

EXPORT TRADING COMPANY ACT OF 1980

JULY 2, 1980.—Ordered to be printed

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

REPORT together with ADDITIONAL VIEWS

[To accompany H.R. 7230 which on May 1, 1980, was referred jointly to the
Committee on Foreign Affairs and the Committee on the Judiciary]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 7230) to direct the Secretary of Commerce to encourage the formation and operation of export trading companies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is 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 1980".

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 American 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. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States, 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 "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, not more than 50 percent of the fair market value (as determined under regulations issued by the Secretary) of which is attributable to articles imported into the United States;

(3) the term "services produced in the United States" includes, but is not limited to, amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services, not less than 50 percent of the fair market value (as determined under regulations issued by the Secretary) of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, 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 produced in the United States or services produced in the United States;

(5) 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 the purposes of—

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

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

(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;

(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;

(8) the term "Secretary" means the Secretary of Commerce; and

(9) the term "company" means any person or any corporation, partnership, association, or similar organization.

(b) The Secretary may by regulation further define any term defined in subsection (a), in order to carry out the purposes of this Act.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 4. The Secretary 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

INVESTMENT IN EXPORT TRADING COMPANIES BY BANKING ORGANIZATIONS

SEC. 101. (a) For purposes of this section—

(1) the term "banking organization" means any State member bank, State nonmember insured bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State (other than the District of Columbia);

(3) the term "District bank" means any bank (except a national bank) which is operating under the Code of Law for the District of Columbia;

(4) the term "State member bank" means any State bank, including a bankers' bank, which is a member of the Federal Reserve System;

(5) the term "State nonmember insured bank" means any State bank, including a bankers' bank, which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(6) the term "bankers' bank" means any bank which (A) is organized solely to do business with other financial institutions, (B) is owned primarily by the financial institutions with which it does business, and (C) does not do business with the general public;

(7) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(8) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(9) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(10) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank;

(11) the term "capital and surplus" means paid in an unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency considers appropriate;

(12) an "affiliate" of a bank organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(13) the term "subsidiary" means, with respect to any banking organization—

(A) any company 25 percent or more of whose voting shares (excluding shares owned by the United States) are directly or indirectly owned or controlled by such banking organization or are held by it with power to vote;

(B) any company the election of a majority of whose directors is controlled in any manner by such banking organization; or

(C) any company with respect to the management or policies of which such banking organization has the power, directly or indirectly, to exercise a controlling influence, as determined by the appropriate Federal banking agency, after notice and opportunity for a hearing;

(14) a banking organization has control over any company if—

(A) the banking organization directly or indirectly or acting through one or more other person owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company;

(B) the banking organization controls in any manner the election of a majority of the directors or trustees of the company; or

(C) the appropriate Federal banking agency determines, after notice and opportunity for a hearing, that the banking organization directly or indirectly exercises a controlling influence over the management or policies of the company; and

(15) the term "export trading company" has the same meaning as in section 3(5) of this Act, and means any company organized and operating principally for the purpose of providing export trade services, as defined in section 3(4) of this Act.

(b) (1) Notwithstanding any other provision of law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly up to 5 percent, in the aggregate, of its consolidated capital and surplus (or, in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking, 25 percent) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of \$10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of \$10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 percent of the voting stock or other evidences of ownership of an export trading company to be owned or controlled by banking organizations, only if the banking organization making such investments or taking such action notifies the appropriate Federal banking agency of such investments or action and only if that banking organization receives the prior approval of the appropriate Federal banking agency for such investments or action.

(2) Any banking organization which makes an investment under paragraph (1) (A) shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, the appropriate Federal banking organization may disapprove the investment or impose conditions on such investment under subsection (d). The appropriate Federal banking agency may also require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1) (B) of this subsection within the 90-day period which begins on the date the application is received by the appropriate Federal banking agency, the application shall be deemed to have been granted.

(4) Before—

(A) a banking organization makes any investment in an export trading company subsidiary other than an investment for which notification has been made pursuant to paragraph (1) (B), or

(B) an export trading company subsidiary of a banking organization engages in any activity, including the taking of title to goods or commodities, which was not disclosed in any prior application for approval under this section,

the banking organization shall notify the appropriate Federal banking agency. The banking organization may make the investment described in subparagraph (A), or the export trading company subsidiary may engage in the activity described in subparagraph (B), as the case may be—

(i) at the end of the 60-day period beginning on the date on which the appropriate Federal banking agency receives the notification required by this paragraph, if such agency fails either to disapprove or to impose conditions on such investment or activity,

(ii) subject to any conditions imposed by such agency on such investment or activity during such 60-day period, or

(iii) before the end of such 60-day period, if such agency notifies the banking organization in writing of its intent not to disapprove or impose conditions on the investment or activity.

During such 60-day period, the appropriate Federal banking agency may disapprove the proposed investment or activity or impose conditions on such investment or activity under subsection (d).

(5) In any case in which a banking organization makes an investment, or an export trading company subsidiary of a banking organization engages in an activity, of which notification to, or approval by, the appropriate Federal banking agency is required by this subsection, and that banking organization is a subsidiary of another banking organization which is subject to the jurisdiction of another appropriate Federal banking agency, such notification or approval need only be made to or obtained from the appropriate Federal banking agency for the banking organization which makes the investment or whose export trading company engages in the activity.

(c)(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company, combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 percent of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts other than those necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) This subsection applies to investments or actions described in subsection (b)(1)(B), any investment described in subsection (b)(1)(A) in an export trading company which the appropriate Federal banking organization determines is a subsidiary of the banking organization making the investment, and any investment or activity described in subparagraph (A) or (B) of subsection (b)(4).

(2) Before the appropriate Federal banking agency exercises the authority of this subsection to approve, disapprove, or impose conditions on a proposed investment, action, or activity, such agency shall transmit a copy of such proposal to the Secretary of Commerce. The Secretary, not later than 30 days after the date on which such proposal is so transmitted, may present to such agency the views of the Department of Commerce on the proposal. In weighing the export related benefits of such proposal, the appropriate Federal banking agency shall consider any views of the Department of Commerce submitted under this paragraph.

(3) In the case of every investment, action, or activity to which this subsection applies, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns, and to improving United States competitiveness in world markets. The

appropriate Federal banking agency may not approve any proposed investment, action, or activity to which this subsection applies if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the proposal. Any disapproval order issued under this section shall contain a statement of the reasons for such disapproval.

(4) In approving any investment, action, or activity to which this subsection applies, the appropriate Federal banking agency may impose such conditions which, under the circumstances of the particular case, it considers necessary (A) to limit a banking organization's financial exposure to an export trading company or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods or commodities, or the holding of title to inventory, by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies shall issue regulations which establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. Such standards should be established not later than 270 days after the date of enactment of this Act. If an export trading company subsidiary of a banking organization proposes to take title to goods or commodities, or to hold title to inventory, in a manner which does not conform to such standards, or prior to the establishment of such standards, it may only do so with the prior approval of the appropriate Federal banking agency and subject to such conditions and limitations as such agency may impose under this paragraph.

