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## BANK EXPORT SERVICES ACT

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JULY 1, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ST GERMAIN, from the Committee on Banking, Finance and Urban Affairs, submitted the following

### R E P O R T

together with

### A D D I T I O N A L V I E W S

[To accompany H.R. 6016]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking, Finance and Urban Affairs, to whom was referred the bill (H.R. 6016) to permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Bank Export Services Act".

#### INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved

by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A) (i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interests;

"(II) the financial or managerial resources of the companies involved warrant disapproval;

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B) (1) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on the date of the enactment of this paragraph relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company which invests in an export trading company may extend credit or cause any subsidiary to extend credit to any export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(1) may engage in or hold shares of a company engaged in the business or underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company

which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated exclusively for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. Any export trading company may perform such importing or other activities as are reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the exportation of goods or services produced in the United States;

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when such services are provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank owning stock in a bank described in this clause that invests in an export trading company shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act."

#### BANKERS' ACCEPTANCES

Sec. 3. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7) (A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal

at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction."

Amend the title so as to read :

A bill to permit bank holding companies and bankers' banks to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.

#### HISTORY OF THE LEGISLATION

H.R. 6016, a bill to permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions, was introduced by Banking Committee Chairman Fernand J. St Germain on March 31, 1982, and was cosponsored by 24 members of the Banking Committee. This bill addressed the banking-related issues that had arisen during consideration of ways to improve the export capabilities of the nation's economy.

In the 96th Congress, legislation was developed out of Congressional studies of the American exporting experience. The goal of that legislation was to reduce regulatory and statutory barriers to exporting and to encourage more American businesses to become involved in international trade. The previous Administration, as part of its overall export

policy, endorsed export trading company (ETC) legislation similar to that now under consideration by the Congress. As evidence of widespread support for increasing this nation's export training capability, the House Export Task Force was established consisting of over 100 members representing every geographic region in the United States with the prime purpose of advocating legislation that supports American export trade. Three members of the House Banking Committee have served from its creation on the Task Force executive committee: former Banking Committee Chairman Henry Reuss, now Chairman of the Joint Economic Committee; Stephen L. Neal, Chairman of the Subcommittee on International Trade, Investment and Monetary Policy; and John J. LaFalce, one of the earliest House sponsors of ETC legislation. This year, the Subcommittee on Financial Institutions Supervision, Regulation and Insurance heard testimony from the first Task Force President, Congressman Bill Alexander, as well as from its current President, Congressman Don Bonker.

In their consideration of trade matters, the previous Administration and the Export Task Force have focused on a number of issues, including both trade incentives and disincentives. The Banking Committee, on the other hand, as a result of its legislative jurisdiction, has directed its attention both to the issues of providing adequate bank financing for international trade activities as well as to a review of the impact of authorizing banking organization investments in ETCs on the long-standing policy of separating banking from commerce. The traditional policy has been based on the belief that the integrity of the payments mechanism and the nature of competition for funds would be compromised if banks undertook the risks inherent in commercial and industrial ventures, or had conflicts of equity interest that involved favorable treatment for some customers, possibly bringing into serious question the banker's principal role as an impartial arbiter of credit. It should be noted at the outset that both the previous Administration and the current Administration continue to adhere to the principle of the separation of banking and commerce while supporting increased bank participation in ETC operations, including equity ownership. Former Secretary of Commerce Philip M. Klutznick, in testimony before the Subcommittee on Financial Institutions on September 30, 1980 stated the following:

Because of their expertise and financial resources, banks can play an important role in the successful development of export trading companies. The administration believes that the banking provisions of S. 2718, approved by the Senate, adequately meet the concerns of safety and soundness for our financial system while permitting a leading role for bank participation in export trading companies.

Secretary of Commerce Malcolm Baldrige, on behalf of the current Administration, on April 22, 1982 reaffirmed support for this separation by stating the following:

I am aware of the concern that permitting banking institutions to become involved in these kinds of activities without adequate safeguards could lead to unsafe and unsound banking practices and conflicts of interest. I believe that the approach taken in H.R. 6016 effectively addresses these con-

cerns. This legislation will ensure adequate safeguards for banks, and at the same time, create the environment for increasing U.S. exports.

\* \* \* I also understand the concerns of the Subcommittee that there be as much separation as possible between a bank's involvement in export trade activities and the deposit taking functions of the depository institutions to ensure the financial soundness and integrity of the bank. \* \* \*

Deputy Secretary of the Treasury Richard McNamar also addressed the separation issue, saying:

We are convinced that active, profitable participation of banking organizations in export trading companies can be encouraged without disregarding the traditional policy of separating banking and commerce in the interest of preserving the safety and soundness of the banking system and the openness of our markets. The Administration feels that your bill maintains this traditional separation by authorizing export trading companies only as subsidiaries of bank holding companies. We wholeheartedly endorse this approach, since (1) with the proper safeguards it would not impose a significantly higher risk on the banks in the holding company group; and (2) with appropriate changes in banking laws, it would not give bank-affiliated ETCs an unfair competitive advantage over other business concerns competing for access to credit.

Subsequent to Senate passage of S. 734 on April 8, 1981, a number of informal staff discussions were held by the respective House Committees to which S. 734 was referred—Banking, Judiciary, and Foreign Affairs. In an effort to assist the Subcommittee on International Economic Policy and Trade of the House Foreign Affairs Committee, which evidenced a desire to move forward on companion bills to S. 734, the Chairman of the House Banking Committee advised that Subcommittee by letter of October 29, 1981, of the basic concepts which would ultimately govern this Committee's response to the bank participation title in pending ETC legislation. That letter reaffirmed the separation principle by stating in part:

\* \* \* I have been exploring the possibility of allowing depository institutions to engage in export trading company activities in a manner which assures as much separation as possible between that activity and the deposit taking function of the depository institutions. This might be accomplished by only allowing direct investments (purchases of the securities of export trading companies) by depository institution holding companies. Thus, operating export trading company activities within a bank or thrift institution itself would be precluded. The operations would be in separate subsidiaries. \* \* \*

In addition, the Committee encouraged a series of discussions within the Administration (Commerce, Treasury and the Office of Trade Representative) and between Commerce and the Federal Reserve Board in an effort to devise a realistic compromise insofar as

bank investments in ETCs are concerned. As a result of the discussions and continuing action by both the Foreign Affairs and Judiciary Committees, H.R. 6016 was introduced and became the subject of Subcommittee hearings on April 22, May 19 and May 25, 1982. Recognizing the importance of bankers' acceptances in financing international trade and need for modernization of the present Federal laws governing the use of bankers' acceptances, H.R. 6016 also incorporated the general scope of the provisions of H.R. 2438, introduced by Congressman Doug Barnard.

