

# EXPORT TRADING COMPANY ACT OF 1980

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## HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE

OF THE

COMMITTEE ON

BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

**S. 2379**

TO ENCOURAGE EXPORTS BY FACILITATING THE FORMATION  
AND OPERATION OF EXPORT TRADING COMPANIES AND THE  
EXPANSION OF EXPORT TRADE SERVICES GENERALLY

**S. 864**

TO ESTABLISH WITHIN THE DEPARTMENT OF COMMERCE AN  
OFFICE TO PROMOTE AND ENCOURAGE THE FORMATION AND  
UTILIZATION OF EXPORT TRADE ASSOCIATIONS, AND FOR  
OTHER PURPOSES

AND

**Amendment No. 1674 to S. 864**

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MARCH 17 AND 18; AND APRIL 3, 1980

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Committee on Banking, Housing, and Urban Affairs



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# EXPORT TRADING COMPANY ACT OF 1980

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MONDAY, MARCH 17, 1980

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

The subcommittee met at 2:05 p.m. in room 5302 of the Dirksen Senate Office Building; Senator Adlai E. Stevenson, chairman of the subcommittee, presiding.

Present: Senators Stevenson, Tsongas, and Heinz.

## OPENING STATEMENT OF SENATOR STEVENSON

Senator STEVENSON [presiding]. The subcommittee will come to order. This afternoon we resume hearings on legislation to promote U.S. exports through trading companies and trade associations. The two measures we consider in these hearings are complementary approaches to strengthening American export competitiveness, S. 2379, which Senator Heinz and I and several colleagues have introduced to facilitate export trading companies in order to serve the thousands of American producers of exportable goods and services who need trade intermediaries to export for them, and S. 864, which Senator Danforth and several colleagues have introduced and has recently offered an amendment which would provide anti-trust exemptions for trade associations formed solely for export purposes.

Export trade associations can help U.S. producers compete effectively against foreign government-owned corporations and cartels in trying to win foreign procurement contracts. Export trading companies can tap the skills of experienced export managers to market a broad range of products and services in all corners of the world.

Trade associations may decide to form trading companies and vice versa or the twain may never meet. The experience of other nations demonstrates that trading companies can be very profitable and extremely effective tools for the world market.

The essence of both bills is to reduce Government regulations for the purpose of stimulating improved export performance. Both would establish positive Government attitudes where hostility or indifference has prevailed in the past.

I hope these hearings will indicate what further revisions, if any, are needed, and that the committee can then move to report both bills expeditiously.

Our witnesses this afternoon will comprise a panel. They are Herbert A. Gardner, vice president and chief operating officer of

Acme-Cleveland Corp., representing the National Machine Tool Builders Association; J. D. Minutilli, president and chief operating officer of Commercial Credit Co. of Baltimore; and Ted D. Taubeneck, president of Rockwell International, representing the Chamber of Commerce of the United States and chairman of the Trading Company Work Group of the Export Policy Task Force.

We thank you, gentlemen, for joining us. If you would like to summarize your prepared statements in order to save time, the full statements will be entered in the record.

Mr. Gardner?

**STATEMENTS OF HERBERT A. GARDNER, VICE PRESIDENT AND CHIEF OPERATING EXECUTIVE OFFICER, ACME-CLEVELAND CORP., CLEVELAND, OHIO, ON BEHALF OF THE NATIONAL MACHINE TOOL BUILDERS ASSOCIATION, ACCOMPANIED BY JAMES H. MACK, PUBLIC AFFAIRS DIRECTOR, NMTBA; J. D. MINUTILLI, PRESIDENT AND CHIEF OPERATING OFFICER, COMMERCIAL CREDIT CO., BALTIMORE, MD.; AND TED D. TAUBENECK, PRESIDENT, ROCKWELL INTERNATIONAL CO., ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES AND CHAIRMAN, TRADING COMPANY WORK GROUP, EXPORT POLICY TASK FORCE, ACCOMPANIED BY JOSEPH PRENDERGAST, VICE PRESIDENT, WACHOVIA BANK & TRUST CO., AND HOWARD WEISBERG, DIRECTOR OF INTERNATIONAL TRADE, POLICY, UNITED STATES CHAMBER OF COMMERCE**

Mr. GARDNER. Good afternoon. I am the executive vice president and chief operating officer of Acme-Cleveland Corp. Accompanying me today is James H. Mack, Public affairs director of the National Machine Tool Builders Association, the national trade association of which Acme-Cleveland is one of over 370 member companies.

Acme-Cleveland is in the business of manufacturing the tools of metal working productivity. Currently these products are manufactured by six operating divisions, supported by two service companies, with a combined domestic employment of approximately 5,700 workers.

Acme-Cleveland views foreign trade as an extremely significant part of what has come to be recognized as a worldwide machine tool market. A high point of foreign activity occurred in 1975 when over one-fifth—21.5 percent—of its domestic production had its destination in the export market.

Unfortunately, however, even with an overall increase in total business volume, there has been a steady decline in export sales until in 1979 only 6 percent of domestic production was shipped overseas for an annual average of 10.3 percent for the years 1975 through 1979.

Shifting from my own corporation's experience to that of the industry generally, it is important to point out that the world machine tool market has grown substantially. Unfortunately, most of this worldwide expansion has been absorbed by our foreign competitors, eroding our market share. In the middle 1960's, the machine tool industry supplied approximately one-third of the total global market; however, according to American Machinist, as of the end of 1979, that portion had fallen to only 16 percent.

In short, over the past 13 years, our share of the world market has plummeted by almost 50 percent. This dramatic decline is the result of two factors—one, an invasion of the U.S. domestic market by foreign competitors, and two, a dramatic decline in the U.S. builders' share of the export market. This second aspect is what we wish to focus on at this time.

#### DECLINE IN MACHINE TOOL EXPORTS

Looking at the United States percentage of world machine tool exports, we note discouragingly that our share fell from 21 percent in 1964 to just 7 percent last year, placing us well behind West Germany and Japan as a machine tool exporting nation. Even more alarmingly, in 1978, the United States suffered its first machine tool trade deficit in history, with imports exceeding exports by some \$155 million. And to make matters even worse, this deficit trend continued through 1979. Even though our exports grew by 15.8 percent over 1978 levels, imports soared by more than 45 percent, to produce an even larger trade deficit of almost \$400 million.

NMTBA, on behalf of the American machine tool industry, is devoting its own resources to the development and maintenance of international markets everywhere in the world. The association developed seminars and workshops to train our members' people on many aspects of international trade. We conduct market research to locate new and promising markets for industry development and have conducted 24 industry-organized, Government-approved trade missions to help gain a foothold in these new markets.

In addition, we often work in close conjunction with the Commerce Department in sponsoring foreign exhibitions, recruiting exhibitors for export promotion events, and organizing reverse trade missions to bring foreign buyers to our plants, and we bring large groups of foreign visitors to the International Machine Tool Show in Chicago every 2 years.

#### WEBB-POMERENE ACT MODIFICATIONS

Now let me comment on the Webb-Pomerene Act modification proposals. Unfortunately, the role of Webb associations has declined drastically over the years from a highwater mark of about 19 percent of total U.S. exports between 1930 and 1935 to less than a 2 percent share today. Upon the recommendation of the National Commission for the Review of Antitrust Laws and Procedures, several bills have been introduced in the Senate that would modify or, in at least one case go significantly beyond the provisions of the current Webb-Pomerene Act.

S. 2379 applies to the Webb-Pomerene Act to export trading companies, while S. 864 makes extensive revisions and clarifications in the act. Passage of these two measures will together make it possible for American companies to combine their resources in a variety of ways and configurations in the interest of more competitive overseas marketing of American products and services.

Perhaps the primary factor discouraging companies from joining together under the current Webb-Pomerene statute is the uncer-

tainty created by varying interpretations of the antitrust laws in this area. S. 864 helps solve this problem.

Closely allied with this issue is the question of who would be able to bring an antitrust complaint against a Webb association. Under the Danforth approach, complaints brought against Webb associations on antitrust grounds would be limited to Federal agencies, with private parties enjoying only the right to petition the Secretary of Commerce to investigate an association's activities. We support this improvement.

Both Senator Danforth's and Senator Roth's proposals would expand the scope of Webb-Pomerene associations to include both goods and services. We commend the sponsors of these bills for this significant improvement.

Until American exporters are able to combine all aspects of American technology and business know-how into a single overseas consortium, American competitiveness in overseas markets will continue to be seriously impaired. S. 2379 expands this concept even further by, one, including banking and export services within the scope of an export trading company's legally permissible activities and by, two, including export trading companies within the purview of Webb-Pomerene.

Your bill really permits the harnessing of all America's potential resources in the pursuit of U.S. exports. S. 2379, thankfully, goes even further. It commits the full faith and credit of the U.S. Government to that pursuit. Enactment of your bill will permit American exporters to compete fairly, with Government leverage, with competitors from other countries.

Beyond modification of current Webb-Pomerene procedures, your bill would establish the eligibility of export trading companies to receive Eximbank loans and guarantees to meet up to 50 percent of export-related operating expenses up to a maximum of \$1 million in 1 year or \$2.5 million in total.

Additionally, export trading companies, if creditworthy, would be eligible to utilize all loan guarantee and insurance programs of the Export-Import Bank.

Finally, Eximbank could guarantee up to 80 percent of short-term bridge loans for both export trading companies and other exporters, thus helping smaller businesses to overcome a significant financial barrier to selling overseas.

These important export policy reforms should be adopted, if the United States is to reverse its overburdening trade deficit. In this connection, we urge the Congress to also adopt your forward-looking proposals for strengthening the Eximbank and making it more competitive.

S. 2379 permits export trading companies to enjoy DISC treatments of all their income, including income derived from the providing of export services—a benefit not available under current law. This is a very helpful change in the tax laws.

We would suggest that consideration should also be given to both raising significantly the threshold for application of the incremental aspect of DISC and to reducing the average percentage of export sales used to compute the basis over which DISC treatment is applied.

These additional improvements will enable the small- and medium-sized exporters to improve their competitiveness in overseas markets. They also take appropriate cognizance of the role of inflation during the past few years in drawing up the dollar value of many U.S. export sales.

Although your subcommittee will not consider the various small business export bills until mid-April, we have taken the opportunity in our full statement to comment briefly on them.

In conclusion, we thank this committee for affording us the opportunity to relate the experiences of Acme-Cleveland and NMTBA in the export market. We believe that the new executive branch international trade reorganization plan, in conjunction with the adoption of S. 2379 and the other export proposals we have detailed, will do much to encourage and promote overseas trade by both experienced and new exporters.

We'd be happy to respond to your questions.

[The complete statement follows:]

STATEMENT BY  
W. PAUL COOPER  
PRESIDENT AND CHIEF EXECUTIVE OFFICER,  
ACME-CLEVELAND CORPORATION  
BEFORE THE  
SUBCOMMITTEE ON INTERNATIONAL FINANCE  
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS  
UNITED STATES SENATE  
MARCH 17, 1980

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I. INTRODUCTION

Good morning, my name is W. Paul Cooper. I am President and Chief Operating Officer of Acme-Cleveland Corporation. Accompanying me today is Mr. James H. Mack, Public Affairs Director of the National Machine Tool Builders' Association (NMTBA), the national trade association of which Acme-Cleveland is one of over 370 member companies.

I am pleased to testify today before this Subcommittee in the dual capacity of corporate spokesman and industry representative on the subject of export promotion and development, an area of vital interest to both my own corporation and the U. S. machine tool industry generally.

Before proceeding with my comments, I would first like to briefly outline Acme-Cleveland's activities in the metalworking manufacturing industry, as well as the corporation's recent experience in the export market.

Acme-Cleveland, a New York Stock Exchange listed corporation, has existed in its present form since 1968. However, several of its predecessor companies and present major components have long histories in the industry, dating back over one hundred years in some cases. The corporation is in the business of manufacturing the tools of metal working productivity: Machine tools, cutting and threading tools, foundry tooling and equipment, electrical and electronic controls, and automated production systems. Currently, these products, including replacement parts, are manufactured by six operating divisions, supported by two service companies with a combined domestic employment of approximately 5,700 workers.

In addition to these domestic U. S. operations, Acme-Cleveland also consists of a number of foreign subsidiaries. Finally, relationships with several foreign licensees and one overseas joint-venture round out the corporation's worldwide business activity.

Acme-Cleveland views foreign trade as an extremely significant part of what has come to be recognized as a worldwide machine tool market. Even prior to Acme-Cleveland's worldwide expansion, several of its predecessor companies enjoyed long and active involvement in foreign trade. A high point of this foreign activity occurred in 1975 when over one fifth (21.5%) of Acme-Cleveland's domestic production had its destination

in the export market. Unfortunately, however, even with an overall increase in total business volume, there has been a steady decline in export sales until in 1979 only 6.0% of domestic production was shipped overseas, for an annual average of 10.3% for the years 1975 through 1979.

Shifting from my own corporation's experience to that of the industry generally, it is important to point out that while the domestic U. S. machine tool market has been oscillating with very little real growth since the middle 1960's, the world market has grown substantially. Unfortunately, most of this worldwide expansion has been absorbed by our foreign competitors, eroding our market share.

In the middle 1960's, the American machine tool industry supplied approximately one-third of the total global market. In other words, one out of every three machine tools consumed in the world was produced by an American machine tool builder. However, according to American Machinist, as of the end of 1979, that portion has fallen to only 17.1%. In short, over the past 13 years, our share of the world market has plummeted by almost 50%.

This dramatic decline is the result of two factors. First, our domestic market has been invaded by foreign competitors on a scale never before dreamed of. For example, since 1964, America's imports of foreign machine tools have more than tripled, growing from 7% of total consumption 15 years ago to 24% in 1979.

It is obvious that, because the United States is the largest open machine tool market in the world, our foreign competitors have pulled out the stops and are aiming their export marketing efforts at America.

Second, and this is the aspect that we wish to focus on at this time, our share of the export market has also declined. When we look at the dollar value of our exports, the results of our efforts look encouraging. But if we look at American exports as a percentage of all of the machine tool exports in the world, the results are, indeed, discouraging. We have been losing export market share at an alarming rate. Our share of the world's machine tool exports fell from 21% in 1964 to just 7% last year, placing us well behind West Germany and Japan as a machine tool exporting nation.

Finally, and perhaps most alarmingly, in 1978 the United States suffered its first machine tool trade deficit in history, with imports exceeding exports by some \$155 million. And, to make matters even worse, this deficit trend continued through 1979. Even though our exports grew by 15.8% over 1978 levels, imports soared by more than 45% to produce an even larger trade deficit of almost \$400 million.

The National Machine Tool Builders' Association is a national trade association representing over 370 American machine-tool manufacturing companies, which account for approximately 90% of the United State's machine tool production.

Although the total machine tool industry employs approximately 110,000 people with a combined annual output of around \$3.9 billion, most NMTBA member companies are small businesses with payrolls of 250 or fewer employees.

While relatively small by some corporate standards, American machine-tool builders comprise a very basic segment of the U.S. industrial capacity, with a tremendous impact on America. It is the industry that builds the machines that are the foundation of America's industrial strength. Without machine tools, there could be no manufacturing; there would be no trains, no planes, no ships, no cars; there would be no power plants, no electric lights, no refrigerators and no agricultural machinery.

## II. NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION EXPORT PROMOTION ACTIVITIES

NMTBA and its member companies have devoted considerable time and effort to increasing exports.

NMTBA, on behalf of the American machine tool industry is devoting its own resources to the development and maintenance of international markets everywhere in the world. The Association

has three people who spend virtually their full time overseas promoting United States machine tool exports with considerable assistance from the Department of Commerce.

NMTBA develops seminars and workshops to train our members' people on international financing, export licensing, or any other subject that will benefit a machine tool builder. We conduct market research to locate new and promising markets for industry development. We have conducted twenty-four Industry Organized, Government Approved (IOGA) trade missions to help gain a foothold in these new markets, and more are planned for 1980 and 1981. We sponsor foreign exhibitions so that our members will have more opportunities to display their products overseas. In addition, we often work in close conjunction with the Commerce Department on such activities as recruiting exhibitors for export promotion events such as catalog shows, video tape shows and technical seminars. We organize reverse trade missions to bring foreign buyers to our plants. And we bring large groups of foreign visitors to the International Machine Tool Show in Chicago every two years. The Commerce Department has worked closely with us in the development and implementation of these programs, as have the commercial officers in our embassies and trade centers around the world.

### III. WEBB-POMERENE ACT MODIFICATION PROPOSALS

The Webb-Pomerene Act, enacted in 1918, allows American companies to join together in developing foreign

sales while enjoying, to some extent, immunity from the anti-trust laws. The current statute is administered by the Federal Trade Commission (FTC).

Unfortunately, the role of Webb associations has declined drastically over the years. From a high-water mark of about 19% of total U.S. exports between 1930 and 1935, they have slipped to less than a 2% share today.

Within the past year the merits of the Webb-Pomerene Act have been re-examined by the National Commission for the Review of Antitrust Laws and Procedures. After reception of conflicting testimony it was the Commission's recommendation that Congress re-examine the Act, and modify it where necessary. In that regard, several bills have been introduced in the Senate that would modify, or in at least one case go significantly beyond the provisions of the current law.

S. 2379 applies the Webb-Pomerene to export trading companies; while S. 864 makes extensive revisions and clarifications in the Act. Passage of these two measures will together make it possible for American companies to combine their resources in a variety of ways and configurations in the interest of more competitive overseas marketing of American products and services.

Senator Danforth's bill (S. 864) requires the disclosure of an association's operational, managerial, and

financial information to the Secretary of Commerce. The Danforth bill also requires the Secretary of Commerce, Attorney General and the FTC Chairman to all issue guidelines on these procedures. Perhaps the primary factor discouraging companies from joining together under the current Webb-Pomerene statute is the uncertainty created by varying interpretations of the antitrust laws in this area.

Closely allied with this issue is the question of who would be able to bring an antitrust complaint against a Webb association. Under the Danforth approach complaints brought against Webb associations on antitrust grounds would be limited to federal agencies, with private parties enjoying only the right to petition the Secretary of Commerce to investigate an association's activities.

Another approach, introduced by Senator Roth, would not only permit the FTC to retain its administrative responsibilities, but it would also grant the Commission enlarged authority to determine whether an association should be investigated. However, the Roth approach would require Justice to defer its own investigation until the FTC has completed its study.

Additionally, the Roth bill would permit third parties to file independent court actions, though the damages

these parties might receive would be reduced from treble to compensatory damages.

With the potential for conflicting and/or duplicative antitrust legal actions embodied with in this framework it seems highly doubtful that it would achieve its espoused goal of clarifying the currently bewildering state of the antitrust law in this area. We strongly prefer Senator Danforth's bill - S. 864.

Both Senator Danforth's and Senator Roth's proposals would expand the scope of Webb-Pomerene associations to include both goods and additionally services. We commend the sponsors of these bills for this significant improvement. Until American exporters are able to combine all aspects of American technology and business know-how into a single overseas consortium, American competitiveness in overseas markets will continue to be seriously impaired.

S. 2379 expands this concept even further. By (1) including banking and export services within the scope of an export trading company's legally permissible activities and by (2) including export trading companies within the purview of Webb-Pomerene, your bill really permits the harnessing of all of America's potential resources in the pursuit of U.S. exports.

#### IV. EXIMBANK FINANCING

S. 2379 thankfully goes even further. It commits the full faith and credit of the U. S. Government to that pursuit. Enactment of your bill will permit American exporters to compete fairly with Government-leveraged competitors from other countries.

Beyond modification of current Webb-Pomerene procedures, your bill would establish the eligibility of export trading companies to receive Eximbank loans and guarantees to meet up to 50% of export-related operating expenses up to a maximum of \$1 million in one year or \$2.5 million in total.

Additionally, export trading companies, if credit-worthy, would be eligible to utilize all loan, guarantee and insurance programs of the Export-Import Bank.

Finally, Eximbank could guarantee up to 80% of short-term "bridge loans" for both export trading companies and other exporters, thus helping smaller businesses to overcome a significant financial barrier to selling overseas.

These important export policy reforms should be adopted, if the United States is to reverse its overburdening trade deficit. In this connection, we urge the Congress to also adopt your forward-looking proposals for strengthening the Eximbank and making it more competitive.

. TAX TREATMENT OF EXPORT TRADING COMPANIES

S. 2379 permits export trading companies to enjoy DISC treatment of all their income, including income derived from the providing of export services. DISC treatment does not now apply to income derived from export services.

This is a very helpful change in the tax laws. We would suggest that consideration should also be given to both raising significantly the threshold for application of the incremental aspect of DISC and to reducing the average percentage of export sales used to compute the basis over which DISC treatment is applied. These additional improvements will enable small and medium sized exporters to improve their competitiveness in overseas markets. They also take appropriate recognition of the role of inflation during the past few years in driving up the dollar value of many U.S. export sales.

VI. SMALL BUSINESS EXPORT BILLS

Although your Subcommittee will not consider the various small business export bills until mid-April, we would like to take this opportunity to comment briefly on them.

In the Fall of 1977, the Massachusetts Port Authority implemented a unique international marketing program for small business manufacturers entitled "Massport." The first of its kind in the nation, this program is specifically designed

to encourage and assist small businesses who lack the time and resources to explore trade opportunities, in the development of foreign markets for their products.

While initially open only to companies located in the Commonwealth of Massachusetts, the program was expanded in the Fall of 1978 to include participants from throughout the New England region.

Through the program, the Authority provides; without charge, a selected number of small business manufacturers with individual export assistance.

Participation in this program is based upon a process which analyzes a company's products export potential, financial history, available financial and operating resources and managerial desire and ability to become an exporter. Additionally, companies selected cannot presently be engaged in any significant export activities.

Since its inception, four trade missions have been sponsored under the program. Twenty-five companies have directly participated. Due to the success of the program to date and its unique approach, considerable attention has been gained throughout New England. The Authority has received approximately 1,500 inquiries and more than 700 completed program applications. A composite picture of the twenty-five participating companies would produce a manufacturing company which has been in business

for twenty-eight years, with fifty-five employees, annual sales of \$1,900,000 where exports account for less than 4.0%.

Results to date have produced actual export sales of \$1,576,493 to customers met directly or indirectly during the trade missions. Eighteen foreign distributors have been signed and eleven European companies have come to the States to pursue further discussions and negotiations with participating companies.

The goal of the program, simply stated, is to encourage small businesses who are not now exporting to any significant degree to do so, not as a one-time transaction, but on a permanent basis -- profitably.

We strongly support this program and would encourage its national adoption on a trial basis in a number of port cities around the United States as proposed in S. 2040. However, one suggestion we would make is that such a program perhaps extended its resources to a broader cross-section of the business community, without, of course jeopardizing its efficiency. Moreover, we would also recommend that such a program not be limited to the "novice," but also be extended to smaller companies, which are although to some extent experienced in the export market, nevertheless, greatly assisted by such support.

In a similar vein, we have heard from many exporters the suggestion that the current two tier pricing system for

Department of Commerce international trade services, with its preference for first-time exporters, either be abolished or at least modified so as to allow the new-to-market price to be extended to small businesses, even if they have had previous export experience. We strongly believe that it is just as important to keep people in the export field as it is to get them in initially.

#### VII. ONE-STOP SHOPPING

The concept of providing a centralized location (desk) within Commerce Department district and regional offices where an exporter could go for a complete package of export information for a particular country is one that we fully support. Such an approach would eliminate the frustration of the small businessman who upon receiving a thick file of material from many sources within the government is at a loss for where to begin his export activities.

#### VIII. JOINT EXPORT MARKETING ASSISTANCE (JEMA)

Finally, we would strongly urge the implementation of the Commerce Department's JEMA guaranteed loan program for associations and/or consortiums of small businesses. Through a legislative oversight, appropriations for this important program were deleted this year. We feel that this was not a conscious policy decision, and that funds for this program

should be reinstated in the supplemental appropriation bill and for FY 1981. S. 2097, introduced by Senator Jepsen (R-IA) would accomplish this purpose.

#### IX. CONCLUSION

In conclusion, we thank this Committee for affording us the opportunity to relate the experiences of Acme-Cleveland and NMTBA in the export market. We believe that the new executive branch international trade reorganization plan in conjunction with the adoption of S. 2379 and the other proposals we have detailed will do much to encourage and promote overseas trade by both experienced and new exporters. We would be happy to respond to your questions.

Senator STEVENSON. I think we'll finish with all of the statements and then come back to all of you with questions.

Thank you, Mr. Gardner.

Mr. Minutilli?

Mr. MINUTILLI. Thank you, Mr. Chairman. My name is Joseph D. Minutilli. I'm president and chief operating officer of the Commercial Credit Co., Baltimore, which is a wholly-owned subsidiary of Control Data Corp., Minneapolis.

I want to thank you for the opportunity to express my views, as well as those of my company and our parent before this committee.

Our interest in this bill is quite simple and straightforward. We are thoroughly dedicated to the survival and stimulation of small business activity within our country, and we see the expansion of exports as an important means to that end.

While it's easy to find an abundance of information documenting the ills of our society and of our economy, the Control Data corporate attitude is that the major societal needs of our Nation represent challenging and interesting business opportunities for us, working in concert with appropriate Government agencies.

One of our highest priorities is to foster the startup and stimulate the profitable growth of existing small enterprise in the United States. A management task which our chairman, Mr. William C. Norris, has assigned to some of us in the top management of the company is to study the export-import problems of our country and to use our corporate resources to help eliminate those problems.

Consequently, this bill is of great concern to us, yet the bill's impact on the small business of the country is our major concern with it. We applaud the sweeping scope of this bill, but because it is quite comprehensive, we need to be mindful of the number of variables set in motion, which may or may not produce the results intended. Consequently, we feel it's important that you plan to

review its effect at regular intervals to determine what, if any, additional refinements may be required.

I would like to cite several examples of why we feel this tracking mechanism is required. The bill implies that loans and more importantly guaranteed loans will be made by the Export-Import Bank, while it is mute on the point of guarantees for the operation of the trading companies themselves. It does provide for 80 percent guarantees with relatively low maximum limits for loans made relating to specific transactions.

Management at the Small Business Administration, in our view, had been taking some positive steps toward improving their service by broadening their scope and by streamlining the loan application and approval processes. This revitalization, change in strategy, and extensive nationwide organization, we feel, may well make the SBA better known, understood, and more highly regarded within the small business community.

#### GOVERNMENT GUARANTEED LOANS

You may find that the SBA is a suitable place to handle the guaranteed loans provided for in this legislation. As you may know, Commercial Credit Co. has recently become the first nationwide, nonbank lender offering SBA guaranteed loans to small businesses. Our experience to date tells us that lending institutions are not overwhelming the SBA with their desire to provide SBA loans, even with a 90-percent guarantee.

During the testimony of Commerce Secretary Hodges at the bill's hearings, there was considerable concern as to whether the Government guarantees were required and whether such a provision was healthy for our country. I feel the 80-percent guarantee is required. I also feel that for the present, an 80-percent guarantee is adequate.

Since the 90-percent guarantee program of the SBA is only in the early stages of success and since the Department of Commerce is just now starting up a 90-percent guarantee program under the Economic Development Act, there is room to wonder if an 80-percent guarantee program through a much smaller source is going to provide the results we seek.

We're also pleased that this bill hopefully will eliminate past bias against aid to the service industries and that it permits local government organizations to participate in export trading activities. The entry of service industries and local government supported trading companies represent potentially important new activities, but they require regular evaluation as well.

Your hearing discussed the administration's program on export promotion in some detail, and it included some details about a computerized information system to provide exporters with prompt access to international marketing opportunities. Earlier in this testimony, I mentioned that we looked at the societal and economic needs of our country as challenging business opportunities. One of the many areas where we are putting that philosophy into action involves the opening of facilities we refer to as business resource centers.

## BUSINESS RESOURCE CENTERS

The purpose of these centers is to provide a single storefront, if you will, where a small business person can find many of the services most needed to help in the successful conduct of his business.

These centers provide a variety of financial insurance training, data processing, consulting, accounting and tax services, as well as personnel and legal services.

The first four centers have now been opened, and we plan to open many more over the next few years. Your attention is directed to the ability to provide a wide variety of data processing-oriented services, including automated financial planning capabilities and the ability to locate and exchange technical information on a worldwide basis.

The point in President Carter's program relating to a computerized information system to provide exporters with prompt access to international marketing opportunities abroad relates directly to this capability. We feel that particular capability is also long overdue, and vital to any real success in helping small businesses become more aware of and involved in export-import opportunities.

Since our business resource centers will not only have the expertise but also the data processing equipment required to use such a computerized system, we expect to help small business access the proposed marketing information system.

Even if President Carter's program and the results of this legislation are as successful as we all hope they will be, we are still going to find a significant gap in understanding and in entrepreneurial time available to research the feasibility of any single small business going into the export-import arena. We see this as another area where a very large business might provide a truly valuable service to the small business community.

The progress on that data system needs to be tracked. The greatest challenge the leadership of our country faces is in the creation of jobs. As we remind ourselves that the crying need in our society for more jobs, and almost as important, more skilled jobs—while everything we do has as its root the long-term profit motive, we always look at strategies and programs we are developing in relation to their effect on the creation of jobs in our society.

We have, for example, programs directed to the rehabilitation of convicts; we have programs to train the functionally illiterate; we have programs to use private enterprise to stimulate the resurrection of our inner cities. All of these programs have one ultimate objective, and that is to prepare more Americans for productive jobs, where they can develop and maintain personal dignity and where they can contribute to their family, community, and country.

I mentioned earlier that we have a highly sophisticated information system that facilitates worldwide transfers of technology, and I mentioned we are supportive of the Government's intentions to build a much needed export-import data base.

Specific points I would like to make in support of this legislation are these: (1) The effect of this proposed legislation must be regularly evaluated and modified as needed; in other words, it must be

dynamic; small businesses need to be encouraged, nurtured and helped; and finally, big business can and should help the small companies. And we at Control Data stand ready and willing to help.

Therefore, while we at Control Data and Commercial Credit heartily endorse the passage of this bill, we ask that you include in the legislation a requirement that the Department of Commerce provide this subcommittee an annual report summarizing and evaluating the results achieved. The report should also include recommendations and justifications for further refinements and modifications.

I speak personally and as a representative for our company in offering you any appropriate private sector assistance in the passing—and more importantly, the implementation—of this legislation.

Senator Stevenson, we appreciate the time you have given us this afternoon to hear our views. We congratulate you and your subcommittee on the work that it is doing. Thank you.

[The complete statement follows:]

REMARKS OF  
JOSEPH D. MINUTILLI, PRESIDENT & CHIEF OPERATING OFFICER, COMMERCIAL CREDIT  
COMPANY, BALTIMORE, MARYLAND

Mr. Chairman, and Distinguished Members of this Committee:

I want to thank you for the opportunity to express my views, as well as those of my Company and of our parent company - Control Data Corporation - before this Subcommittee. Some of you may wonder why the President of a \$5 billion financial institution, whose overseas involvement is quite limited, would be interested in this Bill. The interest, I am sure, is understood when one realizes our parent is a major, large business providing data processing equipment and services exceeding \$2 billion yearly and which employs over 58,000 people. Our interest is quite simple and straight-forward -- we are thoroughly dedicated to the survival and stimulation of small business activity within our Country, and we see the expansion of exports as an important means to that end.

Commercial Credit Company was founded 68 years ago, as a small business, providing business loans to other small businesses. Our expertise has evolved from a very basic understanding of the needs, problems and aspirations of small businesses. Further, it was only 22 years ago that our parent company, Control Data Corporation, started in business, as a small business, with only 4 employees.

While it is easy to find an abundance of information documenting the ills of our society and of our economy, the Control Data corporate attitude is that -- The major societal needs of our nation represent challenging and interesting business opportunities for Control Data working in conjunction with appropriate government agencies.

One of our highest priorities is to foster the start-up and to stimulate the profitable growth of existing small enterprise in the United States. A management task, which our Chairman, Mr. William C. Norris, has assigned to some of us

in the top management of the Company is to study the export/import problems of our nation, and to use our corporate resources to help eliminate those problems. Consequently, this Bill is of great concern to us; yet, the Bill's impact on the small businesses of this Country is our major concern with it.

My purpose this morning is to support the passage of that Bill and to provide some insight, from our perspective, as to its potential success. We seek legislation which will truly foster and stimulate the formation of small business export trading companies. In other words, small businesses helping small businesses. We think this is good for the United States; that it is long overdue; that it is not going to happen overnight; and that it will require not only assistance, through legislation, from the United States Government, but it can also be significantly assisted by big businesses helping these small businesses.

We applaud the sweeping scope of the Bill, but because it is quite comprehensive, we need to be mindful of the number of variables set in motion which may, or may not, produce the results you intend. Consequently, we feel it is important you plan to review the effect of this legislation at regular intervals to determine what, if any, additional refinements are required.

As a case in point, a major factor of the Bill provides 80% guaranteed loans, through the Export/Import Bank, to export trading companies. During the testimony of Commerce Secretary Hodges at the Bill's hearing there was considerable concern as to whether the Government guarantees were required, and whether such a provision was healthy for our Country. I feel the 80% guarantee is required; I also feel that an 80% guarantee is adequate.

As you may know, Commercial Credit has recently become the first nationwide non-bank lender offering SBA guaranteed loans to small businesses. Management at

the SBA, in our view, has been taking some positive steps toward improving their service; by broadening the scope of services and by streamlining the loan application and approval process. This revitalization, change in strategy and extensive nationwide organization, we feel, may well make the SBA better known, understood and more highly regarded within the small business community. Yet lending institutions are not overwhelming the SBA with their desire to provide SBA loans, even with their 90% guarantee. The point is, you may find that the SBA is a suitable place to handle the guaranteed loans provided for in this legislation.

Further, as the representative of the Arthur Andersen Company testified during your hearings, small businesses are frustrated with problems of currency exchange, overseas collections, complexities of DISC legislation, duty problems, and so forth. We then look at new export trading companies, which for the most part, will have little or no net worth; little or no collateral; dealings with customers who are overseas; and becoming involved with some other truly volatile variables, represented by our international friends and trading partners. Companies with these characteristics are generally not ones for whom lending institutions rush to provide funds. Since the 90% guarantee program of the SBA is only in the early stages of success, and since the Department of Commerce is just now starting up a 90% guarantee program under the Economic Development Act, there is room to wonder if an 80% guarantee program, through a much smaller guarantee source, is going to provide the results we seek. These are but two examples of the need to closely monitor the results, once this legislation is passed.

We are also pleased that this Bill, hopefully, will eliminate bias against aid to the service industries, and that it permits local government organizations to participate in export trading activities. The entry of service industries and local government supported trading companies represent potentially important new activities and require regular evaluation as well.

Your hearing discussed the Administration's program on export promotion in some detail. That program was quoted in the hearing minutes, a portion of which states:

"Specifically, the President proposed three areas of assistance to exporters; one of which was, and I quote --

A computerized information system to provide exporters with prompt access to international marketing opportunities abroad and to expose American products to foreign buyers ---".

Earlier in this testimony, I mentioned that we look at the societal and economic needs of our Country as challenging business opportunities. One of the many areas where we are putting that philosophy into action involves the opening of facilities we refer to as Business Resource Centers. The purpose of these Centers is to provide a single "store-front", if you will, where a small business person can find many of the services most needed to help in the successful conduct of his business. These Centers provide a variety of financial, insurance, training, data processing, consulting/accounting and tax services; and we plan to develop personnel and legal services in these Centers. The first four Centers have now been opened, and we plan to open many more over the next few years. Your attention is directed to the ability to provide a wide variety of data processing oriented services, including automated financial planning capabilities and the ability to locate and exchange technological information on a world-wide basis. The point in President Carter's program relating to "a computerized information system to provide exporters with prompt access to international marketing opportunities abroad ---" relates directly to this capability. We feel that particular capability is also long overdue and vital to any real success in helping small businesses become more aware of, and involved in, export/import opportunities. Since our Business Resource Centers will not only have the expertise, but also the data processing equipment required to use such a computerized system, we expect to help small business access the proposed marketing information system.

Even if President Carter's program and the results of this legislation are as successful as we all hope they will be, we are still going to find a significant gap in understanding, and in entrepreneurial time available, to research the feasibility of any single, small business going into the export/import arena. We see this as another area where a very large business might provide a truly valuable service to the small business community, while doing it in a free enterprise environment.

The cornerstone of most of Control Data's various developmental programs and philosophies is the creation of jobs for American citizens. The real problem our Country faces is actually not so much exports or, for that matter, stimulation of small business per se. The real challenge the leadership of our Country faces is in the creation of jobs. As Mr. Norris regularly reminds us -- "of the crying need in our society for more jobs and almost as important, more skilled jobs". While everything we do has, at its root, the long term profit motive, we always look at strategies and programs we are developing in relation to their effect on the creation of jobs in our society. We have programs directed to the rehabilitation of ex-convicts; we have programs to train functionally illiterate adults in basic societal requirements which will allow them to contribute to a free enterprise society; we have programs to use private enterprise to stimulate the resurrection of our inner cities. All of these programs have one ultimate objective -- that is to prepare more Americans for productive jobs where they can develop and maintain personal dignity, and where they can contribute to their family, community and Country.

I mentioned earlier that we have a highly sophisticated information system that facilitates world-wide transfers of technology, and I mentioned we are supportive of the Government's intentions to build a much needed export/import data base. While increased exports will help overcome our balance of payments problems, there

is no doubt about the effect these expanded export programs will have on the creation of skilled jobs in the United States. While transferring technology within our Country can frequently stimulate competition, transfer of technology, in itself, to foreign countries has a minimal effect on the creation of skilled jobs within the United States. On the other hand, stimulating exports, and more importantly, stimulating exports by small companies within the United States will have a beneficial long-term effect on the creation of jobs for Americans. It will help small companies to be more competitive; and will contribute significantly to their survival and prosperity. Gentlemen, I make these comments only to underline the significance of this legislation.

The points I am making here are these:

1. The effect of this proposed legislation must be regularly evaluated and modified as needed -- it must be dynamic.
2. Small businesses need to be encouraged, nurtured and helped.
3. Big business can and should help these small companies, and we at Control Data stand ready and willing to help.

For this program to be successful, it must be perceived by businesses, big and small, as you intend it -- A major Bill that will enhance our Country's export activities by providing much needed support to those companies which have the product to engage in exports, but lack the know-how to do it.

To gain this perception, in our view, it is imperative this legislation be viewed as not just another Government sponsored program, but one that has the public and private sector working together to promote the growth of small business; -- A program that will help reduce our payments deficit; and will, most important of all, create additional job opportunities for many more of our people. We sincerely hope our presence here today will reinforce that perception.

For the reasons I have previously mentioned, we need to review this Bill annually; to fine tune it, and to keep it responsive to current needs. In our Company, we regularly review existing policies and programs; we refer to them as "living" programs, because they grow and change with the environment in which they work.

Therefore, while we at Control Data Corporation and Commercial Credit Company heartily endorse the passage of this Bill, we ask that you include, in the legislation, a requirement that the Department of Commerce provide this Sub-Committee an annual report, summarizing and evaluating the results achieved. The report should also include recommendations and justification for any refinements and modifications.

I speak personally and as a representative for my Company in offering you any appropriate private sector assistance in the passing and, more importantly, implementation of this legislation.

Senator Stevenson, we appreciate the time you have given us this morning to hear our views; and we congratulate you and your Sub-Committee on the work it is doing.

Thank you.

Senator STEVENSON. Thank you, sir. Mr. Taubeneck?

Mr. TAUBENECK. Mr. Chairman, I am Ted Taubeneck, president, Rockwell International Trading Co. I am also chairman of the Trading Company Working Group of the Export Policy Task Force of the Chamber of Commerce of the United States, on whose behalf I am appearing today.

With me is another member of the task force, Joe Prendergast, vice president of Wachovia Bank and Trust Co.; and accompanying us is Howard Weisberg, director of international trade policy for the U.S. Chamber.

The U.S. Chamber represents a membership of over 89,000 small, medium, and large businesses; 1,293 trade associations; over 2,600 State and local chambers of commerce; and 44 American chambers of commerce overseas.

Last fall we spoke before the subcommittee concerning S. 864, which we support. We are here today to express the chamber's support for S. 2379, legislation which will facilitate the formation and operation of trading companies and thereby expand U.S. exports.

We were tempted just to show up and applaud, because the revised bill is such a major improvement over S. 1663. And we wanted to thank you, Mr. Chairman, Senator Heinz and the co-sponsors. We assumed that would be put down as blarney, and so we will proceed with some detailed comments on the bill.

There has been a limited history in the United States of trading companies, instrumentalities which buy from and sell to unrelated parties. By and large, producers in the United States have marketed their own product lines overseas or have stayed within the

domestic market. With the growing export consciousness in this country, companies are considering new approaches to competing in international markets. The trading company is one viable alternative.

Naturally, all business finds inspiration in the great success of the Japanese and Korean trading companies. Of equal significance, as was pointed out in our testimony last September before this subcommittee, the trading company approach may be the best way of expanding U.S. exports, by getting the largest number of small businesses involved in international trade.

#### APPROACHES TO FOREIGN MARKETS

Small business in the U.S. has four alternative approaches to foreign markets: first, direct export sales, which are difficult to perform on a small scale and which, because of slower payment time, infringe on cash flow needs; second, sales through foreign agents or brokers, who often insist on product and pricing control; third, sales through export management companies, which can only grow to the limits of the management company's resources; and fourth, sales through Webb-Pomerene associations or through export trading companies, which avoid or are less susceptible to the disadvantages of the other three, and which provide their members and clients with the potential for matching any level of foreign competition. The trading company concept has great promise, and, therefore, the U.S. Chamber has recommended to its membership that this possibility for engaging in exporting be given greater consideration.

At the same time, the Government, as part of its national export policy, should create an environment more conducive to the formation and operation of export trading companies. S. 2379 is a positive step in this direction. It provides incentives and lessens disincentives in four key areas for the formation and operation of trading companies: First, the permissibility of bank investment in such companies; second, Export-Import Bank guarantees and loans for startup and expansion costs; third, a clear statement of exemption from U.S. antitrust laws; and fourth, extension of DISC tax treatment.

Effective implementation of these approaches should foster the formation of new trading companies, as well as the expansion of existing operations. We agree with the new bill's approach, that trading companies should not be limited because of their ownership, size, or form of international trade activity. An organization should qualify as an export trading company whether owned by a single producer of goods or services, a group of producers, or owned entirely independent of any producers. It should also qualify whether the owners are domestic or foreign and should be permitted to trade for and on behalf of affiliates.

The range of permissible international trade activities should include, but not necessarily be limited to, exporting, importing, barter and countertrade transactions, and handling trade between two or more foreign countries. We do have some concern as to whether S. 2379 addresses these other trade activities adequately, particularly the import side of the trading company equation.

In addition, trading companies should be encouraged to grow in size to a level sufficient to be internationally competitive with their foreign counterparts.

Our detailed statement mentions several changes that have been made in the new bill that we endorse. Today, we want to highlight the following.

First, to clarify the range of permissible activities for a trading company, it would be helpful if the report language detailed the activities beyond exporting in which a trading company can engage, and what percentage of its total business can be taken up by nonexporting activities. That report language should also make explicit that a trading company can trade goods produced by affiliates. If one of the intentions of S. 2379 is to encourage the rapid growth of trading companies, firms should be able to build on and draw from existing corporate arrangements.

Second, there is a tenfold reduction in the new bill in the amount that is available from the Export-Import Bank for loans or guarantees for initial investments in and operating expenses of an export trading company. The new limitations of \$1 million in any one year or \$2½ million in total are, we believe, totally unrealistic.

By way of illustration, the cost of setting up just one small overseas branch office can easily exceed \$1 million today. If Eximbank support is too limited, this provision will not serve as much of an incentive to the formation of trading companies.

Third, section 7, which extends Eximbank's guarantee programs to inventory and export accounts receivable, could be the single most useful part of the bill, but not as it is presently written. The three judgments to be made by Eximbank's board are worded so rigidly that we question how much, if any, guarantees would be made available.

Specifically, the phrases "which would not otherwise occur," in subpart (1) and "are essential to" in subpart (2) if strictly interpreted, establish tests which are extremely difficult to meet. In addition, such tests are not within the normal expertise of bankers, but are instead business judgments. Moreover, should they be met, the word "adequately" in subpart (3) would require a level of security that would obviate the need for a guarantee and, therefore, not be effective as an inducement to additional exports.

Fourth, the extension of DISC eligibility to export trading companies recognizes the need to provide a favorable tax climate for potential exporters. Extending the eligibility to the service sector is a great step forward in the realization of the importance of service exports to our balance of trade.

Fifth, the new bill eliminates the favorable tax treatment included in S. 1663, which would have permitted an export trading company to elect to defer corporate income taxes. Concern about conflicts with the new subsidy code resulting from the recent multilateral trade negotiations produced this change. However, such conflicts should in fact be abated by the change in coverage of the bill from trading companies exclusively engaged in exporting to companies engaged in all aspects of international trade.

In conclusion, it is important to note that trading companies of foreign countries have the advantages provided in this bill, and more. Many governments provide additional incentives, and all

have fewer disincentives. Nevertheless, with the changes suggested in our testimony, S. 2379 would contribute significantly to raising U.S. businesses to competitive parity with their foreign counterparts in international markets.

With proper promotion from the Government, through the Department of Commerce, and the private sector, through organizations like the U.S. Chamber, we believe that potential exporters, particularly small business, will view favorably the incentives provided in this bill and will avail themselves increasingly of the trading company format for doing business overseas. The result will be participation by more U.S. businesses in foreign markets and increased U.S. exports. Thank you.

[The complete statement follows:]

STATEMENT  
on  
THE EXPORT TRADING COMPANY ACT OF 1980 (S.2379)  
before the  
INTERNATIONAL FINANCE SUBCOMMITTEE  
of the  
SENATE BANKING COMMITTEE  
for the  
CHAMBER OF COMMERCE OF THE UNITED STATES  
by  
T.D. Taubeneck  
March 17, 1980

I am Ted Taubeneck, President, Rockwell International Trading Company. I am also chairman of the Trading Company Working Group of the Export Policy Task Force of the Chamber of Commerce of the United States, on whose behalf I am appearing today. With me is another member of the Task Force, Joseph Prendergast, Vice President of Wachovia Bank and Trust Company. Accompanying us is Howard Weisberg, Director of International Trade Policy for the U.S. Chamber.

The U.S. Chamber represents a membership of over 89,000 small, medium, and large businesses, 1,293 trade associations, over 2,600 state and local chambers of commerce, and 43 American chambers of commerce overseas.

We are here to express the Chamber's support for two legislative initiatives, both of which would foster U.S. exports. We addressed the first area, changes to the Webb-Pomerene Act, in our testimony before this subcommittee on September 17, 1979. Our endorsement of bills, such as S.864, which would encourage U.S. businessmen to use export trade associations without fear of the sanctions of U.S. antitrust laws, still stands. Today, we direct our comments to S.2379 -- legislation to facilitate the formation and operation of export trading companies and, thereby, expand U.S. exports.

Export Trading Companies

There has been a limited history in the United States of export trading companies, instrumentalities which buy from and sell to unrelated

parties. By and large, producers have marketed their own product lines overseas or have stayed within the domestic market. With the growing export consciousness in this country, companies are considering new approaches to competing in international markets. The trading company is one viable alternative. Naturally, all business finds inspiration in the great success of the Japanese and Korean trading companies. However, as was pointed out in our testimony last September, before this subcommittee, the trading company approach may be the best way of expanding U.S. exports by getting the largest number of small businesses involved in international trade.

Small business has four alternative approaches to foreign markets: (1) direct sales, which are difficult to perform on a small scale and which, because of slower payment time, infringe on cash flow needs; (2) sales through foreign agents or brokers, who often insist on product and pricing control; (3) sales through export management companies, which can only grow to the limits of the management company's resources; and (4) sales through Webb-Pomerene associations or through export trading companies, which avoid or are less susceptible to the disadvantages of the other three and which provide their members and clients with the capability to match any level of foreign competition.

The trading company concept has great potential, and, therefore, the U.S. Chamber has recommended to its membership that this possibility for engaging in exporting be given greater consideration. At the same time, the government, as part of its national export policy, should create an environment more conducive to the formation and operation of export trading companies. S.2379 is a positive step in this direction. It provides incentives and lessens disincentives in four key areas for the formation of trading companies: (1) the permissibility of bank investment in such companies; (2) Export-Import Bank guarantees and loans for start-up and expansion costs; (3) a clear statement of exemption from U.S. antitrust laws; and (4) extension of DISC treatment. Effective implementation of these approaches should foster the formation of new trading companies, as well as the expansion of existing operations.

We believe that trading companies should not be limited because of their ownership, size, or form of international trade activity. An organization should qualify as an export trading company whether owned by a single producer of goods or services, a group of producers, or whether owned entirely independent of any producers. It should also qualify whether the owners are domestic or foreign and should be permitted to trade for and on behalf of affiliates.

The range of permissible international trade activities should include, but not necessarily be limited to, exporting, importing, barter and countertrade transactions, and handling trade between two or more foreign countries. We do have some concern as to whether S.2379 addresses these other trade activities adequately, particularly the import side of the trading companies equation. In addition, trading companies should be encouraged to grow in size to a level sufficient to be internationally competitive with their foreign counterparts.

Detailed Comments on S.2379

1. The elimination of the licensing requirements of S.1663, the predecessor to S.2379, is a change we endorse. To have to go through a "gatepost" before being eligible to act as a trading company would be an administrative burden, both in time and expense, that might discourage their formation.

2. The new bill also removes restrictions on ownership and the types of production activities a trading company can engage in. As stated earlier, participation in and ownership of trading companies should be as open as possible so as to encourage the broadest use of this trade mechanism.

3. In the definition of "export trade" in section 3(a)(1), instead of the words "services produced in the United States," we suggest "services sourced in the United States," because the service may be supplied fully by U.S. citizens, but produced outside of the United States.

4. The definition of "goods produced in the United States" in section 3 relies on a computation based on fair market value. It would be clearer and easier to administer if the language were to read "means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 percent of the sales price."

5. The following changes in the definitions of services and export trade services are recommended:

- (a) In the list of representative services, accounting, construction franchising and licensing, and tourism should be included. These are significant service sectors that should be specifically identified. Even more so with services than goods, fair market value is not the administratively most suitable measure of worth. We suggest that "sales or billings" be substituted for "fair market value."
- (b) To the list of export trade services, consulting and product research and design should be added, the latter encompassing the adaptation of U.S. products to foreign requirements. Marketing, however, should be deleted because it is encompassed within trade and commerce in section 3(a)(1).

6. To clarify the range of activities for a trading company, it would be helpful if the report language detailed the permissible activities beyond exporting in which a trading company can engage and what percentage of its total business can be taken up by non-exporting activities. That report language should also make explicit that a trading company can trade goods produced by affiliates. If one of the intentions of S.2379 is to encourage the rapid growth of trading companies, firms should be able to build on and draw from existing corporate arrangements.

7. The mandate to the Secretary of Commerce to promote the formation of trading companies is a useful and appropriate function for that department's reorganized trade promotion arm.

8. We endorse the provisions of S.2379 which allow bank participation in trading companies. Aside from the obvious benefit of giving trading companies an additional investment source to draw from, it encourages greater involvement by U.S. banks in international trade.

9. There is a tenfold reduction in the new bill from S.1663 in the amount that is available from the Export-Import Bank for loans or guarantees for initial investments in and operating expenses of an export trading company. The new limitations of \$1,000,000 in any one year or \$2,500,000 in total are, we believe, totally unrealistic. By way of illustration, the cost of setting up just one small overseas branch office

can easily exceed \$1,000,000. If Eximbank support is too limited, this provision will not serve as much of an incentive to the formation of trading companies.

10. Section 7, which extends Eximbank's guarantee program to inventory and export accounts receivable, could be the single most useful part of the bill, but not as it is presently written. The three judgments to be made by Eximbank's Board of Directors are worded so rigidly that we question how much, if any, guarantees would be made available. Specifically, the phrases "which would not otherwise occur" in subpart (1) and "are essential to" in subpart (2), if strictly interpreted, establish tests which are extremely difficult to meet. In addition, such tests are not within the normal expertise of bankers, but are instead business judgments. Should they be met, the word "adequately" in subpart (3) would require a level of security that would obviate the need for a guarantee and, therefore, not be effective as an inducement to additional exports. A requirement of "acceptable" security would be preferable.

