----|| MC || SZ and the || -- || -- || --  
|| USSR<sup>3</sup> ||

Pipe coating equipment,

Pipe laying equipment,

Pipe wrapping equipment, and

Machinery and equipment, n.e.s., specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas.

6391F Other equipment utilized for the exploration or production of petroleum or natural gas; and specially designed parts and accessories therefor. ||-----|| MC || SZ and the || -- || -- || --  
|| USSR<sup>3</sup> ||

(See § 399.2, Interpretation 30, for illustrative list of commodities included in this entry.)

6399G<sup>1</sup> General industrial equipment listed in § 399.2, Interpretation 29; and parts and accessories, n.e.s. ||-----|| MC || SZ<sup>1</sup> || -- || -- || --

### GROUP 4—TRANSPORTATION EQUIPMENT<sup>3</sup>

#### Marine Equipment:

4409B Water tube boilers, marine type, designed to have a heat release rate (at maximum rating) equal to 180,000 BTU, up to but not including 190,000 BTU per hour per cubic foot of furnace volume; boiler superheaters, feedwater heaters, and economizers therefor; and parts and accessories therefor. ||-----|| MG || QSTVWYZ || 1,000 || 1,000 || 0

4431B Other marine propulsion steam turbines specially designed for naval use; and parts and accessories, n.e.s. (Specify hp or kW.) ||-----|| MG || QSTVWYZ || 1,000 || 1,000 || 0

5406D<sup>1</sup> Diesel engines, nonmagnetic, 50 brake horsepower and over, having a nonmagnetic content exceeding 50 percent, up to but not exceeding 75 percent of total weight; and parts and accessories, n.e.s. (Specify brake hp at rated rpm.) ||-----|| MC || QSWYZ<sup>1</sup> || -- || -- || 100

5431D<sup>1</sup> Compressors, fans, and blowers, any type specially designed or modified for military or naval shipboard use; and parts and attachments, n.e.s. (Specify by name.) ||-----|| MC || QSWYZ<sup>1</sup> || -- || -- || 500

4460B Nonmilitary aircraft and helicopters, aero- ||-----|| MG || QSTVWYZ || 1,000 || 1,000 || 0  
engines, and aircraft and helicopter equipment, as follows:

(a) Other jet, turbo-prop, turbo-shaft, and gas turbine aircraft engines, as follows:

- (1) Under development for nonmilitary use, experimental or non-certificated, or
- (2) Certified engines which have been in civil use for 3 years or less, and
- (3) Parts and accessories, n.e.s., therefor; and

(b) Parts and accessories, n.e.s., specially designed for nonmilitary:

- (1) Helicopters over 10,000 pounds weight; or
- (2) Helicopters 10,000 pounds or less empty weight or fixed-wing aircraft, of types which have been in normal civil use and containing one or more of the items listed in entry No. 1485 or 1501, or Supplement No. 2 to Part 370.

(Specify make and model of aircraft, and type of avionic equipment on aircraft.) (Also see § 399.2, Interpretation 20.)

6460F Other aircraft, helicopters, and aero-en- ||-----|| MG || SZ and || -- || -- || --  
gines, as follows: || Algeria, Syrian ||

(a) Military aircraft, demilitarized, (not specifically equipped or modified for military operations), *the following only*:

- (1) Cargo, "C-45 through C-118" inclusive, and "C-121", || Arab Rep., ||
- (2) Trainers, bearing a "T" designation and using piston || Iraq, Egypt, ||
- engines, || People's Dem. ||
- (3) Utility, bearing a "U" designation and using piston || Rep. of ||
- engines, || Yemen, Libya, ||
- (4) Liaison, bearing an "L" designation, and || the Rep. of ||
- (5) Observation, bearing an "O" designation and using || South Africa, ||
- piston engines; || Namibia, & ||
- || Angola' ||

(b) Other nonmilitary helicopters and aircraft;

(c) Other nonmilitary jet, turbo-prop, turbo-shaft, and gas turbine aircraft engines of types certificated and in civil use for more than 3 years; and

6461F Aircraft internal combustion engines; and ||-----|| MG || SZ and the || -- || -- || --  
parts and accessories, n.e.s. || Rep. of South ||  
|| Africa and ||  
|| Namibia ||

#### Other Equipment:

5480B<sup>1</sup> Nonmilitary mobile crime science labora- ||-----|| MG || QSTVWYZ<sup>1</sup> || 0 || 0 || 0  
tories; and parts and accessories, n.e.s. (See § 376.14.)

5485D<sup>2</sup> Fluidic-based aircraft control devices; and ||-----|| MG || QSWYZ<sup>2</sup> || -- || -- || 100  
parts and accessories, n.e.s. (Specify by name and model number.)

6485F Other aircraft flight and navigation instru- ||-----|| MG || SZ and the || -- || -- || --  
ments, n.e.s.; and parts and accessories, n.e.s. || Rep. of South ||  
(Specify by name and model number.) (See § 399.2, Interpretation 20.) || Africa and ||  
|| Namibia ||

6490F<sup>3</sup> Off-highway wheel tractors of carriage ca- ||-----|| MG || SZ<sup>3</sup> and || -- || -- || --  
pacity 10 tons or more; and parts and accessories, n.e.s. || Libya ||

6499G<sup>3</sup> Other transportation equipment, n.e.s.; and ||-----|| MG || SZ<sup>3</sup> || -- || -- || --  
parts and accessories, n.e.s.

9499M Vehicles mounted with telecommunications || No. || EE || Export controls applicable to vehicles  
equipment (including radar). (See Group 5—Elec- || included in this entry are those which  
tronics and Precision Instruments.) (Specify mounted equipment.) || apply to the equipment mounted on  
(Report telecommunications equipment, including radar, exported || the vehicle.  
as replacements or accessories under appropriate Export Control Commodity Number.)

## GROUP 5—ELECTRONICS AND PRECISION INSTRUMENTS

*Radio, Radar, and Other Telecommunications Apparatus:*

4517B Communications intercepting devices; and parts and accessories therefor. (Specify by name.) ||-----|| EE || QSTVWYZ || 0 || 0 || 0  
 || and Canada ||

(Also see § 376.13.)

*Other Related Equipment and Parts for Radio, Radar, and Telecommunications Apparatus:*

4522B Laser interferometers specially designed as feedback components for numerically controlled machine tools; and parts and accessories therefor. (Report lasers exported as replacements or accessories in entry No. 1522.) ||-----|| MC || QSTVWYZ || 100 || 100 || 100

4529B Other instruments, n.e.s., for measuring, indicating, recording, testing, or controlling electronic, electric, or nonelectric quantities that incorporate digital computers defined in entry No. 1565 sub-items (d) and (e); and parts and accessories, n.e.s. (Specify by name and model number.) ||-----|| MC || QSTVWYZ || 1,000 || 1,000 || 0

6531F Other transmitters or transceivers having more than 100 channels and designed to provide a multiplicity of alternative output frequencies controlled by a lesser number of piezoelectric crystals, except those forming multiples of a common central frequency; and parts and accessories, n.e.s. (Specify by name and model number.) ||-----|| EE || SZ and || — || — || —  
	Algeria,	
	Syrian Arab	
	Rep., Iraq,	
	Egypt, Peo-	
	ple's Dem.	
	Rep. of	
	Yemen, Libya,	
	Rep. of South	
	Africa and	
	Namibia	

4541B Other cathode ray tubes with micro-channel plate electron multipliers; and specially designed parts and accessories, n.e.s. (Specify by name and type number.) ||-----|| EE || QSTVWYZ || 500 || 500 || 0

*Other Electronic Apparatus and Precision Instruments:*

5565D Equipment, n.e.s., containing or incorporating an array transform processor (for example, nuclear magnetic resonance analyzers, biomedical analyzers, X-rays scanner/analyzers, simulator systems, auto visual inspection systems, vibration and noise analyzers, and nuclear particle/emission analyzers). (Array transform processors and parts therefor, when exported alone or as spares or replacements are controlled by entry No. 1565.) ||-----|| CD || QSWYZ || — || — || 0

4568B Electronic devices utilizing analog to digital conversion techniques capable of analyzing transients by sequentially sampling single input signals at successive intervals of less than 50 nanoseconds; and parts and accessories therefor. (Specify by name and model number.) ||-----|| EE || QSTVWYZ || 1,000 || 1,000 || 0

5568D<sup>1</sup> Equipment, as follows: ||-----|| MC || QSWYZ || — || — || 100

(a) Synchronous motors of any rating having any of the following characteristics:

- (1) Synchronous speeds in excess of 3,000 rpm,
- (2) Designed to operate between  $-55^{\circ}\text{C}$  and  $-10^{\circ}\text{C}$ , or between  $+55^{\circ}\text{C}$  and  $+125^{\circ}\text{C}$ ,
- (3) Of size 11 (1.1 inches in diameter) or smaller, or
- (4) Larger than size 20 (2 inches in diameter) having synchronous speeds in excess of 3,600 rpm;

(b) Servo control units, linear induction potentiometers, induction rate generators, synchros, and resolvers; and instruments which perform functions similar to synchros or resolvers with a rated electrical error of greater than 7 minutes of arc, or between 0.2 percent and 0.5 percent of maximum output voltage;

(c) Induction potentiometers (including function generators and linear synchros), linear and nonlinear, of size 11 (1.1 inches in diameter) or smaller, or having a rated conformity between 0.25 percent and 0.5 percent, or of more than 13 minutes to 18 minutes;

(d) Induction rate (tachometer) generators, synchronous and asynchronous, of size 11 (1.1 inches in diameter) or smaller, or with a housing diameter of 2 inches and smaller and a length (without shaft-ends) of 4 inches and smaller, or with a diameter-to-length ratio greater than two to one, having a rated linearity between 0.1 percent and 0.5 percent; and

(e) Parts and accessories therefor.

(Specify by name and model number.)

4569B Inverters, converters, frequency changers, and generators having a multiphase electrical power output within the range of 600 to 2,000 hertz. ||-----|| EE || QSTVWYZ || 0 || 0 || 0  
|| and Canada ||

4584H Cathode-ray oscilloscopes, associated plug-in units, and external amplifiers and pre-amplifiers containing or designed for the use of cathode-ray tubes with microchannel plate electron multipliers; and parts and accessories, n.e.s. (Specify by name and model number.) ||-----|| EE || QSTVWYZ || 1,000 || 1,000 || 0

4585B Photographic equipment, as follows: ||-----|| MG || QSTVWYZ || 500 || 500 || 0

(a) Streak cameras capable of recording events which are initiated by, or synchronized with the camera mechanism (i.e., discontinuous access type), having a design capability for writing speeds of 8 mm per microsecond and above and a time resolution of 100 nanoseconds or less, and parts and accessories, n.e.s.;

(b) Aerial camera film, black and white, sensitized and unexposed, having spectral sensitivities at wavelengths greater than 7,500 Angstroms or at wavelengths less than 2,000 Angstroms;

(c) Aerial camera film, sensitized and unexposed, having resolving powers (using a Test-Object Contrast of 1,000:1) of 200 line pairs/mm or more or with a base thickness before coating of 0.0025 inch or less;

(d) Continuous tone aerial duplicating film, sensitized and unexposed, having resolving powers (using a Test-Object Contrast of 1,000:1) of 300 line pairs/mm or more; and

5585D<sup>1</sup> Photographic equipment, as follows: ||-----|| MG || QSWYZ<sup>1</sup> || - || - || 100

(a) Other high-speed continuous writing, rotating drum cameras capable of recording at rates in excess of 2,000 frames per second, and parts and accessories, n.e.s.; and

(b) Other 16 mm high-speed motion picture cameras capable of recording at rates in excess of 2,000 frames per second, and parts and accessories, n.e.s.

4589B Flat-bed microdensitometers, image digitizers, or multispectral remote sensing devices, except drum type or cathode ray tube type microdensitometers, having any of the following capabilities: ||-----|| MG || QSTVWYZ || 100 || 100 || 0

(a) A recording rate or scanning rate exceeding 100 data points per second;

(b) A density resolution greater than .02 in density units;

(c) A spatial resolution smaller than 100 microns at the specimen; or

(d) An optical density range greater than 0-3; and

(e) Parts, components, and assemblies therefor.

4590B Multispectral image processing systems or digital image display enhancement equipment which provide or accept signals of sufficient composite information that when connected to an optical display device will have all of the following capabilities: ||-----|| MG || QSTVWYZ || 100 || 100 || 0

(a) Image construction of at least 60 Raster lines (i.e., 60x60 resolvable elements, 60x60 resolution cells or Pixels, or 60x60 images);

(b) Each image element is capable of being displayed in at least 16 different shades of color or gray; and

(c) The system has conversion and synchronization circuitry suitable for driving a TV monitor, storage display, graphic memory, memory refreshment, or other type of optical display devices; and

GROUP 6—METALS, MINERALS, AND THEIR MANUFACTURES<sup>1</sup>*Basic Metals and Mill Products:*

4635B	Pressure tube, pipe, and fittings therefor,	Lb.		MC		QSTVWYZ		500		500		500
	of 8 inches or more inside diameter, having a wall thickness of 8 percent or more of the inside diameter and made of:											
	(a) Stainless steel,											
	(b) Copper-nickel alloy, or											
	(c) Other alloy steel containing 10 percent or more nickel and/or chromium.											
4675B	Cylindrical tubing, raw, semifabricated, or finished forms, made of aluminum alloy (7000 series) or maraging steel having all of the following characteristics:	-----		MC		QSTVWYZ		0		0		0
						and Canada						
	(a) Wall thickness of 1/2 inch, or less;											
	(b) Diameter of 3 to 8 inches inclusive;											
	(c) Length equal to or greater than 3 times the diameter.											
4676B	Cylindrical rings, or single convolution bel- lows, made of high-strength steels having all of the following characteristics:	-----		MC		QSTVWYZ		0		0		0
						and Canada						
	(a) Tensile strength of 150,000 psi;											
	(b) Wall thickness of 1 millimeter or less;											
	(c) Diameter of 3 to 8 inches inclusive;											
	(d) Length of 2 to 8 inches inclusive.											
4677B	Cylindrical discs, in raw, semifabricated, or finished form, having all of the following characteristics:	-----		MC		QSTVWYZ		0		0		0
						and Canada						
	(a) Having a 1/2 to 2 inch peripheral lip;											
	(b) Having a diameter of 3 to 8 inches inclusive;											
	(c) Made of maraging steel or aluminum alloy (7000 series).											
4678B	Corrosion-resistant sensing elements of nickel, nickel alloys, phosphor bronze, stainless steel, or aluminum specially designed for use with equipment which measures pressures to 100 Torr or less.	-----		MC		QSTVWYZ		0		0		0
						and Canada						
5680B <sup>2</sup>	Nonmilitary protective vests, leg irons, shackles, handcuffs, thumbscrews, and other manufactures of metal, n.e.s., particularly useful in crime control and detection; and parts and accessories, n.e.s. (Specify by name.) (See § 376.14.)	-----		MC		QSTVWYZ <sup>2</sup>		0		0		0
6699G <sup>1</sup>	Other metals, minerals, and their manufactures, n.e.s.	-----		MC		SZ <sup>1</sup>		—		—		—

GROUP 7—CHEMICALS, METALLOIDS, AND PETROLEUM PRODUCTS<sup>1</sup>*Chemicals and Metalloids:*

4707B (a) Chemicals, as follows:	Lb.	MG	QSTVWYZ	500	500	100*
(1) Beta-diethylaminoethyl diphenylpropylacetate hydrochloride,		(17) Di-o-tolyl carbodiimide,				
(2) 2-Chloro-10-(3-dimethylaminopropyl)phenothiazine,		(18) Dissopropylaminoethylchloride hydrochloride,				
(3) 2-Chlorophenothiazine,		(19) Ethylphosphonothioic dichloride,				
(4) 2-Cyanoacetamide,		(20) Ethylphosphonous dichloride,				
(5) 2-Dicyclohexylcarbodiimide,		(21) Lysergic acid diethylamine,				
(6) Diethylmethylphosphonite,		(22) Malononitrile,				
(7) Dihydrodibenzazepine,		(23) Methylbenzylate,				
(8) Dihydrodibenzocycloheptene,		(24) Methylchlorophosphine,				
(9) 10, 11-Dihydro-N, N-dimethyl-5H-dibenz(a, d) cyclohept delta 5, gamma-propylamine,		(25) Methylisonicotenate,				
(10) 2-Diisopropylaminoethanol,		(26) Methylphosphonothioic dichloride,				
(11) Diisopropylcarbodiimide,		(27) Methylphosphonous dichloride,				
(12) 5-(3-(Dimethylamino)-2-methylpropyl)-10, 11-dihydro-5H-dibenz (b,f) azepine,		(28) Methylphosphonyldichloride,				
(13) Dimethylamino propylchloride hydrochloride,		(29) N, N-diethylethylenediamine (diethylaminoethylamine),				
(14) 5-(3-Dimethylaminopropyl)-10, 11-dihydro-5H-dibenz (b,f) azepine,		(30) Orthochlorobenzaldehyde,				
(15) 10-(3-Dimethylaminopropyl)-2-trifluorodimethylphenothiazine,		(31) Phenothiazine,				
(16) Dimethyl hydrogen phosphite,		(32) Piperidine carboxyl acid,				
(b) Synthetic organic agricultural chemicals, as follows:		(33) n-Propylphosphonous dichloride,				
(1) Alkyl aryl carbamates (including isopropyl N-phenylcarbamate and isopropyl N-(3-chlorophenyl)-carbamate),		(34) 3-Quinuclidinol,				
		(35) 3-Quinuclidinone,				
		(36) 2-Trifluoromethylphenothiazine, and				
		(37) 4-(3-(2-Trifluoromethyl) phenothiazine-10-yl) propyl)-1-piperazine ethanol.				
		(2) Aminochloropicolinic acid and its salts and esters,				
		(3) Bromoalkyl pyrimidines,				
4712B Beryllium oxide ceramic and refractory tubes, pipes, crucibles, and other shapes in semi-fabricated or fabricated form.	Lb.	MG	QSTVWYZ	500	500	100
4720B Radioisotopes, cyclotron-produced or naturally occurring, except those having an atomic number 3 through 83, and compounds and preparations thereof. (Specify by name and isotope number.)	MC	MG	QSTVWYZ	100	100	100
4721B Helium isotopically enriched in the helium-3 isotope, in any form or quantity, and whether or not admixed with other materials, or contained in any equipment or device.	Liters	MG	QSTVWYZ	1,000	1,000	0
			and Canada			

4744B Polymeric substances, thermally stable, hav- || Lb. || MG || QSTVWYZ || 100 || 100 || 0  
 ing weight loss of 15 percent or less after exposure  
 for 24 hours to a temperature of 400° C. (752° F.) in air, and manufactures thereof, where the value of the poly-  
 meric component, either alone or in combination with other materials included on the Commodity Control List  
 under an Export Control Commodity Number that is followed by the code letter "A," is 50 percent or more of the  
 total value of the materials.

Examples of thermally stable polymeric substances include, but are not limited to, the following:

Polyarylenesulfones	Polytetraazopyrenes	Polyboroimidazolines
Polyphenylene oxides, excluding styrene modified forms	Polybenzoxazinones	Polyiminoimidazolidinediones
Polymetalocenes	Polytritycenes	Polyarbanic acids
Fluoroepoxides	Coordination polymers	Polyaryloxysilanes
Polyimidazoimides	Polyaroylanthranilamides	Polymetallosiloxanes
Polyparaoxybenzoyls	Polyanthazolines	Polyquinazolidinediones
Polyphenylenes	Polycarboxylimides	Polyquinazolones
Polybenzimidazolones	Polyarylethers	
	Polycarboranesiloxanes	

4754B Synthetic resins, as follows: || Lb. || MG || QSTVWYZ || 500 || 500 || 500

- (a) Irradiated polyolefin film, sheeting, and laminates;
- (b) Methyl methacrylate, cross-linked, hot stretched, clear, film, sheeting, or laminates;
- (c) Other fluorocarbon polymers and copolymers, *except the copolymer of tetrafluoroethylene and perfluoro-alkyl vinyl ether; polyvinyl-fluoride, solid forms of polychlorotrifluoroethylene, and non-dispersion grades of polytetrafluoroethylene, and products wholly made thereof;* and
- (d) Other fluorocarbon polymer and copolymer products, *except ethylene/tetrafluoroethylene copolymers,* as follows:
  - (1) products wholly made thereof;
  - (2) molding compositions containing more than 20 percent by weight of fluorocarbon polymers or copoly-  
mers, or
  - (3) laminates partially made of fluorocarbon polymers or copolymers, including molded, decorative, or lam-  
inated with other materials or metals.

(Specify by name.)

4755B Silicone fluids and resins, as follows: || Lb. || MG || QSTVWYZ || 500 || 500 || 100

- (a) Silicone diffusion pump fluids having the capacity for producing ultimate pressures of less than  $10^{-8}$  Torr;  
and
- (b) Thermally stable silicone resins capable of withstanding temperatures of 400°C (752°F) and greater with  
weight losses of 15 percent or less over a 24 hour test.

4757B Single crystal sapphire substrates. ----- || No. || MG || QSTVWYZ || 500 || 500 || 0

1760A Compounds of tantalum and niobium (co- || Lb. || MG || QSTVWYZ || 500 || 500 || 0  
lumbium), as follows:

- (a) Tantalates and niobates having a purity of 98 percent or more; and
- (b) Other compounds containing 20 percent or more of tantalum in which the niobium content with respect to  
tantalum is less than one part per thousand.

4778B Inorganic chemicals, as follows: ammonia, ||-----<sup>3</sup> || SS || QSTVWYZ || 250<sup>3</sup> || 250 || 250  
anhydrous or in aqueous solution; carbon dioxide; ||  
carbon monoxide; helium and mixtures thereof; || and Canada ||  
and hydrogen; listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions re-  
garding shipments under General Licenses G-NNR and GLV.)

5779B \* Fluorescent luminescent fingerprint powders ||-----|| MG || QSTVWYZ\* || 0 || 0 || 0  
and dyes, fingerprinting ink, and other chemicals  
and metalloids, n.e.s., particularly useful in crime control and detection. (Specify by name.) (See § 376.14.)

6779F Drilling fluids, muds, lost circulation ma- ||-----|| MG || SZ and the || -- || -- || --  
terials and polymers and other detergents utilized || USSR\* ||  
for enhanced recovery of petroleum or natural gas.

**Petroleum, Natural Gases,<sup>5</sup> and Products Derived Therefrom:**

4781B Petroleum, crude or partly refined, including tar sands, shale oil and topped crudes, listed in Supplement No. 2 to Part 377.	Bbl.	SS	QSTVWYZ    and Canada	0*	0	0
4782B Other petroleum products listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions regarding shipments under General Licenses G-NNR and GLV.)	-----	SS	QSTVWYZ    and Canada	250*	250*	250*
4783B Natural gas liquids and other natural gas derivatives listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions regarding shipments under General Licenses G-NNR and GLV). <sup>5</sup>	Bbl.	SS	QSTVWYZ    and Canada	250*	250	250
4784B Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy) listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions regarding shipments under General Licenses G-NNR and GLV).	MCF	SS	QSTVWYZ    and Canada	250*	250	250

5799D <sup>1</sup> Other chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., except those listed in § 399.2 Interpretation 24.	-----	MG	QSWYZ <sup>1</sup>	--	--	100
6799C <sup>1</sup> Chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., listed in § 399.2, Interpretation 24.	-----	MG	SZ <sup>1</sup>	--	--	--

**GROUP 8—RUBBER AND RUBBER PRODUCTS<sup>2</sup>**

6899C <sup>1</sup> Other rubber and rubber products, n.e.s.	-----	MG	SZ <sup>1</sup>	--	--	--
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**GROUP 9—MISCELLANEOUS<sup>3</sup>**

4997B Viruses or viroids for human, veterinary, plant, or laboratory use, except <i>hog cholera</i> and <i>attenuated or inactivated systems</i> .	-----	MG	QSTVWYZ	0	0	0
4998B Bacteria, fungi, and protozoa; except those listed in § 399.2, Interpretation 28. (Specify by name.)	-----	MG	QSTVWYZ	0	0	0
5998B <sup>1</sup> Nonmilitary shotguns, barrel length 18 inches or over; and nonmilitary arms, discharge type (for example, stun-guns, shock batons, etc.), except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.	-----	MC	QSTVWYZ <sup>1</sup>	0	0	0

6998F Shotgun shells, and parts. -----	-----	MG	SZ and the		--		--		--
			Rep. of South						
			Africa, Nami-						
			bia, Botswana,						
			Lesotho, and						
			Swaziland						
4999B Horses for export by sea. -----	-----	SS	QSTVWYZ		0		0		0
			and Canada						
5999B* Nonmilitary gas masks, straight jackets, protective vests, bullet-proof vests and shields, and other commodities, n.e.s., particularly useful in crime control and detection; and parts and accessories, n.e.s. (Specify by name.) (See § 376.14.)	-----	MG	QSTVWYZ*		0		0		0
6999C** Other commodities, n.e.s.; and parts and accessories, n.e.s., except prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications, including bound newspapers and periodicals; children's picture and painting books; newspapers and periodicals, unbound, excluding waste; music books; sheet music; and calendars and calendar blocks, paper; and advertising printed matter exclusively related thereto.	-----	MG	SZ**		--		--		--
9999M Technical models for demonstration. -----	-----		The validated export license control applicable to each model is the same as the control which is applicable to the full size commodity represented by the model as exercised by Commerce (OEA and/or Maritime Administration), State (OMC), or Nuclear Regulatory Commission.						

Senator STEVENSON. Do you see any basis for applying different foreign availability tests in the case of national security controls than for foreign policy controls?

Mr. WEIL. The administration has taken the position, Mr. Chairman, that foreign availability be considered with respect to controls used for foreign policy purposes on substantially the same basis as it is considered currently for national security purposes; however, we urge that it be limited to "taken under consideration," because there obviously are cases involving both national security objectives, as well as foreign policy objectives where it may serve the national interest to withhold an item whether or not it is available from a third source.

In many cases, there are a series of delicate decisions, but we believe that it is important for discretion, particularly under the foreign policy standard, to be retained by the President in the exercise of his constitutional powers with respect to the foreign policy affairs of the United States.

Senator STEVENSON. The administration bill says "weight will be given" foreign availability in the case of foreign policy export controls. How much? How much weight? Is it possible to generalize?

Mr. WEIL. I don't think it is. I think that there has been over the past year some shift in the center of gravity of consideration of these issues. The administration's bill also proposes that export consequences be given greater weight. The two issues of export consequences and foreign availability, have and will continue to have a shifting benefit to those who would like to see the trade balance of the United States improved.

There are obvious exceptional cases. Thumbscrews, which are instruments of torture, can be made anywhere. Yet because of concern for human rights and terrorism, we have embargoed the export of thumbscrews to the world at large.

I think it would be difficult to argue that.

There are other areas where the value of the commodity is substantially greater and where the issue is more evenly balanced.

Senator STEVENSON. Why did the administration reverse its earlier decision not to release the large Sperry Univac computer for sale to TASS?

Mr. WEIL. The application by Sperry Rand was sufficiently revised so that the technicians determined that there was no longer a national security concern on that application.

Senator STEVENSON. Was this a national security control or foreign policy?

Mr. WEIL. The original denial was based on foreign policy concerns. But there were at that time unresolved national security questions.

Senator STEVENSON. Did they require Cocom clearance?

Mr. WEIL. Yes and the case is currently pending.

Senator STEVENSON. What about the French sale of the Iris 80?

Mr. WEIL. They have refused Cocom clearance in the past and presumably will in this case.

Senator STEVENSON. Was foreign availability in this case assessed? I gather the Iris 80 is a comparable computer and we lose the business to the French?

Mr. WEIL. The decision was made in this instance in the ordinary course and foreign availability was one of the factors in consideration at the level of the Department of Commerce.

The foreign policy concerns, as you know, are primarily concerns of the State Department or National Security Council and there were no foreign policy concerns on this case at this time.

Senator STEVENSON. I think you said you assumed that the French sale requires Cocom clearance?

Mr. WEIL. Well, those Iris 80 machines have in the past required clearance, and we presume the French intend to take the case to Cocom for clearance at this time.

Senator STEVENSON. But before national security control can be imposed, as I understand it, you have to determine whether the commodity is available without restriction from other sources.

You must have assumed, this computer being subject to national security control, that it was not available without restriction from other resources and that would have applied to a French sale of the Iris 80.

Mr. WEIL. Well, Mr. Chairman, we believe it does. On the other hand, as you know, the Cocom system is not entirely watertight.

Senator STEVENSON. Does not entirely work?

Mr. WEIL. Watertight. There have been instances, I'm advised, that some of our Cocom partners have not always—I don't mean to suggest necessarily the French, I'm not suggesting any nation—have not always been as precise as we are in taking cases to Cocom.

We presume the French will take this case to Cocom.

I assume from the information I have available that they have not yet. In the past I'm advised that the Iris 80 cases have been submitted. But until the case is submitted into Cocom, we don't know the exact configuration of the case. And if the French position were that it was configured in such a way that it didn't

require Cocom clearance, we'd never know it, because it would not have been submitted.

Senator STEVENSON. It doesn't sound to me like there's much risk for the French in submitting it now that we have approved the Univac computer for export from the United States, we would certainly not be in much position to object in Cocom to the export of the Iris by the French. We delayed and denied the application. By the time we got around to approving it, the French went out and got the business, and we are in no position to object.

Mr. WEIL. The conclusion of what you stated, Mr. Chairman, is inescapable. Our information on the French sale in this case is limited to what is available to the public at large.

We believe that the French computer is significantly different than the Sperry Rand computer.

We have reason to believe that it's substantially more expensive. That suggests to me, as a layman, that it must be more complicated. But it has not been submitted to Cocom and, until it is, we don't know what it is.

And if the French opt not to submit it, we may never know what it is. The inference in your question is that because it took the United States so long to make the decision, we may have opened the door for the French to get the business. That is an inescapable conclusion.

Senator STEVENSON. What do we do in a situation like this? Do we just play the good guys and come in last again? Or are we going to take a hard look at this, are we going to go after the French, take a look at this computer and make sure that if it should be, it is submitted to Cocom and that within the Cocom context we take a hard look at that computer and make sure that it complies with the Cocom standard before the export goes out to France?

Or do we just sit here sucking our thumbs?

I'm assuming now that what you say is accurate, that it is substantially different. That might give us the basis for doing something within Cocom. At least we ought to be taking a look at it to determine whether it is substantially different. If it is substantially different, it may have national security implications that the Univac didn't.

But how do we find out, if we don't take a hard look?

Are we going to take a hard look?

Mr. WEIL. What you say suggests to me that if we haven't, we should seek more detailed information from the French Government about this case.

Mr. Chairman, the Sperry Rand application is still with us and—have we submitted the Sperry Rand case to Cocom?

VOICE. Yes, we have.

Mr. WEIL. If the French Iris 80 case is not in short order submitted to Cocom for approval, we would make, of course, representations to the French Government, requesting that they do so.

There were substantial national security concerns with respect to the Univac case. There may be with respect to the Iris 80 case.

Unfortunately, this particular case catches us in the middle of a very technical matter which is yet to be resolved. It is unclear at this point since we may still be competitive and since Sperry Rand has not requested us to terminate the application or to terminate

the Cocom application—whether we in fact, have gotten the business, in the best sense.

Senator STEVENSON. Sounds like we really got the business, all right.

Now, for the Arab boycott—new Arab boycott. As you well know, this legislation, the Export Administration Act, contains the so-called antiboycott provisions which were adopted in June 1977 and raised at the time with the administration the possibility that the implications of this legislation for other countries might not be tender.

Now, the Arabs are boycotting Egypt. What will the effect of this legislation be on American business, the business of American companies, with other Arab states and with other companies doing business with other Arab states as a result of their boycott of Egypt?

Originally, of course, it was the boycott of Israel. And I understand that the consequences of that legislation have not had, a significantly adverse impact on U.S. business in the Middle East.

There may have been some consequences in Iraq and Libya. On the whole, I think it's worked very well.

Now, we have another boycott. What will the consequences of this boycott be for American industry as a result of the antiboycott law? Egypt clearly is a country friendly to the United States.

It looks as if the law is applicable. And the law does contain a number of prohibitions.

Mr. WEIL. The short answer to your question, Mr. Chairman, is that we don't know yet. We have a longer answer that says about the same thing in a letter that has not been through the usual channels for clearance. You will have the letter in a day or two.

Senator STEVENSON. Is this a letter in response to my letter to the Secretary?

Mr. WEIL. Yes. It looks like the boycott, the details of which are not yet clear from the the Arab nations, will have an effect on Egypt—

Senator STEVENSON. You say it will not have?

Mr. WEIL. It will. It will affect Egypt in the same way that it affects Israel. But I want to preface it by saying we don't know the details yet.

Senator STEVENSON. But I'm asking about the effect of the anti-boycott legislation, the law, on American industry, American companies.

Mr. WEIL. If the boycott had the same effect upon Egypt as it does upon Israel, the antiboycott law would have substantially the same effect upon American industry vis-a-vis Egypt as it does upon Israel.

As a personal observation, it is arguable that the application of the boycott to Egypt will prove to be in the interests of American industry because the combination of Egypt and Israel is a substantially larger market and those American companies that have, for one reason or another, stayed out of the Middle East because of the boycott and the antiboycott law, might find that there is a sufficient reason to opt in favor of the combined Israel-Egypt access.

But that's an observation based only on the logic of the market potential.

Senator STEVENSON. If I understood you, you said that the combined market of Egypt and Israel is larger than the market in the other Arab boycotting countries?

Mr. WEIL. No. I'm saying, abstractly now, an American company that was faced with the question: "Do I want to do business in the Middle East," might say to itself that Israel is a country of 3½ million people and the rest of the Arab nations are many, many times that size therefore, they would opt to do business in Arab nations, not because of the antiboycott law, but because of the choice of markets. The company can make that decision as long as it doesn't infringe on the antiboycott law in any respect.

Senator STEVENSON. That's the point. It may. And now, of course, I believe, I may be wrong, that Iran has joined with the Arab nations in the boycott of Egypt.

Iran was never, of course, a party to the boycott of Israel.

Mr. WEIL. That's correct. That's partly what lies behind my observation, that the alinement of risks versus benefits to an American firm in the Middle East has changed because of the possible application of the boycott against Egypt.

Now it might be in the interests of American industry to opt more for those countries that are boycotted than those which are boycotting.

Senator STEVENSON. Well, I look forward to getting this letter.

If the effect of this law is to deprive American businesses of economic opportunity in Iran, Kuwait, Saudi Arabia, the Arab countries—it can be serious. I would have thought, though, that the effect would be similar, as you started out by saying—to the effect as a result of the boycott of Israel.

Mr. WEIL. I think as you observed; Mr. Chairman—

Senator STEVENSON. With a possible exception for Iran. Which is a new factor.

Mr. WEIL. As you pointed out, the evidence we have to date, indicates that the impact of antiboycott law upon the American exports to the Arab nations has not been as severe as some predicted it might be.

We may not have had as much growth in that market as some of our competitors—

Senator STEVENSON. I will receive the letter soon?