The Subcommittee on Financial Institutions heard from a total of 25 witnesses, including the Honorable Malcolm Baldrige, Secretary of Commerce; Governor Henry Wallich, Board of Governors, Federal Reserve System; and the Honorable Richard McNamar, Deputy Secretary, Department of the Treasury. Congressman Stewart McKinney, a member of the Subcommittee also testified and introduced a panel of witnesses representing the New England Congressional Institute. Senators John Heinz, Paul Tsongas and John Chafee, cosponsors of the Senate bill, S. 734, also appeared during the course of the hearings.

Concerning the importance of the legislation, Secretary of Commerce Baldrige testified about the potential benefits of ETCs.

Exports play a vital role in the U.S. economy. They pay for our imports. They preserve and create jobs. One job out of every eight in our manufacturing sector and one job out of every three in our agricultural sector are related to exports. In 1980, the Department of Commerce estimated that each billion dollars in manufactured exports supports approximately 32,000 jobs.\* \* \*

This Department's district export offices recently conducted an informal survey concerning the possible effects of export trading companies on U.S. exports. While such effects are difficult to quantify, four of our district offices estimated an increase in exports from five to twenty percent. If we take the lowest level of this estimate, a five percent increase over 1981 exports, the result would be an increase in exports of \$11 billion. This could translate into 350,000 additional jobs.

Mr. Chairman, the key to expanding our exports lies with the private sector. Export trading company legislation can, without any additional federal expenditures, give the private sector the tools to do the job of which it is capable.

In addition, the Subcommittee received statements from a number of organizations, including the American Bankers Association, the Federal Deposit Insurance Corporation, the Independent Bankers Association of America, the Institute of Foreign Bankers, the National Association of Mutual Savings Banks, the National Governors Association, the Small Business Administration and the U.S. Chamber of Commerce.

Following these hearings, and after consultation with members of the Subcommittee, an amendment in the nature of a substitute was prepared that incorporated many of the suggestions offered by witnesses and Subcommittee members. This amendment removed the authority for Edge Act corporations to invest in ETCs, at the suggestion

of the Federal Reserve Board and the Treasury Department. To enable the ten thousand or so small banks in the Nation which are not affiliated with a bank holding company to participate in the operations of an ETC, authority for bankers' banks to invest in ETCs was included in the substitute. The substitute prescribed a 60 day Federal Reserve disapproval period rather than an unlimited-term approval period as in the introduced bill. Refinements were also included in the substitute concerning the limits on credit extensions to ETCs, the definition of an ETC, and the provisions governing bankers' acceptances. The substitute amendment itself was amended in the Subcommittee markup to provide the Federal Reserve with additional authority to prevent unsafe and unsound speculative activity by an ETC, and to exempt State-chartered, non-Federal Reserve member banks from the bankers' acceptance limits contained in H.R. 6016. The amendment in the nature of a substitute, as amended, was adopted by voice vote by the Subcommittee on June 22.

The Full Committee held its markup on June 23 and by a vote of 40 to 0 ordered reported the bill as amended. The Full Committee adopted an amendment clarifying the authority of the Federal Reserve to disapprove a proposed ETC investment based on the financial or managerial resources of the companies involved or based on the potential investor's failure to provide required information.

#### NEED FOR THE LEGISLATION

##### CREATING JOBS THROUGH EXPORTS

In recent decades the U.S. marketplace has changed from one dominated by domestic manufacturers to one in which consumer demands have been increasingly satisfied by low-cost, low-wage foreign suppliers. In addition, the historically rapid growth in post World War II demand which accompanied the maturation of those individuals in the so-called "baby boom," has now slowed dramatically. New markets are needed by many U.S. producers if they are to maintain their present employment levels. A Commerce Department survey concluded that about 20,000 manufacturers and agricultural producers offer goods and services which could be highly competitive abroad. The greatest potential for building America's export capacity lies with the small and medium-sized firms that have not previously turned their attention to overseas markets.

With U.S. employment at very high levels, America's export policy becomes more important to an increasingly large number of Americans. Small and medium-sized firms create most of America's jobs, and it is these firms that face the greatest obstacle to successfully exporting the goods they produce. While no one can predict with complete accuracy the number of U.S. jobs that would be created by passage of the ETC legislation, a report prepared in the summer of 1981 by Chase Econometrics estimated that by 1985 ETCs could increase employment by between 320,000 and 640,000 workers. One out of eight U.S. jobs depends in one way or another on exports. New England is particularly dependent on exports and has been heavily involved in international trade. Regarding the job creating potential of ETCs, the New England Congressional Institute stated:

In 1980, the six New England states generated over \$10 billion in export sales. An estimated 135,000 jobs in New England are a direct result of export sales. When asked to predict the effect of passage of ETC legislation on their companies' receipts in the New England Congressional Institute survey conducted in April, 57 percent of the export trading company respondents estimated an increase of over 25 percent. All of the respondents indicated increases of at least 5 percent. Applying the lowest of those estimates to current export data suggests that *the potential effect of ETC legislation in New England means 500 million dollars earned in export sales, and over 10,000 jobs.* (Emphasis in original.)

#### BANKING AND COMMERCE SEPARATION

There is a long tradition of separating banking and commerce. As a result of practices evident in the period leading up to the crash of 1929 and the bank closings in the 1930s, legislation was enacted which created a wall between the operations of depository institutions and other fields of commercial enterprise. This wall was believed necessary to assure that the institutions which hold the financial deposits of U.S. industry and commerce were operated in a safe and sound manner and that concentrations of power resulting from combinations of banking and commercial firms were minimized. Over the years since passage of that legislation, Congress has allowed some exceptions to this separation. In particular, bank holding companies have been allowed to engage in activities which are "closely related to banking." These exceptions reflect the changing nature of the financial services industry and the development of new product lines and needs in the marketplace.

