

EXPORT TRADING COMPANY ACT OF 1982

JULY 15, 1982.—Ordered to be printed

Mr. ZABLOCKI, from the Committee on Foreign Affairs,
submitted the following

REPORT

[To accompany H.R. 1799 which on February 6, 1981, was referred jointly to the Committee on Foreign Affairs, the Committee on Banking, Finance and Urban Affairs, the Committee on the Judiciary, and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 1799) entitled "The Export Trading Company Act of 1981", 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 Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

Sec. 2. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(6) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(7) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(8) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(9) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(10) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations and export trading companies, by making the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

Sec. 3. For purposes of this section and sections 2 and 4 of this Act—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services;

(3) the term "export trade services" includes international market research, advertising, marketing, insurance, 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, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means any person, corporation, partnership, association, or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "export trade association" means an association engaged solely in export trade which is exempt from the antitrust laws under the Webb-Pomerene Act;

(6) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 4. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such

office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE I—EXPORT TRADING COMPANIES

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 10i. (a) Section 4(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 been approved by the Board, except that such investments, whether direct or indirect, in such shares shall not exceed 5 percent of the bank holding company's consolidated capital and surplus. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the bank holding company and the export trading company involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. Notwithstanding any other provision of law, in any case in which a bank holding company invests in an export trading company, such bank holding company shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of the Federal Reserve Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to the first sentence of this paragraph shall not apply with respect to the limitations imposed under section 23A of the Federal Reserve Act. For purposes of this paragraph, 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 principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this paragraph, 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, and financing, when provided in order to facilitate the export of goods or services produced in the United States. For purposes of this paragraph, an export trading company (A) 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 its bank holding company investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities. The name of the export trading company involved shall not be similar in any respect to the name of the bank holding company which owns any of its voting stock or other evidence of ownership."

(b) Section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.) is amended—

- (1) in the first paragraph of subsection (c), by inserting "(1)" after "(c)"; and

(2) by inserting after the first paragraph of subsection (c) the following:

"(2) (A) Notwithstanding any other provision of law, with the approval of the Board of Governors of the Federal Reserve System, a corporation organized under this section may purchase and hold stock or other certificates of ownership in any other corporation which is an export trading company. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the corporations involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of

interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. No corporation organized under this section shall invest in such export trading companies in an amount in excess of 25 percent of its own capital and surplus. The second proviso of paragraph (1) shall apply to any corporation referred to in this paragraph.

“(B) Notwithstanding any other provision of law, in any case in which a corporation organized under this section purchases or holds stock or other certificates of ownership in any other corporation which is an export trading company, such acquiring corporation, or any bank or banking institution which purchases or holds stock or other certificates of ownership in such acquiring corporation, shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of this Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to subparagraph (A) shall not apply with respect to the limitations imposed under section 23A of this Act.

“(C) For purposes of this section—

“(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 principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services; and

“(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, and financing, when provided in order to facilitate the export of goods or services produced in the United States.

“(D) For purposes of this subsection, 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 the corporation which is organized under this section and which invests in the company defined in this clause may do so under applicable Federal and State banking law and regulations; and

“(ii) may not engage in manufacturing or agricultural production activities.

“(E) The name of the export trading company involved shall not be similar in any respect to the name of the corporation organized under this section which owns any of its voting stock or other evidences of ownership.”.

TITLE II—ANTITRUST PROVISIONS

DEFINITIONS

SEC. 201. The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

SECTION 1. DEFINITIONS.

“As used in this Act—

“(1) EXPORT TRADE.—The term ‘export trade’ means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country.

“(2) SERVICES.—The term ‘services’ includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services.

“(3) EXPORT TRADE ACTIVITIES.—The term ‘export trade activities’ means activities and agreements made in the course of export trade.

“(4) STATE.—The term ‘State’ means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

“(5) UNITED STATES.—The term ‘United States’ means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

“(6) METHODS OF OPERATION.—The term ‘methods of operation’ means the methods by which an association or export trading company conducts or proposes to conduct export trade.

“(7) ASSOCIATION.—The term ‘association’ means any combination, by contract or other arrangement, of two or more persons (A) who are citizens of the United States, or (B) which are partnerships or corporations created and existing under the laws of any State or of the United States.

“(8) EXPORT TRADING COMPANY.—The term ‘export trading company’ means any person, corporation, partnership, association or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

“(A) exporting goods or services produced in the United States; or

“(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

“(9) ANTITRUST LAWS.—The term ‘antitrust laws’ means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1-7); sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8-11); the Clayton Act (15 U.S.C. 12 et seq.); and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

“(10) SECRETARY.—The term ‘Secretary’ means the Secretary of Commerce.

“(11) ATTORNEY GENERAL.—The term ‘Attorney General’ means the Attorney General of the United States.

“(12) COMMISSION.—The term ‘Commission’ means the Federal Trade Commission.”

ANTITRUST EXEMPTION

SEC. 202. The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

“SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

“(a) ELIGIBILITY.—Any association entered into for the sole purpose of engaging in export trade and actually engaged or proposed to be engaged solely in such export trade and the export trade activities and methods of operation of such association, and the export trade, export trade activities, and methods of operation of any export trading company, shall, when such association or export trading company is certified in accordance with the procedures set forth in this Act, be eligible for the exemption provided in subsection (b), if—

“(1) such association and its export trade, export trade activities, and methods of operation, or the export trade, export trade activities, and methods of operation of such export trading company are not in restraint of trade within the United States and are not in restraint of the export trade of any domestic competitor of such association or export trading company; and

“(2) such association or export trading company does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States of goods or services of the class exported by such association or export trading company, or which substantially lessens competition within the United States or otherwise restrains trade in the United States.

“(b) EXEMPTION.—(1) Except as provided in paragraph (2) of this subsection, an association or export trading company and the members of such association or export trading company are exempt from the operation of the antitrust laws with respect to the export trade, export trade activities, and methods of operation of such association or export trading company that are specified in a certificate issued in accordance with the procedures set forth in this Act and that are carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and are engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation of such certificate shall not render the association or its members or an export trading company or its members liable under the antitrust law for such export trade, export trade activities, or methods of operation engaged in during such period.

"(2) Notwithstanding paragraph (1) of this subsection, the antitrust laws shall apply to any association or export trading company, to the members of such association or export trading company, and to the conduct of such association or export trading company to the extent that such association or export trading company or conduct has a direct, substantial, and reasonably foreseeable effect on trade or commerce within the United States."

TECHNICAL AMENDMENT

SEC. 203. (a) The Webb-Pomerene Act (15 U.S.C. 6-66) is amended by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED."

(b) Section 3 of such Act is amended by striking out "Sec. 3. That nothing" and inserting in lieu thereof "Nothing".

ADMINISTRATION ; ENFORCEMENT ; REPORTS

SEC. 204. (a) Section 6 of the Webb-Pomerene Act (15 U.S.C. 66) is amended—

(1) by striking out "SEC. 6."; and

(2) by inserting immediately before such section the following:

"SEC. 11. SHORT TITLE."

(b) The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws of the association or export trading company, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods and services which the association or export trading company or the members of the association or export trading company export or propose to export.