11. The provisions for new Eximbank programs will require renewed efforts to expand the overall and annual authorization levels for the Bank. If this not done and Eximbank remains within its current, tight budgetary constraints, one can be assured that the language for guarantees for inventory and receivables will be strictly interpreted so as to avoid a further drain on the Bank's limited resources.

12. We agree that Webb-Pomerene associations and export trading companies should be accorded comparable treatment under the U.S. antitrust laws, that treatment being an exemption from antitrust coverage so long as the company's activities do not result in a substantial and adverse impact on the domestic market. Language conforming this act with a new Webb-Pomerene Act is an appropriate way of handling this issue.

13. The extension of DISC eligibility to export trading companies recognizes the need to provide a favorable tax climate for potential exporters. Extending the eligibility to the service sector is a great step forward in the realization of the importance of service exports to our balance of trade.

14. The new bill eliminates the favorable tax treatment included in S.1663, which would have permitted an export trading company to elect to

defer corporate income taxes. Concern about conflicts with the new subsidy code resulting from the recent multilateral trade negotiations necessitated this change. However, conflicts should be substantially abated by the change in coverage of the bill from trading companies exclusively engaged in exporting to companies engaged in all aspects of trade.

#### Conclusion

It is important to note that trading companies of foreign countries have the advantages provided in this bill and more. Some governments provide additional incentives, and all have fewer disincentives.

Nevertheless, with the changes suggested in our testimony, S. 2379 would contribute significantly to raising U.S. businesses to competitive parity with their foreign counterparts in international markets. With proper promotion from the government, through the Department of Commerce, and the private sector, through organizations like the U.S. Chamber we believe that potential exporters, and particularly small business, will view favorably the incentives provided in this bill and will avail themselves, where appropriate, of the trading company format for doing business overseas. The result will be participation by more U.S. businesses in foreign markets and increased export.

Senator STEVENSON. Thank you, sir, and I thank you all for the suggestions—which are all helpful.

One of the largest outstanding issues—I beg Senator Heinz's pardon—Senator Heinz.

#### STATEMENT OF SENATOR HEINZ

Senator HEINZ. Mr. Chairman, thank you very much. I appreciate your yielding to me, and I shall be brief.

I apologize to our distinguished panel of witnesses that I did not hear the beginning of your testimony. I do want to make a few remarks because, once again, I am particularly pleased that Chairman Stevenson not only is holding these hearings, but has taken such an important lead in writing and introducing this legislation.

Our first set of hearings was back in September of last year, and since then I've become completely convinced of the necessity of legislation to promote the formation of export trading companies in the United States, which is why I am pleased to join you, Mr. Chairman, as a cosponsor of this bill.

I believe that S. 2379 is one of the most important measures to aid the American exporting community which will be before the Congress in this session. And that's why I am so disappointed that the administration has yet to endorse this bill, or submit a similar proposal of their own. I would think—indeed, any reasonable person would think—that the \$90 billion trade deficit we've had to endure in aggregate over the last 3 years would have motivated any prudent administration to be receptive to concepts such as the one that Senator Stevenson and I are considering today.

As January's \$4.76 billion trade deficit has convincingly demonstrated, a weak dollar alone is not exactly the answer to improving our trade deficit. What we need, and what this bill provides, are structural changes in the way this Nation conducts its export business. One of the things, of course, we hope it will do is to bring not only big business but medium and smaller sized businesses into this effort.

It's all too easy to explain away, as some have tried over the last year, that the nonparticipation of the 20,000 small- and medium-sized firms identified by the Department of Commerce who could export, simply don't—conventional wisdom is that these firms have compared the large, rich, profitable domestic market with the tiny, insignificant, unprofitable, distant, risky international environment, and just decided not to take any chances, or maybe they have simply refused to make the effort necessary to find the right export management firm to handle the international segment of their businesses.

In some cases, these explanations may be valid, but they do not justify inaction on the part of the administration or the Congress, and I believe that in this case we have to go beyond the conventional wisdom. We have to create an environment in which the export market actually becomes an attractive alternative to the expansion of domestic market opportunities.

And trading companies can do exactly that.

I am a realist, Mr. Chairman. I know that we're not going to solve this problem overnight. Apparently the administration hasn't been able to solve it overnight, either, which is one of the reasons we don't have any witnesses from the administration today. With no disrespect to our witnesses, we had hoped for still more, such as at least one and preferably three administration witnesses. I hope that when the administration appears, we will get only one, and not three, positions on this proposal.

It is a fact that trading companies in Europe and Japan have been highly successful in stimulating trade in the postwar era. In Japan, for example, the 10 largest trading companies accounted for 12 percent of the gross sales of all Japanese industry in 1977, and 30 percent of the gross national product.

Thirty percent. Now, I am well aware of the differences between ourselves and the Japanese. Coming from Pittsburgh, Pa., you'd better believe I am aware of some of the differences, what with Japanese steel and our steel—but nevertheless, those figures are impressive, and I would think that they would pique the interest of an agency such as the Office of the U.S. Trade Representative, which is charged, now that we have reorganized, with trade policy development.

I am a little disappointed. I really can't understand why the trade representative has not come forward at any time to date with a plan of its own to promote trading companies or their equivalent or, at the very least, develop a unified administration, White House, President Carter backed, certified grade A, Good House-keeping Seal of Approval position on this legislation. It's not exactly new legislation. The original draft, S. 1663, has been around for more than 6 months.

And I would say this, if the U.S. trade representative wants to be considered the lead agency on trade matters, it must exert leadership on this issue.

The fact is that if the trade representative forfeits its leadership in this area, it will inevitably forfeit it in others.

I hope that when someone from STR comes here, he is inclined favorably toward this legislation. And I would want to know why there's been such a delay from Ambassador Askew—and Secretary Hodges, who was here, such a delay in getting back to us.

Mr. Chairman, one last point, I think that based on some of the testimony that we've received so far, and that I think we're going to receive, we're going to build a very strong hearing record for the passage of this legislation.

There have been improvements made in the original bill.

Mr. Taubeneck, you and others have indicated some additional improvements. I have some improvements I would like to propose.

But I think there is no doubt, from any of the people I have talked to, Mr. Chairman, over the last 6 months, that we are on the right track.

Thank you, Mr. Chairman.

Senator STEVENSON. Thank you.

We'll resume these hearings tomorrow at 9:30, and I'm told we'll hear from the administration witnesses at 2:30 on Wednesday. Don't hold your breath though. [Laughter.]

Senator HEINZ. Mr. Chairman, I have learned that anybody who holds their breath for the administration turns blue. And then, hopefully, they turn Republican. [Laughter.]

Senator STEVENSON. Ours, as you may be able to tell, is a bipartisan effort. It is a bipartisan effort that began more than 2 years ago to formulate an export policy for the United States, of which the bills before us now are just two parts. It's a much larger effort than that.

But I have to say to my good friend that while nothing has been done since the election of Jimmy Carter outside of this activity to formulate such a policy, nothing was done before him either. This, as far as I know, is the first effort in the Congress or in any branch of the Federal Government under any administration to develop an export strategy for the United States.

So, what's not been done lately was not done earlier either. All these problems didn't come home to roost just in the last 3 years.

So, in that spirit of bipartisanship—[Laughter.]

Senator HEINZ. Mr. Chairman, I think that's a fair spirit of bipartisanship, but I think that the reason there is any interest in this is because of the chairman. The chairman has been holding hearings—you have been holding hearings, I know, because I've been ranking on the subcommittee for 3 years, and I can't escape all those hearings we've had—which I have gone to gladly I might add—where you have exhaustively analyzed the many problems we've been facing. You have challenged the conventional wisdom time after time and I think quite successfully. And without the groundwork, I don't know that we would be anywhere close to where we are today. I say that—it doesn't mitigate anything else you've said, but I think it's a statement of fact.

Senator STEVENSON. Well, I thank you.

It has been a joint effort, and it's now enlarged to include a bipartisan export caucus, which numbers 65 members I believe. Business shares some of the responsibility, too. American business has not been oriented to a world market, both big and small business; but that's changing.

Thank you, Senator Heinz. We will push on.

Now, where was I?

One of the larger, unresolved issues involves the participation of banks in the trading companies. As you know, foreign banks participate very actively in trading companies. In fact, I think most foreign trading companies do have bank owners. But there seems to be a good deal of resistance to the participation of U.S. banks in U.S. trading companies. One of the concerns is that this might get them into manufacturing.

How do you gentlemen feel about the participation of banks, which is permitted under the bill as it's now written?

#### PARTICIPATION OF BANKS

Mr. GARDNER. It's my feeling that we would welcome the banks. And I think under the proper circumstances, considering the merits of the transactions, the banks would support our efforts. And I'm speaking from experience of the banks in my community.

Senator STEVENSON. There's a strong history against nonbanking activities by American banks.

Mr. Taubeneck, do you have a remark to make?

Mr. TAUBENECK. I think, clearly, one of the historical problems we've had in developing this kind of intermediary has been the legislative requirement that it be fragmented. And I think to permit trading and banking to come together in some reasonable way is a forward step. Now, what the complications are of meshing this with what the Fed may be trying to do, I don't know.

Joe, would you like to add something to that?

Mr. PRENDERGAST. Mr. Chairman, I happen to be a banker, but my bank's interest in this bill is not that we be permitted to establish a trading company. And I think it would be misleading to assume that if banks are authorized to establish trading companies, that there will be an immediate rush for them to do this.

I look at banks as an additional resource with some expertise, in many cases far-flung resources, and presence in a number of different countries that could be brought to bear on the export problem.

To limit banks' participation opportunities is a disservice to the exporting companies that banks are trying to assist.

Senator STEVENSON. Yes, sir.

Mr. MINUTILLI. I would like to add that, as we all know, many of our very large money-center banks and even some of our large regional American banks are perhaps even more export-minded or involved with foreign business than perhaps many other American businesses. And I do think that American banks, either through, perhaps, minority equity positions in the formation of trading companies or, perhaps, even more importantly, can make a very large contribution toward the management of trading companies, as opposed to taking an equity position in them.

I do know that in our own efforts to form and encourage the formation of regional trading companies, mostly among small businesses, there has been a considerable amount of interest on the part of large regional banks, especially in the Midwest, toward this activity. And I do think they can bring to the table a considerable amount of expertise and management ability, which most of these trading companies, when formed, are going to need very badly.

Mr. TAUBENECK. I'd like to add a point, if I could, Mr. Chairman. One of the anomalies that I think your bill is aimed at curing, in a major way, is the fact that there are large general purpose trading companies available, but typically they're foreign owned and foreign controlled.

Now, the same is true in the banking area, because U.S. banks, through Edge Act subsidiaries, can today invest in a foreign trading company. So there's a funny gap in what U.S. banks can do that your bill would cure and would tend, therefore, to make those resources available for the first time to American trading companies, as they are, at least in principle, to foreigners.

Senator STEVENSON. What about the tax provisions? We now have trading companies eligible for DISC treatment, and they could be eligible for taxation as subchapter S corporations; is that enough?

We've gotten some suggestions that this really doesn't give them enough incentive to help, particularly with the startup costs.

Any reactions?

Mr. TAUBENECK. Well, our statement indicated, Mr. Chairman, that we felt this was a step backward and probably an unnecessary step backward from the original bill, which offered deferral to trading companies.

Senator STEVENSON. You recognize, I think, we are trying to get around the subsidy issue.

Mr. TAUBENECK. But as our testimony indicated, you've gotten around it by broadening the trading company into a general purpose trading company that is not just exporting.

Senator STEVENSON. That's necessary.

Mr. TAUBENECK. Which would free it from any problem under the subsidies code, I suppose.

Senator STEVENSON. Well, on the other hand, if we go too far, we're going to be providing tax treatment for non-export-related services. I think one of you raised that as a problem, too.

The purpose is rather loosely defined. I think the primary purpose is exporting. Somebody has pointed out imports are related to exports, barters, third-company activities.

If we go down that road too far, we're getting further and further away from the original purposes. I've got to strike a balance, it seems to me, between the definition—the purposes of the trading company, which need more definition, as you indicated—and tax provisions that give them incentives which don't violate the codes and which are targeted on exports. I'm not sure we've struck that balance as well as it can be struck.

Mr. MACK. Mr. Chairman, we, in our testimony, have made some suggestions with respect to some of the incremental aspects of DISC as they relate to trading companies and, for that matter, to other exporters. We suggested increasing the threshold before the

incremental portion of DISC comes into play, as well as perhaps reducing the basis under which the incremental aspects are now computed.

There is another question, which we didn't include in our testimony, but that I think the committee might want to consider. That has to do with how you treat an export trading company which forms a DISC. Would it be treated as a new DISC for purposes of applying the incremental aspect of DISC? Or would you impute to the export trading company's DISC the exports of its components in applying the increment?

One thing that you might want to give consideration to is making clear that you would do the former rather than the latter—in other words, that you would treat the export trading company DISC as a new DISC, which, if I recall, does have a grace period, before the incremental aspect of DISC is applied. Otherwise, you could have some really odd applications of the incremental factor.

Senator STEVENSON. Any further comments on this whole problem?

[No response.]

#### FINANCING SERVICES

Senator STEVENSON. The next part which I'll come to after Senator Heinz is the financing of Exim versus SBA if there are no further comments on that last one.

Senator Heinz.

Senator HEINZ. I think that's a good place for us to keep going, Mr. Chairman.

I was going to ask exactly whether, as some have suggested, the Small Business Administration and/or EDA would be a more appropriate—better source of financing, startup costs, than Exim? I ask this also knowing that the Exim authorization is going to be under some considerable pressure this year and next year.

Senator STEVENSON. Let me just point out, before you respond, there is nothing in the bill to prevent EDA and SBA from providing the financing services to the trading companies.

But Senator Heinz is absolutely right, there are many pressures on Exim. I wish we could get additional authority in Exim for this kind of activity.

Mr. TAUBENECK. Well, I think there are two points worth mentioning just briefly.

First, Eximbank is far more conversant with the export picture generally and with international markets and the problems of analyzing international customers.

Second, I thought the bill took a fairly shrewd approach by emphasizing guarantees. I would expect that would be the major use of those provisions. Eximbank's guarantee programs, to begin with, only count one to four against the authorization and are not typically utilized the way the direct loan program is, which tends to go to the massive projects.

Senator HEINZ. I believe guarantees are counted—

Senator STEVENSON. One to four.

Mr. TAUBENECK. One to four, 25 percent.

Senator STEVENSON. One to four, 25 percent. They're not in the budget at all.

Mr. TAUBENECK. The bill's approach emphasizes guarantees. I don't think that should be a major problem in the short run.

Now, in the long run, I think everybody is familiar with Exim-bank's problem and the problem of exporters who see heavy constraints and are troubled by the fact that the administration tends to look on those as similar to other loan guarantee programs. We think they're much different.

Senator HEINZ. Well, some people would say that the reason for involving SBA is that the 20,000 small-or medium-sized firms that I referred to in my opening statement would feel more comfortable, would know who the SBA was, would be more likely to understand that the SBA had a mission particularly consonant with their needs, notwithstanding, Mr. Taubeneck, your perfectly valid points. That, it seems to me, is an important point that I'd like you or one of the other witnesses to address since I believe that the major reason for this trading company legislation is to get more people into trade.

Mr. MINUTILLI. I did offer a comment. While it's certainly not our intention to suggest which of the Government programs of the administration this particular legislation would come under, I do think that whether we talk about the Export-Import Bank, the SBA, or the various other programs such as EDA, none, in any case, are all that familiar with the workings of trading companies as such since we, in effect, do not have any worthy of the name in this country.

Second, it is true that Exim, of course, is more conversant with export markets and the various needs that arise.

But on the other hand, I think only in the past 30 days, the SBA, under its existing programs, has extended its 90-percent guarantee program, for example, to trade acceptances generated by small businesses. So, in fact, they are extending even today their own guarantees to the acceptance portion of revenues generated by participating small businesses.

So it would appear, whether it is intended or not, they are expanding their programs to finance various types of exports generated by small business. I do think there have been some improvements, especially in bringing about some unanimity of policy on the part of the SBA as opposed to, perhaps, the Balkanized approach that had been used in the past where each region, perhaps, had its own policies and procedures, which in some cases bore little resemblance to those that might exist elsewhere.

I do think there has been some improvement along those lines, and perhaps the SBA might be a useful place, given its longstanding relationships, which are improving, with small business. But I do defer to the other witnesses. They would perhaps have more to learn about exporting in general than would exist in the Export-Import Bank.

Senator HEINZ. Any further comment?

Mr. GARDNER. Yes. I support both of these gentlemen in that view. Looking at it through the narrower view of the machine tool builders' group, we see the opportunities that we have not been able to participate in as the rather huge turnkey type operations

overseas, which I think require something of the scope of the Eximbank to handle, as opposed to the SBA where you're talking about a transaction involving a machine or two.

Certainly Eximbank is much larger and much more capable of working with a \$50 or \$100 million transaction.

Mr. MACK. Senator, at the expense of prolonging this, I think there are two other comments that we might make. One is that Congress just got done approving a major trade reorganization, one of the purposes of which was to try to centralize trade functions in at least a couple of agencies. We question the wisdom a couple of months later, of turning around and reproducting trade activities.

Second, the competition for funds within the Commerce Department's EDA budget and SBA's budget is probably at least as fierce and intense as the competition for funds within the Congress among various activities.

At least you have, by focusing the attention on the Export-Import Bank, some recognition on the part of policymakers that this is an export function. If you put it in the EDA and/or in the SBA, the export function is competing again with other overall policy considerations. In addition to competing for funds within the Congress, the activity would be re-competing for funds within the agency itself.

#### ANTITRUST TYPE OF ARGUMENT

Senator HEINZ. Thank you. Not everybody is as enthusiastic about trading companies as we are. Those people who are less enthusiastic about them essentially make an antitrust type of argument. Some of the statements that they make are to the effect that trading companies tend to promote oligopolistic concentration and therefore begin to have a negative impact on the whole economy, that they need to operate domestically as trading companies as well as in foreign markets, and in order to be financially feasible, that in turn creates antitrust enforcement problems. And, therefore, they raise the question of how you keep the domestic side from being influenced by the agreements arrived at for the export market.

It is argued that they can be used to artificially hold prices up domestically by selling what is in surplus abroad. It has been argued that they lead to the creation of foreign cartels by virtue of an export cartel having been created here. And it is argued that they are used only to set prices and not to increase sales by the establishment of sales agents.

How would you respond to those people who are critical on antitrust grounds?

Mr. Taubeneck?

Mr. TAUBENECK. In a word, balderdash.

Senator HEINZ. Do you have anything else other than that?  
[Laughter.]

Mr. TAUBENECK. I didn't get all of those points exactly as you put them, Senator Heinz, but it seems to me that their vagueness reveals very clearly the problem that American business faces in trying to work out some of its export problems. If you assume that for us to succeed in international competition we've got to some-

how bring more pieces together than we've done in the past, we've got to be able to do so. And if you assume, furthermore, that exports are important, those kinds of vague anxieties, it seems to me, pale more or less in significance. I don't see how they really amount to anything except the short supply issue, which has already been addressed in the Export Administration Act.

You know when things are in short supply, and encouraging the export of those things is going to have a price impact on the domestic economy. The tools are available to deal with that problem, and they should be.

Mr. MINUTILLI. I do think that with regard to the fears that the sale of surpluses overseas would drive up domestic pricing—this conceptually, I guess, could occur, but I think it's far preferable to have a situation where our productivity is creating surpluses, and these, after all, have to compete competitively in world markets.

It's far preferable than to have the reverse occurring where such surpluses are being created elsewhere and jobs maintained elsewhere, at the risk of dumping those surpluses, for example, on domestic markets—that is, U.S. domestic markets. So I do think, at least, it puts us all on an equal footing with regard to the same problem. And I guess that's the best response that I can think of to that contention.

Mr. GARDNER. Well, I don't know of any reason to feel that all the regulations that now apply would not continue to apply. The legislation indicates that the FTC will still be looking over the shoulders of these groups, and I can't imagine that they would go away.

I wanted to touch on one other aspect of this that Mr. Minutilli mentioned earlier. We see this as providing jobs for American workers. It should certainly help our balance of trade. But there's a very important area that wasn't addressed at all or no one has mentioned today, as far as the machine tool industry is concerned. That is the strength we think this will give our industrial base from a defense standpoint.

We're talking now about rebuilding the defense capabilities of this country. I can tell you now that the capacity is not there to take care of the domestic needs as well as a superimposed high level of defense work on top of it. One of the reasons is that through the years we have not been able to compete abroad, and we've shrunk our capacity relative to what's been created in the market of the world.

S. 2379 addresses that problem. It hasn't been mentioned here today. But I think it's one of the most important aspects of what you're proposing, Senator. I think it's wonderful.

Senator HEINZ. Senator Stevenson?

Senator STEVENSON. I only have one more question. It recalls yours.

Is the antitrust protection adequate by taking the provisions of S. 864 and applying them to trading companies? Does that give them enough protection against complaints, both from the Government and the private sector, of antitrust violations?

Mr. TAUBENECK. We think it should. What's enough protection from the Government, you're asking? [Laughter.]

For a very strong endorsement, I'm not sure I can give it that, but it certainly seems to us to do the job.

We're assuming in talking about it that S. 864 would go through.

Senator STEVENSON. Yes.

Senator HEINZ. Mr. Chairman, may I just be clear. We're talking about S. 864 with the amendment that Senator Danforth has proposed?

Senator STEVENSON. That's right.

Senator HEINZ. Which is amendment No. 1674. I just want to be sure that we are clear on what we're referencing.

Are you speaking, Mr. Taubeneck, about the bill as amended by Senator Danforth's amendment?

Mr. TAUBENECK. Right. And speaking about the provision of S. 2379 which incorporates the Danforth amendment. Right.

Senator STEVENSON. It seems to me like they might make a pretty good single bill, somehow woven together.

Senator Heinz?

Senator HEINZ. As this legislation is written, some people have expressed some concern that it would permit State and local governments to form trading companies.

Does that concern you?

Mr. TAUBENECK. We see no harm in it, and I suppose in some cities, metropolitan areas, States, it could be advantageous. I think it's an interesting experiment.

Senator HEINZ. Any others?

Mr. MINUTILLI. I would respond that in many parts of the country it's most appropriate that these local governments—State and local governments—be encouraged to participate. As you know, in many cities, the port authorities are either under the jurisdiction of the city or in more cases the States. And this is where the body of knowledge, in many cases, exists in many of our States. So I do think that this is a very important added ingredient in this legislation. I think while it needs to be evaluated and monitored at a later time, I don't think of it as an intrusion of government into areas that are normally best handled by private enterprise.

Senator HEINZ. Thank you, Mr. Chairman.

Senator STEVENSON. Tomorrow's hearing will be in this room. The hearing on Wednesday at 2 o'clock in which we will hear from administration witnesses will be in room 4202.

Thank you again, gentlemen. The subcommittee is adjourned. [Whereupon, at 3:20 p.m., the hearing was recessed to reconvene at 9:30 a.m., Tuesday, March 17, 1980.]

[Copies of the bills, and the amendment under consideration at this hearing follow:]

96TH CONGRESS  
2D SESSION

# S. 2379

To encourage exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally.

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## IN THE SENATE OF THE UNITED STATES

MARCH 4 (legislative day, JANUARY 3), 1980

Mr. STEVENSON (for himself, Mr. HEINZ, Mr. JAVITS, Mr. BENTSEN, and Mr. GLENN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

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## A BILL

To encourage exports by facilitating the formation and operation of export trading companies and the expansion of export trade services generally.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3

### SHORT TITLE

4        SECTION 1. This Act may be cited as the "Export  
5 Trading Company Act of 1980".

6

### FINDINGS

7        SEC. 2. (a) The Congress finds and declares that—

1           (1) tens of thousands of American companies pro-  
2           duce exportable goods or services but do not engage in  
3           exporting;

4           (2) although the United States is the world's lead-  
5           ing agricultural exporting nation, many farm products  
6           are not marketed as widely and effectively abroad as  
7           they could be through producer-owned export trading  
8           companies;

9           (3) exporting requires extensive specialized knowl-  
10          edge and skills and entails additional, unfamiliar risks  
11          which present costs for which smaller producers cannot  
12          realize economies of scale;

13          (4) export trade intermediaries, such as trading  
14          companies, can achieve economies of scale and acquire  
15          expertise enabling them to export goods and services  
16          profitably, at low per unit cost to producers;

17          (5) the United States lacks well-developed export  
18          trade intermediaries to package export trade services  
19          at reasonable prices (exporting services are fragmented  
20          into a multitude of separate functions; companies at-  
21          tempting to offer comprehensive export trade services  
22          lack financial leverage to reach a significant portion of  
23          potential United States exporters);



1 which is attributable to articles imported into the  
2 United States;

3 (3) the term "services produced in the United  
4 States" includes, but is not limited to amusement, ar-  
5 chitectural, automatic data processing, business, com-  
6 munications, consulting, engineering, financial, insur-  
7 ance, legal, management, repair, training, and trans-  
8 portation services, not less than 50 per centum of the  
9 fair market value of which is provided by United  
10 States citizens or is otherwise attributable to the  
11 United States;

12 (4) the term "export trade services" includes, but  
13 is not limited to, international market research, adver-  
14 tising, marketing, insurance, legal assistance, transpor-  
15 tation, including trade documentation and freight for-  
16 warding, communication and processing of foreign  
17 orders to and for exporters and foreign purchasers,  
18 warehousing, foreign exchange, and financing when  
19 provided in order to facilitate the export of goods or  
20 services produced in the United States;

21 (5) the term "export trading company" means a  
22 company which does business under the laws of the  
23 United States or any State and which is organized and  
24 operated principally for the purposes of—

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

3 (B) facilitating the exportation of goods and  
4 services produced in the United States by unaffil-  
5 iated persons by providing one or more export  
6 trade services;

7 (6) the term "United States" means the several  
8 States of the United States, the District of Columbia,  
9 the Commonwealth of Puerto Rico, the Virgin Islands,  
10 American Samoa, Guam, the Commonwealth of the  
11 Northern Mariana Islands, and the Trust Territory of  
12 the Pacific Islands;

13 (7) the term "Secretary" means the Secretary of  
14 Commerce; and

15 (8) the term "company" means any corporation,  
16 partnership, association, or similar organization.

17 (b) The Secretary is authorized, by regulation, to further  
18 define such terms consistent with this section.

19 **FUNCTIONS OF THE SECRETARY OF COMMERCE**

20 **SEC. 4.** The Secretary shall promote and encourage the  
21 formation and operation of export trading companies by pro-  
22 viding information and advice to interested persons. The As-  
23 sistant Secretary of Commerce for Trade Promotion shall be  
24 responsible for such activities and shall provide a referral

1 service to facilitate contact between producers of exportable  
2 goods and services and firms offering export trade services.

3 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,  
4 BANK HOLDING COMPANIES, AND INTERNATIONAL  
5 BANKING CORPORATIONS

6 SEC. 5. (a) For the purpose of this section—

7 (1) the term “banking organization” means any  
8 State bank, national bank, bank holding company,  
9 Edge Act Corporation, or Agreement Corporation;

10 (2) the term “State bank” means any bank which  
11 is incorporated under the laws of any State, any terri-  
12 tory of the United States, the Commonwealth of  
13 Puerto Rico, Guam, American Samoa, the Common-  
14 wealth of the Northern Mariana Islands, or the Virgin  
15 Islands, or which is operating under the Code of Law  
16 for the District of Columbia (except a national bank);

17 (3) the term “State member bank” means any  
18 State bank which is a member of the Federal Reserve  
19 System;

20 (4) the term “State nonmember insured bank”  
21 means any State bank which is not a member of the  
22 Federal Reserve System, but the deposits of which are  
23 insured by the Federal Deposit Insurance Corporation;

1           (5) the term "bank holding company" has the  
2 same meaning as in the Bank Holding Company Act of  
3 1956;

4           (6) the term "Edge Act Corporation" means a  
5 corporation organized under section 25(a) of the Fed-  
6 eral Reserve Act;

7           (7) the term "Agreement Corporation" means a  
8 corporation operating subject to section 25 of the Fed-  
9 eral Reserve Act;

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

12           (A) the Comptroller of the Currency with re-  
13 spect to a national bank;

14           (B) the Board of Governors of the Federal  
15 Reserve System with respect to a State member  
16 bank, bank holding company, Edge Act Corpora-  
17 tion, or Agreement Corporation; and

18           (C) the Federal Deposit Insurance Corpora-  
19 tion with respect to a State nonmember insured  
20 bank;

21          (9) the term "capital and surplus" means paid in  
22 and unimpaired capital and surplus, and includes undi-  
23 vided profits and such other items as the appropriate  
24 Federal banking agency may deem appropriate;

1           (10) an "affiliate" of a banking organization or  
2 export trading company is a person who controls, is  
3 controlled by, or is under common control with such  
4 banking organization or export trading company;

5           (11) the term "control" means the power, directly  
6 or indirectly, to vote more than 50 per centum of the  
7 voting stock or other evidences of ownership of any  
8 person, or otherwise having the power to direct or  
9 cause the direction of the management or policies of  
10 any person; and

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

16           (b) Notwithstanding any prohibition, restriction, limita-  
17 tion, condition, or requirement contained in any other provi-  
18 sion of law, any banking organization, subject to the proce-  
19 dures, limitations and conditions of this section, may acquire  
20 and hold for its own account, either directly or indirectly, the  
21 voting stock or other evidences of ownership of any export  
22 trading company.

23           (c)(1) Any banking organization may invest not more  
24 than 5 per centum of its capital and surplus in no more than  
25 50 per centum of the voting stock or other evidences of own-

1 ership of any export trading company without obtaining the  
2 prior approval of the appropriate Federal banking agency,  
3 except that an Edge Act Corporation not engaged in bank-  
4 ing, as defined by the Board of Governors of the Federal  
5 Reserve System, may invest up to 25 per centum of its capi-  
6 tal and surplus in no more than 50 per centum of the voting  
7 stock or other evidences of ownership of any such company  
8 without obtaining the prior approval of the Board of Gover-  
9 nors of the Federal Reserve System.

10 (2) Any banking organization may, subject to the limita-  
11 tions contained in subsection (e), make an investment in the  
12 voting stock or other evidences of ownership of an export  
13 trading company which does not comply with paragraph (1),  
14 if it files an application with the appropriate Federal banking  
15 agency to make such investment and within sixty days after  
16 the receipt of such application, the appropriate Federal bank-  
17 ing agency has not issued an order pursuant to subsection (d)  
18 denying such proposed investment. The appropriate Federal  
19 banking agency may require such information in any applica-  
20 tion filed pursuant to this subsection as is reasonably neces-  
21 sary to consider the factors specified in subsection (d). An  
22 application is received for the purpose of this paragraph when  
23 it has been accepted for processing by the appropriate Fed-  
24 eral banking agency. Upon receipt of an application, the ap-  
25 propriate Federal banking agency shall transmit a copy

1 thereof to the Secretary of Commerce and afford the Secre-  
2 tary a reasonable time, not to exceed thirty days, to present  
3 the views of the Department of Commerce on the application.  
4 An investment may be made prior to the expiration of the  
5 disapproval period if the appropriate Federal banking agency  
6 issues written notice of its intent not to disapprove the  
7 investment.

8 (3) Any banking organization whose proposed acquisi-  
9 tion under paragraph (2) is disapproved by an order of the  
10 appropriate Federal banking agency under subsection (d),  
11 may obtain a review of such order in the United States Court  
12 of Appeals within any circuit wherein such organization has  
13 its principal place of business, or in the Court of Appeals for  
14 the District of Columbia Circuit, by filing a notice of appeal  
15 in such court within thirty days from the date of such order,  
16 and simultaneously sending a copy of such notice by regis-  
17 tered or certified mail to the appropriate Federal banking  
18 agency. The appropriate Federal banking agency shall  
19 promptly certify and file in such court the record upon which  
20 the disapproval was based. The court shall set aside any  
21 order found to be (A) arbitrary, capricious, an abuse of discre-  
22 tion, or otherwise not in accordance with law; (B) contrary to  
23 constitutional right, power, privilege or immunity; (C) in  
24 excess of statutory jurisdiction, authority, or limitations, or

1 short of statutory right; or (D) not in accordance with the  
2 procedures required by this section.

3 (d) The appropriate Federal banking agency may disap-  
4 prove any investment for which an application is filed under  
5 subsection (c)(2) if it finds that the export-related benefits of  
6 such acquisition are clearly outweighed in the public interest  
7 by adverse competitive, financial, managerial, or other bank-  
8 ing factors associated with the particular acquisition. In  
9 weighing the export-related benefits of a particular proposal,  
10 the appropriate Federal banking agency shall give due con-  
11 sideration to the views of the Department of Commerce fur-  
12 nished pursuant to subsection (c)(2), and shall give special  
13 weight to any application that will open new markets for  
14 United States goods and services abroad, or that will involve  
15 small- or medium-size businesses or agricultural concerns  
16 new to the export market. Any disapproval order issued  
17 under this section must contain a statement of the reasons for  
18 disapproval.

19 (e)(1) No banking organization holding voting stock or  
20 other evidences of ownership of any export trading company  
21 may extend credit or cause any affiliate to extend credit to  
22 any export trading company or to customers of such company  
23 on terms more favorable than those afforded similar borrow-  
24 ers in similar circumstances.

1           (2) Except as provided in subsection (c)(1), no banking  
2 organization may, in the aggregate, invest in excess of 10 per  
3 centum of its capital and surplus in the stock or other  
4 evidences of ownership of one or more export trading  
5 companies.

6           (f) The appropriate Federal banking agencies may adopt  
7 such rules and regulations and require such reports as are  
8 necessary to enable them to carry out the provisions of this  
9 section and prevent evasions thereof.

10           INITIAL INVESTMENTS AND OPERATING EXPENSES

11           SEC. 6. (a) The Export-Import Bank of the United  
12 States is authorized to provide loans or guarantees to export  
13 trading companies to help such companies meet operating ex-  
14 penses and make investments in facilities related to the  
15 export of goods or services produced in the United States, or  
16 related to the provision of export trade services, if in the  
17 judgment of the Board of Directors of the Bank—

18                   (1) the loans or guarantees would facilitate ex-  
19 ports which would not otherwise occur;

20                   (2) the company is unable to obtain sufficient fi-  
21 nancing on reasonable terms from other sources; and

22                   (3) there is reasonable assurance of repayment.

23           (b) Loans and guarantees under this section shall be  
24 used only for the financing of exports and export trade serv-  
25 ices. The amount of loans and guarantees to any single con-

1 cern in any year may not exceed 50 per centum of such con-  
2 cern's annual operating expenses, as determined by the  
3 Board.

4 (c) The bank shall not make loans or guarantees availa-  
5 ble to any one company in excess of \$1,000,000 in any  
6 twelve-month period, or \$2,500,000 in total. The aggregate  
7 amount of loans or guarantees outstanding at any time under  
8 this section may not exceed \$100,000,000. The authority  
9 granted by this section shall expire five years after the date  
10 of enactment of this Act.

11 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND  
12 INVENTORY

13 SEC. 7. The Export-Import Bank of the United States  
14 is authorized and directed to provide guarantees for up to 80  
15 per centum of the principal of loans extended by financial  
16 institutions or other private creditors to export trading com-  
17 panies as defined in section 3(5) of this Act, or to exporters,  
18 for periods up to one year when in the judgment of the Board  
19 of Directors—

20 (1) such guarantees would facilitate expansion of  
21 exports which would not otherwise occur;

22 (2) the guarantees are essential to enable the  
23 export trading company or exporter to receive ade-  
24 quate credit to conduct normal business operations; and



1           (2) by inserting "or export trading company" after  
2           "association" each place, after the first, it appears.

3           APPLICATION OF DISC RULES TO EXPORT TRADING  
4           COMPANIES

5           SEC. 10. (a) Paragraph (3) of section 992(d) of the In-  
6           ternal Revenue Code of 1954 (relating to ineligible corpora-  
7           tions) is amended by inserting before the comma at the end  
8           thereof the following: "(other than a financial institution  
9           which is a banking organization as defined in section 5(a)(1)  
10          of the Export Trading Company Act of 1980 investing in the  
11          voting stock of an export trading company (as defined in sec-  
12          tion 3(5) of the Export Trading Act of 1980) in accordance  
13          with the provisions of section 5 of such Act)".

14          (b) Paragraph (1) of section 993(a) of the Internal Reve-  
15          nue Code of 1954 (relating to qualified export receipts of a  
16          DISC) is amended—

17                 (1) by striking out "and" at the end of subpara-  
18                 graph (G),

19                 (2) by striking out the period at the end of sub-  
20                 paragraph (H) and inserting in lieu thereof "and", and

21                 (3) by adding at the end thereof the following new  
22                 subparagraph:

23                         "(I) in the case of a DISC which is an  
24                         export trading company (as defined in section 3(5)  
25                         of the Export Trading Company Act of 1980), or

1           which is a subsidiary of such a company, gross re-  
2           ceipts from the export of services produced in the  
3           United States (as defined in section 3(3) of such  
4           Act) or from export trade services (as defined in  
5           section 3(4) of such Act).”.

6           (c) The Secretary of Commerce, after consultation with  
7           the Secretary of the Treasury, shall develop, prepare, and  
8           distribute to interested parties, including potential exporters,  
9           information concerning the manner in which an export trad-  
10          ing company can utilize the provisions of part IV of sub-  
11          chapter N of chapter 1 of the Internal Revenue Code of 1954  
12          (relating to domestic international sales corporations), and  
13          any advantages or disadvantages which may reasonably be  
14          expected from the election of DISC status or the establish-  
15          ment of a subsidiary corporation which is a DISC.

16          (d) The amendments made by this section shall apply  
17          with respect to taxable years beginning after December 31,  
18          1980.

19                   SUBCHAPTER S STATUS FOR EXPORT TRADING

20                                   COMPANIES

21          SEC. 11. (a) Paragraph (1) of section 1371(a) of the  
22          Internal Revenue Code of 1954 (relating to the definition of a  
23          small business corporation) is amended by inserting “, except  
24          in the case of the shareholders of an export trading company  
25          (as defined in section 3(5) of the Export Trading Company

1 Act of 1980) if such shareholders are otherwise small busi-  
2 ness corporations for the purpose of this subchapter," after  
3 "shareholders".

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

8 (c) The amendments made by this section shall apply  
9 with respect to taxable years beginning after December 31,  
10 1980.

96TH CONGRESS  
1ST SESSION

# S. 864

To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 4 (legislative day, FEBRUARY 22), 1979

Mr. DANFOETH (for himself, Mr. BENTSEN, Mr. CHAFEE, Mr. JAVITS, and Mr. MATHIAS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 SECTION 1. SHORT TITLE.

4        This Act may be cited as the "Export Trade Associ-  
5 ation Act of 1979".

6 SEC. 2. FINDINGS; DECLARATION OF PURPOSE.

7        (a) FINDINGS.—The Congress finds and declares that—

1           (1) in 1978 the United States suffered the largest  
2 trade deficit in its history, amounting to approximately  
3 \$30,000,000,000;

4           (2) the trade deficit has contributed to the decline  
5 of the dollar on international currency markets and has  
6 led to widespread public concern about the strength of  
7 the dollar;

8           (3) the exports of the American economy are re-  
9 sponsible for creating and maintaining one out of every  
10 nine manufacturing jobs in the United States and for  
11 generating one out of every seven dollars of total  
12 United States goods produced;

13           (4) foreign-government-owned and foreign-govern-  
14 ment-subsidized entities compete directly with private  
15 United States exporters for shares of the world market;

16           (5) between 1968 and 1977 the United States  
17 share of total world exports fell from 19 percent to 13  
18 percent;

19           (6) service-related industries are vital to the well-  
20 being of the American economy inasmuch as they  
21 create jobs for seven out of every ten Americans, pro-  
22 vide 65 percent of the Nation's gross national product,  
23 and represent a small but rapidly rising percentage of  
24 United States international trade;

## 3

1           (7) small and medium-sized firms are prime bene-  
2           ficiaries of joint exporting, through pooling of technical  
3           expertise, help in achieving economies of scale, and as-  
4           sistance in competing effectively in foreign markets;  
5           and

6           (8) the Department of Commerce has as one of its  
7           responsibilities the development and promotion of  
8           United States exports.

9           (b) **PURPOSE.**—It is the purpose of this Act to encour-  
10          age American exports by establishing an office within the  
11          Department of Commerce to encourage and promote the for-  
12          mation of export trade associations through the Webb-  
13          Pomerene Act, by making the provisions of that Act explicit-  
14          ly applicable to the exportation of services, and by transfer-  
15          ring the responsibility for administering that Act from the  
16          Chairman of the Federal Trade Commission to the Secretary  
17          of Commerce.

18          **SEC. 3. DEFINITIONS.**

19          The Webb-Pomerene Act (15 U.S.C. 61-66) is amend-  
20          ed by striking out the first section and inserting in lieu there-  
21          of the following:

22          **"SECTION 1. DEFINITIONS.**

23          **"As used in this Act—**

24                  **"(1) EXPORT TRADE.**—The term 'export trade'  
25          means trade or commerce in goods, wares, merchan-

## 4

1       dise, or services exported, or in the course of being ex-  
2       ported from the United States or any territory thereof  
3       to any foreign nation.

4               “(2) SERVICE.—The term ‘service’ means intangi-  
5       ble economic output, including, but not limited to—

6                       “(A) business, repair, and amusement serv-  
7       ices;

8                       “(B) management, legal, engineering, archi-  
9       tectural, and other professional services; and

10                      “(C) financial, insurance, transportation, and  
11       communication services.

12               “(3) EXPORT TRADE ACTIVITIES.—The term  
13       ‘export trade activities’ includes any activities or  
14       agreements which are incidental to export trade.

15               “(4) TRADE WITHIN THE UNITED STATES.—The  
16       term ‘trade within the United States’ means trade be-  
17       tween or among—

18                      “(A) the several States of the United States,

19                      “(B) the territories of the United States, or

20                      “(C) the District of Columbia and the several  
21       States or Territories of the United States.

22               “(5) ASSOCIATION.—The term ‘association’  
23       means any combination, by contract or other arrange-  
24       ment, of persons who are citizens of the United States,  
25       partnerships which are created under and exist pursu-

1 ant to the laws of any State or of the United States, or  
2 corporations which are created under and exist pursu-  
3 ant to the laws of any State or of the United States.  
4 The term 'association' does not include a combination  
5 of any of the above with a subsidiary located in the  
6 United States which is controlled by a foreign entity.

7 "(6) ANTITRUST LAWS.—The term 'antitrust  
8 laws' means the antitrust laws defined in the first sec-  
9 tion of the Clayton Act (15 U.S.C. 12) and section 4  
10 of the Federal Trade Commission Act (15 U.S.C. 44),  
11 any other law of the United States in pari materia with  
12 those laws, and any State antitrust or unfair competi-  
13 tion law.

14 "(7) SECRETARY.—The term 'Secretary' means  
15 the Secretary of Commerce.

16 "(8) ATTORNEY GENERAL.—The term 'Attorney  
17 General' means the Attorney General of the United  
18 States.

19 "(9) CHAIRMAN.—The term 'Chairman' means  
20 the Chairman of the Federal Trade Commission."

21 **SEC. 4. ANTITRUST EXEMPTION.**

22 Section 2 of the Webb-Pomerene Act (15 U.S.C. 62) is  
23 amended to read as follows:

## 6

## 1 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

2       “(a) GENERAL RULE.—Any association certified ac-  
3 cording to the procedures set forth in this Act, entered into  
4 for the sole purpose of engaging in export trade, and engaged  
5 in such export trade, is exempt from the application of the  
6 antitrust laws if the association and the export trade activi-  
7 ties in which it and its members are engaged or propose to be  
8 engaged—

9               “(1) serve to preserve or promote export trade;

10              “(2) result in neither a substantial restraint of  
11 competition within the United States nor a substantial  
12 restraint of the export trade of any domestic competitor  
13 of such association;

14              “(3) do not unreasonably enhance, stabilize, or de-  
15 press prices within the United States of the goods,  
16 wares, merchandise, or services of the class exported  
17 by such association;

18              “(4) do not constitute unfair methods of competi-  
19 tion against domestic competitors engaged in the  
20 export trade of goods, wares, merchandise, or services  
21 of the class exported by such association;

22              “(5) do not include any act which results, or may  
23 reasonably be expected to result, in the sale for con-  
24 sumption or resale within the United States of the  
25 goods, wares, merchandise, or services exported by the  
26 association or its members.

1           “(6) do not constitute trade or commerce in the  
2           licensing of patents, technology, trademarks, or know-  
3           how, except as incidental to the sale of the goods,  
4           wares, merchandise, or services exported by the associ-  
5           ation or its members.

6           “(b) ENFORCEMENT BY FEDERAL AGENCIES ONLY.—

7           “(1) STANDING.—No person other than a depart-  
8           ment or agency of the United States, or an officer of  
9           the United States acting in his official capacity, shall  
10          have standing to bring an action against an association  
11          for failure to meet the requirements of subsection (a).

12          “(2) PETITIONS BY THIRD PARTIES.—Whenever  
13          any person has reason to believe that an association  
14          fails to meet any requirement of subsection (a), he may  
15          file a petition, alleging such failure and requesting the  
16          commencement of appropriate enforcement action, with  
17          the Secretary. Unless the Secretary, in consultation  
18          with the Attorney General and Chairman, determines  
19          that the petition does not make allegations upon which,  
20          if true, an enforcement action could be based, he shall  
21          conduct an adjudicatory proceeding in accordance with  
22          the provisions of section 554 of title 5, United States  
23          Code, for the purpose of determining the truth of the  
24          matters alleged. If he determines that the allegations  
25          contained in the petition are true, and that they indi-

1 cate that the association does not meet a requirement  
 2 of subsection (a), then he shall bring an action against  
 3 the association under paragraph (3).

4 “(3) REMEDIES.—Such a department, agency, or  
 5 officer acting in his official capacity may bring an  
 6 action for the revocation, in whole or in part, of an as-  
 7 sociation’s certification on the ground that it fails, or  
 8 has failed, to meet a requirement of subsection (a), or  
 9 to enjoin or restrain an association from engaging in  
 10 any activity which fails to meet any condition set forth  
 11 in paragraphs (1) through (6) of subsection (a).

12 “(4) JURISDICTION.—Any action brought under  
 13 subsection (b) shall be considered as an action de-  
 14 scribed in section 1337 of title 28, United States  
 15 Code.”.

16 **SEC. 5. AMENDMENT OF SECTIONS 3 AND 4.**

17 (a) **CONFORMING CHANGES IN STYLE.**—The Webb-  
 18 Pomerene Act is amended—

19 (1) by inserting immediately before section 3 (15  
 20 U.S.C. 63) the following:

21 “**SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-**  
 22 **ATIONS PERMITTED.**”,

23 (2) by striking out “SEC. 3. That nothing” in sec-  
 24 tion 3 and inserting in lieu thereof “Nothing”,

1           (3) by inserting immediately before section 4 the  
2 following:

3 "SEC. 4. UNFAIR METHODS OF COMPETITION AGAINST DO-  
4           MESTIC COMPETITORS PROHIBITED.",

5 and

6           (4) by striking out "SEC. 4. That the" in section  
7 4 and inserting in lieu thereof "The".

8           (b) LIMITATION OF UNFAIR COMPETITION PROHIBI-  
9 TION TO DOMESTIC COMPETITORS.—Section 4 of the Act  
10 (15 U.S.C. 64) is amended by inserting "domestic" before  
11 "competitors".

12 SEC. 6. ADMINISTRATION; ENFORCEMENT; REPORTS.

13           (a) IN GENERAL.—The Webb-Pomerene Act is amend-  
14 ed by striking out section 5 and inserting in lieu thereof the  
15 following sections:

16 "SEC. 5. CERTIFICATION.

17           "(a) APPLICATION.—In order to obtain certification as  
18 an association engaged solely in export trade, a person shall  
19 file with the Secretary a written notice of intent to meet for  
20 the purpose of determining the desirability of applying for  
21 certification and, within 60 days after such meeting, unless  
22 such person has filed with the Secretary a written notice or  
23 decision not to apply for certification, a written application  
24 for certification setting forth the following:

25           "(1) The name of the association.

## 10

1           “(2) The location of all of the association’s offices  
2 or places of business in the United States and abroad.

3           “(3) The names and addresses of all of the associ-  
4 ation’s officers, stockholders, and members.

5           “(4) A copy of the certificate or articles of incor-  
6 poration and bylaws, if the association is a corporation;  
7 or a copy of the articles or contract of association, if  
8 the association is unincorporated.

9           “(5) A description of the goods, wares, merchan-  
10 dised, or services which the association or its members  
11 export or propose to export.

12           “(6) An explanation of the domestic and interna-  
13 tional conditions, circumstances, and factors which  
14 make the association useful for the purpose of promot-  
15 ing the export trade of the described goods, wares,  
16 merchandise, or services.

17           “(7) The methods by which the association con-  
18 ducts or proposes to conduct export trade in the de-  
19 scribed goods, wares, merchandise, or services, includ-  
20 ing, but not limited to, any agreements to sell exclu-  
21 sively to or through the association, any agreements  
22 with foreign persons who may act as joint selling  
23 agents, any agreements to acquire a foreign selling  
24 agent, any agreements for pooling tangible or intangi-  
25 ble property or resources, or any territorial, price-

1 maintenance, membership, or other restrictions to be  
2 imposed upon members of the association.

3 “(8) The names of all countries where export  
4 trade in the described goods, wares, merchandise, or  
5 services is conducted or proposed to be conducted by  
6 or through the association.

7 “(9) Any other information which the Secretary  
8 may request concerning the organization, operation,  
9 management, or finances of the association; the rela-  
10 tion of the association to other associations, corpora-  
11 tions, partnerships, and individuals; and competition or  
12 potential competition, and effects of the association  
13 thereon. The Secretary may not request information  
14 under this paragraph which is not reasonably available  
15 to the person making application or which is not neces-  
16 sary for certification of the prospective association.

17 “(b) ISSUANCE OF CERTIFICATE.—

18 “(1) NINETY-DAY PERIOD.—Based upon the in-  
19 formation obtained from the application, the Secretary  
20 shall certify an association within 90 days after receiv-  
21 ing the association’s application for certification if the  
22 Secretary determines that the association and its mem-  
23 bers and the proposed export trade activities meet the  
24 requirements of section 2 of this Act.

1           “(2) EXPEDITED CERTIFICATION.—In those in-  
2           stances where the temporary nature of the export trade  
3           activities, deadlines for bidding on contracts or filling  
4           orders, or any other circumstances beyond the control  
5           of the association which have a significant impact on  
6           the association’s export trade, make the 90-day period  
7           for application approval described in paragraph (1) of  
8           this subsection impractical for the person seeking certi-  
9           fication as an association, such person may request and  
10          may receive expedited action on his application for cer-  
11          tification.

12           “(3) APPEAL OF INITIAL DETERMINATION.—If  
13          the Secretary determines not to certify an association  
14          which has submitted an application for certification,  
15          then he shall—

16                   “(A) notify the association of his determina-  
17                   tion and the reasons for his determination, and

18                   “(B) upon request made by the association,  
19                   afford the association an opportunity for a hearing  
20                   with respect to that determination in accordance  
21                   with section 557 of title 5, United States Code.

22          “(c) MATERIAL CHANGES IN CIRCUMSTANCES;  
23          AMENDMENT OF APPLICATION.—

24                   “(1) VOIDING OF CERTIFICATION.—Whenever  
25                   there is a material change in—

1           “(A) the domestic and international condi-  
2           tions, circumstances, and factors which make an  
3           association useful for the purpose of promoting the  
4           export trade of its goods, wares, merchandise, or  
5           services, or

6           “(B) the association’s membership, export  
7           trade, export trade activities, or methods of oper-  
8           ation which would cause the association to fail to  
9           meet any requirement of section 2,

10          then the association shall apply to the Secretary for an  
11          amendment of its certification. If an association fails to  
12          apply for an amendment of its certification when re-  
13          quired by the preceding sentence, then the certification  
14          of the association shall be void as of the date of such  
15          material change (as determined by the Secretary).