Mr. WEIL. Yes. I hope so.

Senator STEVENSON. The long answer?

Mr. WEIL. Longer than the "We don't know" answer; yes.

Senator STEVENSON. Well, we had better move on.

We may have some additional questions and we will be receiving, as I understand it, some additional answers from you to the questions already submitted.

Mr. WEIL. Yes.

Senator STEVENSON. Very good.

Unless you have anything more to add, Mr. Weil. Thank you. I better leave it at that.

Thank you, sir.

[Complete statement of Mr. Weil, additional answers to questions, and copies of the two bills being considered follow:]

STATEMENT OF FRANK A. WEIL, ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,  
DEPARTMENT OF COMMERCE

Thank you for this opportunity to comment in detail on S. 737 and H.R. 3216. In my testimony, I shall first address our major concerns about S. 737, and then about H.R. 3216.

In your letter of invitation dated April 30, 1979, you posed 22 questions that you requested that I include in my testimony. Time has not permitted us to incorporate the answers to all those questions in my prepared statement, although some will be addressed in the course of my testimony. I will be pleased to respond to all your questions following my prepared statement. I will also provide written responses to the Committee in time for your markup on Monday, May 7.

S. 737 has many constructive features. However, we have difficulty with several of its provisions. These are proposals:

(1) To include legislated decision deadlines and escalation procedures in the Act (proposed section 4(a)(2)(E));

(2) To remove the Commerce Department's exemption from provisions of the Administrative Procedure Act (proposed section 10);

(3) To require annual unilateral U.S. review of all items controlled for national security purposes (proposed sections 4(a)(2)(b) and 4(b)(1));

(4) To institute majority rule in export licensing decisions (proposed sections 4(c)(7)(A) and 4(c)(7)(B));

(5) To place controls exceeding CoCom controls under qualified general license (proposed section 4(c)(2));

(6) To limit to three the types of export control licenses permitted under the Act (proposed section 4(c)(1)(A)); and

(7) To continue controls over domestically produced oil now contained in section 4(l) of the Act (proposed section 4(i)).

Let me discuss each of these sections individually. In some instances, they overlap with provisions of H.R. 3216. I shall note it when they do.

#### 1. LEGISLATED DECISION DEADLINES AND ESCALATION PROCEDURES

One of the most frequent criticisms of the existing export control system is that it can sometimes take a long time to reach a final decision. As a result of such criticism, proposals have been made to enact into law a detailed set of administrative procedures and deadlines for making decisions.

In our view, such proposals will not solve the problem. They would produce results which are contrary to the national interest in general and to the interests of exporters in particular. While we fully agree with the goal of shortening the time it takes to act on an export license application, we differ with some of the proposals on the best means of attaining that goal. As we have stated on other occasions, we believe that mandatory decision dates would have effects other than those desired, notably more denials.

Delays actually occur in a very small proportion of the cases handled. Out of a case load now running at the rate of 75,000-80,000 a year, only about 3 percent typically require more than 90 days to complete.

But that aside, it is essential to understand that cases which take longer than 90 days to decide are usually those that involve significant issues of national security or foreign policy. All our efforts are directed toward finding ways to approve a case rather than deny it. And that involves numerous steps involving several departments.

For example, consider a large and complex computer case. When the application comes in, our analysts need to examine it carefully to determine whether it raises national security concerns. Often we cannot even begin the analysis because the information supplied is incomplete or unclear. Once we are in a position to begin the analysis, we have to examine a wide variety of factors, including the sophistication of the technology involved, the degree to which it can be extracted, the appropriateness of the computer for the proposed use, the degree to which we are satisfied that the proposed user will not divert the equipment or technology to an unauthorized use, the existence of foreign availability, and many other factors.

When we discover a potential problem, we go back to the exporter to discuss ways of resolving it. Sometimes that involves reconfiguring the system, or reducing its size or degree of sophistication. Sometimes it requires the exporter to redo the basic engineering work, including plans, specifications, and drawings. And when the exporter has to modify the proposed export, he must go back to his customer to see whether the modifications are acceptable to him. When they are not, further negotiations to agree upon modifications are necessary. The agreed modifications, of

course, require examination by the U.S. Government before any approval can be granted.

If they are confronted with mandatory decision dates, export licensing officers who have not been able to resolve such problems will have no choice but to issue a denial. And that will be true even if the case is brought to the attention of higher levels of authority within a Cabinet department. No responsible Deputy Assistant Secretary, Assistant Secretary, or Secretary will approve a case in the face of a legitimate national security objection. He will demand that the objection be resolved before acting favorably.

In our judgment it is simply not sound policy to deny an application which might ultimately be approved simply because a decision must be made by a specified date. By doing so we lose exports and transfer sales to our foreign competitors with no offsetting gain to or national security.

Despite the appeal of deadlines—and none of us is comfortable in quarrelling with deadlines—deadlines for decisions will kill the patient rather than cure it.

They will cause more denials; and

They will cut short analysis which could yield approvals.

We believe it makes more sense to set case processing deadlines for administrative purposes than to set final decision deadlines. And we are now preparing to institute such deadlines.

In addition, Secretary Kreps is directing that all cases under review for more than 90 days be referred to her for appropriate action. That may include contacting another Cabinet Secretary if another agency is responsible for the delay, applying additional resources to the licensing divisions if appropriate, or forcing high-level attention to an underlying policy issue.

Moreover, in difficult cases where it becomes clear that more than 90 days will be required to make a favorable decision, we will give applicants the option, as of the 75th day of review, either to have their applications returned without action or to have us continue our review beyond the 90th day. This will accomplish the twin goals of being responsive to the wishes of the exporting community for finality as of a certain date while permitting extended review of complicated cases in which the applicant wishes us to try to reach a favorable decision rather than issuing a denial on the 90th day.

Let me point out that the measures I have just described will not necessarily ensure that all cases are processed within certain time limits. They may not even reduce the number of cases that take more than 90 days to decide, because processing deadlines cannot remove the substantive causes for objection to the granting of a license. But processing deadlines are an important management tool; they will help us to identify where the problems are and to find ways of dealing with them. They will assist us in determining whether the problem is one of resources, organization, competence or whatever. And such determination will help reduce to a minimum the time it takes to reach an export licensing decision.

## 2. REMOVING COMMERCE'S EXEMPTION FROM PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT

We take serious exception to this proposal. It would make export administration activities subject to the requirements of the Administrative Procedure Act (APA), except where the Secretary of Commerce determines that applicability of APA provisions would be inconsistent with the purposes of the Export Administration Act. No such determination could be made for boycott compliance cases or with respect to provisions relating to confidentiality of information.

Continued exemption from the provisions of the APA is essential to the orderly, responsible and efficient administration of the export control functions exercised pursuant to the Export Administration Act.

Without such an exemption, export administration activities would become subject to the APA's procedural requirements for both rulemaking and adjudication. In the rulemaking area, this would severely restrict our ability to amend regulations immediately in order to deal with quickly developing national security, foreign policy and short-supply situations. Since our licensing and enforcement activities might well be considered adjudicatory functions within the meaning of the APA, full scale "on the record" hearings for each of the approximately 75,000 to 80,000 license applications we expect to receive this year, as well as for all enforcement proceedings, would presumably be required. The administrative burdens and delays such requirements would impose on an already overburdened process are evident.

While the proposed amendment would allow the Secretary of Commerce to continue to exempt certain rulemaking, licensing and enforcement activities from APA coverage, we do not believe that this is a satisfactory resolution of the matter.

Secretarial determinations of this nature would clearly be discretionary and would themselves be open to direct legal challenge. Protracted litigation could be expected and the APA exemption would be called into question. Moreover, if the Secretary is not permitted to exempt from APA coverage provisions relating to the withholding of export licensing information, full adjudicatory hearings on such questions might be required. This would call into question our ability to continue to protect the sensitive information which we must receive from exporters in order to administer export controls properly.

Finally, we object to this provision because it is unnecessary. As noted in earlier testimony, we are committed to a policy of issuing regulations in proposed form whenever possible. If we must issue regulations with immediate effect, we will still provide meaningful opportunities for public comment. As for adjudicatory matters, the Department conducts its export administration activities in accordance with administrative due process requirements. Applicants have ample opportunity to state their positions on applications, and their positions are carefully considered.

### 3. ANNUAL LIST REVIEWS

Proposed sections 4(a)(2)(B) and 4(b)(1) direct the Secretary of Commerce, in consultation with the Secretary of Defense, to conduct an export control list review not less than annually. This requirement ignores the close and necessary relationship between the U.S. Commodity Control List and the multilateral export controls administered by CoCom. These multilateral controls are reviewed every 3 or 4 years. The review takes more than 1 year to complete. It is not feasible for CoCom to conduct multilateral reviews covering all items on the list more frequently.

For all but a handful of extremely sophisticated technologies, the United States is no longer the sole supplier. If the United States does not enlist the cooperation of other advanced industrial nations in controlling exports of high technology to our adversaries, we will merely deprive ourselves of sales without depriving our adversaries of the technologies they seek. Cooperation by CoCom, therefore, is crucial if any effort to control exports is to be successful.

If the United States undertakes to change its own export controls on a unilateral basis, the result could be very damaging to CoCom. If our review resulted in our unilaterally decontrolling certain items now controlled multilaterally, it could trigger unilateral decontrol of other items by our CoCom partners. And since our partners at times take a more relaxed attitude toward export controls than we do, the result could be a gradual unraveling of CoCom controls.

On the other hand, if the United States were unilaterally to impose more extensive controls on items freely available elsewhere, our exporters would be placed at a serious competitive disadvantage relative to other CoCom suppliers unless we could convince our CoCom partners to impose similar controls. Such an effort would be very unwelcome to our partners, because they already tend to chafe under CoCom controls and to regard the United States as too restrictive in its attitude toward export controls. An effort on our part to convince them to agree to more stringent controls imposed unilaterally by the United States would be unlikely to meet with success. Furthermore, even if successful, the effort would require long and time-consuming negotiations.

### 4. MAJORITY RULE IN EXPORT LICENSING DECISIONS

When any reviewing agency lodges an objection to an export, it usually does so because it has strong substantive reasons for considering the proposed export potentially damaging to the national interest. There is no legitimate way to ignore such objections. They cannot be skirted by devices such as majority rule. The only way to deal with them is to argue them out and resolve them.

On the other hand, when legitimate objections are raised, we do not automatically deny the license. Instead, under the present system, we strive—often by working with the applicant to modify the proposed export—to find a solution which will permit the export to proceed without detriment to the national security. The Department of Commerce has a long record of sensitivity to both aspects of trade regulation: national security and export encouragement.

### 5. CONTROLS EXCEEDING COCOM CONTROLS TO BE UNDER QUALIFIED GENERAL LICENSE

Proposed section 4(c)(2) would provide that controls exceeding multilateral controls be effected to the greatest extent possible by means of qualified general licenses. We believe this provision could be damaging to the national security despite the qualifying words "to the greatest extent possible."

At present, the United States unilaterally controls a small group of items that are not on the CoCom embargo list. We control these goods either because they are

high-technology items uniquely available in the United States, or because they are items of a sensitive nature (e.g., nuclear materials) of whose destination we wish to keep track, even though foreign availability may exist. If these controls were required to be placed under qualified general license procedures, their effectiveness would be largely undermined. In addition, there are a wide variety of controls for foreign policy reasons which go beyond multilateral controls, such as total embargoes on exports to several countries.

#### 6. ESTABLISHMENT OF THREE TYPES OF LICENSES

Proposed section 4(c)(1)(A) would establish and authorize only three types of licenses under the Act: general, validated, and a new license, the "qualified general license." We believe that the bulk licensing procedures we have already instituted fulfill the objectives sought by the new qualified general license. Moreover, we would suggest that the specification of license types is not an appropriate subject for legislation. It may be desirable in the future to use still other forms of licenses or to vary the conditions under which existing licenses can be used. Statutory language which may limit new approaches could ultimately frustrate our common objective of devising means to limit validated license procedures to only those cases where necessary.

A similar provision appeared in the original version of H.R. 2539, sponsored by Congressman Bingham, and we objected to it. The House bill was improved, however, by the addition of a new paragraph to the subsection in question permitting the establishment of "such other licenses, consistent with this subsection and this Act, as the Secretary (of Commerce) may deem necessary for the effective and efficient implementation of this Act." A similar alteration to S. 737 would improve that bill.

#### 7. CRUDE OIL

The Administration favors allowing section 4(l) of the Export Administration Act (restated in proposed section 4(i) of S. 737) to expire on June 22, 1979, in accordance with its terms. The Administration has no current intention to authorize swaps of U.S.-produced oil. Rather, we seek to ensure that the President is not unduly constrained in considering such action should it be in the national interest.

That concludes my discussion of the provisions of S. 737 to which we take exception. Now let me proceed to discuss H.R. 3216, also known as the Export Administration Reform Act of 1979, introduced in the House by Representatives Wolff, Miller, and Ichord.

The bill mandates the establishment of an export control list based on the concept of "critical technologies and goods" or "significant technologies and goods." The idea has considerable appeal, and we are working toward the development of such a list. We are not yet in a position to translate the critical technologies concept into an export control list, but we hope to be able to do so.

However, it should be emphasized that the idea of controlling critical technologies is in no way a new one. On the contrary, it has been the governing philosophy of U.S. national security export controls for over two decades. For many years now, our export controls have been consciously designed to protect advanced U.S. technologies with important military applications in which the United States enjoys a technological lead.

H.R. 3216 would also impose a complete ban on the export, under any circumstances, of "critical" technologies and goods to controlled nations—primarily the communist bloc countries. Though it is difficult to know precisely which items would be designated "critical," it is conceivable that our CoCom allies would disagree with some of our assessments. To the extent this occurred, the result would be a loss of U.S. business opportunities with no corresponding reduction in the acquisition capabilities of controlled nations.

Currently, validated licenses are issued for the export of dual-use and end-user have been specifically identified and only after we have received adequate assurance against diversion. In some cases, mostly involving computers, these assurances include on-site inspection arrangements. We believe that these precautions, coupled with the conscientiousness of those who take part in the licensing process, are sufficient to ensure our national security.

More broadly, the Administration objects to transferring the main responsibility for national security controls to the Secretary of Defense, as stipulated in H.R. 3216. Commerce is the agency charged with implementation of U.S. export controls under the Export Administration Act. The Defense Department has a special statutory responsibility with respect to national security controls, and we believe this arrangement has proven satisfactory.

Similarly, we do not believe that the proposal to transfer the administration of the Technical Advisory Committees from Commerce to Defense is either useful or necessary. If the purpose behind such a proposal is to ensure Defense Department participation in the TAC's themselves, I would point out that by statute, Defense is already represented in the Committees and can receive advice from them. Second, under present arrangements TAC's consider and advise the Government on many issues—such as foreign availability and commercial opportunities—which go far beyond security concerns. Transferring the administration of the TAC's would therefore not add significantly to the Defense Department's resources or participation, while it would diminish their utility with respect to other export administration matters.

H.R. 3216 seems to require that a national security impact statement containing very extensive information to be written for every decision to classify or re-classify technologies and goods and for every licensing decision. When it is recognized that we are processing between 75,000 and 80,000 cases a year, it is clear that such a requirement would be an administrative nightmare, depleting scarce resources needed for other purposes. Finally, we strongly object to the provision for Congressional veto over executive branch decisions in the export administration field.

In your letter of invitation, Mr. Chairman, you asked that we respond to several questions dealing with the short supply provisions of the Export Administration Act.

The Administration is committed to a free and open international trading system for both raw materials and other commodities, consistent with other national security, foreign policy and economic interests. Through the Multilateral Trade Negotiations and other fora, we have been actively striving to induce our trading partners to remove formal and informal barriers to free trade. We have also sought to ensure that we have free and unfettered access to raw materials in other countries. At the same time, we have launched a National Export Program designed to strengthen the dollar and improve our balance of trade position. If we are to be successful in these efforts, it is crucial that we ourselves do not impose unnecessary restrictions upon exports to other nations, and that we maintain the United States reputation as a reliable supplier of vital basic commodities.

In determining whether to monitor exports or to apply short supply controls with respect to a particular commodity, the Department conducts a thorough analysis of all relevant factors in consultation with other interested Federal agencies. In deciding whether to impose controls, for example, we determine the extent to which domestic shortages and inflationary price increases exist, whether they are caused or aggravated by exports and the alternatives available to ease supply or price problems. In making monitoring decisions, we assess the severity of the apparent problem, the adequacy of data already available to us, the importance of the additional information we could obtain through monitoring, less burdensome ways of obtaining needed additional data, and the probable impact of a monitoring program on exports and prices.

The Short Supply Division within the Department's Office of Export Administration in consultation with other elements of the Department and other Federal agencies, maintains a "Watch List" of commodities in potential short supply. The "Watch List" is periodically updated, and recommendations on monitoring and controls are made as necessary to the Deputy Assistant Secretary for Trade Regulation, the Assistant Secretary for Industry and Trade and, where appropriate, the Secretary.

Since the 1974 Amendments to the Act, two new short supply programs have been introduced. A monitoring program on bituminous coal and coke of coal was initiated with the advent of the United Mine Workers strike in December 1977. This program ended in April 1978. A cobalt reporting program—one step short of monitoring—was introduced last December and is still in effect. Since December 1973, exports of crude petroleum and petroleum energy products have been subject to strict limitations, and, in the case of petroleum fuels, to export quotas.

With respect to specific proposals on amending the short supply provisions of the Act, we believe that any rigid statutory scheme requiring equal treatment of all requests for controls or monitoring—or mandating firm deadlines for reaching decisions—would be ill-advised. In some cases, the alleged problem proves to be relatively minor. In others, it is clear that rather narrow interests are being pursued. Sometimes we receive requests for control or monitoring long before the criteria for action set forth in the Act have been met. Rather than closing those cases, we inform the petitioner that though the present situation does not merit the action requested, we will keep the commodity under continuing review.

Formal procedures and public hearings may generate publicity which could exacerbate a tight supply situation by causing a surge in exports and/or price in anticipation of monitoring or controls. The result could be the very thing we are trying to avoid.

Finally, we do not believe that the addition of the phrase "or any industry or substantial segment thereof" to the monitoring language in Section 4(c)(1) of the Act is desirable. Such language could compel us to impose monitoring even though the burden on industry as a whole would far outweigh the possible benefits of the program to any particular industry or segment thereof. Monitoring always imposes a substantial burden on both industry and government. We should, therefore, avoid language which would virtually force monitoring in cases of less than national importance. Moreover, in many cases, necessary data can be obtained through less onerous methods.

You asked a number of questions pertaining to ferrous scrap. While a number of other countries restrict the export of ferrous scrap, others, including the United States, do not, and this country remains the world's principal supplier of this commodity. The Administration does not favor permanent monitoring of ferrous scrap exports because the level of such exports becomes a concern only when the capacity utilizations of both domestic and foreign steel industries peak simultaneously.

Further, we believe it undesirable to establish any rigid formula requiring mandatory controls when scrap exports reach a certain level—such as 600,000 tons per month. This particular volume has been substantially exceeded in six out of the last 7 years. Moreover, the volume of exports is only one of many factors which must be carefully weighed in making a decision to impose controls.

You asked our estimate of the price elasticity of supply for ferrous scrap. Though it is extremely difficult to measure this accurately, it is clear that supply varies according to factors other than price. Variables such as weather conditions, seasonal changes, the level of scrap inventories at steel mills, purchasing agents market expectations and transportation constraints also have an impact on supply.

One thing is clear. Scrap prices are sensitive to Governmental decisions regarding monitoring or controls. As you know, the price of scrap was extremely high during the early part of this year. Following a thorough analysis of the situation, I announced on March 2 that we would take no action to restrict or control the export of scrap, but would continue to watch developments carefully. Almost immediately, scrap prices and export volumes began to fall—and they have continued falling. From a high of \$128.67 per ton on March 1, prices decreased to \$95.17 a ton on May 2. I think it is fair to say that events have justified our decision.

Some have pressed us to control the export of ferrous scrap for environmental or energy conservation reasons. It is true that steel produced from scrap uses considerably less energy than that produced from ore. It is also true that electric furnaces which use scrap are cleaner than blast furnaces which use ore. The latter also require coking facilities which add to pollution. But we believe it is misleading to conclude that scrap exports result in a loss of energy and an increase in pollution for the United States. The domestic steel industry is now operating at about 94 percent of capacity and is utilizing its electric furnaces at close to 100 percent of capacity. Thus, there is little or no possibility of shifting production from the more polluting blast furnaces to the cleaner electric furnaces. Moreover, the energy efficiency and pollution generated by any steel-making facility obviously varies according to its modernity, design and the anti-pollution equipment which has been installed.

Finally, you inquired about the effect of scrap export controls on U.S. inflation and the trade balance. Certainly this would depend upon the stringency of any future controls which were imposed. But we can say that ferrous scrap exports in calendar year 1978 were valued at \$698 million, and thus made a significant positive contribution to this nation's balance of trade. Because of the high prices which have recently obtained, this impact will probably be even greater in 1979. To the extent that domestic scrap prices have been relatively high, there has probably been a slight impact on our rate of inflation. I would hasten to add, however, that prior to my March 2 decision not to impose export controls, I was advised by the Council on Wage and Price stability that scrap prices would not have an undue adverse impact on the President's anti-inflation program.

In concluding my discussion of ferrous scrap, Mr. Chairman, I would emphasize that many of the proposals to amend the short supply section of the Export Administration Act were inspired by the previously high price of scrap. I would reiterate that this situation seems to be resolving itself; prices have steadily fallen since early March and have dropped to \$95.17 a ton as recently as yesterday. More broadly, the

Administration does not believe any change to the short supply provisions of the Act is necessary. We have adequate means of determining when a commodity is or may be in short supply, and we now possess sufficient statutory authority to deal with any situations which may develop.

Let me conclude by summarizing the provisions of the Administration bill. While we do not believe that major changes in the law are necessary, the Administration has proposed a bill which has a number of important provisions which we urge the Committee to adopt.

One is a statement about the importance of exports to the nation's economy. The President's National Export Policy statement last September stressed the need to promote and increase exports in order to strengthen the trade and monetary position of the United States. The proposed amendment would strengthen the findings section of the Act by emphasizing the importance of exports to the U.S. economy and giving recognition to the fact that export restrictions may adversely affect our domestic employment as well as our balance of payments.

At the same time the Administration's bill would emphasize the need to control exports of technology which could make a significant contribution to the military potential of possible adversaries by explicitly stating that the export of technologies having significant military applications and the export of products which could contribute significantly to the transfer of such technologies should be closely controlled.

Because of concern that foreign policy export controls may unnecessarily deprive us of export opportunities where the same goods are available from foreign sources, the Administration's bill would provide that weight be given to foreign availability when export controls are considered for foreign policy purposes.

To make it clear that commercial information of a confidential nature submitted by exporters in connection with their export license applications is protected from public disclosure under the Freedom of Information Act, the Administration bill would eliminate the uncertainty caused by recent judicial decisions which call into question our ability to protect that information from public disclosure.

At the same time in order to assure the Congress that it has access to all information submitted under the Act, the Administration's bill would clear up an uncertainty created when the law was last amended in 1977.

The Administration's bill would also eliminate the existing unwarranted distinction in the penalties applicable to first and successive violations of the Act. It would also increase the potential prison sentences and fines for violations involving exports to countries to which exports are restricted for national security or foreign policy purposes to 10 years or a fine of \$100,000 or five times the value of the exports, whichever is greater, or both. (Present maximum penalties are imprisonment for 5 years and a fine of \$50,000 or five times the value of the exports, whichever is greater, or both.)

In order to insure that the government is fully informed about potential technology transfers taking place pursuant to agreements with foreign governments, the Administration's bill would require that certain commercial science and technology cooperation agreements between non-governmental entities in the United States and government agencies in nations to which exports are restricted for national security purposes be reported to the Secretary of Commerce if they are intended to result in the export of unpublished technical data.

Finally, in order to put in one place all authority pertaining to export controls, multilateral as well as national, the Administration's bill would incorporate into the Export Administration Act the provisions of the Mutual Defense Assistance Control Act of 1951 (the "Battle Act") pertaining to U.S. participation in CoCom. The remaining provisions of the Battle Act are obsolete and would be superseded.

This concludes my formal testimony, Mr. Chairman. In the course of it, I have responded to some of the questions you included in your letter of invitation on April 30, 1979. We shall answer those that I have not covered in a separate submission that will be sent to the Committee in time for markup on Monday, May 7. I shall be happy now to answer any questions you may have.

#### ADDITIONAL SUBMISSION TO STATEMENT OF ASSISTANT SECRETARY FOR INDUSTRY AND TRADE

Following are the responses to Questions 7-13, 15 and 19-22 in Senator Stevenson's letter of April 30 to Assistant Secretary Frank A. Weil inviting him to testify on S. 737 and H.R. 3216. Questions 1-6, 14 and 16-18 were answered in Mr. Weil's prepared statement.

*Question 7.* The AFL-CIO, in testimony before the full Committee on March 12, took the view that the United States gains nothing but small short-term profits by

exporting technology to closed economies: nations which do not allow the United States equal access to their own markets. Such nations will use our technology to export goods which take away our foreign and domestic markets. According to the AFL-CIO: "We lose our technological advantage; we lose an ability to export the product that the technology produces; we lose jobs; and we lose entire industries." Does the evidence available to your Department support or refute these contentions?

Answer. The Soviet Union has been importing United States and Western technology for many years, but remains several years behind the West in essentially every major non-military technological area. In general, the Soviets use imported technology very inefficiently. They have chronic problems in absorbing and utilizing it because of the structural problems and managerial disincentives built into their planned economy.

Moreover, they typically fail to disseminate new technology to other portions of their economy beyond the area for which it was specifically imported. Their technological imports, therefore, presumably give them valuable enough assistance for them to consider it worthwhile to go on making them, but the advantage does not result in a loss of U.S. technological leadership.

Nor do such imports generally promote Soviet technological advance, because in addition to their severe absorption problems, the Soviets have equally severe problems in innovating on established technologies. At times, therefore, their imports of technology result in "freezing" the U.S.S.R. at the technological level represented by the import. Nevertheless, for export control purposes, it is prudent to assume that the Soviet Union can and will effectively assimilate advanced technology of military significance. Soviet technological imports are primarily aimed at improving their domestic production. In some instances, the Soviets have concluded "buy-back" agreements with the U.S. exporter, by whose terms the U.S. firm has agreed to take part of its payment in the production from the plant it has helped establish. Such agreements, however, were never very numerous and have become even fewer in recent years because the Soviets have remained unwilling to allow United States participation in plant management or quality control.

Nor might we realistically expect to export significantly larger amounts of manufactured products to the Soviets if we halted exports of technology to them. Neither the Soviets nor other Communist countries have the necessary hard currency to import significant quantities of finished products. As do other developing countries, they consider it rational economic policy to develop their manufacturing capability to use their own raw materials to satisfy their own needs.

Moreover, the economic capacity and motivation of the U.S.S.R. and other Communist countries to compete in Western markets differ markedly from that of other trading nations. Many Western countries export partly as a means of solving unemployment problems and of utilizing excess production capacity. Total production in Communist countries, however, is generally inadequate to satisfy domestic needs. Therefore, in general, exports represent an economic sacrifice for them since they must be diverted from already inadequate production volumes.

*Question 8.* Why did the Administration reverse its earlier decision not to license the sale of a large Sperry-Univac computer to Tass, the Soviet news agency? Did the license require CoCom clearance? Did the French sale of the "Iris-80" require CoCom clearance? Was the original license denial based upon foreign policy grounds, or did the Administration believe at that time that the Sperry-Univac computer would make a significant contribution to the military potential of the U.S.S.R.? Why was the license not granted until after the French sold a similar computer to Tass? What determination was made with respect to foreign availability when the Sperry-Univac license was denied?

Answer. The application approved by the Administration in March was for a computer system which was a modified version of the one in the application which was denied last summer. The new application was processed through the usual channels for applications for computers to be exported to the Soviet Union. The Department of Commerce and all the other agencies which were consulted—the Departments of Defense, Energy, Treasury, and State—recommended approval of the application based on a finding that potential national security concerns were satisfied. Because of the President's involvement in the denial of the earlier application, he was consulted about this application, and he concurred in approving it.

Issuance of a license does require CoCom clearance. We submitted the case to CoCom, and it is currently pending there.

The denial of the applicaiton last summer was ordered primarily on foreign policy grounds.

"Iris-80" systems have in the past required CoCom clearance and presumably will in this case.

There was no connection between the approval of the Sperry-Univac application and the announcement the same week that a French company had sold a computer to TASS.

*Question 9.* In previous testimony you have referred to "delegations of authority" received by Commerce from other Departments. Please identify each such delegation for the Subcommittee and provide copies of documents or correspondence through which such "delegations" have been effected. What additional "delegations of authority" are being sought?

Answer. Delegations of authority ("DOA's") that have been given to Commerce are listed in the attachment. These delegations are issued only after full discussion in the interdepartmental Advisory Committee on Export Policy ("ACEP") Operating Committee and agreement by all advisory agencies, including the Department of Defense. Section 4(h)(2) of the present Act states that \* \* \* "the Secretary of Defense shall determine, in consultation with the export control office to which licensing requests are made, the types and categories of transactions which should be reviewed by him \* \* \*". The DOA's listed were obtained in full compliance with that section of the Act.

Commerce is currently seeking substantial additional DOA's through the ACEP structure. It would be premature to describe in an open hearing the specific nature of the requests until the ACEP has reached a decision.

ATTACHMENT TO QUESTION NO. 9—LIST OF ACEP DELEGATIONS OF AUTHORITY

- No. 1/2 Amend. 10—Delegation of Authority (DOA) to Approve CoCom Decontrolled Items.
- No. 1/2 Supp. 13, Amend 1—DOA—Digital Voltmeter.
- No. 1/2 Supp. 10, Rev 5—DOA—Spare/Replacement Parts.
- No. 1/2 Supp. 32, Amend 1—DOA—Avionics Instrumentation.
- No. 1/2 Supp. 79—DOA—to Approve Model 908A Coaxial Terminations.
- No. 1/2 Supp. 80—DOA—Rotary Rock Drill Bits and Parts.
- No. 1/2 Supp. 81—DOA—Television Recording Tape.
- No. 1/2 Supp. 82, Amend 1—DOA—To License Active and Current Probes.
- No. 1/2 Supp. 87, Amend 1—DOA—To Approve Magnetic Tape.
- No. 1/2 Supp. 91, Rev 2A—OEA Authorization to Approve Exports/Reexports to QWY of Certain Parts and Accessories for Lasers.
- No. 1/2 Supp. 91, Rev 2A—DOA—To License Exports to QWY Destinations of Certain Lasers, Parts and Accessories.
- No. 1/2 Supp. 91, Rev 4—OEA Authorization to Approve Certain Lasers.
- No. 1/2 Supp. 95—DOA—Aircraft Components.
- No. 1/2 Supp. 96, Revised—Delegation for BIC to Approve, Certain Electronic Test Instruments.
- No. 1/2 Supp. 101—DOA—To Approve Helicopter Engines and Helicopters.
- No. 1/2 Supp. 108, Rev 1—OEA Authorization to Approve Power Meters.
- No. 1/2 Supp. 112—Authorization to Approve Transistor-Making Equipment and TD.
- No. 1/2 Supp. 113, Rev 1—DOA—DC Amplifiers and Preamplifiers.
- No. 1/2 Supp. 114—DOA—Slotted Line.
- No. 1/2 Supp. 115, Rev 1—OEA Authorization to Approve Exports of Certain Electronic Counters.
- No. 1/2 Supp. 120—DOA—For BIC to Approve, Certain Types of Amplifiers.
- No. 1/2 Supp. 121—DOA—Oilfield Equipment.
- No. 1/2 Supp. 124—DOA—BIC to Approve Future Exports and Reexports of Certain Molecular Sieves.
- No. 1/2 Supp. 125—DOA—To Approve Deep Horizon and Off-Shore Equipment.
- No. 1/2 Supp. 126, Rev 3—OEA Authorization to Approve Exports of Certain Models of Video Tape Recorders.
- No. 1/2 Supp. 127—Delegation for BIC to Approve Diethylene Triamine.
- No. 1/2 Supp. 128—DOA—To BIC to Approve PIN Diodes.
- No. 1/2 Supp. 129—Delegation of Licensing Authority to Approve Certain Oil Field Equipment.
- No. 1/2 Supp. 130—DOA—For Certain Thermistor Mounts and Equivalents.
- No. 1/2 Supp. 131—DOA—For Light-Emitting Diodes and Arrays.
- No. 1/2 Supp. 132—DOA—on Boron Trifluoride Monoethylamine.
- No. 1/2 Supp. 133, Rev 1—OEA Authorization to Approve Potentiometers.
- No. 1/2 Supp. 134—DOA—For Lithium-Drifted Germanium and Lithium-Drifted Silicon Detectors and Associated Equipment.

- No. 1/2 Supp. 135—DOA—To License Certain Quantities of Magnetic Instrumentation Tape.
- No. 1/2 Supp. 136—DOA—For Equipment for Use with YAK-40 Aircraft.
- No. 1/2 Supp. 137—DOA—To Approve Export of Reasonable Quantities of Seismic Tape.
- No. 1/2 Supp. 138—DOA—On Non-I/L Digital Voltmeters.
- No. 1/2 Supp. 139 (Revocation)—DOA—For Converters as Part of Certain Computer Systems.
- No. 1/2 Supp. 140 Rev. 1—DOA—On Polyphenyl Ether (PMPE).
- No. 1/2 Supp. 141—DOA—To Approve Certain Non-I/L Numerical Control Machines.
- No. 1/2 Supp. 142—DOA—To Approve Export of Certain Infrared Thermometers.
- No. 1/2 Supp. 143—DOA—To Approve FEF Fluorocarbon Resin.
- No. 1/2 Supp. 144—Delegation of Licensing Authority For Freons 113 and 114 and Solvents and Mixtures.
- No. 1/2 Supp. 145—OEC Conditional Authorization to Approve Exports of Type System 7 Electronic Computer Systems and Certain Related Equipment.
- No. 1/2 Supp. 146—OEC Authorization to Approve Nomex (HT-1 Polymer) Aromatic Polyamide Materials.
- No. 1/2 Supp. 147—OEA Authorization to Approve Certain Coaxial Attenuators.
- No. 1/2 Supp. 148—OEA Authorization to Approve Exports of Certain Frequency Synthesizers.
- No. 1/2 Supp. 149—OEA Authorization to Approve Exports of Certain Electronic Capacitors.
- No. 1/2 Supp. 150—OEA Authorization to Approve Certain Field Effect Transistors.
- No. 1/2 Supp. 151—OEA Authorization to Approve Under Specified Conditions Applications to Export Commodities for Acetic Acid Plant.
- No. 1/2 Supp. 152—Conditional Authorization to OEA to Approve Applications to Export Operational Amplifier Integrated Circuits.
- No. 1/2 Supp. 153 Amend 1—OEA Authorization to Approve Exports of Certain Spectrum Analyzers.
- No. 1/2 Supp. 154—OEA Authorization to Approve Exports of Polychlorotrifluoroethylene Oil.
- No. 1/2 Supp. 155 Rev. 1—OEA Authorization to Approve and Deny Exports of Certain D/A and A/D Converters.
- No. 1/2 Supp. 156 Rev. 1—DOA—OEA Authorization to Approve Applications of Certain Integrated Circuits.
- No. 1/2 Supp. 157—DOA—OEA Authorization to Approve, Applications for Export of 3-Dimethylaminopropyl Chloride Hydrochloride (DMPC).
- No. 1/2 Supp. 158—DOA—OEA Authorization to Approve Applications of Certain Counter/Timer Plug-ins.
- No. 1/2 Supp. 159—Authorization of OEA to Approve Certain Tantalum Powder.
- No. 1/2 Supp. 166—Approval of DOA for Certain IC's.
- No. 1/2 Supp. 163—DOA—Denial of MC 14000 IC's.