(5) In determining whether to impose any condition under paragraph (4), the appropriate Federal banking agency shall consider the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title to goods or commodities, or the holding of title to inventory, which conditions or standards unnecessarily disadvantage, restrict, or limit export trading companies in competing in world markets or in achieving the purposes of section 2 of this Act. In setting standards under paragraph (4) for the taking of title to goods or commodities or the holding of title to inventory, the appropriate Federal banking agencies shall give special weight to the need to take such title in certain kinds of trade transactions, such as international barter transactions.

(6) Notwithstanding any other provision of this Act, if the appropriate Federal banking agency has reasonable cause to believe that the ownership or control by a banking organization of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act, such agency may order the banking organization, after notice and opportunity for a hearing, terminate (within 120 days or such longer period as such agency may direct in unusual circumstances) its investment in the export trading company.

(7) Not later than two years after the date of enactment of this Act, the appropriate Federal banking agencies shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a report, prepared jointly by such agencies, on the implementation of this section. Such report shall contain the recommendations of such agencies with respect to the implementation of this section, any changes in United States law they recommend to facilitate the financing of United States exports, especially exports by small and medium-sized business concerns, and the recommendations of such agencies on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(e) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals for any circuit in which such organization has its principal place of business, or in the United States Court of Appeals for the district of Columbia, by filing a notice of appeal in such court within 30 days after the date of such order, and simultaneously sending a copy of such notice by registered or certified

mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights; or (D) without observance of procedure required by law. Except for violations of subsection (b) (3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall, within 60 days after the date of issuance of the court's order, correct any such procedural error or, in the case of a substantive error, reconsider its prior order. If the agency fails to act within such 60-day period, the application or other matter which was the subject of the review shall be deemed to have been granted as a matter of law.

(f) (1) Each appropriate Federal banking agency may issue such regulations and orders, require such reports, delegate such functions, and conduct such examinations of subsidiary export trading companies, as such agency considers necessary to carry out the provisions of this section.

(2) In addition to any powers, remedies or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

INITIAL INVESTMENTS AND OPERATING EXPENSES

Sec. 102. (a) The Economic Development Administration and the Small Business Administration shall, in considering applications by export trading companies for loans and guarantees, including applications to make new investments related to the export of goods produced in the United States or services produced in the United States and to meet operating expenses, give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small or medium-sized businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated to carry out this section \$20,000,000 for each of the fiscal years 1982, 1983, 1984, and 1985. Amounts appropriated under this subsection shall be in addition to amounts appropriated under any other provision of law.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 103. The Export-Import Bank of the United States shall provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 3(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

Guarantees provided under this section shall be subject to limitations contained in annual appropriations Acts.

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 exported, or in the course of being exported, from the United States to any other country.

"(2) SERVICE.—The term 'service' means the provision, for a charge, of useful labor that does not produce a tangible commodity, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication 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' includes the District of Columbia.

"(5) UNITED STATES.—The term 'United States' means the States and the territories and possessions of the United States.

"(6) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' means trade or commerce within any territory or possession of the United States or between or among the States and territories and possessions of the United States.

"(7) 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.

"(8) 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.

"(9) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 3(5) of the Export Trading Company Act of 1980.

"(10) 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); and the Clayton Act (15 U.S.C. 12 et seq.);

"(11) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(12) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(13) 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 or its export trade, export trade activities, or methods of operation, or the export trade, export trade activities, or 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.—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, or 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."

TECHNICAL AMENDMENT

SEC. 203. (a) The Webb-Pomerene Act (15 U.S.C. 61-66) 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 or 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 by which the association or export trading company conducts or proposes to conduct export trade in the described goods or services, including, but not limited to, 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, or 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 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 to 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 there shall be no interruption in the period for which the certificate is in effect.

“(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 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 ex-

port 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 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 enactment of the Export Trading Company Act of 1980, the Secretary, after consultation with the Attorney General and the Commission, shall publish proposed guidelines for determining whether 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), and any proposed revision of such guidelines, interested parties shall have 30 days to comment on the proposed guidelines or proposed revision. 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 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 reports of material changes, filed under section 4 of this Act, and 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, and annual reports submitted pursuant to section 6 of this Act, or 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 enactment of the Export Trading Company Act of 1980, 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 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 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 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 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.

TITLE III—TAXATION OF EXPORT TRADING COMPANIES

APPLICATION OF DISC RULES TO EXPORT TRADING COMPANIES

SEC. 301. (a) Paragraph (3) of section 992(d) of the Internal Revenue Code of 1954 (relating to ineligible corporations) is amended by inserting before the comma at the end thereof the following: “(other than a financial institution which is a banking organization as defined in section 101(a)(1) of the Export Trading Company Act of 1980 investing in the voting stock of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) in accordance with the provisions of section 101 of such Act)”.

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

- (1) by striking out “and” at the end of subparagraph (G),
- (2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof “, and”, and
- (3) by adding at the end thereof the following new subparagraph:

“(I) in the case of a DISC which is an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 3(3) of such Act) or from export trade services (as defined in section 3(4) of such Act).”.

(c) The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall develop, prepare, and distribute to interested parties, including potential exporters, information concerning the manner in which an export trading company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and any advantages or disadvantages which may reasonably be expected from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

(d) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1981.

SUBCHAPTER S STATUS FOR EXPORT TRADING COMPANIES

Sec. 302. (a) Paragraph (2) of section 1371(a) of the Internal Revenue Code of 1954 (relating to the definition of a small business corporation) is amended by inserting ", except in the case of the shareholders of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) if such shareholders are otherwise small business corporations for the purpose of this subchapter," after "shareholder".

(b) The first sentence of section 1372(e) (4) of such Code (relating to foreign income) is amended by inserting ", other than an export trading company," after "small business corporation".

(c) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1981.

PURPOSE AND SUMMARY

The purpose of H.R. 7230 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 the greater use of export trading companies and export trade associations. The bill seeks to accomplish that purpose by the following principal means:

First, an office is to be established in the Department of Commerce to promote and encourage the formation of export trading companies and export trade associations;

Second, export trading companies are given greater access to financial resources and marketing expertise through bank participation in export trading companies, assistance by the Economic Development Administration and the Small Business Administration in meeting the startup costs and operating expenses of small and medium-sized export trading companies, and Export-Import Bank loan guarantees, secured by accounts receivable and inventories, to export trading companies;

Third, antitrust exemptions of the Webb-Pomerene Act are extended to associations formed for the purpose of exporting services and to export trading companies and a certification procedure is established under the Webb-Pomerene Act so as to provide greater certainty to export trading companies and export trade associations;

Fourth, DISC and Subchapter S tax incentives are made available to export trading companies.

BACKGROUND

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 inhibit or place the firms at a competitive disadvantage in foreign trade. In that year, the Congress passed the

Webb-Pomerene Act permitting U.S. firms to form associations for the purpose of exporting goods without constraint under U.S. anti-trust laws.