16          “(2) AMENDMENT OF APPLICATION.—The re-  
17          quest for amendment shall be filed within 30 days after  
18          the date of the material change and shall set forth the  
19          requested amendment of the application and the rea-  
20          sons for the requested amendment. Any request for the  
21          amendment of an application shall be treated in the  
22          same manner as an original application for certifica-  
23          tion. If the request is filed within 30 days after the  
24          material change which requires the amendment, and if  
25          the requested amendment is approved, then there shall

1 be no interruption in the period for which certification  
2 is in effect.

3 “(3) AMENDMENT UPON RECOMMENDATION OF  
4 SECRETARY.—After notifying the association involved,  
5 the Secretary may, on his own initiative, or upon the  
6 recommendation of the Attorney General, the Chair-  
7 man, or any other person—

8 “(A) require that an association’s certifica-  
9 tion be amended,

10 “(B) require that the organization or oper-  
11 ation of the association be modified to correspond  
12 with the association’s certification, or

13 “(C) revoke, in whole or in part, the certifi-  
14 cation of the association upon a finding (made in  
15 an adjudicatory proceeding held in accordance  
16 with section 554 of title 5, United States Code)  
17 that the association, its members, or its export  
18 trade activities do not meet the requirements of  
19 section 2 of this Act.

20 “SEC. 6. GUIDELINES.

21 “(a) INITIAL PROPOSED GUIDELINES.—Within 90  
22 days after the enactment of the Export Trade Association  
23 Act of 1979, the Secretary, the Attorney General, and the  
24 Chairman shall publish proposed guidelines for purposes of  
25 determining whether an association, its members, and its

1 export trade activities will meet the requirements of section 2  
2 of this Act.

3       “(b) PUBLIC COMMENT PERIOD.—Following publica-  
4 tion of the proposed guidelines, and any proposed revision of  
5 guidelines, interested parties shall have 30 days to comment  
6 on the proposed guidelines. The Secretary, the Attorney  
7 General, and the Chairman shall review the comments and  
8 publish final guidelines within 30 days after the last day on  
9 which comments may be made under the preceding sentence.

10       “(c) PERIODIC REVISION.—After publication of the  
11 final guidelines, the Secretary, the Attorney General, and the  
12 Chairman shall meet periodically to revise the guidelines as  
13 needed.

14       “(d) APPLICATION OF ADMINISTRATIVE PROCEDURE  
15 ACT.—The promulgation of guidelines under this section  
16 shall not be considered rule-making for purposes of sub-  
17 chapter II of chapter 5 of title 5, United States Code, and  
18 section 553 of such title shall not apply to their promulga-  
19 tion.

20       “SEC. 7. ANNUAL REPORTS.

21       “Every certified association shall submit to the Secre-  
22 tary an annual report, in such form and at such time as he  
23 may require, setting forth the information described by sec-  
24 tion 5(a) of this Act.

1 "SEC. 8. OFFICE OF EXPORT TRADE IN COMMERCE DEPART-  
2 MENT.

3 "The Secretary shall establish within the Department of  
4 Commerce an office to promote and encourage to the great-  
5 est extent feasible the formation of export trade associations  
6 through the use of provisions of this Act in a manner consist-  
7 ent with this Act.

8 "SEC. 9. AUTOMATIC CERTIFICATION FOR EXISTING ASSOCI-  
9 ATIONS.

10 "The Secretary shall certify any export trade associ-  
11 ation registered with the Federal Trade Commission as of the  
12 date of enactment of the Export Trade Association Act of  
13 1979 if such association, within 180 days after the date of  
14 enactment of such Act, files with the Secretary an applica-  
15 tion for certification as provided for in section 5 of this Act,  
16 unless such application shows on its face that the association  
17 is not eligible for certification under this Act.

18 "SEC. 10. CONFIDENTIALITY OF APPLICATION AND ANNUAL  
19 REPORT INFORMATION.

20 "(a) GENERAL RULE.—Applications made under sec-  
21 tion 5, including amendments to such applications, and  
22 annual reports made under section 7 shall be confidential,  
23 and, except as authorized by this section, no officer or em-  
24 ployee, or former officer or employee, of the United States  
25 shall disclose any such application, amendment, or annual  
26 report, or any application, amendment or annual report infor-

1 mation, obtained by him in any manner in connection with his  
2 service as such an officer or employee.

3       “(b) DISCLOSURE TO FEDERAL OFFICERS OR EM-  
4 PLOYEES FOR ADMINISTRATION OF OTHER FEDERAL  
5 LAWS.—

6           “(1) INVESTIGATION.—The Secretary shall make  
7 an application, amendment, or annual report, or infor-  
8 mation derived therefrom available, to the extent re-  
9 quired by an ex parte order issued by a judge of a  
10 United States district court, to officers and employees  
11 of a Federal agency personally and directly engaged in,  
12 and solely for their use in, preparation for an adminis-  
13 trative or judicial proceeding (or investigation which  
14 may result in such a proceeding) to which the United  
15 States or such agency is or may be a party.

16           “(2) APPLICATION FOR ORDER.—The head of  
17 any Federal agency described in paragraph (1), or, in  
18 the case of the Department of Justice, the Attorney  
19 General, the Deputy Attorney General, or an Assistant  
20 Attorney General, may authorize an application to a  
21 United States district court judge for the order referred  
22 to in paragraph (1). Upon application, the judge may  
23 grant the order if he determines, on the basis of the  
24 facts submitted by the applicant, that—

25           “(A) in the case of a criminal investigation—

1                   “(i) there is reasonable cause to believe,  
2                   based upon information believed to be reli-  
3                   able, that a specific criminal act has been  
4                   committed,

5                   “(ii) there is reason to believe that such  
6                   application, amendment, annual report, or in-  
7                   formation derived therefrom is probative evi-  
8                   dence of a matter in issue related to the  
9                   commission of such Act, and

10                   “(iii) the information sought cannot rea-  
11                   sonably be obtained from any other source,  
12                   unless it is determined that, notwithstanding  
13                   the reasonable availability of the information  
14                   from another source, the application, amend-  
15                   ment or annual report, or information derived  
16                   therefrom sought constitutes the most proba-  
17                   tive evidence of a matter in issue relating to  
18                   the commission of such criminal act, and

19                   “(B) in the case of any other investigation,  
20                   that—

21                   “(i) such application, amendment or  
22                   annual report, or information derived there-  
23                   from is probative evidence of a matter under  
24                   investigation,

1                   “(ii) such application, amendment or  
2                   annual report, or information derived there-  
3                   from is or may be material to the administra-  
4                   tive or judicial proceeding in connection with  
5                   which the investigation is being conducted,  
6                   and

7                   “(iii) the information sought cannot rea-  
8                   sonably be obtained from any other source,  
9                   or, notwithstanding the reasonable availabil-  
10                  ity of the information from another source,  
11                  the application, amendment or annual report,  
12                  or information derived therefrom sought con-  
13                  stitutes the most probative evidence of a  
14                  matter in issue relating to the commission of  
15                  the act being investigated.

16 **“SEC. 11. MODIFICATION OF ASSOCIATION TO COMPLY WITH**  
17 **UNITED STATES OBLIGATIONS.**

18                  “**At such time as the United States undertakes interna-**  
19 **tional obligations by treaty or statute, to the extent that the**  
20 **operations of any export trade association, certified under**  
21 **this Act or registered under this Act, before its amendment**  
22 **by the Export Trade Association Act of 1979, are inconsis-**  
23 **ent with such international obligations, the Secretary may**  
24 **require such association to modify its operations so as to be**  
25 **consistent with such international obligations.**

1 "SEC. 12. REGULATIONS.

2 "The Secretary, in consultation with the Attorney Gen-  
3 eral and the Chairman, shall promulgate such rules and regu-  
4 lations as may be necessary to carry out the purposes of this  
5 Act.

6 "SEC. 13. TASK FORCE STUDY.

7 "Seven years after the date of enactment of the Export  
8 Trade Association Act of 1979, the President shall appoint,  
9 by and with the advice and consent of the Senate, a task  
10 force to examine the effect of the operation of this Act on  
11 domestic competition and on the United States' international  
12 trade deficit and to recommend either continuation, revision,  
13 or termination of the Webb-Pomerene Act. The task force  
14 shall have one year to conduct its study and to make its  
15 recommendations to the President."

16 (b) REDESIGNATION OF SECTION 6.—The Act is  
17 amended—

18 (1) by striking out "SEC. 6." in section 6 (15  
19 U.S.C. 66), and

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

22 "SEC. 14. SHORT TITLE."

**AMENDMENT NO. 1674**

Purpose: To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

**S. 864**

To establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations, and for other purposes.

February 26 (legislative day, January 3), 1980

Referred to the Committee on Banking, Housing, and Urban Affairs, and ordered to be printed

AMENDMENT intended to be proposed by Mr. DANFORTH (for himself, Mr. BENTSEN, Mr. CHAFEE, Mr. HEINZ, Mr. JAVITS, and Mr. MATHIAS)

Viz: Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Export Trade Associ-  
3 ation Act of 1980".

4 **SEC. 2. FINDINGS; DECLARATION OF PURPOSE.**

5 (a) **FINDINGS.**—The Congress finds and declares that—

6 (1) the exports of the American economy are re-  
7 sponsible for creating and maintaining one out of every  
8 nine manufacturing jobs in the United States and for  
9 generating one out of every seven dollars of total  
10 United States goods produced;

1           (2) exports will play an even larger role in the  
2 United States economy in the future in the face of  
3 severe competition from foreign government owned and  
4 subsidized commercial entities;

5           (3) between 1968 and 1977 the United States  
6 share of total world exports fell from 19 per centum to  
7 13 per centum;

8           (4) trade deficits contribute to the decline of the  
9 dollar on international currency markets, fueling infla-  
10 tion at home;

11           (5) service-related industries are vital to the well-  
12 being of the American economy inasmuch as they  
13 create jobs for seven out of every ten Americans, pro-  
14 vide 65 per centum of the Nation's gross national  
15 product, and represent a small but rapidly rising per-  
16 centage of United States international trade;

17           (6) small and medium-sized firms are prime bene-  
18 ficiaries of joint exporting, through pooling of technical  
19 expertise, help in achieving economies of scale, and as-  
20 sistance in competing effectively in foreign markets; and

21           (7) the Department of Commerce has as one of its  
22 responsibilities the development and promotion of  
23 United States exports.

24           (b) PURPOSE.—It is the purpose of this Act to encour-  
25 age American exports by establishing an office within the

1 Department of Commerce to encourage and promote the for-  
2 mation of export trade associations through the Webb-  
3 Pomerene Act, by making the provisions of that Act explicit-  
4 ly applicable to the exportation of services, and by transfer-  
5 ring the responsibility for administering that Act from the  
6 Chairman of the Federal Trade Commission to the Secretary  
7 of Commerce.

8 **SEC. 3. DEFINITIONS.**

9 The Webb-Pomerene Act (15 U.S.C. 61-66) is amend-  
10 ed by striking out the first section (15 U.S.C. 61) and  
11 inserting in lieu thereof the following:

12 **"SECTION 1. DEFINITIONS.**

13 "As used in this Act—

14 "(1) **EXPORT TRADE.**—The term 'export trade'  
15 means trade or commerce in goods, wares, merchan-  
16 dise, or services exported, or in the course of being  
17 exported from the United States or any territory there-  
18 of to any foreign nation.

19 "(2) **SERVICE.**—The term 'service' means intangi-  
20 ble economic output, including, but not limited to—

21 "(A) business, repair, and amusement serv-  
22 ices;

23 "(B) management, legal engineering, archi-  
24 tectural, and other professional services; and

1                   “(C) financial, insurance, transportation, and  
2                   communication services.

3                   “(3) EXPORT TRADE ACTIVITIES.—The term  
4                   ‘export trade activities’ includes any activities or  
5                   agreements which are incidental to export trade.

6                   “(4) TRADE WITHIN THE UNITED STATES.—The  
7                   term ‘trade within the United States’ whenever used in  
8                   this Act means trade or commerce among the several  
9                   States or in any Territory of the United States, or in  
10                  the District of Columbia, or between any such Terri-  
11                  tory and another, or between any such Territory or  
12                  Territories and any State or States or the District of  
13                  Columbia, or between the District of Columbia and any  
14                  State or States.

15                  “(5) ASSOCIATION.—The term ‘association’  
16                  means any combination, by contract or other arrange-  
17                  ment, of persons who are citizens of the United States,  
18                  partnerships which are created under and exist pursu-  
19                  ant to the laws of any State or of the United States, or  
20                  corporations which are created under and exist pursu-  
21                  ant to the laws of any State or of the United States.

22                  “(6) ANTITRUST LAWS.—The term ‘antitrust  
23                  laws’ means the antitrust laws defined in the first sec-  
24                  tion of the Clayton Act (15 U.S.C. 12) and section 4  
25                  of the Federal Trade Commission Act (15 U.S.C. 44),

1 any other law of the United States in pari materia with  
2 those laws, and any State antitrust or unfair competi-  
3 tion law.

4 “(7) SECRETARY.—The term ‘Secretary’ means  
5 the Secretary of Commerce.

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

9 “(9) CHAIRMAN.—The term ‘Chairman’ means  
10 the Chairman of the Federal Trade Commission.”.

11 **SEC. 4. ANTITRUST EXEMPTION.**

12 The Webb-Pomerene Act (15 U.S.C. 61-66) is amend-  
13 ed by striking out the second and fourth sections (15 U.S.C.  
14 62 and 64) and inserting in lieu thereof the following:

15 **“SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**

16 “(a) GENERAL RULE.—Any association, entered into  
17 for the sole purpose of engaging in export trade, and engaged  
18 in such export trade, is exempt from the application of the  
19 antitrust laws if the association, its export trade and methods  
20 of operation in which it and its members are engaged or pro-  
21 pose to be engaged—

22 “(1) serve to preserve or promote export trade;

23 “(2) result in neither a substantial restraint of  
24 trade or lessening of competition within the United

1 States nor a substantial restraint of the export trade of  
2 any domestic competitor of such association;

3 “(3) do not unreasonably enhance, stabilize, or de-  
4 press prices within the United States of the goods,  
5 wares, merchandise, or services of the class exported  
6 by such association;

7 “(4) do not constitute unfair methods of competi-  
8 tion against domestic competitors engaged in the  
9 export trade of goods, wares, merchandise, or services  
10 of the class exported by such association;

11 “(5) do not include any act which results, or may  
12 reasonably be expected to result, in the sale for con-  
13 sumption or resale within the United States of the  
14 goods, wares, merchandise, or services exported by the  
15 association or its members;

16 “(6) do not constitute trade or commerce in the  
17 licensing of patents, technology, trademarks, or know-  
18 how, except as incidental to the sale of the goods,  
19 wares, merchandise, or services exported by the associ-  
20 ation or its members.

21 “(b) EXEMPTION.—The export trade and methods of  
22 operation of an association certified according to the proce-  
23 dures set forth in this Act shall remain exempt from the ap-  
24 plication of the antitrust laws until the association’s certifica-  
25 tion is revoked pursuant to subsection (d) or (e) of section 4 of

1 this Act. And provided further, that if an association's certifi-  
2 cation is revoked, neither it nor any of its members shall be  
3 subject to an action under the antitrust laws for the period  
4 during which the certification was in existence as to those  
5 export trade activities and methods of operation which were  
6 certified according to the procedures set forth in this Act."

7 **SEC. 5. AMENDMENT OF SECTION 3.**

8 (a) **CONFORMING CHANGES IN STYLE.**—The Webb-  
9 Pomerene Act (15 U.S.C. 61-66) is amended—

10 (1) by inserting immediately before section 3 (15  
11 U.S.C. 63) the following:

12 **"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-**  
13 **ATIONS PERMITTED."**

14 (2) by striking out "SEC. 3. That nothing" in sec-  
15 tion 3 and inserting in lieu thereof "Nothing".

16 **SEC. 6. ADMINISTRATION; ENFORCEMENT; REPORTS.**

17 (a) **IN GENERAL.**—The Webb-Pomerene Act (15  
18 U.S.C. 61-66) is amended by striking out section 5 (15  
19 U.S.C. 65) and inserting in lieu thereof the following sec-  
20 tions:

21 **"SEC. 4. CERTIFICATION.**

22 "(a) **PROCEDURE FOR APPLICATION.**—In order to  
23 obtain certification as an association engaged solely in export  
24 trade, a person shall file with the Secretary, a written appli-  
25 cation for certification setting forth the following:

1           “(1) The name of the association.

2           “(2) The location of all of the association’s offices  
3 or places of business in the United States and abroad.

4           “(3) The names and addresses of all of the associ-  
5 ation’s officers, stockholders, and members.

6           “(4) A copy of the certificate or articles of incor-  
7 poration and bylaws, if the association is a corporation;  
8 or a copy of the articles or contract of association, if  
9 the association is unincorporated.

10          “(5) A description of the goods, wares, merchan-  
11 dise, or services which the association or its members  
12 export or propose to export.

13          “(6) A description of the domestic and interna-  
14 tional conditions, circumstances, and factors which  
15 make the association and its activities useful for the  
16 purpose of promoting the export trade of the described  
17 goods, wares, merchandise, or services.

18          “(7) The export trade activities in which the asso-  
19 ciation intends to engage and the methods by which  
20 the association conducts or proposes to conduct export  
21 trade in the described goods, wares, merchandise, or  
22 services, including, but not limited to, any agreements  
23 to sell exclusively to or through the association, any  
24 agreements with foreign persons who may act as joint  
25 selling agents, any agreements to acquire a foreign

1 selling agent, any agreements for pooling tangible or  
2 intangible property or resources, or any territorial,  
3 price-maintenance, membership, or other restrictions to  
4 be imposed upon members of the association.

5 “(8) The names of all countries where export  
6 trade in the described goods, wares, merchandise, or  
7 services is conducted or proposed to be conducted by  
8 or through the association.

9 “(9) Any other information which the Secretary  
10 may request concerning the organization, operation,  
11 management, or finances of the association; the rela-  
12 tion of the association to other associations, corpora-  
13 tions, partnerships, and individuals; and competition or  
14 potential competition, and effects of the association  
15 thereon. The Secretary may request such information  
16 as part of an initial application or as a necessary sup-  
17 plement thereto. The Secretary may not request infor-  
18 mation under this paragraph which is not reasonably  
19 available to the person making application or which is  
20 not necessary for certification of the prospective  
21 association.

22 “(b) ISSUANCE OF CERTIFICATE.—

23 “(1) NINETY-DAY PERIOD.—The Secretary shall  
24 certify an association within ninety days after receiving  
25 the association’s application for certification or

1 necessary supplement thereto if the Secretary, after  
2 consultation with the Attorney General and Chairman,  
3 determines that the association and its members, the  
4 export trade and methods of operation, meet the re-  
5 quirements of section 2 of this Act.

6 “(2) EXPEDITED CERTIFICATION.—In those in-  
7 stances where the temporary nature of the export trade  
8 activities, deadlines for bidding on contracts or filling  
9 orders, or any other circumstances beyond the control  
10 of the association which have a significant impact on  
11 the association’s export trade, make the ninety-day  
12 period for application approval described in paragraph  
13 (1) of this subsection, or an amended application ap-  
14 proval as provided in subsection (c) of this section, im-  
15 practical for the person seeking certification as an as-  
16 sociation, such person may request and may receive  
17 expedited action on his application for certification.

18 “(3) APPEAL OF DETERMINATION.—If the Secre-  
19 tary determines not to certify an association which has  
20 submitted an application or an amended application for  
21 certification, then he shall—

22 “(A) notify the association of his determina-  
23 tion and the reasons for his determination, and

24 “(B) upon request made by the association,  
25 afford the association an opportunity for a hearing

1           with respect to that determination in accordance  
2           with section 557 of title 5, United States Code.

3           “(c) **MATERIAL CHANGES IN CIRCUMSTANCES;**  
4 **AMENDMENT OF CERTIFICATION.**—Whenever there is a  
5 material change in the association’s membership, export  
6 trade, export trade activities, or methods of operation, the  
7 association shall report such change to the Secretary and  
8 may apply to the Secretary for an amendment of its certifica-  
9 tion. Any application for an amendment to an association’s  
10 certification shall set forth the requested amendment of the  
11 certification and the reasons for the requested amendment.  
12 Any request for the amendment of certification shall be treat-  
13 ed in the same manner as an original application for certifica-  
14 tion. If the request is filed within thirty days after a material  
15 change (as determined by the Secretary) which requires the  
16 amendment, and if the requested amendment is approved,  
17 then there shall be no interruption in the period for which  
18 certification is in effect.

19           “(d) **AMENDMENT OR REVOCATION OF CERTIFICATE**  
20 **BY SECRETARY.**—After notifying the association involved  
21 and after an opportunity for hearing pursuant to section 554  
22 of title 5, United States Code, the Secretary, on his own  
23 initiative—

24           “(A) may require that an association’s certifica-  
25           tion be amended,

1           “(B) may require that the organization or oper-  
2           ation of the association be modified to correspond with  
3           the association’s certification, or

4           “(C) shall revoke, in whole or in part, the certifi-  
5           cation of the association upon a determination that the  
6           association, its export trade activities or methods of op-  
7           eration no longer meet the criteria of section 2 of this  
8           Act.

9           “(e) ACTION FOR INVALIDATION OF CERTIFICATION  
10          BY ATTORNEY GENERAL OR CHAIRMAN.—

11           “(1) The Attorney General or the Chairman may  
12           bring an action against an association or its members  
13           to revoke, in whole or in part, the association’s certifi-  
14           cation on the ground that it fails, or has failed to meet  
15           the criteria of section 2 of this Act. The Attorney Gen-  
16           eral or Chairman shall notify any association, or appli-  
17           cable members, against which it intends to bring an  
18           action for revocation, thirty days in advance, as to its  
19           intent to file an action under this subsection.

20           “(2) Any action brought under this subsection  
21           shall be considered an action described in section 1337  
22           of title 28, United States Code.

23           “(3) No person other than the Attorney General  
24           or the Chairman shall have standing to bring an action  
25           against an association, certified according to the proce-

1       dures set forth in this Act, or any of its members for  
2       failure to meet the criteria of section 2 of this Act.

3       **"SEC. 5. GUIDELINES.**

4       **"(a) INITIAL PROPOSED GUIDELINES.**—Within ninety  
5       days after the enactment of the Export Trade Association  
6       Act of 1980, the Secretary, after consultation with the Attor-  
7       ney General, and the Chairman, shall publish proposed  
8       guidelines for purposes of determining whether an associ-  
9       ation, its members, and its export trade activities will meet  
10      the requirements of section 2 of this Act.

11      **"(b) PUBLIC COMMENT PERIOD.**—Following publica-  
12      tion of the proposed guidelines, and any proposed revision of  
13      guidelines, interested parties shall have thirty days to com-  
14      ment on the proposed guidelines. The Secretary, after consul-  
15      tation with the Attorney General, and the Chairman, shall  
16      review the comments and publish final guidelines within  
17      thirty days after the last day on which comments may be  
18      made under the preceding sentence.

19      **"(c) PERIODIC REVISION.**—After publication of the  
20      final guidelines, the Secretary, after consultation with the At-  
21      torney General, and the Chairman, shall periodically review  
22      the guidelines and propose revisions as needed.

23      **"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE**  
24      **ACT.**—The promulgation of guidelines under this section  
25      shall not be considered rulemaking for purposes of subchapter

1 II of chapter 5 of title 5, United States Code, and section  
2 553 of such title shall not apply to their promulgation.

3 **"SEC. 6. ANNUAL REPORTS.**

4 "Every certified association shall submit to the Secre-  
5 tary an annual report, in such form and at such time as he  
6 may require, which report updates where necessary the infor-  
7 mation described by section 4(a) of this Act.

8 **"SEC. 7. OFFICE OF EXPORT TRADE IN COMMERCE DEPART-**  
9 **MENT.**

10 "The Secretary shall establish within the Department of  
11 Commerce an office to promote and encourage to the great-  
12 est extent feasible the formation of export trade associations  
13 through the use of provisions of this Act in a manner consist-  
14 ent with this Act.

15 **"SEC. 8. AUTOMATIC CERTIFICATION FOR EXISTING ASSOCI-**  
16 **ATIONS.**

17 "The Secretary shall certify any export trade associ-  
18 ation registered with the Federal Trade Commission as of the  
19 date of enactment of the Export Trade Association Act of  
20 1980, if such association, within one hundred and eighty days  
21 after the date of enactment of such Act, files with the Secre-  
22 tary an application for certification as provided for in section  
23 5 of this Act, unless such application shows on its face that  
24 the association is not eligible for certification under this Act.

1 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL  
2 REPORT INFORMATION.

3 "(a) GENERAL RULE.—Portions of applications made  
4 under section 4, including amendments to such applications,  
5 and annual reports made under section 6 that contain trade  
6 secrets or confidential business or financial information, the  
7 disclosure of which would harm the competitive position of  
8 the person submitting such information shall be confidential,  
9 and, except as authorized by this section, no officer or em-  
10 ployee, or former officer or employee, of the United States  
11 shall disclose any such confidential information, obtained by  
12 him in any manner in connection with his service as such an  
13 officer or employee.

14 "(b) DISCLOSURE TO ATTORNEY GENERAL OR CHAIR-  
15 MAN.—The Secretary may make available portions of appli-  
16 cations, amendments thereto or annual reports, or informa-  
17 tion derived therefrom to the Attorney General or Chairman,  
18 or any employee or officer thereof, for official use in connec-  
19 tion with an investigation or judicial or administrative pro-  
20 ceeding under this Act or the antitrust laws to which the  
21 United States or such agency is or may be a party. Such  
22 information may only be disclosed by the Secretary upon a  
23 prior certification that the information will be maintained in  
24 confidence and will only be used for official law enforcement  
25 purposes by the Attorney General or Chairman.

1 "SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH  
2 UNITED STATES OBLIGATIONS.

3 "At such time as the United States undertakes binding  
4 international obligations by treaty or statute, to the extent  
5 that the operations of any export trade association, certified  
6 under this Act or registered under this Act, before its amend-  
7 ment by the Export Trade Association Act of 1980, are in-  
8 consistent with such international obligations, the Secretary  
9 may require such association to modify its operations so as to  
10 be consistent with such international obligations.

11 "SEC. 11. REGULATIONS.

12 "The Secretary, in consultation with the Attorney Gen-  
13 eral and the Chairman, shall promulgate such rules and regu-  
14 lations as may be necessary to carry out the purposes of this  
15 Act.

16 "SEC. 12. TASK FORCE STUDY.

17 "Seven years after the date of enactment of the Export  
18 Trade Association Act of 1980, the President shall appoint,  
19 by and with the advice and consent of the Senate, a task  
20 force to examine the effect of the operation of this Act on  
21 domestic competition and on the United States international  
22 trade deficit and to recommend either continuation, revision,  
23 or termination of the Webb-Pomerene Act. The task force  
24 shall have one year to conduct its study and to make its  
25 recommendations to the President."

1       (b) REDESIGNATION OF SECTION 6.—The Act is  
2 amended—

3           (1) by striking out “SEC. 6.” in section 6 (15  
4 U.S.C. 66), and

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

7 “SEC. 13. SHORT TITLE.”.

# EXPORT TRADING COMPANY ACT OF 1980

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TUESDAY, MARCH 18, 1980

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

The subcommittee met at 9:35 a.m. in room 5302, Dirksen Senate Office Building, Senator Adlai Stevenson, chairman of the subcommittee, presiding.

Present: Senators Stevenson and Heinz.

Senator STEVENSON. The subcommittee will come to order.

This morning we continue our hearings on S. 2379 to authorize the establishment of U.S. trading companies and amendment No. 1 to S. 864, which would make changes in the Webb-Pomerene Act.

It's a pleasure for me to welcome my colleague and good friend from Texas, Senator Bentsen.

## STATEMENT OF LLOYD BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. Thank you very much, Mr. Chairman. I am very pleased to have a chance to be before you and your subcommittee to talk about S. 2379 and to be a cosponsor of this legislation. I am looking forward to working with you on it to see that it's implemented into law.

I do hope we can see the administration and the various departments finally get together and decide what they want, what they will support.

I think we are in real trouble on trade. I just returned from 9 or 10 days of Joint Economic Committee hearings, without the interruption of rollcalls and everything else, to just listen to fellows out there on the cutting edge talking about the problems they are having on exports and trying to increase our trade abroad. We were in the Far East. I looked at situations in each of those countries where we had a stored reservoir of goodwill, where people really wanted to trade with the United States, where they really didn't want to see the Japanese preempt the market. They wanted some balance in that market but they were having trouble trading with this country for many reasons, part of them government reasons and part of them just not enough aggressiveness on the part of our own manufacturers.

Time and time again we were told that our people wouldn't adapt to the local market, wouldn't modify their product in the slightest just to try to be competitive, that they wouldn't do entry pricing, that they wanted to make it all on the front end. If we

continue to take that kind of attitude toward trade we are going to find our share of trade continue to decrease and we will not remain a first-class power in this world.

One of the things that we know that works for our competitors abroad is they're doing a great deal with trading companies and we are not.

Mr. Chairman, when I was in Hong Kong, I had three representatives of regional banks in Texas call me who had offices there who had representatives there. One of the things I like about your bill is that you allow bank participation in export trading companies, up to 50-percent ownership. They can go beyond that with the approval of the regulatory authority. I think that's a real step forward. We are seeing that kind of competition by the Japanese, by the Germans and the other countries that are really out front in world trade. Today they have that kind of a tool to utilize.

Let's take an example of someone who's back in Illinois or back in Texas who has a small company or a modest size company. There's no way in the world that they can have representatives overseas and spend the kind of money needed to have outlets overseas, but if you have the trading company here it's the chance for them to do that.

Now the banks already have those kinds of people over there, plus they have some business counseling that they generally provide for the smaller businesses and the medium sized businesses, but they are already paying the expense of a representative over there, of offices over there. They have contacts over there and that gives our smaller businessmen something to tie to when he goes to that foreign country. It gives him the entrees and they are trying to encourage the exports of the products from home for their customers back home. So it's a great advantage I believe in trying to add that to this piece of legislation and I very strongly support it. I think it's a major plus in this legislation.

#### END ADVERSARY RELATIONSHIPS

But we have looked at the situation where we have a deficit in trade over the last 2 years of approximately \$60 billion. That has to be turned around and that means that we are going to have to be more aggressive. It means that we are going to have to do away with the adversary relationships that we have seen between business and government and labor, a breakdown of that, because in every one of these countries that are really out front on trade we are seeing a lot of forward planning; we are seeing a lot of cooperation by the Government and by business and by labor in order to develop their share of the market.

So once again, we have seen patterns where, for example, the Japanese have come in here and they have gone into low-profit items like black and white TV and our people have really not resisted that kind of an entry and then they have developed their supply lines; they have developed their service lines; they have developed their learning curves; and once they have been able to do that, then they have moved right up into the high-profit items.

We are going to have to do the same kind of thing if we are going to be competitive in world trade.

I believe that legislation to permit more effective and efficient U.S. trading companies should be high on the list of priorities for legislation that's done this year, not next year, and I would be delighted to aid in any way I can in trying to urge the administration to get their house in order in that regard and decide just what they want. If we are going to have exporters that are going to compete against the combined resources of the most efficient and aggressive trading nations in the world, then we need this kind of legislation. I see no reason to deny them the assistance of full-fledged American trading companies. When it's enacted into law you're going to find thousands of these small businesses that are currently put off by the risks, the lack of facilities abroad to which they have entry, who will move into that market and I think begin to compete. This will also help spread the risk of entry marketing and going into new areas. It will help absorb currency fluctuations. They will be better able to provide competitive financing, identify the market opportunities, and help organize joint construction projects abroad.

As you may be aware, Senator Danforth and I—and you just mentioned the Webb-Pomerene Act—we have attacked that one area of the problem by introducing legislation, S. 864, to amend that particular act. It was enacted in 1918 to try to help encourage joint export activities, but it has so many ambiguities in it that in effect it actually restrains trade outside of the United States and restrains those kinds of consortiums that are necessary for some of the major projects. Yet we don't see any such inhibitions on some of our competitors and you see the major companies there able to work together to bid on the major contracts.

The Danforth-Bentsen bill is complementary to S. 2379. I am very enthusiastic, Mr. Chairman, about the way that you have approached this and the time that you have devoted to it, and I'm really here this morning to tell you I'm going to do everything I can to try to assist you in that regard and I'm particularly interested in seeing the kind of financing that would be provided through the banking system to try to help these trading companies increase our exports abroad.

Senator STEVENSON. Thank you, Senator Bentsen. Not only are those bills complementary, but S. 2379 now has been drafted in such a way as to rely on enactment of S. 864 to take care of the antitrust problems.

You have been one of the most perceptive officials in the Federal Government and you have recognized in your individual capacity as chairman of the Joint Economic Committee some of the structural defects which underlie the high levels of inflation and economic stagnation here and in the world, and so I am particularly pleased to be working with you on these two bills, and with your additional position on the Finance Committee which has an interest in the trading companies bill, I'm optimistic we can get favorable action out of both of these committees on both of the bills.

You mentioned at the outset the administration. I was somewhat disappointed not to hear more recognition from the President of structural causes of inflation in his recent statements, though we were somewhat reassured yesterday to discover one of the reasons for his failure to acknowledge structural causes of inflation is

owing to the fact that two of the pages in his speech were stuck together.

Senator BENTSEN. That may have been what happened at the United Nations too. I don't know. [Laughter.]

Senator STEVENSON. In any event, I received a call yesterday from Secretary Klutznick after having announced at this hearing yesterday that we expected to hear from the administration on Wednesday afternoon with respect to its position on these bills, and I have to say now that we will not hear from the Secretary on this Wednesday. The administration wants another 2 weeks in which to take a position.

So I would hope that you and others interested could say to the administration, in particular the Justice Department, that it would be ironic if in the name of competition the antitrust laws of the United States were permitted to prevent the United States from effectively competing throughout this highly competitive world.

You have pointed out very clearly from your own experience what's happened to the United States in some parts of the world. It's happening everywhere, and those countries which don't already have trading companies will soon have them, including Canada perhaps.

You made one mistake on that trip. You should have taken the Attorney General along.

#### INDUSTRIAL BASE TURNOVER

Senator BENTSEN. I agree. I really should have. You know, one of the things that's disturbing me, Mr. Chairman, when you go over there and see the fact that the Japanese are turning over their industrial base now once every 10 years and we are turning over our industrial base once every 30 years, it doesn't take any genius economist to understand that their working people are going to have better and more modern and more efficient tools in their hands than will our working people. I don't care how hard ours work, how long hours or how intelligently they work, unless they have efficient, effective tools to work with it's going to be very difficult for them to be competitive and get our full share of the world market.

Senator STEVENSON. They are not bailing out Chryslers. They are creating the industries of the future, particularly in high technology. There will be very little left that's superior or unique to the United States after the end of this year.

I thank you again and look forward to working with you on these bills. Thank you, sir.

Senator BENTSEN. Thank you very much. I'd like to put my remarks in the record.

Senator STEVENSON. The full statement will be placed in the record.

[Complete statement follows:]

#### STATEMENT OF LLOYD BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Thank you, Mr. Chairman, for the opportunity to appear before the International Finance Subcommittee and testify in support of S. 2379, the Export Trading Company Act.

I commend you, Mr. Chairman, for your efforts on behalf of this important legislation and for your long history of concern for American exports. I am pleased to join you as a cosponsor of the Export Trading Company Act and look forward to working with you and your subcommittee members to insure that it becomes law. I also hope that in the months to come we can find additional areas of cooperation in our effort to make American goods more competitive in world markets. Export competitiveness has become and will remain one of my legislative priorities. I believe that legislation like S. 2379 is absolutely essential if the United States is to succeed in the tough, competitive world of trade.

It is no secret, Mr. Chairman, that in recent years our trade performance has left much to be desired. A two year, \$60 billion balance of trade deficit testifies eloquently to the magnitude of our problems. Our chronic balance of trade problems contribute to domestic inflation, debase the value of our currency, undermine efforts to deal with our energy problems, and create real doubts about our future access to rapidly expanding world markets.

Our problems in trade are obviously linked to domestic economic problems like inflation, declining productivity, low rates of savings and investment, and excess demand in the system. Before we can hope to compete successfully in the international marketplace, we must demonstrate that we can put our own economic house in order. It will take time, sacrifice, and discipline to realize the fundamental reforms that will restore a healthy, dynamic American economy characterized by real growth.

The long-term nature of our economic problems should not, however, discourage us from taking steps that will have an immediate and favorable impact on our ability to export. The Export Trading Company Act will clearly promote American commercial interest abroad. We have seen over the years that export trading companies are an essential ingredient in the commercial success of nations, like Japan, that have emerged as consistent winners in the battle for export opportunities.

While in East Asia with the Joint Economic Committee earlier this year we held nine days of hearings with American businessmen to determine what can be done to improve our competitiveness. Legislation to permit more effective and efficient U.S. trading companies was high on their list of priorities, and S. 2379 is responsive to this concern.

Mr. Chairman, our exporters must compete against the combined resources of the most efficient and aggressive trading nations in the world. I can see no good reason to continue to deny them the support and assistance of full-fledged American trading companies. When S. 2379 is enacted into law, thousands of small U.S. businesses, currently put off by the risks and complexity of exporting, will find it easier to market their products abroad. Trading companies of the type envisioned in this legislation will help spread out the risks of foreign trade and absorb currency fluctuations . . . they will be better able to provide competitive financing . . . identify market opportunities . . . and help organize joint construction projects abroad.

As you may be aware, Mr. Chairman, Senator Danforth and I have attacked one area of this problem by introducing legislation—S. 864—to amend the Webb Pomerene Act. Webb Pomerene was enacted in 1918 to encourage joint export activities so long as they do not restrain trade within the United States. Over the years, however, the vagueness of the law, lack of adequate certification procedures, and the threat of Justice Department prosecution have actually served to discourage U.S. firms from joining in joint export ventures.

The Danforth-Bentsen bill makes the provisions of Webb-Pomerene applicable to the export of services; it expands and clarifies the antitrust exemption for export trade associations and transfers administration of the Act to the Department of Commerce; it creates an office within Commerce to promote joint export activities and establishes a specific certification procedure that will eliminate the element of uncertainty in the current law.

The Danforth-Bentsen bill is complementary to S. 2379 since it spells out the new Webb-Pomerene advantages that will be accorded to U.S. trading companies.

I am very enthusiastic, Mr. Chairman, about the banking aspects of the Export Trading Company Act which would permit banks to participate in trading companies and provide the financial resources and expertise required to complete effectively in world trade.

We have seen that in the highly competitive world of international trade, the ability to offer credit terms to potential foreign buyers often means the difference between winning and losing sales. While the United States has traditionally discouraged relationships between banks and trading companies, our competitors in world trade have gone in the opposite direction and, through their bank-owned trading

companies, have frequently gained a competitive advantage over U.S. exporters. S. 2379 will, for the first time, bring the technical expertise and financial resources of the U.S. banking community to bear on the problem of exports.

This legislation also contains the necessary safeguards to prevent abuses when banks enter commercial export activities by demanding approval of the Federal banking agencies in appropriate circumstances. This legislation also prohibits a bank that owns stock in a trading company from making credit available to that company on terms more favorable than those afforded similar borrowers in similar circumstances.

For too long, Mr. Chairman, this Nation has approached international trade as a luxury rather than as a necessity. Today success in the world of trade has become an indispensable ingredient of domestic prosperity. We have been slow to adjust and adapt to the changing environment of trade, and our share of world exports has decrease dramatically in recent years.

The Export Trading Company Act will enable American exporters to compete more effectively for world markets. It deserves the support of the Congress and reflects high credit on the work of this subcommittee.

Senator STEVENSON. Our next witnesses are Anthony Newton, senior vice president, Philadelphia National Bank; and James B. Sommers, executive vice president, North Carolina National Bank, Charlotte, N.C., and President of the Bankers' Association for Foreign Trade. We would ask both of these gentlemen to come forward now and we will hear their statements and turn to both of them for questions, and I will invite all of our witnesses to summarize their statements and if they do so the full statements will be entered in the record. Mr. Newton.

**STATEMENT OF E. ANTHONY NEWTON, SENIOR VICE PRESIDENT, PHILADELPHIA NATIONAL BANK; ACCOMPANIED BY LESLIE NEWCOMER, LEGISLATIVE AFFAIRS REPRESENTATIVE**

Mr. NEWTON. Mr. Chairman, my name is Anthony Newton. I am the senior vice president of the Philadelphia National Corp., a one-bank holding company headquartered in Philadelphia, Pa. I also am senior vice president of PNC's principal subsidiary, the Philadelphia National Bank. I am accompanied here by Leslie Newcomer, a legislative affairs representative of the bank.

[Complete statement follows:]

**STATEMENT OF E. ANTHONY NEWTON, SENIOR VICE PRESIDENT, PHILADELPHIA NATIONAL CORP.**

My name is E. Anthony Newton, I am a Senior Vice President of the Philadelphia National Corporation, a one-bank holding company headquartered in Philadelphia, Pennsylvania. I also am Senior Vice President of PNC's principal subsidiary, the Philadelphia National Bank.

The Philadelphia National organization is grateful to the Subcommittee for this opportunity to express views on S. 2379, "the Export Trading Company Act of 1980".

By way of background, the Philadelphia National Bank was founded in 1803 and was, on December 31, 1979, the 30th largest commercial bank in this country ranked by deposits. It has been involved actively in international trade financing since the 1890's, and was one of the first American banks in 1965 to be awarded the Department of Commerce's "E" Award for Export Excellence. PNB currently has either branches, representative offices or affiliates in some twenty-six countries. The bank also has an Edge Act banking subsidiary in New York. Another subsidiary, Philadelphia Overseas Finance Company, is based in San Francisco and specializes in trade financing.

For the years 1974-1979, 20 percent of the bank's average total assets and liabilities were attributable to international activities. I think you will find us a typical medium-size regional bank holding company. While other institutions in Boston, Cleveland, Houston, Phoenix, Chicago, Atlanta, Pittsburg and other regional money centers may be somewhat smaller or larger than PNC and while the degree of

international emphasis will vary from bank to bank, all of us have greatly expanded our overseas presence in the last twenty years and we are all working hard to strengthen the range and quality of our international services including export services. Speaking for ourselves, we at Philadelphia National view S. 2379 as a meaningful, constructive step to assist these export expansion efforts by removing a number of legal and bureaucratic barriers.

Let me give just one example involving the subsidiary I mentioned a moment ago, Philadelphia Overseas Finance Company. Until last year this firm operated as a subsidiary of the Greyhound Corporation and was known as Greyhound Export Finance Corporation or GEFC. The firm arranges, packages and places short and medium term financing for U.S. based exports and for third country trade. GEFC's principals have been active in this field for the past ten or twelve years, and had developed several unique export financing packages.

In one of these arrangements, GEFC purchased capital equipment from an American manufacturer, stored it in a bonded warehouse in Asia and released it to local distributors there upon receipt of full payment. This arrangement had a number of advantages. It provided for the American exporter to be paid in cash when the goods were shipped. It enabled the Asian distributors to postpone payment until sale of the equipment had been completed, thus avoiding the onerous costs of financing inventory in local currencies. GEFC and the lenders who actually put up the funds for the transactions were protected (1) by a partial buy-back commitment from the manufacturer; (2) by actual title to the goods; (3) by an internationally known warehouse company; and (4) by overall policing by a local Asian bank. This arrangement is typical of inventory financing packages being structured by the firm today in several key overseas transshipment centers.

During 1979, with approval of the Comptroller of the Currency, The Philadelphia National Bank acquired an 80 percent interest in the firm. Under general banking law, banks are not permitted to hold title to general assets other than those used in the normal course of business or acquired upon a loan default. This has required the firm, now renamed the Philadelphia Overseas Finance Company, to involve more third parties, more paperwork, more opportunity for miscommunication and, certainly, more fees to the American exporter to accomplish the same task. We interpret Senator Heinz' and Senator Stevenson's bill to remove this extra obstacle and extra cost by permitting export trading companies with bank ownership to hold title to goods being exported.

The complex type of transaction I have described is one which calls upon an American bank's overseas contacts, its representatives, its foreign reputation and its expertise in developing proper documentation for transactions. It would be extremely costly for even the largest of American exporting companies to duplicate this array of resources—and none but the largest could succeed. It would be even more costly, not to mention risky, for an American exporter to compete in a half-baked way—with controls only partially established, with communications only partially developed, and with foreign exchange control laws and legal precedents only half understood. Especially for small and medium-sized firms, the consequences of a major export sale that came unraveled could be disastrous. S. 2379 would permit our organization to use our existing network of overseas resources much more effectively to serve the large numbers of existing and potential exporting firms which cannot realistically approach the overseas market without sophisticated support.

Thank you.

Mr. NEWTON. Mr. Chairman, we've followed the progress of your efforts for the past 6 months. I attended the hearings in mid-September and one could not but come away impressed by the thoroughness and the thoughtfulness and the care that you have shown in structuring this bill and facing the various issues and concerns. If we can do anything further to assist you and Senator Heinz and others in these efforts we would be honored to do so. Thank you.

Senator STEVENSON. Thank you, sir. Mr. Sommers.

STATEMENT OF JAMES B. SOMMERS, EXECUTIVE VICE PRESIDENT, NORTH CAROLINA NATIONAL BANK, AND PRESIDENT, BANKERS' ASSOCIATION FOR FOREIGN TRADE; ACCOMPANIED BY GARY M. WELSH, ESQ. AND THOMAS L. FARMER, ESQ.

Mr. SOMMERS. My name is James B. Sommers and I am president of the Bankers' Association for Foreign Trade. I am also executive vice president of North Carolina National Bank.

The association is pleased to have this opportunity to testify in support of S. 2379 because the promotion and support of U.S. exports has been one of BAFT's fundamental priorities since its inception. Improved export performance has also become one of this Nation's most critical economic priorities, a fact underscored in January's trade deficit of more than \$4.7 billion, the second largest monthly trade deficit on record.

In my statement this morning, I would like to focus on the need for export trading companies in the United States and the contributions which can be made by U.S. banking organizations to their success. I would also like to address briefly the various incentives which S. 2379 provides, and the various export disincentives that it removes.

The nub of our trade problem was aptly summarized by the Joint Economic Committee in its 1980 Economic Report:

[I]t is not only the oil bill that concerns American policymakers.

Nearly all other nations recognize the link between international trade and domestic prosperity. The United States has been slow to adjust to the competitive world of trade. We have tended to view foreign trade as a luxury rather than a necessity. In the meantime, the U.S. market has become the target of integrated, well-financed, and highly successful efforts by our competitors.

Expanding the U.S. share of foreign trade market is crucial because once you lose market share, you lose the ability to export spare parts and services over the economic life of a project.

The challenge is thus clear. More U.S. firms must export and, to do so, they must be given the means to meet highly sophisticated foreign trade competition. S. 2379 is directed precisely at these most crucial problems.

First, to involve more U.S. firms in exporting, they must be given both the opportunity and the means to export. S. 2379 accomplishes both of these ends by encouraging the formation of export trading companies that will be able to provide to small- and medium-sized businesses the export know-how and financial resources necessary to carry on a successful export business. It is these firms that most need the services of an export trading company, and thus will most directly benefit from enactment of S. 2379. In this regard, the members of BAFT are prepared to assist small- and medium-sized U.S. firms maximize their potential for exporting goods and services from the United States.

#### EXPORT BARRIERS

Second, to be competitive in export markets, U.S. firms must be relieved of the export barriers and disincentives that the U.S. imposes from within and which often only serve to benefit our competition and make exporting more difficult than it need be.

Among the most important barriers are those which have artificially compartmentalized various segments of the export process and effectively blocked development of U.S. export trading companies in response to natural market forces. S. 2379 would remove or modify these barriers and leave it to private industry to develop the most efficient and competitive forms of export organizations.

Included among these barriers to the formation of export trading companies are certain legal restrictions established over 60 years ago which have prevented U.S. banking organizations from participating in the development of U.S. export trading companies.

If I may digress for a second, I would like to give you an example which we see in our own market, which is quite similar to other industries in other parts of the United States. Textile equipment manufacturers manufacture a limited specialty line of machines. They have been able to do this and be successful over the years because of the size and sophistication of the U.S. market.

However, when they begin to try to export and sell offshore, they find that people in the developing parts of the world that lack this sophistication and capital want a textile mill, not a spinning frame or drafting equipment. The Germans, the French, the Swiss, and the Japanese are able to provide, in combination with construction companies and banks, one project where a sum of money can be put up and a textile mill constructed and turned over to the owners.

No such situation exists in the United States in any viable form and therefore this puts our manufacturers at an extreme competitive disadvantage. This is a particular shame, because the majority of the market expansion offshore for this type of equipment is in the world's developing countries.

Thus, we must take a look at the world as it is and be prepared to modify barriers or restrictions imposed under vastly different economic circumstances that now only serve to frustrate our broader national interests. Among these restrictions are legal provisions which prevent U.S. banking organizations from investing in firms, such as U.S. export trading companies, that engage in export trade or in providing export trade services.

No such restrictions inhibit our trading partners. As a matter of fact, banks are often the key ingredient in these countries' success in attacking foreign markets.

Because the trading company concept is new to the United States, it is difficult for me to indicate at this time the precise ways banking organizations may choose to participate. However, regardless of what form the banks take, their involvement will be controlled through the existing bank regulatory framework and the numerous safeguards which are built into this legislation.

I would like to take this opportunity, however, to highlight the many important contributions which banking organizations can make to the success of U.S. export trading companies.

#### CONTRIBUTIONS BY BANKING ORGANIZATIONS

First, the U.S. banking system reaches virtually every U.S. business, including especially small- and medium-sized U.S. businesses in the United States. U.S. banking organizations can thus provide

an important introductory link between trading companies and U.S. businesses seeking to export their goods or services.

Second, in today's world, the finance component of an export transaction is becoming the most crucial element. A trading company must therefore be able to provide or arrange for appropriate trade financing. Bank participation in a trading company will clearly expand its capabilities to do so.

Third, bank participants can help trading companies penetrate markets abroad and can provide U.S. export trading companies with the knowledge and experience crucial to meeting foreign competition.

Fourth, permitting banking organizations to be linked with trading companies will also better enable U.S. trading companies to compete with their foreign counterparts.

Our association and its members believe that there are legitimate questions concerning the scope of bank participation which will have to be carefully considered. In general, we believe questions concerning the appropriateness of bank participation can best be handled through the regulatory process, as they are now, on a case-by-case basis. Nevertheless, we believe S. 2379 includes several important safeguards. The aggregate limitation on bank ownership, when combined with the banking agencies' broad regulatory, supervisory, and examination powers and existing legal restrictions such as on loans to affiliates, insure that S. 2379 will not breach the domestic line separating banking from commerce. Our members view this bill solely as an opportunity to expand their involvement in assisting U.S. exports throughout the world. It is not a vehicle for investment in domestic nonbank industries.

In summary, BAFT supports section 5 because we believe it is in the national interest to make the knowledge, expertise, and resources of our banking system available to our own trading companies, our own exporters, and their customers.

We have one specific suggestion which we would like included in the record. In regard to the Webb-Pomerene Act, we believe it is important that the service industries be extended the benefits of the act and the act itself should be reshaped to give such associations more antitrust certainty in joint operations overseas.

We appreciate the opportunity to appear before this committee and wholeheartedly endorse your bill.

[Complete statement and appendix follow:]

STATEMENT OF  
JAMES B. SOMMERS  
PRESIDENT  
BANKERS' ASSOCIATION FOR FOREIGN TRADE  
AND  
EXECUTIVE VICE PRESIDENT  
NORTH CAROLINA NATIONAL BANK

My name is James B. Sommers and I am President of the Bankers' Association for Foreign Trade. I am also Executive Vice President of North Carolina National Bank. I am accompanied by Douglas R. Stucky, a Director of the Bankers' Association for Foreign Trade who is also Chairman of the Association's Export Expansion Committee and a First Vice President of First Wisconsin National Bank of Milwaukee. We are joined by the Association's counsel, Thomas L. Farmer of the Washington law firm of Prather, Seeger, Doolittle & Farmer.