In some cases, bank involvement in such areas led to increased risk to those institutions and in some cases led to bank failures. The Nation must, as a result, continue to be cautious about making changes which bridge that traditional separation. Depository institutions continue to play a vital role in our economy and steps which place those institutions at risk must receive careful consideration, and if allowed, must provide sufficient protections to avoid undue risk.

It was natural that there would be concerns about allowing depository institutions to have equity interests in firms which provide many services not now offered by banks and which engage in high risk endeavors. The Federal Reserve Board and the Federal Deposit Insurance Corporation on several occasions expressed their strong reservations. Clearly any legislation in this area must address these concerns, and H.R. 6016 does so by allowing direct investments (purchases of the securities of ETCs) only by bank holding companies or bankers' banks but not by banks themselves. The risks of operating an ETC within a bank itself would, therefore, be precluded by the Act, and the existing ample bank holding company and bankers' bank supervisory and regulatory resources of the Federal Reserve System would be available to prevent undue risk taking.

## SUMMARY OF THE LEGISLATION

The Bank Export Services Act authorizes investments by bank holding companies and by bankers' banks in ETCs. Proposed investments must be disclosed in writing to the Board of Governors of the Federal Reserve System, after which the Board has 60 days (90 days if extended) to review the proposal and decide whether to disapprove it. Disapproval may be based on the need to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition or conflicts of interest, or on the conclusion that the financial or managerial resources of the companies involved warrant disapproval or that certain required information has not been provided in the proposal. Total investments in ETCs cannot exceed 5 percent of the investor's consolidated capital and surplus.

The bill contains specific limitations on the amount of lending to ETCs by entities investing in ETCs and by their subsidiaries. In addition, the bill contains safeguards against preferential terms and conditions in extensions of credit to ETCs as compared with other customers.

ETCs established under the bill are restricted as to their activities relating to securities, agricultural production and manufacturing. Certain limited types of product modification are permissible when needed to facilitate foreign sales and comply with foreign requirements. The Federal Reserve could require a bank holding company to divest its ETC or comply with conditions imposed by the Federal Reserve if the ETC engaged in certain types of speculation in commodities, securities or foreign exchange.

While ETCs are defined as being organized and operated exclusively to export U.S. goods or services or to facilitate their export, certain other activities, such as importing, can be performed if they are related to and incident to an export transaction and if the overall effect is to enhance exports. The bill defines types of export trade services in which ETCs can engage, including financing, marketing, advertising, and taking title to goods, if those services facilitate exports.

The bill also amends the Federal Reserve Act provisions relating to bankers' acceptances, to permit acceptances up to 150 percent of a bank's paid up capital and surplus (200 percent with Federal Reserve approval). Under the bill, member banks and U.S. branches and agencies of foreign banks subject to reserve requirements would be covered by the provisions. The capital of a branch or agency of a foreign bank is defined as the world-wide capital of the foreign bank, as determined by the Federal Reserve.

Domestic acceptances would be limited to 50 percent of a bank's total authorized acceptance amount, and acceptances to any one customer would be restricted to 10 percent of the bank's capital and surplus. When an acceptance is covered by a participation agreement among two or more banks, only the part retained or purchased by a bank would count against that bank's acceptance limitations.

## ISSUES CONSIDERED BY THE COMMITTEE

## FEDERAL RESERVE BOARD REVIEW

H.R. 6016, as amended, would permit investments in ETCs unless the Board of Governors of the Federal Reserve System disapproves the investment within 60 days (or 90 days if extended) of receipt of written notice from the proposed investor. This procedure is different from that contained in H.R. 6016 as introduced. The introduced bill would have required prior Federal Reserve approval of investments in ETCs, with no specified time limits for the review. The provision in the amended bill is intended to reduce paperwork and delay, and is an indication of the Committee's intent to encourage expeditious review of proposed investments in a manner consistent with the Federal Reserve's obligation to ensure that safety and soundness and competitive factors are fully considered. While the Committee recognizes the uniqueness of export trading activity, it is important to allow responsible investments in trading companies by bank holding companies or bankers' banks. The Committee believes that formation of ETCs can have significant public benefits through the enhancement of exports and the creation of jobs for American workers. With the safeguards enumerated in the bill and with prompt Federal Reserve review of proposed investments, ETCs can be established that will provide these benefits to the public and that will be appropriately organized as provided in the legislation.

By changing Section 4(c) of the Bank Holding Company Act with respect to ETCs, the Committee does not intend to affect any provisions of the Bank Holding Company Act that relate to other affiliates of bank holding companies. The Committee's action in this legislation should not be viewed as any indication of a change, either current or prospective, in the way that the Bank Holding Company Act regulates relationships between bank holding companies and their non-ETC affiliates.

## LENDING BY INVESTORS TO ETCs

H.R. 6016, as amended, contains restrictions on lending to ETCs by entities investing in ETCs and by other subsidiaries of those entities. The bill includes an overall limitation on such lending to an ETC of 10 percent of the consolidated capital and surplus of the bank holding company or of the bankers' bank. Furthermore, banks that are investors in bankers' banks are limited to lending up to 10 percent of their capital and surplus to an ETC. These limits relate to lending and not to investments in ETCs, which are governed by other provisions of the bill.

These lending limitations are supplemented by requirements that loans to ETC affiliates be on non-preferential terms and not present excessive risks or other undesirable terms. When taken together these limitations establish reasonable boundaries to the amount and type of credit that can be extended to ETCs to help protect the safety and soundness of the institutions involved.

As introduced, H.R. 6016 incorporated the terms of Section 23A of the Federal Reserve Act, which relates to inter-affiliate lending. The approach taken in the amended bill is simpler and clearer, in that it establishes an overall credit limit without requiring strained redefinitions of what a "member bank" and an "affiliate" are for purposes of Section 23A.

The bill also exempts lending by investors and their affiliates (including banks) to ETCs from the application of Federal laws specifically relating to collateral requirements. While this provision of the bill removes such lending from mechanistic coverage by the collateral restrictions in Section 23A, the bill also requires that lending to ETCs not involve more than the normal risk of repayment or other unfavorable features. Under this standard, the Federal Reserve could take appropriate action to deal with excessive lending risk, taking into account the structure and financial needs of export trading companies.