"(6) The export trade activities in which the association or export trading company intends to engage and the methods of operation of the association or export trading company, in connection with the described goods or services, including any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, and any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(7) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and the effects of the association or export trading company on competition or potential competition. The Secretary may request such information as part of an initial application for certification or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making the application or which is not necessary for certification of the association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within 90 days after receiving the applica-

tion for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and its export trade, export trade activities, and methods of operation, or the export trading company and its export trade, export trade activities, and methods of operation, meet the requirements of section 2 of this Act. The certificate shall specify the permissible export trade, export trade activities, and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary considers necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that the Secretary proposes to issue under this section.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities of an association or export trading company, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of an association or export trading company which have a significant impact on its export trade, make the 90 day period for approval of an application provided in paragraph (1) of this subsection, or for approval of an application for an amendment provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and the Secretary may grant expedited action on the application.

"(3) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application under this section for certification or for an amendment of a certificate, the Secretary shall—

"(A) notify the association or export trading company of that determination and the reasons for the determination, and

"(B) upon the request of the association or export trading company, afford the association or export trading company an opportunity for a hearing with respect to that determination, in accordance with sections 556 and 557 of title 5, United States Code.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade, export trade activities, or methods of operation of an association or export trading company to which a certificate has been issued under this section, the association or export trading company shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment of a certificate shall set forth the requested amendment and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate. If the request is filed within 30 days after a material change which requires the amendment, and if the requested amendment is approved, then no interruption in the period for which the certificate is in effect shall be considered to have occurred.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—After notifying the association or export trading company involved and after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, the Secretary—

"(1) may require that the organization or operation of the association or export trading company be modified to correspond with its certificate, or

"(2) shall, upon a determination that the export trade, export trade activities, or methods of operation of the association or export trading company no longer meet the requirements of section 2 of this Act, revoke the certificate or make such amendments in the certificate as may be necessary to satisfy the requirements of such section.

"(e) ACTION FOR INVALIDATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) COURT ACTION.—The Attorney General or the Commission may bring an action in an appropriate United States district court against an association or its members or an export trading company or its members to invalidate, in whole or in part, a certificate issued under this section to the association or export trading company on the ground that the export trade, export trade activities, or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. The Attorney General or Commission may not file such action until 30 days after notifying the association or export trading com-

pany or members concerned of the intent to file the action. The court shall consider de novo any issues presented in any such action. If the court finds that any requirement of section 2 is not met, the court shall issue an order declaring the certificate, in whole or part, invalid and may issue any other order necessary to meet the requirements of section 2 and to carry out the purposes of this Act. Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code.

“(2) **STANDING.**—No person other than the Attorney General or the Commission shall have standing to bring an action against an association or its members or an export trading company or its members for failure of the association or export trading company or the export trade, export trade activities, or methods of operation of the association or export trading company to meet the requirements of section 2 of this Act.

“SEC. 5. GUIDELINES.

“(a) **INITIAL PROPOSED GUIDELINES.**—Within 90 days after the date of the enactment of the Export Trading Company Act of 1982, the Secretary, after consultation with the Attorney General and the Commission, shall publish proposed guidelines for determining whether the export trade, export trade activities, and methods of operation of an association or export trading company meet the requirements of section 2 of this Act.

“(b) **PUBLIC COMMENT PERIOD.**—After publishing proposed guidelines pursuant to subsection (a), interested parties shall have 30 days to comment on the proposed guidelines. The Secretary shall review any such comments received and, after consultation with the Attorney General and the Commission, shall publish final guidelines within 30 days after the last day on which comments may be made under the preceding sentence.

“(c) **PERIODIC REVISION.**—After publication of the final guidelines pursuant to subsection (b), the Secretary shall periodically review the guidelines and, after consultation with the Attorney General and the Commission, shall, in accordance with the procedures set forth in this section, make any necessary revisions in the guidelines.

“(d) **APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.**—The promulgation of guidelines under this section shall not be considered rule making for purposes of subchapter II of chapter 5 of title 5, United States Code.

“SEC. 6. ANNUAL REPORTS.

“Every association or export trading company to which a certificate is issued under section 4 of this Act shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, which shall include any changes in the information required by section 4(a) of this Act.

“SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

“(a) **GENERAL RULE.**—Portions of applications for certification and amendments thereto and of reports of material changes, filed under section 4 of this Act, and portions of annual reports submitted under section 6 of this Act, that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information.

“(b) **DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.**—The Secretary shall make available applications for certification and for amendments thereto and reports of material changes, filed under section 4 of this Act, annual reports submitted pursuant to section 6 of this Act, and any information derived from such applications or reports, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. The Secretary may disclose any such document or information only upon a prior certification by the recipient of the document or information that the document or information will be maintained in confidence and will only be used for such official law enforcement purposes.

“(c) **DISCLOSURE TO CONGRESS.**—Nothing in this section shall be construed to authorize the withholding of information from the Congress, and any information obtained under this Act shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction.

"SEC. 8. INTERNATIONAL OBLIGATIONS.

"The Secretary may require any association or export trading company certified under this Act to modify its operations so as to be consistent with any international obligation which the United States assumes by treaty or statute.

"SEC. 9. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall issue such regulations as may be necessary to carry out the purposes of this Act.

"SEC. 10. TASK FORCE STUDY.

"Five years after the date of the enactment of the Export Trading Company Act of 1982, the President shall appoint a task force to study the effect of the operation of this Act on domestic competition and on the trade deficit of the United States and to recommend either continuation, revision, or termination of this Act. Such task force shall, within one year after its appointment, complete such study and submit such recommendations to the President."

CONTINUING EXEMPTION FOR EXISTING ASSOCIATIONS; AUTOMATIC CERTIFICATION

SEC. 205. (a) Application of the antitrust laws to (1) any association which is engaged solely in export trade and which is in compliance with section 5 of the Webb-Pomerene Act as in effect immediately before the date of the enactment of this Act, and (2) the export trade, export trade activities, and methods of operation of such association, shall continue to be governed by the provisions of the Webb-Pomerene Act as in effect immediately before the date of the enactment of this Act, except that in lieu of filing the written statements with the Federal Trade Commission required by section 5 of the Webb-Pomerene Act as in effect immediately before the date of the enactment of this Act, such association shall submit annual reports to the Secretary of Commerce pursuant to section 6 of the Webb-Pomerene Act, as amended by this Act.

(b) Any association to which subsection (a) applies shall be deemed to be certified, as of the date of the enactment of this Act, under section 4 of the Webb-Pomerene Act, as amended by this Act, if such association, within 180 days after such date of enactment, files an application for certification with the Secretary of Commerce containing the information set forth in section 4(a) of the Webb-Pomerene Act, as amended by this Act.

(c) For purposes of this section, the terms "association", "export trade", and "export trade activities" have the meanings given such terms in section 1 of the Webb-Pomerene Act, as amended by this Act.

Amend the title so as to read:

A bill to encourage exports by facilitating the formation and operation of export trading companies and export trade associations.

PURPOSE AND SUMMARY

The purpose of H.R. 1799 is to increase exports of U.S. goods and services by encouraging and facilitating the provision of export trade services to U.S. companies through greater use of export trading companies and export trade associations. The bill seeks to strengthen and improve the effectiveness of such companies and associations by:

Establishing an office in the Department of Commerce specifically authorized and directed to encourage the formation of export trading companies, and to serve as a repository and channel of information between U.S. producers of exportable goods and services, and U.S. firms offering export trade services.