The Bankers' Association for Foreign Trade (BAFT) was founded in 1921 by a group of banks whose purpose was to expand their knowledge of international trade and to develop sound banking services and procedures in support of trade. Today, BAFT's voting membership of 147 U.S. banks includes virtually all of those having significant international operations. The Association also includes as non-voting members 95 foreign banks maintaining offices in the United States, and thus embraces nearly all the major international banks of the world.

BAFT is pleased to have this opportunity to testify in support of S. 2379, "The Export Trading Company Act of 1980," because the promotion and support of U.S. exports has been one of BAFT's fundamental priorities since its inception. Improved export performance has also become one of this nation's most critical economic priorities, a fact underscored in January's trade deficit of more than \$4.7

billion (C.I.F. basis), the second largest monthly trade deficit on record. Unfortunately, this deficit was the latest bad news in a disturbing long-term trend -- the Joint Economic Committee of the Congress recently reported that over the last decade our terms of trade have deteriorated by some 25 percent. S. 2379 is but one of a series of important measures that is needed to halt and ultimately reverse this trend.

In my statement this morning, I would like to focus on the need for export trading companies in the U.S. and the contributions which can be made by U.S. banking organizations to their success. I would also like to address briefly the various incentives which S. 2379 provides, and the various export disincentives that it removes.

The Need for U.S. Export  
Trading Companies

The nub of our trade problem was aptly summarized by the Joint Economic Committee in its 1980 Economic Report:

[I]t is not only the oil bill that concerns American policymakers.

Nearly all other nations recognize the link between international trade and domestic prosperity. The United States has been slow to adjust to the competitive world of trade. We have tended to view foreign trade as a luxury rather than a necessity. In the meantime, the U.S. market has become the target of integrated, well-financed, and highly successful efforts by our competitors.

The challenge is thus clear. More U.S. firms must export and, to do so, they must be given the means to meet highly-

sophisticated foreign trade competition. S. 2379 is directed precisely at these most crucial problems.

First, to involve more U.S. firms in exporting, they must be given both the opportunity and the means to export. S. 2379 accomplishes both of these ends by encouraging the formation of export trading companies that will be able to provide to small and medium-sized businesses the export know-how and financial resources necessary to carry on a successful export business. It is these firms that most need the services of an export trading company, and thus will most directly benefit from enactment of S. 2379. In this regard, the members of BAFT are prepared to assist small and medium-sized U.S. firms maximize their potential for exporting goods and services from the United States.

Second, to be competitive in export markets, U.S. firms must be relieved of the export barriers and disincentives that the U.S. imposes from within and which often only serve to benefit our competition and make exporting more difficult than it need be. Among the most important barriers are those which have artificially compartmentalized various segments of the export process and effectively blocked development of U.S. export trading companies in response to natural market forces. S. 2379 would remove or modify these barriers and leave it to private industry to develop the most efficient and competitive forms of export organizations.

Included among these barriers to the formation of export trading companies are certain legal restrictions established over sixty years ago which have prevented U.S. banking organizations from participating in the development of U.S. export trading companies. In fact, we would call to the Subcommittee's attention the rather anomalous situation under present law, whereby a foreign bank doing business in the U.S. may invest in a foreign trading company that exports to the U.S., and certain types of U.S. banking organizations may invest in foreign trading companies that buy and sell goods abroad, but a U.S. banking organization may not invest in a U.S. export trading company that buys U.S. goods for the purpose of exporting them abroad. In other words, the line separating banking and commerce frustrates the development of U.S., but not foreign trading companies. For reasons I will shortly discuss, BAFT believes it is time to move that line to a point where it will do the most good for U.S. exports and the U.S. economy, without compromising more fundamental concerns about the separation of banking from commerce within domestic markets.

Third, S. 2379 recognizes that it is vital to our future foreign trade growth to establish trading companies that can facilitate the joint export of U.S. goods and services. United States service industries are facing increasingly stiff government-supported foreign competition, as detailed by Under Secretary Hodges in his earlier statement

on S. 1563. An export trading company will be able to combine the talents of large and small U.S. firms producing complementary goods and services and put together a complete export package better able to meet both foreign demands and foreign competition. It will be able to export a complete textile mill, or complete construction project -- not just individual pieces of machinery.

The Contributions Which Banking  
Organizations Can Make to the  
Success of Export Trading Companies

In general, we believe the strength of S. 2379 is its reliance on the ingenuity, productivity and efficiency of the American business and financial community. Instead of mandating a particular form of trading company or imposing an inappropriate foreign model on U.S. industry, it leaves it up to the U.S. private sector to develop what is likely to be a highly diverse group of trading companies -- some large, some small, some owned by a single firm, some jointly-owned, some with bank participants, some owned entirely by nonbanking organizations, some formed around particular industries, and some formed for particular markets. It is thus in the growing mainstream of legislation designed to improve U.S. competitiveness by deregulating instead of regulating, by promoting rather than burdening U.S. business. As Chairman Volcker of the Federal Reserve Board recently remarked on the Fed's membership question, we can no longer legislate on the basis of nostalgia. Instead, we must take the world as it is and thus must be prepared to modify barriers or

restrictions imposed under vastly different economic circumstances that now only serve to frustrate our broader national interests. Among these restrictions are legal provisions which prevent U.S. banking organizations from investing in firms, such as U.S. export trading companies, that engage in export trade or in providing export trade services.

Rather than discuss these provisions at length in my testimony, I asked our counsel to prepare a summary of the major legal restrictions and these are included in an Appendix to my statement. The restrictions derive principally from 1919 restrictions included in the Edge Act, and they were based on a concern that U.S. export trade might somehow become dominated by one or two large trading companies involving a few industrial giants and the relatively few banks engaged at that time in trade financing. These restrictions thus bear little relation to today's highly competitive world of international trade, and the internationalization of trade financing. In particular the days when a relatively few money-center banks did most of our trade financing are ancient history. As indicated by the scope of our membership, hundreds of banks -- both domestic and foreign -- are aggressively competing in trade financing across the country. Changes in the Edge Act and the Federal Reserve's Regulation K, largely brought about through the leadership of the Chairman of this Subcommittee, have increased that competition and stimulated more bank involvement in trade financing throughout the country. This diversity and strength of bank competition is, of course, matched by an equally

aggressive commercial export sector. The world has changed greatly since 1919.

Section 5 recognizes this changed world by giving Edge Corporations, banks, and bank holding companies the opportunity to invest in export trading companies, including firms that engage only in providing export trade services, such as a freight-forwarder. We support the inclusion of export trade service firms within section 5 because it would give many banking organizations the opportunity to expand their range of trade services without necessarily having to invest in a trading company that buys and sells goods. This would thus enable banks to present to their customers a more complete, integrated package of services that would facilitate and promote exports. Moreover, with additional managerial and financial resources, many small export trade service firms would be able to expand and improve their operations.

Because the trading company concept is new to the United States, it is difficult for me to indicate at this time the precise ways banking organizations may choose to participate. Some banking organizations may want to finance export trading companies and their customers but not take an equity position; others are more interested in investing in export trade service firms than export trading companies; and others are interested in investing in export trading companies, but may differ on the scope of participation they may find appropriate e.g., some are interested in joint ventures and others are interested in forming their own

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subsidiaries. Given this diversity of interest, we support S.2379's flexible approach and would thus recommend against foreclosing any options at the present time because trading companies must and will evolve in response to market forces, and banking organization involvement will be controlled through the existing bank regulatory framework. I would like to take this opportunity, however, to highlight the many important contributions which banking organizations can make to the success of U.S. export trading companies, and thus to the improvement of U.S. export performance.

First, the United States banking system reaches virtually every U.S. business, including especially small and medium-sized U.S. businesses -- the focus of S. 2379. United States banking organizations can thus provide an important introductory link between trading companies and U.S. businesses seeking to export their goods or services. In this regard, U.S. banks already play an important role in introducing Eximbank, FCIA and other programs to businessmen throughout the country. Simply put, there is no better way to reach U.S. business than through the banking system.

Take the case of a regional bank in the South, for example, where the export of textile, tobacco and other agricultural products are of crucial importance to our regional economy. A banking organization with an investment in a trading company or even a freight-forwarder will have an incentive and the opportunity to link such a company with small producers and farmers throughout the region. The

same, of course, would be true in other regions of the country, and for other activities -- industrial, commercial or otherwise. Banks can thus assist trading companies in their reach inward to involve all existing and potential segments of our export sector.

Second, in today's world, the finance component of an export transaction is perhaps its most crucial element. A trading company must therefore be able either to provide or arrange for appropriate trade financing. Bank participation in a trading company will expand its capabilities to do so; in particular, a bank will be able to use its domestic and foreign network of correspondents to arrange a transaction from anywhere in the U.S. to anyplace in the world.

Third, bank participants can help trading companies penetrate markets abroad and can provide U.S. export trading companies with the knowledge and experience crucial to meeting foreign competition. Many U.S. banks have substantial international networks that reach into every major export market and which form a tremendous reservoir of talent and experience for a trading company. For example, foreign branches and affiliates of U.S. banks have a detailed knowledge of local economic conditions, government policies, and business practices which would take a de novo trading company years to develop on its own, and which knowledge is crucial for competing abroad.

Fourth, permitting banking organizations to be linked with trading companies will also better enable U.S. trading companies to compete with their foreign counterparts. It will also improve the ability of U.S. banks to compete both onshore and offshore with foreign banks. In its hearings on U.S. export policy and on S. 1663, the predecessor to S. 2379, this Subcommittee has become aware of the linkages between foreign trading companies and foreign banks. While these linkages are based overseas, they extend to the U.S., and greatly assist foreign trading companies in penetrating U.S. markets. If we permit foreign banks to own U.S. banks and to be linked with foreign trading companies that export foreign goods and services to the U.S., why shouldn't we permit U.S. banks to link with U.S. trading companies that export U.S. goods and services abroad? We believe we should, and that these linkages will greatly strengthen the competitive ability of U.S. banks, exporters and export trading companies in foreign markets.

While banking organizations can thus make a positive contribution to U.S. exports through participation in trading companies, BAFT and its members believe that there are legitimate questions concerning the scope of bank participation which have to be carefully considered. In general, we believe questions concerning the appropriateness of bank participation can best be handled through the regulatory process, as they are now, on a case-by-case basis. Nevertheless, we believe that S. 2379 contains certain important

safeguards that are appropriate to establish in the governing statute, and certain procedures which are desirable because they give banking organizations and the responsible agencies necessary guidance on how the law is, in fact, to be implemented.

For example, S. 2379 includes several important safeguards which limit bank exposure to any possible non-banking risks: 1) except for an investment Edge Corporation which accepts no deposits, a banking organization is prohibited from investing more than ten percent of its capital and surplus in one or more export trading companies, including export trade service firms; 2) with the exception again of an investment Edge, no banking organization can invest more than five percent of its capital and surplus or acquire a controlling interest in an export trading company without its bank supervisor being given the right to disapprove the investment; and 3) any banking organization with an investment in a trading company is required to deal with such company and its customers on a strictly arms-length basis. This latter restriction not only ensures against any unsound banking practices but it also ensures against any unfair competitive advantages accruing to a trading company or export trade service firm with a bank investor.

These limitations, when combined with the banking agencies' broad regulatory, supervisory, and examination powers and existing legal restrictions, such as on loans to

affiliates, ensure that S. 2379 will not breach the domestic line separating banking from commerce. Our members view this bill solely as an opportunity to expand their involvement in assisting U.S. exports throughout the world; it is not a vehicle for investment in domestic nonbank industries. In this regard, U.S. banking laws have always permitted U.S. banking organizations greater freedom in their international and foreign activities, particularly in support of U.S. exports, because it has consistently been recognized -- even in 1919 -- that additional powers are often needed to compete effectively abroad. For that reason, the Congress made it clear in considering the Edge Act that Edge Corporations could invest in foreign trading companies. S. 2379 merely recognizes this need for special rules in the export area to ensure that internal policies are not applied in our international business operations to the detriment of U.S. business and U.S. jobs.

In summary, BAFT supports section 5 because we believe it is in the national interest to make the knowledge, expertise, and resources of our banking system available to our own trading companies -- our own exporters and their customers. We believe that it is in the national interest to give banking organizations the chance to participate in an initiative aimed at strengthening the nation's economy and providing real benefits to its citizens.

The Need for a Comprehensive  
Approach

S. 2379 recognizes that the U.S. has a lot of catching up to do in the trading company area and it thus includes a number of limited incentives designed to encourage the formation of trading companies, particularly by smaller firms. In general, BAFT supports these provisions and would like to take this opportunity to comment on what we perceive to be the most significant of such provisions.

Eligibility Under the Webb-  
Pomerene Act (SECTION 9)

At the outset, I would like to say that BAFT supports enactment of S. 867, "The Export Trade Association Act of 1980" and we would urge the Committee to report favorably on both bills. In particular, it is important that service industries be extended the benefits of the Webb-Pomerene Act and that the Act itself be reshaped to give such associations more antitrust certainty in their joint operations overseas. We think it of equal importance that trading companies be given the opportunity to obtain a Webb-Pomerene exemption for their export trade activities. Substantial uncertainties in this area could dissuade many banking organizations from participating. The preclearance certification procedures and consequent protections that would be available under S. 864 would thus be particularly helpful. We would recommend, however, that not only export trading companies but also export trade service firms owned in whole or in part by banking organizations be made eligible for the exemption.

Eligibility for DISC Treatment  
(SECTION 10)

At present, certain types of financial institutions are themselves ineligible for DISC treatment. While this prohibition does not by its terms apply to bank affiliates, such as a trading company, Treasury Department policy in this area has been somewhat restrictive. Since it would be unfair to give a less favorable tax status to export trading companies or their subsidiaries owned in whole or in part by banking organizations, we support section 10(a) which would make clear that bank ineligibility for DISC would in no way affect DISC eligibility for export trading companies with a bank shareholder. Again, we would recommend that this be made clear for export trade service firms as well.

In general, we support DISC eligibility for export trading companies as being necessary in order to compete abroad. DISC may be our only option under MTN.

Eximbank Involvement (SECTIONS 6 and 7)

Section 6 of S. 2379 provides for Eximbank loans and guarantees to meet certain initial start-up costs of export trading companies that cannot obtain or afford commercial financing. The several limitations imposed on this program appear clearly designed to have a negligible impact on Eximbank's authority and to limit its use to small concerns. Given the newness of the trading company concept in the U.S., this type of limited start-up assistance may well be needed in some cases.

Section 7 would give Eximbank the authority to guarantee up to eighty percent of the principal of loans extended by financial institutions or other private creditors to export trading companies or to exporters for a period up to a year, provided such guarantees meet certain criteria and are adequately secured by export accounts receivable or inventories of exportable goods. We first of all support the principle of giving export trading companies the same access to Eximbank as other exporters. The eighty percent guarantee would, of course, be a new program and one available to all exporters, not just export trading companies. We believe this new program could be useful in providing export financing to de novo or small exporters or export service firms, and could be of particular benefit to export trading companies, which will be new types of firms with, for the most part, no established track record. Once a bank developed a successful financing relationship with an export trading company or exporter, the need for the guarantees would diminish. Its primary value would thus be in stimulating new export trade and financing that would be ultimately taken over entirely by the private sector.

#### Other Provisions

Finally, we would like to express our support for Section 8 which will extend the privileges of S. 2379 to state-chartered trading companies and Section 4 which would direct the Commerce Department to encourage the formation and facilitate the development of export trading

companies. Many states have developed first-rate export promotion programs, and they should be given the option of developing their own trading company models. The Commerce Department referral service provided in Section 4 could be extremely helpful, since often the biggest hurdle facing a small exporter is locating the services he needs. The great advantage of a trading company is that it will give him one-step service.

CONCLUSION

I would like to conclude by expressing our support for passage of S. 2379 this year. My colleagues and I would, of course, be pleased to answer any questions you might have. I would also like to take this opportunity to express our willingness to work with your staff and the banking agencies' staff on any aspects of this legislation where our input may be of assistance.

APPENDIX  
SUMMARY OF BANKING  
ORGANIZATION INVESTMENT  
PROHIBITIONS RELATED  
TO S. 2379

INTRODUCTION

There are three basic investment prohibitions that are relevant to section 5 of S. 2379: (1) paragraph 6(c) of the Edge Act (12 U.S.C. § 615(c)) which prohibits an Edge Act Corporation from investing in any corporation "engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States;" (2) section 16 of the Glass-Steagall Act which, except as permitted by law, generally prohibits a national or state member bank<sup>1/</sup> from acquiring for its own account "any shares of stock of any corporation;" and, (3) section 4(a) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(a)), which, with certain exceptions, generally prohibits a holding company from engaging in nonbanking activities or from owning or controlling shares of any company that is not a bank. These provisions, among others,<sup>2/</sup> implement the general policy of separating banking from commerce within the United States.

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<sup>1/</sup> Section 5136 of the Revised Statutes directly applies the prohibitions of section 16 to national banks (12 U.S.C. § 24), P. 7); state member banks are subject to such provision by reason of section 9 of the Federal Reserve Act (12 U.S.C. § 335).

<sup>2/</sup> See also the Sherman and Clayton Antitrust Acts (15 U.S.C. § 1 and 15 U.S.C. § 8), section 5199 of the Revised Statutes limiting the amount of dividends payable by a member bank (12 U.S.C. § 60), and § 23A of the Federal Reserve Act limiting the amount of loans to affiliates (12 U.S.C. § 371c).

The type of export trading company envisaged by S. 2379 would not be a holding company for managing investments in U.S. industrial or commercial enterprises -- the thrust of the prohibitions described above. Rather, it would be engaged principally in exporting and providing export trade services for unaffiliated persons, and certain incidental importing and other activities necessary to carry on its operations. Nevertheless, any such company which, as part of its business, bought and sold goods in the U.S. as principal e.g., purchased goods from U.S. exporters for resale abroad or, in a barter transaction, took title to foreign goods for resale in the U.S., would appear to come within the literal prohibitions described. Section 5 of S. 2379 is thus necessary to clearly override these prohibitions in the case of export trading companies. It should be noted that section 5 otherwise leaves intact the general prohibitions described; it thus creates only a limited exception for export trading companies encompassed within section 5 of the bill.<sup>3/</sup>

The following discussion briefly analyzes such a limited exemption for export trading companies in light of the purposes of the prohibitions described and other

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<sup>3/</sup> The definition of export trading company in section 5(12) is not limited to a company that buys or sells goods. A firm that only provides export trade services is also made an eligible investment. While it is possible the Federal Reserve Board might permit an investment in such a more limited trade service company for an Edge Corporation or bank holding company, a member bank would still need specific statutory authority to make such an investment.

exemptions currently provided -- especially for overseas operations and foreign bank holding companies.

EDGE ACT PROHIBITION

Paragraph 6(c) of the Edge Act was a compromise between House and Senate versions of the original Edge Act legislation. At the time of passage of the Edge Act in 1919, there was a concern that the broad investment powers granted Edge Corporations could be used by the relatively few large banks then engaged in trade financing to buy up and control U.S. and foreign commercial concerns, and in the process, form cartels which could fix the prices of commodities in the United States. While these concerns appear unsupported by the legislation's more basic purpose of establishing a means of payment for U.S. exporters, both House and Senate bills contained restrictions designed to prevent any such untoward results. The Senate bill provided that an Edge could only invest in a corporation that did not transact any business in the U.S. except such as was, in the Federal Reserve Board's judgment, incidental to its international or foreign business. In this way, Edge Corporations could not be used to acquire interests in U.S. industrial or commercial enterprises. The House wanted to go even further, as it would have prevented Edge Corporations from investing in any corporation that was not principally engaged in international or foreign banking or financial operations. The House version was rejected, however. Instead, the Conferees took the Senate version and added to it the specific

prohibition against investing in any corporation engaged in the general business of buying or selling goods, wares, merchandise or commodities in the U.S. that is now in paragraph 6(c). The Conference Report explained the Committee's action as follows:

Most of the amendment inserted by the House is stricken out as unnecessary and possibly hampering to the successful operation of the financial corporations in competition with similar foreign institutions and with the great private banking firms. In certain South American countries control of trading companies through ownership of stocks is declared to be necessary, and there are certain other countries where American goods, raw materials, or machinery can not be safely sold on long-term credit unless a voice in the management of the properties during the period of the credit can be obtained. (Emphasis added) 4/

Given the sensitivity of his House colleagues to this provision, Chairman Platt of the House Banking Committee took great pains to lay out the reasons for the compromise on the House floor:

Amendment numbered 19 has reference to the holding of stock of other corporations, and has been so amended in conference as to permit a finance corporation organized under this section to own stock in other corporations which may be engaged in buying and selling commodities outside of the United States, as well as stock in banking or finance corporations outside of the United States. In view of this extended power the committee decided to strengthen the paragraph prohibiting attempted monopoly or the control, or fixing of prices by inserting the words 'directly or indirectly,' so that no corporation organized under this act

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4/ H.R. Rep. No. 66-473, 66th Cong., 2d Sess. 3 (1919).

could control or fix prices through stock ownership in any other corporation, or exercise any monopolistic control. This, of course, has reference to the United States.

Probably the words 'United States' ought to be in the amendment, as we are not particularly concerned as to what these corporations may do in other countries so long as they comply with the laws of these countries. It seemed necessary to give the right to hold stock in corporations doing a trade business in certain South American countries. It has been found unsafe to loan money to trading corporations in some places without some voice in their management. We have been told also that in certain European countries it is unsafe at present to loan money unless there was some element of control in the operations carried on. We do not want to hamper the institutions to be incorporated under this section so that they will be unable to compete with great private banks like J.P. Morgan & Co., Lee, Higginson & Co., who are not hampered. Everything we have permitted is under the regulation of the Federal Reserve Board. We have put in restrictions against monopoly and any practice that could be deemed against good banking and good finance. (Emphasis added) 5/

It thus seems clear from both the language and legislative history of the Edge Act that an Edge Corporation may invest in a foreign trading company that buys and sells goods outside the U.S., in particular, where such may be necessary or desirable to protect a long-term credit.

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5/ 59 Cong. Rec. (Part 1) 49-50 (1919).

Notwithstanding this broad investment power overseas, the Federal Reserve Board in its implementation of the Edge Act has generally restricted Edge Corporations to making non-controlling, portfolio-type investments in foreign commercial or industrial concerns.<sup>6/</sup> Most Edge Corporations have made such investments as part of a larger financing transaction -- e.g., the Edge Corporation in extending credit has received shares or options to acquire shares at attractive prices, which arrangements may have supplemented a lower interest rate. Most often these investments have been made in South America and developing countries.

The Board has, in general, strictly construed the prohibition in paragraph 6(c) against acquisitions of firms that buy and sell goods in the United States. For example, in 1976, the Board denied an application by an Edge Corporation to acquire less than one percent of the voting shares and approximately 6 percent of the nonvoting shares of a Brazilian firm which had a wholly-owned sales subsidiary in California.<sup>7/</sup> However, in 1967, the Board issued an interpretation permitting an Edge Corporation to have

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6/ See generally § 211.5 of the Board's Regulation K.

7/ See Board letter of August 9, 1976 to Chase International Investment Corporation concerning Acos Villares, S.A., Sao Paulo, Brazil.

a noncontrolling interest in a combination export manager that obtained foreign orders for its U.S. clients or, against firm orders from abroad, itself purchased merchandise from them and re invoiced it for export. The Board found the permissibility of this investment to be a "close question" under paragraph 6(c), basing its decision largely on the fact that the export manager in question appeared to bear no market risk in its activities.<sup>8/</sup> A later Board decision involving a foreign bank holding company investment in a similar type of firm casts serious doubt on the remaining vitality of this 1967 interpretation.<sup>9/</sup>

#### GLASS-STEAGALL ACT PROHIBITION

The provision in the Glass-Steagall Act prohibiting member bank investments in corporate stock was aimed principally at abuses that were perceived to have occurred during the period which led up to the Depression: (1) the growth of unregulated "bank affiliates" which devoted themselves to underwriting operations, stock speculation, and maintaining a market for the banks' own stock;<sup>10/</sup> (2) excessive bank

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<sup>8/</sup> 1967 Federal Reserve Bulletin 752; 12 C.F.R. § 211.103 (1979).

<sup>9/</sup> See discussion infra p. 11.

<sup>10/</sup> S. Rep. No. 72-584, 72d Cong., 1st Sess. 9-10 (1932).

corporate investments which both fueled stock market speculation and undue credit expansion;<sup>11/</sup> and (3) unsound investments, which with the collapse of the stock market in 1929, contributed to bank failures.<sup>12/</sup> It thus seems clear that this prohibition was aimed at some rather fundamental abuses that occurred during this period.

The prohibition is, however, not absolute; it of course, excepts investments permitted by other provisions of law. This is consistent with the general thrust of the statute that there should be a "careful restriction of investments," not an absolute ban.<sup>13/</sup> Bank investments in Edge Act Corporations are thus excepted from this prohibition; Edge Act Corporations themselves are not covered by the Glass-Steagall Act. In 1966, Congress created an additional international exception from this prohibition, by giving member banks the authority to invest directly, not just through Edge Corporations, in the stock of foreign banks not engaged, directly or indirectly, in any activity in the United States except such, as in the Board's judgment, shall be incidental to the international or foreign business of such bank.<sup>14/</sup> The provision was intended to avoid the necessity of setting up an Edge Corporation to invest in foreign banks, and, generally, to give U.S. banks the means to compete effectively abroad by acquiring an interest in a foreign

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<sup>11/</sup> S. Rep. No. 72-584, 72d Cong., 1st Sess. 6, 8 (1932).

<sup>12/</sup> Id. at 11.

<sup>13/</sup> Id.

<sup>14/</sup> Section 25 of the Federal Reserve Act, 12 U.S.C. § 601.

corporate investments which both fueled stock market speculation and undue credit expansion;<sup>11/</sup> and (3) unsound investments, which with the collapse of the stock market in 1929, contributed to bank failures.<sup>12/</sup> It thus seems clear that this prohibition was aimed at some rather fundamental abuses that occurred during this period.

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<sup>12/</sup> Id. at 11.

<sup>13/</sup> Id.

<sup>14/</sup> Section 25 of the Federal Reserve Act, 12 U.S.C. § 601.

bank, in particular where such may be the only means of entry into a foreign market e.g., a country which does not permit branches of foreign banks but does permit investments in local banking institutions.

In general, it can be said that Congress has permitted such exceptions from Glass-Steagall and other domestic banking prohibitions where greater freedom abroad is deemed necessary to be an effective banking competitor. S. 2379 seems clearly designed at the same ends -- permitting U.S. banks to make limited investments in export trading companies in order to improve the competitive position of U.S. banks and exporters in foreign markets.

BANK HOLDING COMPANY PROHIBITIONS

As one expert commentator has summarized it,<sup>15/</sup> the main reasons cited by Congress in enacting § 4 of the Bank Holding Company Act (BHCA) are:

(1) a holding company might use its banks to allocate available credit on bases other than the creditworthiness of the borrower -- for example, by preferring customers of the banks' affiliates in the holding company or by denying credit to competitors of the banks' affiliates; and

(2) a holding company might impair the soundness of its subsidiary bank

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<sup>15/</sup> Heller, "Handbook of Federal Bank Holding Company Law" 158-9 (1976).

by causing the bank to make funds available to nonbanking affiliates or to their customers.

Section 5(e)(1) of S. 2379 is precisely addressed to these concerns because it prohibits any banking organization holding voting stock or other evidences of ownership of an export trading company from extending credit or causing any affiliate to extend credit to any such export trading company or to customers of such trading company on terms more favorable than those afforded similar borrowers in similar circumstances.

As in the case of Edge Corporations and member banks, Congress has provided in § 4(c)(13) of the BHCA a specific exception from the domestic prohibitions of § 4(a) for the international and foreign investments of bank holding companies. In general, the Board permits bank holding companies to make the same types of foreign and international investments that can be made by Edge Corporations.<sup>16/</sup> Thus, it is possible that a U.S. bank holding company could acquire an interest in a foreign trading company (see discussion supra pp. 4-6). A 1974 decision involving a foreign bank holding company, however, seems to

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<sup>16/</sup> See § 211.5 of Regulation K, and definition of "investor" in § 211.2(j) of Regulation K.

make it clear that the Board, under authority of § 4(c)(13), would not permit a bank holding company to invest in a U.S. export trading company. In that case, the Board required a foreign bank holding company to divest its interest in a U.S. export management company which arranged for the sale of U.S. exports through a foreign distribution system. The company took nominal title to the goods being exported and invoiced its foreign agents and distributors at the manufacturer's cost plus a commission and interest on any credit extended. In essence, the company functioned as a customer's export department. The Board required divestiture because it concluded that the public benefits of promoting U.S. exports were outweighed by the general policy of separating banking from commerce.<sup>17/</sup>

While neither a U.S. nor foreign bank holding company would thus seem able to own a U.S. export trading company, save for a portfolio investment of five percent or less,<sup>18/</sup> a foreign bank holding company may have an investment in a foreign trading company that exports to and imports from

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<sup>17/</sup> Board Order of January 9, 1974 Disapproving of Lloyds Bank Limited's Retention of Investment in Drake America Corporation. 1974 Federal Reserve Bulletin 59.

<sup>18/</sup> See § 4(c)(6) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(6)) which permits bank holding companies to acquire no more than five percent of the shares of any corporation.

the United States. In the early 1970's, the Board examined the relationships between Japanese banks and Japanese trading companies and their customers and determined that these relationships did not offend the control standards of the BHCA.<sup>19/</sup> Thus, a number of Japanese banks which are linked with Japanese trading companies and their customers through interlocking stock ownership both own U.S. banks and finance the operations of such trading companies and their customers in the U.S. -- such financing generally being provided, however, through separate U.S. branches and agencies of the Japanese parent bank.

In addition, under § 2(h) of the BHCA, as amended by section 8(e) of the International Banking Act of 1978, it seems clear that a foreign bank can own even a controlling interest in a foreign trading company that does business in the U.S., if (a) the foreign bank is itself principally engaged in the banking business outside the United States, (b) the foreign trading company is principally engaged in business outside the U.S. and (c) any U.S. affiliate of the foreign trading company is engaged in the same general line of business of the trading company or in a business related to the business as the trading company. As set forth in the September hearings on S. 1663, there are a

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<sup>19/</sup> Board Orders of December 1, 1971 concerning Dai-Ichi Kangyo Bank, Ltd., Mitsubishi Bank, Ltd., and Sanwa Bank, Ltd., 1972 Federal Reserve Bulletin 49.

number of foreign banks doing business in the U.S. which,  
in fact, have affiliation with foreign trading companies.<sup>20/</sup>

Respectfully submitted,

PRATHER, SEEGER, DOOLITTLE &  
FARMER

By: Gary M. Welsh

March 18, 1980

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<sup>20/</sup> Export Trading Companies and Trade Associations, Hearings  
Before the Subcommittee on International Finance of the  
Committee on Banking, Housing & Urban Affairs, United  
States Senate, 96th Cong., 1st Sess. 110 (1979).

Senator STEVENSON. Thank you, Mr. Sommers. Let me make sure I understand. S. 864 does bring service industries within Webb-Pomerene. Do you have problems with that?

Mr. SOMMERS. We support that. We just want to call special attention to that aspect of it and highlight it.

Senator STEVENSON. That is critical to the trading company legislation too. We want to bring services in.

Mr. SOMMERS. It's not an amendment. It's simply an emphasis.

Senator STEVENSON. Let me make sure—does our record indicate that Mr. Sommers is accompanied by Thomas Farmer and Gary Welsh?

Mr. FARMER. Yes. We would like our statement and appendix introduced in the record also.

Mr. SOMMERS. This is the written statement we submitted to the subcommittee yesterday along with the appendix.

#### RUSSIAN FINANCING INCREASES

Senator STEVENSON. They will be entered in the record too. I might add to what you have said, you mentioned the textile factory—the Russians are increasing rapidly their financing for projects, including such turnkey projects in the LDC's. Some of these trading companies have some strategic implications, too, that should not be neglected. Our way of extending U.S. trade is also a way of extending U.S. influence and hopefully good will in a very competitive world, and a world in which the competition doesn't always come from friendly sources.

The trading companies of foreign nations have bank participation and very substantial bank participation I believe.

Mr. SOMMERS. That's correct.

Senator STEVENSON. Can you think of any that don't have bank participation?

Mr. NEWTON. Some of the French don't, I believe.

#### LIMITATIONS

Senator STEVENSON. The French model is somewhat different. It's really a multinational or company that represents product lines of other companies. The concern here seems to be that the banks participating in trading companies may get involved in a lot of remote unrelated activities, but we're not creating zaibatsus, are we? There are limits on the trading companies within the act and there are limits on the activities of banks which own trading companies. Do you see any basis for that concern?

Mr. SOMMERS. I don't see any inherent conflict. I think the banks view this as an export vehicle. None of the banks in our association view this as a bill to enter into any nonbank activities. There are limitations in terms of aggregate ownership. There are limitations in terms of the affiliate lending and the safeguard built into the bill we think clearly take care of that problem.

Mr. NEWTON. I can say as far as the Philadelphia Overseas Finance Co. is concerned, they are already regulated by the same number of Federal regulatory authorities as we are and it's quite an experience to them, having belonged to Greyhound before and now belonging to a bank and seeing how they are regulated not

once but twice or three times a year. They feel this type of export trading company might have particular appeal in California where the export of agricultural products are so important and they could see immediate applicability up and down the walnut groves and the pecan areas of California, for example. We also do have a small investment in a British clearinghouse. They have a confirming house which does essentially this type of business. They are under the very strict control of the Bank of England and this might be patterned and identified with them much more closely than zaibatus. It's an important activity but certainly not a prominent activity and certainly in no way impairs the capital of these other houses.

Mr. WELSH. The Japanese zaibatsu are formed very differently. The way I understand it, there is interlocking stock ownership between the trading company, its customers, and the bank so everybody sort of owns a small piece of everybody else and you have a cohesive unit formed that way. Whereas, this bill simply authorizes the bank to take an equity interest in a trading company which, under the definition of your bill, is limited to either exporting or providing export trade services to nonaffiliated firms. There's nothing in the bill that specifically authorizes the trading company to act as a holding company for domestic investment or engage in manufacturing or other nonbank enterprises. So it's strictly an export-related firm.

Senator STEVENSON. As I recall, the bill requires that the trading company be organized for the primary purpose of exporting. Is this a satisfactory definition? There's been some questions about that too—must be organized and operated principally for the purposes of exporting and providing export trade services. Now there has to be an association between exporting and importing and probably barter transactions or third country transactions, yet if we broaden that purpose we might give more plausibility to some of these anxieties about banks getting involved in nonbanking activities.

Mr. WELSH. I think, as a practical matter, that the bank regulatory agencies would not permit any significant investment in a trading company that had any substantial U.S. nonbanking activities, and your bill confirms this in the section which gives the agencies the right to disapprove an investment in a trading company for specific reasons related to U.S. banking policy.

Senator STEVENSON. So you don't see any problems with that provision the way it's drawn.

One other complaint has been that the authority would only be used by a half dozen of the largest banks in the country and maybe at the expense of smaller banks. How do you react to that complaint?

Mr. NEWTON. Well, we are certainly not one of the largest six banks in the country. We are 30th. This is pretty far down the list I would think. We are already involved in some of this through the Philadelphia Overseas Finance. We would like to expand our activities. I think we are not atypical, sir.

Senator STEVENSON. The smaller banks could effectively participate in export finance?

Mr. NEWTON. In Philadelphia there are seven or eight major banks I guess, of which five have international divisions and are

quite active and have foreign departments. I think that is similar in most other regional centers of this country and I think you will find all of the members of the BAFT would have a great deal of interest in this. At the present time there are about 170 members of the BAFT.

Mr. SOMMERS. You have 147 members of the Bankers' Association for Foreign Trade who are actively involved daily in this. My own bank is a regional bank in the South and has been operating offshore for almost 10 years and we have either a bank, a branch, or a subsidiary or representative office in every continent in the world. We would like to also look to our membership whose more limited branches and subsidiaries expand their reach through their correspondent banks offshore. The point has been made in previous testimony that one of the advantages of making bank links is the information systems in term sof product flows, customs, and traditions, the very things that are difficult for a very small company to gather than it's trying to sell into a particular country. A small bank located in Kansas or some other State would find that they could operate through their correspondent network which they would have offshore in order to gather some of the information which would be very important to their small exporters.

So I view this as having pretty broad ramifications for practicaly any size bank.

Senator STEVENSON. Thank you very much.

Our next witness is Hon. Erland Heginbotham, Assistant Secretary of State for East Asian and Pacific Affairs. We are grateful to you for joining us, Mr. Heginbotham, and if you would like to summarize your statement I would be happy to enter your full statement in the record.

#### STATEMENT OF ERLAND HEGINBOTHAM, ASSISTANT SECRETARY OF STATE FOR EAST ASIAN AND PACIFIC AFFAIRS

Mr. HEGINBOTHAM. Thank you very much, Mr. Chairman.

I would like to make clear at the outset that my testimony does not represent a position of the administration on this subject. The administration will present its position in the near future. Rather, I have been asked to provide personal observations, from our examination of U.S. export competitiveness in East Asia, on the role of trading companies and their relevance for the United States. My testimony for this reason does not address the specific provisions of the legislation under consideration.

I have had the privilege of serving for the past 3 years in the Bureau of East Asian and Pacific Affairs of the Department of State as Deputy Assistant Secretary for Economic Affairs. During that time the Bureau has given its highest economic priority to promoting a quantum expansion in U.S. exports to the region, in an attempt to stop the sustained erosion of the U.S. share of the fast-growing Asian market.

Strengthening our trade relations with that most important part of the world not only benefits domestic prosperity and employment. It also buttresses our political and military interests by promoting growth and stability of allied and friendly countries in the region.

#### THE DECLINING U.S. TRADE POSITION IN EAST ASIAN MARKETS

During the past decade, East Asia has been one of the fastest growing areas of the world. Now almost the equal of all of Western Europe in our two-way trade, the area has become highly attractive as a market for goods of ever-increasing technological sophistication which U.S. industry is exceptionally able to supply. Yet over the past decade our manufactured exports have failed to keep pace with the growth of East Asia imports. U.S. goods have been losing the marketing edge they once enjoyed. The charts attached to this statement demonstrate at a glance our progressive loss of market shares in East Asia over the past decade.

In a 1978-79 survey undertaken jointly by our embassies and the American Chambers of Commerce and Business Councils in East Asia, we were able to pinpoint significant structural, policy, and financial causes for declining U.S. export competitiveness. The Joint Economic Committee under Chairman Lloyd Bentsen then studied those problems in more detail in January this year, during a 2-week study mission in East Asia. Upon returning, Senator Bentsen submitted to the Senate on January 31 a preliminary report, which I recommend to you. The text of that statement is appended to this testimony.

#### STRUCTURAL OBSTACLES TO U.S. EXPORTS

The JEC Study Mission was impressed by presentations from the U.S. business community in East Asia which indicated that present U.S. laws and regulations prevent the United States from having trading companies with the same strengths and scope of export-supporting activities which have long been the strong suite of our major competitors. Proposals were made to strengthen the operation of existing trading companies and to facilitate closer affiliation between financing institutions and trading companies as a means of strengthening the latter. Remedial legislation in this area may be able to make a great difference in facilitating the export capabilities of small and medium firms, and add greatly to the volume of U.S. exports.

#### PRESENT U.S. DISADVANTAGES

U.S. history, law, and tradition have prevented the development of powerful U.S. trading companies. European colonization techniques and trade motivations produced the giant houses which continue to dominate much of Asia's trade, handling a wide range and volume of goods and services. Japan quickly came to match Europe with zaibatsu conglomerates backed by captive private banks, in turn supported by Government financial backing. U.S. trading companies have been mainly basic commodity traders, single manufacturer marketing arms, or small independent firms with very limited assets to support them. European and Japanese trading companies have had large plantations, major raw materials holdings, captive banks, or other assets to permit their development and expansion of a wide network of complementary services. Most Americans trading companies have been distinctive for their lack of bankable assets on which to base growth or service facili-

ties. It requires major assets to develop an extensive, effective trading network with a broad range of product lines.

#### SPECIAL RELEVANCE OF BANKS

One approach to improving U.S. trading company capabilities is to introduce measures to strengthen existing trading companies. One which appears more relevant to our achieving a level of trading services more comparable to our foreign competition would be to authorize U.S. banks to buy or develop and operate, or otherwise be more closely affiliated with trading companies. The development of bank-owned trading companies promises to offer enormous potential for overcoming most of the major disadvantages now seriously inhibiting U.S. exports to Asia. A number of European banks now operate some of the largest European-owned trading companies. One specific means of achieving this change would be legislation to authorize and facilitate bank-owned trading companies. The bill which your committee has under consideration today, embodies most if not all of the provisions that would be necessary to accomplish that objective.

#### BANK MOTIVATIONS

Of course banks now provide extensive services to trading operations. However the extent of their efforts in this area is limited by profitability of alternative activities such as wholesale banking and credits for major projects of private and Government clients. Incentives are needed to attract greater banking efforts into support of U.S. exports. This is the aim of legislation now being introduced which gives banks the opportunity to participate directly in trading profits through equity ownership in trading companies. The chance to participate in trading profits should be strong inducement for banks to put greater effort into export activities.

Mr. Chairman, at this point I am getting somewhat ahead of my story. I hope it will be instructive to the committee if I first provide some further explanation of our competitive disadvantages in East Asia in the absence of measures to develop more effective U.S. trading company capabilities. This background should make clear how vital we consider it is to develop American trading companies which can much more nearly contend on equal terms with our European and Japanese competitors and why we find the objectives of the legislation you now have under consideration to be particularly attractive and relevant.

#### COMPETITIVE ENVIRONMENT IN EAST ASIAN MARKETS

U.S. commercial officers in East Asia have faced two challenges in trying to expand U.S. exports. First, large U.S. firms which export rely on international sales divisions which often lack sufficient financial, managerial, technical, and information resources to develop export markets adequately. Second, small and medium U.S. firms are rarely active in exporting. Of the 25,000 to 30,000 U.S. manufactures estimated to be export capable, only 1 percent account for 85 percent of U.S. export earnings. There are some large U.S. trading firms specializing in bulk commodities, and there are some small export-management companies which offer

high markup, low-volume exposure in the Asian market. These are very limited exceptions to the general pattern of U.S. firm avoidance of exporting.

In contrast to the declining relative strength of U.S. firms in the East Asian region, countries such as Japan, the advanced developing economies—Taiwan, Hong Kong, Singapore, and Korea—and the EEC have increased their competitive position in the region. To a great extent, the increased competition from these countries reflects the impact of their trading companies in developing new markets, introducing new firms to market, and expanding trade, investment, and technology participation.

Trading companies account for a considerable percentage of the international trade of East Asian countries. In Japan, the most sophisticated market, trading companies account for 60 percent of imports and more than 40 percent of exports. In Korea, trading companies account for 34 percent of exports.

Ironically, non-U.S. trading companies play an important role in U.S. exports to East Asia. A review of shipping documents in major East Asian ports would demonstrate the importance of non-U.S. trading companies, through their U.S. branches and affiliates, in facilitating export of U.S. raw materials, chemicals, nongrain agriculture products and a variety of manufactured products. Particularly in Japanese trading houses the current trend is to expand two-way U.S. trade with third countries in East Asia as a key function of the firm.

Why has such an important function as U.S. export promotion been left to foreign trading firms. Could U.S. export promotion be better handled by United States rather than foreign trading firms? It is not entirely clear, for example, that foreign trading companies are either motivated or effective in developing sustained export marketing efforts by small and medium U.S. firms.

## DEVELOPING AN EAST ASIAN MARKET PRESENCE FOR U.S. FIRMS

### THE CHALLENGE

To develop the export capabilities of small and medium U.S. firms or to expand the overseas presence of larger firms, current barriers to exporting must be removed. Existing U.S. legislative and regulatory barriers such as antitrust, foreign corrupt practices, antiboycott and other measures create imposing barriers and burdens for even the largest U.S. multinationals. In many areas they appear clearly prohibitive for smaller firms. If that were not enough, the difficulties of learning or complying with complex export and import documentation requirements, of identifying customers, assuring their reliability, meeting special language, packaging, standards, design and other local requirements, arranging transportation, protecting against exchange risk, and many other considerations go far to explain why few firms find it worth the effort.

### ARE INCENTIVES THE KEY?

Some argue that significant tax or other monetary incentives are essential to induce adequate U.S. export efforts. As we review the deficiencies in U.S. exporting to East Asia, two considerations

cause us to believe that eliminating barriers and providing trading services may be much more important than providing fiscal incentives. First is the sheer magnitude and extent of the barriers. Second is the high profitability of sales abroad by U.S. firms which have overcome the barriers.

#### THE BARRIERS

The provision of services by large trading companies can significantly reduce the difficulties and uncertainties of export marketing. They assess country markets, sector, and individual product markets, help identify potential customers, assess client creditworthiness, finance transactions, prepare complex documentation, arrange advertising and foreign language services, advise on standards and specifications, offer exchange risk coverage, act as shipping and freight forwarding agents, maintain warehousing and parts inventories, provide engineering and other technical services, and assure after-sales servicing. And of course they provide trade financing.

#### WHERE THE UNITED STATES FALLS SHORT

U.S. trading companies are severely constrained in providing many of these services by virtue of their limited resources. Giant foreign trading companies are able to go even further. They have their own multinational transportation companies, banks, research, engineering and construction departments, assembly and manufacturing facilities, and even merchant banking operations to invest in raw material development and joint venture investments abroad. The partnership which they have created between the financial, production, transportation and marketing functions of trade rests on the legal support and policy encouragement of their governments.

In contrast, with the exception of a few highly specialized commodity traders, U.S. trading firms cannot operate on the scale required to permit self-sponsored market research and development abroad for their clients. Typically they have foreign branches in no more than three or four of the major East Asian trading cities, and their home offices may have no branches elsewhere in the United States. They represent the manufacturing lines of small and medium U.S. firms which cannot enter overseas markets independently. They have very small budgets for advertising or for supplying prospective buyers with technical and sales literature in local languages. They must rely mainly on advertising in U.S. trade and industrial publications circulated abroad. Financial support is critical for U.S. firms seeking to compete in the region. Major foreign trading companies most often take the lead in arranging or supplying credit on highly competitive terms.

Unless their U.S. suppliers can assist them, present U.S. trading companies have very limited resources for assisting foreign purchasers to finance import of U.S. products. They must conduct their business largely on the basis of irrevocable letters of credit. This is in stark contrast to foreign competitors who can offer relatively less costly transaction fees and much greater access to supplier credits.

Without a trading company channel, U.S. firms are so often unable to sell effectively that their only recourse to get a return from abroad may be to sell or license their technology. The implications of such last-recourse decisions in reducing future U.S. competitiveness should be considered carefully.

The range of products which present U.S. trading companies can handle is often limited by their inability to supply required technical expertise for sales promotion, engineering, installation and maintenance. Export is possible only if the manufacturer supplies this expertise. U.S. technical personnel costs, approaching \$300 per day plus transportation and lodging in some cases, cannot be supported by many U.S. manufacturing or trading companies without a larger sales base that can be boasted by all but a few large exporters.

Export sales efforts for many advanced products of smaller manufacturers never get started because U.S. trading firms must restrict their lines to those which can be serviced locally, since small U.S. producers cannot provide service support. Large foreign trading companies often can offset startup costs for new customers from established earnings. Particularly in East Asia, Japanese firms can economically dispatch technical personnel to most neighboring countries within hours.

I have appended to my testimony some charts from the joint Embassy/U.S. chamber study which I mentioned earlier. These charts dramatize the weaknesses described previously by illustrating that these are the most characteristic shortcomings of U.S. export competitiveness gained little because U.S. exporters were deficient in so many other aspects of non-price competitiveness.

If the U.S. is to have trading companies able to compete meaningfully with their foreign counterparts, such firms must be permitted and encouraged to develop additional capabilities which are now beyond their reach, in order to support effective global marketing strategies on behalf of U.S. exporters.

#### THE SPECIAL RELEVANCE OF BANKS

The development of bank-affiliated trading companies appears to offer the most direct route to overcoming most of the major disadvantages now seriously inhibiting U.S. exports to Asia. Banks bring not only assets but almost all of the supporting facilities and services which U.S. exporters now most lack by contrast with competitors. More importantly, banks can encourage and help exporters develop a longer term view of, and presence in the market, bank-affiliated trading companies would have special effect on encouraging more medium and small exporters who are now discouraged by the remoteness and strangeness of foreign markets and buyers, exchange risks, and by the complexity and expense of documentation. Intermediation of banks in the trading process would also help overcome the short-term profit approach of U.S. exporters. Banks typically lend for terms ranging from up to 5 years or more, and tend to consider profit potentials with a longer time horizon than do equity holders who watch even quarterly developments very critically.

## WHAT IS NEEDED?

U.S. antitrust and banking laws and regulations have effectively precluded formation, acquisition, and development by financial institutions of trading companies comparable to those developed by our foreign competition. The typical U.S. trading firm has been restricted essentially to sales commissions as its source of operating funds. As a result it has been unable to accumulate sufficient resources to serve as a full-service trade intermediary to support the innumerable steps from inquiry to delivery.

The U.S. banking community is extraordinarily well positioned to help fill the breach with a minimum of delay. No other country in the world is so well endowed with banking facilities abroad, able to supply the full range of research, financial, documentary, protective, support and other trade services. Moreover, our large international and regional banks, particularly those with Edge Act affiliates, can provide trading companies with contacts over a wide-ranging domestic network of small and medium manufacturing clients.

We believe particular emphasis should be given to special forms of encouragement to assure the greatest possible utilization of the authorities of the proposed trading company legislation by regional banks. Among America's greatest riches is the diversity and diffusion of its resources and its genius. There should be a special role for banks with a regional base to play in developing U.S. export strength.

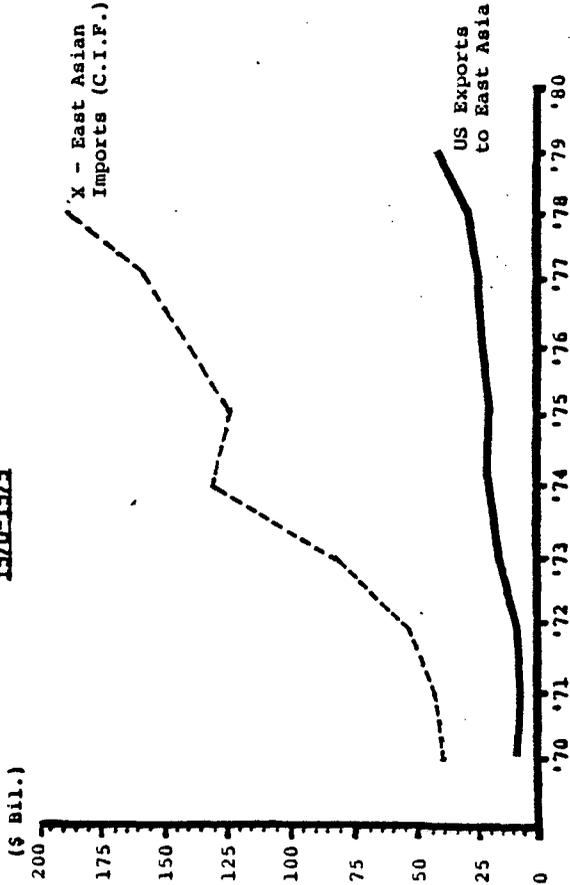
## CONCLUSIONS

From the perspective of our competitive disadvantages in the highly dynamic and competitive East Asian market, we conclude that one of the top U.S. export policy priorities should be the liberalization of the Edge Act and regulation K provision which now limit the involvement of financial institutions in trading company activities. Such liberalization should aim at permitting development of U.S. trading companies on a basis which fully matches our major export competitors in international trade. S. 2379 deals directly with exactly those areas of limitation which we have found to be most inhibiting to U.S. export efforts in East Asia. By authorizing banks to own or establish trading companies we can at long last bring about a closer marriage between financing and other banking services and our basic commercial efforts, which has been so long precluded. Such a measure may well be one of the most important steps we can take toward stemming the erosion in our overseas market shares and toward restoring a healthy national exporting capability for the 1980's.