*Question 10.* Do the CoCom negotiations currently underway include a U.S. proposal concerning so-called militarily critical technologies and related products. If not, why not?

*Answer.* The Defense Department's work on the critical technologies approach is still in progress at present. The United States has not made a proposal in CoCom concerning militarily critical technologies and related products because we are not yet in a position to translate the critical technologies concept into an export control list. However, we have spoken informally about the concept with our CoCom partners.

Administration efforts to elaborate a list of critical technologies for export control purposes have not yet resulted in specific proposals suitable for submission to CoCom. However, the general thrust of this work has been taken into account in proposals which the United States has already tabled to strengthen CoCom procedures on the control of technology. The Defense Science Board's finding that reverse engineering is extremely difficult has also been a factor in the development of proposals to decontrol products which had previously been controlled primarily to protect the technology for their manufacture.

Last fall and this spring, the United States proposed three amendments on this subject to CoCom. These amendments were designed to clarify and strengthen CoCom agreements to control technologies related to the design, manufacture and use of embargoed items. CoCom has adopted two of those proposals. These were:

(1) To amend the CoCom strategic criteria to include specific references to technology as well as to products, and

(2) To include technology controls as an integral part of each of the three CoCom lists (Industrial, Munitions and Atomic Energy) rather than as a separate "Administrative Principle," as in the past.

The pending proposal seeks CoCom confirmation that, if products at the lower end of the performance spectrum are decontrolled, the technology related to those products would remain under control. This question is important because the technology related to the lower end of the performance spectrum often does not differ substantially from the technology related to the higher end of the spectrum.

*Question 11.* Has the system of distribution and bulk licenses been expanded to include Communist country destinations? Must other departments or the President approve such expansion? When does the Department of Commerce expect to put such expanded licensing procedures into effect?

Answer. Proposals to this effect are being actively discussed with our advisory agencies, but we have not yet reached agreement on the scope and conditions of such a license. Complex national security concerns have been raised, and our discussions are focusing on means of ensuring that any such expansion of the bulk license concept will not allow diversion of sensitive exports to undesirable end-users or end-uses.

*Question 12.* What controls does the United States currently impose for national security purposes on goods or technology available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States?

What volume of exports is covered by such controls?

Answer. The United States maintains unilateral controls for national security purposes over 43 commodities which are listed in the U.S. Commodity Control List (CCL). Some but not all of these are uniquely available in the United States. (These items are identified in the CCL by the code letter "B." See Section 399.1, page 2 of the Export Administration Regulations.) Only those non-CoCom-controlled commodities and technical data which could contribute significantly to the development, production, or use of military hardware, irrespective of foreign availability, are included in this list. They are controlled only to the Communist country destinations: U.S.S.R. Eastern Europe and the PRC.

The Advisory Committee for Export Policy (ACEP), chaired by the Department of Commerce periodically reviews the CCL entries and decides whether to delete, modify, or retain existing unilateral controls.

Time has not permitted our compiling a dollar value or other volume figure for individual export license applications processed which involved exports of these 43 entries. A computer printout for the last three years has been requested and should be available in the near future.

*Question 13.* What controls does the United States currently impose for foreign policy purposes on goods or technology available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States? What volume of exports is covered by such controls?

Answer. Comprehensive assessments of foreign availability with respect to all of the items covered by foreign policy controls have not been made. The following are types of foreign policy controls imposed unilaterally by the United States:

- (a) *Embargo.*—On all exports to North Korea, Vietnam, Cambodia, and Cuba.
- (b) *Embargo.*—On all commodities and technical data destined to or for use by military or police in South Africa and Namibia.
- (c) *Crime Control.*—On crime control and detection equipment to all destinations except the NATO countries, Japan, Australia, and New Zealand. Items are denied only to those governments showing a consistent pattern of gross violations of human rights.
- (d) *Petroleum Equipment.*—Exports of oil and gas equipment to the U.S.S.R. are reviewed for foreign policy considerations. No cases have been denied.
- (e) *Regional Stability.*—Exports of commodities and equipment which could contribute to tensions in the Middle East or in certain African countries are carefully monitored. Principal items covered are aircraft, computers, advanced electronic equipment, and certain transport vehicles.
- (f) *Terrorism.*—Exports of equipment particularly useful in abetting terrorism are controlled to Iraq, Libya and South Yemen.

(g) *Nuclear and Military Delivery Controls.*—For foreign policy as well as national security reasons, license applications for computers, advanced electronic equipment, and precision instruments are carefully reviewed for possible contribution to advanced offensive military delivery vehicle systems and nuclear explosive devices. Also pursuant to requirements of the Nuclear Nonproliferation Act, commodities

are controlled when they could be diverted to purposes which would significantly contribute to nuclear programs.

Total denials for foreign policy reasons in 1977 and 1978 amounted to \$79 million.

**Question 15.** What is the Administration's view toward negotiations for the purpose of putting the informal CoCom arrangement on a treaty basis? Has the United States ever proposed such negotiations?

**Answer.** There is a serious risk that even just proposing a treaty would lead to erosion of existing controls. Other member countries have resisted formalization over the years. Even if such an effort were successful, the benefits of formalization would be slight. The other CoCom partners would probably insist on an escape clause to permit, in extraordinary circumstances, approval of licenses at national discretion without CoCom concurrence. Indeed, although the United States has scrupulously abided by its CoCom commitments over the years, it might not be in our best interests to limit our sovereign rights by a treaty which would obligate us to refrain from certain exports because of a negative position taken by an ally.

**Question 19.** In your testimony before the House Foreign Affairs Committee you included a list of "changes in Licensing Procedures and Regulations." It would be helpful to the Subcommittee if you would annotate the list to indicate when the changes were made, whether the changes were required by statute or made pursuant to discretionary authority, what volume of exports is affected by the changes, and why the change is expected to reduce licensing inconvenience or otherwise facilitate U.S. exports.

**Answer.** Time has not permitted us to assemble all the information requested. We are now in the process of collecting it. The following are the most important new procedures among those which have already gone or will shortly go into effect in OEA in order to administer U.S. export policy in the most expeditious manner possible:

#### *I. Front-door licensing*

This system is now in effect. Free-world cases which can be decided the same day they arrive in OEA will be processed at the point of their arrival instead of being routed to technical Licensing Divisions. Licensing Division personnel will review the applications in the Operations Division. This will become standard OEA procedure. It will decrease the time required to process applications by cutting down on the paper flow. It will increase the time available to Licensing Officers to analyze more difficult applications for exports to controlled destinations.

#### *II. Administrative deadlines*

This will be an internal system of deadlines for application review. Deadlines begin from the moment completed applications enter the Operations Division and are calculated in terms of working days.

(a) From Operations, applications not processed through Front-Door procedures must be forwarded to the appropriate technical Licensing Divisions within 3 days.

(b) Cases not requiring review by CoCom or the Operating Committee (OC) must be completely processed by the Licensing Divisions within 15 days.

(c) Applications requiring OC and OC-waiver documentation will have 25 days in the Licensing Divisions. They should then go to the Policy Planning Division (PPD) for interagency review.

(d) Cases requiring interagency consultation will have 35 days to be concluded after reaching PPD. (This includes the time the application spends in PPD and in interagency review by the OC.) If no further processing is required after a case returns from the agencies, it should have the necessary paperwork completed in OEA within 5 days. Therefore, an application requiring OC review will have 68 working days for completion (3 days Operations, 25 days Licensing Divisions, 35 days interagency review, 5 days completion of paperwork).

(e) Cases subject to CoCom review should require no longer than 20 days in CoCom after interagency consultation. This will allow 88 days for processing applications sent to both the OC and CoCom.

#### *III. Secretarial review*

Secretary Kreps is directing that all cases pending for more than 90 days be referred to the appropriate Cabinet Secretary for action.

#### *IV. Applicant option*

In cases where policy and technical issues make it clear that more than 90 days will be required to make a thorough review with possible modifications to the application, we will give the applicant the option on the 75th day either to have his application returned or to have us continue our review beyond the 90th day.

### V. Delegations of authority

We will seek more delegations of authority from the Department of Defense for processing cases in OEA.

### VI. Indexing

Indexing in areas other than computer performance parameters within CoCom is being considered. This would involve setting a moving ceiling on technical specifications defining controlled items.

An indexing system is not currently in place for computers. However, a U.S. proposal for an indexing system for computers is now pending in CoCom.

All these new procedures will affect the processing of every application for a validated export license. They are internal discretionary procedures being administered to minimize the time necessary to process license applications. The Department of Commerce along with other relevant agencies is prepared to continue its attempts at administrative improvements based on experience gained in these initial efforts.

*Question 20.* Under present export licensing procedures, what information does the applicant receive, at what point and in how much detail, concerning the status of his application?

Answer.

(a) By enclosing a stamped, self-addressed post card with its application, a company may learn the date on which OEA receives the application and the case number OEA assigns to it.

(b) The applicant may at any time learn the status of his application by contacting OEA's Exporters' Service Staff. Export Administration Regulations discourage such checks within less than three weeks for Free World cases, and less than five weeks for communist country cases. This time limit avoids waste of manpower on unnecessary status checks because the majority of applications are processed within these periods.

(c) In accordance with section 4(g) of the Export Administration Act, OEA notifies companies when cases will require longer than 90 days to process. The 90-day letters give the status of cases in OEA, under interagency review, or in CoCom and estimate the remaining time it will take to process the cases.

(d) If a case is being formally submitted to the Operating Committee (OC) of the Advisory Committee on Export Policy, the company receives Part I of the OC Document. This is the unclassified portion detailing commodity description, proposed end-use, listing of comparable equipment, and any other pertinent facts about the business transaction.

For cases submitted to the interagency system by waiver of OC referral, the unclassified portion of the waiver may be supplied upon request by the applicant.

OEA does not supply classified information pertaining to strategic uses, CoCom classifications, intelligence information, and other security-sensitive matters.

(e) If objections to issuing the license have been raised during the processing of an application, the company concerned is told the nature of these considerations and is given 15 days to submit a rebuttal. If there is no rebuttal, an official denial is sent to the company. If a rebuttal is made, it is reviewed and the appropriate recommendations for denial or approval are made.

We believe these procedures supply applicants with full information (except for classified information) relevant to their cases at each stage of the application's processing.

*Question 21.* What is your view of proposals to require "indexing" of performance levels of goods and technology subject to export controls for national security purposes?

Answer. A requirement for an annual increase in the performance levels of goods or technical data subject to export controls, while useful for certain items such as computers, would actually be applicable to only a few controlled items. These cases can be handled administratively and through negotiations in CoCom. A U.S. proposal for an indexing system for computers is now pending in CoCom.

*Question 22.* What is your view of the GAO recommendation that Commerce take over inspections to insure compliance with munitions export controls? How much additional funding would Commerce need to carry out such inspections?

Answer. The Office of Export Administration would need additional resources to assume these additional duties. The level of additional funding required to conduct inspections to ensure compliance with munitions export controls would depend on the level of enforcement the Office of Munitions Control would require. We are still considering our position on the GAO recommendation.

[Additional information follows:]

*Jonathan B. Bingham*  
*Victor C. Johnson*

## A RATIONAL APPROACH TO EXPORT CONTROLS

**L**ast year, America's foreign trade deficit reached alarming new levels. Responding, President Carter announced in September a multifaceted program to encourage U.S. exports, and 15 members of the House of Representatives formed an Export Task Force to pursue the same objective. But also last year the President and Congress imposed various new limitations on exports, and 70 members of the House introduced a "Technology Transfer Ban Act," calling for broad prohibitions on exports to communist countries. In 1979, the Congress will have to reconcile these conflicting tendencies as it legislates an extension to the Export Administration Act, the principal authority for controls on civilian exports, which expires September 30.

Unfortunately, the political context in which Congress will face this task may not be conducive to dispassionate and objective analysis. Alarmists in Congress and the executive branch have seized upon the national uneasiness over Soviet actions in Africa, and the national revulsion over the treatment of Soviet dissidents, to subject the entire concept of East-West trade to the most serious attack it has faced in the last 15 years at least. The President's announcement last December 15 of the normalization of relations with the People's Republic of China has excited passions ranging from euphoria over the trade possibilities, to eagerness to play the China card against the Soviet Union, to charges of selling out our friends on Taiwan. As this article goes to press, events in Iran and Afghanistan threaten to damage the climate further.

In this emotional atmosphere, it will be extremely difficult to maintain a focus on the tough but crucial questions of export control policy as it applies to the communist countries. To what degree is it possible for the United States to influence the growth of Soviet military capabilities by means of export controls? Since

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any trade has some potential for contributing to Soviet military capabilities (Khrushchev is said to have remarked that the United States should embargo buttons because they are used to hold up Soviet soldiers' pants), where do we draw the line between acceptable and unacceptable risk? How can we fashion an export control system that protects the national interest, without overburdening the bureaucracy that would implement the controls with either impossible judgments or unmanageable paperwork? How can we impose export controls without unnecessarily frustrating U.S. exports and losing business to other countries, including some of our closest allies?

These questions fall under the traditional heading of "national security controls"—dealing almost wholly with the export of products and advanced technology which might increase the military capabilities of communist countries. But, in addition, the Export Administration Act provides expressly for "foreign policy controls," designed to further the foreign policy of the United States, which may apply to any form of exports to any destination. Today the application of such controls is steadily growing, both through the denial of export licenses for individual items and through broader embargoes. Can these be handled wisely and with reasonable consistency?

And, finally, there are the cases where security and foreign policy interact and become hard to separate. Should we seek to exert economic pressure on the Soviet Union through the selective control of exports, specifically in areas relating to oil production? And how can we keep trade and export policy toward the U.S.S.R. and China in tune with the overall policy of balance defined by President Carter and Secretary of State Vance?

In addressing these questions, this article will stick mainly to the context of the Export Administration Act, proposing key guidelines for its revision. Such an approach necessarily omits detailed discussion of many other laws affecting exports—such as restraints on the Export-Import Bank, conditions attached to authorizations for economic aid and military aid and sales, and the special case of nuclear exports, which fall under the Atomic Energy Act of 1954 and the Nuclear Non-Proliferation Act of 1978. Each of these laws does indeed involve some form of export control based on foreign policy concerns, but the issues are inevitably more diffuse.<sup>1</sup>

<sup>1</sup> For the same reason, we omit discussion of legal provisions of a regulatory nature, which, though not designed to curb or restrain exports, are regarded by many American exporting businesses as significant restraints and burdens. Examples would be the laws affecting bribes

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The core of the problem of formal export controls continues to lie in East-West security problems and in the major foreign policy problems raised within the Export Administration Act.

## II

In these days of difficulties in our relations with the Soviet Union, there are those who argue that the United States has no policy for controlling the transfer of strategic technology to the East, and that the policy we should have is one of "don't sell them anything." Both propositions are wrong.

The Export Administration Act makes it the policy of the United States "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or group of nations which would prove detrimental to the national security of the United States." To give effect to that policy, the act authorizes the President to control the export of "any articles, materials, or supplies, including technical data or any other information."

The reason U.S. policy is as stated in the Export Administration Act, and not one of "don't sell them anything," is that we tried the latter policy before, and it failed. For 20 years, under the Export Control Act of 1949, it was this country's policy to deny the Soviets any trade that would contribute to either their military or their economic potential. Since countries presumably trade *because* it improves their economic potential, this indeed came close to being a prescription for not selling the Soviets anything. This policy was abandoned when Congress passed the Export Administration Act and President Nixon signed it into law in 1969.

There were essentially three reasons for changing from a policy of economic denial to a more narrow strategic embargo. Usually, only one is mentioned today by critics of U.S.-Soviet trade: that we hoped by liberalizing trade to involve the Soviet Union in a "web of interdependence" with the West, and to promote détente. There is room for debate over the success of that strategy.

But there were two further reasons independent of the first. One was that our policy of maintaining a broad trade embargo on the Soviet Union clearly had not significantly retarded Soviet eco-

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overseas, antitrust laws, and environmental review requirements. The Export Administration Amendments of 1977 prohibiting American businesses from cooperating with the Arab boycott of Israel or any similar boycott—while their effect on exports has in fact been minimal—are regarded by some businesses in the same light. For a brief summary discussion of export restrictions in this broader sense, see Marina v.N. Whitman, "A Year of Travail: The United States and the International Economy," *Foreign Affairs, America and the World 1978*, pp. 550-53.

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conomic growth or inhibited Soviet foreign policy. The other, related to the first, was that our allies had refused to go along with a broad embargo, and were simply selling the Soviets what we refused to sell, thereby taking business away from U.S. companies. Given this experience, it seemed prudent to relax the embargo policy, and to seek the benefits of trade with the Soviet Union to the extent that such trade would not damage the national security. It is interesting that Congress took this initiative even at a time when U.S.-Soviet relations were strained, in the aftermath of the 1968 Soviet invasion of Czechoslovakia.

## III

While our policy is reasonably clear, the effectiveness with which it is being carried out is justly the subject of considerable debate. In determining what reforms are necessary, we must consider the validity of some of the often-repeated criticisms of our export licensing system.

Some observers argue that U.S. controls on exports to the Soviet Union, particularly of advanced technology items such as computers and machine tools, are too loose, so that we are in effect helping the Soviets build up their technological—and consequently their military—capacity to the detriment of our national security. Others, particularly the advanced technology industries, feel the controls are too strict. They argue that we attempt to control too much obsolete technology which is generally available elsewhere and that, when we attempt to control what other technology producers are unwilling to control, we merely lose business to other countries without affecting what the Soviets can acquire.

In the authors' view, the question of whether this country's export controls for national security purposes are too tight or too loose is the wrong question. They can be both. This was the conclusion of a 1976 study by a Defense Department task force, commonly referred to as the Bucy Report after the chairman of the task force, J. Fred Bucy, President of Texas Instruments. The Bucy Report concluded that we control too many end products, but do not control the export of design and manufacturing technology as effectively as we should.

The essential recommendations of the Bucy Report were three. First, export controls should focus on "critical technologies" that "transfer vital design and manufacturing know-how most effectively." According to the report, these critical technologies include: (1) "Arrays of design and manufacturing information that include

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detailed 'how-to' instructions on design and manufacturing processes"; (2) "'Keystone' manufacturing, inspection, or automatic test equipment"; and (3) "products accompanied by sophisticated operation, application, or maintenance information." Second, since no technology can be protected forever, it should be recognized that the purpose of the controls is to protect key "strategic U.S. lead times" in critical technology areas. Third, export controls should focus on "active transfer mechanisms"—such as turnkey factories, licenses that involve an extensive teaching effort, joint ventures, technical exchange agreements, and training programs.<sup>2</sup>

The Bucy Report has led to intensive efforts in the Defense Department to define critical technologies and active transfer mechanisms in operational terms which would be useful in guiding export control policy. The results of these efforts are scheduled to be available early in 1979.

We will not know whether the Bucy Report provides a real basis for a rational system of export controls until we learn whether its key terms can be adequately defined. Still, the report was a useful one in that it emphasized the need to focus our resources on controlling what we have determined to be critical technology. Implementation of the Bucy Report may entail new forms of control on technology transfer. But it should also entail a significant reduction in controls on products. Proposals simply to add more controls to the existing ones would actually damage the national security, in our judgment, further encumbering the licensing bureaucracy with paperwork and distracting it from its essential task.

It is sometimes argued that, if a Soviet capability is supported by technology or products of U.S. origin, U.S. licensing decisions must be to blame—that the licensing system itself is too "leaky." The presumption that U.S. export licensing actions can by themselves control the flow of technology and its products to the Soviet Union is a vanity and a delusion we would do well to dispense with. The fact is that the Soviets usually have access to technology and products comparable to those licensed for export by this country—whether from their own sources, from their East European allies, or from other Free World sources. Where this alternative access can be had quickly, there is no way the United States can stop acquisition of the products by the Soviet Union.

<sup>2</sup> *An Analysis of Export Control of U.S. Technology—A DOD Perspective*. A Report of the Defense Science Board Task Force on Export of U.S. Technology, Washington, D.C.: Office of the Director of Defense Research and Engineering, Department of Defense, February 4, 1976.

In that case, there is no national security reason not to export the same thing. When we do, it is not valid to argue that the export *causes* the capabilities.

Where, however, the United States possesses a key strategic lead time—i.e., where the Soviets can obtain the technology or products from alternative sources only after a considerable delay—then the government's practice is to deny the license. Witnesses at hearings conducted in 1976 by the Subcommittee on International Economic Policy and Trade, although representing different points of view, were agreed that it is impossible to prevent Soviet acquisition of technology over time, but that it may be possible—and worthwhile—to delay such acquisition. By the time the Soviets do acquire it, the United States may have moved on to a new generation of technology.

Another criticism of U.S. policy and practice with respect to controls is that exports to the U.S.S.R. are often permitted when the items in question could conceivably be put to military use. The whole system of national security controls is indeed—almost by definition—one for controlling the export of products with both civilian and military uses (or, in the jargon, “dual-use items”): if there were no potential military use, the question of control would not arise. But, as a matter of policy and practice, the United States does not license the export to the Soviet Union of products with important military uses without satisfying itself that the risk of diversion from the authorized civilian end use to a military use is small—on the basis of a combined judgment of the probability that diversion would be detected and of its consequences if it should take place.<sup>3</sup>

A classic example of a dual-use product is the computer. Because the same machine can be used for many purposes, computers confront our government with the most troublesome export-licensing decisions and have given rise to elaborate “safeguards” against diversion, which form part of the sales agreement. For example, safeguards may include a procedure whereby the exporting company programs the computer in such a way that the company can monitor its output and detect any diversion; if diversion occurs, spare parts can be withheld so that the computer

<sup>3</sup> The Department of Defense maintains a list of criteria employed by the Department to make this judgment. They are: (1) Is the item appropriate (in quantity, quality, demonstrable need, design, etc.) to the stated civil end use? (2) Is there any evidence that the stated end-user is engaged in military or military support activities to which this item could be applied? (3) How difficult would it be to divert this item to military purposes? (4) Could such diversion be carried out without detection? (5) Is there evidence of a serious deficiency in the military sector which this item, if diverted, would fill? (6) Is technology of military significance, which is not already available, extractable from this item?

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quickly becomes inoperable. As another safeguard, permanent residence by an American technician, or periodic on-site inspection, may be required.

It may also be noted that the Soviets have good reason not to divert U.S. exports to military use in violation of the terms of the sale. Few diversions would entail benefits great enough to balance the loss of regular access to U.S. technology that would surely follow detection of any major diversion. The greater the benefits of diversion to the Soviets, the more stringent would be U.S.-imposed safeguards, and hence the higher the risk of detection. Granting export licenses in such cases is not to rely on Soviet good faith, but rather to consider what the Soviets would regard as in their own self-interest.

Ultimately, however, the important point to recognize is that there is no strategically impregnable export-licensing decision; there are only acceptable risks. The question about a computer (or any other dual-use product) is not whether it *could* be used for military purposes. The answer to that question is always, by definition, yes. The question is, by exporting that computer, do we run an acceptable risk? No amount of information we could possibly acquire would enable us to be absolutely certain that diversion would not take place.

One suspects that those who would place an absolute ban on the export of dual-use items to the Soviets do so in an attempt to escape from this uncomfortably uncertain game. But there is no escape. Other countries stand ready to sell what we do not, and the risk is the same whether the export that produces it comes from the United States, Western Europe or Japan. By refusing to export, we do not eliminate uncertainty; we only opt out of the game.

Because of the various concerns about the national security implications for the United States of technology transfers to the East, proposals occasionally surface in Congress for some kind of congressional veto of export-licensing decisions. Sometimes these take the form of an effort to void in advance a particular sale that members fear might otherwise be consummated. Sponsors of these efforts usually try to make it appear that, were it not for their vigilance, the executive branch would sell the national security down the river. This happened in 1977, for example, when a "Dear Colleague" letter was circulated to all members of the House alleging that the Commerce Department was about to license the sale of an advanced Cyber-76 computer to the Soviet Union. Investigation by the Subcommittee on International Eco-

conomic Policy and Trade, however, uncovered no inclination on the part of any responsible executive branch official to license the sale. The license was eventually denied on its merits, not because of congressional pressure. The congressional opponents of the sale mistook administrative due process, under which that particular application was granted the same review as any other, for an intention to export the computer.

Proposals also surface for a general congressional veto authority over license approvals with respect to communist countries. (Interestingly, no one has come up with a proposal for congressional reversal of license *denials*.) Proposals of this kind are misguided. The Commerce Department reviews thousands of such applications every year, granting most, rejecting some. All but the most routine applications are subjected to exhaustive review. Under the law, no export with potential military significance can go forward without the concurrence of the Department of Defense, unless the President himself overrules the Department. As a practical matter, any one of several agencies is able to block an export to a communist country.

It is difficult to see what Congress could add to the review process, especially since Congress lacks both the time and the expertise necessary to review these thousands of highly technical applications. The practical effect (and, one is tempted to say, the purpose) of injecting Congress into the day-to-day licensing process would be to politicize and further encumber a process that already has great difficulty producing technically sound decisions efficiently.

Trying to second-guess specific licensing decisions is the wrong way for Congress to go. If we really want rational decisions, what we need to do is work to increase the rationality of the process that produces those decisions, rather than further burdening an already glacially slow process with congressional override provisions.

#### IV

If the 96th Congress is to improve the export-licensing process, it must deal with three underlying and related problems: the inefficiency of the process, the presumption of license denial that is built into it, and the existence of an entrenched bureaucracy making export-licensing decisions which is not accountable to those most affected.

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The current process is so unwieldy one wonders that it produces any decisions at all. The Commerce Department's Office of Export Administration expects to receive some 70,000 license applications in 1979. That works out to nearly 300 per working day. Backlogs are increasing as licensing officials slowly lose the battle with the paper. Too many commodities are subject to control, right down to microprocessors, which are generally available throughout the Western world and which a Soviet embassy official could purchase for \$15 from Radio Shack and carry out of the country in his pocket. Too many agencies must sign off on too many licensing decisions, and there are no effective limits on how much time they can take to reach a determination. Indeed, the system is so structured that there is a built-in incentive for those who oppose exports to the East to use delay as a tactic. So long as an application is in the bottom of a bureaucrat's in-box, nothing can happen. There are no effective procedures for forcing a decision. The result is that too many applications, rather than being dealt with rationally, simply languish in the bureaucracy until the customer cancels the order and gives it to one of our foreign competitors.

The basic factor that accounts for the number of export license applications is the presumption of denial that underlies the system, harking back to the tradition of the broad embargo policy of the cold war years. Indeed, the government's legal premise is that it retains theoretical control over *all* exports, that all exports are expressly prohibited unless licensed.

As a practical matter, the licensing requirement applied from the start to all technology exports to communist destinations. This is a broad category (as it is construed), and the burden of proof is on potential exporters to show that commodities should be taken off the control list because of obsolescence or foreign availability. Once an item is on the list, it stays there until someone successfully makes a case for taking it off. Meanwhile, new products and technological advances are controlled as they are developed, so the scope of the controls constantly increases. Until the Bucy Report, never since 1949 had the government started a "zero-based" effort, in effect, to throw away the old list and construct a new one based on up-to-date conceptions of strategic significance.

It seems bizarre that, in a supposedly free enterprise society, exports of civilian goods could be governed by a doctrine which asserts that they are prohibited unless approved. This doctrine may be justified in the case of so-called Munitions List items: arms, ammunition, implements of war, and related technical data.

But with respect to categories of civilian products, the burden of proof should be reversed. A businessman should be presumed to have the right to export a particular type of civilian product to a particular destination unless the government intervenes and determines that for some overriding reason of public policy that type of export should be controlled. The burden of proof should be on the government. This issue is of more than theoretical significance, because only if we reverse the presumption of denial will we be able to achieve a system lean enough to function effectively and efficiently.

Finally, this cumbersome and biased system is at the mercy of a licensing bureaucracy that has been in place for 30 years and has evidenced great difficulty in changing its approach to technology transfer issues. This bureaucracy has become accustomed to functioning in near-total secrecy without having to account for its decisions. Rarely is a meaningful explanation for a denial or a delay provided to the exporter. Unless he happens to be well connected in Washington, a prospective exporter seldom has an opportunity to sit down with licensing officials, present his case, rebut their arguments, and make sure they understand the equipment in question. Procedural safeguards such as those contained in the Administrative Procedure Act do not apply to the export-licensing process. A great deal of secrecy prevails; it is difficult even for committees of Congress, let alone the exporter, to find out the status of an application or, if it was denied, the reason for the denial.

There may be cases where secrecy is justified, but in general it is part of our democratic faith that the government produces better decisions if it is forced to justify those decisions publicly, and if it is in some sense accountable to those who are principally affected by those decisions. Accountability will lead to more rational licensing decisions, whether those decisions be approvals or denials.

## v

As we have noted, our ability to control technology transfers to the East is limited by the availability of alternative technology from non-U.S. producers in the free world. Both the Export Administration Act of 1969 and the Mutual Defense Assistance Control Act of 1951 (Battle Act) stipulate that this country, in its efforts to control exports, should work in cooperation with other nations, and for 30 years there has been in operation a multilateral Coordinating Committee known by the acronym COCOM. Its

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members are the NATO countries (minus Iceland) plus Japan. This means, of course, that some technology producers, particularly Switzerland and Sweden, do not belong.

COCOM was set up in 1949, at the instigation of the United States, in an attempt to multilateralize what was then a virtual trade embargo of the Soviet Union and its "satellites." However, there is no "COCOM agreement"—no treaty, executive agreement or other constitutive document. COCOM has no enforcement powers over its members. Principally because of domestic political considerations in cooperating countries other than the United States, participation in COCOM is completely informal and, in some cases, not even officially recognized.

COCOM maintains a list of items which, by consent of the parties, are embargoed for export to communist destinations. Under COCOM procedures, items on the list can only be exported if the exporting country submits an "exception request" which is approved by all the parties. Understandings regarding the details of COCOM's operations and procedures are codified as footnotes to the list. All of this—the list, the footnotes, the exception requests, virtually everything having to do with COCOM—is secret. Secrecy is designed not only to protect sensitive national security information, but also, in our judgment, to protect the participating governments from domestic political opposition. Some European governments are sensitive to criticism from the Left for participating with the United States in anti-communist trade controls, and our own government is sensitive to charges that it quietly acquiesces in loose European and Japanese enforcement of the controls.

The secrecy also applies to the criteria, developed more than 20 years ago, that are employed by COCOM for including items on the embargo list. However, these have been characterized in public hearings as including: (1) whether the items constitute weapons or equipment for their production; (2) whether the items incorporate unique technological know-how of military significance; and (3) whether the items represent materials in deficient supply in relation to military potential in the communist countries.

COCOM has not worked very well, and for many of the same reasons that our own licensing system does not. A single case history, developed in 1977 House subcommittee hearings, is revealing.<sup>4</sup>

<sup>4</sup> For a complete account of this case, see *Export Licensing: Foreign Availability of Stretch Forming Presses*, Hearing before the Subcommittee on International Economic Policy and Trade of the House Committee on International Relations, 95th Cong., 1st Sess., November 4, 1977, Washington: GPO, 1977.

In 1976 the Cyril Bath Company, of Cleveland, a manufacturer of machine tools, received an invitation from Avtopromimport, a Soviet import agency, to bid on ten metal-forming presses. Although the end use was not stated, it was clear to the company from the technical specifications that the machines would be used to manufacture aircraft bodies. Cyril Bath submitted bids on all ten machines, but was awarded a contract to supply only one. The Russians told the president of the company that they were ordering the other nine machines from a French company, ACB-Loire, because they already had ACB presses in operation and were satisfied with their performance. ACB subsequently confirmed this. Cyril Bath applied for an export license, which our government denied on the grounds of strategic significance to the Soviet aeronautics industry. Only after a hearing by the Subcommittee on International Economic Policy and Trade did the government reverse itself on the grounds of foreign availability from France.

The United States then submitted the case to COCOM as an exception request, where it still sits, more than three years after Cyril Bath's original application! The French at first denied that they were manufacturing any such machinery, then admitted it but maintained that the machines were designed for automotive, not aeronautical, use. Indications are that the French machines have already been shipped, without ever having been brought before COCOM. But COCOM has refused to accede to the U.S. exception request so long as the French do not admit that they are supplying comparable machines.

The Cyril Bath case, while hopefully too extreme to be typical, illustrates the major problems with COCOM. Metal forming is not a new technology, and it is one the Soviets obviously already possess, as evidenced by their ability to manufacture advanced aircraft. The French have apparently decided that they will simply ignore COCOM controls on this technology. The United States has failed to make vigorous representations to the French government. Nor has the United States taken the lead to remove this technology from the COCOM list in recognition of the fact that COCOM is not willing to enforce controls on its export. We simply continue to apply the COCOM controls to ourselves, and let our partners sell. The Soviets get the equipment, the French get the sale, and the United States gets left out.

The basic flaw in the COCOM process is that our allies in Western Europe and Japan have never agreed with our conception of it. Because of the greater dependence of their economies on

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exports, their historic patterns of trade with the East, their tendency to keep trade separate from political considerations, and the failure of fervent anti-communism to take hold in their societies, our allies have always wanted more trade with the East than we have wanted. For 30 years the United States has fought a rear-guard action to maintain a broader embargo than our allies have been willing to accept. In the early days of COCOM we had a sanction: the Battle Act required a cutoff of foreign aid to any country refusing to cooperate with U.S. trade controls. So long as Marshall Plan aid was more important to the West European economies than trade with the East, we could secure compliance with a broad embargo. Once this ceased to be the case, we lost much of our leverage.

At our allies' insistence, the embargo was gradually narrowed from an economic to a strategic one—a basic change in criteria finally reflected, as noted above, in our own Export Administration Act of 1969. But our allies remain dissatisfied with the scope of the controls we seek to apply for strategic reasons. They argue that too many technologically obsolete products are on the COCOM list—products that are available in the Soviet Union anyway, and that can therefore safely be sold, to the economic benefit of the West, without damaging our security.

COCOM seems almost designed for evasion. The United States attaches great symbolic importance to the continued existence of COCOM as an expression of Western determination to maintain a common front vis-à-vis the East. Hence, we are prepared to wink at evasions of the controls by our allies because we recognize that too much pressure might cause COCOM to fall apart. Evasion is easy, because each participating country decides for itself whether a given export should be brought before COCOM for approval. And the evidence is that the other parties do not in fact enforce the COCOM controls as strictly as we do, with the result that they get business that we deny ourselves and the Soviets get the equipment anyway. We do not blow the whistle for fear of risking COCOM's collapse.