Giving export trading companies greater access to financial resources and marketing information with which to export U.S. goods and services by enabling certain banking organizations to invest a limited proportion of their capital and surplus in export trading companies (subject to prior approval of the Federal Reserve Board), and to lend to such companies for purposes of financing exports.

Permitting associations formed for the purpose of exporting services to enjoy the same exemptions from U.S. antitrust restrictions under the Webb-Pomerene Act as are already granted under existing law to associations engaged in exporting goods, and providing both export trade associations and companies greater certainty of their antitrust status through issuance of certificates specifically exempting particular export trade methods and activities from antitrust limitations.

BACKGROUND

On the basis of hearings in the 96th Congress, the Committee on Foreign Affairs reported favorably legislation to encourage the formation and operation of export trading companies and associations (H.R. 7230, Export Trading Company Act of 1980, introduced by Mr. Bonker of Washington, and others, House Report 96-1151) which was similar to the current bill (H.R. 1799). Two other committees of the House to which that and similar legislation was referred jointly failed to complete action, however, and the 96th Congress adjourned without having an opportunity to consider H.R. 7230. Early in the 97th Congress, the Committee on Foreign Affairs commenced further hearings on export trading companies and the competitive position of various sectors of the U.S. economy, hearing testimony from executive branch and public witnesses on the problems faced by export trading companies and possible legislative remedies which could have the effect of expanding U.S. exports. The committee had under consideration in these hearings several bills relating to export trading companies and associations, including H.R. 1799, introduced by Mr. Bonker and other Members.

These hearings by the committee, and its Subcommittee on International Economic Policy and Trade, were conducted pursuant to the committee's jurisdiction over "export controls," "measures to foster commercial intercourse with foreign nations," and "international economic policy." They confirmed that the export performance of U.S. industries is a significant factor shaping the attitudes of foreign governments and populations toward the United States, and thus in the achievement of U.S. foreign policy objectives. U.S. political leadership is assessed partly in terms of the perception of U.S. economic strength, particularly the ability of the U.S. economy to command a significant share of global markets by competing effectively with the goods and services of other industrialized exporting nations. U.S. trade deficits in the past several years in excess of \$25 billion annually appear to have contributed to a weakening of U.S. foreign policy efforts by raising doubts about U.S. economic vitality and suggesting a decline in U.S. economic strength. The hearings also confirmed that export trading companies have been effective in increasing the relative export market share particularly of Japan, Korea, and several European nations, and that they have the potential to increase U.S. exports significantly.

COMMITTEE ACTION

H.R. 1799 was introduced by Mr. Bonker, a member of the committee, and other Members, on February 6, 1981, and was subsequently referred to the Subcommittee on International Economic Policy and

Trade. Following several subcommittee hearings on it and related bills, the subcommittee on March 29, 1982, marked up H.R. 1799 and reported it favorably to the full Committee on Foreign Affairs with several amendments.

The full Committee on Foreign Affairs considered the subcommittee's recommendations on H.R. 1799 on April 29, 1982, and ordered the bill favorably reported to the House with a further amendment.

NEED FOR THE LEGISLATION

Lack of operating capital and financing is the major obstacle to expanded sales faced by American trading companies. Few U.S.-based trading companies are publicly traded corporations. Most are privately held, inhibiting their ability to raise capital through issuance of stock or other debentures. Few have significant assets except for accounts receivable, against which most U.S. banks have traditionally been reluctant to grant loans. Not only are trading companies generally among the most asset-poor firms competing for bank loans, their business success depends upon their ability to penetrate often poorly understood foreign markets and to take other risks, such as operating on the basis of oral rather than written contracts and sales agreements. The successful trading company turns such risks into profits by experience and intimate knowledge of its markets and customers. Such intangibles, however, rarely meet the requirements of bank lending officers who must justify their loans to cautious superiors and regulatory agencies. Trading companies, therefore, typically command the lowest loan ratings of any of the categories of businesses seeking bank loans. Most trading company officials who testified before or otherwise consulted with the committee indicated that they are able to borrow only on their personal lines of credit, or against company reserves pledged as collateral. They were unanimous in citing this as the major constraint on their business, particularly when their foreign competitors have much greater access to short- and long-term financing.

Statutory provisions and government regulations that directly or indirectly discriminate against trading companies are a second obstacle to their increased effectiveness as U.S. exporters. The reluctance of banks to finance exports is itself a product of banking laws that place a high premium on cautious lending policies and impose strict separation between banks and commercial enterprises such as trading companies. In addition, the restrictions, complexity, and uncertainty of current antitrust laws inhibit producers of similar products and services from entering into cooperative arrangements for purposes of export marketing that could increase their exporting effectiveness.

As early as 1918, the Congress recognized the need to facilitate the export of U.S. goods by exempting the export activities of firms from certain U.S. laws that would place them at a competitive disadvantage in foreign trade. In that year, the Congress passed the Webb-Pomerene Act permitting U.S. firms to form associations strictly for the purpose of exporting goods without the antitrust constraints applicable to domestic trade. In the 1930's there were as many as 57 Webb-Pomerene associations accounting for some 19 percent of total U.S. exports. By 1979 the number had declined to 33, accounting for less

than 2 percent of U.S. exports. Antitrust exemptions under Webb-Pomerene are not available to exporters of services, currently one of the strongest U.S. export sectors, and many producers of goods regard Webb-Pomerene as providing insufficient protection from antitrust penalties.

No Federal agency is explicitly charged with assisting trading companies and assuring that Federal regulations do not unnecessarily hamper trading companies. In fact, some Federal regulations and practices have just such an effect. For example, Commerce Department rules governing U.S.-sponsored international trade fairs discourage exhibitors from displaying more than one line of merchandise per booth. Export trading companies, however, typically handle disparate lines of merchandise, and many are too small to be able to afford more than one booth. Such mundane government insensitivity to the needs of trading companies, while often inadvertent, is nonetheless damaging to their effectiveness as exporters.

The need for assistance to trading companies in these three areas—access to financing, assurance of antitrust exemption for specific export practices and activities, and designation of a federal agency responsible for trading companies—was the basis for the committee's formulation and approval of H.R. 1799.

ISSUES CONSIDERED BY THE COMMITTEE

ROLE OF THE SECRETARY OF COMMERCE

The committee determined that the Commerce Department is the most appropriate agency to exercise responsibility for encouraging the formation and successful operation of U.S. trading companies. In directing the Secretary of Commerce to establish within the Department an office for export trading companies and associations, the committee anticipates and intends that such an office should become a central repository of information useful to such companies and associations, as well as information about their operations. In carrying out its mandate to "promote and encourage" export trading companies and associations, the office should represent the interests of trading companies and associations in deliberations on Government decisions affecting them, and should seek revision of regulations that interfere with export transactions. It should provide necessary support to the Secretary of Commerce in carrying out his authority to grant certificates of antitrust exemption under section 203 of H.R. 1799. It is the committee's intent that applications for such certifications could be filed at any branch office of the Commerce Department in the United States or abroad, from which they would be immediately dispatched to the Secretary, the office of trading companies and associations, and other Federal officials required by section 203 to be consulted in the processing of certification applications. A major responsibility of the office of export trading companies and associations should be to educate and otherwise enable personnel in the Commerce Department field offices to assist and meet the informational needs of such firms.