In the 1930's there were 57 Webb-Pomerene associations and they accounted for some 19 percent of total U.S. exports. By 1979, however, the number of associations had declined to 33, accounting for less than 2 percent of U.S. exports. Coincidentally, the historic U.S. foreign trade surplus had fallen into severe and growing deficit—\$26.5 billion in 1977, \$28.5 billion in 1978, \$24.7 billion in 1979, and a projected \$32.1 billion for 1980.

The Committee on Foreign Affairs and its Subcommittee on International Economic Policy and Trade—through hearings conducted on various aspects of U.S. exports pursuant to the committee's jurisdiction over "export controls," "measures to foster commercial intercourse with foreign nations" and "international economic policy"—found increasing evidence that declining U.S. export performance was having an impact on the conduct of foreign relations. This perception was enhanced and corroborated by hearings conducted by the Joint Economic Committee ("The Trade Deficit: How Much of a Problem? What Remedy?", hearing before the Subcommittee on International Economics, 95th Congress, 1st Session, October 11, 1977), the Committee on Ways and Means ("Causes and Consequences of the U.S. Trade Deficit and Developing Problems in U.S. Exports," hearings before the Subcommittee on Trade, 95th Congress, 1st Session, November 3-4, 1977), and the Senate Committee on Banking, Housing, and Urban Affairs ("Export Policy," hearings before the Subcommittee on International Finance, 95th Congress, 2nd Session, February 6 and 23, March 9, 20, 21, and 30, April 5, and May 16, 1978).

COMMITTEE ACTION

In an effort to find a means of beginning to restore U.S. export competitiveness, Representatives Bingham and Lagomarsino on August 1, 1979, introduced H.R. 5061, a bill to encourage U.S. exports by establishing within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations. H.R. 5061 was referred jointly to the Committee on Foreign Affairs and the Committee on the Judiciary. Several similar bills were subsequently introduced, including H.R. 7230 (introduced May 1, 1980, by Mr. Bonker), H.R. 7310 (introduced May 8 by Mr. LaFalce), H.R. 7364 (introduced May 15 by Mr. AuCoin), H.R. 7436 (introduced May 22 by Mr. Reuss), and H.R. 7463 (introduced May 29 by Mr. Neal).

On May 22, June 4, and June 10, the Subcommittee on International Economic Policy and Trade conducted hearings on the above-mentioned bills. On June 18, the subcommittee marked up and tentatively ordered favorably reported H.R. 7230 with a substitute text. The subcommittee completed action and reported the bill favorably, with an amendment in the nature of a substitute, to the full Foreign Affairs Committee. The subcommittee's amendment included substantial portions of H.R. 7436, which is identical to S. 2718, as reported.

The full Foreign Affairs Committee conducted a hearing on H.R. 7230 on June 24, receiving testimony from Secretary of Commerce

Philip Klutznick and U.S. Trade Representative Reuben Askew, and subsequently, on July 1, ordered the bill favorably reported to the House.

NEED FOR THE LEGISLATION

A strong dollar and a strong economy have become as important as military strength to an effective U.S. foreign policy. There are many causes of the weakened international position of the dollar. The negative balance of foreign trade is created largely by mounting energy import costs and sluggish export performance, the latter resulting from a leveling off of productivity and growth in the U.S. economy. The decline of the dollar contributes at times to failures to attain important foreign policy goals.

H.R. 7230 does not purport to offer a solution to basic problems of the U.S. economy. Instead, its purpose is to stimulate exports and export-led growth by enhancing the availability and sophistication of export services, procedures, and resources for those products and services which are competitive on the world market. The vehicles for export services which the bill seeks to encourage are export trading companies and trade associations.

Trading companies, as is well known, have contributed significantly to the export effectiveness of European, Japanese, and Korean producers. In the case of Japan, large trading companies have evolved over more than a century, and are closely intertwined with unique social and legal traditions and structures that facilitate exports. In Korea and Europe, the trading company phenomenon is of post World War II origin. In Europe in particular, trading companies operate effectively within many of the same social and legal traditions to which the United States is committed.

Trading companies exist as well in the United States. In the course of its deliberations on H.R. 7230, the committee heard testimony from the executives of several American trading companies and received informal comments on the legislation from others. In general American trading companies tend to be rather highly specialized in terms of the products they handle, the services they offer, or both. Their tendency to specialize, rather than to deal in a wide range of goods and services, has been dictated in part by legal restrictions under which they operate. In its action on H.R. 7230, the committee attempted to identify and make appropriate revisions in the most significant of those legal restrictions: Federal banking law restrictions on the relationship between trading companies and banks and antitrust restrictions on pricing and other commercial activities of trade companies and associations.

EXPLANATION OF THE LEGISLATION

1. *Export of Services.*—The United States has the largest service section of any country in the world. Services currently account for about 65 percent of total U.S. Gross National Product. Although exports of services contribute importantly to the balance of trade, that contribution is not as great as it might be considering the role of services in the GNP. The committee believes that an essential element of any export expansion policy is a special emphasis on encouraging the export of services.

H.R. 7230 would make producers of services eligible for the anti-trust exemptions currently available only to producers of goods under the Webb-Pomerene Act. This would enable producers 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 offering services for construction projects abroad without concern for antitrust violations. As with existing Webb-Pomerene associations, associations exporting services would be subject to the various Webb-Pomerene requirements discussed under "Antitrust Exemption and Certification" below.

2. *Export Trading Companies.*—H.R. 7230 gives statutory recognition to export trading companies—companies whose principal business is providing export services to U.S. producers of goods and services. Such companies sometimes themselves become exporters by taking title to goods and exporting them. To qualify as an export trading company for purposes of this legislation, at least 50 percent of the value of the goods and services exported by the company must be of U.S. origin.

For such companies, to encourage their formation and expansion, H.R. 7230 offers several major benefits: (1) exemption under the Webb-Pomerene Act (as amended by H.R. 7230) from antitrust restrictions; (2) authority for participation by banks, which would otherwise under various Federal banking statutes be precluded from investing in trading companies; and (3) DISC and Subchapter S tax treatment.

It is the committee's intent that export trading companies under H.R. 7230 have maximum flexibility to engage in the wide variety of specific commercial activities and relationships that may be necessary to affect trading arrangements which result in exports of U.S. goods and services. In an increasingly competitive and complex international trading environment, such arrangements frequently must be tailored to a complex set of circumstances. U.S. export trading companies should have all the tools at their disposal to meet such circumstances and take advantage of trading opportunities. Such tools might include domestic or foreign investment, importation of foreign goods (particularly to meet the terms of barter arrangements), and other commercial activities.

3. *Banking and Tax Incentives.*—The committee was impressed with evidence that availability of bank financing is an element in the success of many foreign trading companies, and that American trading companies seem to have limited access to financing. The relative unavailability of bank financing to American trading companies stems in part from the fact that a trading company's assets at any given time tend to consist largely of accounts receivable and inventory, and American banks—especially those not heavily involved or experienced in foreign trade—are sometimes reluctant to provide financing on the basis of such collateral. That reluctance is buttressed by U.S. banking laws such as the Bank Holding Company Act, which prohibits banks from participating in commercial enterprises such as export trading companies. That prohibition both reduces the capital available to export trading companies, and precludes banks from gaining the kind of

working knowledge and involvement in export trade which would give them greater confidence and inclination to lend to exporters.