The committee is fully aware of the general need to restructure section 23A of the Federal Reserve Act. Both the Federal Reserve and the Treasury Department have submitted proposals to Congress that would reform section 23A. Congressman Bruce Vento has introduced H.R. 5198 which would revise the restrictions on transactions between banks and their affiliates embodied in section 23A. The treatment of section 23A in this bill should not be construed as an attempt to reform section 23A or to prejudge the outcome of hearings on general modification of section 23A. Rather, the Committee's treatment of section 23A with respect to ETCs is intended solely to address their unique credit needs.

#### EXPORT TRADING COMPANY ACTIVITIES

During hearings by the Financial Institutions Subcommittee, numerous witnesses interpreted the use of the term "exclusively" in H.R. 6016, as introduced, to mean that an ETC could engage only in export transactions, and that other trading activities necessary to promote U.S. exports, such as barter and third country trading and even minimal import transactions, would be prohibited.

To preserve the export promotion character of this legislation while accommodating the concerns expressed by witnesses, the bill, as amended, now clearly allows reasonably related importing, barter and third country trade activities under the modified definition of an ETC.

The new language is meant to allow an ETC to engage in ancillary international trade transactions, but only if they are incident to export transactions. An example of what is intended by this language was provided by John Deegan, President of DEXIM, Inc., a successful export trading company:

One of our larger American manufacturers of film and photographic papers, supplies, etc. has been very successful in exporting to Eastern Europe. Export sales are reaching significant levels. One of the reasons for this success is that the American company has agreed to bring small quantities of wooden products in to the U.S. to help a favored small manufacturing section of the foreign client. The import of these wooden items is negligible when compared to the volume of

U.S. export, but the flexibility was instrumental to the U.S. export success.

This new definition will expressly allow an ETC to engage in importing or other activities reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the export of U.S. goods and services. Nothing in this legislation is intended to affect in any way the U.S. tariff laws as they might apply to the import of components, such as auto components, that are assembled in this country.

#### PRODUCT MODIFICATION.

H.R. 6016 prohibits ETCs from engaging in manufacturing except for incidental manufacturing activities, defined as product modification, which are necessary to meet foreign country requirements and to facilitate the sale of goods overseas. Thus, product modification can be practiced solely to adapt a product to the different circumstances it will operate under in a foreign country. Changing the language which is presented on a computer screen from English to a foreign language when exporting computer software packages, or switching power cords from the U.S. standard three-prong plug to various plugs useable overseas, are examples of product modification.

However, if a product is in any way altered so that the nature or the function of the product is changed, then the changed product has not been modified; it has been manufactured. Thus, changing a primary good, such as oil, into a final good, such as gasoline or plastic, would change the nature of the good, and that would not constitute product modifications as intended by this Act.

#### TITLE TO GOODS

As introduced, H.R. 6016 implicitly would have allowed an ETC to take title to goods to facilitate an export transaction. Several witnesses, including exporters and representatives from export trading company associations, expressed the need for more explicit authority for an ETC to engage in this activity. The National Association of Export Companies, Inc., for example, testified before the Financial Institutions Subcommittee on May 25 regarding this concern:

\* \* \* the vast majority of NEXCO ETCs act as export distributors for U.S. manufacturers, buying goods on their own account and marketing them abroad. This is the essence of export management and export trading. If bank-ETCs are denied this right, they will not be able to live up to the expectations of this legislation.

Because of such comments, ETCs were provided explicit authority to engage in taking title to goods. However, this explicit authority must be balanced by providing the Federal Reserve Board with the authority to establish necessary standards for taking title to goods to ensure against unsafe or unsound practices that could adversely affect the investing bank holding company or bankers' bank. The Federal Reserve Board's standards may specifically include inventory to capital ratios, based on the capital of the ETC.

## JOINT VENTURES IN TRADING

During consideration of this legislation the Committee heard from numerous individuals and organizations about the merits of ETCs and the need to encourage their development. Presently, there is no restriction in Federal law which precludes the formation of ETCs. As with most corporate formations, the relevant considerations are state law and regulation as they pertain to the chartering of companies. Thus, there are hundreds of export management companies and export trading companies which have been formed to provide services for potential exporters. These firms did not depend upon Federal legislation to organize. Most recently, two large U.S. corporations, General Electric and Sears, Roebuck and Co., formed ETCs designed to provide exporting services to U.S. businesses.

H.R. 6016 does not affect the ability of individuals and organizations to form ETCs. During Committee consideration of the bill this point was emphasized by several Members. It was suggested that state and local government entities, including port authorities, could be an important source of overall export expansion and of the development of innovative export programs keyed to local, state, and regional needs. In addition, other organizations, for example, agricultural cooperatives, have similar experience and needs. This bill in no way affects the ability of such organizations to continue these efforts, including their ability to organize, own, or participate in or support ETCs. H.R. 6016 addresses only the question of whether banking organizations should be authorized to invest in ETCs and, if so, the restrictions which would be placed on ETCs sponsored by such banking organizations.

The Committee does stress that the legislation does not preclude a banking organization that is authorized to invest in an ETC under the legislation from engaging in a joint venture, partnership or other cooperative arrangement with other authorized banking organizations or other nonbanking firms to organize an ETC. Such cooperative arrangements are in fact to be encouraged. There are numerous firms and organizations which may want to form an ETC but feel that they lack either investment or capital or expertise. A banking organization may well be able to provide such assistance through a joint venture or partnership arrangement with these other firms. The ETC so supported, however, would be subject to the restrictions contained in this legislation inasmuch as a banking organization is investing in that ETC.

## BANKERS' ACCEPTANCES

H.R. 6016 also addresses the need for additional bank support of export trade through liberalization of the restrictions on the amount of bankers' acceptances which a bank may issue. A bankers' acceptance is a device which allows a seller of a good to complete a sale to a buyer whom the seller may not know. The buyer for example may not want to pay for the goods until they are in his hands or are sold. Thus, the buyer needs credit for the purchase and the seller may not be able to judge the credit worthiness of the buyer. A bankers' acceptance facilitates the sale by utilizing a bank's credit standing to substitute for that of the buyer with the bank guaranteeing payment to the seller. The

market for acceptances has grown over the years and there is an active secondary market as well. However, member banks are restricted by statute in the amount of bankers' acceptance which they may have outstanding. These limitations were placed in the Federal Reserve Act in 1913 and have not been changed since that time. As trade in the international economy takes on increasing importance for U.S. business the need for bankers' acceptances is increasing. The current limitations on bank issuance of acceptances may well preclude adequate financing of export transactions in the future. Thus, the bill raises the limits in the Federal Reserve Act on the amount of acceptances which a bank may issue.