Mr. Chairman, in conclusion we wish to thank you for the opportunity to share with you today our views on this very important subject.

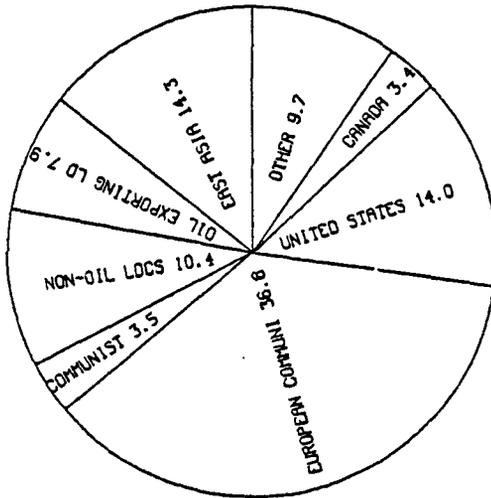
[Exhibits accompanying statement follow:]

**EAST ASIA AS A US EXPORT MARKET**  
1970-1979

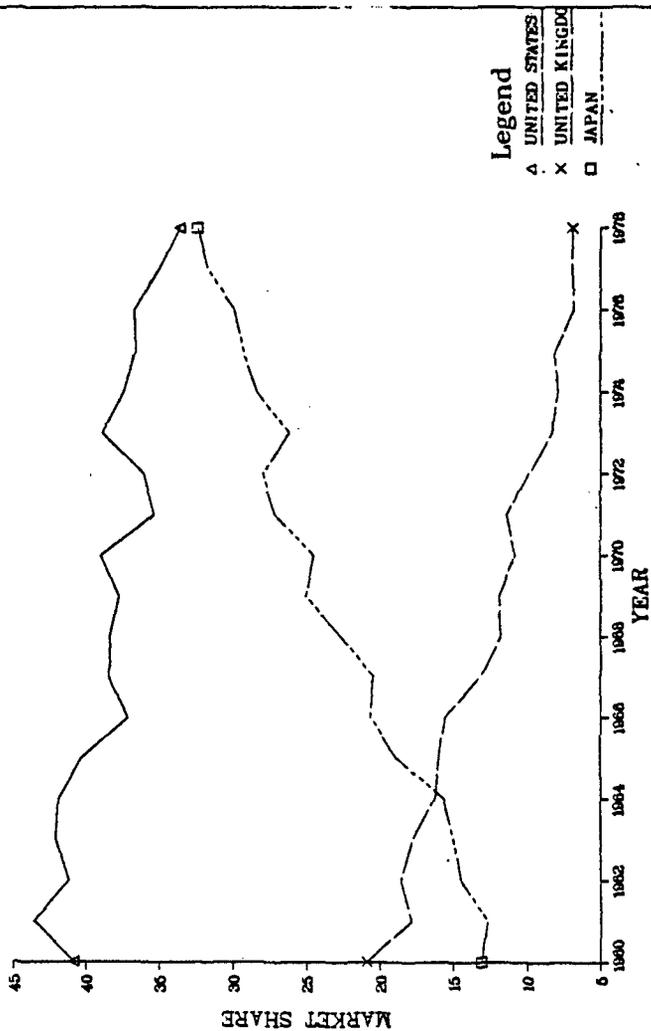


SOURCE: US Department of Commerce (F.A.S. BASIS)

*Distribution of World Exports in 1978.*



**US, UK, AND JAPANESE SHARE OF DEVELOPED COUNTRY EXPORTS TO EAST ASIA, 1960 TO 1978**



## Developed Country Export Shares in EAST ASIA

TOTAL TRADE

Exporter	1970	1971	1972	1973	1974	1975	1976	1977	1978
Developed	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
U.S.	39.2	35.6	36.3	39.1	37.4	36.7	36.7	35.1	33.9
Japan	24.6	27.2	27.8	26.2	28.4	29.3	29.9	31.6	32.4
Canada	5.9	6.1	6.3	6.4	6.2	5.8	6.0	5.6	4.7
Eur. Comm.	26.0	26.6	24.7	23.4	23.3	23.6	22.9	22.9	23.8
Oth Europe	4.2	4.6	4.9	4.9	4.8	4.6	4.4	4.7	5.3

MANUFACTURES

Exporter	1970	1971	1972	1973	1974	1975	1976	1977	1978
Developed	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
U.S.	27.9	26.7	26.1	26.5	26.8	26.0	27.1	25.2	23.5
Japan	32.5	34.2	36.3	36.1	37.1	38.2	38.9	41.1	41.9
Canada	2.0	1.8	1.6	1.3	1.4	1.4	1.5	1.4	1.2
Eur. Comm.	32.4	32.0	30.3	30.0	29.0	28.9	27.5	26.9	27.6
Oth Europe	5.2	5.3	5.8	6.0	5.7	5.5	5.1	5.5	5.9

FOODSTUFFS

Exporter	1970	1971	1972	1973	1974	1975	1976	1977	1978
Developed	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
U.S.	63.9	58.5	63.4	70.6	67.0	65.6	67.1	66.3	68.6
Japan	8.4	8.1	4.2	4.1	3.5	3.2	3.4	3.1	3.2
Canada	12.6	17.5	17.5	13.0	15.7	16.7	15.1	15.4	12.4
Eur. Comm.	13.1	13.2	11.7	9.8	11.1	11.6	11.3	12.5	13.0
Oth Europe	2.0	2.7	3.3	2.6	2.7	2.9	3.1	2.6	2.7

## US Exports, by Major Market, 1970-78.

Importer:	Export Value (Million US \$)		1972	1973	1974	1975	1976	1977	1978
	1970	1971							
World	43226	44137	49676	71314	98506	107652	114997	120163	143660
East Asia	8436	7921	9191	15877	20961	19714	21347	22794	28758
Canada	9084	10366	12415	15073	19932	21759	24109	25749	28372
West Europe	14293	14004	15106	21111	28290	29604	32086	33394	39468
Communist	716	723	1217	2268	2306	3072	3504	2545	3681
Latin Amer.	6533	6483	7276	9929	15806	17106	16969	17935	22017
Mid-East	843	1112	1431	2099	4371	7442	8659	9597	11643
South Asia	933	896	735	933	1433	2115	1707	1315	1734
Africa	908	980	859	1288	1979	2888	2959	3396	3580
Other	1481	1652	1446	2737	3428	3953	3658	3438	4407

Importer:	Partner Distribution (Percent)								
	1970	1971	1972	1973	1974	1975	1976	1977	1978
World	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
East Asia	19.5	17.9	18.5	22.3	21.3	18.3	18.6	19.0	20.0
Canada	21.0	23.5	25.0	21.1	20.2	20.2	21.0	21.4	19.7
West Europe	33.1	31.7	30.4	29.6	28.7	27.5	27.9	27.8	27.5
Communist	1.7	1.6	2.5	3.2	2.3	2.9	3.0	2.1	2.6
Latin Amer.	15.1	14.7	14.6	13.9	16.0	15.9	14.8	14.9	15.3
Mid-East	2.0	2.5	2.9	2.9	4.4	6.9	7.5	8.0	8.1
South Asia	2.2	2.0	1.5	1.3	1.5	2.0	1.5	1.1	1.2
Africa	2.1	2.2	1.7	1.8	2.0	2.7	2.6	2.8	2.5
Other	3.4	3.7	2.9	3.8	3.5	3.7	3.2	2.9	3.1

Importer:	Annual Growth Rate (Percent)								
	1971	1972	1973	1974	1975	1976	1977	1978	1970-78
World	2.1	12.5	43.6	38.1	9.3	6.8	4.5	19.6	16.2
East Asia	-6.1	16.0	72.8	32.0	-6.0	8.3	6.8	26.2	16.6
Canada	14.1	19.8	21.4	32.2	9.2	10.8	6.8	10.2	15.3
West Europe	-2.0	7.9	39.8	34.0	4.6	8.4	4.1	18.2	13.5
Communist	0.9	68.4	86.3	1.7	33.2	14.1	-27.4	44.6	22.7
Latin Amer.	-0.8	12.2	36.5	59.2	8.2	-0.8	5.7	22.8	16.4
Mid-East	32.0	28.6	46.7	108.3	70.3	16.4	10.8	21.3	38.8
South Asia	-4.0	-18.0	26.9	53.6	47.6	-19.3	-23.0	31.9	8.0
Africa	7.9	-12.3	49.9	53.6	46.0	2.4	14.8	5.4	18.7
Other	11.6	-12.5	89.4	25.2	15.3	-7.5	-6.0	28.2	14.6

## U.S. Trading Partners in 1979 by Rank (\$ Billion)

Rank	Total Trade (FAS)	US Exports (FAS)	US Imports (FAS)
1.	ECC	75.9	38.1
2.	Canada	71.2	33.6
3.	Japan	43.8	26.2
4.	Mexico	18.7	8.8
5.	Saudi Arabia	12.9	8.2
6.	Taiwan	9.2	8.0
7.	Venezuela	9.1	5.9
8.	Nigeria	8.8	5.3
9.	Korea	8.2	5.2
10.	Brazil	6.6	4.9
11.	Hong Kong	6.1	4.0
12.	USAFTA	5.8	4.0
13.	Switzerland	5.7	3.6
14.	Libya	5.7	3.2
15.	Algeria	5.3	2.8
16.	Indonesia	4.6	2.6
17.	USSR	4.5	2.2
18.	South Africa	4.0	2.2
19.	Spain	3.8	2.1
20.	Iran	3.8	2.1
21.	Singapore	3.8	2.0
22.	Sweden	3.1	1.9
23.	Malaysia	3.0	1.7
24.	Philippines	3.0	1.6
25.	United Arab Em.	2.6	1.5
	ECC	42.6	38.1
	Canada	33.1	33.6
	Japan	17.6	26.2
	Mexico	9.8	8.8
	Saudi Arabia	4.9	8.2
	Taiwan	4.2	8.0
	Venezuela	4.0	5.9
	Switzerland	3.7	5.3
	Australia	3.6	5.2
	USSR	3.6	4.9
	Brazil	3.4	4.0
	Hong Kong	3.3	4.0
	Taiwan	2.5	3.6
	Spain	2.5	3.6
	Singapore	2.3	3.2
	Hong Kong	2.1	2.8
	Argentina	1.9	2.6
	Israel	1.9	2.2
	China	1.7	2.2
	Philippines	1.6	2.1
	Sweden	1.5	2.1
	Egypt	1.4	2.0
	South Africa	1.4	1.9
	Columbia	1.4	1.7
	India	1.2	1.6
	Iran	1.0	1.6
	Canada		38.1
	EEC		33.6
	Japan		26.2
	Mexico		8.8
	Nigeria		8.2
	Saudi Arabia		8.0
	Taiwan		5.9
	Libya		5.3
	Venezuela		5.2
	Algeria		4.9
	Korea		4.0
	Hong Kong		4.0
	Indonesia		3.6
	Brazil		3.2
	Iran		2.8
	South Africa		2.6
	Australia		2.2
	Malaysia		2.1
	Switzerland		2.1
	United Arab Emirates		2.0
	Netherlands Antilles		1.9
	Sweden		1.7
	Bahamas		1.6
	Trinidad & Tobago		1.6
	Singapore		1.5

If ASEAN were included, it would be our fifth largest trading partner after the EEC, Canada, Japan and Mexico. It would be our fifth largest export market (\$ 6.8 billion) and fourth largest supplier of imports (\$ 9.3 billion).

Source: U.S. Department of Commerce

EA/EP  
January 30, 1980

## U.S. Trade in 1979 by country (\$ Billion)

Rank	Total Trade (FAS)	US Exports (FAS)	US Imports (FAS)
1.	Canada	71.2	33.1
2.	Japan	43.8	17.6
3.	W. Germany	19.4	10.6
4.	United Kingdom	18.7	9.8
5.	Mexico	18.7	8.5
6.	Saudi Arabia	12.9	6.9
7.	France	10.4	5.6
8.	Italy	9.3	5.2
9.	Taiwan	9.2	4.9
10.	Venezuela	9.1	4.4
11.	Nigeria	8.8	4.2
12.	Netherlands	8.8	4.0
13.	Korea	8.2	1.7
14.	Belgium & Lux.	6.9	3.6
15.	Brazil	6.6	3.6
16.	Hong Kong	6.1	3.4
17.	Australia	5.8	3.3
18.	Switzerland	5.7	2.5
19.	Libya	5.7	2.3
20.	Algeria	5.3	2.1
21.	Indonesia	4.6	1.9
22.	USSR	4.5	1.9
23.	South Africa	4.0	1.7
24.	Spain	3.8	1.6
25.	Iran	3.8	1.5
26.	Singapore	3.8	1.4
27.	Sweden	3.1	1.4
28.	Malaysia	3.0	1.4
29.	Philippines	3.0	1.2
30.	United Arab Em.	2.6	1.0
	Canada		38.1
	Japan		26.2
	W. Germany		11.0
	Mexico		8.8
	Nigeria		8.2
	United Kingdom		8.0
	Saudi Arabia		8.0
	Taiwan		5.9
	Libya		5.3
	Venezuela		5.2
	Algeria		4.9
	Italy		4.9
	France		4.8
	Korea		4.7
	Hong Kong		4.0
	Indonesia		3.6
	Brazil		3.2
	Iran		2.8
	South Africa		2.6
	Australia		2.2
	Malaysia		2.1
	Switzerland		2.1
	United Arab Emirates		2.0
	Netherlands Antilles		1.9
	Netherlands		1.9
	Belgium & Lux.		1.7
	Sweden		1.7
	Bahamas		1.6
	Trinidad & Tobago		1.6
	Singapore		1.5

Source: U.S. Department of Commerce

EA/EP  
January 30, 1980



# Congressional Record

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No. 13

## Senate

### EAST ASIAN TRADE

Mr. BENTLEY, Mr. President, earlier this month I led a joint Economic Committee study mission to Hong Kong, Korea, the Philippines, and Taiwan for the purpose of determining how this country can improve its competitive position in East Asia, the world's fastest growing trade area.

The unique concept of a congressional committee traveling abroad to meet formally with the American business community and hear firsthand about the problems they encounter in international trade was originally proposed by the U. S. Chamber of Commerce, with the support and assistance of the State Department.

The Joint Economic Committee is in the process of preparing a full report on the results of our trip, but I believe I can speak for all members of the delegation when I say our mission was an enlightening and, in many respects, alarming experience. I would like to take this opportunity to share with my colleagues some of our most compelling impressions and recommendations as to how the United States can compete more effectively in world trade.

Mr. President, the crisis of trade is not a problem for the future. It is already upon us. With our intense concern about domestic economic problems, access to energy, and strategic competition with our adversaries, we tend to overlook the fact that much of the world is already engaged in a war of trade: intense, cut-throat competition for global markets is a fact of life.

In many respects our commercial relations with East Asia illustrate both the problems and the potential of economic interdependence. Our two-way trade with the region now equals and may soon surpass that with Western Europe. Real GNP in East Asia has been growing at 7 percent annually; trade has been increasing at the rate of 20 percent a year. Over 3 million jobs in this country are directly or partially dependent on our exports to East Asia.

East Asia is clearly a region of vast and expanding economic opportunity for those nations willing and able to compete successfully for international markets.

It is, however, difficult to escape the impression that the United States is approaching the tough, competitive environment of East Asian trade with the same myopic idealism, unilateral restraints, lack of coherent strategy, and adversarial relationship between business, government, and labor that has gradually diminished our competitive position for most of the past decade.

For the first 10 years of 1970 our accumulated trade deficit with Taiwan, Korea, Hong Kong and the Philippines was \$1.5 billion. We had a \$7.4 billion deficit in 1979. In 1978, a 20 percent increase in our exports to East Asia was incurred in East Asia.

The United States has fared poorly in the competition to win major projects in the region and our share of the burgeoning East Asia market has declined from over 40 percent in the 1960's to approximately 33 percent today. Much of our toughest trade competition emanates from East Asia. If projected into the future these trends could have profound consequences for our economy, our currency, and our position of free world leadership.

Most nations of the world, the United States being the notable exception, have recognized and accepted the iron link between international trade and domestic prosperity. In the capitals of our competitors the Minister of Trade frequently stands at the right hand of the President; government and business and labor work together as partners in the effort to offset spiraling energy costs through export earnings and emerge as winners or at least survivors in the big stakes war of trade.

Long accustomed to being the predominant economic power in the world, a nation with a history of economic self-sufficiency and a tendency to view foreign trade as a luxury rather than a necessity, the United States has been slow to adjust to the tough, competitive world of trade. Our most effective economic asset, the world's largest and most accessible market, is the primary target of an integrated, well-financed, and highly successful export effort on the part of our competitors.

The United States, by way of contrast, shackles its exporters with a host of disincentives and self-imposed restrictions that hinder our most successful efforts to export promotion. We can see today a startling example of the different priority accorded to trade by this country and many of our best and closest friends in the world. The United States has clearly demonstrated that, in exceptional circumstances, we remain prepared to sacrifice our economic or trade interests to political objectives. In the present instance, this is an attitude I commend.

However, even larger as clear cut as the Iranian situation and the Soviet invasion of Afghanistan, specifically do not provide sufficient justification to risk the United States' international market so evident among some of our "friendly" competitors. Economic self-interest has become the overriding foreign policy consideration of some industrialized nations that deem trade a matter of survival, make rhetorical gestures toward geopolitical concerns, and then require predatory trade policies.

Mr. President, I am completely and totally convinced that, even with our unique and lonely responsibilities in the world, American business and industry can compete successfully in the international marketplace. But we can compete only if our Government will provide the sort of support and encouragement enjoyed by our competitors. No American business, no matter how efficient or aggressive, can be expected to compete successfully against the economic resources of a major trading nation.

During our mission to East Asia I met personally with hundreds of talented, dedicated U. S. businessmen who complained our front line troops in the competition for international markets. It quickly became apparent that in their efforts to promote American exports our people abroad have all the advantages of an Afghanistani peasant facing a Soviet armored brigade.

An effective American commercial presence overseas is obviously vital to our ability to export. Yet it is becoming increasingly difficult and inordinately expensive to recruit and station qualified American businessmen overseas in the past the obvious disadvantage of an overseas assignment—uprooting the family, finding alternative schooling for children, the impact of an alien culture,

the additional expense involved—were at least partially offset by financial incentives, the prospect of a comfortable existence, and the glamour of life abroad.

But today, despite recent efforts at reform, our tax law is written and administered in a manner that strips away the incentives and actively discourages overseas service. Consider, Mr. President, the fact that the United States is the only major trading nation in the world to tax the income of its businessmen abroad; we are the only major trading nation to tax their schooling and housing allowances as income; we are the only major trading nation to tax income bonuses and cost-of-living allowances.

It is small wonder the number of American businessmen stationed overseas is steadily diminishing at precisely the time we most urgently require an effective commercial presence abroad.

There can no longer be any question that sections 911 and 912 of the Internal Revenue Law stand as powerful and effective deterrents to the presence of American businessmen in vital foreign markets and have a particularly adverse and chilling impact on our small, independent businesses seeking export opportunities.

With the unique tax penalties we have inflicted on our people abroad, it now costs an American firm \$100,000 per year to station a representative with a \$22,000 base salary in East Asia. The same firm could purchase the services of a German, French, or Australian national for about \$45,000 and that is precisely what is taking place.

Given the cost factor involved, some American firms active in East Asia specify that American nationals can only be hired as a last resort. The exporter who insists on American representation for his product in foreign markets must immediately accept a higher cost of doing business and a significant competitive disadvantage imposed by our tax law.

Mr. President, this situation simply makes no sense. In our rush to tax income earned abroad we are inhibiting our export potential, surrendering important markets to the competition, and contributing directly to our balance-of-trade problems.

Members of the JEC study mission are unanimously committed to eliminating the adverse impact of sections 911 and 912 on American businessmen abroad. Americans living overseas and working to promote U. S. exports should receive tax treatment no less favorable than that accorded to their competitors. The unilateral disadvantages imposed on our people solely by sections 911 and 912 of the tax law must be eliminated.

Another disincentive to U. S. exports that delights and amazes our competitors is the Foreign Corrupt Practices Act. The FCPA, Mr. President, is remarkable legislation: Everyone agrees with its noble intent while acknowledging that it does not work as envisioned and serves only as a massive handicap to American exports.

With the Foreign Corrupt Practices Act the United States has sought to establish new standards of morality on the international marketplace; we have, to a significant degree, set out to impose our standards of conduct on the rest of the world.

This development gives rise to two problems: The rest of the world ap-

parently could not care less, and the strictures of the PCPA are so complex, confusing, and ill administered as to give rise to what can only be called a pervasive capitulation on the part of our businessmen—and customers—abroad. Confronted with the lack of predictability inherent in the administration and enforcement of the PCPA, it is frequently easier and less costly for U.S. firms to avoid or minimize their relationships in countries where traditional business practices might put them at odds with domestic enforcement agencies.

The onerous, cumbersome recordkeeping and reporting requirements of the act also constitute a heavy burden for U.S. firms abroad striving to succeed in an extremely competitive environment. During our mission to East Asia we heard numerous reports of Asian businessmen and government officials complaining relationships with U.S. firms because of the provisions of the PCPA. Mr. President, I am not an apostle of the lowest common denominator in international trading practices, but I must sincerely question the extent to which the Foreign Corrupt Practices Act has deterred unavowed and illegal actions worldwide. It seems to me that the most significant impact of this legislation can be seen not in higher moral standards or less corruption but in less U.S. business abroad.

My strong preference would be for a more broadly based attack on corrupt practices, perhaps through a multilateral agreement with our trading partners and provision for cooperative enforcement as recommended by Senator POMERENE. I intend to join in urging the administration to take this approach. Concurrently, I believe we should also be looking for ways in which the administration of the PCPA can be streamlined and made predictable and consistent, thereby diminishing its adverse impact on our exporting community.

Another serious inhibition to U.S. exports is the overseas impact of domestic antitrust legislation. Our experience in East Asia reinforced the widely held belief that the Webb-Pomerene Act, which has been in existence longer than the Senator from Texas, simply does not work as intended.

Rather than limit domestic antitrust laws in their application to foreign markets, Webb-Pomerene is so confusing, dated, and ambiguous that it actually discourages the formation of U.S. consortia that can compete for major international contracts.

Together with Senator DAWSON I have submitted legislation (S. 466) that would amend Webb-Pomerene, dispel some of the ambiguities in the act, and permit it to serve its intended purpose. After our study mission to East Asia, however, I am inclined to the position that the ultimate improvement in Webb-Pomerene might well be its repeal and replacement with language to the effect that U.S. domestic antitrust laws are not intended to affect transactions in non-U.S. markets.

Can you imagine, Mr. President, our competitors in overseas markets worrying about this domestic antitrust legislation as they assemble massive, integrated joint ventures, with the cooperation of the public and private sectors, to bid on lucrative international con-

tracts? The very idea is laughable; most of our competitors actively encourage such consortia because they accurately perceive that they are a potent weapon in the war of trade.

If we are to meet the challenge of trade in the future, repeal or drastic revision of the Webb-Pomerene Act is an urgent priority. I have been a strong and consistent supporter of domestic antitrust laws, but I fail to see any justification for hobbling American exporters with phony antitrust concerns every time a major international contract comes up for bidding.

During our stay in East Asia, committee members were also impressed by the extent to which our laws and regulations—regulation K in particular—preclude the establishment in this country of trading companies with the same breadth and broad scope of export-sustaining activities that have contributed so significantly to the commercial success of nations like Japan. We returned to this country determined to influence legislation that will strengthen the operation of existing trading companies and permit their closer affiliation with financing institutions.

More effective U.S. trading companies able to perform a wide variety of services to potential clients would provide an excellent vehicle to enable small and medium-size firms in this country to compete successfully for international business.

The trading company concept has vast potential for increasing U.S. exports, 25 percent of which are currently controlled by 1 percent of our exporting firms, without costing the taxpayer a cent. Trading companies have worked remarkably well for nations like Japan and Taiwan, and there is no good reason why we should not learn from their success.

Finally, Mr. President, improved financing for U.S. exports is an essential element in any coherent trade strategy for the future. The Exim Bank currently supports a much smaller percentage of U.S. exports than comparable institutions of most of our major competitors. A major reason for the U.S. loss of a \$2 billion Egyptian telecommunications contract last year was the lack of adequate, low-cost financing.

The nations of Western Europe and East Asia have demonstrated that they are prepared to work with industry, to go out and buy business, to meet and beat the competition. U.S. industry simply lacks comparable support and resources. When the Japanese can finance a billion dollar project at 7.5 percent and the best we can offer is 9.5, it is not difficult to guess where the business will go.

One problem that arose frequently during our mission was the fact that our commercial competitors in the region have quick and ready access to low-cost financing for design and feasibility studies while U.S. exporters generally do not.

Aid funding for such studies is extremely limited and, with the exception of an Exim Bank direct-loan program in the Philippines, U.S. businessmen anxious to get in on the ground floor of a major project by conducting a feasibility or design study rarely have no alternative but to obtain funding at commercial rates. Several instances of significant projects lost to American businessmen because of problems in obtaining

funds for feasibility studies were cited to committee members.

Given the obvious competitive advantages accorded to the country that gets involved early on and writes the specifications for a project, there can be little doubt that additional low-cost funding for feasibility and design studies would pay handsome dividends in export performance. I plan to contact both AID and the Exim Bank to see what can be done to make substantially more resources available for this purpose at rates comparable to those offered by our competitors.

Several American businessmen in the region also cited the current controversy over availability to the press of shippers export documents under provisions of the Freedom of Information Act as another example of how the United States is hobbling with unilateral constraints in trade. They suggested that many of these documents contain privileged commercial information that can provide a significant advantage to our competitors who do not publicize such material.

I am pleased to learn that Senators RIVKOFF and PRECY will soon be holding hearings on legislation designed to resolve this problem in a manner that protects both the confidentiality of commercial information and the provisions of the Freedom of Information Act.

Mr. President, I do not pretend that the measures I have outlined—amendments to sections 911 and 913 of the tax code, changes in the Foreign Corrupt Practices Act, repeal or drastic revision of the Webb-Pomerene Act, legislation to encourage more efficient and effective U.S. trading companies, readily available funding for feasibility studies, and additional resources for the Exim Bank—constitute an adequate or comprehensive response to the crisis of trade facing this country.

We will continue to have trade problems—and deficits—until we can control inflation in America, decrease Government spending as a proportion of GNP, encourage savings and investment, and strengthen the supply side of our economy. We will continue to have trade problems—and deficits—until we fully recognize the vital importance of exports and replace the adversary relationship between Government, labor, and business with the sort of cooperative, mutually supportive attitude that prevails elsewhere in the world.

However, to the extent that we can move forward with specific remedies to the specific problems I have outlined, we can improve our competitive position substantially.

We can signal American industry, and our competitors, that the United States recognizes the importance of international trade, the realities of the marketplace, and is prepared to touch the full resources of the world's largest economy to bear on the problem. We can demonstrate, as we enter the decade of the eighties, that when it comes to trade the United States of America means business. ♪

Senator STEVENSON. Thank you, sir.

EAST ASIA TARIFF BARRIERS

We continually hear complaints of tariff and nontariff barriers in East Asia, especially in Japan. Your charts which indicate that other nations are expanding their exports into East Asia apparently at our expense suggest that such barriers as do exist can be overcome. How do you respond to that, the complaint that it's not our fault; it's their fault that U.S. exports miss out?

Mr. HEGINBOTHAM. As you may know, Senator, we have been very actively working in Asia to attempt to diminish the import barriers there. They do exist. They are very important. They are a major factor, but that's only half the story.

As you pointed out, it's quite clear that others have done better in quite a number of markets in East Asia than we have. The inevitable conclusion is that, in addition to attempting to reduce import barriers in those markets, we must also do much better to compete effectively on our side.

The study we conducted amassed interviews of some 300 major importing houses throughout Asia and demonstrated across the board that the United States is ineffective as an exporter in East Asia. We are unresponsive to inquiries. We tend to be very slow on delivery schedules. We are generally poor on post services and sales, followup. We are very inflexible in pricing techniques. There is a whole raft of respects in which we are very poor. The thing that led me to an interest in the trading company problem was precisely the observation that most of the things that we are weak in are the techniques which trading companies provide so effectively for our competition.

Senator STEVENSON. And when you mention trading company everybody thinks immediately of zaibatsus, the Japanese trading companies, but they are not unique, are they? Aren't foreign competitors using foreign trading companies to get inside the Japanese market?

Mr. HEGINBOTHAM. Absolutely, Senator. They are by no means unique. In the European case not all of them are bank affiliated. One reason for this is that many of these companies develop with a massive resource base. In some cases they historically controlled the entire economies, for example, in 17th-18th century Indonesia. They acquired massive assets and facilities so that banks were not essential in those cases.

We don't have a comparable tradition and base, so in our case the relevance of banking to building that strength is very direct. Similarly, in the Japanese case, I think the financing access has probably been the major factor in permitting them to catch up with the Europeans in the trading company business.

Senator STEVENSON. You mentioned that about 34 percent of Korean exports were through trading companies I believe. The Korean trading companies are of recent origin, are they not?

Mr. HEGINBOTHAM. That's right, sir, very recent.

Senator STEVENSON. How long have they been in existence?

Mr. HEGINBOTHAM. I would have to guess, but I would imagine that the effective ones have really become effective only within the past 10 or 15 years.

Senator STEVENSON. I thought it was even more recent than that.

Mr. HEGINBOTHAM. It could well be. That's just from general memory.

Senator STEVENSON. But within a fairly short period of time they now have over a third of Korean exports?

Mr. HEGINBOTHAM. These companies have existed for longer periods, but I think in the earlier years they were focused predominantly on the importing business and I think the shift toward exporting has been gradual.

Senator STEVENSON. Senator Heinz.

Senator HEINZ. Thank you, Senator Stevenson.

Mr. Heginbotham, in your written testimony you note that many non-U.S. trading companies now facilitate the export of U.S. raw materials and a variety of other things, that they are highly successful, and it's my understanding that the Matsui Trading Co. of Japan is the sixth largest U.S. exporter, which should give us all some pause for thought. What happened to the famous Yankee trading mentality? How did we get to the point where our sixth largest exporter is a Japanese trading company? Where did we go wrong?

Mr. HEGINBOTHAM. Senator, I believe that the Yankee ingenuity still exists, but it's been stifled by a faulty sense of complacency on the part of the U.S. Government. I think over the years the Congress and the executive have larded onto our companies a roster of barriers that have made it impossible virtually to export in a profitable way on the scale that we should be. We have assumed that our country economically was the most powerful in the world and we have neglected to note how many barriers we have put up. When you consider that we have the one largest market in the world—all the rest of the markets are considerably smaller, and there are now 150-odd of them—that multiplies the difficulties our traders have.

The Joint Economic Committee study amassed a record of some 25 major barriers that impede the Yankee trading spirit. In the case of trading companies in particular there have been very explicit prohibitions that, in my view, have prevented the necessary structure for American trading companies and that is the link between financing and commerce, financing and exporting, that until now has been essentially found in regulation K where it was most explicit.

Senator HEINZ. In line with that, you pointed out in your testimony that cheap dollars haven't been the answer, that a weak dollar, a devalued dollar, really hasn't been enough. You indicated that we have hamstrung ourselves over the years. Is it your opinion that in terms of results that well capitalized, well managed U.S. trading companies, such as those that would be permitted to operate under our legislation, in fact would make a real difference?

Mr. HEGINBOTHAM. It's my belief, Senator, that this is the single action which could make more difference to U.S. exports than any other single thing you could do. More than just the structure of the companies; our banks are overseas in profusion in virtually every

market in the world. Their motivations for putting more resources into the trading side are strongly diminished by the fact that they can get a better return in other uses of their resources, in wholesale banking, in bank-to-government financing, and in other more traditional forms of banking.

If they have the opportunity to increase their return in association with trading, I think that you will see not only stronger trading companies, but much more attention by banks in general to supporting trade as a general activity.

Senator HEINZ. Well, it was of particular interest to me that our banking authorities recently approved a rather fascinating merger of the Hong Kong Shanghai Bank with Marine Midland. The Hong Kong Shanghai Bank has, shall we say, a few nonbank activities. I think they have something like 251 nonbanking subsidiaries. A lot of them consist of ships, but they have one subsidiary that's absolutely fascinating to me called Hutcheson-Wampoa, Ltd., which is a very large East Asian trading company. So Hong Kong Shanghai has been allowed to keep that trading company and all U.S. banks, of course, currently can't; but the interesting thing is just to go one step further, somebody down in the bank regulatory agencies thought, well, that's a little dangerous to allow Hutcheson-Wampoa to operate freely, so what do they do? They restricted them in an equally fascinating way. They said Hutcheson-Wampoa can export into the U.S. market everything they want but they can't help export out of the United States, which is more than just shooting yourself in the foot; it's like blasting yourself in the kneecaps it seems to me, and I think that's just one more incredible example of how we don't seem to know what's in our best interest.

Senator STEVENSON. Mr. Heginbotham, I think you have given excellent testimony and I very much appreciate it.

#### LEGISLATION IMPORTANT TO SMALLER AND REGIONAL BANKS

Mr. HEGINBOTHAM. I wonder if I could volunteer one additional comment that occurs to me after your questions to the earlier panel. It seems to me that in fact the opportunities that your bill offers may be particularly important to smaller and regional banks. They are not as well positioned to engage in the more profitable international opportunities of wholesale banking, and bank-to-government financing. I would think that these banks should see this bill as an opportunity to gain something of a march on the large international bankers who are going to be less attracted because of their other profitable activities. They can at the same time build a much stronger better client relationship and exporting base for their regions. I would think their State governments in turn would be very interested in supporting their entry into these activities. On a personal basis, it would be very much my hope that the committee and others who engage this topic can make a special point of this with the small firms.

Senator STEVENSON. I think many of them do see it that way. In fact, the two previous witnesses saw it as an opportunity, as you do, for the regional banks to get involved in financing of trade in a way that they wouldn't otherwise have available. Everybody is

suspicious and scared. Some smaller ones I think fear more competition.

Senator Tsongas.

Senator TSONGAS. No questions.

Senator STEVENSON. Thank you very much, sir.

Mr. HEGINBOTHAM. Thank you, sir.

Senator STEVENSON. Our next witnesses are all invited to come forward to form a panel. They are: Lawrence A. Fox, vice president, International & Economic Affairs, National Association of Manufacturers; Jerry L. Hester, president, International Trade Operations, Inc.; John Leibman, general counsel, Export Managers Association, Los Angeles, Calif.; Charles S. Levy, vice president, Emergency Committee for American Trade; Thomas M. Rees, representing the Task Force on International Trade, White House Conference on Small Business and an old friend and former colleague from the House of Representatives; and Ruth Scheuler, president, Schuco, Williston Park, N.Y., representing the President's Export Council's Subcommittee on Export Expansion.

Mr. Hester, would you start off. The full statements will be entered in the record.

**STATEMENT OF JERRY L. HESTER, PRESIDENT, INTERNATIONAL TRADE OPERATIONS, INC., ALEXANDRIA, VA.**

Mr. HESTER. Thank you, Mr. Chairman.

I am appearing here today as a small business having been in business since 1966 and actively engaged in the type of activity which you described in some detail in your bill.

I think I have been through the whole gamut of activity since 1966 and the one restrictive measure that has kept us from going beyond our own ability and the ability of our exporting suppliers has been the lack of support by the banks in giving capital and resources whereby the small exporter did not have such capital and the project warranted such capital and such support and the individual net worth of the supporters of the exporting going on might have exceeded the net worth of the exporter himself. Consequently, there was no recognition on the part of the banks on a case-by-case basis, and in many cases we failed to achieve a competitive position in a timely manner due to this problem.

I fully support your bill. I have gone through it in some detail. I will comment on section 2 where I have found over the years that many companies exporting would be very happy to have an American export management company take over the role which they are doing inside their own doors because they find it quite expensive and they find it quite inefficient. So we have approached many companies, large and small, and after a short time they rapidly become a very substantial part of our business. Most of them are very lazy from the standpoint of getting involved in the hard business of traveling, the hard business of digging out the requirements, and applying the technical expertise required to do the job. So consequently, their main attitude is one of getting paid, getting paid quickly, and letting us take the problems which is what we get paid for.

## PROBLEM OF SIGNING A CONTRACT

I think the biggest problem we find in the U.S. Government today and those of the Department of Commerce and the other agencies around that are in the activity is that they take you to the export market but there's no way they can bring you to a contract. There's no way they can sign a contract for a businessman once he gets into their grasp of activities, and when he comes home from their activities, whether it be a trade mission or whatever, he finds himself bewildered and "did I say the right thing or should I do something else?" In many cases, they say this bridging of the exports has to take place in a different sector and they start turning to trading companies. We get most of our clients coming by word of mouth and other activities that we are engaged in, but primarily they want to see an early export. They want to see an early sale and they want to see a return on their investment in time and money. So what we consequently feel that the Government activity to date lacks is an answer to being able to conclude a contract—which is where the money is. This is where the businessman wants to see his export company perform. So in order to do this and set up an export trading company—we have one in such a small manner—it's not anything like the provision in this bill, but over the last 15 years we have invested heavily in coming up with foreign affiliates who, in effect, become our entry into the foreign market. They, in turn, pass the requirements to us which we, in turn, then implement throughout the American industry. We have never been turned down on a single occasion that I know of when we bring to an American supplier a bona fide export opportunity. I can name you very large corporations that we have aided in getting large amounts of business because we were at the right place at the right time and their own marketing staffs abroad could not get to the opportunity.

But to operate as an export trading company you first have to have a U.S. base, and you, second have got to have an overseas base in at least one of three or four areas—Europe, Middle East, Far East, South America, for example. To operate any one of these offices, you're talking about \$300,000 a year budget for overseas offices plus your own operating office. So you've got a substantial overhead here and a real operating problem with the export trading company most of us can't afford. We can't afford the overhead. The market will not stand the markups. An American supplier supplies us an FOB price. We usually work between 10 and 25 percent. So when you add a high overhead on a small operation, plus banking charges where you have to finance export, you rapidly find yourself out of the marketplace, and we have lost a few opportunities there to say the least.

I question in the bill where we will be able to obtain such a staff to staff the export management companies so quickly. There's just not that group of people in the United States sitting around that have this kind of experience.

So I say if you start today it will take 5 years before you have a functioning export company of the type envisioned in the bill.

I think it would be very efficient and very desirable on the part of the foreign customers to have identified to them export trading

companies by geographical area or by product areas that they can go to. That today is not done.

What happens is that the Government trade opportunities activities in the Department of Commerce, for example, get sorted out by SIC category code, and you have to sign up for trade opportunities, and if you don't sign up you don't get them. In many cases they come in too late, you can't operate with them. There's not enough detail.

#### COMPUTERIZED OPERATION

But I think that the company operations which you're proposing in this bill would certainly have to be computerized. I don't see how you can operate with the many opportunities that would come in and the activities and the pricing and everything that goes on, without computerized operation.

I think I'll give you an example of a case where a small company can create a large amount of export. This is why we do need this leverage by working with banks, and that leverage is given in a case where you have three or four participants on a turnkey project export, and you need a team later. No one company on the team will propose or want to export the other company's product, because it may be unfamiliar to them. But the project requires a mix of products.

Consequently, you might put together a \$2 million export opportunity, and your net worth might be \$200,000. So when you go to a bank and say, well, we need the guarantee for this project to bid it, the banks says, well, you know, it's \$2 million. A 5-percent bid guarantee of \$2 million, that's \$100,000. That's half your net worth.

So everyone loses because you don't have this leverage. And in the bill I notice you have that, which is one of the biggest things that we need in this area.

I also notice in the bill that you're requiring certain things from the Secretary of Commerce, and I think this is good, because if any export management company is set up under this bill it certainly ought to be granted immediate access to all trade opportunities coming into the Department of Commerce and other activities.

There are many activities outside of the Department of Commerce, like your State port authorities and other State development offices abroad, who find good opportunities through their State offices. And many times, even though I'm a corporation in the State of Virginia, I never see an opportunity coming into my office from the State development office or the State port authority. So there's a lacking of communication in this area.

In regard to section 6 of the bill, I notice that the bank participation is spelled out there and talked about, but margins—I'm sorry. Let me see. It talks about the investments in the banks in the trading companies. I don't see how a trading company can afford the high interest rates in today's markets to borrow financing capital. Now you're talking 18 to 20 percent short term money. I don't even go to the banks any more. We have to operate within our own capital.

Senator STEVENSON. You also have Exim guarantees.

Mr. HESTER. But let's say we went to Riggs Bank and borrowed the money today and Exim guaranteed it. I'd still have to pay interest on that money.

It's a very difficult thing to get that into your pricing structure when you're competing with companies that have their Government backing at low interest rate loans. But what I'm suggesting here in my testimony is that I think an export trading company, in the initial phases of its genesis or starting out, is going to have to have some low interest money. I'm talking 6 percent, 8 percent money. I don't see how you can afford to borrow money today.

Now, somebody testified earlier—I believe it was Senator Heinz—you commented on how did we lose the "Yankee Trader" concept. I'll give you an example which the committee may not be aware of. The Korean construction companies are picking off, I would say, 75 percent of the large Middle East construction contracts, which are engineered by this country. Consequently, they set up in the United States a trading company and this trading company may bring in 100 people, and then that trading company will purchase \$50 million to \$100 million worth of equipment in exports.

As a U.S. exporter, I cannot get to that business. It's bought, sold and gone before we can get into the act. We call the companies, they take our information, and we never hear any more from them.

So you find the Japanese and others are alert to how to come in and staff up and tap the U.S. industry base. We compete with them all the time and we have learned, you know, some of the wherewithals and how to withhold information to protect our own exporting.

Going on quickly, I notice in the bill you have an eligibility for the State and local governments to form an export trading company. As a small business, I cannot compete. If you permit, for example, the State of Virginia, to own an export trading company, I would see immediate gravitation of the State business to that office, because he has more resources than I have, he can advertise, he can do many things I cannot do.

I would see a big hurt to small business if State governments or local governments competed with private industry. It would eliminate a large portion of the small business clientele that would go to these kind of trading companies now that you already have in existence, which you are attempting to foster.

#### ROLE OF U.S. CHAMBER OF COMMERCE

In summation, I was asked to comment recently by the U.S. Chamber of Commerce on the role which they might play in export, and I thought about this a long time, and I thought too of many experiences abroad when I'm visiting, where they always take us to the local chamber of commerce in Taiwan or Hong Kong or wherever. We don't do that in this country. We really don't use our export leverage with the local chamber of commerce, the State chambers of commerce, which all fall under the U.S. Chamber of Commerce.

And there might just be a role in the organization already set up, that we could maybe assign these export trading companies, which would be generated by this bill or encouraged to grow by this bill, to be assigned by the chambers of commerce or working with the chambers of commerce in a local manner, because your exporting takes place at a local level. It does not take place at the government level; it takes place at the local level, many times working on weekends and things like that.

So your American businessman is somewhat shy of an export program when it's offered to him, unless he is familiar with it on a local level. And I think if they would have a continuous conduit in which to go to to obtain expert advice by an export trading company assigned or working with the local chamber of commerce, I think you would find a tenfold increase. Because so many of these people have been burned. They've spent money in the past. They've been taken in by the glamor of export. And when it comes down to reality, it's a very difficult job and many of them don't have the time or the wherewithal to get their return on investment.

Thank you for letting me appear before the committee today.  
[Complete statement of Mr. Hester follows:]

TESTIMONY OF JERRY L. HESTER, PRESIDENT, INTERNATIONAL TRADE OPERATIONS, INC.

Mr. Chairman, I wish to thank the Senate and this subcommittee for the opportunity to testify before it today.

I have read the revised bill and will attempt to go through its contents in order.

In regard to section 2, it is my experience that the non-exporting and in some cases the already exporting American companies are eager to export provided the export burden is relieved and the export is treated as a domestic sale FOB their loading dock. An export management company provides the method for the producing company to sell its product and for the producer to get paid quickly in U.S. currency. It should also be understood that exporting is roughly twice or three times as difficult as domestic sales. Hence, discouragement and cost of sales are soon apparent.

The shortcoming of the present U.S. Government and Department of Commerce activities is that with all the exposure abroad and all the domestic promotion for exporting it creates much activity that cannot be implemented by the intended U.S. recipients, the businessmen, into actual exports or contracts. No U.S. Government agency or individual can or will sign a contract for a U.S. businessman. He must act on his own behalf. Therefore, for any bill to establish export trading companies to have any merit, it must recognize that the primary location of the Export Trading Company be in the United States with a minimum network of overseas offices be located in major market and geographical areas much the same as the Japanese and other Trading Companies have. You cannot establish your operations solely in the United States as they will not be effective. Foreign customers will day-to-day need cultivation, exposure, after-sales contracts etc. Such overseas operations are very costly to operate and establish. For example, a single office in a major market location would require three to five persons and would cost on a yearly basis including expenses \$300,000 to \$400,000 per year. I point out there is at least three to five such areas requiring these overseas offices for any serious export management company to do its job properly. These are: Europe, Middle East, Far East, South America and others.

Now, I mention this because, once you begin to attract the non-export business to the export management company, it had better be ready, willing and able to fulfill its expectation. Otherwise, it will result in the all too familiar experience of many businessmen who were initially attracted to export, spent much money following the U.S. Government's leadership as far as it took them but nothing ever materialized due to the sheer magnitude of the export problems facing the businessman and the inability of the U.S. Government agencies abroad to support the individual cases to eventual contract and marketing fruition.

I also question where, as a result of this bill, will we be able to quickly acquire such expertise to staff and operate the export management companies as envisioned.

We cannot legislate it. Experience must be acquired through the hard world of international business over many years. My experience is that at least 5 years will be required to fully mature an export management company, as a minimum.

It would certainly be more efficient and aid the foreign customers if they were rapidly directed to a qualified export trading company rather, as we do now in the handling of trade leads, contacts, and foreign buyers, by the Government agencies. The results of which are often nonproductive.

Computerized operations are a must in any modern export management company in order to keep up with the large number of quotations, inquiries, U.S. company products, orders, etc.

The biggest single exporting deterrent to an active growing export management firm is its ability to have readily available short-term capital reserves in order to bid competitively and move goods quickly. Lack of bid guarantee credits have in a large number of cases caused our firm to "no bid" very good opportunities backed up by a team of major U.S. producers which we had organized but any one of which could not have bid the entire project on its own due to the mix of products required. This kind of a situation hurts. On the other hand, our most successful case involved several large U.S. corporations and our Bank working together to create the guarantees but the bank would only guarantee against secure collateral which strained our resources.

Until recently, commercial banks looked at export trading companies on the basis of the company's financial statement and net worth in granting credits toward export. No leverage was possible using the net worth of the producers of the goods which often far exceeds the export trading company's net worth.

In the bill under consideration, it should be provided for that when a project of an export management company requires multiple firm participation and guarantees or credits exceed the amounts stipulated in section 6(a) that such cases be given consideration and the entire team's financial capability be a criteria not just the export management company.

The trend in the Middle East especially is that the large opportunities will take the nature of that just described.

In regards to section 4, the Sec. of Commerce function should also include registration of such qualified export management companies and selective computerized distribution of trade leads to such companies based on registration data.

In regards to section 6, with today's very high interest rates on commercial bank loans, I do not see how an expanding or new Export Trading Company can afford to borrow for initial investment and operating expenses. The net margins which an Export Management Company operates within will not permit such a heavy burden of interest. On one hand you are seeking to encourage export expansion, yet in the market place competition we encounter, our foreign competitor has the advantage of their government's backing at low interest rates. We simply cannot compete if we are to add the U.S. current prime rates on expansion capital. It seems to me that this type of activity would certainly qualify for low interest loans such as granted in case of disaster relief or the like.

I don't particularly like the section 6(b) of the bill as it should be tied to a percentage of sales rather than operating expenses.

Sales is the real criteria an bottom line in export. I can run-up operating expenses astronomically with expensive travel and not produce 1 percent increase in sales. This also encourages aggressive thinking and innovation and discourages the high overhead, inefficient operations.

Section 6(c) I commented on earlier indicating a need for large dollar sales cases consideration especially in the Middle East.

Under section 7. The "bridge financing" or export accounts receivable financing is very good and long needed.

The eligibility of State and local Government-owned Export Trading Companies is contrary to a long stated policy of Government not competing with private business. I fail to see or understand why a commercial enterprise would be attracted to go to a qualified Commercial Export Trading Company when the State Government offers one supported by taxpayer's money and can draw up such resources as not available to the private company. A private firm cannot compete with government under such a provision of the bill.

Most of the State Port Authorities and State Development Agencies already have well staffed, operating overseas offices at the present whose purposes are to: (1) Encourage traffic and revenue through their respective ports and (2) in the case of the State Development Offices, encourage reverse investment in their respective states by foreign industry location and organize trade missions for export promotion.

We in private industry rarely see any actual trade leads generated as a result of these State and local offices so we are left to depend upon our own initiative and that of our foreign trade affiliates. So, I do not see any benefit to be derived for a private export trading company under any new legislation that would change the present situation. I see them as competitors if the State and Local Governments are permitted to own export trading companies under the bill. Participation would be satisfactory but direct ownership should not be a provision.

We do not want to overlook their values and contribution to this country's exports. I prefer to see all efforts channeled through the U.S. Chamber of Commerce, State Chamber of Commerce and Local Chamber of Commerce which has been the successful domestic business forum in this country. Our foreign customers use their local Chambers of Commerce both for domestic as well as export business, we do not.

I was asked to comment recently on a place for the U.S. Chamber of Commerce in export, taking into account their already functioning organization. I suggested that they consider using the help of a qualified Export Trading or Management Company which was already in business, had experience, staff and financial resources. Such assistance would be rendered by registering the Qualified Export Trading Companies with the U.S. Chamber, State and local organizations to support new exporters, exporters and trade associations. These services would be contracted for on an annual basis and funded by Federal grant to whatever level appropriate. We do not have the support at the local level which is where the exporting is conducted. New exporters would be brought in to the program and rendered assistance, or discouragement if their products are unsuitable, for a short time under the Federal grant. Subsequent activity would require some payment by the local firm as the situation matures and potential is realized.

This concludes my remarks and again thank you for permitting me the opportunity to testify to this subcommittee.

Senator STEVENSON. Thank you, Mr. Hester.

If there's no objection, we'll continue with all the remaining statements and then proceed on to questions.

Mr. Fox?

**STATEMENT OF LAWRENCE A. FOX, VICE PRESIDENT, INTERNATIONAL AND ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS**

Mr. Fox. Thank you, Mr. Chairman.

I am Lawrence A. Fox, vice president for international and economic affairs for the National Association of Manufacturers. I am happy to appear today on behalf of NAM to testify in favor of the enactment of the Trading Companies Act of 1980, S. 2379. With your permission, Mr. Chairman, I would like the statement made part of the record and I will summarize it for the purposes here this morning.

Senator STEVENSON. All the statements which are summarized will be entered in the record.

Mr. Fox. Thank you.

The National Association of Manufacturers is a voluntary non-profit organization of nearly 13,000 companies, large and small, located in every State of the Union. It represents firms which account for about 75 percent of American manufactured goods output and approximately the same percentage of the Nation's industrial jobs.

NAM has for some years now favored a vigorous export expansion program as the most appropriate means to help right the U.S. balance-of-payments and to help strengthen the dollar internationally.

Mr. Chairman, in the report which your committee presented last year following your extensive hearings on export expansion,

the committee correctly noted that the scope of the U.S. trade problem is truly a very broad one which touches the most important aspects of the domestic economy as well as requiring steps to improve access to foreign markets for U.S. goods.

No export expansion program will prove successful if the U.S. industrial base does not produce the products which are demanded in the world markets at prices which are competitive and with service and engineering back-up facilities to make the American product the best available in world markets.