OPERATING FLEXIBILITY OF TRADING COMPANIES

In addition to expertise and experience with foreign markets, flexibility and ability to respond quickly to trade opportunities are the key requirements for the success of trading companies and associations. Often the difference between a trading company's response to an export opportunity and the response of firms producing the goods or services to be exported is the ability of the trading company to make quick decisions and to find creative means of realizing a profit. If a profit cannot be realized directly from a markup of the price of the goods or services to be exported, the trading company may be able to realize a profit from the financing, from the shipping, or other export-related services. Or it may be able to realize its profit by taking payment in kind from the foreign buyer, and finding a profitable buyer for those goods either in the United States or a third country. Particularly when the trading company or associations takes title to U.S. goods it hopes to export, it must find a profitable formula for making the export as rapidly as possible to avoid tying up limited capital and incurring storage and other charges. In the meantime, it has already performed the service of removing the goods from the supplying company's inventory and providing the supplier with resources with which to continue production.

The committee gave high priority to this need for trading company flexibility in its actions on H.R. 1799. In the area of bank investment in and lending to trading companies, particularly, the committee sought to avoid imposing conditions upon such participation that would impinge upon or constrain export trading company operation. The committee followed the lead of the distinguished chairman of the Committee on Banking, Finance and Urban Affairs, Mr. St Germain, by substituting the bank investment provisions of legislation introduced by Mr. St Germain (H.R. 6016 for the original banking provisions of H.R. 1799. That substitute amends the Federal Reserve and Bank Holding Company Acts to permit bank holding companies and Edge Act institutions to invest a limited portion of their capital and surpluses in export trading companies with the prior approval of the Federal Reserve Board.

The committee considers it essential, however, that export trading companies eligible for bank investment should have the widest possible latitude to engage in activities other than exporting, provided that such activities facilitate exports and that the export trading companies achieve in the aggregate over a reasonable period of time (such as 5 years) a surplus of total exports over imports. The committee, therefore, changed the definition of export trading companies originally proposed in H.R. 6016 from "exclusively" to "principally for purposes of exporting goods or services produced in the United States", and so provides in H.R. 1799 (section 101(b)). Any more rigid standard, including any standard which would require nonexport activities by a trading company to result in exports on a transaction-by-transaction (rather than an aggregate trade) basis would constitute a constraint on trading company operations that would, in the view of the commit-

tee, outweigh any advantages the trading company might realize from bank investment.

The need reasonably to protect and assure the financial soundness of banking institutions, and any depository banks affiliated with them, also concerned the committee. Such protection is achieved, however, through the limitations provided in H.R. 1799 on the proportion of bank capital and surpluses (5 percent in the case of bank holding companies, and 25 in the case of Edge Act corporations) that can be put at risk in trading companies, and through prior review by the Federal Reserve Board. It should not be sought by limiting the operating flexibility of the trading companies in which banks might choose to invest. To impose banking standards, or the judgments of bank regulatory agencies such as the Federal Reserve Board, upon the operating methods and practices of trading companies can only result in greater risk to the investors by reducing the operating flexibility, and thus the profitability, of trading companies.

It is the intent of the committee, therefore, that the Federal Reserve Board should use its authority to reject proposed investments by banking institutions in export trading companies in any case where it considers such an investment to involve undue risk or other undesirable features. Once such an investment is approved, however, the Federal Reserve Board should not seek to exercise control over export trading company operations by placing conditions on bank lending or on the bank investment itself. H.R. 1799 provides that the only purposes for which the Federal Reserve Board is authorized to impose such conditions is to "prevent conflicts of interest, undue concentration of resources, and decreased or unfair competition". Such conditions are to be set forth prior to the investment.

EXPORT OF SERVICES

The need to facilitate the export of U.S. services was found by the committee to be particularly compelling. The United States has the largest service sector of any national economy in the world. Services currently account for about 65 percent of the total U.S. gross national product. Although the exports of services contribute importantly to the balance of trade, that contribution is not as great as it might be in light of the extent and high quality of services available from U.S. firms. Firms in the service sector have been even less aggressive than producers of goods seeking to exploit export markets. The committee believes that an essential element of any export expansion policy is greater emphasis on encouraging export of services.

H.R. 1799 would make producers of services eligible for the antitrust exemptions currently available only to producers of goods under the Webb-Pomerene Act. This would enable providers of services to coordinate their efforts for purposes of exporting those services by forming export trade associations. Engineering firms, for example, with different but complementary specialties could associate for purposes of bidding on large construction projects abroad without concern for antitrust violations. As with existing Webb-Pomerene associations, service export associations would be subject to the various Webb-Pomerene requirements discussed under "Antitrust Certification" below.

The committee is aware and took note that, particularly in the legal community, there is a body of opinion that the Webb-Pomerene law should be repealed on grounds that it encourages formation of cartels. The National Commission for the Review of Antitrust Laws and Procedures recommended in 1979 that Congress consider repealing the act. There has been ample time for the appropriate committees of the Congress to endorse such a repeal, but they have not done so. The committee feels, therefore, that as long as the Webb-Pomerene Act remains in force, it should at least be made equitable by including exporters of services on an equal basis with exporters of goods under the act.

ANTITRUST CERTIFICATION

H.R. 1799 revises the conditions under which export trading associations may be granted exemption from antitrust laws under the Webb-Pomerene Act, makes such exemptions available as well to export trading companies, and provides for issuance of certificates of exemption by the Secretary of Commerce for particular export activities and methods to give export trading firms greater certainty of exemption. It is the committee's intent that, provided such firms operate strictly within the terms of their certification of exemptions from antitrust laws, that they not be liable under those laws for any unforeseeable damages that might occur to any other firm in U.S. domestic commerce. Such protection from liability is essential if the "chilling" effect of antitrust laws upon efforts to export by export trading companies and associations is to be reduced.

The committee expects the Secretary of Commerce, however, and the Attorney General and Federal Trade Commission with whom he (or she) is required to consult in issuing certificates of antitrust exemption, to examine carefully the possibility of any damage occurring to any other firm or entity in U.S. domestic commerce, and to deny such certification where any such damage is reasonably foreseeable, bearing in mind that injured parties will not have recourse to recover their loss. The committee intends, also, that the Attorney General and Federal Trade Commission, who are given exclusive authority to challenge the validity of a certification once issued, should exercise that authority with vigilance. The committee does not intend to preclude any party from challenging the actions of an export trading company or association on grounds that such company or association has exceeded or otherwise violated the terms of its certification, nor to preclude the collection of damages under the antitrust laws should such allegations and evidence of such resulting injury be affirmed by an appropriate court of law.