Reinforcing the mutual suspicions inherent in COCOM is the fact that, because of the inefficiency of our licensing process, our government is unable to deal expeditiously with the exception requests of our COCOM partners. Since they generally do not hold up our requests, they naturally resent it when we do it to them, and suspect that we engage in these delays for our own commercial advantage.

Investigations by the Subcommittee on International Economic

Policy and Trade indicate that our COCOM partners do agree with the necessity of maintaining controls on the export of truly critical goods and technology to the East—the same general terms used in the Bucy Report. In this situation, the approach the United States should take seems clear. We should agree to negotiate with our allies a significant reduction in the scope of the COCOM list, so that it embodies only those goods and technologies we can all agree are critical to our security. We should reform our own licensing process so that we can respond quickly to their exception requests, and expect them to continue to do the same with ours. In return, we should insist on more vigorous and effective enforcement of the controls that remain. This might entail reconstituting COCOM on a more formal basis, including the creation of enforcement mechanisms.

It cannot be in our interest to seek to continue the COCOM arrangement as it currently functions. We have to be more accommodating to our allies if we expect to gain their cooperation for an effective multilateral export control system. Above all, we must resist proposals for an expansion of U.S. controls. To the extent that such proposals would require the United States to go it alone on export controls, they would be self-defeating and would have the effect of merely giving the trade to our competitors. More important, to the extent that they would require an attempt by the United States to reverse the trend toward a narrowing of the COCOM embargo, and to bludgeon our allies into accepting greater controls, they would have the effect of destroying whatever consensus does exist among the Western countries on controlling strategic exports to the East.

In short, in COCOM, as at home, we must learn to accommodate ourselves to the reality of a world with many technology producers not subject to our control. We must set priorities and concentrate on implementing our objectives efficiently. Only then can we expect greater cooperation from our allies.

## VI

The Export Administration Act of 1969 also authorizes the President to apply export controls “to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities.” This broad authority in fact codifies a power long exercised by the executive branch—often under express congressional authority.

Controls on exports for other than direct national security

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reasons have been used for various purposes: to deny economic benefits to countries deemed hostile or threatening to the United States; to give concrete expression to a sense of moral outrage at the behavior of the would-be importing country; to comply with international obligations; to avoid disturbing relationships with other countries (e.g., to prevent an increase in the military capacity of the target country vis-à-vis an ally or friend of the United States); and—with particular recent emphasis—to discourage human rights violations or, at the least, to avoid facilitating them. Usually these purposes overlap, but often one seems to predominate.

Take first the most sweeping examples—the total embargoes applied during the 1920s and early 1930s against the Soviet Union, and from 1950 until 1971 against the People's Republic of China. Trade embargoes are still in effect against Cuba, Vietnam, Cambodia and North Korea, having been imposed by executive order principally under the emergency powers of the Trading with the Enemy Act of 1917, with supplementary authority provided by other legislation. And in 1978 a law was enacted imposing a trade embargo against Idi Amin's Uganda.

Trade embargoes are typically justified at first as a device to deny resources to an offending regime, both to limit its capabilities and with the ultimate hope of bringing the regime down. However, the fact that embargoes invariably remain in effect long after the regime in question is firmly ensconced in power indicates that the real purpose has become—or always was—the basically symbolic one of dissociating the United States from the regime and expressing disapproval of its behavior. Because embargoes serve these symbolic purposes, both internationally and domestically, it is difficult to lift them without seeming to send an unwanted signal. This alone suggests that trade embargoes are too insensitive to changes in another country's behavior to be a very appropriate tool for influencing that behavior.

Such primarily symbolic action certainly has its place. In retrospect it is shameful that the United States did not impose an embargo on trade with Nazi Germany until after Pearl Harbor. But if we are to take such drastic action, it will be well for us to recognize that to do so may cost us something, in human or economic terms or both, and that there may come a time when we will decide that the benefits—psychological or otherwise—are no longer worth the cost. That was the case with the Soviet Union in 1933 and with mainland China in 1971.

The judgment involved is largely subjective and the considera-

tions not easily quantified. Thus no one seriously quarrels with the continuing embargo on trade with Cambodia, and the stopping of trade with Uganda was popular in the Congress. But there are many, these authors included, who believe the embargoes against Cuba and Vietnam are not on balance in the interest of the United States.

Our sense of self-righteousness in imposing embargoes ought to be a little diminished when we stop to think that we tend to abandon the moral position when large quantities of potential trade are involved—i.e., when the target of the embargo is a great power. Conversely, we tend to maintain the moral position when the cost is not high.

The case of multilateral, and especially U.N.-decreed, embargoes raises different questions. That against Rhodesia, initially imposed in 1967 and strengthened in 1968, was in conformity with mandatory sanctions imposed by the U.N. Security Council and accordingly was *required* under the terms of the U.N. Charter. For many Americans sympathetic to the black African point of view, the action was morally sound, including the purpose of bringing down the illegal Smith regime or causing it to surrender. However, it seems clear that the embargo would not have been imposed had it not been for the Security Council's action. Even as it was, the Congress in the Byrd Amendment insisted on exempting chromium imports from the embargo from 1971 to 1977, and in 1978 tacked another amendment on the foreign military aid bill calling for an end to the embargo if the Smith regime took certain steps. Strong efforts will undoubtedly be made to lift or weaken the embargo early in the 96th Congress.

Multilateral embargoes obviously have a greater potential for being effective than do unilateral embargoes, but can prove extremely difficult and costly to sustain domestically. The Rhodesia embargo was imposed by this country pursuant to the decision of an international organization despite the absence of a strong domestic political consensus in favor of the embargo. Clearly the Smith regime finds considerable comfort in divisions within the United States and exploits those divisions to the hilt. And such divisions would surely be compounded if a multilateral embargo against South Africa were to be attempted.

At a very different level is the relatively small category of export controls designed to protect relationships with countries other than the proposed recipient. One such case, where the denial has been hotly protested by the manufacturer, involved the proposed export of machinery to Taiwan which could be used in the

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fabrication of missiles. It is quite obvious that an export license is denied in such cases, not because of any impact the exports would have on U.S. security, but because of the delicate balance involved in our overall China policy.

Another license denial, undertaken for a comparable reason, involved a sale to Libya, by the Oshkosh Truck Company of Wisconsin, of heavy trucks which the Egyptians objected could be used to carry tanks. Until the trucks were about to be shipped, the transaction did not require a validated (i.e., individual) license, but could proceed under what is known as a general license, which is a standing authority to ship a certain class of products. At the last minute, the Administration, responding no doubt to strong representations from the State Department, changed the rules so as to require a license for the trucks, and then denied the license. Understandably, the company appealed for help to Wisconsin's representatives on Capitol Hill. While the decision on the heavy trucks stood, a subsequent sale by the same company of different trucks considered less adaptable to military use was approved.

The main problem with this type of foreign policy control tends to be its unpredictability. Export controls become part of a baffling, constantly changing diplomatic signaling process which leaves exporters angry and confused—especially when the exporter is told that, for vague and unexplained foreign policy reasons, he cannot get a license for a product similar or identical to one he had previously shipped to the same customer in the same country. While large enterprises may be able to bear the costs imposed by this uncertainty, it surely has a dampening effect on the propensity of small businesses to export.

Most government decisions on exports reflecting human rights considerations have involved exports financed by the Export-Import Bank or the bilateral or multilateral foreign aid programs, but in some cases such considerations have been paramount in connection with license denials for strictly commercial exports. For example, in 1978 crime control and detection equipment, previously controlled for export mainly to communist countries, was placed under licensing to all destinations except the NATO countries, Japan, Australia and New Zealand. Also in 1978, following the trials of Aleksandr Ginsburg and Anatoly Shcharansky and the harsh sentences imposed by the Soviet authorities, the President denied a license for the export of a Sperry Univac computer to the Soviet Union for use by TASS, the Soviet news agency. Both of these actions were taken in response to, or at least subsequent to, strong pressure from Capitol Hill.

The authors have no quarrel in principle with export controls for human rights purposes. However, it must be noted that there is probably no type of foreign policy control that sends businessmen up the wall faster. Besides the unpredictability of the controls (why are they applied to some human rights violators more than others?), businessmen argue that their unilateral nature merely guarantees that the business will go to other countries and the target country will still get the trade.

Most fundamentally, businessmen argue that trade controls are ineffective in changing other countries' behavior. (The Sperry Univac license denial, for example, was not just a protest against an egregious violation of human rights, but also represented a deliberate effort to discourage future such actions by the Soviet Union.) This brings us to the consideration of foreign policy controls that are intended to achieve a change in the behavior of the country affected.

This type of motivation is not often the sole factor in the denial of export licenses, but it may be one of the purposes underlying a particular set of export controls, especially if Export-Import Bank credits or other government assistance is involved. For example, where the law directs that no credits or economic aid other than to benefit the very poor be extended to governments that persistently engage in gross violations of human rights, the underlying implicit purpose is not so much to punish those governments as to persuade them to change their ways. The same purpose clearly underlay the 1974 Stevenson Amendment to the Export-Import Bank Act limiting credits to the Soviet Union to a total of \$300 million, and the Jackson-Vanik provision of the 1974 Trade Act, which prohibited export credits and most-favored-nation tariff treatment for non-market-economy countries imposing unreasonable restrictions on the right of their citizens to emigrate.

It is not within the scope of this article to argue the effectiveness of the Jackson-Vanik and Stevenson Amendments. It is, however, pertinent to point out that, when we embark on foreign policy controls of this kind, we should try to answer the \$64 question: what are the chances of success? The same question should, of course, be asked when the controls in question are broader than export limitations, such as total embargoes on trade, or are of a slightly different type, such as controls on investment. The Congress in 1979 will again be wrestling with proposals of this character: for example, bills to limit trade with countries that harbor international terrorists and to limit investment in South Africa.

With respect to these various categories of foreign policy controls, are there general principles which should apply and which the Congress should attempt to spell out in the coming legislation extending the Export Administration Act?

The essential point to recognize at the outset is that when we employ export controls for foreign policy purposes, we do so alone. No other COCOM country is willing to go along. Thus, to apply foreign policy controls is to apply unilateral controls. We do not want to argue that the United States should never act unilaterally. But if we do, surely it should be on the basis of the most careful consideration, with full regard for the costs.

We can start with the proposition stated at the beginning of this article: that the United States has a dangerously large trade deficit, and that the encouragement of U.S. exports must be a major national objective. Obvious as this proposition is, it often seems to be forgotten when emotionally based arguments are advanced for limiting, or continuing to limit, a particular kind of trade. The time is past, if it ever existed, when we could think of trade controls as a cost-free way of expressing disapproval of another country.

If exports are in the national interest, as indeed they are, then they should be controlled and limited only for clear and compelling reasons. As we have already suggested in connection with national security controls, the burden of proof should be on the proponents of controls. The presumption should always be that a company has the right to export, and that the U.S. government supports its efforts to export and will intervene against that right only for carefully designed and important reasons of public policy.

This presumption must be recognized particularly when the President or the Congress seeks to impose export controls of a new type or against an importing country not hitherto affected. Where such action is taken by law, then both the Congress and the President are involved and share the responsibility. But when the action proposed to be taken is within the authority of the executive branch, then it seems reasonable to give the Congress the right to veto that action by Concurrent Resolution. This is not at all the same as providing for a congressional veto of all licenses issued, as discussed above. The latter would affect, and interfere with, the efficient execution of a previously defined policy. When a new type of controls is involved, then the Congress should not be excluded from the decision.

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Currently, a major reason that some people in the Administration consider export controls an attractive foreign policy tool is precisely that these controls are available to be used at will, without recourse to Congress. If a congressional veto provision in the law achieves nothing else, it will serve to encourage the executive to proceed cautiously with new export controls and to consult with the appropriate congressional committees before deciding to impose them.

A second general principle, which ought to be accepted without dissent, is that the government should be clear, both in the institution and in the exercise of foreign policy controls, on just what it is seeking to accomplish. If the objective is known, then the appropriate questions are more likely to be asked: What are the chances that the controls will achieve the desired result? At what cost? If they fail to do so, can they be lifted without embarrassment? Can the target country retaliate by denying us something we want? And it would be salutary for the government to be required to answer the following question about every control it proposes to apply: How will we know when the control has succeeded?

Related to the second is a third general principle: so far as possible, the reasons for a particular set of controls or for denying a license under those controls should be made known. No one quarrels with the proposition that the processes of government should in general be open rather than secret. In this case, as in other fields of government regulation, those adversely affected by the controls will be more likely to accept them if they can understand the reason for them. Moreover, in some situations (such as an embargo imposed to express moral outrage), the purpose of the controls will be furthered by publication of the reasons for them.

Inevitably, however, there will be other cases where the reason for certain controls or for the denial of licenses cannot be made explicit, even though the reason may be self-evident. Such a case may arise, for example, where the purpose is to bring about a change in the target country's behavior. In such situations, the target country's pride must be taken into account: the policy change will be easier to achieve if it can be made without loss of face.

Finally, if exports are to be encouraged, the system of controls, both for national security and for foreign policy reasons, should be made as predictable as possible. We recognize that unpredictability can be a diplomatic virtue, but that just points up the

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difficulty of using trade for diplomatic purposes. It is questionable how much is gained by sacrificing the development of stable trade relationships to the vicissitudes of diplomacy. The government should seek to avoid changing the rules in the middle of the game, thereby creating uncertainty in the minds of our exporters as to whether it is worth pursuing foreign markets.

Sometimes surprise is unavoidable; for example, in the Sperry-Univac computer case the sentences of Ginsburg and Shcharansky came after the company had negotiated the sale. But in other situations the U.S. government has simply changed its mind in midstream: this was true of the Oshkosh truck sale to Libya, and of the ban on exports to most countries of crime control and detection equipment, which went into effect before the regulations were even published and had the effect of voiding existing contracts. In both of these cases, the action taken was probably justified, but the timing and the procedure were unfortunate.

There will no doubt always be some unpredictability in the administration of foreign policy controls. And exporters have a responsibility to be more sensitive to situations where it is obvious controls may be applied and not to jump in without careful thought. But the Congress and the executive branch should try in the law and the regulations issued to create as much predictability as possible.

## VIII

Many of the questions we have raised about foreign policy controls find practical expression in a major issue confronting the U.S. government: Is it in our interest to seek to slow down the development of Soviet oil production capabilities? The proposal to use export controls on oil production equipment as levers to influence Soviet foreign and domestic policy is principally associated with Samuel P. Huntington, who, while on the staff of the National Security Council, argued publicly for "a new approach of conditioned flexibility in which changes in the scope and character of U.S.-Soviet economic relations are linked to and conditioned by progress in the achievement of U.S. political and security objectives."<sup>5</sup>

While the general proposition has a certain plausibility, Huntington fails to treat adequately certain problems which arise when that proposition is applied to specific issues such as that of oil

<sup>5</sup> Samuel P. Huntington, "Trade, Technology, and Leverage: Economic Diplomacy," *Foreign Policy*, Fall 1978, p. 67.

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production technology. In this section we will try to explore some of the questions his position raises.

Last year, following the Ginsburg-Shcharansky sentences, the President considered reversing previous approvals of licenses issued in connection with the export by Dresser Industries of a drill bit manufacturing plant to the Soviet Union, but then decided not to do so. He also approved a license for one component of that sale not previously licensed, an electron beam welder. The President did, however, order an expansion of the types of oil production equipment exported to the Soviet Union subject to license, and called for a review by the National Security Council of all applications to export such equipment to the U.S.S.R.

The buzzwords "national security" are often used by those who criticized the President's decision to approve the Dresser sale, and who oppose any similar actions in the future. But it has not been convincingly argued that the exports in question would have had a telling effect on Soviet military capabilities. Indeed, no agency involved in the decision, including the Defense Department, made such a finding. This presumably reflects the Administration's judgment that the technology has no significant military application or is readily available elsewhere—and that the Soviet military establishment in any case faces no shortage of oil. It is clearly not limited by a shortage at the present time, and even in the long run it seems unlikely that the Soviet military-industrial complex, which presumably has first call on oil resources, would be the sector to feel the pinch if the U.S.S.R. suffered an energy shortfall.

What opponents of the Dresser sale really seem to be saying is that the exports should have been barred because of Soviet actions in Africa and the harsh treatment of dissidents, both as a protest and in the hope of influencing that behavior. The moral or practical effectiveness of such action as a protest is difficult to analyze. But if the main purpose is to secure a change in Soviet behavior, then various questions must be answered. For starters: To what extent *can* the United States effectively slow down the development of additional Soviet oil production capacity? What capabilities do the Soviets already possess? What technologies are available from competitors? What are the chances that we can secure the cooperation of those competitors in controlling these technologies?

Objective information with regard to the first three questions is limited. Opponents of trade in this equipment naturally downgrade Soviet capabilities and foreign availability, while propo-

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nents take the opposite view. The answer to the last question, however, seems clear: while there may be some conceivable circumstances in which our allies would join us in controlling trade with the Soviets for political purposes, we should be under no illusion that they will support attempts to link trade in oil production equipment to Soviet dissident trials or Africa policy. They will not. On this issue, the United States stands alone.

One commonly forgotten factor in this debate is thus that, even if U.S. technology is the best in some respects, the Soviets do not face a U.S.-or-nothing situation. Second-best technology is available, and the cost we can inflict on the Soviets for their behavior must be measured as the difference between that technology and what the United States has, not as the difference between what the Soviets already have and what the United States has.

If we determine that we have a lever in our oil production technology, another basic question arises: How badly do the Soviets want this technology, and what political price might they be prepared to pay for it? This question seems particularly ignored in discussions of this issue. There may well be concessions that we can obtain from the Soviets in exchange for this technology, but there are undoubtedly some that we cannot. Huntington's statement that "American oil and gas equipment would continue to flow into the Soviet Union" if "the Soviet Union would appropriately moderate some of its undesirable behavior" is not helpful.<sup>6</sup> Proponents of controls to influence Soviet behavior fail to appreciate that they must define more precisely what changes they are seeking, and then calculate whether the Soviets could logically be expected to make them in exchange for whatever we have determined we can withhold from them. Based on the Soviet Union's long history of willingness to force its people to undergo tremendous sacrifices for the sake of preserving its internal system and foreign policy, the authors are skeptical that the Soviets would be willing to make fundamental changes merely in exchange for access to U.S. oil production technology.

A third set of questions has to do with the effects of a decision to impose export controls on oil production equipment on the likelihood that there will continue to be exports to control and consequently any leverage to exercise. It seems highly unlikely that American firms would continue to pursue the Soviet market if U.S. license applications were subject to denial on the basis of random occurrences in Soviet foreign or domestic policy, and even

<sup>6</sup> *Ibid.*, p. 77.

less likely that the Soviets would permit themselves to become dependent on a supply of U.S. technology which might be turned off in response to political actions. Yet the argument that we should deny licenses to export oil production equipment for the sake of leverage is based precisely on the assumption that both parties to the transaction will continue to pursue the business no matter what the U.S. government does. If they do not—if both the U.S. sellers and the Soviet buyers take their business elsewhere—there is no more leverage. That is the primary fallacy behind arguments for politically determined export denials: By seeking to gain leverage, you can lose it. If we want leverage, it would seem sensible to seek ways to achieve it that are not self-defeating.

Finally, a decision by the United States aimed at slowing up Soviet energy development would be perceived by the Soviets as a departure from our practice of the past decade of seeking to restrict the export only of products and technologies of more or less direct military significance, and of not seeking to weaken or retard the overall growth of the Soviet economy. The Soviets are certain to react to such a policy change. And if they subsequently see the United States failing to “appropriately moderate some of its undesirable behavior,” what price will *they* decide to try to make *us* pay? And what card would we play in response to that? At what point would we move on to even more drastic forms of export controls—e.g., over grain sales—with all their attendant economic and political costs? It is important to look down the road and try to see where all this might lead. That does not necessarily mean that we should reject export controls used for leverage, only that we should be aware of the possible consequences and make sure that we are willing to pay the price. Our desire to show the Russians who is boss is understandable, but hardly a sufficient basis for making what could be dangerous changes in our foreign policy.

Overall, the arguments against using oil equipment controls for the political purposes which Huntington proposes seem to us persuasive. Surely the burden of proof rests on those who would employ such controls to demonstrate better than they have that the controls would be effective.

## IX

In conclusion, a brief word on our trade relations with mainland China may be in order, especially in view of President Carter's

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welcome decision to recognize realities and extend full diplomatic recognition to the Peking regime as the government of "China." This action raises many trade issues, most notably whether we should have granted China most-favored-nation treatment either within the terms of the Jackson-Vanik Amendment or some other basis. While that issue falls outside the scope of this article, several export control matters must also be confronted as we work out a new relationship with the People's Republic.

Unfortunately, because of the high degree of secrecy pertaining to export control matters both within the U.S. government and in COCOM, very little of our export control policy toward China is a matter of public record. From 1950 to 1971, as noted above, the United States maintained a trade embargo against mainland China. In the early 1950s, at U.S. insistence, the Western countries applied harsher controls to China than to the Soviet Union, giving rise to a so-called "China differential." A separate organization, CHINCOM, and a longer control list were maintained for China. After the Korean War the China differential became harder for the United States to sell, and it collapsed in 1957 when the British unilaterally abandoned it and the other COCOM members quickly went along. CHINCOM and the separate China list were abandoned.

However, the new policy of what today might be called "even-handedness" soon created new pressures. The doctrine that COCOM members should not export to any communist country any product that would increase the military capabilities of the weakest such country meant that all were treated at the level of the Chinese. Inevitably, as Soviet technological and military capabilities increased, COCOM members argued that they should be able to sell to the U.S.S.R. goods which the Soviets had already demonstrated a capability to produce, even though the same products could not be sold to the Chinese because they would add to China's more limited capabilities. Given what we know about how COCOM operates, one assumes that some informal accommodation was made to this point of view, but secrecy prevails.

However, the argument that because China was so weak anything would contribute to its military capabilities, was turned around in 1975 when the British proposed to license the sale by Rolls Royce, Ltd., of supersonic military aircraft engines and production technology to the People's Republic. While the British arguments on behalf of this sale are not publicly known, they must have argued that, since the engines would contribute to Chinese capabilities vis-à-vis the Soviet Union, this would not

affect Western security. The United States objected to this sale, but the British went ahead anyway.

By the end of 1978, it was clear that, following the British precedent, a "reverse China differential" was being applied. Although the United States was not itself selling arms to China, it was acquiescing in the sale of such arms by West European countries. What role COCOM has been playing in these transactions, if any, is not clear. (Since U.S. controls on oil production equipment for foreign policy purposes are being applied only to the Soviet Union, the differential between our treatment of that country and China for export control purposes is increased.) Earlier in the year there had been open talk by the President's National Security Adviser of "playing the China card" against the Soviet Union, in part by loosening up exports to China while tightening up on those to the Soviets, although one heard less of that by the end of the year. By the time that normalization was announced, the Administration was at pains to emphasize that its policy toward the Soviet Union and the People's Republic was one of even-handedness.

Clearly, many things need to be sorted out in our export control policy toward China. From the point of view of our *security*, it would seem that we could sell many military and dual-use items to China which would have the effect of building up Chinese military capabilities without necessarily affecting U.S. security directly. From the point of view of our *foreign policy*, however, it is not clear that we would want to do so.

Our own feeling is that an expansion of trade with China, including trade in advanced technology, is to be encouraged, creating as it would possibilities for significant improvement in the relations between our two countries. However, a policy of using export controls for the explicit purpose of building up China at the expense of the Soviet Union would be dangerous. Those who advocate this approach have apparently not thought deeply enough about whether it really would serve any good purpose for the United States to heighten Soviet fears of the Chinese or increase Soviet apprehensions concerning U.S.-China normalization. Instead, we should be able to communicate to both the U.S.S.R. and China that we are not attempting to increase the threat each poses to the other. Above all, we must remember that the Soviet Union remains the world's only other superpower—the only country in the world capable of destroying us. Maintaining good relations with the Soviet Union must be our paramount objective. While that will not and should not deter us from

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normalizing with the Chinese, it would be foolish in doing so deliberately to insult the Soviets.

## x

This discussion of export controls for foreign policy purposes has posed more questions than it has resolved. But bringing some of the problems up for close examination has been one of our main intentions. The U.S. government itself is only tentatively feeling its way with this relatively novel use of export controls.

We believe that the American public as well as our policymakers must keep in mind certain principles: that trade is in itself good for us; that there are limits to our influence; that export controls, like all aspects of foreign policy, must be as open and as accountable as possible; that we have to be clear about our objectives and, in trying to shape a policy, must avoid simple answers; and that our trade policy should be an expression of what is good and not what is vindictive in us. With those guidelines, the Congress, the executive branch, and the American people should be able to evolve an export policy that supports and contributes to a constructive American foreign policy.



1           (1) The right of United States citizens to engage  
2 in international commerce is a fundamental concern of  
3 United States policy.

4           (2) Exports contribute significantly to the balance  
5 of trade, employment, and production of the United  
6 States.

7           (3) The availability of certain materials at home  
8 and abroad varies so that the quantity and composition  
9 of United States exports and their distribution among  
10 importing countries may affect the welfare of the do-  
11 mestic economy and may have an important bearing  
12 upon fulfillment of the foreign policy of the United  
13 States.

14           (4) The unrestricted export of goods and technol-  
15 ogy without regard to whether they make a significant  
16 contribution to the military potential of any other  
17 nation or nations may adversely affect the national se-  
18 curity of the United States.

19           (5) The unwarranted restriction of exports from  
20 the United States has a serious adverse effect on our  
21 balance of payments and domestic employment and  
22 production, particularly when export restrictions ap-  
23 plied by the United States are more extensive than  
24 export restrictions imposed by other countries.



1           reduce the serious inflationary impact of foreign  
2           demand;

3           (B) to further significantly the foreign policy  
4           of the United States or to fulfill its declared inter-  
5           national obligations; and

6           (C) to prevent the export of goods and tech-  
7           nology which would make a significant contribu-  
8           tion to the military potential of any other nation  
9           or nations which could prove detrimental to the  
10          national security of the United States.

11          (3) It is the policy of the United States (A) to for-  
12          mulate, reformulate, and apply any necessary controls  
13          to the maximum extent possible in cooperation with all  
14          nations, and (B) to encourage observance of a uniform  
15          export control policy by all nations with which the  
16          United States has defense treaty commitments.

17          (4) It is the policy of the United States to use its  
18          economic resources and trade potential to further the  
19          sound growth and stability of its economy as well as to  
20          further its national security and foreign policy objec-  
21          tives.

22          (5) It is the policy of the United States—

23          (A) to oppose restrictive trade practices or  
24          boycotts fostered or imposed by foreign countries

1           against other countries friendly to the United  
2           States or against any United States person;

3           (B) to encourage and, in specified cases, re-  
4           quire United States persons engaged in the export  
5           of goods and technology to refuse to take actions,  
6           including furnishing information or entering into  
7           or implementing agreements, which have the  
8           effect of furthering or supporting the restrictive  
9           trade practices or boycotts fostered or imposed by  
10          any foreign country against a country friendly to  
11          the United States or against any United States  
12          person; and

13          (C) to foster international cooperation and  
14          the development of international rules and institu-  
15          tions to assure reasonable access to world sup-  
16          plies.

17          (6) It is the policy of the United States that the  
18          desirability of subjecting, or continuing to subject, par-  
19          ticular goods or technology to United States export  
20          controls should be subjected to review by and consulta-  
21          tion with representatives of appropriate United States  
22          Government agencies and private industry.

23          (7) It is the policy of the United States to use  
24          export controls, including license fees, to secure the re-  
25          moval by foreign countries of restrictions on access to

1 supplies where such restrictions have or may have a  
2 serious domestic inflationary impact, have caused or  
3 may cause a serious domestic shortage, or have been  
4 imposed for purposes of influencing the foreign policy  
5 of the United States. In effecting this policy, the Presi-  
6 dent shall make every reasonable effort to secure the  
7 removal or reduction of such restrictions, policies, or  
8 actions through international cooperation and agree-  
9 ment before resorting to the imposition of controls on  
10 exports from the United States. No action taken in ful-  
11 fillment of the policy set forth in this paragraph shall  
12 apply to the export of medicine or medical supplies.

13 (8) It is the policy of the United States to use  
14 export controls to encourage other countries to take  
15 immediate steps to prevent the use of their territories  
16 or resources to aid, encourage, or give sanctuary to  
17 those persons involved in directing, supporting, or par-  
18 ticipating in acts of international terrorism. To achieve  
19 this objective, the President shall make every reason-  
20 able effort to secure the removal or reduction of such  
21 assistance to international terrorists through interna-  
22 tional cooperation and agreement before resorting to  
23 the imposition of export controls.

## AUTHORITY

1  
2       SEC. 4. (a)(1) To the extent necessary to effectuate the  
3 policies set forth in section 3 of this Act, the President may  
4 prohibit or curtail the export, except under such rules and  
5 regulations as he shall prescribe, of any goods or technology  
6 subject to the jurisdiction of the United States or exported by  
7 any person subject to the jurisdiction of the United States. To  
8 the extent necessary to achieve effective enforcement of this  
9 Act, such rules and regulations may apply to the financing,  
10 transporting, and other servicing of exports and the participa-  
11 tion therein by any person subject to the jurisdiction of the  
12 United States. In curtailing the export of any goods or tech-  
13 nology to effectuate the policy set forth in section 3(2)(A) of  
14 this Act, the President is authorized to allocate a portion of  
15 export licenses on the basis of factors other than a prior his-  
16 tory of exportation.

17       (2)(A) In administering export controls for national se-  
18 curity purposes as prescribed in section 3(2)(C) of this Act  
19 and for foreign policy purposes as prescribed in section  
20 3(2)(B) of this Act, United States policy toward individual  
21 countries shall not be determined exclusively on the basis of a  
22 country's Communist or non-Communist status but shall  
23 take into account such factors as the country's present and  
24 potential relationship to the United States, its present and  
25 potential relationship to countries friendly or hostile to the

1 United States, its ability and willingness to control re-  
2 transfers of United States exports in accordance with United  
3 States policy, and such other factors as the President may  
4 deem appropriate. The President shall review at least annu-  
5 ally United States policy toward individual countries to de-  
6 termine whether such policy is appropriate in light of the  
7 factors specified in the preceding sentence. The results of  
8 such review, together with the justification for United States  
9 policy in light of such factors, shall be reported to Congress  
10 in each report required by section 11 of this Act.

11 (B) Rules and regulations under this subsection may  
12 provide for denial of any request or application for authority  
13 to export goods or technology from the United States, its  
14 territories and possessions, which would make a significant  
15 contribution to the military potential of any nation or combi-  
16 nation of nations threatening the national security of the  
17 United States if the President determines that their export  
18 could prove detrimental to the national security of the United  
19 States. In administering export controls for national security  
20 purposes as prescribed in section 3(2)(C) of this Act, priority  
21 shall be given to preventing the effective transfer to countries  
22 to which exports are controlled for national security purposes  
23 of goods and technology critical to the design, development,  
24 or production of military systems which would make a signifi-  
25 cant contribution to the military potential of any nation or

1 nations which could prove detrimental to the national secu-  
2 rity of the United States. The Secretary of Commerce, in  
3 consultation with the Secretary of Defense, shall review not  
4 less frequently than annually all controls maintained for na-  
5 tional security purposes pursuant to this Act for the purpose  
6 of making such revisions as may be necessary to insure that  
7 export controls are limited, to the maximum extent possible  
8 consistent with the purposes of this Act, to such militarily  
9 critical goods and technologies and the mechanisms through  
10 which they may be effectively transferred. A description of  
11 actions taken to carry out this subsection shall be included in  
12 each report required under section 11 of this Act. Such de-  
13 scriptions shall contain as much detail as may be included  
14 consistent with the national security and the need to maintain  
15 the confidentiality of proprietary information.

16 (C) Prior to imposing, increasing, or extending export  
17 controls for foreign policy purposes pursuant to the authority  
18 provided by this Act, the President shall give full considera-  
19 tion to—

20 (i) alternative means to further the foreign policy  
21 purposes in question;

22 (ii) the ability of the United States Government to  
23 control effectively the export of the goods or technol-  
24 ogy in question;



1 quality to those produced in the United States, unless the  
2 President determines that adequate evidence has been pre-  
3 sented to him demonstrating that the absence of such con-  
4 trols would prove detrimental to the foreign policy or nation-  
5 al security of the United States. Where, in accordance with  
6 this paragraph, export controls are imposed for foreign policy  
7 or national security purposes notwithstanding foreign avail-  
8 ability, the President shall take steps to initiate negotiations  
9 with the governments of the appropriate foreign countries for  
10 the purpose of eliminating such availability.

11 (b)(1) Except as otherwise provided in this Act, the Sec-  
12 retary of Commerce shall reorganize the Department of  
13 Commerce as necessary to effectuate the policies set forth in  
14 this Act. The Secretary of Commerce shall maintain a list of  
15 goods and technology the export of which from the United  
16 States, its territories and possessions, is prohibited or regu-  
17 lated pursuant to this Act. The Secretary shall review such  
18 list not less frequently than annually in order to make  
19 promptly such changes and revisions as may be necessary or  
20 desirable in furtherance of the policies set forth in this Act.  
21 The Secretary shall include in each review an assessment of  
22 the availability from sources outside the United States, its  
23 territories and possessions, of goods and technology in signifi-  
24 cant quantities and comparable in quality to those items in-  
25 cluded on such list. In order to further effectuate the policies

1 set forth in this Act, the Secretary shall establish an Office of  
2 Foreign Product and Technology Assessment, whose func-  
3 tions shall include monitoring and gathering information on  
4 the foreign availability of goods and technology subject to  
5 export control. The Secretary shall include a detailed state-  
6 ment with respect to actions taken in compliance with the  
7 provisions of this paragraph in each report to the Congress  
8 pursuant to section 11 of this Act.

9 (2) The Secretary of Commerce shall keep the public  
10 fully apprised of changes in export control policy and proce-  
11 dures instituted in conformity with this Act with a view to  
12 encouraging trade. The Secretary shall meet regularly with  
13 representatives of the business sector in order to obtain their  
14 views on export control policy and the foreign availability of  
15 goods and technology.

16 (c)(1)(A) To effectuate the policies set forth in this Act,  
17 the Secretary of Commerce shall establish the following three  
18 types of export licenses:

19 (i) A validated license.

20 (ii) A qualified general license.

21 (iii) A general license.