In the interest of export expansion, the committee concluded that a limited exception from existing limits on bank participation in commercial activities is warranted. H.R. 7230 provides such an exception. It authorizes banks to invest in export trading companies within certain financial limits and subject to the scrutiny and supervision of appropriate Federal bank regulatory agencies.

The committee does not intend the authority for banks to invest in and, with Federal bank regulatory approval, even to control export trading companies to become a loophole through which banks engage in domestic commerce beyond what is necessary and directly beneficial to export trade. The 50 percent export trade requirement of H.R. 7230, discussed earlier, partly assures against such abuse. In addition, however, it may be necessary for the Federal bank regulatory agencies, particularly in cases of bank control of export trading companies, to establish criteria for certain commercial activities by export trading companies to assure that such activities do not exceed the intent of this legislation. H.R. 7230 gives ample authority to the Federal bank regulatory agencies to regulate commercial activities by banks. However, with the exception of trade in commodities futures, which is explicitly prohibited by H.R. 7230 for trading companies controlled by banks, no commercial activity should be precluded which can be shown directly to be associated with or beneficial to an export trading company's export transactions.

In allowing export trading companies the tax deferral benefits of DISC's with respect to their income from services as well as products, and notwithstanding bank investment in such companies, the committee recognizes that DISC status is itself controversial and takes no position on DISC per se. The committee recommends DISC for export trading companies because the committee feels it makes no sense to exclude export trading companies from DISC treatment so long as DISC exists. Export trading companies perform all of the functions expected of DISC's. The exclusion of export trading companies, or a portion of their income, from DISC benefits on the basis of minor structural or operational factors constitutes an inequity which should be corrected, and detracts from the effectiveness of DISC as a spur to exports. The Ways and Means Committee has primary jurisdiction in this area, and the committee hopes the Ways and Means Committee will review and exercise its judgment on this issue.

The committee recognizes that both DISC treatment, and Subchapter S treatment for closely held export trading companies, which is also provided in the bill, entail costs to the U.S. Treasury. The Treasury Department estimates the costs of the former at \$300-700 million (although the committee would note that such estimates are necessarily speculative in view of the country's limited experience with export trading companies); no estimate is available for the latter. It is the assessment of the committee that these estimated costs will be more than made up to the Treasury and the U.S. economy through expanded exports attributable to DISC and Subchapter S incentives.

4. *Antitrust Exemption and Certification.*—H.R. 7230 expands the availability of antitrust exemptions for exporters by making trade

associations exporting services and export trading companies eligible for such exemptions. At present, under the Webb-Pomerene Act, only export trade associations dealing in goods are eligible for exemptions. Eligibility requirements for such exemptions under the bill remain the same as under the current Webb-Pomerene Act. To be eligible, an export association or trading company's operations must not restrain domestic competition or trade, and must not artificially or intentionally enhance or depress domestic prices.

H.R. 7230 also adds a new element to the antitrust exemption under the Webb-Pomerene Act, namely prior certification of export associations, trading companies, and their activities. The Secretary of Commerce is authorized to issue such certification, in consultation with the Department of Justice and the Federal Trade Commission. Such certifications would explicitly authorize export trade associations and export trading companies to conduct particular export business activities without fear of antitrust violations as long as their activities remained within the constraints and conditions of the certification. The purpose of this certification procedure, which does not currently exist under the Webb-Pomerene Act, is to provide greater clarity and assurance to export trade associations and export trading companies by specifying which activities are permissible under the antitrust exemption. Under the bill, only the Department of Justice and the Federal Trade Commission are accorded standing to bring legal action for alleged violations of the terms of certification and requirements of the Webb-Pomerene Act.

The committee regards these as constructive and limited enhancements of the antitrust exemptions for exporters which are not intended to reduce the domestic effectiveness of the antitrust laws.

5. *Responsibilities of the Secretary of Commerce.*—To administer the programs and policy changes contained in H.R. 7230, the committee felt that primary responsibility should be vested in the Department principally concerned with expanding and promoting U.S. exports. Accordingly, such responsibility is vested in the Secretary of Commerce, acting in close consultation with and, in some circumstances, the concurrence of agencies principally responsible for the regulation of commerce, such as the Justice Department, the Federal Trade Commission, and the Federal bank regulatory agencies. The Secretary of Commerce is directed to establish an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, to provide export trade referral services, and otherwise to promote and encourage exports of U.S. products, especially finished products.

In designating the Secretary of Commerce to implement H.R. 7230, the committee intends that increased effort and attention should be invested by the Commerce Department in encouraging the formation and expansion of export trading companies and associations. With that in mind, \$20 million per year is authorized, beginning in fiscal year 1982, for the Economic Development Administration and for the Small Business Administration, to assist such export trading companies with startup and operating costs. These additional funds would be used in accordance with their usual standards and purposes of those agencies.

EXPLANATION OF COMMITTEE ACTION

In adopting substantial portions of H.R. 7436 as amendments to H.R. 7230, the subcommittee made, and the committee approved, in addition to technical and conforming changes, several substantive changes in the language of H.R. 7436. With respect to the banking provisions, the subcommittee adopted language (sec. 101(d)(2) of H.R. 7230 as reported) requiring bank regulatory agencies to consider the views of the Secretary of Commerce on the export benefits of proposals for bank participation in export trading companies before making a determination on the proposals. In view of the export promotion objectives of the bill, the committee considers it important that the Secretary of Commerce have an opportunity for such an input into the bank regulatory process.

The subcommittee also made several changes in the antitrust provisions of H.R. 7436, most of them designed to respond to the concerns of existing Webb-Pomerene associations that the bill might hinder their operations.

First, in lieu of the requirements for eligibility for the Webb-Pomerene exemptions that are contained in H.R. 7436, the subcommittee agreed to restore the eligibility criteria contained in the existing Webb-Pomerene Act in order to address the concern of the existing association that the eligibility criteria of H.R. 7436 could be interpreted as being more strict than those of the Webb-Pomerene Act. Since the purpose of the bill is to build upon, rather than narrow, the Webb-Pomerene exemptions, it seemed advisable to the subcommittee to restore the existing criteria in order to avoid any such interpretation.

Second, the subcommittee agreed to delete several of the detailed procedural requirements of H.R. 7436 concerning participation by the Attorney General and the Federal Trade Commission in certification determinations. The committee's intent is not to reduce the role of those agencies, but rather to simplify the certification process. The committee agrees with the existing associations, which now operate under the very simple provisions of the Webb-Pomerene Act, that they should not be subjected to unduly complicated procedures under the new act.

Third, the subcommittee agreed to delete certain kinds of information required by H.R. 7436 to be submitted in support of an application for certification. The intent of this action is again to make the information requirements more in accord with those currently in effect under the Webb-Pomerene Act, in order to avoid, insofar as possible, imposing new burdens on the existing associations.