While the United States has traditionally exercised leadership in promoting competitive world markets and discouraging cartelization of trade through elaborate and aggressively enforced antitrust laws, it is the committee's view that current world trade practices necessitate the adjustment in U.S. antitrust policy recommended in H.R. 1799. Few if any nations with which the U.S. exporters must compete in world markets impose as strict antitrust limitations upon their exporters, or enforce their antitrust laws as aggressively with respect to export transactions, as the United States. This has increasingly con-

stituted a marketing advantage for competitors of the United States. While, arguably, U.S. antitrust constraints on export transactions are not actually as severe as exporters perceive them to be, there is clear need to provide greater freedom of cooperation by U.S. firms in pursuing export market opportunities on a footing more equal to that enjoyed by their foreign competitors. The Webb-Pomerene Act provides a limited and well-tested basis for such cooperation. Its applicability to export trading companies, and strengthening through the mechanism of antitrust exemption certification, represents in the view of the committee a moderate response to this need without serious risk of reducing domestic competition or encouraging further formation of international cartels.

FORMATION OF TRADING COMPANIES

It should be pointed out that nothing in current law directly precludes formation of export trading companies or their financing by individuals and corporations other than banking institutions. Indeed, there are scores of export trading companies and other firms specializing in services to exporters. Nothing in H.R. 1799 is intended by the committee to limit the formation of trading companies, to require trading companies to enter into affiliations with banks or to obtain antitrust certification; nor is there any intent to suggest that export trading companies and associations that choose to affiliate with banks or obtain antitrust certifications are necessarily superior to those that do not. On the contrary, the committee hopes passage of this legislation will encourage greater attention to and confidence in export trading companies, fuller appreciation of their role as engines of export, and increased investment in them, particularly by well-capitalized corporations.

The committee notes, furthermore, that various state and local governmental entities, including port authorities, have both the authority and the potential to promote exports. These entities can be helpful in the overall national effort to expand U.S. exports by developing innovative export programs geared to local, state, and regional economic needs and strengths. Nothing in H.R. 1799 is intended, therefore, to restrict or prevent such entities from organizing, owning, or otherwise participating in or supporting export trading companies consistent with local and State laws. Nothing in this bill is intended to preclude subsidiaries or affiliates of railroads from functioning as export trading companies, provided the railroad and export trading company maintain separate identities and separately managed operations, and otherwise comply with the Interstate Commerce Act.

The committee expects neither export trading companies, nor the provisions of this legislation to facilitate their operations, to be a panacea for solving U.S. export problems. In light of those problems, however, which are serious and costly in both dollars and U.S. jobs, the committee feels no stone should be left unturned in the search for means even marginally to expand exports. The Export Trading Company Act of 1982 (H.R. 1799) is but one step toward increasing U.S. jobs by regaining U.S. export markets.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 1 provides that the act may be cited as the "Export Trading Company Act of 1982."

Section 2—Findings; declaration of purpose

Section 2 sets forth the findings of the Congress, including: that "exports are responsible for * * * one out of every nine manufacturing jobs * * * and one out of every seven dollars of total United States goods produced"; that service-related industries "offer the greatest potential for significantly increased industrial trade"; that export services in the United States are fragmented and the U.S. economy needs "well-developed export trade intermediaries"; that State and local governmental authorities "can be an important source for expansion of total United States exports"; and that U.S. trading companies "should be able to draw on the resources, expertise, and knowledge of the United States banking system."

The purpose of the legislation is to increase U.S. exports by establishing in the Commerce Department an office to promote export trading companies and export trade associations, by transferring to the Commerce Department responsibility for administering the Webb-Pomerene Act, by making that act applicable to the export of services as well as goods, and by otherwise encouraging more efficient export trade services.

Section 3—Definitions

"Export trade," "export trade services," "export trading company," "export trade associations," and "United States" are defined in section 3 of the bill. These definitions, however, apply only to sections 2 through 4 of the bill because Titles I and II (below) contain their own definitions, or employ definitions in existing statutes.

Section 4—Office of Export Trade in the Department of Commerce

Section four directs the Secretary of Commerce to establish within the Department of Commerce an office to promote and encourage formation of export trade associations and export trading companies.

TITLE I—EXPORT TRADING COMPANIES

Title ^III amends the Bank Holding Company Act of 1956 and the Federal Reserve Act to facilitate the financing of export trading companies.

Section 101(a) amends the Bank Holding Company Act of 1956 to permit bank holding companies, with the approval of the Federal Reserve Board, to invest up to 5 percent of consolidated capital and surplus in an export trading company. In granting such approval, the Federal Reserve Board is directed to consider the "financial and managerial resources, competitive situation, and future prospects" of the investing company and the export trading company, and may impose restrictions "to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair

competition." Extension of credit by a bank holding company to its export trading companies would be limited to 10 percent of the holding company's capital stock and surplus to any single trading company, and 20 percent of such stock and surplus to all trading companies. Export trading companies could underwrite, sell, or distribute securities in the United States only to the extent their investing bank holding companies could legally do so, and could not engage in manufacturing or agricultural production, or use a name similar to a parent banking organization.

Subsection (b) amends section 25(a) of the Federal Reserve Act to permit banking institutions organized under the Edge Act to invest up to 25 percent of capital and surplus, subject to the same requirements of Federal Reserve Board approval and limitations as described for bank holding companies in subsection (a) above.

The amendments made by this title define "export trading company" as a company organized "principally" for the purpose of exporting, or facilitating the export, of U.S. goods and services.

TITLE II—ANTITRUST PROVISIONS

Title II substantially amends the Webb-Pomerene Act (the "Act") to expand the eligibility of export trading organizations for exemption from the antitrust laws, and to provide for Federal certification of such exemptions.

Section 201 amends the definition section of the Act to include definitions of export trade (which is defined to include the export of goods *and services*) and export trading companies, which will also be eligible for the antitrust exemptions under section 2 of the Act.

Section 202 amends section 2 of the Act to exempt from antitrust law restrictions the activities of export trading associations and export trading companies provided those activities are not in restraint of trade within the United States, do not restrain any domestic competitor, and do not substantially lessen competition within the United States, except to the extent such activities may have a "direct substantial and reasonably foreseeable effect on trade or commerce within the United States." Such exception is to be specified in a certificate issued under section 4 of the Act.

Section 203 makes a technical amendment to section 3 of the Act.

Section 204 amends the Act to provide for procedures for the certification of export trade associations and export trading companies for the antitrust exemption provided in the Act. Applicants are required to submit information set forth in section 4 of the Act, including such information as the Secretary of Commerce (the "Secretary") considers necessary. The Secretary is required to issue a certificate within ninety (90) days after receiving an application, after consultation with the Attorney General and the Federal Trade Commission, specifying permissible export trade activities and methods, and any terms or conditions the Secretary considers necessary. Provision is made for expedited certification for temporary export trade activities and bidding or export sales deadlines. Certification decisions of the Secretary may be appealed under sections 556 and 557 of Title 5, United States Code (provisions of the Administrative Procedure Act). Provision is made for amendment of certificates on the basis

of material changes affecting certified export trading companies and associations, and for modification of the activities of certified companies or associations and revocation of certificates by the Secretary, after opportunity for a hearing in accordance with Section 554 of Title 5, United States Code. The Attorney General and Federal Trade Commission are authorized to bring court actions to invalidate certifications 30 days after notice to the affected export trading association or export trading company, and no other person has standing to bring such actions.