H.R. 6016 stipulates that that portion of an eligible bankers' acceptance issued by an institution and which is covered by a participation agreement sold to another institution will not count towards the issuance limits of the issuing institution. A bank can incur two distinct responsibilities when it issues a bankers' acceptance. First, it accepts the responsibility of covering the borrower's debt if the borrower defaults on its repayment obligation. Second, if the bankers' acceptance is sold into the secondary market, the issuing bank has the responsibility to make payment on the bankers' acceptance when it comes due.

A participation agreement, within the meaning of H.R. 6016, occurs if a participating bank assumes the credit risk associated with a borrower defaulting on its repayment obligation. The participating bank does not also have to accept responsibility for making repayment on a bankers' acceptance presented by a secondary market buyer in order for the participated portion of the acceptance to be exempt from the issuing bank's participation limits. Therefore, the names of the participating institutions do not have to be on the face of the bankers' acceptance, because the issuing bank is liable for the full amount of the acceptance to its secondary market purchaser.

#### STATEMENTS MADE IN ACCORDANCE WITH HOUSE RULES

In accordance with clauses 2(1)(2)(B), 2(1)(3) and 2(1)(4) of rule XI of the Rules of the House of Representatives, the following statements are made.

#### COMMITTEE VOTE (RULE XI, CLAUSE 2(1)(2)(B))

H.R. 6016, as amended, was ordered reported favorably by a vote of 40 votes in favor of reporting the bill favorably, and no votes against reporting the bill favorably.

The following Committee members cast votes in favor of reporting the bill favorably: Representatives St Germain, Reuss (by proxy), Minish, Annunzio, Mitchell, Fauntroy (by proxy), Neal, Patterson, Blanchard (by proxy), Hubbard, LaFalce (by proxy), Evans (Ind.), D'Amours (by proxy), Lundine (by proxy), Mattox (by proxy), Vento, Barnard, Garcia (by proxy), Lowry, Schumer (by proxy), Frank, Patman, W. Coyne, Hoyer (by proxy), Stanton, Wylie, McKinney, Leach, Evans (Del.), Bethune, Shumway (by proxy), Parris, Weber, McCollum (by proxy), Carman, Wortley, Roukema, Lowery (by proxy), J. Coyne (by proxy), and Bereuter.

There were no votes cast against reporting the bill favorably.

The following member was present but not voting: Representative Paul.

The following members were absent: Representatives Gonzalez, Oakar, Hansen, and Dreier.

OVERSIGHT FINDINGS AND RECOMMENDATIONS (RULE XI, CLAUSES 2(1)(3)  
(A) AND (D), AND RULE X, CLAUSES 2(b)(1) AND (2) AND 4(c)(2))

The Subcommittee on Financial Institutions Supervision, Regulation and Insurance held hearings on April 22, May 19, and May 25, 1982, to inquire into the need for and any appropriate restrictions to be placed on ownership of export trading companies by banking organizations. The Subcommittee heard from 25 witnesses and received statements from additional groups. Based upon the testimony at the hearings, the Committee finds that ownership of shares in export trading companies by bank holding companies and bankers' banks would be appropriate and would help in the effort to enhance America's exports and create new jobs for American workers. In addition, the Committee finds that raising the authorized level of bankers' acceptances would provide valuable assistance in trade financing. Accordingly, the Committee recommends that the House pass H.R. 6016, as amended, the bill that accomplishes the objectives reflected in these findings.

No formal oversight findings or recommendations have been submitted by the Committee on Government Operations.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974 (RULE XI, CLAUSE 2(1)(3)(C))

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., June 29, 1982.*

HON. FERNAND J. ST GERMAIN,  
*Chairman, Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6016, the Bank Export Services Act, as ordered reported by the House Committee on Banking, Finance and Urban Affairs, June 23, 1982.

Section 2 of H.R. 6016 would allow investments by bank holding companies and by bankers' banks in export trading companies, and would establish a review procedure for proposed investments, to be conducted by the Board of Governors of the Federal Reserve.

Depending upon the number, complexity, and timing of applications for investments in export trading companies, it is estimated that approximately ten to eighteen additional staff years, at an estimated cost of between \$400,000 and \$700,000, would be required annually for this purpose. Since the Federal Reserve Board is off-budget, however, any additional cost resulting from enactment of H.R. 6016 would be offset by raising assessments, which are set at a level sufficient to cover operating expenses.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,  
*Director.*

#### INFLATION IMPACT STATEMENT (RULE XI, CLAUSE 2(1)(4))

Your Committee believes that H.R. 6016, as amended, will have no inflationary impact.

#### SECTION-BY-SECTION ANALYSIS OF H.R. 6016, AS AMENDED

##### SECTION 1: SHORT TITLE

Section 1 of the bill prescribes the short title of the bill, "The Bank Export Services Act".

##### SECTION 2: INVESTMENTS IN EXPORT TRADING COMPANIES

Section 2 of the bill authorizes investments by bank holding companies and by bankers' banks in export trading companies (ETCs). Investments in ETCs cannot exceed 5 percent of the bank holding company's or bankers' bank's consolidated capital and surplus.

Under the bill, a bankers' bank is defined as a bank which is organized solely to do business with other banks and their officers, directors, or employees; which is owned primarily by the banks with which it does business; and which does not do business with the general public.

The bill establishes a procedure for review of proposed investments in ETCs. The Federal Reserve must be provided written notice sixty days in advance of the proposed investment. If insufficient or inaccurate information is provided in the notice, the Federal Reserve may have an additional thirty days to review the application. The Federal Reserve may disapprove the proposed investment if necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition or conflicts of interest, or if the financial or managerial resources of the companies involved warrant disapproval or if required information is not provided in the notice document. Written notice of any disapproval, and the reasons for it, must be provided within three days of the disapproval decision. Proposed investments could be made in advance of the expiration of the sixty day period if the Federal Reserve gives written notice of its intent not to disapprove the proposed investment.