22 (B) As used in this subsection—

23 (i) a "validated license" is a license authorizing  
24 the export of goods or technology pursuant to a docu-  
25 ment issued upon application by an exporter in accord-

1           ance with rules and regulations issued pursuant to this  
2           Act. A validated license may be required for the export  
3           of goods and technology subject to multilateral controls  
4           in which the United States participates or as deter-  
5           mined pursuant to paragraph (2) of this subsection;

6           (ii) a “qualified general license” is a license au-  
7           thorizing the export of goods or technology, or a class  
8           of goods or technology, subject to the conditions con-  
9           tained in rules and regulations issued pursuant to this  
10          Act, and further subject to approval of the particular  
11          consignee and end-use of the goods or technology. The  
12          goods and technology subject to control by qualified  
13          general license shall be determined pursuant to para-  
14          graph (2) of this subsection; and

15          (iii) a “general license” is a license authorizing  
16          the export of a class of goods or technology without  
17          specific approval if the export is effected in accordance  
18          with the conditions contained in rules and regulations  
19          issued pursuant to this Act. All goods and technology  
20          not subject to control by a validated license or by a  
21          qualified general license shall be exportable pursuant to  
22          a general license.

23          (2) To effectuate the policies set forth in section 3 of this  
24          Act, it is the intent of Congress that the use of validated  
25          licenses be limited to the greatest extent possible to the con-

1 trol of the export of goods and technology which are subject  
2 to multilateral controls in which the United States partici-  
3 pates. To the extent that the President determines that the  
4 policies set forth in section 3 of this Act require the control of  
5 the export of other goods and technology, or more stringent  
6 controls than the multilateral controls, he will report to the  
7 Congress within six months from the date of enactment of  
8 this Act, and annually thereafter, the reasons for the need to  
9 impose, or to continue to impose, such controls. It is further  
10 the intent of Congress that export controls which exceed the  
11 multilateral controls shall be effected to the greatest extent  
12 possible by means of qualified general licenses.

13 (3) Within sixty days from the date of enactment of this  
14 Act, the Secretary of Commerce shall prescribe conditions for  
15 the use of end-use statements and the form of such state-  
16 ments, and establish procedures for the approval of consign-  
17 ees of goods and technology that may be exported pursuant  
18 to a qualified general license.

19 (4) It is the intent of the Congress that any export li-  
20 cense application required under this Act shall be approved  
21 or disapproved within ninety days of its receipt. Upon the  
22 expiration of the ninety-day period beginning on the date of  
23 its receipt, any export license application required under this  
24 Act which has not been approved or disapproved shall be  
25 deemed to be approved and the license shall be issued unless

1 the Secretary of Commerce or other official exercising au-  
2 thority under this Act finds that additional time is required  
3 and notifies the applicant in writing of the specific circum-  
4 stances requiring such additional time. Any application pend-  
5 ing more than ninety days shall be referred to the Export  
6 Administration Board established by paragraph (7) of this  
7 subsection.

8 (5)(A) With respect to any export license application not  
9 finally approved or disapproved within ninety days of its re-  
10 ceipt as provided in paragraph (4) of this subsection, the ap-  
11 plicant shall, to the maximum extent consistent with the na-  
12 tional security of the United States, be informed in writing of  
13 the specific questions raised and negative considerations or  
14 recommendations made by any agency or department of the  
15 Government with respect to such license application, and  
16 shall be accorded an opportunity to respond to such ques-  
17 tions, considerations, or recommendations in writing prior to  
18 final approval or disapproval. In making such final approval  
19 or disapproval, each official exercising authority under this  
20 Act shall take fully into account the applicant's response.

21 (B) Whenever the Secretary determines that it is neces-  
22 sary to refer an export license application to any interagency  
23 review process for approval, he shall first, if the applicant so  
24 requests, provide the applicant with an opportunity to review  
25 any documentation to be submitted to such process for the

1 purpose of describing the export in question, in order to de-  
2 termine whether such documentation accurately describes the  
3 proposed export and to provide additional information in writ-  
4 ing to be appended to the application.

5 (6) In any denial of an export license application, the  
6 applicant shall be informed in writing of the specific statutory  
7 basis for such denial. The Secretary shall establish appropri-  
8 ate procedures for applicants to appeal denials of applica-  
9 tions, and such procedures may include the opportunity for  
10 appeals to the Export Administration Board established  
11 under paragraph (7) of this subsection.

12 (7)(A) There is established an Export Administration  
13 Board (hereinafter referred to as the "Board") composed of  
14 three voting members, who shall be designated by the Secre-  
15 tary of Commerce, the Secretary of Defense, and the Secre-  
16 tary of State, respectively, and nonvoting, advisory members  
17 named by the heads of such other departments and agencies  
18 as the President may designate from time to time. The  
19 member from the Department of Commerce shall preside  
20 over all Board meetings. License applications referred to the  
21 Board shall be approved or denied by an affirmative vote of  
22 at least two of its three voting members. Any voting member  
23 of the Board may appeal a decision of the Board to the  
24 Export Administration Review Council, but only if such  
25 appeal is made within five days of the Board's decision.

1       (B) There is established an Export Administration  
2 Review Council (hereinafter referred to as the "Review  
3 Council") composed of the Secretary of Commerce, the Sec-  
4 retary of Defense, and the Secretary of State. The Secretary  
5 of Commerce shall preside over meetings of the Review  
6 Council. License applications referred to the Review Council  
7 shall be approved or denied by an affirmative vote of at least  
8 two of its three members. Any member of the Review Coun-  
9 cil may appeal a decision of the Review Council to the Presi-  
10 dent, but only if such appeal is made within five days of the  
11 Review Council's decision.

12       (C) The President shall decide appeals from decisions of  
13 the Review Council made pursuant to this Act, and review  
14 annually the activities of the Board, the Review Council, and  
15 the Department of Commerce to insure efficient implementa-  
16 tion of the policies of this Act.

17       (D) Any application upon which the Board has reached  
18 no decision within thirty days of receipt shall be referred to  
19 the Review Council. Any application upon which the Review  
20 Council has reached no decision within thirty days shall be  
21 referred to the President. Any application not approved or  
22 disapproved within one hundred and eighty days from initial  
23 receipt by the Department of Commerce shall be deemed to  
24 be approved and the license shall be issued by the Depart-

1 ment of Commerce, unless the applicant has consented in  
2 writing to a longer period.

3 (d) The Secretary of Defense is authorized to review  
4 any proposed export of goods or technology to any country to  
5 which exports are controlled for national security purposes  
6 and shall determine, in consultation with the Secretary of  
7 Commerce and confirm in writing the types and categories of  
8 transactions which should be reviewed by the Secretary of  
9 Defense to carry out the purpose of this subsection. When-  
10 ever a license or other authority is requested for the export of  
11 goods or technology within such types or categories of trans-  
12 actions to any country to which exports are restricted for  
13 national security purposes, the Secretary of Commerce shall  
14 notify the Secretary of Defense of such request, and may not  
15 issue any license prior to the receipt of the recommendation  
16 of the Secretary of Defense or the expiration of thirty days  
17 after notification, whichever first occurs. The Secretary of  
18 Defense shall carefully consider all notifications submitted  
19 pursuant to this subsection and, not later than thirty days  
20 after notification of the request shall—

21 (1) recommend to the Secretary of Commerce that  
22 the proposed export be disapproved if he determines  
23 that the export of such goods or technology will make  
24 a significant contribution, which would prove detrimen-

1 tal to the national security of the United States, to the  
2 military potential of such country or any other country;

3 (2) notify the Secretary of Commerce that he will  
4 interpose no objection if appropriate conditions de-  
5 signed to achieve the purposes of this Act are imposed;  
6 or

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

9 If the Secretary of Commerce does not accept the recommen-  
10 dation of the Secretary of Defense, upon the request of the  
11 Secretary of Defense, the application shall be submitted to  
12 the Export Administration Review Council.

13 (e) The Secretary of State is authorized to review any  
14 proposed export of goods or technology to any country to  
15 which exports are restricted for foreign policy purposes and  
16 shall determine, in consultation with the Secretary of Com-  
17 merce, and confirm in writing the types and categories of  
18 transactions which should be reviewed by the Secretary of  
19 State to carry out the purpose of this subsection. Whenever a  
20 license is requested for the export of goods or technology  
21 within such types or categories of transactions to any country  
22 to which exports are restricted for foreign policy purposes,  
23 the Secretary of Commerce shall notify the Secretary of  
24 State of such request, and may not issue any license prior to  
25 the receipt of the recommendation of the Secretary of State

1 or the expiration of thirty days after notification, whichever  
2 first occurs. The Secretary of State shall carefully consider  
3 all notifications submitted to him pursuant to this subsection  
4 and, not later than thirty days after notification of the request  
5 shall—

6 (1) recommend to the Secretary of Commerce that  
7 the proposed export be disapproved if he determines  
8 that prohibiting the export of such goods or technology  
9 is necessary to further significantly the foreign policy  
10 of the United States or to fulfill its declared interna-  
11 tional obligations;

12 (2) notify the Secretary of Commerce that he will  
13 interpose no objection if appropriate conditions de-  
14 signed to achieve the purposes of this Act are imposed;  
15 or

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

18 If the Secretary of Commerce does not accept the recommen-  
19 dation of the Secretary of State, upon the request of the Sec-  
20 retary of State, the application shall be submitted to the  
21 Export Administration Review Council.

22 (f) Notwithstanding any other provision of law, any de-  
23 partment, agency, or official of the Federal Government au-  
24 thorized to review or make recommendations with respect to  
25 export license applications required pursuant to this Act shall

1 determine, in consultation with the Secretary of Commerce,  
2 and confirm in writing the types and categories of transac-  
3 tions with specified countries which should be reviewed by  
4 such department, agency, or official. Whenever a license is  
5 requested for the export to such countries of goods or tech-  
6 nology within such types and categories of transactions, the  
7 Secretary of Commerce shall notify such department, agency,  
8 or official of such request, and may not issue any license prior  
9 to the receipt of the recommendation of such department,  
10 agency, or official, or the expiration of thirty days following  
11 such notification, whichever first occurs. Such department,  
12 agency, or official shall carefully consider all notifications  
13 submitted pursuant to this Act and, not later than thirty days  
14 after notification of the request shall—

15 (1) recommend to the Secretary of Commerce that  
16 the export of such goods or technology be disapproved;

17 (2) notify the Secretary of Commerce that such  
18 department, agency, or official will interpose no objec-  
19 tion if appropriate conditions are imposed; or

20 (3) indicate that such department, agency, or offi-  
21 cial does not intend to interpose an objection to the  
22 export of such goods or technology.

23 (g)(1) To effectuate the policy set forth in section 3  
24 (2)(A) of this Act, the Secretary of Commerce shall monitor  
25 exports, and contracts for exports, of any goods (other than a

1 commodity which is subject to the reporting requirements of  
2 section 812 of the Agricultural Act of 1970) when the  
3 volume of such exports in relation to domestic supply contrib-  
4 utes, or may contribute, to an increase in domestic prices or a  
5 domestic shortage, and such price increase or shortage has,  
6 or may have, a serious adverse impact on the economy or  
7 any sector thereof. Such monitoring shall commence at a  
8 time adequate to insure that data will be available which is  
9 sufficient to permit achievement of the policies of this Act.  
10 Information which the Secretary requires to be furnished in  
11 effecting such monitoring shall be confidential, except as pro-  
12 vided in paragraph (2) of this subsection and in the last two  
13 sentences of section 9(c) of this Act.

14 (2) The results of such monitoring shall, to the extent  
15 practicable, be aggregated and included in weekly reports  
16 setting forth, with respect to each item monitored, actual and  
17 anticipated exports, the destination by country, and the do-  
18 mestic and worldwide price, supply, and demand. Such re-  
19 ports may be made monthly if the Secretary determines that  
20 there is insufficient information to justify weekly reports.

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

1           (i)(1) Notwithstanding any other provision of this Act  
2 and notwithstanding subsection (u) of section 28 of the Min-  
3 eral Leasing Act of 1920, no domestically produced crude oil  
4 transported by pipeline over rights-of-way granted pursuant  
5 to section 28 of such Act (except any such crude oil which  
6 (A) is exchanged in similar quantity for convenience or in-  
7 creased efficiency of transportation with persons or the gov-  
8 ernment of an adjacent foreign state, or (B) is temporarily  
9 exported for convenience or increased efficiency of transpor-  
10 tation across parts of an adjacent foreign state and reenters  
11 the United States) may be exported from the United States,  
12 its territories and possessions, during the two-year period be-  
13 ginning on the date of enactment of this Act, unless the re-  
14 quirements of paragraph (2) of this subsection are met.

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

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

19                   (i) will not diminish the total quantity or  
20 quality of petroleum available to the United  
21 States;

22                   (ii) will have a positive effect on consumer oil  
23 prices by decreasing the average crude oil acquisi-  
24 tion costs of refiners;

1 (iii) will be made only pursuant to contracts  
2 which may be terminated if the petroleum sup-  
3 plies of the United States are interrupted or seri-  
4 ously threatened;

5 (iv) are in the national interest; and

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

8 (B) the President reports such finding to the Con-  
9 gress.

10 If the Congress, within thirty days of continuous session after  
11 receipt of a report of the President under the preceding sen-  
12 tence, adopts a concurrent resolution stating expressly that it  
13 disapproves such export, the President shall promptly take  
14 all necessary steps to prevent such export. For the purpose of  
15 the preceding sentence—

16 (i) continuity of session is broken only by an ad-  
17 journment of Congress sine die; and

18 (ii) the days on which either House is not in ses-  
19 sion because of an adjournment of more than three  
20 days to a day certain are excluded in the computation  
21 of any period of time in which Congress is in continu-  
22 ous session.

23 (j) Petroleum products refined in United States Foreign  
24 Trade Zones, or in the United States Territory of Guam,  
25 from foreign crude oil shall be excluded from any quantitative

1 restrictions imposed pursuant to section 3(2)(A) of this Act,  
2 except that, if the Secretary of Commerce finds that a prod-  
3 uct is in short supply, the Secretary of Commerce may issue  
4 such rules and regulations as may be necessary to limit  
5 exports.

6 (k)(1) The authority conferred by this section shall not  
7 be exercised with respect to any agricultural commodity, in-  
8 cluding fats and oils or animal hides or skins, without the  
9 approval of the Secretary of Agriculture. The Secretary of  
10 Agriculture shall not approve the exercise of such authority  
11 with respect to any such commodity during any period for  
12 which the supply of such commodity is determined by him to  
13 be in excess of the requirements of the domestic economy,  
14 except to the extent the President determines that such exer-  
15 cise of authority is required to effectuate the policies set forth  
16 in sections 3(2) (B) or (C) of this Act. The Secretary of Agri-  
17 culture shall not approve the exercise of such authority with  
18 respect to any such commodity unless he has (i) given full  
19 consideration to the alternative of using the Commodity  
20 Credit Corporation to purchase such commodity and arrange  
21 sales to foreign governments in accordance with the provi-  
22 sions of the Commodity Credit Corporation Charter Act so as  
23 to stabilize markets and maximize returns to agricultural pro-  
24 ducers, and (ii) determined that export controls are preferable

1 to such use of the authority granted by the Commodity  
2 Credit Corporation Charter Act.

3 (2) Upon approval of the Secretary of Commerce, in  
4 consultation with the Secretary of Agriculture, agricultural  
5 commodities purchased by or for use in a foreign country may  
6 remain in the United States for export at a later date free  
7 from any quantitative limitations on export which may be  
8 imposed pursuant to section 3(2)(A) of this Act subsequent to  
9 such approval. The Secretary of Commerce may not grant  
10 approval hereunder unless he receives adequate assurance  
11 and, in conjunction with the Secretary of Agriculture, finds  
12 that such commodities will eventually be exported, that nei-  
13 ther the sale nor export thereof will result in an excessive  
14 drain of scarce materials and have a serious domestic infla-  
15 tionary impact, that storage of such commodities in the  
16 United States will not unduly limit the space available for  
17 storage of domestically owned commodities, and that the pur-  
18 pose of such storage is to establish a reserve of such com-  
19 modities for later use, not including resale to or use by an-  
20 other country. The Secretary of Commerce is authorized to  
21 issue such rules and regulations as may be necessary to im-  
22 plement this paragraph.

23 (l) Nothing in this Act or the rules or regulations there-  
24 under shall be construed to require authority or permission to

1 export, except where required by the President to effect the  
2 policies set forth in section 3 of this Act.

3 (m) The President may delegate the power, authority,  
4 and discretion conferred upon him by this Act to such depart-  
5 ments, agencies, or officials of the Government as he may  
6 deem appropriate, except that no authority under this Act  
7 may be delegated to, or exercised by, any official of any de-  
8 partment or agency whose head is not appointed by and with  
9 the advice and consent of the Senate.

10 **FOREIGN BOYCOTTS**

11 **SEC. 5. (a)(1)** For the purpose of implementing the poli-  
12 cies set forth in sections 3(5) (A) and (B), the President shall  
13 issue rules and regulations prohibiting any United States  
14 person, with respect to his activities in the interstate or for-  
15 eign commerce of the United States, from taking or knowing-  
16 ly agreeing to take any of the following actions with intent to  
17 comply with, further, or support any boycott fostered or im-  
18 posed by a foreign country against a country which is friendly  
19 to the United States and which is not itself the object of any  
20 form of boycott pursuant to United States law or regulation:

21 (A) Refusing, or requiring any other person to  
22 refuse, to do business with or in the boycotted country,  
23 with any business concern organized under the laws of  
24 the boycotted country, with any national or resident of  
25 the boycotted country, or with any other person, pur-

1 suant to an agreement with, a requirement of, or a re-  
2 quest from or on behalf of the boycotting country. The  
3 mere absence of a business relationship with or in the  
4 boycotted country with any business concern organized  
5 under the laws of the boycotted country, with any na-  
6 tional or resident of the boycotted country, or with any  
7 other person, does not indicate the existence of the  
8 intent required to establish a violation of rules and reg-  
9 ulations issued to carry out this subparagraph.

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

15 (C) Furnishing information with respect to the  
16 race, religion, sex, or national origin of any United  
17 States person or of any owner, officer, director, or em-  
18 ployee of such person.

19 (D) Furnishing information about whether any  
20 person has, has had, or proposes to have any business  
21 relationship (including a relationship by way of sale,  
22 purchase, legal or commercial representation, shipping  
23 or other transport, insurance, investment, or supply)  
24 with or in the boycotted country, with any business  
25 concern organized under the laws of the boycotted

1 country, with any national or resident of the boycotted  
2 country, or with any other person which is known or  
3 believed to be restricted from having any business rela-  
4 tionship with or in the boycotting country. Nothing in  
5 this paragraph shall prohibit the furnishing of normal  
6 business information in a commercial context as defined  
7 by the Secretary of Commerce.

8 (E) Furnishing information about whether any  
9 person is a member of, has made contributions to, or is  
10 otherwise associated with or involved in the activities  
11 of any charitable or fraternal organization which sup-  
12 ports the boycotted country.

13 (F) Paying, honoring, confirming, or otherwise im-  
14 plementing a letter of credit which contains any condi-  
15 tion or requirement compliance with which is prohibi-  
16 ted by rules and regulations issued pursuant to this  
17 paragraph, and no United States person shall, as a  
18 result of the application of this paragraph, be obligated  
19 to pay or otherwise honor or implement such letter of  
20 credit.

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

23 (A) complying or agreeing to comply with require-  
24 ments (i) prohibiting the import of goods or services  
25 from the boycotted country or goods produced or serv-

1 ices provided by any business concern organized under  
2 the laws of the boycotted country or by nationals or  
3 residents of the boycotted country, or (ii) prohibiting  
4 the shipment of goods to the boycotting country on a  
5 carrier of the boycotted country, or by a route other  
6 than that prescribed by the boycotting country or the  
7 recipient of the shipment;

8 (B) complying or agreeing to comply with import  
9 and shipping document requirements with respect to  
10 the country of origin, the name of the carrier and route  
11 of shipment, the name of the supplier of the shipment  
12 or the name of the provider of other services, except  
13 that no information knowingly furnished or conveyed in  
14 response to such requirements may be stated in nega-  
15 tive, blacklisting, or similar exclusionary terms on or  
16 after June 22, 1978, other than with respect to carri-  
17 ers or route of shipment as may be permitted by such  
18 rules and regulations in order to comply with precau-  
19 tionary requirements protecting against war risks and  
20 confiscation;

21 (C) complying or agreeing to comply in the  
22 normal course of business with the unilateral and spe-  
23 cific selection by a boycotting country, or national or  
24 resident thereof, of carriers, insurers, suppliers of serv-  
25 ices to be performed within the boycotting country or

1 specific goods which, in the normal course of business,  
2 are identifiable by source when imported into the boy-  
3 coting country;

4 (D) complying or agreeing to comply with export  
5 requirements of the boycotting country relating to ship-  
6 ments or transshipments of exports to the boycotted  
7 country, to any business concern of or organized under  
8 the laws of the boycotted country, or to any national  
9 or resident of the boycotted country;

10 (E) compliance by an individual or agreement by  
11 an individual to comply with the immigration or pass-  
12 port requirements of any country with respect to such  
13 individual or any member of such individual's family or  
14 with requests for information regarding requirements of  
15 employment of such individual within the boycotting  
16 country; and

17 (F) compliance by a United States person resident  
18 in a foreign country or agreement by such person to  
19 comply with the laws of that country with respect to  
20 his activities exclusively therein, and such rules and  
21 regulations may contain exceptions for such resident  
22 complying with the laws or regulations of that foreign  
23 country governing imports into such country of trade-  
24 marked, tradenamed, or similarly specifically identifi-  
25 able products, or components of products for his own

1 use, including the performance of contractual services  
2 within that country, as may be defined by such rules  
3 and regulations.

4 (3) Rules and regulations issued pursuant to paragraphs  
5 (2)(C) and (2)(F) shall not provide exceptions from para-  
6 graphs (1)(B) and (1)(C).

7 (4) Nothing in this subsection may be construed to su-  
8 perse or limit the operation of the antitrust or civil rights  
9 laws of the United States.

10 (5) Rules and regulations pursuant to this subsection  
11 shall be issued not later than 90 days after the date of enact-  
12 ment of this section and shall be issued in final form and  
13 become effective not later than 120 days after they are first  
14 issued, except that (A) rules and regulations prohibiting neg-  
15 ative certification may take effect not later than 1 year after  
16 the date of enactment of this section, and (B) a grace period  
17 shall be provided for the application of the rules and regula-  
18 tions issued pursuant to this subsection to actions taken pur-  
19 suant to a written contract or other agreement entered into  
20 on or before May 16, 1977. Such grace period shall end on  
21 December 31, 1978, except that the Secretary of Commerce  
22 may extend the grace period for not to exceed 1 additional  
23 year in any case in which the Secretary finds that good faith  
24 efforts are being made to renegotiate the contract or agree-  
25 ment in order to eliminate the provisions which are inconsis-

1 ent with the rules and regulations issued pursuant to para-  
2 graph (1).

3       (6) This Act shall apply to any transaction or activity  
4 undertaken, by or through a United States or other person,  
5 with intent to evade the provisions of this Act as implement-  
6 ed by the rules and regulations issued pursuant to this sub-  
7 section, and such rules and regulations shall expressly pro-  
8 vide that the exceptions set forth in paragraph (2) shall not  
9 permit activities or agreements (expressed or implied by a  
10 course of conduct, including a pattern of responses) otherwise  
11 prohibited, which are not within the intent of such  
12 exceptions.

13       (b)(1) In addition to the rules and regulations issued  
14 pursuant to subsection (a) of this section, rules and regula-  
15 tions issued under section 4(b) of this Act shall implement the  
16 policies set forth in section 3(5).

17       (2) Such rules and regulations shall require that any  
18 United States person receiving a request for the furnishing of  
19 information, the entering into or implementing of agreements,  
20 or the taking of any other action referred to in section 3(5)  
21 shall report that fact to the Secretary of Commerce, together  
22 with such other information concerning such request as the  
23 Secretary may require for such action as he may deem appro-  
24 priate for carrying out the policies of that section. Such  
25 person shall also report to the Secretary of Commerce

1 whether he intends to comply and whether he has complied  
2 with such request. Any report filed pursuant to this para-  
3 graph after the date of enactment of this section shall be  
4 made available promptly for public inspection and copying,  
5 except that information regarding the quantity, description,  
6 and value of any goods or technology to which such report  
7 relates may be kept confidential if the Secretary determines  
8 that disclosure thereof would place the United States person  
9 involved at a competitive disadvantage. The Secretary of  
10 Commerce shall periodically transmit summaries of the infor-  
11 mation contained in such reports to the Secretary of State for  
12 such action as the Secretary of State, in consultation with  
13 the Secretary of Commerce, may deem appropriate for carry-  
14 ing out the policies set forth in section 3(5) of this Act.

15       PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT

16                               CONTROLS

17       SEC. 6. (a) Any person who, in his domestic manufac-  
18 turing process or other domestic business operation, utilizes a  
19 product produced abroad in whole or in part from a commod-  
20 ity historically obtained from the United States but which has  
21 been made subject to export controls, or any person who  
22 historically has exported such a commodity, may transmit a  
23 petition of hardship to the Secretary of Commerce requesting  
24 an exemption from such controls in order to alleviate any  
25 unique hardship resulting from the imposition of such con-

1 trols. A petition under this section shall be in such form as  
2 the Secretary of Commerce shall prescribe and shall contain  
3 information demonstrating the need for the relief requested.

4 (b) Not later than thirty days after receipt of any peti-  
5 tion under subsection (a), the Secretary of Commerce shall  
6 transmit a written decision to the petitioner granting or deny-  
7 ing the requested relief. Such decision shall contain a state-  
8 ment setting forth the Secretary's basis for the grant or  
9 denial. Any exemption granted may be subject to such condi-  
10 tions as the Secretary deems appropriate.

11 (c) For purposes of this section, the Secretary's decision  
12 with respect to the grant or denial of relief from unique hard-  
13 ship resulting directly or indirectly from the imposition of  
14 controls shall reflect the Secretary's consideration of such  
15 factors as—

16 (1) whether denial would cause a unique hardship  
17 to the petitioner which can be alleviated only by grant-  
18 ing an exception to the applicable regulations. In de-  
19 termining whether relief shall be granted, the Secre-  
20 tary will take into account:

21 (A) ownership of material for which there is  
22 not practicable domestic market by virtue of the  
23 location or nature of the material;

24 (B) potential serious financial loss to the ap-  
25 plicant if not granted an exception;

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

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

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

13 (F) other relevant factors, including the ap-  
14 plicant's lack of an exporting history during any  
15 base period that may be established with respect  
16 to export quotas for the particular commodity; and

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

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

## CONSULTATION AND STANDARDS

1  
2       SEC. 7. (a) In determining what shall be controlled or  
3 monitored under this Act, and in determining the extent to  
4 which exports shall be limited, any department, agency, or  
5 official making these determinations shall seek information  
6 and advice from the several executive departments and inde-  
7 pendent agencies concerned with aspects of our domestic and  
8 foreign policies and operations having an important bearing  
9 on exports. Such departments and agencies shall fully coop-  
10 erate in rendering such advice and information. Consistent  
11 with considerations of national security, the President shall  
12 from time to time seek information and advice from various  
13 segments of private industry in connection with the making  
14 of these determinations. In addition, the Secretary of Com-  
15 merce shall consult with the Secretary of Energy to deter-  
16 mine whether, in order to effectuate the policy stated in sec-  
17 tion 3(2)(A) of this Act, monitoring of controls are necessary  
18 with respect to exports of facilities, machinery, or equipment  
19 normally and principally used, or intended to be used, in the  
20 production, conversion, or transportation of fuels and energy  
21 (except nuclear energy), including but not limited to, drilling  
22 rigs, platforms, and equipment; petroleum refineries, natural  
23 gas processing, liquefaction, and gasification plants; facilities  
24 for production of synthetic natural gas or synthetic crude oil;  
25 oil and gas pipelines, pumping stations, and associated equip-

1 ment; and vessels for transporting oil, gas, coal, and other  
2 fuels.

3 (b)(1) In authorizing exports, full utilization of private  
4 competitive trade channels shall be encouraged insofar as  
5 practicable, giving consideration to the interests of small  
6 business, merchant exporters as well as producers, and estab-  
7 lished and new exporters, and provision shall be made for  
8 representative trade consultation to that end. In addition,  
9 there may be applied such other standards or criteria as may  
10 be deemed necessary by the head of such department, or  
11 agency, or official to carry out the policies of this Act.

12 (2) Upon imposing quantitative restrictions on exports of  
13 any goods or technology to carry out the policy stated in  
14 section 3(2)(A) of this Act, the Secretary of Commerce shall  
15 include in the notice published in the Federal Register an  
16 invitation to all interested parties to submit written com-  
17 ments within fifteen days from the date of publication of the  
18 impact of such restrictions and the method of licensing used  
19 to implement them.

20 (c)(1) Upon written request by representatives of a sub-  
21 stantial segment of any industry which produces goods or  
22 technology which are subject to export controls or are being  
23 considered for such controls because of their significance to  
24 the national security of the United States, the Secretary of  
25 Commerce shall appoint a technical advisory committee for

1 any grouping of such goods or technology which he deter-  
2 mines is difficult to evaluate because of questions concerning  
3 technical matters, worldwide availability and actual utiliza-  
4 tion of production and technology, or licensing procedures.  
5 Each such committee shall consist of representatives of  
6 United States industry and government, including the De-  
7 partments of Commerce Defense, and State, and, when ap-  
8 propriate, other Government departments and agencies. No  
9 person serving on any such committee who is representative  
10 of industry shall serve on such committee for more than four  
11 consecutive years.

12 (2) It shall be the duty and function of the technical  
13 advisory committees established under paragraph (1) to  
14 advise and assist the Secretary of Commerce and any other  
15 department, agency, or official of the Government of the  
16 United States to which the President has delegated power,  
17 authority, and discretion under section 4(e) with respect to  
18 actions designed to carry out the policy set forth in section 3  
19 of this Act. Such committees, where they have expertise in  
20 such matters, shall be consulted with respect to questions  
21 involving (A) technical matters, (B) worldwide availability  
22 and actual utilization of production technology, (C) licensing  
23 procedures which affect the level of export controls applica-  
24 ble to any goods or technology, and (D) exports subject to  
25 multilateral controls in which the United States participates

1 including proposed revisions of any such multilateral controls.  
2 The Secretary shall include in each report required by section  
3 11 of this Act an accounting of the consultation undertaken  
4 pursuant to this paragraph, the use made of the advice ren-  
5 dered by the technical advisory committees pursuant to this  
6 paragraph, and the contributions of the technical advisory  
7 committees to carrying out the policies of this Act. Nothing  
8 in this subsection shall prevent the Secretary from consult-  
9 ing, at any time, with any person representing industry or  
10 the general public regardless of whether such person is a  
11 member of a technical advisory committee. Members of the  
12 public shall be given a reasonable opportunity, pursuant to  
13 regulations prescribed by the Secretary of Commerce, to  
14 present evidence to such committees.

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

20 (4) Each such committee shall elect a chairman, and  
21 shall meet at least every three months at the call of the  
22 Chairman, unless the Chairman determines, in consultation  
23 with the other members of the committee, that such a meet-  
24 ing is not necessary to achieve the purposes of this Act. Each  
25 such committee shall be terminated after a period of two

1 years, unless extended by the Secretary for additional periods  
2 of two years. The Secretary shall consult each such commit-  
3 tee with regard to such termination or extension of that  
4 committee.

5 (5) To facilitate the work of the technical advisory com-  
6 mittees, the Secretary of Commerce, in conjunction with  
7 other departments and agencies participating in the adminis-  
8 tration of this Act, shall disclose to each such committee ade-  
9 quate information, consistent with national security, pertain-  
10 ing to the reasons for the export controls which are in effect  
11 or contemplated for the grouping of goods or technology with  
12 respect to which that committee furnishes advice.

13 (6) Whenever a technical advisory committee certifies to  
14 the Secretary of Commerce that goods or technology have  
15 become or will imminently become available in fact from  
16 sources outside the United States in sufficient quantity and of  
17 comparable quality so as to render United States export con-  
18 trols ineffective in achieving the purposes of this Act, and  
19 provides adequate documentation for such certification, the  
20 Secretary of Commerce shall either remove export controls  
21 on such goods or technology or submit a recommendation to  
22 the President regarding the termination or continuation of  
23 such controls.

## VIOLATIONS

1

2       SEC. 8. (a) Except as provided in subsection (b) of this  
3 section, whoever knowingly violates any provision of this Act  
4 or any regulation, order, or license issued thereunder shall be  
5 fined not more than \$25,000 or imprisoned not more than  
6 one year, or both. For a second or subsequent offense, the  
7 offender shall be fined not more than three times the value of  
8 the exports involved or \$50,000, whichever is greater, or  
9 imprisoned not more than five years, or both.

10       (b) Whoever willfully exports anything contrary to any  
11 provision of this Act or any regulation, order, or license  
12 issued thereunder, with knowledge that such exports will be  
13 used for the benefit of any country to which exports are re-  
14 stricted for national security or foreign policy purposes, shall  
15 be fined not more than five times the value of the exports  
16 involved or \$50,000, whichever is greater, or imprisoned not  
17 more than five years, or both.

18       (c)(1) The head of any department or agency exercising  
19 any functions under this Act, or any officer or employee of  
20 such department or agency specifically designated by the  
21 head thereof, may impose a civil penalty not to exceed  
22 \$10,000 for each violation of this Act or any regulation,  
23 order, or license issued under this Act, either in addition to or  
24 in lieu of any other liability or penalty which may be  
25 imposed.

1       (2)(A) The authority under this Act to suspend or  
2 revoke the authority of any United States person to export  
3 goods or technology, may be used with respect to any viola-  
4 tion of the rules and regulations issued pursuant to section  
5 5(a) of this Act.

6       (B) Any administrative sanction (including any civil pen-  
7 alty or any suspension or revocation of authority to export)  
8 imposed under this Act for a violation of the rules and regula-  
9 tions issued pursuant to section 5(a) of this Act may be im-  
10 posed only after notice and opportunity for an agency hearing  
11 on the record in accordance with sections 554 through 557 of  
12 title 5, United States Code.

13       (C) Any charging letter or other document initiating ad-  
14 ministrative proceedings for the imposition of sanctions for  
15 violations of the rules and regulations issued pursuant to sec-  
16 tion 5(a) of this Act shall be made available for public inspec-  
17 tion and copying.

18       (d) The payment of any penalty imposed pursuant to  
19 subsection (c) may be made a condition, for a period not ex-  
20 ceeding one year after the imposition of such penalty, to the  
21 granting, restoration, or continuing validity of any export li-  
22 cense, permission, or privilege granted or to be granted to  
23 the person upon whom such penalty is imposed. In addition,  
24 the payment of any penalty imposed under subsection (c) may  
25 be deferred or suspended in whole or in part for a period of

1 time no longer than any probation period (which may exceed  
2 one year) that may be imposed upon such person. Such a  
3 deferral or suspension shall not operate as a bar to the collec-  
4 tion of the penalty in the event that the conditions of the  
5 suspension, deferral, or probation are not fulfilled.

6 (e) Any amount paid in satisfaction of any penalty im-  
7 posed pursuant to subsection (c) shall be covered into the  
8 Treasury as a miscellaneous receipt. The head of the depart-  
9 ment or agency concerned may, in his discretion, refund any  
10 such penalty, within two years after payment, on the ground  
11 of a material error of fact or law in the imposition. Notwith-  
12 standing section 1346(a) of title 28, United States Code, no  
13 action for the refund of any such penalty may be maintained  
14 in any court.