Section 204 also amends the Act as follows: The Secretary is directed to issue proposed guidelines, within 90 days after enactment of the bill, for determining whether an export trade association or export trading company meets the requirements for certification under the Act. The guidelines are to be open for public comment for a period of 30 days prior to publication of final guidelines. Promulgation of these guidelines is exempt from the Administrative Procedure Act. Certified export trade associations and export trading companies are required to report to the Secretary annually on activities relevant to their certificates. Information submitted by export trade associations and export trading companies with respect to certification and in the required reports shall be confidential and exempt from disclosure (except for certain law enforcement procedures) to the extent the information deals with trade secrets or confidential business or financial information. The Secretary may require modification of the operations of a certified association or trading company to comply with the international obligations of the United States. The Secretary is directed to issue regulations to carry out the Act, after consultation with the Attorney General and the Federal Trade Commission.

Section 205 provides that export trade associations operating under the Webb-Pomerene Act immediately before the enactment of the bill may elect to continue to be governed by the Act as in existence prior to enactment, or by the Act as amended by the bill. If they choose the latter, they are certified automatically under the new provisions of the act upon filing the required applications for certification within 180 days after the date of enactment of the bill.

REQUIRED REPORTS SECTION

COST ESTIMATE

H.R. 1799 provides no authorization of appropriations. The Congressional Budget Office estimate set forth below, is that up to \$500,000 in fiscal year 1983 may be necessary for the administration of activities mandated in the bill. The committee agrees with the projected cost estimate of the Congressional Budget Office.

INFLATIONARY IMPACT STATEMENT

No authorization of appropriations is contained in H.R. 1799. Furthermore, the principal purpose of the bill is to stimulate U.S. exports, thereby strengthening the international position of the U.S. dollar. Therefore, the enactment of this legislation would have no identifiable impact on inflationary forces, and in fact should be counterinflationary over a period of time.

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

(a) Oversight findings and recommendations

Among the principal oversight activities which contributed to the formulation of H.R. 1799 have been hearings and review of the legislation by the Subcommittee on Economic Policy and Trade, as well as the full committee (described under "Committee Action"). The committee also notes that it conducted extensive hearings on a similar bill, H.R. 7230, which it reported in 1980. Based on this lengthy review of export trading company legislation, the committee recommends the passage of H.R. 1799.

(b) Budget authority

The enactment of H.R. 1799 will create no new budget authority.

(c) Committee on Government Operations summary

No oversight findings and recommendations which relate to this measure have been received by the Committee on Government Operations under clause 4(c) (2) of Rule X of the Rules of the House.

(d) Congressional Budget Office cost estimate

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 12, 1982.

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign 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. 1799, the Export Trading Company Act of 1982, as ordered reported by the House Committee on Foreign Affairs, April 22, 1982.

H.R. 1799 would direct the Secretary of Commerce to actively promote the formation of export trading companies. It would require that an office within the Department of Commerce (DOC) be established with responsibility for providing information about export trade services, as well as reviewing and certifying export trading companies. The DOC, after consultation with the Attorney General and the Federal Trade Commission (FTC), would be required to issue rules and regulations within 90 days after date of enactment of H.R. 1799.

While H.R. 1799 provides no authorization of appropriations to carry out the activities outlined in the bill, nonetheless certain costs will be incurred in order to implement H.R. 1799. Depending upon the number and complexity of the applications for certification, it is estimated that up to \$500,000 in fiscal year 1983, and somewhat less annually thereafter, may be necessary to promote export trading companies as well as to adequately administer the certification process in the DOC. This amount would cover staff time, plus overhead and printing costs.

At the present time the FTC is responsible for registering export trading companies. Under current law, registration is virtually assured, however, and no review or evaluation is conducted, nor are certificates issued. While H.R. 1799 would transfer the administrative functions for the activity to the DOC, the FTC as well as the Attorney

General would have the authority, consistent with the standards of the Webb-Pomerene Act, to invalidate a certificate issued to an export trading company. Thus, each application for certification will require review to determine possible antitrust violations. It is expected that this increased involvement of the FTC and the Attorney General in the certification process would impose an additional workload upon these two agencies. However, it is not possible to estimate at this time the extent to which potential anti-competitive problems will occur, and hence the magnitude of the additional resources required to fulfill the requirements of the bill.

In addition, the Board of Governors of the Federal Reserve System would have authority over banking organizations which are affected by the provisions in this bill. Any additional costs to the Federal Reserve, which is off-budget, would be offset by raising the assessments that fund all of its activities.

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

Sincerely,

ALICE M. RIVLIN,
Director.

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

INTEREST 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 been approved by the Board, except that such investments, whether direct or indirect, in such shares shall not exceed 5 percent of the bank holding company's consolidated capital and surplus. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the bank holding company and the export trading company involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. Notwithstanding any other provision of law, in any case in which a bank holding company invests in an export trading company, such bank holding company shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of the Federal Reserve Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to the first sentence of this paragraph shall not apply with respect to the limitations imposed under section 23A of the Federal Reserve Act. For purposes of this paragraph, 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 principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this paragraph, 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, and financing, when provided in order to facilitate the export of goods or services produced in the United States. For purposes of this paragraph, an export trading company (A) 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 its bank holding company investor may do so under applicable Federal and

State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities. The name of the export trading company involved shall not be similar in any respect to the name of the bank holding company which owns any of its voting stock or other evidences of ownership.

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 25 OF THE FEDERAL RESERVE ACT

BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS

SEC. 25 (a). Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided*, That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositaries in Panama and the Panama Canal Zone, or in the Philippine Islands and other insular possessions and dependencies of the United States.

The Congress hereby declares that it is the purpose of this section to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad; to afford to the United States exporter and importer in particular, and to United States commerce, industry, and agriculture in general, at all times a means of financing international trade, especially United States exports to foster the participation by regional and smaller banks throughout the United States in the provision of international banking and financing services, to all segments of United States agriculture, commerce, and industry, and, in particular small business and farming concerns; to stimulate competition in the provision of international banking and financing services throughout the United States; and, in conjunction with each of the preceding purposes, to facilitate and stimulate the export of United States goods, wares, merchandise, commodities, and services to achieve a sound United States international trade position. The Board of Governors of the Federal Reserve System shall issue rules and regulations under this section con-

sistent with and in furtherance of the purposes described in the preceding sentence, and, in accordance therewith, shall review and revise any such rules and regulations at least once every five years, the first such period commencing with the effective date of rules and regulations issued pursuant to section 3(a) of the International Banking Act of 1978, in order to ensure that such purposes are being served in light of prevailing economic conditions and banking practices.

Such persons shall enter into articles of association which shall specify in general terms the objects for which the association is formed and may contain any other provisions not inconsistent with law which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

Such articles of association shall be signed by all of the persons intending to participate in the organization of the corporation and, thereafter, shall be forwarded to the Board of Governors of the Federal Reserve System and shall be filed and preserved in its office. The persons signing the said articles of association shall, under their hands, make an organization certificate which shall specifically state:

First. The name assumed by such corporation, which shall be subject to the approval of the Board of Governors of the Federal Reserve System.

Second. The place or places where its operations are to be carried on.

Third. The place in the United States where its home office is to be located.

Fourth. The amount of its capital stock and the number of shares into which the same shall be divided.

Fifth. The names and places of business or residence of the persons executing the certificate and the number of shares to which each has subscribed.