The bill also prescribes limitations on lending by the investing entity and its subsidiaries to the ETC. For a bank holding company, total extensions to credit by the holding company and its subsidiaries to an export trading company could not exceed 10 percent of the holding company's consolidated capital and surplus. With respect to bankers' banks, an identical limitation would apply, and in addition a bank that is an investor in the bankers' bank would be limited to lending not more than 10 percent of its capital and surplus to an ETC. Specific collateral requirements for lending that are prescribed in existing Federal law would not apply to these extensions of credit by investing

bank holding companies, bankers' banks, or any of their subsidiaries. Any credit extended to an ETC by an investing bank holding company or bankers' bank or their subsidiaries could not be granted on terms more favorable than those afforded other borrowers in similar circumstances, and such credit could not present more than the normal risk of repayment or other unfavorable features.

The bill permits an ETC to engage in securities activities only to the extent its parent investor may do so under Federal or State law or regulation. In addition, ETCs cannot engage in agricultural production activities or in manufacturing, except for incidental product modification necessary to enable the goods or services to conform to foreign country requirements and to facilitate their sale in foreign countries. The Federal Reserve could require a bank holding company to divest its ETC or comply with conditions specified by the Federal Reserve if the ETC engages in certain types of speculation in commodities, securities, or foreign exchange.

The bill defines an export trading company to mean a business organized and operated exclusively to export goods or services produced in the United States or to facilitate the export of such goods or services by unaffiliated persons by providing one or more export trade services. Importing or other activities reasonably related to and incident to an exporting transaction can be performed by an ETC, so long as the overall effect of those activities is to enhance the exportation of goods or services produced in the United States. Export trade services would include consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when those services facilitate the export of goods or services produced in the United States.

### SECTION 3: BANKERS' ACCEPTANCES

This section amends paragraph (7) of section 13 of the Federal Reserve Act which relates to bankers' acceptances. The coverage of the Act's provision would be broadened to include, in addition to member banks, branches and agencies of foreign banks subject to reserve requirements. The overall limit on a bank's acceptances would be raised from the current level of 50 percent of the bank's paid up capital and surplus (100 percent with Federal Reserve Board approval) to 150 percent (200 percent with Federal Reserve Board approval).

The bill specifies that acceptances growing out of domestic transactions cannot exceed 50 percent of the bank's authorized issuance limit. The current limitation on the issuance of unsecured acceptances for any one customer to 10 percent of the bank's capital and surplus would be retained. The amendment would also specify that, when banks enter into participation agreements to share the obligations of an acceptance with another institution, the portion of the obligation retained or purchased by a bank would count toward that bank's acceptance limits. The bill defines the capital of a United States branch or agency of a foreign bank to be the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Federal Reserve.

The Federal Reserve would be authorized to define any terms in carrying out the provision.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECTION 4 OF THE BANK HOLDING COMPANY ACT OF 1956

INTERESTS IN NONBANKING ORGANIZATIONS

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

\* \* \* \* \*

(c) The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) \* \* \*

\* \* \* \* \*

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a) (2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe; **[or]**

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest**[.]**; or

(14) *shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such in-*

vestments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A) (i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the financial or managerial resources of the companies involved warrant disapproval; or

(III) the bank holding company fails to furnish the information required under clause (iii).

(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vi) A proposed investment may be made prior to expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B) (i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on the date of the enactment of this paragraph relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company which invests in an export trading company may extend credit or cause any subsidiary

to extend credit to any export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) For purposes of this paragraph—

(i) the term "export trading company" means a company which does business under the laws of the United States or any State and which is organized and operated exclusively for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. Any export trading company may perform such importing or other activities as are reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the exportation of goods or services produced in the United States;

(ii) the term "export trade services" includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and foreign forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when such services are provided in order

to facilitate the export of goods or services produced in the United States

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank owning stock in a bank described in this clause that invests in an export trading company shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

In the event of the failure of the board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

\* \* \* \* \*

## SECTION 13 OF THE FEDERAL RESERVE ACT

### POWERS OF FEDERAL RESERVE BANKS

SEC. 13. Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any non-member bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided*, Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or non-member bank or other depository institution from making reasonable

charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. Nothing in this Act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount, and the notes, drafts, and bills of exchange of factors issued as such making advances exclusively to producers of staple agricultural products in their raw state shall be eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than 90 days, exclusive of grace.

In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d), of this Act, to discount for any individual, partnership, or corporation, notes, drafts, and bills of exchange of the kinds and maturities made eligible for discount for member banks under other provisions of this Act when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank: *Provided*, That before discounting any such note, draft, or bill of exchange for an individual or a partnership or corporation the Federal reserve bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All such discounts for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, any Federal reserve bank may discount or purchase bills of exchange payable at sight or on demand which grow out of the

domestic shipment or the exportation of nonperishable, readily marketable agricultural and other staples and are secured by bills of lading or other shipping documents conveying or securing title to such staples: *Provided*, That all such bills of exchange shall be forwarded promptly for collection, and demand for payment shall be made with reasonable promptness after the arrival of such staples at their destination: *Provided further*, That no such bill shall in any event be held by or for the account of a Federal reserve bank for a period in excess of ninety days. In discounting such bills Federal reserve banks may compute the interest to be deducted on the basis of the estimated life of each bill and adjust the discount after payment of such bills to conform to the actual life thereof.

The aggregate of notes, drafts, and bills upon which any person, copartnership, association, or corporation is liable as maker, acceptor, indorser, drawer, or guarantor, rediscounted for any member bank, shall at no time exceed the amount for which such person, copartnership, association, or corporation may lawfully become liable to a national banking association under the terms of section 5200 of the Revised Statutes as amended: *Provided, however*, That nothing in this paragraph shall be construed to change the character or class of paper now eligible for rediscount by Federal reserve banks.

Any Federal reserve bank may discount acceptances of the kinds hereinafter described, which have a maturity at the time of discount of not more than 90 days' sight, exclusive of days of grace, and which are indorsed by at least one member bank: *Provided*, That such acceptances if drawn for an agricultural purpose and secured at the time of acceptance by warehouse receipts or other such documents conveying or securing title covering readily marketable staples may be discounted with a maturity at the time of discount of not more than six months' sight exclusive of days of grace.