15 (f) In the event of the failure of any person to pay a  
16 penalty imposed pursuant to subsection (c), a civil action for  
17 the recovery thereof may, in the discretion of the head of the  
18 department or agency concerned, be brought in the name of  
19 the United States. In any such action, the court shall deter-  
20 mine de novo all issues necessary to the establishment of  
21 liability. Except as provided in this subsection and in subsec-  
22 tion (d), no such liability shall be asserted, claimed, or recov-  
23 ered upon by the United States in any way unless it has  
24 previously been reduced to judgment.

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



1 in the case of contumacy by, or refusal to obey a subpoena  
2 issued to, any such person, the district court of the United  
3 States for any district in which such person is found or re-  
4 sides or transacts business, upon application, and after notice  
5 to any such person and hearing, shall have jurisdiction to  
6 issue an order requiring such person to appear and give testi-  
7 mony or to appear and produce books, records, and other  
8 writings, or both, and any failure to obey such order of the  
9 court may be punished by such court as a contempt thereof.

10 (b) No person shall be excused from complying with any  
11 requirements under this section because of his privilege  
12 against self-incrimination, but the immunity provisions of the  
13 Compulsory Testimony Act of February 11, 1893 (27 Stat.  
14 443; 49 U.S.C. 46) shall apply with respect to any individual  
15 who specifically claims such privilege.

16 (c) Except as otherwise provided by the third sentence  
17 of section 5(b)(2) and by section 8(c)(2)(C) of this Act, infor-  
18 mation obtained under this Act, which is deemed confidential  
19 or with reference to which a request for confidential treat-  
20 ment is made by the person furnishing such information, shall  
21 be exempt from disclosure under section 552(b)(3)(B) of title  
22 5, United States Code; and such information shall not be  
23 published or disclosed unless the Secretary of Commerce de-  
24 termines that the withholding thereof is contrary to the na-  
25 tional interest. Nothing in this Act shall be construed as au-

1 thORIZING the withholding of information from Congress, and  
2 all information obtained at any time under this Act or previ-  
3 ous Acts regarding the control of exports, including any  
4 report or license application required under section 4(a), shall  
5 be made available upon request to any committee or subcom-  
6 mittee of Congress of appropriate jurisdiction. No such com-  
7 mittee or subcommittee shall disclose any information ob-  
8 tained under this Act or previous Acts regarding the control  
9 of exports which is submitted on a confidential basis unless  
10 the full committee determines that the withholding thereof is  
11 contrary to the national interest.

12 (d) In the administration of this Act, reporting require-  
13 ments shall be so designed as to reduce the cost of reporting,  
14 recordkeeping, and export documentation required under this  
15 Act to the extent feasible consistent with effective enforce-  
16 ment and compilation of useful trade statistics. Reporting,  
17 recordkeeping, and export documentation requirements shall  
18 be periodically reviewed and revised in the light of develop-  
19 ments in the field of information technology. A detailed state-  
20 ment with respect to any action taken in compliance with this  
21 subsection shall be included in the report required by section  
22 11 of this Act.

23 (e) The Secretary of Commerce, in consultation with ap-  
24 propriate United States Government departments and agen-  
25 cies and with appropriate technical advisory committees es-

1 tablished under section 7(c), shall review the rules and regu-  
2 lations issued under this Act and the lists of goods and tech-  
3 nology which are subject to export controls in order to deter-  
4 mine how compliance with the provisions of this Act, can be  
5 facilitated by simplifying such rules and regulations, by sim-  
6 plifying or clarifying such lists, or by any other means. The  
7 Secretary of Commerce shall report periodically to Congress  
8 on the actions taken on the basis of such review to simplify  
9 such rules and regulations. Such reports may be included in  
10 the report required by section 11 of this Act.

11       EXEMPTION FROM CERTAIN PROVISIONS RELATING TO  
12       ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

13       SEC. 10. The functions exercised under this Act shall be  
14 subject to the provisions of sections 551, 553 through 559,  
15 and 701 through 706 of title 5, United States Code, except in  
16 those cases described in regulations prescribed by the Secre-  
17 tary of Commerce where applicability of such provisions  
18 would be inconsistent with the purposes of this Act, but such  
19 regulations may not apply to any case described in section  
20 8(c)(2) or 9(c) of this Act.

21                               ANNUAL REPORT

22       SEC. 11. (a) The Secretary of Commerce shall make an  
23 annual report to the President and to the Congress of his  
24 operations hereunder.

1 (b)(1) Each such report shall include summaries of the  
2 information contained in the reports required by section  
3 4(c)(2) of this Act, together with an analysis by the Secretary  
4 of Commerce of—

5 (A) the impact on the economy and world trade of  
6 shortages or increased prices for goods and technology  
7 subject to monitoring under this Act;

8 (B) the worldwide supply of such goods and tech-  
9 nology; and

10 (C) actions taken by other nations in response to  
11 such shortages or increased prices.

12 (2) Each such report shall also contain an analysis by  
13 the Secretary of Commerce of—

14 (A) the impact on the economy and world trade of  
15 shortages or increased prices for commodities subject  
16 to the reporting requirements of section 812 of the Ag-  
17 ricultural Act of 1970;

18 (B) the worldwide supply of such commodities;  
19 and

20 (C) actions being taken by other nations in re-  
21 sponse to such shortages or increased prices.

22 The Secretary of Agriculture shall fully cooperate with the  
23 Secretary of Commerce in providing all information required  
24 by the Secretary of Commerce in making such analysis.

25 (c) Each such report shall include—





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

5 AUTHORIZATION OF APPROPRIATIONS

6 SEC. 14. (a) Notwithstanding any other provision of  
7 law, no appropriation shall be made under any law to the  
8 Department of Commerce for expenses to carry out the pur-  
9 poses of this Act for any fiscal year commencing on or after  
10 October 1, 1980, unless previously and specifically author-  
11 ized by legislation.

12 (b) There are authorized to be appropriated to the De-  
13 partment of Commerce \$8,000,000 (and such additional  
14 amounts as may be necessary for increases in salary, pay,  
15 retirement, other employee benefits authorized by law, and  
16 other nondiscretionary costs) for fiscal year 1980 to carry out  
17 the purposes of this Act, of which \$1,250,000 shall be availa-  
18 ble only for the Office of Foreign Product and Technology  
19 Assessment.

20 EFFECTIVE DATE

21 SEC. 15. (a) This Act takes effect upon the expiration of  
22 the Export Administration Act of 1969.

23 (b) All outstanding delegations, rules, regulations,  
24 orders, licenses, or other forms of administrative action under  
25 the Export Control Act of 1949 or section 6 of the Act of

1 July 2, 1940 (54 Stat. 714), of the Export Administration  
2 Act of 1969 shall, until amended or revoked, remain in full  
3 force and effect, the same as if promulgated under this Act.

4 **TERMINATION DATE**

5 **SEC. 16.** The authority granted by this Act terminates  
6 on September 30, 1983, or upon any prior date which the  
7 President by proclamation may designate.

96TH CONGRESS  
1ST SESSION

# S. 977

To amend the Export Administration Act of 1969, as amended, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 23 (legislative day, APRIL 9), 1979

Mr. PROXMIRE (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Export Administration Act of 1969, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That section 2 of the Export Administration Act of 1969, as  
4 amended (50 U.S.C. App. 2401), is further amended by—

5 (a) revising subsection (2) to read as follows:

6 “The export of goods or technology without regard to  
7 whether it makes a significant contribution to the mili-  
8 tary potential of individual countries or combinations of



1 trols to the extent necessary to restrict the export of  
2 (A) goods and technology which would make a signifi-  
3 cant contribution to the military potential of any coun-  
4 try or combination of countries which would prove det-  
5 rimental to the national security of the United States;  
6 (B) goods and technology where necessary to further  
7 significantly the foreign policy of the United States or  
8 to fulfill its international responsibilities; and (C) goods  
9 where necessary to protect the domestic economy from  
10 the excessive drain of scarce materials and to reduce  
11 the serious inflationary impact of foreign demand.”;

12 (b) deleting in subsection (5) “articles, materials,  
13 supplies, or information” and inserting in lieu thereof,  
14 “goods, technical data, or other information”;

15 (c) deleting in subsection (6) “articles, materials,  
16 or supplies, including technical data or other informa-  
17 tion,” and inserting in lieu thereof, “goods, technical  
18 data, or other information”; and

19 (d) adding at the end thereof the following new  
20 subsection:

21 “(9) It is the policy of the United States to cooperate  
22 with other nations with which the United States has defense  
23 treaty commitments in restricting the export of goods and  
24 technical data which would make a significant contribution to  
25 the military potential of any country or combination of coun-

1 tries which would prove detrimental to the security of the  
2 United States and of those countries with which the United  
3 States has defense treaty commitments.”.

4       SEC. 3. Section 4 of the Export Administration Act of  
5 1969, as amended (50 U.S.C. App. 2403), is further amend-  
6 ed by—

7           (a) deleting “nations with which the United  
8 States is engaged in trade” in subsection (a), para-  
9 graph (1), and inserting in lieu thereof “countries with  
10 which the United States has diplomatic or trading rela-  
11 tions”;

12           (b) deleting “articles, materials, or supplies, in-  
13 cluding technical data or other information,” in subsec-  
14 tion (a), paragraph (1), and inserting in lieu thereof  
15 “goods and technical data”;

16           (c) deleting the last sentence of subsection (a),  
17 paragraph (1);

18           (d) revising subsection (b), paragraph (1) to read  
19 as follows: “To the extent necessary to carry out the  
20 policies set forth in section 3 of this Act, the President,  
21 by rule or regulation, may prohibit or curtail the  
22 export of any goods, technology, or any other informa-  
23 tion subject to the jurisdiction of the United States or  
24 exported by any person subject to the jurisdiction of  
25 the United States. To the extent necessary to achieve

1 effective enforcement of this Act, these rules and regu-  
2 lations may apply to the financing, transporting, and  
3 other servicing of exports and the participation therein  
4 by any person. In curtailing exports to carry out the  
5 policy set forth in section 3(2)(C) of this Act, the Presi-  
6 dent is authorized and directed to allocate a portion of  
7 export licenses on the basis of factors other than a  
8 prior history of exportation.”;

9 (e) deleting “(C)” in subparagraph (A), paragraph  
10 (2), subsection (b), and inserting in lieu thereof “(A),”  
11 and by deleting the last sentence of that subparagraph;

12 (f) deleting “articles, materials, or supplies, in-  
13 cluding technical data or other information” in subpar-  
14 agraph (B), paragraph (2), subsection (b) and inserting  
15 in lieu thereof “goods, technical data, or any other in-  
16 formation,” and adding the following sentence at the  
17 end of that subparagraph: “In administering export  
18 controls for foreign policy purposes, weight will be  
19 given to whether the goods or technology in question  
20 are also available from countries other than the United  
21 States.”;

22 (g) deleting “(A)” in paragraph (1), subsection (c),  
23 and inserting in lieu thereof “(C)”;

24 (h) deleting “(C)” in paragraph (1), subsection (f),  
25 and inserting in lieu thereof “(A)”;

1 (i) deleting "(A)" in paragraph (3), subsection (f),  
2 and inserting in lieu thereof "(C)";

3 (j) inserting after the words "national security" in  
4 the first sentence of subparagraph (A), paragraph (2),  
5 subsection (g), the words "and foreign policy";

6 (k) deleting "(A)" as it appears in subsection (i)  
7 and inserting in lieu thereof "(C)";

8 (l) relettering that subsection (m) which begins  
9 with the words, "No article, material, or supply," as  
10 subsection (n);

11 (m) deleting "article, material, or supply, includ-  
12 ing technical data or other information," in relettered  
13 subsection (n) and inserting in lieu thereof "goods,  
14 technical data, or any other information,"; and

15 (n) adding at the end thereof the following two  
16 new subsections:

17 "(o)(1) Any United States firm, enterprise, or other non-  
18 governmental entity which, for commercial purposes, enters  
19 into an agreement with an agency of a government in an-  
20 other country to which exports are restricted for national se-  
21 curity purposes, which agreement cites an intergovernmental  
22 agreement calling for the encouragement of technical cooper-  
23 ation and is intended to result in the export from the United  
24 States to the other party of unpublished technical data of

1 United States origin, shall report such agreement to the Sec-  
2 retary of Commerce.

3       “(2) The provisions of this subsection shall not apply to  
4 colleges, universities, or other educational institutions.

5       “(3) The Secretary of Commerce is authorized to issue  
6 such rules and regulations as are necessary to implement the  
7 provisions of this subsection.

8       “(p) The Secretary of State, in consultation with the  
9 Secretary of Defense, the Secretary of Commerce, and the  
10 heads of other appropriate departments and agencies, shall be  
11 responsible for negotiations with other countries regarding  
12 their cooperation in restricting the export of goods and tech-  
13 nologies whose export should be restricted pursuant to sec-  
14 tion 3(9) of this Act, as authorized under section 4(b)(1) of  
15 this Act, including negotiations on the basis of approved ad-  
16 ministration positions as to which goods and technologies  
17 should be subject to multilaterally agreed export restrictions  
18 and what conditions should apply for exceptions from those  
19 restrictions.”

20       SEC. 4. Section 5 of the Export Administration Act of  
21 1969, as amended (50 U.S.C. App. 2404), is further amend-  
22 ed by—

23           (a) deleting “Federal Energy Administration” in  
24 subsection (a) and inserting in lieu thereof “Depart-  
25 ment of Energy”;

1 (b) deleting "article, material, or supply" in para-  
2 graph (2), subsection (b) and inserting in lieu thereof  
3 "goods";

4 (c) deleting "(A)" in paragraph (2), subsection (b)  
5 and inserting in lieu thereof "(C)";

6 (d) deleting "articles, materials, and supplies, in-  
7 cluding technical data and other information" each  
8 time it appears in paragraph (1), subsection (c) and in-  
9 serting in lieu thereof "goods and technical data";

10 (e) deleting from paragraph (2), subsection (c) "ar-  
11 ticles, materials, and supplies, including technical data  
12 or other information" and inserting in lieu thereof,  
13 "goods and technical data";

14 (f) deleting the following sentence from paragraph  
15 (2) subsection (c): "The Secretary shall include in each  
16 semiannual report required by section 10 of this Act an  
17 accounting of the consultation undertaken pursuant to  
18 this paragraph, the use made of the advice rendered by  
19 the technical advisory committees pursuant to this  
20 paragraph, and the contributions of the technical advi-  
21 sory committees in carrying out the policies of this  
22 Act."; and

23 (g) deleting from paragraph (5), subsection (c),  
24 "articles, materials, and supplies" and inserting in lieu  
25 thereof "goods and technical data".

1        SEC. 5. Section 6 of the Export Administration Act of  
2 1969, as amended (50 U.S.C. App. 2405) is further amended  
3 by—

4            (a) revising subsection (a) to read as follows:  
5        “Except as provided in subsection (b) of this section,  
6        whoever knowingly violates any provision of this Act  
7        or any regulation, order, or license issued thereunder  
8        shall be fined not more than five times the value of the  
9        exports involved or \$50,000, whichever is greater, or  
10       imprisoned not more than five years, or both.”;

11           (b) revising subsection (b) to read as follows:  
12        “Whoever willfully exports anything contrary to any  
13        provision of this Act or any regulation, order, or li-  
14        cense issued thereunder, with knowledge that such ex-  
15        ports will be used for the benefit of any country to  
16        which exports are restricted for national security or  
17        foreign policy purposes, shall be fined not more than  
18        five times the value of the exports involved or  
19        \$100,000, whichever is greater, or imprisoned not  
20        more than ten years, or both.”; and

21           (c) deleting “articles, materials, supplies, or tech-  
22        nical data or other information” from subparagraph  
23        (A), paragraph (2), subsection (c) and inserting in lieu  
24        thereof, “goods, technical data, or any other informa-  
25        tion”.

1        SEC. 6. Section 7 of the Export Administration Act of  
2 1969, as amended (50 U.S.C. App. 2406) is further amended  
3 by—

4            (a) revising subsection (c) to read as follows:  
5        “Except as otherwise provided by the third sentence of  
6        section 4A(b)(2) and by section 6(c)((2)(C) of this Act,  
7        information obtained under this Act which is deemed  
8        confidential or with reference to which a request for  
9        confidential treatment is made by the person furnishing  
10       such information shall be exempt from disclosure under  
11       section 552(b)(3)(B) of title 5, United States Code, and  
12       such information shall not be published or disclosed  
13       unless the Secretary of Commerce determines that the  
14       withholding thereof is contrary to the national interest.  
15       Nothing in this act shall be construed as authorizing  
16       the withholding of information from Congress, and all  
17       information obtained at any time under this Act or pre-  
18       vious Acts regarding the control of exports, including  
19       any report or license application required under section  
20       4(b), shall be made available upon request to any com-  
21       mittee or subcommittee of Congress of appropriate ju-  
22       risdiction. No such committee or subcommittee shall  
23       disclose any information obtained under this Act or  
24       previous Acts regarding the control of exports which is  
25       submitted on a confidential basis unless the full com-



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

3           “(5) the results of review of United States policy  
4 toward individual countries called for in section  
5 4(b)(2)(A);

6           “(6) evidence demonstrating a need to impose  
7 export controls for national security purposes in the  
8 face of foreign availability as set forth in section  
9 4(b)(2)(B);

10           “(7) the information contained in the reports re-  
11 quired by section 4(c)(2) of this Act, together with an  
12 analysis of—

13           “(A) the impact on the economy and world  
14 trade of shortages or increased prices for com-  
15 modities subject to monitoring under this Act or  
16 section 812 of the Agricultural Act of 1970;

17           “(B) the worldwide supply of such commod-  
18 ities; and

19           “(C) actions being taken by other nations in  
20 response to such shortages or increased prices;

21           “(8) delegations of authority by the President as  
22 provided for under section 4(e) of this Act;

23           “(9) the number and disposition of export license  
24 applications taking more than ninety days to process  
25 pursuant to section 4(g) of this Act;

1           “(10) consultations undertaken with technical ad-  
2           visory committees pursuant to section 5(c) of this Act,  
3           the use made of advice given, and the contribution  
4           such committees made in carrying out the policies of  
5           this Act;

6           “(11) violations of the provisions of this Act and  
7           penalties imposed pursuant to this Act; and

8           “(12) any revisions to reporting requirements pre-  
9           scribed in section 7(d).

10          “(c) The heads of other involved departments and agen-  
11          cies shall fully cooperate with the Secretary of Commerce in  
12          providing all information required by the Secretary of Com-  
13          merce to complete the annual reports.”.

14          SEC. 9. Section 11 of the Export Administration Act of  
15          1969, as amended (50 U.S.C. App. 2410), is renumbered as  
16          section 10.

17          SEC. 10. Section 12 of the Export Administration Act  
18          of 1969, as amended (50 U.S.C. App. 2411) is amended  
19          by—

20           (a) renumbering it as section 11; and

21           (b) deleting “section 414 of the Mutual Security  
22           Act of 1954 (22 U.S.C. 1934).” in subsection (b) and  
23           inserting in lieu thereof “section 38 of the Arms  
24           Export Control Act (22 U.S.C. 2778).”.

1       SEC. 11. Section 13 of the Export Administration Act  
2 of 1969, as amended (50 U.S.C. App. 2411a) is further  
3 amended by—

4           (a) renumbering it as section 12;

5           (b) revising subsection (a) to read as follows:

6           “(a) For fiscal years commencing on or after October 1,  
7 1979, there are hereby authorized to be appropriated to the  
8 Department of Commerce such sums as may be necessary to  
9 carry out the purposes of this Act.”; and

10           (c) adding at the end thereof the following new  
11 subsection:

12           “(c) For fiscal years commencing on or after October 1,  
13 1979, there are hereby authorized to be appropriated to the  
14 Department of State such sums as may be necessary to im-  
15 plement the provisions of sections 3(9) and 4(p) of this Act.”.

16       SEC. 12. Section 15 of the Export Administration Act  
17 of 1969, as amended (50 U.S.C. App. 2413), is further  
18 amended by deleting “1979” and inserting in lieu thereof  
19 “1983”.

20       SEC. 13. Sections 14 and 15 of the Export Administra-  
21 tion Act of 1969, as amended (50 U.S.C. App. 2412 and  
22 2413), are renumbered as section 13 and section 14, respec-  
23 tively.

1        SEC. 14. As of October 1, 1979, the Mutual Defense  
2 Assistance Control Act of 1951, as amended (22 U.S.C.  
3 1611-1613d), is superseded.

Senator STEVENSON. The next witness is John F. O'Leary, the Deputy Secretary of Energy.

I apologize, Mr. O'Leary, for the delay. You are welcome to summarize your statement. If so, your full statement will be entered in the record.

#### STATEMENT OF JOHN F. O'LEARY, DEPUTY SECRETARY OF ENERGY

Mr. O'LEARY. Mr. Chairman, members of the subcommittee, I am pleased to appear today before the Subcommittee on International Finance to present the views of the Department of Energy on the Export Administration Act, the export of Alaskan or other U.S.-produced oil, and respond to the questions raised in your letter of April 27, 1979, to Secretary Schlesinger.

Of serious concern to the administration is section 4(a) of the Export Administration Act which expires in June of this year. The administration is opposed to any extension of section 4(l), or any new legislative proposals which would further restrict the President's authority to authorize swaps of Alaskan North Slope—ANS—crude oil.

The administration is not proposing that any U.S.-produced oil be exported, but rather seeking to assure that the President and the Congress are not unduly constrained in considering such action should it be in the national interest.

In recent years domestic crude production from the established producing regions in the lower 48 States has been declining. Production from these regions has declined from a peak of about 10 million barrels per day in 1970 to 7.5 million barrels per day in 1978. Production from the lower 48 States is expected to continue to decline by as much as 2 percent annually through 1985.

On the west coast, however, a regional surplus of crude oil has existed since the latter part of 1977, principally due to the opening of the trans-Alaskan pipeline. This surplus has now grown to the point where approximately 400,000 barrels per day of Alaska production must be transported by tanker to the gulf and east coasts.

The factors contributing to this regional surplus are the relatively isolated nature of the west coast market; the lack of efficient transportation systems, especially pipelines, to move the crude to other U.S. markets; the lack of the type of refining capacity needed to process the indigenous heavy sour crudes into marketable products; strict environmental limitations on sulfur content; and, the system of price controls and the entitlements program.

Ironically, it is this region of the country that the largest potential exists for significant near-term increases in domestic crude production.

Since 1977 Alaskan North Slope—ANS—production has increased from 300,000 barrels per day to a present capacity of 1.2 million barrels per day.

If increased development of existing fields and further exploration is successful, ANS and south Alaska production could increase to well beyond current production levels by 1990.

Furthermore, according to recent forecasts, crude oil production in California under an optimistic set of assumptions could also

show significant increases above current levels by 1990, through tertiary oil recovery and production from new offshore discoveries.

If these optimistic production levels are reached, total west coast refined product demand will not be sufficient to absorb all California and Alaska production, even if all west coast refineries process only ANS and California crude oil.

This, of course, would presume a substantial retrofitting of west coast refineries to process those crudes into a marketable product slate, rather than relying on light, sweet crude imports for blending stock.

Thus, under a high production scenario, even assuming complete regional processing ability and no imports, considerable volumes of Alaskan and California crude would have to be transported to gulf coast and inland refining centers.

Currently, Alaskan and California production are roughly equivalent to the regional demand. However, as I mentioned earlier, a large part of the current problem exists because of a poor match between crude characteristics and refinery configurations.

ANS crude cannot freely replace all imported crude because existing west coast refineries have a limited capacity for desulfurizing more ANS crude. West coast refining capacity is currently suited primarily for the pre-ANS mix of heavy-sour, light-sour, and light-sweet crude. Strict environmental laws prevent the burning of high sulfur residual fuel oil in California.

The Department's position has been to encourage refiners to continue to retrofit their equipment to process ANS and other heavy crude oil. While we remain hopeful that new desulfurization capacity will be constructed, at least 3 years would likely be required, given physical limitations and difficulty in obtaining necessary State and local permits, before such plants could come on-stream.

In some cases environmental constraints will prevent any conversion.

These additional refinery conversions would help to relieve the current surplus and displace imports.

We have similar problems with new California production. In order to provide some much-needed near-term relief for distressed California heavy crude oil production in 1978, the Department took action to reduce the entitlement obligation which had reduced the market for this oil, and to provide entitlement-based incentives on a case-by-case basis, to ship some of this crude to other U.S. markets.

Also as part of this program of relief for California crude production, in August 1978, at DOE's request, the Department of Commerce—DOC—amended its regulations to permit, on a temporary basis, exports of high sulfur residual fuel oil refined on the west coast from California crude oil.

As mentioned, this is a temporary program subject to the following general conditions:

First, exports would permit increased utilization of California crude oil by west coast refineries, and thereby increase California crude liftings;

Second, the benefits of U.S. price controls would not be, in effect, exported with the oil.

However, long-term solutions to this current regional surplus are essential if we are to provide crude oil producers and the States of Alaska and California with incentives to take necessary action to expand production.

An effective long-term solution would be to transport surplus west coast crude via pipeline to inland refining centers.

In March of this year Standard Oil of Ohio—Sohio—announced its decision to abandon the Pactex pipeline project, which would run from Long Beach, Calif., to Midland, Tex.

Sohio stated regulatory delays and the threat of extended litigation had seriously threatened the economic viability of the pipeline project.

However, Secretary Schlesinger has met with Sohio, members of Congress, and officials from the State of California. At the meeting Sohio agreed to reconsider the Pactex project; however, no guarantees were given that the project will go forward.

Officials from the State of California will continue to issue the necessary permits. But Sohio's concern is litigation. Although Sohio and the local air quality board have reached an agreement on the best strategy to protect air quality in southern California, the threat of project delays from litigation remain.

To counter this threat, it has been proposed that legislation be introduced both in Congress and the California State Legislature to preclude litigation-related delays. This legislation would merely confirm agreements Sohio has already made with State and local jurisdictions.

We are now hopeful that if the major uncertainties can be resolved to the satisfaction of the project's sponsor, will be removed and that construction of the pipeline can begin within a number of months.

Numerous other proposals have been made to build a northerly crude oil transportation system from the west coast to inland States. Included among these proposals are the northern tier pipeline, the trans-mountain pipeline reversal project, the foothills—Alaska Highway—pipeline project, and the Canadian west coast oil port and pipeline—Kitimat—project.

Until more west coast refinery conversions take place and at least one west-to-east pipeline is completed, surplus ANS crude must continue to be shipped by tanker to U.S. gulf and east coast markets. The current transportation charges for moving ANS crude by tanker through the Panama Canal are roughly \$3 per barrel.

Because of the uncertainties regarding the progress of west coast refinery conversions and completion of a west-to-east pipeline, we are reviewing a wide range of alternatives for the disposition of west coast crude oil.

Our preliminary assessment is that these transportation and refining bottlenecks are now discouraging increased California and ANS production.

Furthermore, any large near-term increase in ANS crude production would place additional pressure on the domestic tanker market.

There are few orders being filled for new tankers at the present time because there would be little demand for them if a west-to-



crude oil. The Administration is not proposing that any U.S.-produced oil be exported, but rather seeking to assure that the President and the Congress are not unduly constrained in considering such action should it be in the national interest.

In recent years, domestic crude production from the established producing regions in the lower 48 states has been declining. Production from these regions has declined from a peak of about 10 million barrels/day in 1970 to 7.5 million barrels/day in 1978. Production from the lower 48 states is expected to continue to decline by as much as 2 percent annually, through 1985.

On the west coast, however, a regional surplus of crude oil has existed since the latter part of 1977, principally due to the opening of the Trans-Alaskan Pipeline. This surplus has now grown to the point where approximately 400 thousand barrels per day of Alaska production must be transported by tanker to the Gulf and east coasts. The factors contributing to this regional surplus are the relatively isolated nature of the west coast market; the lack of efficient transportation systems, especially pipelines, to move the crude to other U.S. markets; the lack of the type of refining capacity needed to process the indigenous heavy sour crudes into marketable products; strict environmental limitations on sulfur content; and, the system of price controls and the Entitlements Program. Ironically, it is this region of the country that the largest potential exists for significant near-term increases in domestic crude production.

Since 1977, Alaskan North Slope (ANS) production has increased from 300 thousand barrels per day to a present capacity of 1.2 million barrels per day. If increased development of existing fields and further exploration is successful, ANS and South Alaska production could increase to well beyond current production levels by 1990. Furthermore, according to recent forecasts, crude oil production in California under an optimistic set of assumptions could also show significant increases above current levels by 1990, through tertiary oil recovery and production from new offshore discoveries.

If these optimistic production levels are reached, total West Coast refined product demand will not be sufficient to absorb all California and Alaska production, even if all West Coast refineries process only ANS and California crude oil. This, of course, would presume a substantial retrofitting of West Coast refineries to process those crude into a marketable product slate, rather than relying on light, sweet crude imports for blending stock. Thus, under a high production scenario, even assuming complete regional processing ability and no imports, considerable volumes of Alaskan and California crude would have to be transported to Gulf Coast and Inland refining centers.

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We have similar problems with new California production. In order to provide some much-needed near-term relief for distressed California heavy crude oil production in 1978, the Department took action to reduce the entitlement obligation which had reduced the market for this oil, and to provide entitlement-based incentives, on a case-by-case basis, to ship some of this crude to other U.S. markets.

Also as part of this program of relief for California crude production, in August 1978, at DOE's request, the Department of Commerce (DOC) amended its regulations to permit, on a temporary basis, exports of high sulfur residual fuel oil refined on the West Coast from California crude oil. As mentioned, this is a temporary program, subject to the following general conditions:

- (1) Exports would permit increased utilization of California crude oil by West Coast refineries, and thereby increase California crude liftings;
- (2) The benefits of U.S. price controls would not be, in effect, exported with the oil.

However, long-term solutions to this current regional "surplus" are essential if we are to provide crude oil producers and the States of Alaska and California with incentives to take necessary action to expand production.

An effective long-term solution would be to transport surplus West Coast crude via pipeline to inland refining centers. In March of this year Standard Oil of Ohio (Sohio) announced its decision to abandon the Pactex pipeline project, which would run from Long Beach, California to Midland, Texas. Sohio stated regulatory delays and the threat of extended litigation had seriously threatened the economic viability of the pipeline project.

However, Secretary Schlesinger has met with Sohio, members of Congress, and officials from the State of California. At the meeting, Sohio agreed to reconsider the Pactex project; however, no guarantees were given that the project will go forward. Officials from the State of California will continue to issue the necessary permits. But Sohio's major concern is litigation. Although Sohio and the local air quality board have reached an agreement on the best strategy to protect air quality in Southern California, the threat of project delays from litigation remain.

To counter this threat, it has been proposed that legislation be introduced both in Congress and the California State legislature to preclude litigation-related delays. This legislation would merely confirm agreements Sohio has already made with State and local jurisdictions. We are now hopeful that if the major uncertainties can be resolved to the satisfaction of the projector's sponsor, will be removed and that construction of the pipeline can begin within a number of months.

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Until more West Coast refinery conversions take place and at least one west-to-east pipeline is completed, surplus ANS crude must continue to be shipped by tanker to U.S. Gulf and East Coast markets. The current transportation charges for moving ANS crude by tanker through the Panama Canal are roughly \$3/barrel.

Because of the uncertainties regarding the progress of west coast refinery conversions and completion of a west-to-east pipeline, we are reviewing a wide range of alternatives for the disposition of West Coast crude oil. Our preliminary assessment is that these transportation and refining bottlenecks are now discouraging increased California and ANS production. Furthermore, any large near term increase in ANS crude production would place additional pressure on the domestic tanker market. There are few orders being filled for new tankers at the present time because there would be little demand for them if a west-to-east pipeline project is constructed. Should it become apparent that a pipeline will not be constructed, it could take two years to build enough tankers to transport the additional crude, unless Jones Act waivers were granted.

This raises the possibility that the Nation may be denied the benefit of ANS production increases, and that production may remain at 1.2 to 1.35 million barrels/day indefinitely or decline after 1990 unless we solve west coast refinery and transportation bottlenecks. It is our assessment that unless at least one west-to-east pipeline is constructed, swaps are allowed, or it becomes clear that no pipelines will be built and the continuing demand for new domestic tankers is assured, we may lose a valuable opportunity to increase domestic production and solve this regional crude oil surplus.

We are also concerned that a persistent crude oil surplus on the West Coast may make both Federal and State commitments to open up new areas for exploration difficult to implement. Opposition to offshore lease sales in California and Alaska may occur unless progress is made on the west coast surplus.

In summary, it is clear that we must develop a balanced, long-term solution to the west coast surplus problem. As part of this effort, the Department has conducted a study of proposals for a west-to-east pipeline for the transportation of crude oil to the Northern Tier and Inland States. Under a broader review of the west coast problem, we are continuing to evaluate a range of alternatives, including the export of Alaskan crude oil. We intend to weigh a number of important considerations before making any recommendation on this important issue.

I have attached for the record the answers to the questions the Committee submitted in its letter to Secretary Schlesinger as well as a recent letter from the Secretary to Mr. Bingham stating the Administration's position on any extension of section 4(l) of the Export Administration Act.

I trust that this testimony addresses the concerns expressed by the Subcommittee in the letter of April 27, 1979.

DEPARTMENT OF ENERGY,  
Washington, D.C., April 23, 1979.

HON. JONATHAN B. BINGHAM,  
Chairman, Subcommittee on International Economic Policy and Trade, Committee on  
Foreign Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the President's request and in consultation with Secretaries Kreps and Vance, I am taking this opportunity to present the Administration's position on Congressman McKinney's bill, H.R. 3301, which would amend Section 4(l) of the Export Administration Act (EAA) as amended by the Export Administration Amendments of 1977. As you know, the Administration has already transmitted a bill which would extend and amend the Export Administration Act without section 5(l). This bill is now before your Subcommittee.

The Administration is opposed to any extension of Section 4(l) of the EAA which expires in June 1979, or any new legislative proposals which would further restrict the President's authority to authorize swaps of Alaskan North Slope (ANS) crude oil. It is the Administration's position that H.R. 3301 is unnecessary and could prevent the President from acting in the national interest. Although the crude oil export restrictions in the EAA expire in June of this year, Section 28(u) of the Mineral Lands Leasing Act of 1920, as amended by the Trans-Alaska Pipeline Authorization Act, would remain intact and would prohibit any exports of ANS crude unless the President made a finding that such action did not diminish the total quantity or quality of petroleum available to the United States and that it was in the national interest.

The Administration is not proposing that any U.S.-produced oil be exported, but rather seeking to assure that the President and the Congress are not unduly constrained in considering such action should it be in the national interest. The regional "surplus" of crude oil on the west coast should be eliminated through refinery retrofits on the west coast and by transportation to inland States over efficient west-to-east pipelines. Any decision to authorize swaps would have to take into account the circumstances prevailing at that time, including such factors as the impact of swaps on the U.S. balance of payments and the U.S. maritime industry, the costs and benefits of such a decision to oil producers, consumers, the State of Alaska and the U.S. Treasury. Nonetheless, it is conceivable that swaps of Alaskan north slope crude oil will become necessary at some time to induce additional Alaskan and west coast production and to improve economic efficiency.