S. 2379 can make a valuable contribution to improving the export performance of American companies. But taken alone, S. 2379 cannot do even a major part of the job. I state this view not to derogate from the importance of S. 2379, but to indicate that NAM's support for the bill is in the context of an overall program which includes domestic economic measures, lifting of U.S. Government impediments, and opening up of foreign markets to U.S. goods.

S. 2379 falls in the second category, that is, elimination of impediments to U.S. exports, while providing some modest finance and tax incentives to export growth. It is undoubtedly the case that for a manufacturing country the United States has a very small proportion of medium and smaller manufacturing concerns engaged directly in export. Although many such firms provide components to larger firms, which incorporate the components into end products which are then exported, this constitutes only a limited potential of a large part of American industry for export.

Smaller and medium-sized firms are likely to find foreign markets more difficult to penetrate, more costly to do business in, and to present less certain prospects for profits than would be the result of alternative use of capital and other business resources to expand sales and markets in the United States.

#### ADDITIONAL SALES OFFICES IN UNITED STATES

In my opinion, the principal competitive judgment to be made by small and medium-sized firms is whether or not to open up an additional sales office in a rapidly growing part of the United States, such as the Southwest, or to take on what appears to be the more hazardous market in Europe or Japan. I think the decision of the smaller companies and medium-sized companies to expand within the United States is hardly irrational in the context of the growth potential in the American market.

Just the opposite conditions prevail in most foreign countries, that is, domestic markets being smaller and more competitive, often offer less advantageous prospects than expanding into foreign markets. And therefore it is not surprising that bottom-line considerations have resulted in a much larger commitment to exports among the medium and smaller businesses in such countries as Germany, France, Switzerland, Sweden, et cetera, as well as Japan.

Trading companies are used to some extent in most countries which compete with the United States for world markets, but they are truly important factors in the trade competitive situation, notably of Japan and Korea. Bear in mind, however, that the U.S. situation is quite different from that which prevails in Japan,

where five or six major trading companies engage in up to 75 or 80 percent of the export activities of that country. Furthermore, these trading companies own or control a large number of domestic manufacturing companies, often the very largest companies in the country. And finally, each trading company is generally associated with a commercial bank or banking group.

Conditions in the United States, of course, do not permit the replication of the Japanese situation, and S. 2379 is an appropriate recognition of the different nature of the conditions prevailing in American industry and banking. S. 2379 permits the creation of trading companies with participation on the part of manufacturers, banks, export service organizations, constructors and other firms, who can profitably work together in helping to create new markets abroad for U.S. goods.

Export credit as well as working capital is made available to such trading companies on somewhat more favorable terms than might otherwise be the case, and the domestic international sales corporation concept, the DISC, of deferral of taxes on export income, is authorized for these trading companies.

The principal advantage of the trading company concept is that the trading company can engage in market development activities on a longer term basis, with greater certainty of continuity, than individual smaller companies could achieve on their own. Trading companies could be organized to specialize with respect to specific industrial products or product groups, with respect to specific geographical areas of the world, or in accordance with the particular needs and opportunities of the major firms forming the trading company.

Marketing expertise, specialized product lines, specialized knowledge of foreign market conditions, and a number of other particular factors, can be taken into account in organizing precisely the kind of trading company which most adequately reflects the needs of the American firms forming the trading company.

#### ENDORSEMENTS

We would specifically like to endorse these sections of S. 2379:

One, direct the Export-Import Bank to establish a guarantee program for commercial bank or other private short-term loans or lines of credit secured by export accounts receivable or inventory held for exportation.

Second, authorize Eximbank to make direct loans or extend loans or loan guarantees which would enable export trading companies to meet operating expenses over the first 5 years of an export company's operation or during any one 5-year period in which an export company which was formed before the enactment of S. 2379 undertakes a significant expansion in export services to unaffiliated producers.

Third, authorize banks, their holding companies, Agreement and Edge Act corporations to participate directly in a broader range of export trade services through the authorization of limited investment in export trading companies. By allowing American banks to broaden their export trading services, the competitive position of U.S. banks should be correspondingly improved and the ability of

the trading companies to have access to private finance would be improved also.

Four, direct the U.S. Department of Commerce, in cooperation with other relevant Government agencies, to provide explanatory literature seminars and other assistance to parties interested in forming new export trading associations or expanding existing ones. The Commerce Department is also directed to work closely with local and State governments and special authorities to facilitate the formation and operation of export trading companies.

Fifth, clarify the eligibility of export income earned by trading companies for DISC tax deferral and other related tax considerations, such as subchapter S.

And sixth, make trading companies eligible for the same anti-trust exemption treatment as trade associations are now accorded under the Webb-Pomerene act. Thus firms which meet the definition of export trading companies will, with regard to their export activities, enjoy the same status under the Webb-Pomerene Act as associations formed exclusively for the purposes of that Act.

#### UNAFFILIATED PERSONS

Mr. Chairman, we would like to suggest that section 3(a)(5)(b) be amended to permit specialized divisions of units of larger companies to become members of trading companies. Often these units can serve as catalysts for the efforts of the smaller firms engaged in specific product-oriented marketing programs. The definition of "unaffiliated persons" in this section should be clarified to authorize such participation.

Our point in this connection is that a specialized division of a larger or multiproduct company is often engaged in a particular product line, for instance irrigation equipment. A trade association formed under the act specifically to engage in agricultural product machinery and agribusiness marketing development might very well find a most useful company to participate in that connection to be a division of a larger multiproduct company.

The definition of unaffiliated person causes us concern in that connection.

Mr. Chairman, NAM testified on the subject of export trading companies on September 17. On that occasion our main focus was on those bills, particularly S. 864 and S. 1499, which were specifically directed to amend the Webb-Pomerene Act by improving its effectiveness. We will not repeat our observations made at that time, but specifically we would like to endorse the proposals in those bills which we understand are being considered now together with S. 2379.

We particularly commend to the attention of the committee the provisions of those bills which would authorize the service industries and particularly constructors and export service organizations to be members of Webb-Pomerene associations.

I would like to conclude, Mr. Chairman, by stating that we do not believe any single measure has the power to deal with the full scope of the American trade problem. Trading companies are an important step forward, but far from the total answer. NAM will be supporting other legislation which attempts to improve the

trade position of the United States. We will be testifying in favor of the Small Business Export Expansion Act, S. 2040, and the Small Business Export Development Act, S. 2104.

Efforts to amend the Export-Import Bank Act of 1945 to authorize the Bank to engage in the use of special measures of export finance to counter the use of such measures by other trading companies, S. 2339, are also important efforts to improve U.S. export expansion capability.

And finally, without an overall program, including domestic efforts along the lines of NAM's program to revitalize American industry, efforts to stimulate increased savings and investment in U.S. industry, the long-term prospects for a markedly improved export record will remain modest indeed. S. 2379 is strongly endorsed by NAM as a first and most important step in a comprehensive and sustained program to improve U.S. exports.

Thank you.

[The complete statement follows:]

Statement of the  
National Association of Manufacturers  
before the  
International Finance Subcommittee  
of the  
Senate Committee on Banking, Housing, and Urban Affairs  
Concerning S. 2379  
The Trading Companies Act of 1980  
March 18, 1980

Mr. Chairman and members of the Committee, I am Lawrence A. Fox, Vice President for International Economic Affairs for the National Association of Manufacturers. I am happy to appear today on behalf of NAM to testify in favor of the enactment of the Trading Companies Act of 1980, S. 2379, introduced by yourself, Mr. Chairman, and other members of the Senate.

The National Association of Manufacturers is a voluntary, non-profit organization of nearly 13,000 companies, large and small, located in every state of the Union. It represents firms which account for about 75% of American manufactured goods and approximately the same percentage of the nation's industrial jobs.

NAM has for some years now favored a vigorous export expansion program as the most appropriate means to help right the U.S. balance of payments and to help strengthen the dollar internationally. Mr. Chairman, in the report which your Committee presented last year following your extensive hearings on export expansion, the Committee correctly noted that the scope of the U.S. trade problem is truly a very broad one which touches the most important aspects of the domestic economy as well as steps to improved access to foreign markets for U.S. goods. No export expansion program will prove successful if the U.S. industrial base does not produce the products which are demanded in the world market at prices which are competitive and with service and engineering backup facilities to make the American product the best available in world markets.

On December 12, 1979, I testified before this Committee calling for a balance of payments strategy for the United States. The essence of this testimony was to call for a three-fold effort:

- 1) Improvement of the domestic economy primarily through improved savings, investment, R & D and other measures designed to enhance the competitiveness of our manufacturing industries, both with respect to import competition in home markets and with respect to exports to foreign markets;
- 2) To remove unneeded, costly U.S. Government impediments or disincentives to U.S. exports;
- 3) To open up foreign markets further to U.S. goods, primarily through forceful and effective implementation of the various non-tariff barrier agreements negotiated in the course of the Multilateral Trade Negotiations (MTN).

This is not the place to summarize the balance of payments strategy outlined last December, but suffice to say that the objective is to secure a surplus in our current account and to sustain this surplus over a period of years. Such an objective can only be accomplished by reduction of the oil import bill, but even more concretely it can only be accomplished through an improvement in the trade account in the manufactured goods area. A materially stronger industrial base can only be achieved by eliminating inflation in our economy, or materially reducing it, and enhancing the competitiveness of the American economy across the board.

In the context of the objectives I have just set forth, obviously no single export expansion device or program is sufficient to accomplish our goal. Clearly,

S. 2379 can make a valuable contribution to improving the export performance of many American companies--but taken alone, S. 2379 cannot do even a major part of the job. I state this view, not to derogate from the importance of S. 2379, but to indicate that NAM's support for the bill is in the context of an overall program which includes domestic economic measures, lifting of U.S. Government impediments and opening up of foreign markets to U.S. goods. S. 2379 falls in the second category, i.e., elimination of impediments to U.S. exports, while providing some modest finance and tax incentives to export growth.

It is undoubtedly the case that for a manufacturing country, the U.S. has a very small proportion of medium and smaller manufacturing concerns engaged directly in exporting. Although many such firms provide components to larger firms which incorporate the components into end products which are then exported, this constitutes only a limited potential of a large part of American industry.

Smaller and medium-sized firms are likely to find foreign markets more difficult to penetrate, more costly to do business in, and to present less certain prospects of profits than would be the result of alternative use of capital and other business resources to expand sales and markets in the U.S. Just the opposite conditions prevail in most foreign countries, i.e., domestic markets being smaller and more competitive, often offer less advantageous prospects than expanding into foreign markets, and therefore it is not surprising that bottom line considerations have resulted in a much larger commitment to exports among medium and smaller businesses in such countries as Germany, France, Switzerland, Sweden, etc., as well as Japan.

Trading companies are used to some extent in most countries which compete with the U.S. for world markets, but they are truly important factors in the trade competitive situation, most notably only in Japan. Bear in mind, however,

that the U.S. situation is quite different from that which prevails in Japan, where the five or six major trading companies engage in more than 75% or 80% of the export activities of the country. Furthermore, these trading companies own or control a large number of domestic manufacturing companies, often the very largest companies in the country. And finally, each trading company is generally associated with a commercial bank or banking group. Conditions in the U.S., of course, do not permit the replication of the Japanese situation, and S. 2379 is an appropriate recognition of the different nature of the conditions prevailing in American industry and banking.

S. 2379 permits the creation of trading companies with participation on the part of manufacturers, banks, export service organizations, constructors, and other firms, who can profitably work together in helping to create new markets abroad for U.S. goods. Export credit as well as working capital is made available to such trading companies on somewhat more favorable terms than might otherwise be the case, and the Domestic Sales Corporation concept of deferral of taxes on export income is authorized for these trading companies. The principle advantage of the trading company concept is that the trading company can engage in market development activities on a longer-term basis with greater certainty of continuity than individual smaller companies could achieve on their own. Trading companies could be organized to specialize with respect to specific industrial products or product groups, with respect to specific geographical areas of the world, or in accordance with the particular needs and opportunities of the major firms forming the trading company. Marketing expertise, specialized product design, specialized knowledge of foreign market conditions, and a number of other particular factors, can be taken into account in organizing precisely the kind of trading company which most adequately reflects the needs of the American firms forming the trading company.

We would like to endorse the provisions of S. 2379 which:

- 1) Direct the Export-Import Bank to establish a guarantee program for commercial bank, or other private, short-term loans or lines of credit secured by export accounts receivable or inventory held for exportation. Exim's guarantee could not exceed 80 percent of the commercial loan extended.
- 2) Authorize Eximbank to make direct loans or extend loans or loan guarantees which will enable export trading companies to meet operating expenses over the first five years of an export company's operation or during any one five-year period in which a company formed before the enactment of S. 2379 undertook a significant expansion of export services to unaffiliated producers. However, these loans or loan guarantees are only made available in circumstances where existing private credit sources are unwilling or unable to provide financing. The Bank's Board of Directors must also be convinced that there is a sufficient likelihood of repayment.
- 3) Authorize banks, their holding companies, Agreement and Edge Corporations to participate directly in a broader range of export trade services through the authorization of limited investment in export trading companies. By allowing American banks to broaden their export trade services, the competitive position of U.S. banks should be correspondingly improved. However, proposals to acquire a controlling interest in export trade companies will be subject to review by the pertinent Federal bank regulatory agency.

- 4) Direct the U.S. Department of Commerce, in cooperation with other relevant governmental agencies, to provide explanatory literature, seminars, and other assistance to parties interested in forming new export trading associations or expanding present ones. The Commerce Department is also directed to work closely with local and state governments and special authorities, to facilitate the formation and operation of export trade companies.
- 5) Clarify the eligibility of export income earned by trading companies for DISC tax deferral. Election of Subchapter S (pass-through of gains and losses to the shareholders) is made easier for export trading companies. With the assistance of the Internal Revenue Service, the Department of Commerce is directed to write up a guide to assist export trade companies in the formation of DISCs or for the election of Subchapter S tax treatment.
- 6) Make export trading companies eligible for the same antitrust exemption treatment as trade associations are now accorded under the Webb-Pomerene Act. Thus, firms which meet the definition of export trading companies will, with regard to their export activities, enjoy the same status under the Webb-Pomerene Act as associations formed exclusively for the purpose of export trade.

We suggest that Section 5 (a)(5)(B) be amended to permit specialized divisions or units of larger corporations to become members of trading companies. Often these units can serve as catalysts for the efforts of smaller firms in regard to specific product-oriented marketing programs. The definition of "unaffiliated persons" should be clarified to authorize such participation.

Mr. Chairman, NAM last testified on the subject of Export Trade Companies on September 17, 1979.<sup>a/</sup> On that occasion, our main focus was on those bills, S. 864 and S. 1499, which were specifically directed to amend the Webb-Pomerene Act by improving its effectiveness. Obviously, S. 2379 is directly related to that effort, although S. 864 and S. 1499 are more specialized in their focus. As we understand the present legislative situation, S. 864 and S. 1499 are in the process of being reconciled in one legislative proposal. And because we have already made our views known on the necessity for revising Webb-Pomerene, the following remarks will be specifically devoted to S. 864.

NAM strongly endorses those provisions of S. 864 (the "Export Trade Association Act of 1979") which encourage and promote the formation of export trade associations through the Webb-Pomerene Act. This bill will attempt to meet those requirements by making provisions of the Webb Act applicable to the exportation of services and by transferring the responsibility for the administration of the Act from the Chairman of the Federal Trade Commission to the Secretary of Commerce. Obviously, its major thrust is to exempt from the application of the antitrust laws an association which is engaged in export trade services. We believe that the six specific provisions which must be satisfied for an association to be exempted from the antitrust laws (pp. 6-7 of S. 864) are more than adequate to prevent an abuse of the exemption provisions.

The emphasis in both S. 864 and S. 1499 to include services within the purview of a revised Webb Act is strongly endorsed by NAM. As we testified last September before this Committee, "By including within the Act's coverage the

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<sup>a/</sup> Statement of the NAM before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs on September 17, 1979.

service industries, more U.S. firms, particularly small and medium sized ones-- would be able to furnish the combination of products and services which are so frequently required by large foreign buyers." In this regard, NAM also maintained then, as we do now, that "any such expansion of the Act" to include the service sector will also have a favorable impact on exports of manufactured goods, "since the disadvantages often suffered by U.S. exporters due to the design of specifications by foreign engineering or construction firms would thus be largely neutralized. Moreover...the 'services' provision is particularly needed today in view of the dramatic increases in 'industrial cooperatives' and trading companies which cross national frontiers and are able to provide foreign buyers 'full service' packages within a relatively short period of time."

Finally, we wish to reaffirm the six specific endorsements and suggestions which we included in our September 17 statement. We strongly endorse the principle of Commerce Department responsibility for the administration of the Webb-Pomerene Act as set out in S. 864. Such enhanced responsibilities for Commerce would, in our view, be in line with the Department's new and expanded role in the administration of U.S. trade policy as a result of the White House's Trade Reorganization Plan which entered into law this last January. And the transfer of authority from the Federal Trade Commission to the Department of Commerce would also be a significant indication of a changing government attitude regarding the need of this country to provide greater incentives, primarily of a market-oriented nature, for U.S. exports.

As we stated at the outset, the various bills before this Committee do not constitute a final answer to the serious problems facing the U.S. economy both at home and abroad in regard to U.S. foreign trade. NAM will be supporting other

legislation which attempts to improve the trade position of the United States. We will be testifying in favor of both the "Small Business Export Expansion Act" (S. 2040) and the "Small Business Export Development Act" (S. 2104). Efforts to amend the Export-Import Bank Act of 1945 to authorize the Bank to engage in the use of special measures of export finance to counter the use of such measures by other major trading countries (S. 2339) are efforts to confront, as S. 2379 attempts to do, the fact that the United States has only begun to address the constraints under which it has conducted its export trade policy. Finally, without an overall program--including domestic efforts along the line of NAM's program to "Revitalize American Industry"--geared to stimulate increased savings and investment in U.S. industry, the long term prospects for a markedly improved export record remain modest indeed.

S. 2379 is strongly endorsed by NAM as a first and most important step in a comprehensive and sustained program to improve U.S. exports.

Senator STEVENSON. Thank you, Mr. Fox.  
Mr. Liebman.

**STATEMENT OF JOHN R. LIEBMAN, DIRECTOR, EXPORT MANAGERS ASSOCIATION OF CALIFORNIA, INC.**

Mr. LIEBMAN. Thank you, Mr. Chairman. I wish to thank the committee for allowing us to appear before it today.

As is indicated in my written statement, which I understand is being incorporated in the record, I would just like to ask that two corrections be made: First, the reference to 1663, the previous bill, which appears in the second paragraph on page 2 should be changed to 2379. I believe the same correction should be made, the third line from the bottom of page 5 of my statement.

I appear here today on behalf of the Export Managers Association of California. This is a nonprofit trade association headquartered in Los Angeles, representing more than 250 exporting manufacturers, EMC's and related suppliers of services to the export community of southern California. As is indicated in my statement, the vast majority of the members of EMAC are small businesses. I serve the association as its general counsel, as director, and chairman of its legislative committee. I have been associated with a number of similar groups active in southern California for a number of years.

As indicated in the text of our statement, California obviously is a major factor, and has to be taken as a major factor, in any export expansion program. It is the gateway to the Pacific rim markets. I believe today it accounts for something on the order of the second largest volume in the country in international trade. Therefore, our association views with great interest the success prospects for the expansion of exports, particularly in view of the chronic trade deficits that this country has suffered over the past several years.

The Export Managers Association genuinely and warmly supports the spirit and, for the most part, the letter of 2379. We endorse most of the revisions incorporated into the bill over the prior version and particularly applaud the removal of many of the procedural requirements which were present in that prior version. And, of course, we applaud the spirit of the bill, as it is the first real concerted effort, as far as I know, by the Congress to put some teeth into our ability to export.

#### PROBLEM WITH SECTION 102(C)(1)

At the risk of seeming ungrateful, we do perceive one problem, and it is a problem we believe must be considered seriously by this committee. Section 102(c)(1) of the original bill proscribed the issuance of an export trading company license by the Secretary of Commerce to "any partnership, association, or corporation owned or controlled by a foreign corporation or in which any other foreign entity owned stock or other securities with voting rights issued by the export trading company."

During his testimony to this committee last September, Secretary Bergsten commented that such a prohibition runs counter to traditional U.S. policy of neither encouraging nor discouraging foreign investment in the United States, and that the denial of domestic tax benefits to foreign persons would also violate the nondiscrimination provisions in our double-taxation conventions. He concluded that foreign-owned export trading companies would be subject to U.S. law in any case, and that ownership restrictions therefore would not be necessary.

Our initial reaction was clearly one of agreement with the Secretary's position. There is certainly no reason why we should preclude foreign interests from participating in our export expansion program, particularly at this time when we need all the help we can get.

I am just parenthetically interested to hear from one of the prior witnesses that Mitsui is the sixth largest exporter of U.S. goods, ironic as that may seem. It also occurred to me that probably the reason for that fact is that Mitsui probably understands the market which it serves, exporting from the United States to Japan, better perhaps than some of our own American companies.

Nonetheless, we felt that the proscription against foreign ownership of the export trading companies might be giving vent to our xenophobic instincts and accomplish nothing. Therefore, at first blush, we did welcome the revision of the bill which eliminated this provision.

But, on reflection, it became apparent that there were other aspects of the question holding in importance at least as high a priority as the imperatives of exporting larger slices of the gross national product of the United States. For one, export trading companies stand to profit, in large measure, directly and otherwise, from the largesse of American taxpayers. And I think that imposes a special duty on us to keep faith with those embattled legions and to insure that the benefits generated by ETC's are not lost for them because of heavy repatriations of earnings by foreign investors.

For another, foreign investors have foreign currency earnings bases which give them access to low-interest foreign-currency loans and don't really need the additional financial leverage afforded by this bill.

Third, there is the danger that the very purpose which this legislation is designed to accomplish could be frustrated where foreign-owned export trading companies were allowed to run down because of pressure imposed upon them by their governments, pressure which might emanate from adverse conditions in those countries unrelated to conditions here.

And finally, the orchestration of the activities of the export trading company with those of its parent could breed competitive patterns inconsistent with extant U.S. antitrust policy.

Despite these compelling arguments, the association which I am here to represent today has no objection, in principle, to foreign ownership of export trading companies or, for that matter, with foreign ownership of most other U.S. assets. But we do believe that it is eminently reasonable in circumstances of high public purpose, as here, that no greater access be afforded to any foreign investor than any one of us would enjoy to a similar enterprise in his country.

If embraced in this bill, this principle would have the salutary effect of protecting the express purpose of the bill and further encouraging, at the same time, the liberalization of capital movements among industrialized nations—a long-range U.S. policy, as elusive in its attainment as it is simple in its definition.

There are more tangible reasons to incorporate this requirement into 2379. We really have no idea how foreign investors from countries following restrictive investment practices will behave as owners of ETCs. Past experience suggests that, as indicated above, commercial policies of U.S. affiliates may be subordinated to those of the offshore parent which, in the end, are more responsive to the perceived needs of a foreign government than to those of the American people, as expressed in this legislation. But once here, we believe that Congress would have enormous difficulties in singling such foreign investors out for special treatment, if equal protection is given any credence at all.

#### EQUAL PROTECTION

And just commenting on a footnote, I realize that it is rather poor practice to cite oneself as an authority for a proposition, but we did do an extensive investigation of the whole area of the concept of equal protection as applied to foreign investors. And, if nothing more, that proves that it is going to be a troubling area. It's going to be troubling for us as business people and as lawyers trying to advise those business people. We could easily be confronted with then having to disassemble this entire program, even though no one in the export community would want to see the baby thrown out with the bathwater.

With all due respect to Secretary Bergsten, we have no difficulty with the notion of restricting foreign ownership along the suggested lines, with or without extant bilateral tax conventions. This is not so much a question, in my view, of discriminatory tax treat-

ment as it is of eligibility. And examples of such restrictions within current law are plentiful, as are set forth in the text of the statement. Indeed, we had to note that small business corporations, as defined under subchapter S, section 1371 of the Internal Revenue Code prohibits nonresident aliens from ownership. The subject matter is certainly well known to this committee, and I don't think it would pose any difficulty to write it into the bill.

Which of our major trading partners would stand to be affected by the adoption of the eligibility standard we have suggested? Well, Mr. Chairman, as you have noted, we have attached to our statement a copy of some materials which we felt were most interesting, because, while it's not exhaustive in any respect, I thought it was a fairly interesting cross section of some of the policies which are followed by some of our major trading partners and some of our trading partners who aren't so major but nonetheless have come up with some very ingenious approaches to the problem of foreign ownership of domestic enterprises. And those appear in the appendix.

In addition, I wish to commend the committee's attention to the further material which, as an afterthought, we tacked on, which discusses in a more structural context the form which some of these restrictive practices assume.

In sum, we propose that a reciprocity standard be incorporated within this bill, limiting eligibility for treatment as an export trading company to firms whose beneficial foreign ownership does not exceed, in terms of voting control, those limits on foreign ownership of domestic firms by the governments of those foreign owners.

The implementation of this standard entails the use of the same sort of ownership identification envisioned in S. 953, which I believe, Mr. Chairman, you introduced in the 94th Congress, and would require the Secretary of Commerce to determine periodically what percentages of ownership would be allowed to vest in nationals of various countries. The only administrative procedure necessitated by this approach would occur where an export trading company sought exemption from the application of an eligibility standard.

There was one minor technical question which we raised, and do raise now; namely, since the freight forwarding services qualifies as an export trading services, whether that allows a freight forwarder, or whether it's intended by this legislation that a freight forwarder be allowed to have an ownership interest in the goods which he handles. Under present Federal Maritime Commission regulations, I don't believe that is permitted. There would have to be some changes made if that were the intent of this legislation.

We don't believe that the changes which we are suggesting would be unduly burdensome relative to the objective which is envisioned by this suggestion. We do feel that the recommendation is useful and reasonable. Its adoption would not only improve the bill as a whole, but make it even more attractive and responsive to the perceived needs of our country.

Thank you, Mr. Chairman and Senator Tsongas. I will be happy to answer any questions that either of you have.

[The complete statement follows:]

## STATEMENT OF JOHN R. LIEBMAN

Mr. Chairman and Committee Members:

Thank you for inviting me to share with you some thoughts concerning the Export Trading Company Act of 1980. I know of no other bill more deserving of Congress' attention at this time, and it is our most sincere wish that we will be able to play a constructive role in the shaping of this legislation.

I appear here today on behalf of the Export Managers Association of California, Inc., a non-profit trade association representing more than 250 exporting manufacturers, export management companies, shippers and freight forwarders, and other professionals providing varied services to exporters, most of whom are "Small Business" and are located in Southern California. I serve the Association as a director, chairman of its Legislative Committee, and its general counsel. I also have been a member of the Southern California District Export Council and the Western International Trade Group since 1974, am a trustee and a former president of the Brazil-California Trade Association, and am active with the California Council of International Trade and the International Law Committees of the American Bar Association and the Los Angeles County Bar Association. My law practice is devoted primarily to the general and specialized representation of numerous California firms - large and small - deeply involved in international trade, as well as commercial trading interests from other parts of the world.

If California were an independent nation, it would rank as eighth largest in the world and certainly as one of the fastest growing. Its population, now accounting for one-tenth of the total U.S. population and labor force, has been growing at double the national rate. The state's industrial base is diverse, with major roles in the nation's high technology industries and agriculture, providing many of our country's exports.<sup>1]</sup> California is recognized as a major gateway to the markets of the Pacific Rim, accounting for nearly one-half of U.S. trade with those markets, and its exporters quite understandably view themselves as leaders in our national efforts to expand exports. The introduction of S. 1663, therefore, has aroused great interest in the California export community.

The Export Managers Association genuinely and warmly supports the spirit and, for the most part, the letter of S. 1663. Generally, too, we endorse most of the revisions incorporated into the bill since last September's hearings. Many of the procedural requirements contained in the original bill considered by us as unnecessary now have been excised. This bill, in any event, is the first concerted effort by the Congress to put some teeth in our nation's export expansion effort. Its financial and tax provisions promise the export community a tangible prospect for being able to compete on a fair basis with our counterparts in other reaches of the world. American

exporters, for so many years, have been players in a very rough football game, and we simply have not had the equipment to do the job. Now, it seems, we finally are being given our helmets and hip pads.

At the risk of seeming ungrateful, however, we do perceive one problem, and it is a problem we believe should be considered seriously by this committee. In the original bill, Section 102 (c) (1) proscribed the issuance of an Export Trading Company license by the Secretary of Commerce to " ... any partnership, association, or corporation owned or controlled by a foreign corporation or in which any other foreign entity owns stock, or other securities with voting rights, issued by the export trading company, ..." Secretary Bergsten commented, during his testimony to this committee last September, that "... Such a prohibition runs counter to traditional U.S. policy of neither discouraging nor encouraging foreign investment in the United States..." and that "[T]his denial of domestic tax benefits to foreign persons would also violate the nondiscrimination provisions in our double taxation conventions...", concluding that " ... foreign-owned export trading companies... would be subject to U.S. law in any case, and ownership restrictions would therefore not be necessary."<sup>2</sup>

Our initial reaction, I must admit, accorded with Secretary Bergsten's views. Why, we asked, should we discourage

foreign interests from participating in the national export expansion program at a time when we need all the help we can get? Would not such a prohibition simply be giving vent to our baser, xenophobic instinct and accomplish nothing but cutting off our nose to spite our face? In consequence, we welcomed the revised version of the bill reflecting, as it did, this enlightened perspective if not the reality that some substantial American firms who stand ready, willing, and able to avail themselves of the bill's handsome benefits are already owned by foreign interests.

On rethinking this issue, however, it became apparent that there were other aspects of the question holding in importance at least as high a priority as the imperatives of exporting larger slices of America's GNP. For one, Export Trading Companies stand to profit in large measure, directly and otherwise, from the largesse of American taxpayers, thereby imposing a special duty on us to keep faith with those embattled legions and ensure that the benefits generated by Export Trading Companies aren't lost for them because of heavy repatriations of earnings by foreign investors. For another, foreign investors have foreign currency earnings bases which give them access to low interest foreign currency loans, and don't really need the additional financial leverage afforded by this bill. Third, there is the danger

that the very purpose which this legislation is designed to accomplish could be frustrated if a foreign-owned Export Trading Company were allowed to run down because of pressure imposed upon its foreign owners by their government -- pressure emanating from adverse conditions there unrelated to conditions here. And, finally, the orchestration of the activities of the Export Trading Company with those of its parent could breed competitive patterns inconsistent with extant U.S. antitrust policy.

Despite these compelling arguments, the Export Managers Association has no objection in principle to foreign ownership of Export Trading Companies, or for that matter with foreign ownership of most other U.S. assets. But we do believe that it is eminently reasonable in circumstances of high public purpose, as here, that no greater access be given to any foreign investor than one of us would enjoy to a similar enterprise in his country. If embraced in this Bill, this principle would have the salutary effect of protecting the express purpose of the bill and further encouraging, at the same time, the liberalization of capital movements among industrialized nations -- a long-range U.S. policy as elusive in its attainment as it is simple in its definition.

There are more tangible reasons to incorporate this requirement in S. 1663. We really have no idea how foreign investors from countries following restrictive investment policies will behave as owners of Export Trading Companies.

Past experience suggests that, as indicated above, commercial policies of U.S. affiliates may be subordinated to those of the offshore parent which, in the end, are more responsive to the perceived needs of a foreign government than to those of the American people as expressed in this legislation.<sup>3]</sup> But once here, we believe that Congress would have enormous difficulties in singling such foreign investors out for special treatment, if "equal protection" is given any credence at all.<sup>4]</sup> We could easily be confronted then with having to disassemble the entire program, even though no one in the export community would want to see the baby thrown out with the bathwater.

With all due respect to Secretary Bergsten, we have no difficulty with the notion of restricting foreign ownership along the lines suggested, with or without extant bilateral tax conventions. This is not so much a question of discriminatory tax treatment as it is of eligibility of ownership, and examples of such restrictions within current law are plentiful: communications,<sup>5]</sup> energy and natural resources,<sup>6]</sup> transportation and trade,<sup>7]</sup> banking,<sup>8]</sup> and numerous special government-funded incentive programs,<sup>9]</sup> to name but a few. Indeed, Small Business Corporations under Subchapter S may not include among their shareholders any non-resident aliens.<sup>10]</sup> The subject matter is certainly well-known to

the Congress, particularly to members of this Committee, <sup>111</sup> and should not pose undue difficulty.

Which of our major trading partners would stand to be affected by the adoption of the eligibility standard we have suggested? Appended to this statement is a compendium of countries which practice some form of discrimination against foreign investors. In compiling these data (and this effort is by no means either exhaustive or analytical), we have omitted restrictions relating to such publicly-regulated sectors as those just mentioned and concentrated on restrictive policies imposed in commercial activities where the United States does not follow exclusionary policies.

In sum, we propose that a reciprocity standard be incorporated within this Bill, limiting eligibility for treatment as an Export Trading Company to firms whose beneficial foreign ownership does not exceed, in terms of voting control, those limits on foreign ownership of domestic firms by the government(s) of those foreign owners. The implementation of this standard entails the use of the same sort of ownership identification envisioned in S. 953, introduced by Senator Stevenson in the 94th Congress, and would require the Secretary of Commerce to determine periodically what percentages of ownership would be allowed to vest in nationals of various countries. The only administrative procedure necessitated by this approach would occur where an Export

Trading Company sought exemption from the application of an eligibility standard.

Finally, there is some confusion whether this Bill, in embracing freight forwarding as qualified "export trade services" which may be rendered by an Export Trading Company, intends to pre-empt Federal Maritime Commission regulations prohibiting freight forwarders from having any ownership interest in the commodities they handle. If so, we suggest that pre-emption language be added to the Bill.

We do not believe that these burdens are unreasonable in relation to the policy objectives sought by this legislation. We are convinced that our recommendation is a useful one, and that its adoption not only would improve the Bill as a whole, but make it even more attractive and responsive to the nation's needs.

Thank you again for the privilege of appearing here today.

## APPENDIX

- 1] Security Pacific Corporation, California: Pacific Giant (1979)
- 2] Hearings S.864, S.1499, S.1663 and S.1744 (96th Cong, 1st Sess.)<sup>33</sup>
- 3] Inouye, "Political Implications of Foreign Investment in the United States" 27 Mercer Law Review 597, 602 (1976)
- 4] Liebman, "Foreign Investors and Equal Protection" 27 Mercer Law Review 615, 624 (1976)
- 5] 47 U.S.C. §§ 310(a), 222(d), 301(1), 734(d)
- 6] 42 U.S.C. §§ 2133, 2134; 30 U.S.C. § 22; 30 U.S.C. §§1601-1025; 48 U.S.C. §§ 1501-1508
- 7] 49 U.S.C. §§ 1301(1) and (13)
- 8] 12 U.S.C. §§ 72, 619
- 9] 16 U.S.C. § 742(c)(7) (restricting government loans for financing the costs of commercial fishing vessels or gear)
- 10] I. R.C. § 1371
- 11] See Senator Inouye's discussion in 27 Mercer Law Review note 3, supra.

The descriptions regarding foreign investment in the countries listed below are taken from Investment Licensing & Trading Conditions Abroad (Business International Corporation), reproduced here with permission of the publisher.

AUSTRIA

AUSTRALIA

CANADA

DENMARK

FRANCE

JAPAN

GREECE

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indirectly through its majority ownership of three of Austria's largest banks (Creditanstalt-Bankverein, Oesterreichische Laenderbank and Oesterreichisches (Creditinstitut) as a result of postwar nationalizations. These banks have substantial holdings in many Austrian firms. The percentage of direct state participation in the nominal capital of industries is as follows: mining and metallurgy 86%, chemicals and oil processing 74%, foodstuffs and beverages 40%, electrical goods 34%, steel construction and motor vehicles 32%, machinery 15%, textiles 14% and paper 12%.

Since 1955, more than 70 nationalized companies have been sold to private investors (and a few are still up for sale) for a total sum of almost Sch 1 billion. Eleven major industrial and mining companies are still nationalized today, including the country's three biggest iron and steel plants, the largest chemical factory and the leading oil-producing and oil-processing company. Among the biggest state-owned firms are the following:

- Voest-Alpine, in Vienna (steel, machinery) and Linz (coal, iron ore, steel, machinery); and its wholly owned subsidiary Vereinigte Edeltahlwerke, a 1975 merger of the three formerly separate subsidiaries Schoeller-Bleckman Stahlwerke (steels, including high-grade steels), Gebrueder Boehler (steels, including high-grade steels), and Steirische Gussstahlwerke.

- Oesterreichische Mineraloelverwaltung, in Vienna (petroleum);

- Elin-Union in Vienna (electrical equipment);

- Simmering Graz-Pauker in Vienna (machinery, locomotives);

- Vereinigte Metallwerke Ranshofen-Berndorf in Ranshofen (metals); and

- Chemie Linz (fertilizers, plastics, pharmaceuticals).

In a number of cases, foreign investors work together with Austrian state-owned firms. For example, Siemens Oesterreich is 44% OIAG-owned. Oesterreichische Stickstoffwerke and Oesterreichische Mineraloelverwaltung have a 50% interest in Danubia Olefinwerke, a joint venture with BASF. Companies in joint ventures with OIAG report they are satisfied with its business conduct.

2.03 Nationalization policy. Expropriation—with fair compensation—is possible under the law, but no further nationalization is planned. The OIAG, however, is expected to continue extending its influence over industry by setting up joint ventures with both domestic and foreign investors.

### 3.00 ORGANIZING

3.01 General. Austria abides by the principle of reciprocity, granting the same rights to a foreigner seeking to establish operations in Austria as the foreigner's country grants to Austrians. There are virtually no restrictions on

incoming investment. Capital imports can require central bank approval (7.01), and there are certain requirements associated with incorporating a local company (3.10). Approval is also required for some incentives (10.00).

3.02 Basic approval procedure for new investments and expansions. Direct cash investments in Austria usually need no federal government approval (although since 1972 the government has occasionally limited capital inflows to productive investment and required approval by the central bank—7.01). However, investments in kind must always be approved by the National Bank of Austria, which usually grants permission automatically (except in the case of banks and insurance companies, for which special permission must first be obtained from the Finance Ministry). Other formalities include a certificate from the tax authorities stating that the incorporation tax has been paid. Companies also need authorization by the provincial government for a license to establish a business.

As a rule, formalities are easily taken care of, but Austrian laws governing the establishment of a new business provide wide latitude for administrative decisions, which are strongly influenced by officially sponsored trade and industry organizations. Before granting authorization for incentives, provincial authorities consult with the Federal Chamber of Commerce and its provincial branches. In this context, it should be noted that a report issued by the Chamber of Labor has called for tighter control of foreign investment, particularly stricter disclosure requirements for Austrian branches of foreign firms, minimum publication requirements for GmbHs (see also 3.10) and more publication requirements for AGs. However, the master is on the back burner for the time being.

3.03 Activities not open to foreign capital. Foreign investment is forbidden in arms and explosives and in industries in which the state has a monopoly.

3.04 Limitations on foreign equity. None.

3.05 Building and related permits. It is usually not difficult to obtain the necessary permits for constructing and operating a plant. The provincial authorities of the Trade, Commerce and Industry Ministry must approve sanitary and fire-prevention installations. In some protected areas (nature preserves, etc.), special rules apply, and approval must be obtained from the district-administration authorities. Environmental matters are usually handled at provincial or community levels. As a rule, authorization depends on the assurance that no damage to health and no nuisances (noise, etc.) will result in the locality. The federal government is expected to complete a set of antipollution rules within the next few years that will apply throughout the nation.

3.06 Acquisition of real estate. The state laws regulating acquisition of real estate by foreigners also apply to the purchase of land for productive purposes. No special provi-

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tion is an effective barrier to nationalization of industry, although the government may—like any other investor—acquire shares in Australian companies.

### 3.00 ORGANIZING

**3.01 General.** Australia has introduced a variety of controls on new foreign investments and takeovers in the past few years. In 1972, the Foreign Takeovers Act (FTA) was passed, providing for government scrutiny of foreign acquisitions of shares in existing local companies (3.07). In November 1974, a Foreign Investment Committee was established to screen all foreign investment not covered by the FTA (3.02). Subsequently, a Companies (Foreign Takeovers) Act was passed by Parliament (in August 1975) amending the FTA. In April 1976, the Foreign Investment Committee was replaced by the Foreign Investment Review Board (FIRB), under foreign investment policy guidelines; no actual legislation was introduced at this time. In June 1978, revised guidelines were introduced, which relax and clarify some earlier provisions governing foreign investments; they will be implemented by administrative directive. The new guidelines include the following:

- Automatic approval will be granted for foreign investment in new projects worth A\$5 million or less, a whopping rise from the former ceiling of A\$1 million. All investment in the financial sector and in uranium, however, will continue to be screened.
- Takeovers of companies whose assets are less than A\$2 million (previously A\$1 million) will normally be permitted, unless the business is in the financial sector or it requires some special consideration.
- Individual acquisitions of real estate worth less than A\$250,000 will no longer require the government's blessing.

The liberalization also introduced the new concept of "naturalizing" companies. These are majority foreign-owned firms that have long-term plans to become naturalized (or Australianized) companies (i.e., those having at least 51% local equity and Australian control). The benefit is that such companies would be considered as Australian for investment purposes. This has significant implications for mining companies, since rules on local ownership have been most stringently observed in this sector (3.04).

The FIRB, directed in 1976 to assess the need for a comprehensive Foreign Investment Review Act, has given a preliminary opinion that no further controls on investment are needed at this time. In its view, further experience with the existing legislation is needed before making a final judgment on the need for more comprehensive legislation. Further modification of the foreign investment rules (such as the June 1978 liberalization) by administrative directive rather than new legislation can therefore be expected.

It has been suggested that the FIRB be reconstituted as a separate statutory body. Another alternative is the establishment of a register to list foreign investment proposals for public scrutiny, without giving full details or reasons for decisions handed down by the FIRB. The Australian government has endorsed the OECD code of conduct for multinational corporations, and the FIRB considers this adequate to regulate foreign investment in Australia for the time being.

**3.02 Basic approval procedure for new investments and expansions.** The FIRB must be notified of all new direct equity investment. The investor will be informed whether the project is subject to automatic approval, usually granted to those that satisfy the following conditions: (1) total investment in a project is less than A\$5 million (formerly A\$1 million); (2) the proposal does not fall under the provisions of the Foreign Takeovers Act; (3) the proposal does not entail the establishment of a new nonbank financial institution or insurance company or investment in uranium; and (4) it does not involve acquisition of real estate worth over A\$250,000.

Review by the FIRB is required for all new direct foreign equity investment proposals not benefiting from automatic approval. The FIRB comprises representatives from both public and private sectors. The Foreign Investment Division of the Treasury advises the FIRB, which in turn advises the Treasury. Foreign investments, for screening purposes, comprise those with total foreign equity in excess of 40% or with a single foreign shareholder owning 15% or more of the equity. Approvals are granted on a case-by-case basis; the government is particularly responsive to proposals for Australian-controlled projects.

Of 1,455 investment or takeover proposals submitted to the FIRB in 1976/77, only seven were rejected and 36 withdrawn. During 1977/78, the FIRB received 1,342 foreign investment proposals, amounting to nearly A\$3 billion; of these, 228 did not require approval, 764 were approved outright, 312 were approved conditionally, nine were rejected and 29 were withdrawn. (A company may withdraw a proposal rather than have it rejected outright by the FIRB. This gives the firm an opportunity to reapply at a later date.)

The principal criterion for approval is the proposal's ultimate contribution to the economy, including the investment's impact on: the level and nature of economic activity; employment; productivity, industrial efficiency, technological development and product innovation and variety; domestic competition; and price levels. Further important considerations are the utilization of Australian components and services; the introduction of managerial and workforce skills; access to export markets; the degree and significance of participation by Australians; the level of available risk capital; and the project's conformity with the government's

objectives for the economy and industry, as well as decentralization and the environment. Other criteria are occasionally used when the government considers them in the national interest.

Expansions of existing businesses are subject only to normal exchange control requirements unless the expansion involves more than A\$1 million, falls within the scope of the Foreign Takeovers Act or involves diversification. The last is defined as a new activity outside those listed under the third-digit grouping of the Australian Standard Industrial Classification in which the foreign investor is already engaged. Since 1975, expansions of foreign-owned ventures also require prior approval if: (1) they are in mining or real estate, (2) foreign ownership would increase by more than 15%, (3) the expansion involves more than A\$10 million in any 12-month period or (4) the cost of expansion in any 12-month period amounts to more than 15% of the pre-expansion total assets. However, this is generally a formality and usually amounts to notifying the government.

**3.03 Activities not open to foreign capital.** Traditionally, foreign investment is not allowed in utilities, broadcasting, television, daily newspapers, certain parts of the civil aviation industry and banking (savings and trading banks). Also, foreign investment in real estate is closely scrutinized for national interest criteria, and must have demonstrable benefits.

When the Labor government first came to power, it banned foreign participation in the development of uranium resources and sought to ensure 100% Australian ownership in coal, gas and oil. The restrictions were eased by the coalition government under revised guidelines (3.04).

**3.04 Limitations on foreign equity.** Most foreign investment (e.g. in manufacturing) is not subject to specific equity rules. Foreign investment in manufacturing has traditionally been approved case by case within the guidelines given in 3.02. While the government prefers local equity participation, definite rules regarding maximum foreign participation in this sector have not been spelled out.

In 1976, special rules governing the permissible amount of foreign investment were established for sectors designated as "key areas"; they include offshore and onshore exploration for oil and natural gas, mineral production and development and agricultural, forestry and fishery projects. Foreign investment in uranium is permitted, but by the start of production, at least 75% of shares must be in Australian hands. (Uranium enrichment—apart from mining and production to the yellowcake stage—is not covered by the rule. While the Fraser government ended a four-year ban on uranium mining in 1977, implementation of uranium projects is being held up by labor, which objects to uranium mining for environmental reasons.) In other key areas, foreign equity participation may be as high as 50%, but

voting control on the board of directors may not exceed 50%.

The requirement for local participation in key companies need not come into force until a project reaches the development or production phase (with government permission). The government recognizes that sufficient Australian risk capital may not be available in the early stages of a key-area project, so it allows higher foreign participation initially, with the understanding that local participation will be increased within an agreed-upon period.

So far, the foreign equity rules have been administered with great flexibility: the Agnew nickel project in Western Australia passed muster with less than 20% Australian equity, and the partial takeover of the Robe River Iron ore project was approved—even though local equity of 30% resulted (3.07).

In June 1978, the government introduced new guidelines to provide a framework for such flexibility. Majority foreign-owned firms that intend to become majority Australian-owned and controlled (i.e. "naturalized companies") can now be eligible for "naturalizing" status. This gives them many of the benefits that Australian-owned companies have in terms of new investments and expansions and in setting up joint ventures in Australia.

To qualify as a naturalizing company, a firm must have at least 25% local equity, a majority of Australians on its board, and a public commitment to reach at least 51% local ownership. Although the company must report regularly to the FIRB on its progress toward majority Australian ownership, no specific timetable for naturalization is required.

Under the scheme, a naturalizing company would be able to undertake new projects in mining (except in uranium), whether by itself or in conjunction with a local firm or another naturalized or naturalizing company. It would not be able to join in a new project with a wholly foreign-owned corporation, however, since that would further dilute the level of local ownership in the project.

**3.05 Building and related permits.** Permits for the erection of new buildings or for the alteration of existing ones must be obtained from local city councils before operations begin, and plans must be submitted for approval. State governments lay down general building requirements to be incorporated into local government statutes, and these are administered by local councils in conjunction with their individual requirements, to which all buildings must conform.

**3.06 Acquisition of real estate.** Acquisitions of land and real estate by foreigners must normally be approved by the FIRB under the foreign investment approval process (3.02), except those by pension funds, by foreign-controlled charities or by foreign-owned companies when the property would be used as residences for employees. Under the recent

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relaxation of investment guidelines (3.01), acquisitions of land and real estate worth less than A\$250,000 need no prior authorization. Foreign investment in real estate of a speculative nature is discouraged (3.03).

**3.07 Acquisitions and takeovers.** Government approval is required for bids by a single foreign company to buy 15% or more equity in an Australian enterprise and for any acquisition of equity by foreign interests that would raise total foreign ownership to 40% or more (unless total assets are under A\$2 million, in which case the takeover is normally permitted). In practice, most proposals likely to result in a change in control are submitted for approval.

While acquisitions by foreigners of substantial shareholdings in companies when the acquisitions do not change the ultimate ownership and control of the acquired firm are currently scrutinized, the government has proposed amending the rules, so that such proposed takeovers would not require notification.

In 1972, the outgoing government enacted interim legislation to screen takeovers by foreign firms. The Foreign Takeovers Act (FTA) law was administered by the Treasury Department's Foreign Takeovers Committee (FTC) and empowered the Treasurer to prohibit a takeover if he was convinced it would be contrary to the national interest. He also had the power to limit the equity a particular foreign investor or group of foreign investors could have in an Australian company.

The FTA was replaced by the Companies (Foreign Takeovers) Act of 1975, which was similar to the FTA but administered by an interdepartmental Foreign Investment Advisory Committee. However, since April 1976, takeover legislation has been administered by the FIRB (3.02) under administrative guidelines.

The Companies (Foreign Takeovers) Act differs from the 1972 FTA in the following ways: (1) it regulates foreign acquisitions of assets (including mineral rights), as well as shares, (2) it treats transactions between foreigners in the same way as those between Australians, (3) it sets the rules on foreign representation on boards of directors and management boards and (4) it requires that the Australian authorities be notified of changes in control of overseas businesses that have 50% or more of their assets in Australia or whose assets in Australia amount to more than A\$3 million. The last rule obliged many international companies to report changes in their head office management structures to Canberra. The merger between Utah Development and General Electric (both of the US) is one example.

The effect of (1) and (2) above was to block off two loopholes used to circumvent the 1972 law. The first was to acquire (or lease) the assets of an Australian company, as distinct from the company itself. The other was to acquire a company that was already foreign-owned.

The basic criterion for approving a foreign takeover is "whether it would lead to net economic benefits in relation to such matters as production, price, quality and range of products and services, efficiency and technological change, which would be sufficient to justify the increased degree of foreign control of the particular industry that would result from the takeover."

Because foreign investors planning a takeover or merger no longer obtain automatic approval from the Trade Practices Commission upon approval from the FIRB, they are advised to submit applications to both simultaneously to avoid unnecessary delays—see 4.03. (Any merger involving a business with a turnover of less than A\$3 million, however, is not subject to approval by the Trade Practices Commission.)

Experience with takeover legislation since 1972 shows that the FIRB has been quite liberal in granting approvals for takeovers. Only a small percentage of proposed takeovers have been turned down.

The first such rejection concerned Pegler-Hattersley (PH) of the UK and M.B. John and Hattersley (MBJH), a manufacturer of pressure valves. PH proposed raising its existing 21% equity in MBJH to 61%, with the reasoning that the increase could contribute to expanding PH's exports. The takeover was barred on the grounds that MBJH was the only Australian-controlled firm left in its industry.

In one case, the FTC barred acquisition in a high-technology industry. 3M of the US tried to acquire Teletronics Pty Ltd, a bio-engineering firm with expertise in cardiac machines. The Australian board backed the 3M bid because it was trying to expand exports to the US and the EEC. The FTC, however, decided that the takeover would not be in Australia's best interests.

The FTC also vetoed a proposal by Gillette of the US to buy the entire equity of Sunoroid Pty Ltd, a sunglasses manufacturer, and its holding company, Sun-Art Pty Ltd. Gillette had hoped to market Sunoroid products throughout its worldwide distribution system and to expand the capital base of the company. The decision was subsequently reversed, and Gillette was allowed to buy a majority shareholding.

Mitsui is another foreign investor given thumbs down by the FTC. It sought equity in Buchanan Borehold Collieries Pty Ltd, but was rejected, primarily because natural resources are being carefully guarded by the government.

Before deciding on whether to approve or reject an application for an acquisition, the FIRB may freeze a takeover bid. It need not reveal its reasons for imposing the freeze or for subsequently approving or rejecting the bid. The FIRB has done so in several cases. In recent takeover proposals involving coal projects, the FIRB froze bids by Shell to purchase a 37% stake in the New South Wales company Austen & Butta, by Conzinc Rio Tinto for a 50%

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averse to such nationalization at present.