Any member bank may accept drafts or bills of exchange drawn upon it having not more than six months sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods provided shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No member bank shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus: *Provided, however*, That the Board of Governors of the Federal Reserve System, under such general regulations as it may prescribe, which shall apply to all banks alike regardless of the amount of capital stock and surplus, may authorize any member bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred per centum of its paid-up and unimpaired capital stock and surplus: *Provided further*,

That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty per centum of such capital stock and surplus.】

(7)(A) *Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as "institutions"), may accept drafts or bills of exchange drawn upon its having not more than six months' sight to run, exclusive of days of grace—*

(i) *which grow out of transactions involving the importation or exportation of goods;*

(ii) *which grow out of transactions involving the domestic shipment of goods; or*

(iii) *which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.*

(B) *Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).*

(C) *The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).*

(D) *Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.*

(E) *No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.*

(F) *With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.*

(G) *In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board*

*shall define an equivalent measure to which the limitations contained in this paragraph shall apply.*

*(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.*

\* \* \* \* \*

ADDITIONAL VIEWS OF REPRESENTATIVE CHALMERS  
P. WYLIE ON H.R. 6016

Legislation to permit banking organizations to invest in export trading companies makes good sense. I believe export trading companies can be a useful means of improving the export performance of the United States. If export performance is to be improved, there are many measures to be taken, and the most important are those which will make American products more competitive in world markets. Measured against this need, H.R. 6016 is a very modest proposal which deserves a chance to work.

It is toward this end of making H.R. 6016 a more workable bill that I offered one amendment which was agreed to during full Committee markup and discussed two other amendments, which I refrained from offering.

The amendment which was agreed to added "managerial and financial resources" to the criteria which the Federal Reserve would be permitted to consider in determining whether or not to disapprove an application by a bank holding company to invest in an export trading company. Under the bill, applications would be deemed to be approved if the Fed does not disapprove them within 60 days, which period might be extended by 30 days. It was one of several amendments concerning disapproval criteria which the Fed requested in a letter to Chairman St Germain which appears in the body of this Report.

In making the case for this amendment, the Fed informed the Committee that unless "financial or managerial resources" was added to the existing criteria, the Fed would be powerless to disapprove on "safety and soundness" grounds an investment by a bank holding company in an export trading company when the investment might endanger the safety and soundness of the bank subsidiaries but would not be so serious as to cause their failure. Since it is the intent of the amendment to grant the Fed sufficient regulatory authority to safeguard the safety and soundness of banks as they might be affected by bank holding company investments in export trading companies, the Committee agreed to this portion of the Fed's recommendation. This amendment, for example, would enable the Board to disapprove an investment if the investment would materially affect the strength of an affiliated bank or if the past practices of the holding company management indicate a probability that the trading company might be run in such a manner that the soundness of the parent or of an affiliated bank might be undermined. It is not intended, however, that the Board read into this amendment the authority to effect changes in the holding company or in its nonbanking subsidiaries other than the export trading company, unrelated to the actual acquisition of an export trading company and to the effect of such acquisition on the parent and on an affiliated bank.

Moreover, it is important to note that other portions of the Fed's request for additional authority to disapprove applications were not adopted. In his letter to Chairman St Germain, Chairman Volcker proposed the addition of two additional disapproval criteria, on the ground that, "There is no need to authorize bank participation in a new area of commercial activity—particularly one that is likely to be highly leveraged—unless such participation indeed is needed to accomplish the overall policy purpose of increasing the formation and viability of export trading companies and their success in improving U.S. export performance."

It is my understanding that the decision by the Committee not to adopt this portion of the Fed's suggestions reflects a determination that bank participation in export trading companies is "indeed needed to accomplish the overall policy purpose" to which Chairman Volcker referred. The amendment does not delegate to the Fed plenary authority to disapprove applications on the basis of its application of a "public benefits" test. The hearings provide ample evidence that the Committee has concluded that bank participation in export trading companies will be in the public interest and that banks should be given a chance to show what they can contribute through trading companies to the improvement of this country's export performance. This legislation authorizes the Fed to disapprove applications only on basis of the tests set forth in the legislation, as applied solely to the proposed export trading company investment.

There were two other amendments which were suggested by the Department of the Treasury, which I refrained from offering at full Committee in deference to the Chairman's desire to get quick action on the bill. Nevertheless, I believe that these amendments would improve the bill if they were to be adopted by the House and Senate conferees. Even though the Committee has made great improvements in this legislation since it was first introduced, I believe there is room for further improvement, so I will explain briefly the two Treasury proposals which were not considered by the Committee.

The first amendment would have deleted the special limitation on the ability of a bank holding company to finance an export trading company subsidiary. This would make applicable the existing provisions of section 23A to extensions of credit by a bank to the bank holding company, in the same manner as they apply now to extensions of credit to support any nonbanking activity. I do not believe it is necessary to establish a separate provision governing bank financing of export trading companies, and I am concerned that this special provision might impede the implementation of bank participation in export trading companies because it will require new procedures on the part of investing bank holding companies and new interpretations by the Federal Reserve. Finally, there is the danger that if a special provision is adopted in this case, it will be the forerunner of a panoply of special, complex provisions to be applied to other nonbanking activities.

The second amendment would have liberalized the definitions of "export trading company" and "export trade services" to give export trading companies more leeway to import, in order to improve their ability to increase exports. It should be obvious to any reasonable person that trade is a two-way street and that the ability to improve ex-

port performance may sometimes depend upon the ability to import, as well. The existing provision permits an export trading company to "perform such importing or other activities as are reasonably related to and incident to an exporting transaction, if the overall effect is to enhance the exportation of goods or services produced in the United States." This raises the possibility that before an export trading company can engage in importing, the agencies administering this bill, principally the Federal Reserve, will be called upon to make such detailed findings as to render export trading companies unworkable as a means of promoting exports. Treasury suggested, and I concurred, that such a perverse result could be avoided if export trading companies were required to devote their activities "predominantly" to export, rather than "exclusively," as provided in the bill, where "predominantly" would require that exports make up at least 75 percent of combined exports from and imports to the United States. My amendment would also have deleted the requirement that "export trade services" be provided "in order to facilitate the export of goods or services produced in the United States" and substituted report language calling for the services to be provided in accordance with the general purposes of the bill.