Our objections to the McKinney Amendment are discussed in more detail below:

#### *Increasing Alaska and California crude oil production*

Oil fields in Alaska and California provide over 22 percent of all U.S. crude oil production and in the next 10 years, these two states' production will continue to increase substantially. We should strive to eliminate the risks for the producers that militate against the exploration and development activities that will increase long run production of Alaska and California crude oil. Failure to eliminate these disincentives could mean a loss of as much as 600,000 barrels per day of domestic crude oil production in the post-1985 period because of lower wellhead values and reduced oil and gas leasing.

As long as the apparent regional surplus persists, considerable local opposition to expanded leasing and development in areas such as offshore Southern California and the Beaufort Sea off of Alaska can be expected. Local cooperation is essential if we are to expand successfully development in these areas.

#### *Economic efficiency*

It is our expectation that west-to-east pipelines will be built; however, if one or more such pipelines are not constructed, the Department of Energy estimates swaps of ANS crude could improve the transportation and crude oil production efficiency of the U.S. economy by as much as \$800 million per year or a total of \$10 billion over 20 years. Tax revenues to the Federal Government could increase by as much as \$680 million per year or a total of \$8.5 billion over the same period as a result of higher wellhead values due to more efficient transportation systems. Furthermore, any resulting production increase would reduce net imports and improve the U.S. balance of payments. The maximum increase in production of 600,000 barrels per day would improve the U.S. trade balance by as much as \$3.9 billion per year. In addition, under many circumstances, increased crude oil production can restrain or moderate potential increases in the world price of crude oil. Any restraint on world crude oil prices provides significant benefits to the U.S. because of our dependence upon large volumes of foreign crude imports.

### *Security of supply*

Under the Agreement for an International Energy Program (IEP), the amount of oil which would be available to the U.S. during an embargo or other crude supply interruption would not be affected if the United States were to swap crude oil. The amount available to the United States would be determined by historic consumption and net import volumes which would remain unchanged if the United States engaged in export swaps.

In the worst case scenario, in which the U.S. were suffering a severe shortfall and for some reason the IEP system were not activated, export contracts could be interrupted and Alaskan crude shipped to U.S. Gulf or East Coast markets. This would be possible because swaps would only be permitted under contracts which could be interrupted if U.S. crude oil supplies were threatened and under export licenses subject to revocation were that to happen. In an embargo, there would be sufficient United States and foreign flag VLCC's to bring Alaskan oil to Gulf and East Coast refineries capable of processing it.

### *International commitments*

The proposed McKinney Amendment may not adequately allow the United States to meet two important international commitments—our oil supply commitment to Israel, and our obligations under the emergency oil sharing system of the International Energy Agency (IEA) developed pursuant to the IEP. Mr. McKinney's proposed amendment provides for exports to Israel pursuant to our bilateral agreement, but such exports would be limited to 180 days and could be terminated at any time during that period by vote of either House. We urge full clarification of our authority to back up our commitment.

This commitment was an essential element in the negotiations leading to the conclusion of the Peace Treaty between Israel and Egypt, and we are very concerned that we be able to live up to the obligations that we have undertaken.

In addition, the McKinney Amendment does not provide for fulfilling our obligations under the IEP emergency oil sharing system. The authority to export U.S. oil under the IEP system, granted by Congress in section 251 of the Energy Policy and Conservation Act of 1975, could be interpreted as being limited by Section 4(l) of the Export Administration Act. Therefore, even if we never use our emergency sharing authority, we need to make our authority to export under emergency conditions absolutely clear to our IEA partners and thus demonstrate to them that we are fully committed to the sharing system.

It is virtually impossible that the U.S. would ever be a net exporter of oil under the IEP sharing system. If in a crisis we were obligated to supply oil to other IEA countries, we would normally do so by diverting imports. However, it is conceivable that for maximum efficiency and effective distribution, we would want to swap U.S. oil for other oil under the sharing system, without changing the total amount of oil to which the United States would be entitled.

### *Legal concerns*

The McKinney amendment, as currently drafted, poses a real danger of frustrating the will of Congress and the President by requiring that several legally ambiguous standards be met. In our opinion, adherence to the standards may either be impossible due to unforeseen conditions or be interpreted by a court in a different manner than the Congress or the President intended. It must be recognized that such a result would prevent Congress, as well as the President, from fulfilling a stated course of action which both felt was in the national interest.

With these considerations in mind, I ask that you allow the existing EAA export restrictions to expire and grant the President the flexibility to consider export options if he concludes that they are in the national interest. The Department of Energy has been advised by the Office of Management and Budget that the views herein stated are in accord with the President's program.

Sincerely,

JAMES R. SCHLESINGER, *Secretary.*

### ANSWERS TO QUESTIONS FROM THE DEPARTMENT OF ENERGY

*Question 1.* What is the present production of the Alaskan pipeline? How much of Alaskan oil is shipped to the West Coast, and how much passes through the Panama Canal to the Gulf and East Coast?

*Answer.* The present production of the Trans-Alaska Pipeline is 1.2 million barrels per day. Of this amount, 800,000 b/p/d are refined on the West Coast and roughly 400,000 b/p/d are shipped by tanker to Gulf and East Coast markets.

*Question 2.* what is the additional (incremental) cost to the American consumer of shipping the oil beyond West Coast ports through Panama to Gulf and East Coast destinations?

Answer. There is no additional incremental cost to the American consumer for Alaskan oil shipped through the Panama Canal. This is because Alaskan oil is not under price controls and the oil is priced at landed costs.

*Question 3.* Are there sufficient "Jones Act" tankers available to carry additional Alaskan oil production if that production were to come on line within the next couple of years?

Answer. There are sufficient "Jones Act" tankers to carry the current ANS production to U.S. Gulf and East Coast markets. Any large near term increase in ANS production would place pressure on the domestic tanker market. Since few orders are now being filled for new domestic tankers, it could take two years to build sufficient tonnage to carry the increased crude volumes. However, it is possible to increase the number of tankers to carry ANS crude by allowing non-Jones Act U.S.-Flag ships into the Alaska trade. The Secretary of Commerce can allow these ships in the Alaska trade if it is essential for moving the crude oil to market.

*Question 4.* If the proposed Sohio pipeline were finally approved by all relevant authorities, how long would it take to bring the pipeline into operation and at what capacity?

Answer. If all the necessary permits for the Sohio pipeline were approved, it would take around 30 months to be operational and would carry 500,000 barrels per day.

*Question 5.* How much additional production could be brought on line from Alaska within one year after additional pumping capacity? How much within three years using pumps and "looping"? What is the long term outlook?

Answer. The Trans-Alaska Pipeline (TAPS) will increase its capacity to 1.35 million or 1.4 million b/d by the end of this year by adding additional pumping capacity. The pipeline has a capacity of 2 million b/d, but the Prudhoe field can't supply more than about 1.6 million. If 2 million b/d becomes available, TAPS will activate four undeveloped pump sites.

For the long term outlook estimates of speculative Alaskan reserves range in the neighborhood of 50 billion barrels, of which only 10 billion are presently producible, and almost all of that in Prudhoe Bay.

*Question 6.* At current world prices, what would be the foreign exchange value of the sale of the following amounts of Alaskan oil to foreign countries: 100,000 bbls per day; 400,000; 600,000?

Answer. The official price for Arabian light oil which is the benchmark crude was \$13.34 as of March 1, 1979. Surcharges to be imposed after April 1 of about \$1.20 per barrel would result in a current market price of \$14.54 for Arabian light oil. ANS crude oil sells for approximately the same price less a small quality differential. At this world price 100,000 b/p/d of Alaskan crude would result in a gross foreign exchange value of approximately \$1,454,000 per day, 400,000 b/p/d in a value of \$5,816,000, and 600,000 b/p/d in a value of \$8,724,000.

*Question 7.* What amount of production per day has been considered in discussion of a possible oil swap among the United States, Japan, and Mexico?

Answer. The United States is not involved in any swap negotiations with Japan and Mexico at the present time. The State of Alaska has met with Mexican officials to discuss a swap of their royalty oil to Japan in return for shipment of Mexican oil to the U.S. Alaska's 12.5 percent royalty share of North Slope production amounts to about 150,000 b/p/d on current output averaging 1.2 million b/d.

*Question 8.* What would be the cost of retro-fitting West Coast refineries to accept additional amounts of Alaskan oil?

Answer. Major expansions or replacement of existing refineries provide no significant technical or economic constraints (providing environmental permits can be obtained) to refining ANS crude into the appropriate product slate for California. In general, the long run gravity-sulfur price differential for Indonesian vis-a-vis ANS crude is sufficient to encourage refiners to adapt new refineries or modify existing refineries to use ANS crude. However, price differentials would have to be somewhat larger to induce refiners to convert sweet-light facilities that still have some years of useful life remaining.

DOE estimates that it would require a discount (in addition to the long run gravity-sulfur differential) of \$.50 to \$1.50 a barrel to convert an additional 400,000 barrels a day of sweet-light facilities to process ANS crude.

However, refiners face a number of uncertainties regarding conversion of their facilities from sweet-light to heavy-sour capability. These uncertainties are as follows:

(1) There is no guarantee a discount for ANS crude will be available for a time period sufficient to justify premature abandonment of sweet-light facilities. If the export ban is lifted, or the Sohio pipeline is completed, any discount ANS producers are now giving California refiners because of high transportation costs to the Gulf will no longer exist.

(2) Sweet-light production may increase from South Alaska and be available at competitive prices. New supplies of sweet-light will discourage abandonment of sweet-light refineries that have some years of useful service remaining.

(3) The cost of environmental controls for processing higher sulfur crude oils or making major modifications at a refinery may rise significantly or permits may not be granted.

*Question 9.* What is your estimate of the productive life of the Prudhoe oil fields at current rates of production? What is your estimate if production were increased by 400,000 barrels per day?

Answer. Although the ultimate recovery of the Prudhoe oil fields is estimated at just under 10 billion barrels, it is difficult to estimate the productive life of the fields. The current production of 1.2 million b/p/d comes from the extensive and complex Sadlerochit reservoir. According to the producers this can be increased to 1.5 million b/p/d. Additional production could come from two other Prudhoe Bay formations—the shallower Kuparuk and the deeper-lying Lisburne. ARCO has a specific program for producing the Kuparuk, but has made no final commitment. Sohio has not found anything commercial as yet at Lisburne and has no plans for production.

Assuming the current 1.2 million b/p/d were produced since the Prudhoe field came on stream 19 months ago, the productive life of the field would theoretically be 22.8 years. Since the field did not initially produce this amount, the productive life would be two to three years more. Similarly, if initial production started at 1.6 million barrels, the productive life of Prudhoe would be about 17.1 years since the field began producing.

In addition, there are other factors affecting the productive life of the Prudhoe oil fields: high transportation and operating costs, environmental concerns by the Alaskans, higher state taxes, and the lack of opportunity to explore the Beaufort Sea (about 50 miles northeast of the Prudhoe fields) and the other parts of Alaska. Many of these items are affected by the marketing and transportation problems of ANS crude oil.

*Question 10.* What is DOE's range of estimates of the amount of new production which will be brought on line as a result of the President's recently announced decontrol of oil?

Answer. Secretary Schlesinger has testified that the actions recently announced by the President to decontrol domestic crude oil prices will likely result in a production response of 700 to 740 thousand barrels per day by 1985. Further, the total oil import reduction, resulting from the combined effects of increased production and demand restraint through higher prices, could be on the order of one million barrels per day by 1985.

*Question 11.* Are the oil companies the only ones who would profit from a swap or sale of oil to Japan, as has been charged?

Answer. A swap or other type of export agreement could have many beneficiaries in addition to those firms directly involved. To the extent that swaps promote or encourage increased crude oil production, and other gains in economic efficiency, mainly through improved transportation, all U.S. consumers would benefit. Any increase in crude production would also have the net effect of reducing imports, thus improving the U.S. balance of payments. Tax revenues to the Federal government, and to the State of Alaska, could increase significantly. In addition, under many circumstances, increased crude oil production can restrain or moderate potential increases in the world price of crude oil. Any restraint on world crude prices provides significant benefits to the U.S. because of our heavy dependence on foreign crude imports.

*Question 12.* How much additional oil does DOE estimate can be brought on line as a result of syncrude projects over the next five years? How much will these projects cost?

Answer. The following table provides recent estimates of commercial syncrude production from oil shale and coal liquids in 1990. Virtually no commercial production of coal liquids will occur by 1985. Commercial production from oil shale by 1985 is uncertain given the required lead time for facility construction and need for improvement in the relative economics of shale production.

*Range of anticipated production in 1990 thousand barrels oil equivalent per day*

Technology:	
Oil shale.....	30-300
Coal liquids.....	30-300

*Total capital investment billion dollars 1978*

Technology:	
Oil shale:.....	
Low.....	0.9
High.....	5.4
Coal Liquids:.....	
Low.....	1.8
High.....	7.2

*Nominal plant: Output and capital cost*

The projected optimum-size plants that will minimize costs without risking too much capital. As experience with these technologies develops, the probable size of these plants will increase.

The size of the nominal plant is expressed here in terms of thousands of barrels of crude oil equivalent per day to be consistent with the production estimate. The capital cost of the nominal plant is in 1978 dollars, for simplicity, no range is shown although significant uncertainty exists in these estimates.

*Number of plants*

The number of nominal plants needed to attain the extremes of the range of anticipated production in 1990.

*Total capital expenditures through 1990*

This represents the total capital needed to build all of the production capacity represented by the extremes on the range of anticipated production in 1990, including some expenditures which have already been made.

*Range of anticipated production in 1990*

The range of anticipated production in 1990 provides a measure of the energy impact that the technology will have. The range reflects uncertainties in relative economics and in government actions. The lower bound is associated with essentially constant real oil prices and a continuation of current government activities. It does not try to account for the output from R&D facilities, however. The upper bound reflects high oil prices and an aggressive commercialization program.

*Question 13.* Over the near-term there seems to be a very tight world market for oil. Would additional Alaskan production be likely to have any effect on that tight supply situation? What percentage of world production does Alaskan oil now constitute? What percentage of world oil would Alaskan oil constitute if production were increased by 400,000 barrels per day?

Answer. The world crude oil market has been quite tight since the advent of production curtailments in Iran. Any additional production, including increased production from Alaska, would tend to provide some relief from this situation. However, it is important to note that the extent of relief provided will depend in large part on decisions by producing countries on whether to maintain present production rates. It is conceivable that some producing countries may restrict their production in seeking to maintain a tight market.

Presently, Alaskan North Slope (ANS) production represents about 2.4 percent of non-Communist world petroleum liquid supply. If ANS production were to increase by 400 thousand barrels per day, it would then rise to about three percent of the total.

*Question 14.* It has been argued that an oil swap would be costly because Alaskan oil would be sold to Japan for \$13 per bbl in exchange for \$14 or \$15 per bbl OPEC or Mexican oil, and because of the quality difference between high sulphur Alaskan oil and lower sulphur OPEC, Indonesian or Mexican oil would result in the United States paying out \$250 million more for the foreign oil than it would receive for the Alaskan oil. What is your response?

Answer. It should be recognized at the outset that the economics of any export or swap proposal would be specific to a given proposal, and that there are an endless number of variations of such proposals. It should further be noted that, following recent OPEC action, the FOB contract prices of most foreign crudes now range from the \$14.54 per barrel marker crude price, to over \$20 per barrel for premium crudes. Spot prices are even higher. Alaskan crude would be expected to sell in Japan at

prices equivalent to similar quality foreign crudes, i.e., at the world price for that grade of oil. Foreign oil imports pursuant to a swap agreement would be comprised of a mix of crudes which would satisfy U.S. refinery demand. The price of this import mix would depend on the nature of refinery demand at the time the swap is arranged. It is possible that this import price could be roughly equivalent to the price obtained for ANS crude in a foreign market, especially if additional U.S. refinery retrofits to process heavy sour crude continue to occur.

In any event, it is most important to understand that any export or swap proposed would be tied to increasing ANS production, and the revenue from each additional barrel of ANS crude produced and sold for export would be incremental revenue to the U.S. economy which would not otherwise be earned. This revenue from this incremental production would have the net effect of reducing our oil import bill and improving our balance of payments.

*Question 15.* With respect to transportation cost savings from Alaskan oil exports, it is argued that (a) the entitlements program spreads crude oil cost evenly to all refineries, thereby excluding any possibility of passing savings on to consumers and (b) the \$2 per bbl cost differential between West Coast and Gulf Coast delivery could be substantially reduced if North Slope producers would engage in long-term shipping contracts rather than spot contracts. What is your response?

*Answer.* The Department has examined the issue of improved transportation as well as crude oil production efficiency that would result from swaps of ANS crude, and has determined that the net benefits from such improvement, as discussed in the response to question II, would flow to the U.S. economy in general, and not specifically to petroleum product consumers. That is, the transportation cost saving would not flow through the cost equalizing mechanism of the entitlements program.

Regarding present shipping costs for ANS production, it is our understanding that the major North Slope producers do at this time have a large percentage of Jones Act vessels used in this trade either under ownership or long term charter agreements.

*Question 16.* Would a swap agreement include a provision enabling the United States to terminate sales of Alaskan oil if our own supplies were to be jeopardized or cut off?

*Answer.* Yes, swaps would be permitted only under contracts which could be interrupted if U.S. crude oil supplies were threatened and under export licenses subject to revocation should that happen.

*Question 17.* It has been proposed that section 4(l) of the existing Act be renewed and amended to require specific Congressional approval before any proposed export of Alaskan oil is allowed. What is the Administration's view on that proposal?

*Answer.* The Administration is opposed to any extension of Section 4(l) of the existing Act, or any new legislative proposals which would further restrict the President's authority to allow swaps of ANS crude oil. It is the Administration's position that such restrictions are unnecessary and could prevent the President from acting in the national interest. Section 28(u) of the Mineral Lands Leasing Act of 1920, as amended by the Trans-Alaska Pipeline Authorization Act, could remain intact and would prohibit any exports of ANS crude unless the President made a finding that such action did not diminish the total quantity or quality of petroleum available to the U.S. and that it was in the national interest.

*Question 18.* It has been charged that exporting Alaskan oil will aggravate our balance-of-payments deficit. What is the administration's view?

*Answer.* Whether exporting Alaskan North Slope (ANS) crude oil would aggravate our balance-of-payments depends upon a number of circumstances. In general, any solution to the regional surplus of crude oil will benefit our balance-of-payments account as long as it is tied to incremental ANS production and thus represents an efficient solution. West-to-East pipelines, refinery retrofits, or swaps will improve wellhead values in Alaska and California. If these actions are successful in inducing additional production there will be significant improvements in our balance-of-payments deficit. Only under conditions in which the Alaskan production is shipped in foreign tankers and no new production is realized will the balance-of-payments suffer. However, the change in our balance-of-payments would be small even in the worst case scenario.

*Question 19.* It has been argued that exporting or swapping Alaskan crude will not result in transportation costs being passed on to the American consumer because the price of Alaska North Slope crude oil is pegged to the landed price of imported crude regardless of transportation costs, destination, or vessel used. What is your response?

*Answer.* The value of Alaskan crude oil is pegged to the landed price of competing foreign crudes. ANS crude oil has been selling at world prices for the last few years.

Although the consumer may not realized direct benefits from any efficiency gains resulting from swaps a number of indirect benefits are likely. Any efficient solution to the West Coast surplus will improve wellhead values in California and Alaska. Higher well head values will result in additional revenues to the States of California and Alaska and the Federal government. These higher revenues could be used to lower taxes. In addition, increased crude oil production can restrain or moderate potential increases in the world price of crude oil. Any restraint on world crude oil prices provides significant benefits to the United States because of our dependence on large volumes of foreign crude imports. In this case consumers would directly benefit.

*Question 20.* It is argued that if Alaskan oil is exported or exchanged, incentives to build new tankers, one or more west-to-east pipelines, and additional domestic refinery capacity would be lost, and thereby, thousands of American jobs would be lost. What is your response?

*Answer.* It is the Administration's position that an efficient west-to-east pipeline can be constructed to move ANS crude to inland markets. However, if a domestic solution is not possible because of environmental concerns or objections from local jurisdictions, the President should have authority to seek other remedies such as swaps. It is also possible to only allow swaps above a given production level on the North Slope (e.g., 1.2 million barrels/day) thereby encouraging new production, but keeping an incentive for refinery retrofits and west-to-east pipelines.

**Senator STEVENSON.** My memory is a little hazy. But as chairman of the former Senate Subcommittee on Oil and Gas Production, I have been deeply involved in the west coast surplus issue; and partly responsible for the provisions now in the Export Administration Act as a result of my chairmanship of this subcommittee.

In the course of hearings in the old Oil and Gas Subcommittee, we received, as I recall it, some estimates of substantial savings in transportation costs that would result from swaps.

That is to say, it was less expensive to import oil from the Middle East to the Northeast and the Midwest, than to try to deliver Alaskan oil to the areas in need.

Shipments of this Alaskan oil to Japan, on non-Jones Act tankers, was substantially less expensive than shipment of Middle East oil to the United States.

On a pure economic basis, it looked to me at the time like swaps made a great deal of sense. Of course, any swaps could be terminated in the event of a national emergency that resulted in interdiction of supplies from the Middle East.

We'd take the Alaskan oil instead of shipping it to Japan.

I apologize if I missed it, do you have any estimates of what those transportations savings would amount to, if we were to sell Alaskan oil to Japan and buy oil from the Middle East?

**Mr. O'LEARY.** Yes. This would provide an increase in the net back at the Alaskan wellhead of about \$2 a barrel, Mr. Chairman. From my standpoint, that's an extremely important element of this problem that you are trying to work out.

You probably know that the net back at the wellhead, because of the very, very high costs assignable to transportation, are well below the ceilings that are applicable to new crude, let alone new crude under the rules which we are in the process of promulgating.

This occurs, because a lot of the costs are eaten up by transportation. That's true for shipment to the west coast and, of course, doubly true for shipment around the gulf.

It seems to me if you take a look at where the United States can expect larger significant new finds of oil, one of the important places with a high potential is Alaska.

In light of that, it seems to me that the adoption and retention of national policies that have the effect of arbitrarily and artificially lowering the return on potential production from Alaska will tend to dampen interest in that region and probably will have the long-term effect of yielding much less production. Significantly less production than would be the case if we were to adopt policies that were aimed at maximizing revenues to producers on the North Slope and other regions of Alaska.

I think you are quite right that sheer review of the economics shows that there is a significant opportunity here for increasing net backs for the ANS producers and thereby at least directionally assuring a higher level of interest in finding and producing additional reserves.

Mr. Chairman, I might say this is what prompted me, as Administrator of FEA, to make the decisions I did. The whole chain of logic I used with regard to the entitlements and other price treatments when I dealt with this whole problem approximately 2 years ago.

Senator STEVENSON. If that's the case—and I don't doubt it for a moment—it's a larger benefit, in fact, than I had recalled, because you not only get the net back, but you also get the increased interest in exploration and development in Alaska and oil from a domestic source as you point out—but if that is the case, why can't the President make the necessary findings under the Export Administration Act and get an exemption from the prohibition against crude oil exports?

Mr. O'LEARY. Well, perhaps he could, Mr. Chairman.

But it seems to me that if this is going to die a natural death in just a couple of months, that there's really no national purpose to be served by maintaining this very, very cumbersome mechanism which puts a heavy burden both on Congress and on the President.

The President, of course, already has a burden that's been imposed on him by just the Pipeline Act itself.

So, I think that the administration's dilemma here is not so much that it would like at the moment to propose swaps but that swaps might be the appropriate strategic thing to do in the future.

We are surrounded by the uncertainties created by this particular section in the Export Policy Act, and we just see no particular purpose.

There is an additional point, Mr. Chairman. There is a requirement under the provisions of section 4(l) that the President find that benefits will flow to consumers.

It's unlikely, under the sort of contract that I put before you, that the consumer will, in fact, benefit in direct ways.

Now, please understand me, I'm not pleading the case for higher net backs to producers on the North Slope because I like to see oil companies get more money. I'm pleading the case because there's a direct link between their price expectations and the amount they are willing to invest.

And I think it's absolutely imperative that over the next dozen years or thereabouts that we make a major, indeed, a massive exploratory effort in Alaska.

I think that will not be forthcoming unless the attitude, the price attitude or atmosphere, is as beneficial as we can make it.

These benefits will not go in the short run to the consumers. Ultimately, if producers are successful in finding additional supplies of oil, quite clearly the consumer will benefit. I'm not sure the President can make the literal findings that are required by the section as it reads now and probably he could well be subject to a challenge if he attempted to do so.

Senator STEVENSON. Is that the only finding that the President would have difficult making, a finding with respect to a positive effect on consumer oil prices by decreasing the average crude oil acquisition cost to refiners?

Mr. O'LEARY. That's the one that we would regard as virtually impossible to make in the real world.

I think the others are not difficult and indeed are paralleled by and large in the Alaskan Pipeline Act.

Let me check that.

Senator STEVENSON. Is this one not in the Alaskan Pipeline Act?

Mr. O'LEARY. I think that one is not in the Alaskan Pipeline Act.

Senator STEVENSON. I authored that one, too —

Mr. O'LEARY. You thought they were parallel? Let me get the comparison, Mr. Chairman, if I may?

Senator STEVENSON. I misspoke a moment ago. I was thinking of the Natural Gas Pipeline Act which I authored. I did not author the Oil Pipeline Act.

Mr. O'LEARY. Under the TAPS Act, the President is required to find that the action will not diminish the total quantity or quality of petroleum available to the United States; that the action is in the national interest; and that the action is in accordance with the provisions of the Export Administration Act.

The additional point that is included in this by the revisions that you have offered here are: "Will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition cost to refiners."

Senator STEVENSON. You say that's in the Oil Pipeline Act, the TAPS Act?

Mr. O'LEARY. No, it's not in the TAPS Act. However, swaps will only be made pursuant to contracts which may be terminated in the petroleum supplies the United States are seriously interrupted.

I have no problem with the other provisions—but as I suggested, the finding that the transaction will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition cost of refiners—I'm advised—cannot be made in ways that would not expose it to a challenge and quite possibly a successful challenge.

Consequently, I think that that provision hampers the capacity of the President to act in ways that we would clearly construe to be in the national interest.

Senator STEVENSON. Well, at the time we enacted this provision, we did so with the belief that, with the President's authority for oil and price controls, he could pass along part of these transportation savings to the refiners if it would benefit consumers.

Why could he not do so, at least for such time until that control authority expires by its term?

Mr. O'LEARY. Well, Mr. Stevenson, if I were to advise the President at this point, I would advise him not to pass those price

reductions on to refineries. First of all, there's no assurance they would be passed on in turn to consumers for most of the barrel, and second, because it vitiates the point I have been making.

If we do this, we really ought to do it to maximize revenues to the producers for new oil production on the slope and increase their price expectations so as to motivate them to greater investments on the slope and possibly in the development for additional and strategic supplies of crude.

Senator STEVENSON. We can do that but I want to nail down the legal question here.

Mr. O'LEARY. Yes.

Senator STEVENSON. We enacted this as we did all the oil control allocation and price control authorities, and we do so in this case with the belief that we could use the authorities granted by us to pass part of this cost saving along.

We mentioned refineries, because we knew he couldn't pass it along directly to consumers, but assumed that some passed through to refiners would benefit consumers. And that's all we required. And in those circumstances an expectation that the consumer would be benefited.

If I understand you, what you are saying is you've got the authority, and you could do it, but you really don't want to do it, because you want to benefit the oil companies instead of the consumers?

Mr. O'LEARY. Mr. Chairman, we pass it on to the refinery, but we can't force it onto the consumers.

Senator STEVENSON. We understood that, and that's why we worded this the way we did. It would have benefited consumers by reducing the acquisition cost to the refinery.

Mr. O'LEARY. The trouble with that is you did that at a time when virtually all the products from refineries were under price control, and you could have more or less assurance that you could get a passthrough, you could have a positive effect on the prices to consumers.

We are now at the point where only a narrow fraction, about one-third of the refinery products in this country are subject to price controls and the only effective level of those controls is at the refinery level. We have teams out now under a different hat that are finding widespread violations and with the population that we have of some 18,000 service stations, and a relatively small resource base to devote to their policing, and that resource base is thoroughly occupied on other, and we regard from the standpoint of consumer interest, more significant matters—we are at the point where we simply can't make the assurance that there would be a passthrough to consumers of any benefits that went into the refinery sector.

Senator STEVENSON. You can't make that assurance, because you decontrolled it.

Mr. O'LEARY. We have had a series of decontrol actions, that's quite true.

Senator STEVENSON. You have the authority in law to do it; you don't want to use that authority, and you are making it more difficult on yourself. Therefore, all the benefits from swaps of Alaskan oil, as a result of the decontrol, would go to the producers,

which is what you say you want. And because of your own decontrol decisions, that's about all you can do without reversing those decontrol decisions.

Mr. O'LEARY. Mr. Chairman, that is right and that is where we are.

Senator STEVENSON. Well, first of all, I think decontrol is a serious mistake. But I'm also concerned, Mr. O'Leary, that while you might like to wipe the slate clean and get rid of this provision and let it die in the Export Administration Act, that isn't politically realistic. I tried to indicate I'm very sympathetic to the notion of swaps and, as a matter of fact—my recollection is slowly getting refreshed—I went to the floor and did battle for the administration to get this provision retained in the law once when there was an effort to take it out of the law.

And I won, narrowly. The fight then was to retain these liberal provisions that would permit swaps, which is what you wanted, against the effort to prohibit any exports.

That's what we are going to be up against again.

I think it's unreasoning, irrational argument. But we are going to be lucky to keep anything in.

I barely kept this in last time.

The export of American oil abroad is not a very popular notion in the country, as I found out, and as I think this administration knows.

Now leaving aside the arguments of decontrol and who gets the benefit of all these transportation savings, without some compromise—and I think we had a compromise to pass along some savings to the consumer—you may not get any swaps. And then your production is going to go down.

Nobody—the producer or consumer—is going to get the benefit of those exports.

I questioned this Sohio pipeline. When we were holding our hearings, it was a \$1 billion project. It's probably a \$2 billion project now. Somebody has got to pay for the cost of that transportation system.

We have tankers, non-Jones Act tankers. Compared to all the operations, including Kitomat, including Sohio—the most economical is to sell to Japan and import from the Middle East, I think. It used to be. Isn't it still?

Mr. O'LEARY. Yes; I think if you were to rack them up on a purely economic basis, the way to handle this business is first of all to back out imports on the west coast, because of the logistics.

You then have to take into account general questions, because it requires a major investment in the reconfiguration of refineries past a certain point—the imports into the west coast now are largely sweet Indonesian crudes. The crudes in question, both the California crudes and Alaskan crudes are sour and much heavier. So you are not able to simply wave your hand and do away with the Indonesian crudes.

It requires a lot of money to get it up to the point where they can accept it, but in the strict economic pecking order, it would be first, placement on the west coast and then swaps, and then these other alternatives, including the Sohio.

Senator STEVENSON. All right. I agree with you.

I'm going to be out there on the line again, trying to retain some authority for exports. I haven't got any head counts, but I suspect it's going to be pretty tough.

Now, one way of sweetening all this up—you are making it pretty hard for some, including some in the Northeast to oppose export controls—is by pointing out to them that they are going to save money, the people that they represent are going to save money, by getting the benefit of these economic savings, as a result of the transportation savings, or because they don't incur the costs associated with other options, including increased or changed refinery capacity or pipelines.

You are telling me, if I understand you correctly, that we have the authority to do it. We don't want to do it. We want to give all that benefit to the oil companies. Even with your decontrol, you still have the authority. It expires when, 1982, 1983?

Mr. O'LEARY. On September 30, 1981.

Senator STEVENSON. Well, until that time you have the authority.

Mr. O'LEARY. Yes, if we want to go back and reimpose controls. And I think that would be a very small tail wagging a relatively large dog.

Senator STEVENSON. After that time we wouldn't have any authority?

Mr. O'LEARY. After that time, we would have no authority.

Senator STEVENSON. I disagree with you that it would require any controls on products. We didn't want to do that at the time, and we know what our intent was. We want to reduce the cost to refineries, and we wanted to assume that there would be some cost savings, as a result, to the consumer.

Mr. O'LEARY. Mr. Stevenson, I have to say that in the market that I see now, and prospectively over the next 2 or 3 years, I simply can't agree with you. I think that circumstances have been changed. It may well have been true 2 or 3 years ago, and I think most assuredly, it is not true today, and I don't think it will be true for the next 2 or 3 years.

Senator STEVENSON. It may not happen as a practical matter, but it won't have a negative effect. It may have a positive effect. And I don't think anyone will quarrel with you, if it doesn't get through the refiner in the form of reduced products to the consumer, because we know what we intended and that was to pass part of those savings through the refiner.

That's the reason we did it.

If we intended to reach your result, we would have just said we will have a positive effect on consumer oil prices by decreasing the cost of products to the consumer, instead, we said by decreasing the average crude oil acquisition cost to refiners.

Mr. O'LEARY. I'm afraid our lawyers read that first phrase in that section and gave it equal weight for the second.

Senator STEVENSON. Well, you better tell your lawyers what we lawmakers wrote into the law.

Mr. O'LEARY. Our problem is not your view, although we respect it, or my view or the lawyer's view but the possibility of a challenge and, of course, how the courts review it.

Senator STEVENSON. I can tell you are not a lawyer.

Mr. O'LEARY. Indeed, one of the gloomy sides of my past and lamentable history is that I am not a lawyer, Mr. Chairman.

Senator STEVENSON. All right. I can tell you, you are wrong, and we have congressional history, and if we need to make any more congressional history, we can make it.

As a matter of fact, I'm making it right now—without much help from you.

Mr. O'LEARY. Mr. Chairman, I'd help support this provision or any successor to this provision.

Senator STEVENSON. I don't want to belabor the point, but you are up against a political problem, too. If you like, I would change that decision around a little, to say take the effect out on consumer oil prices, it will run at least to—acquisition costs to refiners.

Mr. O'LEARY. Mr. Chairman, why would we want to do that as a matter of national interest?

Senator STEVENSON. Because I am convinced that OPEC control of domestic oil prices is the prescription for calamity; and that the prices which result—now it's an OPEC floor, not a ceiling—are far in excess of the resources and the incentives needed by the oil companies.

Including the high cost production areas in Alaska. It is, as your President has recognized, a prescription for windfall profits. And instead of the windfall profits which then won't get taxed—you can prevent the windfall profits and pass along some of the benefits from control of prices throughout the entire economy in order to stabilize prices and to increase employment.

I don't see any magic in an OPEC floor in oil prices, any more magic in an OPEC control than in U.S. Government control.

Mr. O'LEARY. Let's bring it back to the volumes we might be discussing here.

Perhaps there might be another million barrels a day over the next 15 years that would receive this accounting. The refiners might benefit by a \$1½ million in today's dollars based on a 1½ million barrels a day economy. Thus, let's say they got \$1 on each barrel by the time all the permutations were rounded out.