Fourth, the subcommittee agreed to a provision (sec. 205 of the bill as reported) which provides for automatic certification of existing Webb-Pomerene associations, and that such existing associations would continue to be governed by the requirements of the Webb-Pomerene Act as in effect before the enactment of this act. This is yet another way of clarifying that the bill is not intended in any way to narrow the Webb-Pomerene exemptions. The intent of the bill, which is reflected in this provision, is that activity which is permissible under the existing Webb-Pomerene Act will continue to be permissible under the new act.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

Section 1 provides that the act may be cited as the "Export Trading Company Act of 1980."

Section 2—Findings; Declaration of Purpose

Section 2(a) sets forth 10 findings with respect to: the importance of exports to the U.S. economy; the potential for service-related industries to improve the country's export performance; the problems caused by trade deficits; the failure of small and medium sized firms to export; the fragmentation of trade services in the United States; the need for well developed export trade intermediaries; the role of business attitudes and government regulations in hampering the development of export trading companies; the importance of the activities of State and local governmental authorities in expanding exports; the importance of bank participation in export trading companies; and the central role of the Department of Commerce in promoting exports.

Section 2(b) declares it to be the purpose of the act to increase exports of goods and services by encouraging the provision of trade services to potential exporters, particularly by establishing an office in the Department of Commerce to promote the formation of export trade associations and export trading companies; by making the provisions of the Webb-Pomerene Act applicable to the export of services; and by transferring the responsibility for administering that Act to the Department of Commerce.

Section 3—Definitions

Section 3(a) provides definitions for the following terms as used in the act: (1) "export trade"; (2) "goods produced in the United States"; (3) "services produced in the United States"; (4) "export trade services"; (5) "export trading company"; (6) "State"; (7) "United States"; (8) "Secretary"; and (9) "company".

Section 3(b) provides that the Secretary may by regulation further define any term used in subsection (a) in order to carry out the purposes of the act.

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

Section 4 directs the Secretary to establish within the Department of Commerce an office to promote and encourage the formation of export trade associations and export trading companies, and that such office shall provide information, advice, and a referral service to facilitate contact between producers and export service organizations.

TITLE I—EXPORT TRADING COMPANIES

Section 101—Investment in Export Trading Companies by Banking Organizations

Section 101(a) provides definitions for the following terms for purposes of this section: (1) "banking organization"; (2) "State bank"; (3) "District banks"; (4) "State member bank"; (5) "State non-member insured bank"; (6) "bankers' bank"; (7) "bank holding company"; (8) "Edge Act Corporation"; (9) "Agreement Corporation";

(10) "appropriate Federal banking agency"; (11) "capital and surplus"; (12) "affiliate"; (13) "subsidiary"; (14) "control", in the case of a banking organization's control over a company; and (14) "export trading company".

Section 101(b) provides the bill's basic limitations on, and procedures for Federal banking agency approval of, investments by banking organizations in export trading companies.

Paragraph (1) provides that a banking organization may invest up to 5 percent, in the aggregate, of its consolidated capital and surplus in one or more export trading companies. A banking organization may invest up to an aggregate amount of \$10 million in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if the investment does not cause an export trading company to become a subsidiary of the banking organization. A banking organization may invest in excess of \$10 million, or take any other action which causes an export trading company to become a subsidiary, or causes more than 50 percent ownership or control of an export trading company to be held by banking organizations, only if the banking organization notifies the appropriate Federal banking agency of the proposed action and receives the prior approval of the banking agency.

Paragraph (2) provides that a banking organization which makes an investment not requiring prior approval must notify the appropriate Federal banking agency of such investment, and the banking agency may disapprove or impose conditions on the investment if it determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the banking organization. The banking agency may also require divestiture and may impose any other conditions necessary for the termination of any controlling relationship.

Paragraph (3) provides that any application for approval of an investment by a banking organization, which has not been acted on within 90 days of receipt by the appropriate Federal banking agency, shall be deemed to have been granted.

Paragraph (4) provides that before a banking organization makes an investment in an export trading company subsidiary for which notification has not previously been made, and before an export trading company subsidiary of a banking organization engages in any activity not disclosed in a prior application for approval, the banking organization must notify the appropriate Federal banking agency. Such investment or activity may be undertaken (1) if, within 60 days after receipt of such notification, the banking agency fails either to disapprove or impose conditions on the investment or activity, or, (2) subject to any conditions imposed on the investment or activity within the 60-day period, or (3) before the end of the 60-day period if the banking agency notifies the banking organization of its intent not to disapprove or impose conditions on the investment or activity.

Paragraph (5) provides that a banking organization which is a subsidiary of another banking organization which is subject to the jurisdiction of another appropriate Federal banking agency need only obtain the approval of its appropriate Federal banking agency for its investment or for an activity of its export trading company subsidiary.

Section 101(c) provides the following further conditions on bank investments in export trading companies:

First, the name of an export trading company may not be similar to that of a banking organization that owns any of its stock;

Second, the total historical cost of the direct and indirect investments by a banking organization in an export trading company, combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company, shall not exceed 10 percent of the banking organization's capital and surplus;

Third, a banking organization must terminate its ownership of stock in an export trading company if the export trading company takes positions in commodities or commodities contracts other than those necessary in the course of its business operations; and

Fourth, no banking organization holding any stock in an export trading company may extend credit to that trading company or its customers on terms more favorable than those afforded similar borrowers in similar circumstances.

Section 101(d) pertains to the consideration by appropriate Federal banking agencies of proposals by banking organizations for investments or activities in export trading companies. Paragraph (1) sets forth the investments and activities to which this subsection applies. Paragraph (2) provides that the banking agency shall consider the views of the Department of Commerce on a proposed investment, action, or activity. Paragraph (3) sets forth the criteria that the banking agency shall consider in approving or disapproving a proposal, and provides that the banking agency may not approve a proposal if it finds that the export benefits of the proposal are outweighed by adverse financial, managerial, competitive, or other banking factors associated with the proposal.

Paragraph (4) provides that, in approving any proposal, the banking agency may impose any conditions it considers necessary to limit a banking organization's financial exposure to an export trading company or to prevent possible conflicts of interests or unsafe or unsound banking practices. The banking agencies must, by regulation, issue standards to govern the taking of title to goods and the holding of title to inventory by banking organizations in order to ensure against unsafe or unsound practices. No banking organization may take or hold such title in a manner not in conformity with such standards without the prior approval of the banking agency.

Paragraph (5) sets forth criteria for use by banking agencies in determining whether to impose conditions under paragraph (4). This provision specifies that the conditions must not unnecessarily disadvantage export trading companies in competing in world markets, and that special attention must be given to the need to take title in certain kinds of transactions such as barter transactions.

Paragraph (6) provides that if a banking agency has reasonable cause to believe that ownership or control of an export trading company by a banking organization constitutes a serious risk to the banking organization, and is inconsistent with sound banking principles or with the purposes of the act, the banking agency may order the banking organization, after notice and opportunity for hearing, to terminate its investment in the export trading company.