In summary, I would emphasize that this is a good bill, but it can be rendered unworkable if bank-related export trading companies are hamstrung by unnecessary regulations which the bill invites the Federal Reserve to impose. I do not believe this is what the Committee intends, and before this bill becomes law, we should take additional steps to ensure that a device which Congress conceived as a boon to exports will not become an intolerable regulatory burden to investors who attempt to implement it.

CHALMERS P. WYLIE.

## ADDITIONAL VIEWS OF HON. STEWART B. MCKINNEY

As an original sponsor of H.R. 6016 and a co-sponsor of previous export trading company proposals I strongly support this bill as reported by the Banking Committee. The legislation will help this nation improve its export performance as well as constituting an important step toward meeting the trade goals of the Reagan Administration.

In our deliberations I have approached this proposal from several different perspectives—as a member of the Banking Committee, as a regional representative and as a national legislator. As one who has served on the Banking Committee for twelve years I have been very concerned about the historical separation of commerce and banking that has existed in this country. Although there have been valid points expressed about the role banks should have in export trading companies during our Committee's hearings, I feel that H.R. 6016 includes adequate safeguards to assure that allowing bank holding companies and bankers' banks to invest in export trading companies will not jeopardize the traditional soundness and stability of our financial institutions. We have included language to specifically prohibit and protect against activities that would be inconsistent with our intent in permitting bank involvement in these trading companies. Speculation is clearly not to be permitted by the regulators. However, the Banking Committee through this legislation has provided the banking industry with a vehicle that improves their ability to compete while also improving their ability to service domestic manufacturers.

In my role as a Connecticut Congressman I testified in support of this proposal representing the New England Congressional Caucus. As the result of research commissioned by that group of regional representatives I was able to share with the Banking Committee statistics which indicate that in New England alone exporting represents a growth industry of major importance. In fact export growth since 1960 has exceeded manufacturing growth in this region and I have little doubt that in other parts of the country similar growth can be expected if the tools made available in this legislation are utilized. I have encountered numerous bankers and businessmen from different regions who have indicated an interest in developing markets for their services and products domestically and abroad. We should encourage this attitude and H.R. 6016 does just that in my opinion.

Also, it is my belief that this legislation nationally will help expand U.S. exports. It is obviously in our interest to do whatever is possible in that regard as our economy begins to rebound. H.R. 6016 has the strong endorsement of the Administration as Commerce Secretary Baldrige testified before our Committee. From other witnesses we learned that although a great many smaller manufacturing firms are willing to expand into foreign markets, they have not done so for lack of information and expertise and the type of assistance that can

be offered by export trading companies. It is estimated that in the next few years the impact of this legislation could produce between 300,000 and 600,000 new jobs and boost our GNP by between \$25 billion to \$50 billion. The American businessmen I have met would be thrilled to see such results.

These are difficult times for our economy and it is extremely difficult for American products to compete internationally. But this is not the time for Congress to retreat into protectionism. It is a time for us to free American businesses to compete in the world market using the same methods as our trading partners do. Aggressively seeking out new markets is the American way: H.R. 6016 is consistent with that philosophy. I urge my colleagues to support the Bank Export Services Act as reported by the Banking Committee and send that message to the American business community.

STEWART B. MCKINNEY.

## ADDITIONAL VIEWS OF HON. RON PAUL H.R. 6016

Only because I regard this bill as a start in the right direction, have I supported it. Unlike so many bills considered by our committee, the Bank Export Services Act, H.R. 6016, actually may produce a little less regulation of the banking industry and it may expand the types of business bank holding companies may enter.

I continue to believe that we should impose no artificial barriers to anyone's business. Neither principles of logic nor laws of economics require that banks be prohibited from all forms of manufacturing. Similarly, there should be no reason to prevent a retailer from offering certificates of deposit or a securities firm from operating a bus line. Other nations have such mixtures and they exist with a sound economic structure.

The Bank Export Services Act is something of an acknowledgment of other nations' success in mixing banking and commerce. By allowing the export trading company as a line of business for a bank holding company or a bankers' bank, the committee hopes to emulate the success of the Japanese and their own form of bank-related export trading companies. It is an admirable hope but one that may go aglimmering with the limits on the types of business and the regulatory burden we have placed on these companies.

There are steps (or half steps) toward deregulation in this bill. We have responded to criticisms of the Federal Reserve and its excessively long decision-making process on holding company applications. The bill gives the Federal Reserve only a few reasons to disapprove a holding company's application to acquire an interest in an export trading company and the bill requires a rather prompt decision. There is an initial 60-day period in which the Federal Reserve may disapprove an application and one extension of 30 days for the holding company to provide necessary additional or corrective information. The Federal Reserve will not be able to withhold a decision interminably based on its administrative whim or its refusal to face up to a difficult interpretative problem. The Federal Reserve would not be permitted to disapprove an application based on a holding company's failure to meet some vague standard of convenience and needs.

The procedure in H.R. 6016 may be an improvement over the existing process, but it is still a burden to the bank holding companies. Should Sears or American Express decide to establish an export trading company as one of its financial services, the principal delay will be their own internal procedures, not the procedures of a supervisory agency. I hope we may soon see the time where a bank's entry into a new line of commerce is as easy as Sears'.

I am also pleased that the committee has defined the powers available to the export trading companies to include taking title to goods. If the companies are to succeed in the export market they should be able to deal with all possible customers as a principal, if necessary. Of

course, taking title may mean a mixing of banking and commerce. This mixing should do no harm to our economic structure and, if the bill's proponents are to be believed, it may enhance the power of the export trading companies.

I would be happier with this bill if it were less restrictive. I would be most pleased if we had decided to remove all restrictions on bank holding companies, banks, and business enterprises that wish to offer banking services. Banks and other financial intermediaries need not be limited to only a few lines of business and no others. I hope at some future time we will be bold enough to move banking into a fully competitive environment without the suffocating restrictions and protections now in law. The Bank Export Services Act may be a small part of a larger deregulation and it is on that hope that I support it.

RON PAUL.