British Columbia and Quebec have taken over major electric power utilities with full compensation at market prices to shareholders. The Saskatchewan government has announced its intention to nationalize half the province's potash industry; acquisitions will be made at fair market prices.

Shortly after the Parti Quebecois came to power in November 1976, it announced that it would seek to ensure provincial control over the asbestos industry and basic forestry resources (but not the pulp and paper industry). In the asbestos field, the government is attempting to acquire control over Asbestos Corp, 54.6%-owned by General Dynamics of the US (against the company's wishes). When the provincial government and the firm failed to come to an agreement over the purchase price, the government introduced a bill in mid-December 1978 to give it power to expropriate the Quebec assets of Asbestos Corp. It is unclear whether any other sectors will be affected by similar nationalization moves, although the government has denied any intention to take over other industries.

The acquisitions made and contemplated by the CDC (see 2.02) are being made at market prices.

### 3.00 ORGANIZING

**3.01 General.** The Foreign Investment Review Act, passed in December 1973, provides for a federal screening agency with authority to review foreign acquisitions of Canadian firms (see 3.07) and direct investment and expansion into new areas by foreign concerns (3.02). The first phase of the act, involving foreign takeovers of medium and large-sized Canadian enterprises, came into force in April 1974. The second stage calls for government review of the establishment of new businesses by foreigners who either are not already operating in Canada, or who do not have a business in Canada to which the new enterprise is related. This phase came into force Oct. 15, 1975. In March 1977, regulations simplifying the application process and an amendment to the related businesses guidelines were announced (3.02).

The high percentage of applications approved suggests that the government has been fairly liberal in approving new foreign investments and acquisitions. Since the implementation of the first phase, from April 1974 to August 25, 1978, 772 applications for acquisitions have been decided: 694 were approved and 78 disallowed. Of 604 resolved applications for new businesses between October 1975 and August 25, 1978, 566 were allowed and 38 disallowed.

Application for incentives must be made separately to the federal government (DREE) or any of the provincial development agencies (10.00).

**3.02 Basic approval procedure for new investments and expansions.** As of Oct. 15, 1975, the establishment of a new business in Canada by foreigners who either are not already operating in Canada, or who are not involved in an enterprise to which the new business is related, is subject to screening by the Foreign Investment Review Agency (FIRA). Detailed information about the new investment must be submitted to FIRA, Ottawa, Canada, K1A 0H5, on forms obtainable from the agency. After review, the application is referred to the Minister of Industry, Trade and Commerce for cabinet approval. If the applicant receives no notice within 60 days of receipt of the application by FIRA, the application can be considered approved.

Regulations announced in spring 1977 provide that companies proposing new investments or takeovers involving less than C\$2 million in gross assets and fewer than 100 employees can take advantage of a speedier review: information on such investments can be provided in summary form, and the minister expects to dispose of the application within 10 clear days. If approval is withheld—based on the summary application—the applicant may provide FIRA with any additional information requested, and the proposal will be assessed through normal channels. The time required to review these smaller investments has averaged 15 days since the new procedure took effect, while those subject to the longer review have taken an average of 85 days to process.

For all investments, the final decision of the cabinet depends on whether the new investment is of "significant benefit" to Canada, based on five criteria:

- (1) The effect on the level and nature of economic activity in Canada, including the effect on employment, resource processing, the use of products and services and exports;
- (2) The degree and significance of participation by Canadians in the business enterprise and in the industrial sector to which it belongs;
- (3) The effect on Canadian productivity, industrial efficiency, technological development, product innovation and product variety;
- (4) The effect on competition within Canada;
- (5) The compatibility of the investment with national industrial and economic policies, taking into consideration industrial and economic objectives enunciated by any province likely to be significantly affected by the investment.

In line with the government's new policy to promote R&D activity in Canada announced in early 1978, FIRA is emphasizing R&D commitments in the assessment process of foreign takeover and investment proposals.

Nonresident or "ineligible" investors are defined as persons who are neither Canadian citizens nor landed immigrants, as well as Canadian citizens not ordinarily resident in Canada, and landed immigrants resident in Canada

for more than one year after eligibility for Canadian citizenship. (Eligibility usually requires a three-year residency.) Corporations are presumed "ineligible" if 25% (in the case of public corporations) or 40% or more (in the case of private corporations) of the voting rights are owned by "ineligible" persons. If 5% or more of the voting rights of a public or private corporation are owned by any one "ineligible" person, the corporation is also presumed "ineligible." In addition, a foreign government, public agency or other political entity is treated as an ineligible investor. The presumption of ineligibility may be rebutted, however, and advance rulings may be obtained from the Minister of Industry, Trade and Commerce.

As mentioned above, approval by FIRA for expansions into a new business "unrelated" to that already carried on by a foreign-owned firm operating in Canada has been necessary since Oct. 15, 1975. While the legislation itself does not define "related" business, the government has issued guidelines identifying diversifications by foreign-controlled companies in Canada that are exempt from review. These include new businesses established for: backward or forward vertical integration from raw materials to distribution; substitution of an old product line with a new one; provision of new goods using essentially the same technology and production processes as the established business; and marketing new products resulting from R&D carried on in Canada. Also exempt from review would be a new business in the same industrial classification as the old.

In 1977, new amendments to the government guidelines on "related business" were announced that allow companies importing or distributing a foreign affiliate's products in Canada to expand into the manufacture or assembly of those products without prior FIRA approval. The items must be "proprietary" or "readily identifiable" goods ordinarily recognized as the products of that corporation and distinguishable from those of other corporations.

3.03 Activities not open to foreign capital. The new Canada Business Corporations Act contains no restrictions on ownership by foreigners, but it requires that a majority of the directors of a federally incorporated company be resident Canadians (see 3.10). However, the Bank Act limits nonresident ownership in Canadian chartered banks to 25% of the voting stock (10% by any single nonresident). To prevent the takeover of Canadian-controlled companies, these limits are also imposed on federally chartered trust, loan, life insurance and sales finance companies, although the limitations do not apply if such firms are being newly established. In May 1978, amendments to the Bank Act were introduced in Parliament that would allow foreign banks to operate in Canada with full banking powers, subject to certain limitations on size. Under the proposals, which are not likely to become effective before mid-1979, foreign banks may set up subsidi-

aries in Canada, but assets for each subsidiary will be limited to C\$500 million. Total assets of all foreign banks will also be limited, and the banks will be able to operate a maximum of five Canadian branches.

Foreigners also are limited to 20% of the voting stock and 60% of the total capital in broadcasting companies (including television). Other laws restrict the amount of foreign equity in newspapers, airlines, fishing, coastal shipping companies, sales finance and consumer loan companies.

In summer 1978, proposed legislation was introduced that would require uranium-producing companies to be 67% Canadian-owned, although foreign equity ownership may be increased to 50% if Canadian control can be ensured. At present, all of Canada's uranium producers either can pass the Canadian-controlled test or would be covered by exceptions in the legislation. The law would formalize policies in effect since 1970.

In 1976, the government announced an energy policy requiring 25% Canadian participation in any commercial oil or gas discoveries in the Yukon, Northwest Territories and offshore areas. This policy is embodied in the proposed Canada Oil and Gas Act. It is seeking 50% Canadian ownership (2.02). In 1971, Ontario limited foreign ownership of brokerage houses to 10% for individuals and 25% for a group of foreign investors.

3.04 Limitations on foreign equity. There are legal restrictions on the percentage of foreign equity in a number of sectors (see 3.03 above); however, no overall foreign equity limit applies.

3.05 Building and related permits. Building permits are issued by municipalities. Environmental considerations are taken into account, and additional permits or certificates of approval may be required from the Ministry of Environment in a particular province.

3.06 Acquisition of real estate. No federal restrictions apply to the ownership of real estate by foreign-owned companies. However, one province—Prince Edward Island—controls nonresident (including Canadians residing in other provinces) ownership of land. Nonresidents and nonresident corporations (defined as those whose management or owners reside outside the province—even if the company is incorporated in Prince Edward Island) must obtain approval for the purchase of 10 or more acres of land or 330 or more feet of waterfront land. Alberta, Saskatchewan and other provinces also limit nonresident acquisition of certain types of land (e.g. agricultural). In addition, some provinces have disclosure requirements on land purchases.

In early 1974, Ontario imposed a land transfer tax that discriminates against acquisitions by foreigners, and Quebec passed similar legislation in 1975 (8.15). Foreign purchases of real estate considered business acquisitions may be subject to review under the Foreign Investment Review Act, depend-

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ing on the nature, size and use to which the property will be put (e.g. earning rents on a significant scale), as well as other factors.

**3.07 Acquisitions and takeovers.** In April 1974, FIRA began screening all nonresident (3.02) acquisitions leading to control of Canadian firms with assets over C\$250,000 or gross revenues over C\$3 million. Control is deemed to have been acquired when 50% of the voting shares of public or private companies is obtained. In addition, the act presumes that control is acquired if a purchase involves: (1) 5% or more of the shares of a public company, or (2) 20% or more of the shares of a private firm. These presumptions may, however, be rebutted.

Since Oct. 15, 1975, the agency has had the authority to review all acquisitions by "ineligible" firms not already doing business in the country, regardless of the size of the Canadian concern to be acquired. Furthermore, foreign firms already doing business in Canada can acquire without the agency's approval only small firms (i.e. assets less than C\$250,000 or gross revenues less than C\$3 million) carrying on a related business.

The same procedures and criteria applicable to review of a new foreign direct investment apply to acquisitions (3.02). Average processing time for firms using the abbreviated format for small business cases is fifteen days; on occasion, a case may take three or four months of processing and substantial amounts of high-level management time if the acquisition is large and complicated. The major criterion for government approval of an acquisition by a foreign-owned company is the "significant benefit" it will bring to Canada. While the benefits, as listed in the application that must be submitted to FIRA for a proposed acquisition, are numerous and varied, company experience indicates that Canada is primarily looking for: (1) increased jobs, (2) a substantial number of Canadians in management and on the board of the acquired company, (3) improvement of existing facilities and/or expansion, (4) increased R&D in Canada, (5) local purchasing, (6) expanded exports, (7) Canadian participation in ownership and (8) reinvestment of earnings.

The provincial governments may also play a role in the final decision to allow a takeover bid. In the review process, provinces significantly affected by a proposal are consulted and their views taken into account in the assessment of significant benefit. After FIRA's rejection in November 1974 of its proposal to acquire J.H. Corbeil, a small Quebec manufacturer of schoolbus bodies, the Blue Bird Bus Co of the US continued negotiations with provincial authorities and agreed to let Quebec take a minority interest in the target company. In return, Quebec dropped its original opposition to the takeover, which had influenced FIRA's decision, and the federal cabinet allowed the acquisition.

Usually, FIRA does not state precise reasons for rejecting

a takeover bid, other than that it would not be of significant benefit to Canada. Some 90% of acquisition proposals and 94% of new business proposals have been judged as bringing significant benefit to Canada. While no clear pattern emerges in FIRA's rejection policy, when targeted takeover companies have had Canadian public shareholders, applications for acquisition have sometimes been refused, indicating that, in such situations, establishing "significant benefit" may be more difficult. Celanese Canada Ltd was not allowed to acquire Westmills Carpets Ltd, whose shares are almost wholly Canadian-owned. Similarly, a subsidiary of the UK's Bowater Corp was denied permission to acquire Lacroix Inc of Quebec, a publicly traded company engaged in the wholesaling and retailing of hardware and plumbing supplies. However, if other benefits of an acquisition by foreigners outweighed the reduction in Canadian ownership, a takeover would be allowed.

Since December 1970, Canada's stock exchanges in Toronto, Montreal and Vancouver have barred foreign takeovers of member firms. In 1974, the Ontario Securities Commission blocked the takeover of Du Pont Glare Forgan Canada, the Ontario subsidiary of the US firm, by another US firm, Pains, Webber, Jackson & Curtis.

**3.08 Local-content requirements.** None exist; however, vehicle manufacturers must meet various Canadian-content requirements based on the value added to qualify for tariff rebates on imported components under the terms of the US-Canada auto pact (13.01).

**3.09 Mandatory memberships.** None.

**3.10 Establishing a local company.** Canadian companies may be incorporated under the federal Canada Business Corporations Act or any one of the 10 provincial acts (but incorporations in banking and telecommunications require a special act of Parliament). The federal and provincial laws are similar enough that there is no major legal reason to incorporate under federal rather than provincial legislation. The decision depends on the company. Provincial incorporation may be desirable if a firm will be active chiefly in one province and will own substantial real estate. Federal incorporation ensures that a company can exercise the same powers in all provinces without discrimination, subject to provincial legislation. Most foreign-owned firms are incorporated in Ontario.

The Canada Business Corporations Act became effective Dec. 15, 1975 (see box on p. 11 for provisions). All federally incorporated companies have until Dec. 15, 1980 to apply for a "continuance" certificate, or to bring themselves into compliance with the new provisions; otherwise, they will be automatically dissolved.

The legislation was generally designed to strengthen shareholders' rights, define a code of ethics for directors, simplify incorporation procedures, improve standards of

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(Handelsministeriet, 12 Slotsholmsgade, 1216 Copenhagen K).

1.10 Other BI sources of information. Further information on doing business in Denmark can be found in BI's weekly newsletter *Business Europe*. In addition, BI's research departments in New York, London and Hong Kong are prepared to handle individually tailored research on topics of special interest to *ILT* readers. Such research is performed for a fee, subject to prior cost estimate.

## 2.00 STATE ROLE IN INDUSTRY

2.01 General. The government's main role in industry is to secure the orderly functioning of the capital market and to provide capital for investment where the public interest is at stake (e.g. in regional development) and for which private funds are insufficient. Although the state's participation in business activities has been expanding in recent years, it does not conflict with private business: it is concentrated mainly in projects beyond the scope of Danish private enterprise.

Denmark has never exhibited a strong inclination toward state ownership of industry. Even under Social Democratic governments, which have expressed desire for tighter controls from time to time, no trend toward state ownership has developed, and attempts to press in that direction have failed. In fact, if any trend is discernible, it may be toward less—not more—state ownership. In the past, for example, the state has sold off plants that produced uniforms, munitions and bread for the armed forces.

While the Danish government has occasionally bailed out ailing major companies to preserve jobs, it is reluctant to do so. One major rescue operation was undertaken in 1978, when the government took Dkr108 million in equity in the steelworks Det Danske Staalvalseværk. When Danish shipyards demanded help during the international shipping crisis, the state only sped up its orders for coast guard ships. The government also has recently declined to help even when the public has been in favor of intervention; for example, an ailing ferry line between Sealand and Jutland was allowed to close.

2.02 State-owned industry. The state has a monopoly or a majority interest in the railways, airports and communications media (e.g. radio and television). Most of the country's power stations are owned and run by local governments. The government also holds equity in Det Danske Staalvalseværk (2.01).

The state has authority over all natural resources. However, they may be exploited by the private sector on concession. For example, private firms were drilling for oil in the North Sea. Most oil companies returned their licenses when exploration results were unsuccessful, and now that some oil and gas have been found, the government has

decided to take over and distribute the gas through a state-owned company, Dansk Olie & Naturgas.

2.03 Nationalization policy. No nationalization law is on the books, and no company has ever been nationalized. Proposals to nationalize pharmaceutical distribution have been shelved for the time being, and indications are that the government would prefer to leave that function to private producers.

The constitution contains specific rules on expropriation, stating that it can take place only if (1) the general interest of the public so requires, (2) a special law is enacted and (3) full compensation is paid.

## 3.00 ORGANIZING

3.01 General. Foreign firms must obtain a number of approvals and permits, many of which are fairly routine, to invest in Denmark. Among them are an investment permit from the Ministry of Commerce (which includes permission for importing the required capital); approval from the Ministry of Justice to buy a site or building for the investment (3.02 and 3.06); a permit from local municipalities covering sanitation and fire regulations; and clearance from local authorities for any investment that might cause pollution (3.05). Foreign-owned companies must also obtain approval from the Regional Development Board if they are seeking incentives for locating in a development area (10.00); must sign up with the Registrar of Corporations when incorporating and undergo scrutiny by the Registrar when bringing capital into the country in noncash forms (3.10); and must obtain work and residence permits for non-EEC, non-Nordic workers (12.07).

3.02 Basic approval procedure for new investments and expansions. The primary approval needed is the investment permit issued by the Ministry of Commerce, required for investments of more than Dkr1 million per calendar year. It is given fairly liberally and guarantees the investor unlimited import of needed capital. Free transfer of profits and repatriation of capital are generally granted by the foreign-exchange authorities (see also 7.00). Once the investment permit has been obtained, a foreign investor can readily obtain approval from the Ministry of Justice to buy a site or building. Approvals usually are given in a matter of weeks. (Real estate purchase approvals are rarely needed, since an affiliate set up as a Danish resident company does not need such approval.)

Special laws apply in the oil and mining sectors, in which private firms may operate only on a concession basis (2.02).

3.03 Activities not open to foreign capital. No manufacturing industries are closed to foreign investment, although the government favors investment that provides new technology and know-how.

large share in the manufacture of tractors and in oil producing and refining. The three largest commercial banks (Banque Nationale de Paris, Societe Generale and Credit Lyonnais), the largest advertising agency and the three principal insurance companies are owned by the state. The box on p. 6 lists the largest state-owned manufacturing concerns.

Many state firms are *societes d'economie mixte*, companies in which the state is only one shareholder among others, either majority or minority. In most, however, the state appoints the managers (usually civil servants) and actually runs the operation.

The state also runs a number of financial operations that can grant small-scale credits to companies that invest in plant or equipment to improve productivity, decentralize industry or create jobs in economically depressed areas. They include: Fonds de Developpement Economique et Social (FDES), whose loans of Ffr4.2 billion in 1978 went mostly to state-owned companies (but also to some private firms) at interest rates two points below going market rates, for 3-12 years; Credit National, which furnishes state guarantees to private firms in addition to its usual industrial loan business (11.03); Caisse Centrale de Credit Hotelier, Commercial et Industriel, which makes loans to smaller companies; and regional liquidity committees (set up in 1974) to aid firms with temporary liquidity problems, either with financial help or by stretching tax payments.

The Institut de Developpement Industriel (IDI), established in 1971 to provide financial aid to weak industrial sectors, also can affect business. IDI provides both debt and equity financing, in principle on a temporary basis. It cooperates with other branches of the government in pursuing common aims. For example, it may use its contacts to find a French purchaser for a company negotiating to sell out to foreign interests, if the government wishes to maintain French ownership.

2.03 Nationalization policy. The French constitution states that any company having "the character of a national public service or a de facto monopoly must become collective property," and specifically sets out the legal procedures for nationalization. Although the French constitution permits nationalizations if they are judged to be desirable for the national economy, no outright government takeovers have taken place since the immediate postwar era. Instead, the government has applied pressure and financial aid, which in two instances at least have resulted in quasi-nationalizations. When Peugeot moved to absorb ailing Citroen in December 1974, the government fostered a package deal that involved state financial aid. As a result, Citroen was forced to cede its truck division, Bertiet, to state-owned Renault. And, although the move was called "voluntary," the steel industry was for all intents and

purposes placed under state control in the government-sponsored "third plan" for steel. The state agreed to guarantee bonds issued to the public in return for the conversion into equity of government loans to the steel companies, thus giving it control of most major steel firms.

### 3.00 ORGANIZING

3.01 General. All sizable direct foreign investments in France, whether for the expansion or establishment of a company or for the purchase of a local firm, must be approved by the Ministry of the Economy (ME—before April 1978, it was the Ministry of Economy and Finance). Approval must also be obtained for incentives, which are available for manufacturing plants set up in outlying regions (10.00). Once investment approval has been obtained, foreign exchange controls are relatively light (7.01). Employees who are not EEC nationals must obtain residence and work permits (12.07).

3.02 Basic approval procedure for new investments and expansions. A foreigner wishing to make a direct investment by establishing or expanding a local firm or by acquiring more than 20% of the capital of an existing French-owned company must apply to the ME for prior approval. The application must contain full information on the investing company; full financial, legal and descriptive data on the type of investment; and information on the investment's scope and intended results (location, size, number and type of employees, expected impact on foreign trade, research activities, etc.).

In 1977, the authorities waived the requirement for prior approval of outlays for expansion of existing operations amounting to less than Ffr3 million in any one year (if 100% of the capital is imported from abroad). Acquisitions and new establishments of sole proprietorships in retail trade or certain other activities requiring less than Ffr1 million do not need prior approval.

In 1971, under pressure from EEC officials, France abolished the approval procedure for investors from other EEC countries. However, it simultaneously introduced a stipulation that such investments be approved for foreign exchange control purposes, so the situation is essentially unchanged. While the authorities are careful about rejecting investments from EEC countries, they nevertheless do so on occasion.

The ME has the final word on investment approval, but opinions are first rendered by other ministries through the Comité des Investissements Etrangers (Foreign Investments Committee), composed of representatives of the Ministries of Industry, Economy, Interior, Defense, Treasury, Foreign Trade and the Foreign Office, as well as DATAR (the agency in charge of attracting foreign investment and running the

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incentives program). Each looks at the project in light of its special interests, and a strong negative vote from any quarter may kill the application (but the reasoning behind rejections is usually not disclosed).

The government states that few new investment applications are rejected, but experience shows that authorities currently are more resistant to new plant investment that is considered to be too competitive with local industry. Approval to acquire French firms is even more difficult to obtain. Approval for new investments and expansions usually takes about two months, unless there are special circumstances. Acquisition applications take far less time to process than in the past, but delaying procedures are sometimes used to permit the government to restructure a sector or arrange a "French solution" (3.07).

Investment approval is more likely if new jobs are created (especially in depressed areas), technological know-how imported and exports stimulated. Protection of employment is increasingly important, and companies that have shut down plants or laid off part of their work forces are likely to have difficulties in obtaining approvals for new investment.

Companies that provide technology, through the establishment of either advanced manufacturing facilities or research laboratories, are also favored. For example, the authorities have welcomed National Semiconductors, Merck Sharpe & Dohme, Bendix, General Motors and various smaller (but technologically advanced) groups in electronic components.

The government has introduced new pollution controls on chemical imports and production that will affect companies' ability to introduce new products to the market (3.05), but the rules are probably no more stringent in France than in Germany and the Benelux countries. While the Environmental Ministry has recently permitted some companies to defer clean-up projects because of recessionary pressures, the government plans no permanent reversal of its antipollution policy. Under current economic circumstances, companies can expect a certain amount of flexibility on the part of authorities in enforcing pollution norms and permitting reasonable delays for antipollution investment projects.

In 1974, the government sought to increase the amount of imported capital used in foreign investment. Previously, companies were encouraged to borrow locally and the import of funds was strictly limited, but the policy was reversed because of the sharp deterioration in the balance of payments. Companies are advised to import most or all the capital needed, although the government states that, because applications are reviewed on a case-by-case basis, local borrowing may be possible.

Certain regulations apply to firms locating in the Paris area (i.e. Paris, the adjacent suburbs and the greater Paris region). Special approval is required for industrial or technical activities involving creation or expansion if the total

usable space is more than 1,500 sq meters or for office space involving more than 1,000 sq meters of existing facilities or new construction. In general, establishment of new industrial operations in the Paris area is not permitted. For those that are permitted, new installations are penalized at a rate of Ffr100-400 per sq meter for offices and Ffr25-150 per sq meter for factories. Applications should be discussed in advance with DATAR (1.09).

The petroleum industry is subject to 1928 legislation under which the government strictly controls the number of companies active in the sector on the basis of its evaluation of future demand. Only nine companies are now authorized to operate refineries, and any company wishing to enter the field would face extensive and difficult negotiations (2.01).

3.03 Activities not open to foreign capital. Foreign equity is restricted in certain fields: stockbrokerage, public utilities, highway transportation, travel agencies and life insurance (but many exceptions are granted). In certain other areas, such as banking, mutual funds and insurance (except life insurance), foreign equity is subject to special approval procedures. As mentioned above, investment in the petroleum sector is also restricted.

3.04 Limitations on foreign equity. Other than in the sectors listed in 3.03, no formal limits have been placed on the percentage of foreign equity that may be held, but in practice such restrictions may have to be negotiated case by case when a French company is acquired (3.07).

Also, the government may seek to limit foreign equity in special circumstances. For example, in the Poclain case, the US partner J.I. Case was limited to a minority participation of 40% in the French company (but was permitted to take larger shares in Poclain's foreign subsidiaries). In 1979, the UK's Lucas was limited to 49% of the equity in Ducellier, a local auto components manufacturer, although it attempted to gain 100% control (1.05). Also, in both the nuclear and computer sectors, the government forced the reduction of shareholdings by US companies for reasons of "national interest" as French know-how became less dependent on US technology (1.05).

3.05 Building and related permits. A zoning certificate (*certificat d'urbanisme*) is required, indicating the kind of construction permitted on the land in question. It is obtained from the Directeur Departemental de l'Equipelement in the pertinent district. (It is wise to obtain a favorable opinion from authorities before buying land.)

Application must then be made for a building permit. Applications, including full details on the type of construction and its intended use, must be submitted to the mayor of the locality (or the Prefect, in Paris), who then consults with the Directeur Departemental de l'Equipelement and other officials. A decision is based not only on the applicable laws and regulations, but also on architectural aspects of the

Nihombashi Hongoku-cho 1-chome, Chuo-ku, Tokyo; The American Chamber of Commerce, 2-2 Marunouchi 3-chome, Chiyoda-ku, Tokyo; Japan Federation of Economic Organizations, 0-4 Otemachi 1-chome, Chiyoda-ku, Tokyo; Finance Ministry, 3-1 Kasumigaseki, Chiyoda-ku, Tokyo; Ministry of International Trade and Industry, 1-3 Kasumigaseki, Chiyoda-ku, Tokyo; Economic Research Council, Ogura Building, 2 Shiba Kotohira-cho, Minato-ku, Tokyo; United States Trade center, 1-14, Akasaka 1-chome, Minato-ku, Tokyo.

1.10 Other BI sources of information. Further information on doing business in Japan can be found in BI's weekly newsletters, *Business Asia* and *Business International*, and in ILT's companion reference service, *Financing Foreign Operations*. In addition, BI's research departments in New York, Geneva and Hong Kong are prepared to handle individually tailored research on topics of special interest to ILT readers. Such research is performed on a fee-paying basis, subject to prior cost estimate.

## 2.00 STATE ROLE IN INDUSTRY

2.01 General. The state plays an important, although mainly regulatory, role in industry. It oversees many aspects of business and applies what is known as "administrative guidance" through various ministries, agencies and other public organizations. The Ministry of International Trade and Industry (MITI) is particularly important in this regard.

However, except for a few government monopolies (see 2.02), there is very little state ownership of industry.

2.02 State-owned industry. The government has production and sales monopolies over tobacco, salt and industrial alcohol. Both tobacco and salt are handled by the Japan Salt and Tobacco Public Corp. Industrial alcohol is made by private companies supervised by the Alcoholic Enterprises Division of MITI. Nippon Telephone and Telegraph Corp is a semiofficial body that supervises both the domestic and international services of the telephone and telegraph industries. Japan National Railways, also a semiofficial corporation, operates a large part of railway transportation. Japan Air Lines is being moved back into the private sector as the government reduces its equity share.

2.03 Nationalization policy. No industries in Japan are likely to be nationalized, and the ruling political group does not propose to expand the public sector. The Japan Socialist Party has advocated wholesale nationalization of big business, and the coal miners' union proposes nationalization of the coal industry; neither of these moves is likely.

## 3.00 ORGANIZING

3.01 General. In May 1973, Japan began to implement a new foreign investment policy under which equity and

certain other restrictions were relaxed; by May 1976, virtually complete liberalization was achieved. Foreign investment is however, subject to a validation procedure (see 3.02), and restrictions on foreign investment in a few industries still exist (3.03, 3.04). In addition, building permits must be obtained from the local authorities (3.05). Despite certain remaining restrictions, however, foreign investors now enjoy much greater freedom to invest in Japan than they have in the past, and this trend is expected to continue.

3.02 Basic approval procedure for new investments and expansions. To obtain validation under the "automatic approval" system (approval is not automatic, but companies are automatically eligible to take 100% equity in the liberalized industries), the foreign investor should apply to the Investment Control Division, Foreign Department of the Bank of Japan. The application should include all data relevant to the undertaking, including information about the joint venture partner (if applicable), the capital structure, planned production, etc. The Bank of Japan does a preliminary screening of the documents and then passes them on to the appropriate ministries, including the Ministry of Finance, MITI and any other ministries relevant to the product (e.g. health and welfare for pharmaceuticals). The application is then passed on to the Foreign Investment Council, which decides whether the investment is eligible for validation. If approved, the validation certificate is issued by the Bank of Japan.

Even under the so-called automatic system, approvals have taken four weeks or more. However, as of April 1978, the processing time has been reduced to two weeks in most cases, and only investments in certain sensitive or restricted industries are carefully scrutinized. To ensure smooth processing, companies should check with the ministry concerned before applying, to ensure that applications and communications are addressed to the proper departments.

The Fair Trade Commission (FTC) has played a more significant role in the approval process since the 1977 revision of the Antimonopoly Act. It now gives recommendations if the investment would clearly violate Japanese antitrust law. In the case of a joint venture, the FTC will review the relevant contracts even after approval has been given. The review will focus on distribution arrangements and licensing agreements (6.03). Final recommendations, which generally call for changes in the contract to meet the FTC's guidelines, usually take 60 days. They are often negotiable, however. In a few cases, the FTC has raised questions up to several years after approval has been granted.

For investment in the restricted industries (3.03), companies should consult with MITI and relevant ministries to obtain their informal agreement before applying for approval, although this is in general no longer necessary for unrestricted areas. If a company's entry into an industry

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might significantly hurt small local manufacturers, however, a foreign investor may have to make certain compromises in order to obtain approval. For example, the government may insist that foreign concerns seek an understanding with local Japanese companies in the same industry. Even then, opposition from local interests may delay investment.

An example of the type of delay a foreign firm may encounter was Dow Chemical International's plan to start soda production with its own chlorine process in 1975. Although the industry had been liberalized for 100% foreign investment, and the US firm had already received full authorization from the government to proceed, Dow met with intense opposition from the local industry. When it attempted to purchase a tract of land near a petrochemical complex in Hokkaido, Japan's northernmost island, Japanese competitors applied direct pressure to the local government, and the project was stalled. Furthermore, MITI requested Dow not to launch full production until after April 1983. However, opposition from local manufacturers has now almost entirely disappeared, and Dow has had invitations from other Japanese cities to build its soda plant.

A more recent case in which a foreign investor faced restrictions in an already liberalized industry involved a proposed joint-venture forwarding firm—Nippon Soviet Transport Co (Nisotra)—by V/O Sojuzvneshtans of the USSR with three other Japanese companies in March 1978. The project was planned to operate a containerized Siberian land bridge service, with the Soviet corporation taking a 49% stake. Japanese shipping leaders objected strongly, however, claiming that the company would monopolize the Soviet-Japanese shipping trade. Since shipping is supposedly liberalized, the Japanese government had to make a special case on grounds that the Soviet Union is not a member of the OECD (whose code of liberalization Japan is said to observe), and that Nisotra would seriously impair Japan's shipping industry. The application was turned down.

Another recent case concerned plans by Astley and Pearce of London to open a branch in Japan for foreign exchange brokerage—an area the government had earlier liberalized. Astley and Pearce approached the Bank of Japan in September 1977 with the proposal. After consultations with the appropriate authorities, it went through automatic approval procedures in April 1978. A few months earlier, however, the Japanese Short-Term Money Brokers Association had adopted the rule that foreign exchange brokers who want to begin operations in Japan must first obtain recommendations from specified Japanese and foreign banks for membership. The London broker cannot open in Japan until it receives the necessary number of recommendations, and now believes this may take a long time.

While liberalization has greatly simplified approval procedures, some companies find that an informal agreement

with officials, especially MITI, is a useful prelude to filing a formal application for approval. Normally, the Japanese partner in the joint venture contacts the appropriate official shortly after negotiations with the foreign firm have begun, even though any agreement at this stage may be only tentative. It is sometimes unadvisable to make any public move for validation without prior, unofficial assurance that an application will be sympathetically examined.

For more sensitive investments, the three-sided discussion, involving the Japanese firm, the foreign investor and government officials, may proceed until the participants agree on terms that the officials indicate are likely to meet with approval of the Foreign Investment Council. Sometimes fourth parties, such as representatives of industry groups or rival manufacturers who feel their interests may be threatened by the new venture, join the preliminary talks. MITI and other government officials are highly sensitive to pressure from these sources, and some of the "administrative guidance" given to new investors is simply a relay of restrictions demanded by domestic industry.

Preliminary negotiations can be very time-consuming. For example, when Borg-Warner formed a joint venture in 1969 with Aisin Seiki, Toyota Motor's subsidiary, for production of automatic transmissions, the preliminary negotiations took one year, and Borg-Warner had to agree to a 50-50 investment ratio (it originally sought 51%) and granting of sublicensing rights. In some cases, preliminary negotiations have taken years. Now, however, in those cases where preliminary negotiations are helpful, the time required may be less than three months. In most other instances, investments have been approved within two weeks.

In most joint ventures, Japanese authorities have recommended that directorships, including representative directors (operating executives—generally chairman, president and executive vice presidents who have the authority to sign agreements in the company's name), be apportioned so that the Japanese side has authority at least in proportion to its shareholdings. Usually, in the case of a 50-50 venture, one of the chief executives, generally the president, must be Japanese. These conditions, however, are not formalized. Furthermore, they have recently shown signs of being relaxed.

Other restrictions have also been imposed in the past as conditions of validation. Whatever the Japanese and foreign partner agree upon, MITI could make them write certain additional covenants into their agreement. These may include limitations on product line, on the scale of output and on marketing and distribution arrangements. Sometimes MITI may ask firms to delete clauses requiring the use of imported raw materials, machinery or parts, or patents and know-how. Often these restrictions are imposed in response to pressure from competing firms.

One example of MITI action is the joint venture among Showa Denko (52%), Yawata (now Nippon) Steel (18%) and Kaiser Aluminum and Chemical (30%) to make fabricated aluminum products, which included an agreement, thanks to MITI, to avoid production of lines in which small Japanese firms specialized. When Nihon Roche received a validation in 1969 for a loan to construct a new vitamin B-2 plant, it was forced to agree not to construct any new drug manufacturing facilities for three years, to sell the entire output of the new plant abroad for five years and not to seek further loans "for some time to come." In other cases, the effect of MITI interference has been that the joint venture agreement was rewritten in terms more favorable to the Japanese partner. MITI's authority to make such conditions has, however, been greatly curtailed by the liberalized investment policy.

In certain sensitive or restricted industries, even after permission for the establishment of an enterprise has been granted, officials may watch the activities of foreign subsidiaries, joint ventures and branches, in part because the foreign-owned firm may be required to use local raw materials, limit its market share, etc.

**3.03 Activities not open to foreign capital.** Foreign investment is prohibited in nuclear energy, power and light, gas supply and the manufacture of aircraft, armaments and explosives. None of these areas are ever expected to be open to foreign capital. Foreign investment in activities related to (1) agriculture (except, in most cases, cheese-making), forestry and fisheries; (2) petroleum refining and marketing; and (3) leather and leather products manufacturing is subject to case-by-case approval.

**3.04 Limitations on foreign equity.** Japan's liberalization program has been completed, and foreign investors are now able to take up 100% equity in all but the prohibited or restricted areas mentioned above (see 3.03), or in mining, in which foreign investment is limited to 50% equity.

**3.05 Building and related permits.** Permission to build must be obtained from prefectural and local authorities, who are primarily concerned with industrial zoning, planning of land use, etc. In some cases, the national government also has a say about building permits, particularly since pollution has become a popular issue. More stringent enforcement of antipollution regulations can be expected.

**3.06 Acquisition of real estate.** Foreign firms or foreign joint ventures are free to purchase land or buildings if their investment has been validated and the land and buildings are for business use. In practice, the foreign company usually negotiates the purchase of land and buildings before it has sanction to invest, and supplies this information in its investment application. The actual purchase can only be effected after the project is validated. However, it should be noted that local authorities may be in a position to block real estate purchases even when the investment has government

approval (see Dow example, 3.02).

**3.07 Acquisitions and takeovers.** The liberalization program now completed by the Japanese government has cleared the way for foreign firms to acquire control or complete ownership of existing Japanese ventures (except in non-liberalized industries—see 3.03 and 3.03), provided the takeover attempt is not against the wishes of the Japanese company's management.

In the past, firms attempting to increase their equity in joint ventures or to make outright takeovers often faced delays and obstruction, especially if the move would have affected other Japanese firms in the same industry. The attitude of the other local firms, who often joined forces in a "defense" program, was the main factor.

Although it faced no legal barrier, Procter & Gamble of the US ran into difficulties in 1974 when it tried to increase its equity from 50% to 72% in a joint venture it operated with three Japanese partners. At the time, the venture held 10% of the detergent market, and its management wanted to double capitalization in order to increase production. The joint venture found it impossible to borrow the necessary funds or to get fresh capital from two of its partners. The proposal by P&G that it would make up the shortfall and thereby raise its equity to 72% caused MITI officials to intervene, even though there was no legal obstacle to P&G majority—or even complete—ownership. The plan was finally approved in December 1974, with P&G increasing its equity share to 70%. Since then, however, the company has had almost no trouble increasing equity ownership. It now owns 100% of the equity.

Since April 1978, approval time for acquisitions has been reduced to two weeks for most cases. Applications for acquisition are examined more carefully than those for new ventures, but approvals are seldom delayed, provided the management and shareholders of the firms involved are in favor of the move.

Other foreign firms that have succeeded in making acquisitions include Burroughs Corp of the US, which increased its equity in a 50-50 joint venture with Takachio Koeki to 95% in 1975 and then to 100%; Pfizer Inc of the US, which raised its equity in a 50-50 joint venture with Taito Co to 95% in 1976; General Mills Chemicals Inc of the US, which hiked its equity to 100% in 1976; and Domain Industries of the US, which moved from a 50% to a 100% stake in 1977. More recently, Alcon Laboratories of the US increased equity ownership to 100% in a former 50-50 joint venture with Teiin; and Beiserdof of Germany upped its equity from 50% to 90% in a joint venture with Oil Paper.

**3.08 Local-content requirements.** There are no across-the-board local-content requirements for particular industries. However, use of local materials or components sometimes has been made a condition of validation of an

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investment. The Hohen-Unilever joint venture and the Nichiro-Heinz joint venture, among others, had to pledge to make maximum use of domestic raw materials. Black & Decker of the US agreed to include at least 50% local content in its 100%-owned manufacturing venture approved in 1971. While government pressure for local sourcing still exists, in some cases it has diminished in recent years.

**3.09 Mandatory memberships.** No general rules are enforced. Some joint ventures have been obliged to commit themselves to cooperate with trade or industry associations as a condition of validation. Some firms, in order to export products, have been compelled to join cartels set up to promote "orderly marketing" abroad. In one case, a consumer durables firm had to join an exporters' cartel and pay the cartel for an export quota. US firms face a dilemma because they might violate US antitrust laws on products shipped to the US.

Many trade and industry associations have semiofficial standing, since their decisions on pricing, output, etc. are

enshrined in government administrative decrees and given the force of law. In these cases, the rule is enforced not only among the associations' members, but for nonmembers operating in the industry as well.

**3.10 Establishing a local company.** The basic law governing the formation of corporations is the Commercial Code. Major forms of corporate organization in Japan include:

(1) Limited stock company (*kabushiki kaisha*, abbreviation KK), which closely resembles the US and European corporation, with liability limited by shares.

(2) Private limited company (*yugen kaisha*, abbreviation YK), which is used for smaller, family-controlled ventures, in which limitations on the transfer of shares or other restrictions on corporate management are desired. A minimum of ¥100,000 in capitalization is required, with no maximum.

Most major foreign investments in Japan take the limited stock company (KK) form (see box below for details on requirements of the KK). There are other, more complicated features of operating through a KK, however. When payment

#### REQUIREMENTS OF KK IN JAPAN

**Capital.** No minimum or maximum, but at least 25% of authorized capital must be subscribed. Companies must place in a legal reserve a sum equal to at least 10% of cash dividends each year, until the reserve reaches 25% of paid-in capital.

**Founders, shareholders.** Minimum seven, who may be natural or juridical persons, and need not be Japanese citizens or residents. Founders must sign the articles of incorporation, but they may also be signed by residents holding the power of attorney of overseas interests. Shares may be transferred from original subscribers immediately after incorporation, so that lawyers and other persons may be used as founders.

**Directors.** At least three, no more than 20. No written nationality or residence requirements, but one director must be a representative director, participating directly in management and capable of building the company.

**Management.** No written nationality or residence requirements.\*

**Labor.** There are no requirements for labor representation in management or on the board.

**Disclosure.** A report on the formation of a new corporation must be made to the tax authorities within two months of incorporation, and thereafter annually. This report is usually prepared and submitted by a licensed accountant or attorney and signed by a representative director. Similar organizational reports must be filed with local tax authorities within a week of incorporation, but this deadline is usually waived by the authorities. All shareholders must by law receive an annual report containing a balance sheet and income statement. A proposed amendment to the commercial code would empower auditors to examine company accounts more closely.

**Taxes and fees on incorporation.** A registration tax of 0.7%

of capital is imposed and subsequent increases of capital would also be subject to the 0.7% tax. Notary fees, bank commissions and lawyers' fees vary with the size of the company.

**Types of shares.** Virtually all types of shares may be used, but preferred nonvoting shares may not constitute more than 25% of all issued shares. The commercial law allows directors to veto transfers of shares. In most cases, Japanese corporations issue standard, registered, full voting shares, with no preference, conversion or cumulative provisions.

**Control.** Shareholder and director meetings need not be held in Japan. At least one ordinary general meeting of shareholders must be held annually, and this must be within two months of the close of the corporation's financial year. Extraordinary meetings of shareholders may be convened upon demand by shareholders holding at least 3% of total issued stock, providing these shares have been held continuously for six months. A quorum at a shareholders' meeting is 50% of the issued shares, and resolutions are adopted by majority vote of the shareholders present. The quorum requirement may be waived in the articles of association for ordinary resolutions, although the minimum quorum for electing directors is one third of the shareholders. Proxies may be issued, but must be made out separately for each meeting. For certain major decisions, the commercial code provides that there must be a two-thirds majority of shareholders. These decisions include changes in the articles of incorporation, the transfer of the whole or a very important part of the business of the company, and the acquisition of another company. Minorities have the right to have their shares redeemed at fair value under certain circumstances. A group holding no less than 10% of issued shares has the right to inspect the corporation's books and accounts and to make copies of them.

\* MITI would generally recommend that joint ventures between Japanese and foreign firms give the Japanese side directorships at least in proportion to their shareholdings. However, this is not obligatory for approval.

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stated that it will become actively involved in any sector in which it determines private initiative is lacking means that other sectors will come within the public sphere.

### 3.00 ORGANIZING

**3.01 General.** Foreign investment is primarily governed by Legislative Decree 2687 of October 1953, which permits the import of foreign capital for productive investments, i.e. those designed to promote national production or otherwise contribute to the development of the Greek economy. Foreign capital may be imported in the form of cash, equipment or intangible assets, and is afforded the same protection whether it is imported as foreign exchange, machinery and materials, inventions, know-how or patents and trademarks (6.00). Purchase of stock in an existing Greek company that does not result in expansion or modernization is not considered a productive investment.

Under Law 4171 of 1961 (as amended in July 1975 by Law 159), any firm (foreign or local) investing more than Dr150 million after Sept. 9, 1975 in a project that reduces imports or unemployment or increases exports may request an agreement with the government guaranteeing special privileges (10.00). Emergency Law 89 (1967) governs the establishment of offices or regional headquarters to coordinate activities abroad and offers tax incentives for such operations (8.13).

Enterprises established under LD2687 may show their capital and keep their books and financial statements in the currency of investment and language of origin. Furthermore, LD2687 provides the following guarantees for foreign investment: protection against expropriation (2.03); irrevocability of instruments of approval; repatriation of capital and remittance of earnings (7.00); and preferential tax treatment for export or import-substitution industries (10.00). The number of foreign managers or technical personnel is not limited.

While LD2687 makes excellent theoretical guarantees, the government has revised 15 contracts made under the law during the seven years of military dictatorship (1.05); the revision procedure was spelled out in the June 1975 constitution.

All firms established with foreign capital may apply for "most-favored-industry" treatment. Firms benefiting from that status are entitled to terms as favorable as those extended to all other such enterprises in Greece. Should a foreign company receive more advantageous terms than those granted to another corporation previously established, the latter may apply to the Ministry of Coordination and have similar terms extended to it.

**3.02** Basic approval procedure for new investments and expansions. To obtain approval for investing in Greece, an

application must be filed with the Ministry of Coordination (MC), which refers it to the Investments Committee, on which the MC, the Ministry of Finance and the Bank of Greece are represented. The Investments Committee acts in an advisory capacity to the MC. The same procedure applies to expansions financed with foreign capital.

In 1975, the government took steps to simplify and speed up the complicated procedures required for implementation of investments, whether by foreign capital or by major Greek investors. In the past, delays (of up to two years in some cases) frequently led to uncertainty and even to the abandonment of projects by foreign investors.

Time limits have now been set within which such permits must be granted or denied. Feasibility permits for the erection of industrial installations are now handled by the MC. A 15-day limit applies for scrutiny of the data submitted by applicants and for the completion of additional data required by the authorities. The ministry then has two months in which to ask for and receive advice from other relevant ministries. The permit must then be issued by the Ministry of Industry and Energy within one month. Formerly, all these procedures took much longer. The industrial installation permit for foreign investors establishing under LD2687 is granted by the MC in its package investment permit.

Approval agreements outline the kind of investment, its legal and financial form, the manner of determining the value of capital, foreign exchange needs for imports, the nature of the enterprise, transfer of profits and interest abroad, arbitration procedures, employment of foreign personnel and distribution of any net assets remaining after repatriation of the foreign capital invested. They also set down the time within which the proposed investment must be completed.

Greece primarily seeks foreign investors to develop new products, capture new markets, expand exports, increase productivity, move into outlying regions, introduce high technology (such as electronics) and develop agriculture and mining. It is also pushing its role as a supply point for both Middle Eastern and European markets.

The government has indicated a number of industries in which foreign investment would be especially desirable (see box on p. 7). A commitment to export a certain portion of production is often a prerequisite for obtaining approval for a foreign investment. Similarly, investment approval may sometimes be conditional on the amount of local content used (3.03).

Oil operations are governed by the Oil Law (3948/1959), which distinguishes preliminary research, obligatory exploration and exploitation. Upon approval by the Ministry of Industry and Energy (Directorate of State Mines) and payment of fees, licenses are granted for preliminary research (six months) and obligatory exploration (minimum five

Source: Simmonds (ed.)

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(BIICL, 1977) pp 195-209

TABLE 1

PATTERNS OF FOREIGN DIRECT INVESTMENT  
REGULATION IN SELECTED DEVELOPING COUNTRIES

Parameter	Pattern I (mostly Asia - excluding India - Africa, CACM)	Pattern II (mostly Middle East, North Africa)	Pattern III (mostly South America)
I. Admini- stration	Case-by-case screening largely restri- cted to award of <u>incentives</u> (non-discrimi- natory)	Case-by-case screening at establishment (degree of discrimination varies)	Separate admi- nistration for foreign invest- ment screening at establish- ment
II. Invest- ment	Emphasis on functional contributions of investment. Little indica-	Emphasis on functional contributions and conditions of investment	Criteria formu- lated for cost/ benefit analysis, often extensive Includes social

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Parameter	Pattern I (mostly Asia - excluding India - Africa, CACM )	Pattern II (mostly Middle East, North Africa)	Pattern III (mostly South America)
II. Invest- ment (contd)	tion of exten- sive cost/ benefit analy- sis Screening largely for award of in- centives	Little indica- tion of exten- sive cost/ benefit analy- sis	cost criteria in some cases
III. Owner- ship	Few requirements. Few sectors closed to for- eign investment	Joint ventures prevalent	Strict regula- tions on owner- ship and invest- ment (exc. Brazil). A large number of closed sector:
IV. Finance	Few repatria- tion limita- tions	Few repatria- tion limita- tions	Repatriation ceilings in most areas (exc. Mexico). Screen- ing of foreign loans. Special control of pay- ments to parent company
V. Employ- ment and train- ing	Announced indigeniza- tion policies but little headway in practice	Local quotas for work force. Few local quotas for management	Specific across- the-board indigenization requirements
VI. Techno- logy trans- fer	No controls	No controls	Screening and registration of all technology imported

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Parameter	Pattern I (mostly Asia - excluding India - Africa, CACM)	Pattern II (mostly Middle East, North Africa)	Pattern III (mostly South America)
VII. Investment incentives	Long-term tax incentives for establishment	Establishment incentives limited to five years - in most cases non- renewable	Incentives tied to specific contributions, but incentives may be curtailed for foreign- owned firms
VIII. Inter- national dispute settle- ment	Adherence to international dispute regula- tion. Regional investment regulation: UNEAC, OCAM, EAC, OAMP	Same as Pattern I Regional invest- ment regulation: Arab Economic Union	Local adjudica- tion and region- al harmonization of investment regulation: ANCOM, CACM

## III. SELECTED DEVELOPED MARKET ECONOMY COUNTRIES

## A. NATIONAL LEGISLATION AND REGULATIONS

Introduction

The study of the foreign investment legislation and regulations of developed market economy countries is based on a sample of 12 countries,<sup>1</sup> namely Australia, Austria, Belgium-Luxembourg, Canada, France, Federal Republic of Germany, Italy, Japan, the Netherlands, Switzerland, the United Kingdom and the United States. These countries together account for about 90 per cent of the combined gross domestic product of the developed market economies. In addition to the review of national legislations, measures for the liberalization of international investment within the framework of the Organisation for Economic Co-operation and Development and the European Communities were also

1. The Belgo-Luxembourg Economic Union is treated here as a single entity.

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examined.

Since most developed countries do not possess legislation and regulations dealing specifically with transnational corporations as such and few specific regulations dealing with inward foreign investment in general, the survey in this section necessarily includes numerous related materials which, though incomplete, throw light on the subject.

Nature of the legislation

The approach to foreign investment of the countries concerned is, by and large, based on an economic philosophy which favours the free international movement of capital and equal treatment under the law of domestic enterprises and those established by foreign investors. Non-discrimination extends to investments by transnational corporations, which are treated like any other foreign investments. Although this approach is discernible in their legislation, some exceptions and reservations are also noticeable.

In developed market economy countries, although legislation concerning foreign investment and the conduct of foreign enterprises is infrequent, national laws regulating international transactions and various aspects of domestic economic activity usually include certain provisions which apply specifically to foreign investment or foreign enterprises. Under exchange control laws, for example, inward foreign investment usually requires prior authorization, although it is frequently merely a formality.

In some countries, investments involving the acquisition of a participation or controlling interest in a domestic company, or its outright purchase, require special authorization. Virtually all countries restrict or prohibit foreign investment in certain reserved sectors or specified activities. As far as the establishment and operation of foreign enterprises are concerned, special regulations exist primarily in one or several of the following fields: establishment of branches of foreign companies; domestic and foreign borrowing by foreign enterprises; local representation on boards of directors of locally incorporated enterprises. Furthermore, although basic tax laws apply equally to foreign and domestic enterprises, regulations concerning the determination of the locally taxable income of foreign enterprises are generally included in the laws.

The only countries among those studied which have

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enacted separate laws regulating foreign investment are Australia, Canada and Japan. In Australia, the Companies (Foreign Takeovers) Act is designed to control the foreign acquisition of ownership or control of Australian companies. New foreign investment is not covered by this Act. The Canadian Foreign Investment Review Act of 1974 has a broader scope, providing for the regulation of new foreign investments as well as takeovers. Its stated purpose is "to establish a means by which measures may be taken under the authority of Parliament to ensure that, in so far as practicable ... control of Canadian enterprises may be acquired by foreigners, and new business established by foreigners .. only if it has been assessed that the acquisition of the control ... or the establishment of those new businesses ... is likely to be of significant benefit to Canada ..." (article 2 of the Act).