Paragraph (7) requires the appropriate Federal banking agencies to report to Congress on the implementation of this section within 2 years after the date of enactment.

Section 101(e) sets forth procedures by which any party aggrieved by any order of an appropriate banking agency under this section may obtain judicial review of the order.

Section 101(f) gives the appropriate Federal banking agencies regulatory and other authorities to carry out the provisions of this section, and provides that, in addition to other laws, section 8 of the Federal Deposit Insurance Act may be used to enforce compliance with the requirements of this section.

Section 102—Initial Investments and Operating Expenses

Section 102 provides that the Economic Development Administration and the Small Business Administration shall give special weight to export related benefits in considering applications by export trading companies for loans and guarantees, and authorizes the appropriation of \$20 million for each of fiscal years 1982, 1983, 1984, and 1985 to carry out the purposes of this section.

Section 103—Guarantees for Export Accounts Receivable and Inventory

Section 103 provides that the Export-Import Bank shall guarantee loans by private creditors to export trading companies, or to other exporters, secured against accounts receivable or inventories of exportable goods, when in the judgment of the Bank the private credit market is not providing adequate financing and guarantees by the Bank would permit exports which would not otherwise occur.

TITLE II—ANTITRUST PROVISIONS

Section 201—Definitions

Section 201 amends section 1 of the Webb-Pomerene Act to provide definitions for the following terms as used in that act: (1) "export trade"; (2) "service"; (3) "export trade activities"; (4) "State"; (5) "United States"; (6) "trade within the United States"; (7) "methods operation"; (8) "association"; (9) "export trading company"; (10) "antitrust laws"; (11) "Secretary"; (12) "Attorney General"; and (13) "Commission".

Section 202—Antitrust Exemption

Section 202 amends section 2 of the Webb-Pomerene Act to provide an exemption from the antitrust laws for eligible associations and export trading companies.

New section 2(a) of the Webb-Pomerene Act provides that any association entered into for the sole purpose of engaging in export trade, and any export trading company, with respect to its export trade, shall, when certified in accordance with the act, be eligible for an exemption from the antitrust laws if: (1) its activities are not in restraint of trade within the United States and are not in restraint of the export trade of any domestic competitor; and (2) it does not engage in any act which artificially or intentionally enhances or depresses prices within the United States of the class of goods or services it exports, or which substantially lessens competition or otherwise re-

strains trade within the United States. These eligibility criteria are identical to those currently contained in the existing Webb-Pomerene Act.

New section 2(b) provides that an association or export trading company is exempt from the antitrust laws with respect to activities specified in a certificate issued under the act.

Section 203—Technical Amendment

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

Section 204—Administration; Enforcement; Reports

Section 204(a) makes a technical amendment to section 6 of the Webb-Pomerene Act.

Section 204(b) amends the Webb-Pomerene Act by striking out sections 4 and 5 and inserting in lieu thereof the following new sections:

New Section 4—Certification

New section 4 provides procedures for applying for, issuing, amending, and revoking certificates.

New section 4(a) provides that any association or export trading company seeking certification must file an application with the Secretary, and sets forth the information that must be provided in the application.

New section 4(b) provides that the Secretary shall issue a certificate within 90 days of receipt of an application, specifying permissible activities of the association or export trading company, if the Secretary, after consultation with the Attorney General and the Federal Trade Commission, determines that the association or export trading company meets the requirements of section 2 of the Webb-Pomerene Act. Under certain circumstances an applicant may request and the Secretary may grant expedited action on the application. If the Secretary denies an application for certification, the Secretary must notify the applicant of the denial and the reasons for it and, upon the request of the applicant, must afford the applicant an opportunity for a hearing in accordance with sections 556 and 557 of title 5, United States Code.

New section 4(c) provides that an association or export trading company to which a certificate has been issued must report to the Secretary any material change in its membership, export trade, export trade activities, or methods of operation, and may apply for an amendment to its certificate. Procedures for considering a request for amendment are set forth.

New section 4(d) provides that, after notification and opportunity for a hearing, the Secretary may require that the activities of an association or export trading company be modified to correspond with its certificate, and shall revoke or amend a certificate upon a determination that the activities of the holder of the certificate no longer meet the requirements of section 2 of the Webb-Pomerene Act.

New section 4(e) provides procedures whereby the Attorney General or the Federal Trade Commission may bring an action in an appropriate United States district court to invalidate a certificate in whole

or in part on the grounds that the activities of the holder of the certificate do not meet the requirements of section 2 of the Webb-Pomerene Act. No person other than the Attorney General or the Commission shall have standing to bring such an action.

New Section 5—Guidelines

New section 5 requires the Secretary, within 90 days after enactment of the Export Trading Company Act of 1980, and after consultation with the Attorney General and the Federal Trade Commission, to publish proposed guidelines for determining whether the activities of an association or export trading company meet the requirements of section 2 of the Webb-Pomerene Act. New section 5 also provides for public comment on and periodic revision of the proposed guidelines, and specifies that the promulgation of the guidelines shall not be considered rule making for purposes of subchapter II of chapter 5 of title 5, United States Code (the Administrative Procedure Act).

New Section 6—Annual Reports

New section 6 requires submission of an annual report to the Secretary by every association or export trading company to which a certificate is issued under the Webb-Pomerene Act.

New Section 7—Confidentiality of Application and Annual Report Information

New section 7 provides that certain information required to be submitted to the Secretary under the act, which contains trade secrets or confidential business or financial information the disclosure of which would harm the competitive position of the person submitting the information, shall be confidential, and generally prohibits disclosure of such information by any current or former officer or employee of the United States. The Secretary must make such information available to the Attorney General or the Federal Trade Commission for official law enforcement purposes under the act or the antitrust laws upon prior certification by the recipient of the information that the information will be maintained in confidence and used only for such official purposes. This section does not authorize the withholding of any information from Congress, and any information obtained under the act must be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction.

New Section 8—International Obligations

New section 8 provides that the Secretary may require any association or export trading company certified under the Act to modify its operations so as to be consistent with any international obligation which the United States assumes by treaty or statute.

New Section 9—Regulations

New section 9 provides that the Secretary, after consultation with the Attorney General and the Federal Trade Commission, shall issue such regulations as may be necessary to carry out the purposes of the act.

New Section 10—Task Force Study

New section 10 provides that, 5 years after the date of enactment of the Export Trading Company Act of 1980, the President shall appoint

a task force to study the effect of the Webb-Pomerene Act on domestic competition and on the trade deficit of the United States. The task force shall complete its study and submit any recommendations to the President within 1 year after its appointment.

Section 205—Continuing Exemption for Existing Associations; Automatic Certification

Section 205 provides that existing associations which are in compliance with section 5 of the Webb-Pomerene Act as in effect immediately before the date of enactment of this act shall continue to be governed by such section 5 of the Webb-Pomerene Act (except that they must file their reports with the Secretary of Commerce rather than the Federal Trade Commission), and that any such existing association shall be deemed to be certified under the new provisions of the Webb-Pomerene Act, as of the date of enactment of this act, if, within 180 days of enactment, it files an application for certification. Although the committee neither intends nor believes that the amendments to the Webb-Pomerene Act made by this bill will disrupt the activities of any associations currently operating under the antitrust exemption of that act, the committee takes note of the concerns of the existing associations in this regard and intends the provisions of this section to make clear that activities of existing associations that are permissible under the existing act are also permissible under the amendments to the act made by this bill.