Sixth. The fact that the certificate is made to enable the persons subscribing the same, and all other persons, firms, companies, and corporations, who or which may thereafter subscribe to or purchase shares of the capital stock of such corporation, to avail themselves of the advantages of this section.

The persons signing the organization certificate shall duly acknowledge the execution thereof before a judge of some court of record or notary public, who shall certify thereto under the seal of such court or notary, and thereafter the certificate shall be forwarded to the Board of Governors of the Federal Reserve System to be filed and preserved in its office. Upon duly making and filing articles of association and an organization certificate, and after the Board of Governors of the Federal Reserve System has approved the same and issued a permit to begin business, the association shall become and be a body corporate, and as such and in the name designated therein shall have power to adopt and use a corporate seal, which may be changed at the pleasure of its board of directors; to have succession for a period of twenty years unless sooner dissolved by the act of the shareholders owning two-thirds of the stock or by an Act of Congress or unless its franchises become forfeited by some violation of law; to make contracts; to sue and be sued, complain, and defend in any court of law or equity; to elect or appoint directors; and, by its board of directors, to appoint such officers and employees as may be deemed proper, define their

authority and duties, require bonds of them, and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure and appoint others to fill their places; to prescribe, by its board of directors, by-laws not inconsistent with law or with the regulations of the Board of Governors of the Federal Reserve System regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed.

Each corporation so organized shall have power, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe:

(a) To purchase, sell, discount, and negotiate, with or without its indorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its indorsement or guaranty, securities, including the obligations of the United States or of any State thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the Board of Governors of the Federal Reserve System may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe; to receive deposits outside of the United States and to receive only such deposits within the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States; and generally to exercise such powers as are incidental to the powers conferred by this Act or as may be usual, in the determination of the Board of Governors of the Federal Reserve System, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the powers specifically granted herein. Nothing contained in this section shall be construed to prohibit the Board of Governors of the Federal Reserve System, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation organized under this section receives deposits in the United States authorized by this section it shall carry reserves in such amounts as the Board of Governors of the Federal Reserve System may prescribe for member banks of the Federal Reserve System.

(b) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in the dependencies or insular possessions of the United States, at such places as may be approved by the Board of Governors of the Federal Reserve System and under such rules and regulations as it may prescribe, including countries or dependencies not specified in the original organization certificate.

(c) (1) With the consent of the Board of Governors of the Federal Reserve System to purchase and hold stock or other certificates of

ownership in any other corporation organized under the provisions of this section, or under the laws of any foreign country or a colony or dependency thereof, or under the laws of any State, dependency, or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States, and not transacting any business in the United States except such as in the judgment of the Board of Governors of the Federal Reserve System may be incidental to its international or foreign business: *Provided, however,* That, except with the approval of the Board of Governors of the Federal Reserve System, no corporation organized hereunder shall invest in any one corporation an amount in excess of 10 per centum of its own capital and surplus, except in a corporation engaged in the business of banking, when 15 per centum of its capital and surplus may be so invested: *Provided further,* That no corporation organized hereunder shall purchase, own, or hold stock or certificates of ownership in any other corporation organized hereunder or under the laws of any State which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation.

(2) (A) *Notwithstanding any other provision of law, with the approval of the Board of Governors of the Federal Reserve System, a corporation organized under this section may purchase and hold stock or other certificates of ownership in any other corporation which is an export trading company. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the corporations involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. No corporation organized under this section shall invest in such export trading companies in an amount in excess of 25 percent of its own capital and surplus. The second proviso of paragraph (1) shall apply to any corporation referred to in this paragraph.*

(B) *Notwithstanding any other provision of law, in any case in which a corporation organized under this section purchases or holds stock or other certificates of ownership in any other corporation which is an export trading company, such acquiring corporation, or any bank or banking institution which purchases or holds stock or other certificates of ownership in such acquiring corporation, shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of this Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to subparagraph (A) shall not apply with respect to the limitations imposed under section 23A of this Act.*

(C) *For purposes of this section—*

(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 principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced*

in the United States by unaffiliated persons by providing one or more export trade services; and

(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, and financing, when provided in order to facilitate the export of goods or services produced in the United States.

(D) For purposes of this subsection, and 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 the corporation which is organized under this section and which invests in the company defined in this clause may do so under applicable Federal and State banking law and regulations; and

(ii) may not engage in manufacturing or agricultural production activities.

(E) The name of the export trading company involved shall not be similar in any respect to the name of the corporation organized under this section which owns any of its voting stock or other evidences of ownership.

* * * * *

WEBB-POMERENE ACT

AN ACT To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

[That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

[That the word "association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.]

SECTION 1. DEFINITIONS.

As used in this Act—

(1) *EXPORT TRADE.*—The term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country.

(2) *SERVICES.*—The term “services” includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services.

(3) *EXPORT TRADE ACTIVITIES.*—The term “export trade activities” means activities and agreements made in the course of export trade.

(4) *STATE.*—The term “State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(5) *UNITED STATES.*—The term “United States” means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) *METHODS OF OPERATION.*—The term “methods of operation” means the methods by which an association or export trading company conducts or proposes to conduct export trade.

(7) *ASSOCIATION.*—The term “association” means any combination, by contract or other arrangement, of two or more persons (A) who are citizens of the United States, or (B) which are partnerships or corporations created and existing under the laws of any State or of the United States.

(8) *EXPORT TRADING COMPANY.*—The term “export trading company” means any person, corporation, partnership, association, or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

(9) *ANTITRUST LAWS.*—The term “antitrust laws” means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1-7); sections 73 through 77 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8-11); the Clayton Act (15 U.S.C. 12 et seq.); and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

(10) *SECRETARY.*—The term “Secretary” means the Secretary of Commerce.

(11) *ATTORNEY GENERAL.*—The term “Attorney General” means the Attorney General of the United States.

(12) *COMMISSION.*—The term “Commission” means the Federal Trade Commission.

[SEC. 2. That nothing contained in the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for

the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.]

SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

(a) *ELIGIBILITY.*—*Any association entered into for the sole purpose of engaging in export trade and actually engaged or proposed to be engaged solely in such export trade and the export trade activities and methods of operation of such association, and the export trade, export trade activities, and methods of operation of any export trading company, shall, when such association or export trading company is certified in accordance with the procedures set forth in this Act, be eligible for the exemption provided in subsection (b), if—*

(1) *such association and its export trade, export trade activities, and methods of operation, or the export trade, export trade activities, and methods of operation of such export trading company are not in restraint of trade within the United States and are not in restraint of the export trade of any domestic competitor of such association or export trading company; and*

(2) *such association or export trading company does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States of goods or services of the class exported by such association or export trading company, or which substantially lessens competition within the United States or otherwise restrains trade in the United States.*

(b) *EXEMPTION.*—(1) *Except as provided in paragraph (2) of this subsection, an association or export trading company and the members of such association or export trading company are exempt from the operation of the antitrust laws with respect to the export trade, export trade activities, and methods of operation of such association or export trading company that are specified in a certificate issued in accordance with the procedures set forth in this Act and that are carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and are engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation of such certificate shall not render the association or its members or an export trading company or its members liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.*

(2) *Notwithstanding paragraph (1) of this subsection, the antitrust laws shall apply to an association or export trading company, to the members of such association or export trading company,*

and to the conduct of such association or export trading company to the extent that such association or export trading company or conduct has a direct, substantial, and reasonably foreseeable effect on trade or commerce within the United States.

SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.

【Sec. 3. That nothing】 *Nothing* contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

【Sec. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

【Sec. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and or all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations partnerships and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and ex-

penses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

【Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

【For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."】

SEC. 4. CERTIFICATION.

(a) *PROCEDURE FOR APPLICATION.*—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

- (1) *The name of the association or export trading company.*
- (2) *The location of all of the offices or places of business of the association or export trading company in the United States and abroad.*
- (3) *The names and addresses of all of the officers, stockholders, and members of the association or export trading company.*
- (4) *A copy of the certificate or articles of incorporation and by-laws of the association or export trading company, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities or contract of association, if the association or export trading company is unincorporated.*
- (5) *A description of the goods and services which the association or export trading company or the members of the association or export trading company export or propose to export.*
- (6) *The export trade activities in which the association or export trading company intends to engage and the methods of operation of the association or export trading company, in connection with the described goods or services, including any agreements to*

sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, and any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

(7) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and the effects of the association or export trading company on competition or potential competition. The Secretary may request such information as part of an initial application for certification or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making the application or which is not necessary for certification of the association or export trading company

(b) *ISSUANCE OF CERTIFICATE.*—

(1) *NINETY-DAY PERIOD.*—The Secretary shall issue a certificate to an association or export trading company within 90 days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and its export trade, export trade activities, and methods of operation, or the export trading company and its export trade, export trade activities, and methods of operation, meet the requirements of section 2 of this Act. The certificate shall specify the permissible export trade, export trade activities, and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary considers necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that the Secretary proposes to issue under this section.

(2) *EXPEDITED CERTIFICATION.*—In those instances where the temporary nature of the export trade activities of an association or export trading company, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of an association or export trading company which have a significant impact on its export trade, make the 90-day period for approval of an application provided in paragraph (1) of this subsection, or for approval of an application for an amendment provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and the Secretary may grant expedited action on the application.

(3) *APPEAL OF DETERMINATION.*—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application under this section for certification or for an amendment of a certificate, the Secretary shall—

(A) notify the association or export trading company of that determination and the reasons for the determination, and (B) upon the request of the association or export trading company, afford the association or export trading company an opportunity for a hearing with respect to that determination, in accordance with sections 556 and 557 of title 5, United States Code.

(c) **MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.**—Whenever there is a material change in the membership, export trade, export trade activities, or methods of operation of an association or export trading company to which a certificate has been issued under this section, the association or export trading company shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment of a certificate shall set forth the requested amendment and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate. If the request is filed within 30 days after a material change which requires the amendment, and if the requested amendment is approved, then no interruption in the period for which the certificate is in effect shall be considered to have occurred.

(d) **AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.**—After notifying the association or export trading company involved and after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, the Secretary—

(1) may require that the organization or operation of the association or export trading company be modified to correspond with its certificate, or

(2) shall, upon a determination that the export trade, export trade activities, or methods of operation of the association or export trading company no longer meet the requirements of section 2 of this Act, revoke the certificate or make such amendments in the certificate as may be necessary to satisfy the requirements of such section.

(c) **ACTION FOR INVALIDATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.**—

(1) **COURT ACTION.**—The Attorney General or the Commission may bring an action in an appropriate United States district court against an association or its members or an export trading company or its members to invalidate, in whole or in part, a certificate issued under this section to the association or export trading company on the ground that the export trade, export trade activities, or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. The Attorney General or Commission may not file such action until 30 days after notifying the association or export trading company or members concerned of the intent to file the action. The court shall consider de novo any issues presented in any such action. If the court finds that any requirement of section 2 is not met, the court shall issue an order declaring the certificate, in whole or in part, invalid and may issue any other order necessary to meet the requirements of section 2 and to carry

out the purposes of this Act. Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code.

(2) *STANDING*.—No person other than the Attorney General or the Commission shall have standing to bring an action against an association or its members or an export trading company or its members for failure of the association or export trading company or the export trade, export trade activities, or methods of operation of the association or export trading company to meet the requirements of section 2 of this Act.

SEC. 5. GUIDELINES.

(a) *INITIAL PROPOSED GUIDELINES*.—Within 90 days after the date of the enactment of the Export Trading Company Act of 1982, the Secretary, after consultation with the Attorney General and the Commission, shall publish proposed guidelines for determining whether the export trade, export trade activities, and methods of operation of an association or export trading company meet the requirements of section 2 of this Act.

(b) *PUBLIC COMMENT PERIOD*.—After publishing proposed guidelines pursuant to subsection (a), interested parties shall have 30 days to comment on the proposed guidelines. The Secretary shall review any such comments received and, after consultation with the Attorney General and the Commission, shall publish final guidelines within 30 days after the last day on which comments may be made under the preceding sentence.

(c) *PERIODIC REVISION*.—After publication of the final guidelines pursuant to subsection (b), the Secretary shall periodically review the guidelines and, after consultation with the Attorney General and the Commission, shall, in accordance with the procedures set forth in this section, make any necessary revisions in the guidelines.

(d) *APPLICATION OF ADMINISTRATIVE PROCEDURE ACT*.—The promulgation of guidelines under this section shall not be considered rule making for purposes of subchapter II of chapter 5 of title 5, United States Code.

SEC. 6. ANNUAL REPORTS.

Every association or export trading company to which a certificate is issued under section 4 of this Act shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, which shall include any changes in the information required by section 4(a) of this Act.

SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

(a) *GENERAL RULE*.—Portions of applications for certification and amendments thereto and of reports of material changes, filed under section 4 of this Act, and portions of annual reports submitted under section 6 of this Act, that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer, or employee, or former officer or employee, of the United States shall disclose any such confidential information.

(b) *DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.*—The Secretary shall make available applications for certification and for amendments thereto and reports of material changes, filed under section 4 of this Act, annual reports submitted pursuant to section 6 of this Act, and any information derived from such applications or reports, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. The Secretary may disclose any such document or information only upon a prior certification by the recipient of the document or information that the document or information will be maintained in confidence and will only be used for such official law enforcement purposes.

(c) *DISCLOSURE TO CONGRESS.*—Nothing in this section shall be construed to authorize the withholding of information from the Congress, and any information obtained under this Act shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction.

SEC. 8. INTERNATIONAL OBLIGATIONS.

The Secretary may require any association or export trading company certified under this Act to modify its operations so as to be consistent with any international obligation which the United States assumes by treaty or statute.

SEC. 9. REGULATIONS.

The Secretary, after consultation with the Attorney General and the Commission, shall issue such regulations as may be necessary to carry out the purposes of this Act.

SEC. 10. TASK FORCE STUDY.

Five years after the date of the enactment of the Export Trading Company Act of 1982, the President shall appoint a task force to study the effect of the operation of this Act on domestic competition and on the trade deficit of the United States and to recommend either continuation, revision, or termination of this Act. Such task force shall, within one year after its appointment, complete such study and submit such recommendations to the President.

SEC. 11. SHORT TITLE.

[Sec. 6.] This Act may be cited as the “Webb-Pomerene Act”.