Take a look at that. It would reflect assuming no changes in prices out there, a 7-percent reduction against crude costs they would not otherwise obtain.

Now, the question, I think, that we have to ask is, do we best use that 7 percent of set or that \$1½ million a day to provide a stronger investment climate for getting new crude on the west coast, including Alaskan?

Or for subsidizing the refinery industry?

In my judgment, the national investment is much better made in finding new crude. And if that doesn't work after a while, regrouping—if, for example, you have 5 or more years of experience and it's just money on the table to BP, and Sohio, and to Exxon, and the other producers on the North Slope—then pull the plug and say we are not going to do that any more.

But if in the meantime, we do find that there is a surge of activity in Alaska, among other producers on the west coast, then it seems to me as a nation, we made a good bargain.

I don't think that we'll get strategic impacts by simply providing a further subsidy to either refineries—if we stayed with refineries

and the sort of crude market I see over the next few years—or to the downstream group who are utilizing that refinery capacity.

I think if there is a strategic value to be gained, it is really in finding additional crude.

Senator STEVENSON. Yes; I don't deny the importance of finding additional crude. I wish this administration would propose additional means of finding it in the world, not just in Alaska. But I do question whether this additional saving of maybe \$2 a barrel really is necessary in Alaska.

I suggest to you that without some compromise, you may not get it—not get anything.

Mr. O'LEARY. Well, we are practical people and we would be willing to discuss that.

But let me just remind you that that \$2 is extremely significant to those Alaskan North Slope producers.

Right now, the net back on the portion of that crude that is at the most disadvantaged place on the economic scale is probably on the order of—about \$5 a barrel.

That being the worst barrel. I think any producer who went in there under today's ground rules would have to list economics on the basis of that \$5 plus whatever OPEC does to us in the next few years.

And it seems to me that if we can increase that by 40 percent, \$2, and show that directionally, the Government is doing everything in its power to bring up the revenues in that particular area of the country, then we are doing the right thing.

Mr. Chairman, I was pretty roundly criticized and as a matter of fact, had a bitter degree of criticism when 2 years ago I took the actions that I did. As I pointed out as the Administrator of FEA—within the powers available to me at that time, there was a need to maximize the revenues available to producers on the west slope.

I have had 2 years to think about that decision and I think it was the correct one.

Senator STEVENSON. Well, I have been thinking about double-digit inflation.

Mr. O'LEARY. Well, a lot of the inflation is driven by the fact that we are absolutely at the mercy of OPEC.

Senator STEVENSON. We are putting ourselves at the mercy of OPEC. Even to the point of giving OPEC the power to establish minimum energy prices.

Not just for oil, but for all the alternatives. And indirectly at least, even the profits and the taxes now of oil companies.

Mr. O'LEARY. Mr. Chairman, that was a decision—giving OPEC or someone else the power to call the tune for energy prices in the United States—that was made piecemeal beginning in the 1940's and 1950's. One of the things that I have done, if there is any consistent thread in the last 15 years in my tenure in government, is to oppose the consequences of that piecemeal decision every way that I can.

I, for example, have spent an enormous amount of time on things that are regarded with a great deal of hostility.

We are going to have a very, very difficult time developing, over the next 25 to 30 years, synthetic fuels and nuclear energy, in addition to the other things which are a great deal more popular.

Unless we exploit the resources that are available to us here in the form of coal, oil, and shale.

Mr. Chairman, to burden this a little bit more if I may, I am constantly surprised and, indeed, horrified, at our capacity, after the stern lessons of 1973, 1974, 1976, 1977, last year, and this year, to vitiate those resources that can make a significant contribution on the supply side of this business.

I think that this is one more example where we have an opportunity, directionally, to foster the development of what is probably one of the last—what is assuredly, not probably, one of the last promising frontiers for conventional oil production in this country.

And for reasons that no doubt appear to be good and sufficient, we frustrate that. We do it with coal, we do it with nuclear energy, we do it with oil shale.

It seems to me that as one of my associates said, we are constantly in the habit of shooting ourselves in the foot.

Senator STEVENSON. Where have I heard that before?

Well, we don't need to rehash history. I have been part of it since 1970. I haven't been a part of it for as long as you have.

I share your frustrations in full, but I don't share all of your prescriptions.

Mr. O'LEARY. Of course.

Senator STEVENSON. Mine are too radical and controversial to be politically realistic.

For all those years after the controls, the oil companies came in year after year and year after year, demanding decontrol and excess profit tax.

And that's what this administration is now giving. There is no excess profit tax. We knew it in those years and they knew it, too, that there never would be.

And we also, with no help from the economists—I can remember when the Secretary of Treasury, Mr. Simon, bringing in the CIA to convince me in 1973 that the oil price would settle down at \$7.13½ I think he said.

All the models predicted settling price, and demand and supply were in equilibrium. It never occurred to anybody that they might decrease production before they decreased the price.

The economists couldn't understand it. Heaven knows Secretary of Treasury, William Simon, couldn't understand it.

There were a couple of politicians around who did understand it. And we still haven't gotten a national oil and gas corporation like every other country.

We don't have any entity with which to bargain for foreign oil supplies or develop new resources in Latin America or Africa or East Asia.

Now, you talk about the last frontier in the United States. Well, maybe we ought to think twice about depleting it.

We used to call that the "Drain America First Syndrome" project independence. The illusion of independence.

We need another crude oil bed like Alaska every year to keep up with the demand of a healthy economy.

So, I don't know, maybe we shouldn't be in such a hurry to drain America first.

At least there are alternatives.

Mr. O'LEARY. Mr. Chairman, the option to developing our own muscles, which is another way to look at it, is one of assuredly conferring enormous damage.

Senator STEVENSON. That's being done.

Mr. O'LEARY. That's being done, precisely, because although we recognize the problem, we seem totally incapable of devising solutions other than to import more.

If you look back over the de facto energy policy of this country up until last November, when the President signed into law a reversion of the statute that he sought to get enacted in April 1977, it is to import more and more.

Senator STEVENSON. Well, I don't need to hear the proposals being offered. I thought we were going to expedite licensing procedures for nuclear reactors.

The late Vice President Rockefeller and I for years have been suggesting an energy bank of last resort available for financing for transportation as well as production facilities on a global basis.

In the President's program there was a paragraph in which he recognized there ought to be a national effort.

He said: "Well, we'll keep thinking about that." He has been thinking for a long time about that, too.

Mr. O'LEARY. I'd be pleased to discuss that privately with you, Mr. Chairman.

Senator STEVENSON. I will be glad to do that. We better think a bit more about the provision, too.

But wholly apart from the merits of decontrol and control, I think you are against a political practicality that may require some compromise, some further thought to how some of the cost savings as a result of exports might be passed along directly—not directly, indirectly—to consumers.

It will be tough enough getting authority for exports, and I think the President ought to have that authority.

So I'd welcome a chance to cooperate and talk to you further on both of those matters.

Let's see, I guess we have some more questions. Does the act prevent the export of oil to Israel, if that were necessary to fulfill our bilateral agreements stemming from the Sinai pullout and the Israeli-Egyptian Peace Treaty?

Mr. O'LEARY. I don't think as a practical matter that it does influence our capacity to do that.

There are other crudes available that would be beyond the scope of this provision that would make that possible.

I'm not sure even that the Israelis would even want this kind of crude.

Senator STEVENSON. Would the act make it difficult or impossible for the United States to comply with its obligations under the multilateral emergency oil supply sharing arrangement?

Mr. O'LEARY. No, I don't think it would as a practical matter.

Senator STEVENSON. Other supplies? None off shore —

Mr. O'LEARY. It does in a sense, but the practicalities of our ever getting in a position where we would be a major exporter are quite remote, under the act.

I think the sharing idea would mean that really we would reduce our imports, not become an exporter.

Senator STEVENSON. Well, if we have any further questions, Mr. O'Leary, we'll take the limit.

Mr. O'LEARY. Thank you very much, Mr. Chairman.

Senator STEVENSON. Thank you, sir.

The committee is adjourned.

[Whereupon, at 4:45 p.m., the committee was adjourned.]

[Additional material received for the record follows:]

ASSISTANT SECRETARY OF DEFENSE,

Washington, D.C., May 4, 1979.

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

DEAR MR. CHAIRMAN: The Department of Defense offers the following comments on S. 737, a bill to replace the existing Export Administration Act, as amended by Senator Stevenson's amendments of May 2.

Among the many constructive features in the bill, we note particularly the emphasis which is given to preventing the effective transfer to countries to which exports are controlled for national security purposes of goods and technology critical to the design, development or production of military systems. A draft bill sent to the President of the Senate by Secretary of Commerce Kreps on April 17 contains the amendments to the Export Administration Act which are recommended by the Administration. The Department of Defense's comments on various other specific provisions of S. 737 follow:

#### *Annual list reviews*

Proposed sections 4(a)(2)(B) and 4(b)(1) would require that the Secretary of Commerce, in consultation with the Secretary of Defense, review all controls maintained for national security purposes not less frequently than annually. There are a number of practical difficulties with such a requirement. One has to do with the fact that alterations in our control list must be developed and implemented in concert with our partners in CoCom, who review the CoCom list every three years. A second is that a thorough review of the whole range of items under control would normally take more than a year with our available resources. A third point is that as every transaction is considered, the continued necessity for keeping the goods and technology involved under control is also considered. Besides economy of effort, this method virtually assures that every item for which there is an active market will be periodically scrutinized.

#### *Types of licenses*

Section 4(c)(1) would require the establishment of certain types of export licenses. While these are similar to ones now in effect as a matter of regulation, we believe it is undesirable to make such administrative matters the subject of legislation. In addition, section 4(c)(2) would provide that a qualified general license would be used only for items subject to U.S. unilateral control. In our view, items qualified for such control from a national security standpoint would be those of unique importance. They would include sophisticated goods and technology which only the U.S. can produce. Such items should not be dealt with on the more relaxed basis allowed by qualified general licenses.

#### *Majority voting*

Section 4(c)(7) will provide for decisions by majority voting in an Export Administration Board (EAB) and an Export Administration Review Council (EARC). We believe this provision, on the one hand, could add to processing delays because in the absence of consensus more decisions would be appealed to the President. On the other hand, this provision would be inappropriate where national security issues are involved because it would institute majority rule in the EAP and EARC. Either an item is significant in a national security sense or it is not. Such significance cannot be altered by voting arrangements. It is our position that the present law provides the proper mechanism for reaching sound national security judgments and that they would not be improved by this new proposal.

#### *Reexport controls*

Section 4(c)(8) would eliminate reexport controls for national security purposes where the country of destination controls the export of items "in fact \* \* \* to the same extent as the United States." While we sympathize with the intent of this amendment, we have two concerns. First, it will be difficult to define exactly what

"in fact" and "to the same extent" mean in practice. Second, the export control practices of another country may not remain constant. Yet under the proposed legislation we would have no legal remedy to respond to any loosening of such controls until exports damaging to our national security had already taken place.

*Foreign availability*

Section 7(c)(6) requires the Secretary of Commerce to verify the judgment of a Technical Advisory Committee as to whether an item is available abroad or its availability is "imminent." We believe that it would be very unwise to remove items from control lists which are there for national security reasons on the basis of the judgment that availability abroad is "imminent." It has been our experience that many forecasts of the imminent availability abroad of advanced technologies and their products have turned out to be inaccurate. This is particularly the case where production within the Communist world has been forecast. The prudent course, in our judgment, is to take appropriate action on grounds of foreign availability when its existence has actually been substantiated.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

ELLEN L. FROST,  
*Deputy Assistant Secretary of Defense,  
International Economic Affairs.*

DEPARTMENT OF STATE,  
*Washington, D.C., May 2, 1979.*

Hon. WILLIAM PROXMIRE,  
*Chairman, Committee on Banking, Housing, and Urban Affairs,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: In response to your request, the Department of State presents the following comments on S. 737, a bill to replace the existing Export Administration Act. This bill, introduced by Senators Stevenson and Heinz, contains many constructive features. Amendments to the Export Administration Act as recommended by the Administration are contained in a draft bill sent to the President of the Senate by Secretary of Commerce Kreps on April 17. Department of State comments on various other specific provisions of S. 737 follow:

*Right to export.*—Proposed Sections 2(1), 3(1) and 3(2) refer to "the right of United States citizens to engage in international commerce"; "(encouragement of) trade as a right not a privilege"; and "right to export." The bill is carefully worded so as to restrict such "rights" if the President determines that trade with certain countries is against the national interest and to the extent that restrictions are necessary for short supply, foreign policy, or security purposes. However, there is a risk that some readers might incorrectly interpret the bill as intending to permit these "rights" somehow to override the authorities to control exports.

*Annual list reviews.*—Proposed sections 4(a)(2)(B) and 4(b)(1) would require that the Secretary of Commerce, in consultation with the Secretary of Defense, review all controls maintained for national security purposes not less frequently than annually. Thorough reviews more frequently than every three years would be unrealistic. Negotiating with our Allies a review of the list of items controlled for security purposes takes more than one year. Such negotiations are necessary in order to comply with the Section 3(3) policy of cooperating with other nations and with the Section 4(b)(2)(B) provisions concerning foreign availability. The Secretary of State is responsible for these negotiations.

*Foreign policy controls.*—Proposed Section 4(a)(2)(C) would require giving full consideration to five factors prior to imposing, increasing, or extending export controls for foreign policy purposes. Factors such as these are now taken into consideration. However, legislation would be undesirable because of the need for Executive Branch flexibility in reacting to extreme acts of other Governments contrary to our interests.

Proposed Section 4(a)(2)(E) would require a Presidential determination and steps to initiate negotiations to eliminate foreign availability if foreign policy controls are imposed notwithstanding foreign availability. The Administration bill would provide for weight to be given to foreign availability in the administration of foreign policy controls. It would be unwise to go beyond this formulation. We may wish to distance ourselves from extreme acts of other Governments, such as apartheid or the suspected development of a nuclear weapons capability, even if the only short-term trade effect of our controls might be to divert export sales to our competitors.

Section 4(e) would authorize the Secretary of State to review cases for exports restricted for foreign policy purposes and to recommend appropriate action to Commerce within 30 days. Such administrative detail need not be included in legislation.

The State Department now responds to most case referrals within 30 days. For example:

STATE RESPONSE TO COMMERCE WITHIN 30 DAYS

Petroleum equipment cases for the U.S.S.R. October 25, 1978 to March 13, 1979—All 120 cases.

Advanced computers to Western destinations—98 percent (c. 100 cases per month). Other nuclear-related Commerce cases referred to State-chaired interagency committee June to December 1978 (excluding several thousand which DOE reviewed without referral to State)—24 of 39 cases.

Crime control and detection equipment July 12, 1978 to March 23, 1979—871 of 929 cases.

Other human rights and foreign policy cases December 7, 1977 to March 23, 1979—220 of 290 cases.

*Types of licenses.*—Section 4(c)(1) would require the establishment of three types of export licenses. The three types described are similar to those now in effect pursuant to regulations. It may be desirable in the future to use still other forms of licenses or to vary the conditions for the three types described. For instance, a type of qualified license not subject to approval of the particular consignee and/or end-use may prove useful in some circumstances. Statutory language precluding new approaches might turn out to be contrary to our common objective of devising means to limit requirements for validated licenses to important cases.

Section 4(c)(2) would provide that controls exceeding multilateral controls be effected to the greatest extent possible by means of qualified general licenses. Unilateral controls are generally justified either because the items controlled are uniquely available in the United States or because the national interest would be served by denying U.S. exports notwithstanding foreign availability. Permitting exports under qualified general licenses would largely undermine such controls.

*Majority voting.*—Section 4(c)(7) would provide for decisions by majority voting in an Export Administration Board and inter-agency voting would add to processing delays. If disagreements are not worked out at agency level, more issues would be sent to the President for resolution.

*Crude oil.*—The Administration's position on Section 4(1) of the Export Administration Act of 1969, as amended, was conveyed by the Secretary of Energy to the Chairman of the Subcommittee on International Economic Policy and Trade, House Foreign Affairs Committee, on April 23, and this position applies to Section 4(i) of S.737 as well. A copy is enclosed.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is not objection to the submission of this report.

Sincerely,

DOUGLAS J. BENNETT, Jr.,  
Assistant Secretary for Congressional Relations.

Enclosure.

DEPARTMENT OF ENERGY,  
Washington, D.C., April 23, 1979.

Hon. JONATHAN B. BINGHAM,  
Chairman, Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the President's request and in consultation with Secretaries Kreps and Vance, I am taking this opportunity to present the Administration's position on Congressman McKinney's bill, H.R. 3301, which would amend Section 4(1) of the Export Administration Act (EAA) as amended by the Export Administration Amendments of 1977. As you know, the Administration has already transmitted a bill which would extend and amend the Export Administration Act without section 4(1). This bill is now before your Subcommittee.

The Administration is opposed to any extension of Section 4(1) of the EAA which expires in June 1979, or any new legislative proposals which would further restrict the President's authority to authorize swaps of Alaskan North Slope (ANS) crude oil. It is the Administration's position that H.R. 3301 is unnecessary and could prevent the President from acting in the national interest. Although the crude oil export restrictions in the EAA expire in June of this year, Section 28(u) of the Mineral Lands Leasing Act of 1920, as amended by the Trans-Alaska Pipeline Authorization Act, would remain intact and would prohibit any exports of ANS

crude unless the President made a finding that such action did not diminish the total quantity or quality of petroleum available to the United States and that it was in the national interest.

The Administration is not proposing that any U.S.-produced oil be exported, but rather seeking to assure that the President and the Congress are not unduly constrained in considering such action should it be in the national interest. The regional "surplus" of crude oil on the West Coast should be eliminated through refinery retrofits on the West Coast and by transportation to inland States over efficient west-to-east pipelines. Any decision to authorize swaps would have to take into account the circumstances prevailing at that time, including such factors as the impact of swaps on the U.S. balance of payments and the U.S. maritime industry, and the costs and benefits of such a decision to oil producers, consumers, the State of Alaska and the U.S. Treasury. Nonetheless, it is conceivable that swaps of Alaskan North Slope crude oil will become necessary at some time to induce additional Alaskan and West Coast production and to improve economic efficiency.

Our objections to the McKinney Amendment are discussed in more detail below:

#### *Increasing Alaska and California crude oil production*

Oil fields in Alaska and California provide over 22 percent of all U.S. crude oil production and in the next 10 years, these two states production will continue to increase substantially. We should strive to eliminate the risks for the producers that militate against the exploration and development activities that will increase long run production of Alaska and California crude oil. Failure to eliminate these disincentives could mean a loss of as much as 600,000 barrels per day of domestic crude oil production in the post-1986 period because of lower wellhead values and reduced oil and gas leasing.

As long as the apparent regional surplus persists, considerable local opposition to expanded leasing and development in areas such as offshore Southern California and the Beaufort Sea off of Alaska can be expected. Local cooperation is essential if we are to expand successfully development in these areas.

#### *Economic efficiency*

It is our expectation that west-to-east pipelines will be built; however, if one of more such pipelines are not constructed, the Department of Energy estimates swaps of ANS crude could improve the transportation and crude oil production efficiency of the U.S. economy by as much as \$80 million per year or a total of \$10 billion over 20 years. Tax revenues to the Federal Government could increase by as much as \$68 million per year or a total of \$8.5 billion over the same period as a result of higher wellhead values due to more efficient transportation systems. Furthermore, any resulting production increase would reduce net imports and improve the U.S. balance of payments. The maximum increase in production of 600,000 barrels per day would improve the U.S. trade balance by as much as \$3.9 billion per year. In addition, under many circumstances, increased crude oil production can restrain or moderate potential increases in the world price of crude oil. Any restraint on world crude oil prices provides significant benefits to the United States because of our dependence upon large volumes of foreign crude imports.

#### *Security of supply*

Under the Agreement for an International Energy Program (IEP), the amount of oil which would be available to the United States during an embargo or other crude supply interruption would not be affected if the United States were to swap crude oil. The amount available to the United States would be determined by historic consumption and net import volumes which would remain unchanged if the United States engaged in export swaps.

In the worst case scenario, in which the United States were suffering a severe shortfall and for some reason the IEP system were not activated, export contracts could be interrupted and Alaskan crude shipped to U.S. Gulf or East Coast markets. This would be possible because swaps would only be permitted under contracts which could be interrupted if U.S. crude oil supplies were threatened and under export licenses subject to revocation were that to happen. In an embargo, there would be sufficient United States and foreign flag VLCC's to bring Alaskan oil to Gulf and East Coast refineries capable of processing it.

#### *International commitments*

The proposed McKinney Amendment may not adequately allow the United States to meet two important international commitments—our oil supply commitment to Israel, and our obligations under the emergency oil sharing system of the International Energy Agency (IEA) developed pursuant to the IEP. Mr. McKinney's pro-

posed amendment provides for exports to Israel pursuant to our bilateral agreement, but such exports would be limited to 180 days and could be terminated at any time during that period by vote of either House. We urge full clarification of our authority to back up our commitment.

This commitment was an essential element in the negotiations leading to the conclusion of the Peace Treaty between Israel and Egypt, and we are very concerned that we be able to live up to the obligations that we have undertaken.

In addition, the McKinney Amendment does not provide for fulfilling our obligations under the IEP emergency oil sharing system. The authority to export U.S. oil under the IEP system, granted by Congress in Section 151 of the Energy Policy and Conservation Act of 1975, could be interpreted as being limited by Section 4(1) of the Export Administration Act. Therefore, even if we never use our emergency sharing authority, we need to make our authority to export under emergency conditions absolutely clear to our IEA partners and thus demonstrate to them that we are fully committed to the sharing system.

It is virtually impossible that the U.S. would ever be a net exporter of oil under the IEP sharing system. If in a crisis we were obligated to supply oil to other IEA countries, we would normally do so by diverting imports. However, it is conceivable that for maximum efficiency and effective distribution, we would want to swap U.S. oil for other oil under the sharing system, without changing the total amount of oil to which the United States would be entitled.

#### *Legal concerns*

The McKinney Amendment, as currently drafted, poses a real danger of frustrating the will of Congress and the President by requiring that several legally ambiguous standards be met. In our opinion, adherence to the standards may either be impossible due to unforeseen conditions or be interpreted by a court in a different manner than the Congress or the President intended. It must be recognized that such a result would prevent Congress, as well as the President, from fulfilling a stated course of action which both felt was in the national interest.

With these considerations in mind, I ask that you allow the existing EAA export restrictions to expire and grant the President the flexibility to consider export options if he concludes that they are in the national interest. The Department of Energy has been advised by the Office of Management and Budget that the views herein stated are in accord with the President's program.

Sincerely,

JAMES R. SCHLESINGER, *Secretary.*

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#### STATEMENT BY WILLIAM A. ROOT, DIRECTOR, OFFICE OF EAST-WEST TRADE, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, DEPARTMENT OF STATE

The Department of State wishes to present the following comments on S. 737, a bill which would extend and revise the Export Administration Act. We recommend revisions in that bill to conform with the Administration's bill, S. 977. In addition we wish to point out difficulties which would probably be experienced if other portions of S. 737 were enacted which differ from existing legislation and from the amendments proposed by S. 977.

*Right to export.*—Proposed Sections 2(1), 3(1) and 3(2) refer to "the right of United States citizens to engage in international commerce"; "(encouragement of) trade as a right not a privilege"; and "right to export." The bill is carefully worded so as to restrict such "rights" if the President determines that trade with certain countries is against the national interest and to the extent that restrictions are necessary for short supply, foreign policy, or security purposes. However, there is a risk that some readers might incorrectly interpret the bill as intending to permit these "rights" somehow to override the authorities to control exports. We believe that the concept of the right to export is clearly set forth, with appropriate conditions, by existing Section 4(d).

*Annual List Reviews.*—Proposed Sections 4(a)(2)(B) and 4(b)(1) would require that the Secretary of Commerce, in consultation with the Secretary of Defense, review all controls maintained for national security purposes not less frequently than annually. Thorough reviews more frequently than every three years would be unrealistic. Negotiating with our Allies a review of the list of items controlled for security purposes takes more than one year. Such negotiations are necessary in order to comply with the Section 3(3) policy of cooperating with other nations and with the Section 4(b)(2)(B) provisions concerning foreign availability. We believe that legislation on this subject is unnecessary. If a provision to this effect were, nevertheless, included, it would be improved by:

(1) inserting "and the Secretary of State" after "Secretary of Defense," to reflect State's responsibility for negotiating multilateral list reviews, and

(2) replacing "not less frequently than annually" with "periodically" in both Sections 4(a)(2)(B) and 4(b)(1).

*Foreign Policy Controls.*—Proposed Section 4(a)(2)(C) would require giving full consideration to five factors prior to imposing, increasing, or extending export controls for foreign policy purposes. Factors such as these are now taken into consideration. However, legislation would be undesirable because of the need for Executive Branch flexibility in reacting to extreme acts of other Governments contrary to our interests. Criterion 4(a)(2)(C)(ii) would seldom be relevant. The effectiveness of controls depends far more on the patriotism of U.S. exporters than it does on the ability of the U.S. Government. There are situations, such as the imminence of a nuclear weapons capability in another country, where application of the other five criteria would not be appropriate.

Proposed Section 4(a)(2)(E) would require a Presidential determination and steps to initiate negotiations to eliminate foreign availability if foreign policy controls are imposed notwithstanding foreign availability. The Administration bill would provide for weight to be given to foreign availability in the administration of foreign policy controls. It would be unwise to go beyond this formulation. We may wish to distance ourselves from extreme acts of other Governments, such as apartheid or the suspected development of a nuclear weapons capability, even if the only short-term trade effect or our controls might be to divert export sales to our competitors.

Sections 4(e) and 4(f) would authorize the Secretary of State to review cases for exports restricted for foreign policy purposes and to recommend appropriate action to Commerce within 30 days. Such administrative detail need not be included in legislation. State is confident that Commerce will seek State review of proposed exports restricted for foreign policy purposes without legislation to that effect.

*Types of licenses.*—Section 4(c)(1) would require the establishment of three types of export licenses. The three types described are similar to those now in effect pursuant to regulations. It may be desirable in the future to use still other forms of licenses or to vary the conditions for the three types described. For instance, a type of qualified license not subject to approval of the particular consignee and/or end-use may prove useful in some circumstances. Statutory language precluding new approaches might turn out to be contrary to our common objective of devising means to limit requirements for validated licenses to important cases.

Under conditions consistent with the provisions of this Act, the Secretary of Commerce now requires the following types of export licenses:

(1) A validated license authorizing a specific export, issued pursuant to an application by the exporter;

(2) A qualified general license authorizing multiple exports, issued pursuant to an application by the exporter;

(3) A general license authorizing exports without application by the exporter;

(4) Other types of licenses.

No validated or qualified general license is required except to carry out the policies set forth in Section 3 of this Act.

The last sentence of Section 4(c)(2) would provide that controls exceeding multilateral controls be effected to the greatest extent possible by means of qualified general licenses. Unilateral controls are generally justified either because the items controlled are uniquely available in the United States or because the national interest would be served by denying U.S. exports notwithstanding foreign availability. Permitting exports under qualified general licenses would largely undermine such controls.

*Majority Voting.*—Section 4(c)(7) would provide for decisions by majority voting in an Export Administration Board and an Export Administration Review Council. Majority inter-agency voting would add to processing delays. If disagreements were not worked out at agency level, more issues would be sent to the President for resolution.

#### *Other issues*

Section 4(a)(2)(A) does not seem to apply reasonably to export controls for foreign policy purposes. For example, controls for nuclear non-proliferation purposes apply to exports to all countries.

Section 4(a)(2)(B) seems to apply only to security export controls. This would be clearer by adding "to carry out the purposes as prescribed in Section 3(2)(c) of this Act" after "Rules and regulations under this subsection" in the first sentence.

Subsections 4(f) (2) and (3) are unclear. The intent would seem to be that other agencies recommend disapproval or approval or notify Commerce that approval would be recommended subject to specified conditions.

Section 7(c)(6) contains a phrase which is internally inconsistent, namely "have become or will imminently become available in fact." Availability would not be factual if it was still only imminent.

Section 12(4) defines "technology" using terms appearing in existing regulations to define "technical data." The two expressions can and should be used interchangeably. There is no need to include such a definition in the law. For other purposes, the definition would be clearer by replacing "the information and know-how" with "unpublished technical data" and deleting "and technical data."

### *H.R. 3216*

The Committee has also asked for comment on H.R. 3216, a bill introduced by Congressman Wolff and others to reform export administration.

This bill would require several significant changes from present procedures for the use of export controls for national security purposes. The central idea of identifying critical technologies has been under active review in the Executive Branch for three years. This review is continuing. However, it has not yet reached the point where we can be sure that the critical technologies approach will be feasible. We should not give up the present system, which, though it has shortcomings, nevertheless works, until the details of a different system have been developed and, on a trial basis, have been found to be better. In a situation such as this, it would be particularly unfortunate if legislation were on the books which contained so much detail that it would prevent us from making improvements based on developing experience.

Specific comments on H.R. 3216 follow:

Sections 2, 4, 5 and 6 would amend Sections 4 and 5 of the Act to (1) assign to the Secretary of Defense responsibility for identifying technologies and goods to be controlled for security purposes and for preparing statements concerning items available from foreign sources and (2) assign primary responsibility for these tasks to an Office of Technology Export within the Office of the Under Secretary of Defense for Research and Engineering.

Pursuant to the Mutual Defense Assistance Control Act, the Secretary of State is now responsible for determining which items are to be controlled for security purposes in cooperation with other nations, i.e., the CoCom List. Pursuant to the existing Export Administration Act, the Secretary of Commerce is now responsible for determining which items, other than arms and nuclear items, are to be controlled by the United States for security purposes. The U.S. List is based largely on the CoCom List. Both State and Commerce obtain Defense concurrence for all determinations concerning items to be controlled for security purposes, including determinations as to which of those items are available from foreign sources. If Defense has primary responsibility in this area, State and Commerce would no doubt insist on a procedure giving them the opportunity to concur in determinations. This is because of the need to consider foreign relations and commercial factors as well as military security factors in determining the viability of controls.

Further specification in legislation of the respective roles of Defense, Commerce and State (or offices within any of those Departments) does not seem useful. Each Department must be consulted on issues where its competence is relevant.

Section 3 would amend section 4(b) of the Act to require prohibiting the export of (1) any "critical" technology or good to any "controlled nation," i.e., any nation threatening our security; (2) any "critical" technology or good to any other nation whose government fails to provide adequate assurances that the technology or good will not be transferred to any controlled nation; and (3) any "significant" technology or good to any controlled nation except pursuant to a validated license. It would define (A) "critical technology" as indispensable to U.S. military systems and superior to that of any controlled nation; (B) "critical good" as giving insight into a critical technology, being useful in the application of such a technology, or revealing a U.S. military system; (C) "significant technology" as significantly contributing to the military potential of a controlled nation; and (D) "significant good" as giving insight into a significant technology or being useful in the application of such a technology.

There are three ways in which this proposal would control too much and three ways in which it would not control enough.

It would control too much by (1) prohibiting without exception transfers of "critical" items to controlled nations; (2) prohibiting without exception transfers to nations whose governments do not control re-exports; and (3) controlling innocuous goods used in the application of significant technologies.

All items controlled under the Export Administration Act for security purposes are dual-use, that is, they have significant civil as well as military applications. This is because items specially designed for military use are controlled separately under

the Arms Export Control Act. Dual-use items which should be prohibited to controlled destinations without exception are rare. This is because exports of most dual-use items can safely be permitted for reasonable civil end-uses and civil end-users. Even for some of the more sensitive items, exports can be allowed if the importer provides a guarantee of right of access for post-sale visits to assure continued civil use. For any export of a dual-use item there is some risk of diversion to military use. However, this risk varies with different countries and with different items and, in any event, is not sufficient to justify automatic denial. We have little evidence of diversions to military use of any of the many thousands of shipments which have been approved as exceptions from the strategic embargo over the last three decades.

The proposed prohibition of the export of any "critical" items to third nations whose governments do not provide assurances against re-transfers to controlled nations is also too broad. The United States should and does control exports to third countries which do not themselves cooperate in controls on strategic exports to controlled countries. The purpose is to obtain from importers assurances that U.S.-origin items will not be re-exported without U.S. Government authorization. This system is reasonably effective because importers wish to retain their U.S. sources of supply. The system does not depend upon assurances from the governments of the third countries. The present system has a cost. Some firms in third countries design away from U.S. parts so as not to be limited by U.S. controls on re-exports. The proposed system would needlessly increase that cost by denying to U.S. exporters markets in third countries even when importers in those countries agree to subject re-exports to U.S. controls.

The proposed control of all goods which "would complete or extend a process line employed in the application of (a critical or significant) technology" would include many innocuous general purpose items.

On the other hand, the proposal would go too far or too fast in reducing controls by (1) shifting from comprehensive to selective controls on technical data before a viable system of selection has been devised, (2) excluding from the critical category very advanced technology of potential military significance, and (3) excluding from coverage goods of intrinsic military significance.

A requirement to base controls on lists of "critical" and "significant" technologies within 180 days would force a reduction in controls on the transfer of technical data to controlled nations before it would be possible to complete a careful comprehensive review to determine how to define what is "critical" and what is "significant." Such a review is not an easy task. Although broad areas containing critical technologies have been identified, after three years of effort we do not yet have a definition of any critical technology in sufficient detail and clarity for inclusion in an export control list. At present all unpublished technical data requires a validated license for export from the United States to controlled nations. The resultant control is not unduly burdensome, judging from the small caseload (under 200 per year). We should retain the present system until we are sure that we have a better one to take its place.

The limitation of "critical" technologies to those "indispensable to U.S. military systems" would exclude advanced technologies not yet used in any military system but having significant potential military uses.

Before limiting the goods to be controlled to those which are related to critical or significant technologies or which would reveal a U.S. military system, it would be prudent to confirm that there were no items controlled pursuant to this legislation which have intrinsic military significance irrespective of the criticality of their technology or their relevance to revealing a U.S. military system.

For all six of the foregoing reasons, it is recommended that the criteria in the existing legislation for security controls be retained substantially unchanged, namely, to use export controls to the extent necessary to restrict the export of commodities and technical data which would make a significant contribution to the military potential of any country or combination of countries in a way which would prove detrimental to the national security of the United States.

Section 3 would also authorize the President to take such steps as the withdrawal of United States economic and military assistance if negotiations to eliminate foreign availability fail. Such authority would be virtually meaningless. It would be most unusual if a country with such advanced industrial technology as to be a potential foreign source of critical or significant items were to be receiving economic or military assistance from the United States.

Section 5 would permit Congressional vetoes of Presidential determinations to override decisions by the Secretary of Defense (1) identifying items to be controlled, (2) identifying items available from foreign sources, or (3) disapproving specific exports. The Administration believes that such Congressional vetoes are unconstitu-

tional. In this case, they would in all probability also be without substance. Provisions in existing Section 4(h) concerning Presidential determination to override Defense on disapproval of specific exports have never been invoked. It is most unlikely that the proposed provisions for overriding Defense on identifying items to be controlled or identifying items with foreign availability would be invoked were they to be enacted. The leading role of the Department of Defense in such matters is clearly recognized throughout the Executive Branch.