TITLE III—TAXATION OF EXPORT TRADING COMPANIES

Section 301—Application of DISC Rules to Export Trading Companies

Section 301 amends the Internal Revenue Code relating to Domestic International Sales Corporations (DISC's) to insure that bank investments in export trading companies would not disqualify such companies from using DISC's and to make receipts from exports of services or from export trade services eligible DISC receipts. Section 301 also requires the Secretary of Commerce to develop and distribute information on how to form and use DISC's.

Section 302 amends the Internal Revenue Code relating to subchapter S tax treatment, which permits losses or income of firms with fewer than 15 stockholders to be passed through and taxed as individual shareholder tax losses or gains. The amendments would exclude export trading companies from the requirement that 20 percent of the annual income of a subchapter S corporation be domestic income, and permit an export trading company to qualify for subchapter S if owned by shareholders which are small business corporations as defined in subchapter S.

The provisions of sections 301 and 302 take effect with respect to taxable years beginning after December 31, 1981.

COST ESTIMATE

The committee estimates that, assuming the full appropriation of the amounts authorized in this bill, the total budget authority required to carry out the provisions of H.R. 7230 will be \$20 million in each of the fiscal years 1982, 1983, 1984, and 1985.

INFLATIONARY IMPACT STATEMENT

The \$20 million authorization contained in this legislation for each of the fiscal years 1982, 1983, 1984, and 1985 would have no identifiable inflationary impact. The committee notes that the principal purpose of H.R. 7230 is to stimulate U.S. exports thereby strengthening the international position of the U.S. dollar. Therefore, if enacted, the overall impact of this measure, over a period of time, should be counter-inflationary.

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

(A) OVERSIGHT FINDINGS AND RECOMMENDATIONS

Based on the committee's oversight activities with respect to this legislation, as described under "Committee Action", the committee recommends the Passage of H.R. 7230.

(B) BUDGET AUTHORITY

The enactment of H.R. 7230 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 from the Committee on Government Operations under clause 4(c) (2) of Rule X of the House.

(D) CONGRESSIONAL BUDGET OFFICE ESTIMATE

A Congressional Budget Office Estimate was not available at the time this report was filed and will be provided in a supplemental report.

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) :

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.

【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.】

SECTION 1. DEFINITIONS.

As used in this Act—

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

(2) *SERVICE.*—The term "service" means the provision, for a charge, of useful labor that does not produce a tangible commodity, including, but not limited to—

(A) *business, repair, and amusement services;*

(B) *management, legal, engineering, architectural, and other professional services; and*

(C) *financial, insurance, transportation, and communication 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" includes the District of Columbia.

(5) *UNITED STATES.*—The term "United States" means the States and the territories and possessions of the United States.

(6) *TRADE WITHIN THE UNITED STATES.*—The term "trade within the United States" means trade or commerce within any territory or possession of the United States or between or among the States and territories and possessions of the United States.

(7) *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.

(8) *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.

(9) *EXPORT TRADING COMPANY*.—The term “export trading company” means an export trading company as defined in section 3(5) of the Export Trading Company Act of 1980.

(10) *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); and the Clayton Act (15 U.S.C. 12 et seq.);

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

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

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

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 or its export trade, export trade activities, or methods of operation, or the export trade, export trade activities, or 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*.—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, or 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.

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 of 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 expenses 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 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 or 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 by which the association or export trading company conducts or proposes to conduct export trade in the described goods or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agree-

ments 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, or 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 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 to 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 filled within 30 days after a material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which the certificate is in effect.

(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 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 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 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 enactment of the Export Trading Company Act of 1980, the Secretary, after consultation with the Attorney General and the Commission, shall publish proposed guidelines for determining whether 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), and any proposed revision of such guidelines, interested parties shall have 30 days to comment on the proposed guidelines or proposed revision. 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 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 reports of material changes, filed under section 4 of this Act, and 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, and annual reports submitted pursuant to section 6 of this Act, or 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 enactment of the Export Trading Company Act of 1980, 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.”

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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**Subchapter N—Tax Based on Income From Sources
Within or Without the United States**

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**PART IV—DOMESTIC INTERNATIONAL SALES
CORPORATIONS**

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Subpart A—Treatment of Qualifying Corporations

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SEC. 992. REQUIREMENTS OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

(a) DEFINITION OF "DISC" AND "FORMER DISC".— * * *

(d) INELIGIBLE CORPORATIONS.—The following corporations shall not be eligible to be treated as a DISC—

- (1) a corporation exempt from tax by reason of section 501,
- (2) a personal holding company (as defined in section 542),
- (3) a financial institution to which section 581 or 593 applies (*other than a financial institution which is a banking organization as defined in section 101(a)(1) of the Export Trading Company Act of 1980 investing in the voting stock of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) in accordance with the provisions of section 101 of such Act*),
- (4) an insurance company subject to the tax imposed by subchapter L,
- (5) a regulated investment company (as defined in section 851(a)),
- (6) a China Trade Act corporation receiving the special deduction provided in section 941(a), or
- (7) an electing small business corporation (as defined in section 1371(b)).

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SEC. 993. DEFINITIONS.

(a) QUALIFIED EXPORT RECEIPTS.—

(1) GENERAL RULE.—For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, [and]

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC[.], and

(I) in the case of a DISC which is an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 3(3) of such Act) or from export trade services (as defined in section 3(4) of such Act).

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Subchapter S—Election of Certain Small Business Corporations as to Taxable Status

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SEC. 1371. DEFINITIONS.

(a) **SMALL BUSINESS CORPORATION.**—For purposes of this subchapter, the term “small business corporation” means a domestic corporation which is not a member of an affiliated group (as defined in section 1504) and which does not—

(1) have more than 15 shareholders;

(2) have as a shareholder, *except in the case of the shareholders of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) if such shareholders are otherwise small business corporations for the purpose of this subchapter*, a person (other than an estate and other than a trust described in subsection (e)) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

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SEC. 1372. ELECTION BY SMALL BUSINESS CORPORATION.

(a) **ELIGIBILITY.**— * * *

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(e) **TERMINATION.**—

(1) **NEW SHAREHOLDERS.**—

(A) An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation on the day on which the election is made becomes a shareholder in such corporation and affirmatively refuses (in such manner as the Secretary may by regulation prescribe) to consent to such election on or before the 60th day after the day on which he acquires the stock.

(B) If the person acquiring the stock is the estate of a decedent, the period under subparagraph (A) for affirmatively refusing to consent to the election shall expire on the 60th day after whichever of the following is the earlier:

- (i) The day on which the executor or administrator of the estate qualifies; or
- (ii) The last day of the taxable year of the corporation in which the decedent died.

(C) Any termination of an election under subparagraph (A) by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation (or, if later, the first taxable year for which such election would otherwise have been effective) and for all succeeding taxable years of the corporation.

(2) REVOCATION.—An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year,

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the Secretary shall prescribe by regulations.

(3) CEASES TO BE SMALL BUSINESS CORPORATION.—An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day,

the corporation ceases to be a small business corporation (as defined in section 1371(a)). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(4) FOREIGN INCOME.—An election under subsection (a) made by a small business corporation, *other than an export trading company*, shall terminate if for any taxable year of the corporation for which the election is in effect, such corporation derives more than 80 percent of its gross receipts from sources outside the United States. Such termination shall be effective for the taxable year of the corporation in which it derives more than 80 percent of its gross receipts from sources outside the United States, and for all succeeding taxable years of the corporation.

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ADDITIONAL VIEWS OF HON. ROBERT J. LAGOMARSINO

I believe the central issue here is consideration of the merits of Webb-Pomerene associations. It has been my assumption all along that Webb-Pomerene associations offer a valuable opportunity for promoting U.S. exports, and any new legislative efforts in this field should be designed to enhance the value of Webb-Pomerene associations.

If the result of our efforts were to somehow diminish the effectiveness of existing Webb-Pomerene associations, then we have defeated the purpose of legislating improvements to make such associations better able to serve export promotion.

If we were to say that existing Webb-Pomerene associations should not continue their operations just as they always have, then we would be saying there is something wrong with what they have been doing. I do not believe that is the case. For that reason, I believe it is essential that we have the grandfather language that is incorporated in this legislation to ensure that the existing Webb-Pomerene statutory exemption continues in full force and effect for present associations. Those associations would be required to continue to file annual reports with the Secretary of Commerce. This procedure would enable the existing associations to retain the current flexibility, on which their members have always relied. It would not in any way enlarge the existing antitrust exemption; therefore, there should be no objection.

I also support the provisions made in this legislation for existing associations to apply for certification under this act and that such certification be automatic. That certification should be simple and flexible enough to reflect the principles underlying the original purpose of the Webb-Pomerene Act. It makes sense for the certification to be automatic since those existing associations have already demonstrated their successful operation in export promotion. Naturally, an existing association which is automatically certified would be subject to review under the provisions of the new law, but the existing Webb-Pomerene statutory exemption would remain as a protective backup to its operation.

Also, while I have serious reservations about some of the banking provisions that are proposed in some of the bills that came before our subcommittee, I believe the House Banking Committee can more appropriately consider the merits of such banking questions as: controlling interest in export trading companies and engaging in securities business. The proposed changes in the law made by this legislation are a serious departure from existing banking practice and such changes should not be made precipitously.

Another issue has just been raised and one which I believe should be reviewed by the Judiciary Committee.

None of the bills dealing with export trading companies and associations make provision for participation by companies who may have

been named in consent orders, decrees or judgments obtained by the Justice Department or Federal Trade Commission in administering antitrust laws. It is the contention of some that such named companies or persons could not safely participate in export trading companies because the antitrust judgments exclude them as a result of a past violation of conduct which would not be permissible under this legislation. A C.R.S. study disputes that conclusion, but I believe this issue is of such importance that the Judiciary Committee should consider the merits of the question before a final determination is made.

Finally, I would like to call attention to the issue of public sector participation in export trading companies and export promotion. H.R. 7230 contains this finding of fact, which I support :

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.

This finding is substantially the same as the provision in S. 2718. That version embodied an explicit finding in the importance of State and other governmental entity involvement in the initiation, promotion and expansion of exports, and made clear Congress does not intend to curtail essential experimentation of States and groups of States working with the private sector to facilitate export trade. By having adopted a similar provision in this version of the export trading legislation, this committee leaves open the role of State participation without prejudging what precisely that role should be.

While trading company legislation may be enacted this term, it will be several years before the activity envisioned in this legislation becomes a significant force in export trade. Given this lag, the effect of this provision will be to consider the utility of State involvement in the trading company environment that will exist then, rather than now.

State legislative and executive branch officials are becoming highly responsive to the needs and preferences of their particular constituencies. When these officials cooperate closely with the private sector, their actions can have a positive impact on promoting trade. Last year, the administration urged individual States to serve as experimental stations in developing innovative approaches to international trade and investment.

States are in a logical position to merge public and private interests concerning a national export policy. For example, California is a highly complex, fully integrated economy with a legislature, judiciary and executive department that function in a highly independent manner in a broad spectrum of economic, political and social issues. In the international trade area, California has been a leader among States in shaping a State policy that deals efficiently with trade and human commerce with its neighbors to the south and the Pacific basin.

Clearly California and other States are dedicated to understanding the complex issues inherent in international trade and development.

States, therefore, should not be precluded from this opportunity to participate closely with trading companies. To preclude such coopera-

tion directly or by implication could be a serious loss for export trade potential. The finding included in this trading company legislation would ensure that States are not hampered in this vital and legitimate endeavor.

The following letter from the State of California clearly expresses support for this finding of fact in the legislation and also supports the subcommittee language on the activities of the existing Webb-Pomerene Associations:

STATE OF CALIFORNIA,
WASHINGTON OFFICE,
Washington, D.C., June 30, 1980.

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you consider H.R. 7230, the Export Trading Company Act of 1980, we urge your support of two provisions of concern to the State of California which were adopted by the subcommittee last week. Specifically, the State supports the subcommittee language concerning State participation in export trading company activities and that regarding the treatment of existing Webb-Pomerene Associations.

The subcommittee adopted an amendment to include a finding of fact in § 2(a) (8) of H.R. 7230 which states:

"State and local governmental authorities which initiate, facilitate, or expand export 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."

The foregoing finding is substantially the same as the provision in S. 2718. By adopting a similar position in this version of Export Trading legislation, this committee will endorse the principles of State participation and support a Congressional finding that, in effect, recognizes the essential role of States in foreign trade.

In addition, the State supports the language adopted by the subcommittee which: (1) shifts the administrative functions of the Webb-Pomerene Act from the Federal Trade Commission to the Department of Commerce for those associations which choose to continue under the old Webb-Pomerene Act; and (2) grants automatic certification for those associations which make application for coverage under the new act. The subcommittee's language recognizes that need to protect and support those associations which have been fortunate enough to take advantage of the Webb-Pomerene Act and currently contribute to the national export total.

In conclusion, we hope the committee will adopt the two provisions discussed above.

Thank you for your attention to this important matter.

Sincerely,

RICHARD KING,
Director,
Office of International Trade.
HARRY KRADE,
Assistant Director,
California Department of Food and Agriculture.

I strongly support the provisions of H.R. 7230 designed to encourage the continued operation of Webb-Pomerene Associations and promote the development of new ones as a means of improving America's export trade performance. However, if changes were to be made in these provisions adversely affecting the operation of Webb-Pomerene Associations, I would have to seriously reconsider my endorsement of this bill.

ROBERT J. LAGOMARSINO.