In Japan, the Foreign Investment Law, which dates back to 1950, has been repeatedly amended. At the present time, foreign investment is governed primarily by the 1967 Cabinet Decision concerning the Liberalization of Foreign Investment in Japan. A multiplicity of regulations and a variety of restrictions are still in force.

Entry and establishment

In most of the countries studied, foreign investment is subject to some form of control at the point of entry. Except in the Federal Republic of Germany, Italy, Switzerland and the United States, inward investment requires prior authorization. Such authorization is often granted virtually automatically unless certain features of the proposed investment necessitate a closer scrutiny. However, in recent years, three of the countries studied, Australia, Canada and France, have established formal procedures for the evaluation of investment proposals and Japan now subjects foreign investment proposals to intensive scrutiny. Furthermore, in several other countries applications for investment authorization are also carefully examined before an authorization is issued.

Where exchange control laws are in force (in countries studied other than Canada, the Federal Republic of Germany, Switzerland and the United States), the request for authorization is submitted to the exchange control authority, normally the Central Bank, which issues the authorization. In France, investment proposals exceeding a specified, relatively small amount must be submitted for approval to the Ministry of Finance. Under the new foreign investment

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legislation of Canada, all foreign investment proposals are submitted for evaluation to the Foreign Investment Review Agency established under the law, but the final decision to approve a proposal is made at Cabinet level. An Order-in-Council is then issued authorizing the investment.

In Australia, the Reserve Bank receives foreign investment applications and issues authorizations. However, under the Companies (Foreign Takeovers) Act, all applications relating to the acquisition of a participation or controlling interest in a domestic company are examined by the Foreign Takeovers Committee, and those involving the establishment of a new enterprise may be evaluated by the Foreign Investment Committee. In the latter case, evaluation by the Committee is not mandatory. In Australia, as in Canada and France, foreign investment which does not exceed a specified amount is freely admitted.

Foreign takeovers

Many developed countries are increasingly concerned about the acquisition by foreign corporations of control over domestic companies. That concern is particularly acute in Australia and Canada, where foreign investment has played an increasingly important role in industrial development in recent years, and in Japan. But the authorities of several western European countries have also tended to be more restrictive in cases where investment proposals submitted for approval had as their purpose the acquisition of a participation or controlling interest in local companies.

The Australian law empowers the Treasury to prohibit a proposed takeover of an Australian company where such takeover would result in effective foreign control of the company and is deemed to be against the national interest. In Canada, foreign investors who propose to acquire control of a domestic business exceeding a specified size must submit all the relevant information to the Foreign Investment Review Agency for an assessment of the implications of the proposal. In Japan, investment in existing enterprises, including takeovers, is permitted only in the liberalized industries and requires the consent of the enterprise concerned.

In some western European countries, takeovers require a special authorization from the Central Bank and large share acquisitions by foreign corporations need to be reported. Surveillance rather than control seems to be the dominant approach to takeover in western Europe.

*APPENDIX III*Reserved sectors

The most common direct restriction on foreign investment is the exclusion of foreign investment from certain sectors or activities.

The chief motive for such restrictions is usually the desire to prevent public services from falling under foreign control and to keep activities involving the public interest in domestic hands. In some cases, restrictions are related to preoccupations with national security and defence. Another justification for excluding foreign investment from certain sectors is given by Japan, which imposes temporary restrictions in certain sectors until national enterprises have increased their productive efficiency sufficiently to face foreign competition.

The sectors most frequently closed to foreign investment are transport and communications, communications media, public utilities, natural - particularly mineral - resources, banking and insurance. Other fields which are closed in certain countries include hydroelectric power, atomic energy, aviation and certain manufacturing industries (e.g. electronics, computer software, automobile, food-processing industries). In some cases, the acquisition by foreigners of urban real estate and agricultural and public lands is also prohibited.

It should be added that, in a number of countries, State-owned economic sectors constitute reserved sectors and are protected from acquisition by foreign or private domestic investors through nationalization laws or laws concerning public sector activities.

Establishment

With respect to establishment, no distinction is generally made under the laws of developed countries between foreign and domestic enterprises. There are no restrictions on the legal form of establishment of a foreign enterprise, but in several countries establishment of branches of foreign companies requires prior authorization or licensing.

In a few countries there are nationality restrictions with respect to the membership of boards of directors of locally incorporated foreign companies. Such restrictions may apply generally or only to enterprises in certain sectors. In Switzerland, for instance, a majority of directors must be Swiss nationals, or if a company has only a single

director, he must be Swiss. Under Canadian law, a majority of the directors of banks and insurance companies are required to be resident Canadian citizens.

### Financial management

#### Finance

There appear to be few general provisions regarding the manner of foreign direct investment financing. In Australia, new foreign investment is in principle required to be financed by an inflow of capital, which can include equipment and industrial property rights as well as foreign exchange. In some countries, a certain preference is given to foreign investment which takes the form of an inflow of foreign exchange. In France, for instance, a foreign enterprise may invest a relatively small sum annually without prior authorization, provided that the transaction involves a transfer of foreign exchange.

Repatriation of capital, profits and fees is subject to exchange control, where applicable, but authorization is usually given automatically. In some countries, a formal distinction is maintained between capital repatriation and the transfer of income, but it is of little practical significance.

#### Taxation

National tax laws make no distinction between foreign and domestic enterprises. In spite of efforts to promote harmonization, notably in the framework of OECD, national tax systems vary considerably with respect to types of taxation, effective rates of taxation and the definition of income. There are also differences in the tax jurisdiction claimed by individual countries.

In the case of affiliates of transnational corporations, the determination of income for purposes of local taxation raises a number of problems. Furthermore, since this income forms part of the total income of the parent corporation, it may become subject to double taxation in certain cases. With a view to eliminating such inconsistencies, an extensive network of bilateral double taxation agreements, treaties and conventions has been established. These agreements define, determine the limits of, and allocate taxing rights with respect to the taxation of income and capital, thus eliminating or reducing the extent of double taxation and facilitating the exchange of infor-

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mation on the collection of taxes.

Transfer pricing

One of the taxation problems specifically related to transnational corporations not generally dealt with in foreign investment legislation is that of the pricing of goods and services transferred among units of a transnational corporation. This pricing may not be recorded in such a way as to correspond to an arm's length price. Since the level of the transfer price affects the profits, and hence the taxable income, both of the selling and of the buying unit within the transnational corporation, the tax authorities in both countries seek to ascertain that no tax evasion results from artificial pricing. A common method is to check against arm's length price. Where this is difficult to establish, other approximations are used. They include:

- (1) Cost plus reasonable profits (Australia, Belgium, Canada, France, Federal Republic of Germany, United Kingdom, United States);
- (2) Selling price minus reasonable profit or resale price (Belgium, Federal Republic of Germany, United Kingdom, United States);
- (3) Reasonable return on capital (Australia, Federal Republic of Germany, United Kingdom, United States);
- (4) Proportionate profit, i.e. the corporation's total profits split according to the relative costs at the company's various units (United States).

These approximations are especially applicable to services such as research and development expenditures and management fees, which may be allocated in various ways. Most countries use the concept of a "reasonable" amount or "fair" profit margin for royalties and other charges on intangible property.

Industrial promotion and competition

Promotion of local industry

In the face of the growth and spread of highly efficient large corporations, several Governments have endeavoured to assist domestic industries to increase their efficiency and competitiveness. To this end, they have established various institutions which provide incentives

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and financial assistance to selected local companies.

The Australian Industry Development Corporation, set up in 1975, provides some equity capital, loan funds and guarantees, and is empowered to form or participate in enterprises. The Canadian Development Corporation has similar functions and powers. In France, the Institut de Développement Industriel provides refinancing to French enterprises and assists in mergers. In the United Kingdom, the Industry Reorganization Corporation likewise assists and encourages mergers with a view to strengthening British industries.

Restrictive business practices

All the countries reviewed have enacted legislation<sup>2</sup> to promote competition and check abuses thereof within their national territory.<sup>3</sup> The main purpose of anti-trust laws is to ensure that if the power of an enterprise exceeds certain limits, mainly determined by its share of the market, it does not utilize this dominant position to the detriment of the consumers' interest or the public interest.

The relevance of anti-trust laws to transnational enterprises lies in the fact that these enterprises are generally large and possess considerable market power, which they may enlarge further through mergers both within countries and across national borders. The control of such mergers is in general the main objective of anti-trust legislation.

The point at which anti-trust legislation becomes applicable differs to some extent from country to country. In the Federal Republic of Germany, for instance, mergers resulting in a market share of 20 per cent or more, in employment of 10,000 persons or more, and in a combined turnover of the merging enterprises of over DMS00 million, must be reported to the Federal Cartel Office. In the United Kingdom, under the Fair Trading Act of 1973, merger situations qualifying for investigation exist if the value of assets taken over by a firm exceeds £5 million or if the merging enterprises control one quarter of the United

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2. In Italy a bill to this effect has been introduced in Parliament but not yet approved.
  3. Legislation in the United States also includes competition between firms located in the United States and firms whose production facilities are located abroad, e.g. a merger between a United States producer and an exporter to the United States.

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Kingdom market for the types of goods they produce.

Some anti-trust laws focus on the prevention of mergers resulting in market domination, while others are chiefly concerned with the prevention of abuses of market power. A few deal with both aspects. The Netherlands Economic Competition law deals generally with positions of power and the regulation of competition. The prevention of mergers which result in large-size firms holding a substantial share of the market is likewise the main object of the relevant laws of the Federal Republic of Germany and of the United Kingdom. On the other hand, the Swiss Cartel and Competition Laws do not prohibit agreements between enterprises as such, but make any abuses resulting from such agreements subject to court action. Possible abuses include, for example, the exclusion of third parties from agreements, the obstruction of competition through boycotts etc. The Belgian Anti-Trust Law also focuses on abuses, which are defined as the harming of the public interest through distortion or restriction of competition. The law establishes procedures for determining the existence of abuses. Similarly, the regulations of the European Communities (articles 85 to 94 of the Treaty of Rome) are not directed against the establishment of market power, but at regulating the abusive conduct of business by enterprises with a monopolistic position.

With the exception of the regulations of the Treaty of Rome and the anti-trust provisions of the European Coal and Steel Treaty,<sup>4</sup> anti-trust laws regulate business conduct within countries; jurisdiction over enterprises located outside a given country is generally not accepted.

The issues of market position and competition as raised by the transnational corporations create a totally different set of legal problems from those of enterprises within a national jurisdiction: the market position of a transnational corporation in its home country may differ from that in one of the host countries in which its affiliates are located; intra-enterprise arrangements, e.g. for pricing, may not fall under any national jurisdiction. What constitutes a monopoly or dominant position in the

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4. The 1952 ECSC Treaty contains provisions placing cartels and monopolies in the coal and steel sector under strict control of the institutions of the Community (article 48, article 60, article 63, para. 1). The provisions are directly binding and applicable in the member States.

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world market in economic terms may not correspond to its definition or interpretation in legal terms.

B. MULTILATERAL INVESTMENT LIBERALIZATION

Liberalization among members of OECD

The Capital Movements Code of OECD, issued in 1959, provides for the progressive abolition of restrictions on the movement of capital between member countries. By 1975, all but one of the member countries had acceded to the Code.

Article 1 of the Code provides that members shall progressively abolish restrictions on the movement of capital to the extent necessary for effective co-operation. According to appendix A, liberalization includes the elimination of constraints on direct investment, purchase and sale of securities and financial services.

The Code exempts from these obligations, as a matter of principle, all operations which, in the opinion of a member country, involve its interests in matters of public order or national security, and it imposes no obligations with respect to taxes, duties and other charges.

The Code defines direct investment as "investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof". Three means of making such an investment are specifically mentioned:

- (1) The creation or extension of a wholly-owned enterprise, subsidiary or branch, or the acquisition of full ownership of an existing enterprise;
- (2) Participation in a new or existing enterprise;
- (3) A long-term loan (five years and longer).

As it is not specified that the investment must be made in the form of cash, it is assumed that the Code also liberalizes investment in the form of equipment, intellectual property or any other contributions of a capital nature.

The principal criterion by which the Code distinguishes direct investment from portfolio investment and financial loans is the possibility for the investor to exercise an effective influence on the management of the under-

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taking.

The liberalization obligations concerning direct investment are limited by two provisos. They do not apply: (a) to purely financial operations designed only to gain indirect access for the investor to the money or financial market of another country; or (b) to investments which would have an exceptionally detrimental effect on the interests of the member country concerned.

Member countries which feel that they are either temporarily or more permanently unable to comply with their liberalization obligations can obtain a dispensation from them by lodging a reservation at the time at which they assume such obligations, or by invoking a derogation clause any time thereafter (article 7(a) and (b)).

Reservations are periodically subjected to critical examination by the OECD Committee for Invisible Transactions. Invocations of derogation clauses are also examined by the Committee at intervals and must be withdrawn if the organization does not consider them justified.

There is a wide range of economic, social and political considerations which may at various times be held by member countries to be relevant to an assessment of their attitude towards restrictions upon, or incentives to, foreign direct investment, as well as a wide range of policies which directly or indirectly affect the international movements of direct investment capital.

As an extension of the rule that liberalization may not interfere with public order and security, member countries have the right to restrict foreign investment in certain sectors which are subject to special internal regulations, such as public utilities, banks, etc.

Twelve OECD member countries have lodged reservations on the transnational aspects of inward direct investment. Their restrictions are motivated by general political and economic considerations (Australia, Japan, New Zealand, Portugal, Spain, the United States), by the desire to protect certain domestic resources (Austria, Denmark, Finland, Norway, Spain, Sweden), or by the wish to protect certain domestic industries from foreign competition (Ireland, Japan, Portugal). The reservations have so far proved to be of a more or less permanent nature except in the case of Japan, where their scope has been gradually narrowed under a systematic liberalization programme.

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Official incentives and disincentives other than fiscal measures, are means of influencing investment decisions which are not covered by the Code as long as there is no formal prohibition or refusal to authorize an operation. Governmental actions of this kind concern the Code only to the extent that they may frustrate measures of liberalization.

Free transfer of any liquidation proceeds of non-resident direct investment is expressly provided for in the Capital Movements Code, while its companion piece, the Code of Liberalization of Current Invisible Operations of OECD, provides for the free transfer of all income from capital.

Liberalization among members of EC

In its Title III, Chapter 4(3), the Treaty of Rome calls for the liberalization of capital movements and the removal of exchange control restrictions among member countries. However, no specific procedure and no time-table is envisaged in the Treaty. Article 67, paragraph 1 merely states that member States are to eliminate progressively all restrictions on capital movements inasmuch as this is required for the proper functioning of the Common Market.

The Treaty does not contain any provisions regarding inward investments from third countries. Foreign companies and firms formed in accordance with the law of a member State and having their registered office, central administration or principal place of business within the Community, are to be treated in the same way as nationals of member States. Branches of third-country enterprises located within EC are regarded as having the nationality of their head office and are treated as independent companies. They are, *inter alia*, free to reinvest their earnings within EC, in which case such investments are treated in the same way as intra-EC investments (article 58).

The Commission of EC has been concerned about the lack of harmonization of the legislation of member countries in respect of direct investment, notably by transnational corporations. In a communication to the EC Council, it referred to "inadequate national fiscal; economic and monetary rules, the scope of which is too narrow to grasp the problems raised by the existence of numerous groups of companies legally separate and covered by different national laws".<sup>5</sup> The Commission notes specifically: (a) the inadequate  
5. "Multinational undertakings and community regulations" (Com. (73), 1930, Brussels, 7 November 1973), p.2.

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quacy of bilateral tax treaties to tackle the problems raised by transnational enterprises; (b) the insufficiency of available data on the financial flows accompanying the enterprises' operations; (c) the need for harmonization of incentives for national and especially regional investment; (d) the need for the harmonization of labour laws; (e) the control of mergers and oligopolistic situations through the enforcement of articles 85, 86 and 87 of the Treaty of Rome; (f) the regulation of takeovers; and (g) the improvement of information, especially on capital movements, research activities and job creation by transnational corporations.

Senator STEVENSON. Thank you, Mr. Liebman.

Charles Levy is recognized next, appearing for the Emergency Committee for American Trade.

**STATEMENT OF CHARLES S. LEVY, VICE PRESIDENT,  
EMERGENCY COMMITTEE FOR AMERICAN TRADE**

Mr. LEVY. Thank you, Mr. Chairman. I am Charles S. Levy, vice president of the Emergency Committee for American Trade. ECAT is an organization of 64 U.S. companies with extensive international business operations. In 1978 worldwide sales of these companies totaled \$400 billion and employed 5 million people.

Because of the complexity and cost of developing an international marketing structure, arranging for export financing and overseas transportation, as well as understanding foreign laws, tens of thousands of U.S. businesses compete only in our vast domestic market. Our growing balance of trade deficit would be substantially alleviated if these U.S. firms would take advantage of overseas market opportunities.

S. 2379 and S. 864 provide the means for U.S. businesses to focus on export opportunities. S. 2379 would facilitate the formation of export trading companies. These companies would provide the export-related services which thousands of U.S. businesses, particularly small and medium-sized companies, need in order to realize their export potential.

Section 5 of the bill, which provides for ownership of export trading companies by banks, bank holding companies, and international banking corporations is an important element of the proposed legislation. Banking organizations have two resources which are essential to establishing a viable export trading company. First, through their retail banking operations, banking organizations are able to reach out to large numbers of small and medium-sized companies who may manufacture exportable products. Second, through their international branches and foreign correspondent banking relationships, banking organizations are in an excellent position to identify potential foreign markets and customers.

S. 864, would contribute to the expansion of U.S. exports by enhancing the use of trade associations under the Webb-Pomerene Act. By removing ambiguous and confusing language and including

services within the scope of Webb-Pomerene trade associations, U.S. companies will be more disposed to enter into international cooperative ventures. As a result, these companies will be able to increase their competitiveness in world markets.

While we wholeheartedly endorse the basic concepts embodied in both bills, we do offer the following specific comments. The Export Trading Company Act of 1980, or its accompanying legislative history, should clarify the extent to which an export trading company has the authority to engage in the business of importing goods and services into the United States.

#### BARTER TRANSACTIONS

For example, the growing volume of international trade involves barter arrangements. Without clear authority to import into the United States, a U.S. export trading company could find itself at a distinct disadvantage in participating in barter transactions.

While section 3(a)(5) of the legislation, which defines an export trading company, may be intended to include import authority, we suggest that in order to avoid future problems, the ambiguity with respect to import authority should be resolved in favor of permitting export trading companies to import goods and services into the United States.

Sections 6 and 7 of the Export Trading Company Act of 1980 are also important elements of the act. These provisions would increase the financial leverage of existing export trading companies and stimulate the formation of new export ventures by providing guarantees and loans for operating expenses and initial investments in export-related facilities; and guarantees for export accounts receivable and inventories.

However, if these two new programs are to be utilized effectively, the standards by which the Export-Import Bank evaluates the need for guarantees or loans must be more clearly defined. As presently drafted, under both sections 6 and 7, the Export-Import Bank would be required to determine whether the assistance provided would facilitate the expansion of exports that would not otherwise have occurred.

In addition, under section 6, the Bank would have to determine whether the export trading company is unable to obtain sufficient financing on reasonable terms from other sources; and, under section 7, that guarantees are essential to enable the company to obtain adequate credit to continue normal business operations.

Without clarification, export trading companies may encounter difficulties in demonstrating their need for assistance. As a result, the Export-Import Bank may either be reluctant to use its new authority or, alternatively, the administrative burden on applicants would be so great that trade companies might not apply for either program.

From time to time, President Carter has highlighted the importance of exports to the future health of the U.S. economy and announced his dedication to developing a coordinated national export policy. Unfortunately, to date little has been done by the executive branch. Indeed, the administration has taken a course

with respect to the Export-Import Bank which may result in the bank running out of funds by June 1.

U.S. businesses are looking to the Congress to play a major role in formulating a national export policy. The legislation before this subcommittee is an important first step in developing such a policy.

It is not clear how many export trading associations or export trading companies will be formed under the Export Trade Association Act of 1979 or the Export Trading Company Act of 1980. But it is clear that for those companies that utilize either form of doing business, these two mechanisms will be important and immensely useful in enhancing their ability to compete in world markets.

Thank you.

[The complete statement follows.]

TESTIMONY OF MR. ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN,  
EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE  
SUBCOMMITTEE ON INTERNATIONAL FINANCE, SENATE COMMITTEE ON  
BANKING, HOUSING AND URBAN AFFAIRS  
ON S.2379, THE EXPORT TRADING COMPANY ACT OF 1980  
AND S.864, THE EXPORT TRADE ASSOCIATION ACT OF 1979

March 17, 1980

I am Robert L. McNeill, Executive Vice Chairman of the Emergency Committee for American Trade (ECAT). ECAT is an organization of 64 U. S. companies with extensive international business operations. A list of these companies is attached to this statement. In 1978, worldwide sales by these companies totalled \$400 billion and they employed 5 million people.

Because ECAT member companies are among the largest U.S. exporters, they are well acquainted with the difficulties involved in establishing a viable export operation. ECAT members are also very much aware of the importance of exports to our national economic security.

Because of the complexity and cost of developing an international marketing structure, arranging for export financing and overseas transportation, and understanding foreign laws, tens of thousands of U.S. businesses compete only in our vast domestic market. Our substantial balance of trade deficits would be substantially alleviated if these United States firms would take advantage of overseas market opportunities. S.2379 and S.864 provide the means for U.S. businesses to focus on export opportunities.

ECAT, therefore, supports S.2379, the Export Trading Company Act of 1980, and S.864, the Export Trade Association Act of 1979, because both legislative initiatives provide constructive mechanisms to encourage and aid the entry of American business firms into international export markets.

S.2379 would facilitate the formation of export trading companies. These companies would provide the export-related services which thousands of U.S. businesses, particularly small and medium sized companies, need in order to realize their export potential.

Section 5, which provides for ownership of export trading companies by banks, bank holding companies, and international banking corporations, is an important element of the proposed Act. Banking organizations have two resources which are essential to establishing a viable export trading company. First, through their retail banking operations, banking organizations are able to reach out to large numbers of small and medium sized companies who may manufacture exportable products. Second, through their international branches and foreign correspondent banking relationships, banking organizations are in an excellent position to identify potential foreign markets and customers.

S.864 would contribute to the expansion of U.S. exports by enhancing the use of trade associations under the Webb-Pomerene Act. By removing ambiguous and confusing language and including services within the scope of Webb-Pomerene

trade associations, U.S. companies will be more disposed to enter into international cooperative ventures. As a result, these companies will be able to increase their competitiveness in world markets.

While we wholeheartedly endorse the basic concepts embodied in S.2379 and S.864, we do offer the following specific comments:

1. The Export Trading Company Act of 1980, or its accompanying legislative history, should clarify the extent to which an export trading company has the authority to engage in the business of importing goods and services into the United States. For example, a growing volume of international trade now involves barter arrangements. Without clear authority to import into the United States, a U.S. export trading company could find itself at a distinct disadvantage in participating in barter transactions.

Section 3.(a)(5) of the Act defines an "export trading company" to mean a company doing business under the laws of the United States and "which is organized and operated principally for the purpose of: (1) exporting goods and services produced in the United States; and (2) facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing one or more export trade services." While Section 5 may be intended to include import authority, we suggest that in order to avoid potential future problems

the ambiguity with respect to import authority should be resolved in favor of permitting export trading companies to import goods and services into the United States.

2. Sections 6 and 7 of the Export Trading Company Act of 1980 are important elements of the Act. These provisions would increase the financial leverage of existing export trading companies and stimulate the formation of new export ventures by providing (1) guarantees and loans for operating expenses and initial investments in export related facilities, and (2) guarantees for export accounts receivable and inventories. However, if these two new programs are to be utilized effectively, the standards by which the Export-Import Bank evaluates the need for guarantees or loans must be more clearly defined.

As presently drafted, under both Sections 6 and 7 the Bank would be required to determine whether the assistance provided would facilitate the expansion of exports that would not otherwise have occurred. In addition, under Section 6 the Bank would have to determine whether the export trading company is unable to obtain sufficient financing on reasonable terms from other sources and under Section 7 that guarantees are essential to enable the company to obtain adequate credit to continue normal business operations.

Without clarification, export trading companies may encounter difficulties in demonstrating their need for assistance from the Bank. As a result, the Bank may either be reluctant

to use its new authority, or alternatively the administrative burden on applicants would be so great that export trading companies would not apply for the loans or guarantees.

From time to time, President Carter has highlighted the importance of exports to the future health of the U.S. economy and announced his dedication to developing a coordinated national export policy. To date, little has been done by the Executive Branch. Indeed, the Administration has taken a course with respect to the Export-Import Bank which may result in the Bank running out of funds by June 1.

U.S. business is looking to the Congress to play a major role in formulating a national export policy. The legislation before this Subcommittee is an important first step in developing such a policy.

It is not clear how many export trading associations or export trading companies will be formed under the Export Trade Association Act of 1979, or the Export Trading Company Act of 1980. But it is clear that for those companies which utilize either form of doing business, these two mechanisms will be important and immensely useful in enhancing their competitiveness in world markets.

Senator STEVENSON. Thank you, sir. And now, we're happy to welcome back to Congress our old friend, Mr. Rees.

**STATEMENT OF THOMAS M. REES, ESQ., REPRESENTING THE TASK FORCE ON INTERNATIONAL TRADE, WHITE HOUSE CONFERENCE ON SMALL BUSINESS**

Mr. REES. Thank you, Mr. Chairman. I certainly appreciate being here, and I wish to thank the subcommittee members for the tremendous effort you've made in designing this legislation. I am here in a pro bono capacity. I was appointed by President Carter to head up the Task Force on Small Business and International Trade.

This task force was one of eight or nine task forces that constituted the White House Small Business Conference, which was held this past January. We had a very good task force. We had two good, hardworking members from Chicago and a good, hard working member from the Massachusetts Port Authority as well as six others. Everyone on the task force was a professional. Most of them were export brokers, agents. We had one banker from the Pacific coast. All task force members had been in the field for at least 10 or 15 years.

It was a panel that was composed of sophisticated individuals who knew what they were talking about. We dealt with all of the problems one encounters in developing an export trade.

The first set of problems is really tied up with the Federal Government and all of the disincentives there are in a trade deal. The other problems involved what we would like to do to change this. Most of us felt that we should try to put our emphasis on the private sector, because we didn't think our public sector efforts had been very effective. Frankly, really I don't think that the trade reorganizations we have been going through are going to increase our exports.

**LAYER CAKE AGENCY**

I don't think you increase exports by creating four or five new Assistant Secretaries of Commerce. It's just not done. If you have to reconstruct a department, you do it from the bottom up. You just don't layer the cake from the top down. Every "layer cake" agency we have is a disaster, such as HEW and HUD.

What we really wanted to emphasize was the export trading company. All individuals on our task force felt that they could do far more business if they had the means to do it, if they could have more leverage on their capital, instead of having the bankers say no because they were 1½ to 1 in terms of their debt-to-equity ratio. They'd like to go up to 10, 15, or 20 to 1. They'd like some way of turning around their paper so that they could increase their volume of exports.

Slow money doesn't work. I used to be an exporter, before I ran for office, and I exported farm machinery into Mexico. I was a good salesman down there. I spoke the language, I liked farming, I knew the equipment. The biggest problem was financing, because I either had to finance on a letter of credit or a sight draft. I'd go down and I'd sell a tractor; I'd go back; I'd arrange my finance terms. All of my money would be tied up in one letter of credit or one sight

draft. I wouldn't get my money until that was paid for at the border, which was sometimes 3 or 4 weeks.

As a small operator, I found that my entire capital was tied up with one transaction for 3 or 4 weeks. Maybe, if I'd had some way to discount the paper, or if I had had better lending from, for example, an Eximbank that was located in Los Angeles and not Washington, D.C., I could have increased my volume perhaps five or six times.

If you look at the major export trading companies throughout the world, you'll find that what they have is the ability to sell their paper, the ability to make their capital work to the maximum in an export transaction. With your legislation, you've come closer to that than any legislation I have ever seen on the subject.

#### CREATE A BUNCH OF ZAIBATSUS

However, I would suspect that the Department of Justice, is looking at this legislation and saying, "Oh, my goodness. Here is this committee. They're going to create a bunch of Zaibatsus that will completely dominate the American economy." Well, Justice does this. Justice is one of the greatest deterrents to export trade of all the departments in the Federal system. Commerce really doesn't have much to do with it. It's just a big bureaucracy.

Justice is all-encompassing. It's one of the godfathers in the Federal Government, Justice and the OMB. It is very frustrating. For example, it takes 2 or 3 years to deal with the rules and regulations of the Foreign Corrupt Practices Act. A guy doesn't know if he's going to go to jail when he tries to move something off a dock in Lagos, Nigeria or not. Then, you have a department that has always opposed any change in the Webb-Pomerene Act, even though it doesn't have jurisdiction—the Federal Trade Commission has jurisdiction.

Justice will probably look at this and say, "This is a terrible attempt by certain people to completely dominate export trade." Well, nothing from nothing is nothing. If you don't have trade companies, except in commodities like Contee, or minerals, like Engelhart, if you really don't have trading companies and you'd like to get them going, there's no use killing them before they get going, just because Justice is afraid that we're going to bring in some Samurai warriors to completely dominate the American economy with huge trading companies.

It's simply not true. The Japanese did not invent trading companies. Trading companies have been with us for thousands of years. The trading company that I loved when I was in Los Angeles was the East Asiatic Co., which was a very large Danish concern. It was practically the Danish Government in exile during World War II. It was beautiful to watch.

Those transactions were great. They'd turn something around six times before the money would finally go back to Copenhagen. They were born traders, with an instinct. We really don't have that in the United States. I think that the structure that's on line in your bill could provide that. I also think it is very important that we ask Justice what its view is right now.

It's always terrible. You know, you work a bill through two Houses and get it to the President's desk, and they all come running in, waving their arms, saying, "You have to veto this bill."

I really think that we have to clear the track now so that they don't come in at the last minute and say the bill is unworkable. The key to your bill, and I think you realize that, is the Edge Act, and the International Banking Act, which this committee approved last year. I think it was very effective in section 3, which gave strong legislative intent as to what the function of Edge Act was in the export policy of the United States. The present legislation before you builds upon that very solid foundation.

I don't see any problem with a bank having an interest in an export trading company. I would suspect that a bank would not want to completely dominate it, because the bank would then limit its customer base. I also think banks would fear suits by people who aren't part of the group and want to be part of the group and who contend that the bank isn't loaning to their group.

Otherwise, I really think the bank would prefer to have a minority position. However, a bank is really the only logical base, because most of the major money market banks, the reserve city banks, have offices in all parts of the world. This is essential, because 80 percent of an export transaction is the financing package. That's the gut of it.

If you have a bank in Tokyo, in Cairo and in Singapore, another in London and another in Frankfurt—this is the basis of an export trading company. This means that an exporter has offices all throughout, or offices that he can use, all throughout the world.

When I was an exporter, I exported farm machinery to two States in Mexico, Sonora and Sinaloa. I couldn't have handled any more, because I was a small operation. I had one person in Mexico, a secretary in California and myself. If I had had the ability to use the framework of banking offices throughout Latin America, I suspect that I could have increased my business by leaps and bounds.

It is very difficult to get the economy of scale you need, under the present thinking in the United States, in terms of an export trading company. By tying it in with the Edge Act, you get that economy of scale.

#### TRAINING IN FOREIGN TRADE

There is one problem, though, in that we're not natural foreign traders, except in major commodities such as wheat or metals. It would probably be necessary to send our people to some specialized schools abroad, or, perhaps hire some European or Japanese traders in order to set up our operation. Most of our trading companies tend to be nickel and dime operations.

I would say a good export trading company has about \$10 million gross a year. That isn't very much. It ought to be \$100 million.

There is a great need to find trained personnel in this field. I don't know a school that I consider has a sufficient program to train people for export trade. If you go to Europe, if you go to Asia, there are schools all over. You do need that.

Now, let me just comment on the bill. This bill, I hope, will be approved by the Senate. When it comes to the House, it's going to have to be split up, because of the problem of concurrent jurisdiction. This is a problem wherein one committee can pass a bill and then the other committee to which it's referred sits on it for months.

With this problem in mind, knowing that if you touch DISC, Webb-Pomerene, subchapter S corporations or Edge Act, you're going to have to go to several committees, you might be thinking of expanding some of those areas. Let me start off with the DISC corporation.

A DISC corporation, of course, will defer the income from export receipts. The problem is that the IRS really doesn't like DISC corporations. No administration has liked DISC corporations. As a result, the rules and regulations on DISC's are almost incomprehensible. You find a lot of small businessmen—and we used the definition of anything less than \$100 million in sales, so we used a pretty large definition for small business—anything less than the Fortune 1000—don't set up a DISC because it's too great a problem. There is some legislation over in the Ways and Means Committee, H.R. 1600, that increases the small business exemption from \$100,000 to \$1 million.

You might consider this: There's another problem of qualified export receipts. There needs to be a broadening of the definition. It says "engineering," but it doesn't say "project engineering." There are a lot of parts of a major project where those receipts might not be under a DISC even though it represents foreign income.

That needs to be broadened. Now it's so narrowed down by the IRS in their rules and regulations that there's a deemed distribution where 95 percent of the funds have to be from export receipts. If you are 1 percent under, you have to pay taxes on everything up to the formation of the DISC.

Frankly, that is a terrible penalty. Perhaps the penalty should be just in terms of 1 year's receipts. DISC really needs to be simplified. If it isn't simplified, a smaller businessman is not going to use it. His legal fees would be astronomical.

There might be a chance on Webb-Pomerene. I know there are several Webb-Pomerene pieces of legislation before the Senate. I think Senator Danforth has one of the bills. That might be tied into your bill, because it would expand the concept of Webb-Pomerene. Webb-Pomerene was passed around 1923. Since then a lot of things have happened in international business.

The definition of what an export is also needs to be expanded, for example, to take in construction companies. We have major construction companies in this country that do billions of dollars worth of business overseas under the subchapter S.

My friend, John Leibman, pointed out that there's a restriction under section 1371. The stockholders have to be U.S. citizens. You might reconsider that. I could conceive of an export trading company where 10 percent might be owned by a foreign trading company. You might want that. We need all the education we can get from other countries.

I want to congratulate you, Senator Stevenson, for your great fight on the budget of the Eximbank. I think the Eximbank budget

should be taken out of the Federal budget. It used to be out of the Federal budget, and now it's in the Federal budget.

#### EXIMBANK MAKES GUARANTEES

The Eximbank loans money and it makes guarantees. The Eximbank probably has a better track record than any commercial bank you'll find in this country, in terms of making solid loans. It gets its money back. It turns money back to the Federal Government. It's not like making an expenditure that never comes back. The administration is dragging its feet and saying, "we will not have any new increase in the lending power of the Eximbank."

I have one client with a project in the PRC who's going to be purchasing \$700 million worth of goods. These goods cannot be financed by the Eximbank because there isn't a nickel under the present funding program that would allow for any exports to the PRC. Do you know what that company is going to have to do? It's going to have to go overseas and buy heavy mining equipment, which we make so well in this country, because it can get 8-percent terms, which the Chinese insist on, in Canada, Japan, and the United Kingdom.

We need to do something to get away from this Alice in Wonderland scenario. If the administration is for export, it has to be committed to export, and it's not just giving people "E" flags. It's making a deep commitment for export financing, for export trading companies, to deal with the Webb-Pomerene, to deal with DISC and to deal with other problems that the ordinary exporter faces.

I want to thank you very much for having me here. And again, I want to thank the committee for coming up with an excellent bill. If we're ever to get medium- and small-sized business into the export stream, the way to do it is through an American export trading company.

Senator STEVENSON. Thank you, sir. And Ms. Schueler?

#### STATEMENT OF RUTH SCHUELER, PRESIDENT, SCHUELER & CO., WILLISTON PARK, N.Y., REPRESENTING PRESIDENT'S EXPORT COUNCIL, SUBCOMMITTEE ON EXPORT PROMOTION

Ms. SCHUELER. Mr. Chairman, I am Ruth Schueler, president of Schueler & Co., a privately owned company located in Williston Park, N.Y. Schueler & Co., Inc., is a small business enterprise and is engaged in developing overseas markets for U.S. products, with affiliated branch offices and agents throughout the world. And we have done so since 1908, for 72 years.

We take complete responsibility and pay the manufacturer within his term, and take care of all financial responsibilities, regardless of what terms we extend to our customers, such as open accounts and letters of credit. We also market, we travel, we advertise, and we participate in trade exhibits, we take care of the documentation, shipping, and of course we have multilingual capacity. We were also awarded the E Award, incidentally.

I am a member of the President's Export Council and of its Subcommittee on Export Promotion. I appear today on behalf of the subcommittee.

The Council was reestablished by the President on May 4, 1979, primarily to advise the President on policies and programs to increase U.S. exports and to contribute to the development of an increased national export consciousness.

The studying and analytical work of the Council is carried on largely in subcommittees, and the subject of today's hearing, trading companies, is being considered in our Subcommittee on Export Promotion.

I want to make clear that the Council itself has not yet taken a position on the general subject of legislation to facilitate trading companies, or in particular on S. 2379, which you, Senator Stevenson, introduced on March 4. But the Council, at its meeting on March 3, did authorize the Subcommittee on Export Promotion to appear and to indicate how our thinking was developing on the subject of trading companies in relation to export expansion. That is why I am here today.

My testimony will be brief. I know that other witnesses will present specific comments on S. 2379 that will cover drafting points and the substance of detailed provisions. I will confine myself to what appear to us on the subcommittee to be the basic overall considerations.

First, the matter of perspective. We are not trying, through legislation, to invent or establish trading companies. We have had trading companies in this country from the very beginning. Nobody knows how many currently exist or the various roles they play, but many exist, large and small, of all kinds, and recently some of our largest multinational corporations have established trading companies or divisions within their corporations that for all practical purposes are like separate trading companies, in order to deal more effectively with special trading problems such as the need to be able to engage profitably in counter trade and barter-type transactions.

#### GOVERNMENT ASSISTANCE

The point of legislation, therefore, as I understand it, is to provide governmental assistance to trading companies that will encourage the formation of more of them and make all of them better able to export U.S. goods and services, especially those of small and medium sized U.S. firms.

The Department of Commerce estimates that there are between 200,000 to 300,000 manufacturing firms in the United States, that of these, less than 10 percent, or roughly 20,000 to 30,000, export. But between 1,000 to 2,000 of these exporting firms account for the bulk of our exports and at least 20,000 firms that do not now export at all could become exporters.

These figures summarize the problem at which the trading company concept has dealt with in S. 2379 is directed.

Second, S. 2379 represents an approach to the subject that the subcommittee believes will be effective; namely, redtape should be minimized. A licensing procedure does not appear necessary. We approve deletion of the licensing provisions that were in the original S. 1663. We approve deletion of the restrictions on ownership and on relationships with manufacturing activities. We approve

the provisions enabling banks to have equity interests in trading companies.

We believe that providing financial assistance through Export Import Bank loans and guarantees for startup costs and to carry inventory and accounts receivable will be very helpful. But we respectfully suggest that the present S. 2379 provisions be reviewed in the light of what appear to be excessive restrictions as to eligibility to receive aid and very inadequate ceilings on the amounts of aid that would be available.

The subcommittee may want to consider the point further, but thus far we have reservations about the S. 2379 provision on trading company type activities by States and local governments. We have not yet really explored in depth the tax and antitrust aspects of S. 2379, but the current approach appears positive.

We commend whatever the legislation can do to encourage the Government to encourage and assist the formation of trading companies and to help them to increase U.S. exports. In general, we also caution that the import side of the equation has to be realistically taken into account. We will never have the kind of trading companies we want if they will be hampered or restricted as to their dealings with imports.

Finally, on behalf of the subcommittee, I want to commend Senator Stevenson and all the others in and out of Government and Congress who have been working so hard to make the trading company concept a more effective instrument for increasing U.S. exports. Even though U.S. exports of manufactured goods increased in 1979 to \$116.6 billion, which is up 23 percent over 1978, we still had a \$25 billion merchandise trade deficit in 1979, on the FAS method of keeping figures, and 1980 is expected to result in an even greater deficit, mainly because of rising oil costs.

So every significant available measure to increase exports is vital. The subcommittee, therefore, strongly welcomes favorable consideration of legislation along the lines of S. 2379, hopefully with improvements in the areas I have referred to.

Thank you, Mr. Chairman, and Senator Tsongas, for allowing me to present the present thinking of the President's Export Council's Subcommittee on Export Promotion.

[Complete statement of Ms. Schueler follows:]

STATEMENT  
on  
THE EXPORT TRADING COMPANY ACT OF 1980  
before the  
INTERNATIONAL FINANCE SUBCOMMITTEE  
for the  
SUBCOMMITTEE ON EXPORT PROMOTION  
of the  
PRESIDENT'S EXPORT COUNCIL  
by  
RUTH SCHUELER  
MARCH 18, 1980

I am Ruth Schueler, President of Schueler & Company, Inc., located in Williston Park, New York.

I am also a member of the President's Export Council and of its Subcommittee on Export Promotion.

I appear today on behalf of the Subcommittee.

The Council was reestablished by the President on May 4, 1979 primarily to advise the President on policies and programs to increase U.S. exports and to contribute to the development of an increased national export consciousness. The studying and analytical work of the Council is carried on largely in subcommittees and the subject of today's hearing - trading companies - is being considered in our Subcommittee on Export Promotion.

I want to make clear that the Council itself has not yet taken a position on the general subject of legislation to facilitate trading companies or, in particular, on S.2379, which Senator Stevenson introduced on March 4. But the Council at its meeting on March 3 did authorize the Subcommittee on Export Promotion to appear and to indicate how our thinking was developing on the subject of trading companies in relation to export expansion. That is why I am here today.

My testimony will be brief. I know that other witnesses will present specific comments on S.2379 that will cover drafting points and the substance of detailed provisions. I will confine myself to what appear to us on the Subcommittee to be the basic overall considerations.

First, the matter of perspective. We are not trying, through legislation, to invent or establish trading companies. We have had trading companies in this country from the very beginning. Nobody knows how many currently exist or the various roles they play. But many exist, large and small, of all kinds.

And recently some of our largest multinational corporations have established trading companies - or divisions within the corporations that for all practical purposes are like separate trading companies - in order to deal more effectively with special trading problems, such as the need to be able to engage profitably in countertrade and barter-type transactions.

The point of legislation, therefore, as I understand it, is to provide Governmental assistance to trading companies that will encourage the formation of more of them and make all of them better able to export U.S. goods and services, especially those of small- and medium-sized U.S. firms.

The Department of Commerce estimates that there are between 250,000 and 300,000 manufacturing firms in the United States; that, of these, less than 10% - or roughly 20,000 to 30,000 - export. But between 1,000 to 2,000 of these exporting firms account for the bulk of our exports. And at least 20,000 firms that do not now export at all could become exporters.

These figures summarize the problem at which the trading company concept - as dealt with in S.2379 - is directed.

Second, S.2379 represents an approach to the subject that the Subcommittee believes will be effective; namely,

- Red tape should be minimized. A licensing procedure does not appear necessary. We approve deletion of the licensing provisions that were in the original S.1663.
- We approve deletion of the restrictions on ownership and on relationships with manufacturing activities.
- We approve the provisions enabling banks to have equity interests in trading companies.
- We believe that providing financial assistance through Export-Import Bank loans and guarantees for "start-up" costs and to carry inventory and accounts receivable will be very helpful.

But we respectfully suggest that the present S.2379 provisions be reviewed in the light of what appear to be excessive restrictions as to eligibility to receive aid and very inadequate ceilings on the amounts of aid that will be available.

- The Subcommittee may want to consider the point further, but, thus far, we have reservations about the S.2379 provision on trading-company-type activities by States and local governments.

- We have not as yet really explored in depth the tax and antitrust aspects of S.2379, but the current approach appears positive.
- We commend whatever the legislation can do to encourage the Government to encourage and assist the formation of trading companies and to help them to increase U.S. exports.

In general, we also caution that the import side of the equation has to be realistically taken into account. We will never have the kind of trading companies we want if they will be hampered or restricted as to their dealings with imports.

Finally, on behalf of the Subcommittee, I want to commend Senator Stevenson and all the others, in and out of Government and Congress, who have been working so hard to make the trading company concept a more effective instrument for increasing U.S. exports.

Even though U.S. exports of manufactured goods increased in 1979 to \$116.6 billion, up 23% over 1978, we still had a \$25 billion merchandise trade deficit in 1979 (on the F.A.S. method of keeping figures). And 1980 is expected to result in an even greater deficit, mainly because of rising oil prices.

So every significant available measure to increase exports is vital. The Subcommittee therefore strongly welcomes favorable consideration of legislation along the lines of S.2379, hopefully with improvements in the areas I have referred to.

Senator STEVENSON. Thank you, Ms. Schueler, and I thank you for some most helpful comments. We will certainly consider them in the markup of this legislation.

The DISC and subchapter S provisions were put in partly as a means of getting around GATT and in the MTA codes. I think without them, we could probably have devised more effective means of providing the tax incentive. But we have to provide them in a way that doesn't violate the codes. And maybe, as Mr. Rees has suggested, we could do more in that framework.

Let me ask all of you how you feel about Mr. Liebman's suggestion with respect to foreign participation in trading companies?

#### RECIPROCITY PARTICIPATION

I don't think you heard this, Mr. Rees. Mr. Liebman suggested that foreign participation be limited on a reciprocity basis; that is to say, foreign interests could not participate in trading companies unless their own countries permitted U.S. participation on a similar basis.

How do you feel about that proposal? Any suggestions?

Mr. REES. There's always the problem of running into the reciprocity section. When the International Banking Act was being considered, there was some original language in one of the early drafts that talked about reciprocity. It is difficult, I think, for public policy purposes. Someone might say that you're putting them under the gun. You might have a situation where you want to have foreign participation. Should you be penalized because that other country doesn't have reciprocity?

There could be one way of doing it—by limiting foreign participation to, for example, 10 percent. This is done in banking. There's always a percentage level. The levels are scattered all through the code.

It might be best to look at it that way. There are a lot of benefits in an export trading company, and I basically feel the benefits should accrue to U.S. citizens.

But as I mentioned before, there is a huge gap of knowledge in this country on the subtleties and the sophistication of that field. It might be good to have some foreign participation, but I don't think that it should be dominant.

Senator STEVENSON. Mr. Hester also mentioned the difficulty of putting together the personnel in the United States for exporting.

How do you feel about Mr. Liebman's suggestion, Mr. Hester?

Mr. REES. One thing we talked about was a jobs credit for exporters so that if you're a smaller exporter and you bring someone in that is considered an expert and is working in the field, that that would be a jobs credit.

There is precedent in the code for that.

#### INTERNSHIP OR STEWARDSHIP

Mr. HESTER. I like his idea of an internship or stewardship with some of these foreign trading companies with new personnel.

I think that that's a quick way to get to it.

I just read recently in the Wall Street Journal, I believe, that in your own State, J. D. Marshall of Chicago was bought into or

bought up by a British company. And for that reason, buying in or wanting an American trading company, one that's well established, seem to be the trend. I think that Marshall is probably one of the bigger ones. But we've had inquiries in our company, as small as we are, by Dutch companies, and I think you're going to see more, by the Germans and others.

You know, you can't turn away good capital, but, of course, they want control. And the biggest problem we have, I think, by relinquishing the control or selling out too early, I think that we're going to find that we're killing off the American nucleus that we have here and giving it all away before we're able to realize our own potential.

And I hate to see that.

Senator STEVENSON. But where do you get the traders?

Mr. HESTER. Well, I think you've got some very good schools producing people just for this job—the University of South Carolina School of International Business and the University of Southern California, and others. I have many people calling my office wanting jobs which I can't give them.

Senator STEVENSON. It takes more than school to learn how to be a trader.

Mr. HESTER. It takes the school of hard knocks to learn how to be a trader.

Senator STEVENSON. Mr. Rees, you just said that the schools weren't training traders. Aren't they up to the same standards?

In fact, you made a reference to Southern California.

Mr. REES. It's an academic course. It's like going to law school and then expecting to go out and try a multimillion-dollar case. It just doesn't work.

Again, it's kind of a philosophy of life. It's something that someone has been in all his life.

If you go to Engelhart Industries, which is a fascinating company, and you go to that area and you watch those people trade, it really is something else.

This is what we need. When I started in the export business, I wanted to get into foreign trade. I went around to the export houses. They pay you \$20 a week and think they're helping you, you know. You kind of sat on a three-legged stool with armbands and green eye shades filling out bills of lading.

If you did that for 10 years and did well, they might raise you to \$25 a week. That was kind of it.

I said, the heck with it. I'm going to start my own company.

I went down to Mexico and sold about \$8,000 worth of machinery, big Caterpillar tractors, a land leveler. Then I had to come back and figure out how to get it financed and how to get it across the border.

I hired an export broker. I watched everything he did. I mean, if he scratched his ears between the bill of lading and the sight draft—I always scratched my ear. [Laughter.]

Once I got through the first transaction, which was very complex, I was able to do everything myself.

But, of course, there weren't any complex licensing procedures and I had no problem in financing because all I could get was a letter of credit and the sight draft.

Today it's far more complex. You need a lot of trading. If your bill passes and I was to form a trading company today, and I'd say, this is a good deal. I'm tired of practicing law on Connecticut Avenue. I want to get back in the business. Then I'd go to Europe and hire someone.

#### FOREIGN INVESTORS IN U.S. TRADING COMPANIES

Senator STEVENSON. Mr. Liebman, what would be the effect of your proposal? Do the trading countries exclude U.S. citizens from participation in their trading companies?

Mr. LIEBMAN. Let's talk about specifics, Mr. Chairman. You have, for example, some of the countries which Mr. Hester mentioned—the Federal Republic of Germany, the Kingdom of the Netherlands, the United Kingdom. They don't pose any problems in the context of our suggestion.

Canada poses a problem. Australia poses a problem. Japan, in practical effect, poses a problem because while you may have the right of establishment as a foreigner in Japan in most industrial sectors, you can't borrow money from their banks, and so forth and so on.

There are a handful of countries that are involved, but they happen to be fairly important in terms of our trade relations with them.

I can say that I think there's an emotional level involved in the suggestion, as much as a policy level. But it's a very real factor that we have to contend with, representing as many exporters as we do who feel that they've been rather unfairly treated in some of these countries, who feel that there should be some give and take on a reciprocal basis.

Senator STEVENSON. If they were limited to minority interest would that keep them out?

I don't want to keep them out. We need their know-how and their capital.

Mr. LIEBMAN. Let me put it more strongly, Mr. Chairman. If we were presented with the choice of this legislation the way it stands, or nothing at all—I mean, without question, we would embrace this legislation and enthusiastically.

We would hope, however, and we don't want to keep people out, but we do feel that there is an overriding policy objective to be achieved and that, if possible, that objective can be embraced within this bill so that at least we felt that we've kept faith with our fellow taxpayers.

Senator STEVENSON. Any more reactions to the Liebman proposal?

Mr. Levy?

Mr. LEVY. I think the Congress should react very carefully here. If the Congress restricts foreign participation in U.S. trading companies, these companies may be cut off from international marketing expertise, capital, and, perhaps most important, from access to those markets which may presently discriminate against American companies. With a degree of foreign participation in a U.S. trading company, the U.S. trading company may be able to break into

markets which have been previously dominated by either local companies or other foreign countries.

Finally, with respect to the issue of reciprocity, there is an assumption that we can look at the legal framework of another country and compare it to our legal framework and then decide whether or not the country is discriminating against us. Sometimes that's very difficult.

Senator STEVENSON. Mr. Fox?

Mr. FOX. I would be opposed to Mr. Liebman's suggestion. His proposal, on its face, seems reasonable that American firms be open to all foreign investors, not just those engaged in export company type activities, have equal access to foreign markets for establishment, as is the case in the United States.

In principle, of course, that would be a desirable thing. There are a number of ways to attempt to achieve that. But the result is not forthcoming with the type of leverage that is present in this bill.

There simply is not the possibility, in my opinion, in this legislation to affect the investment policies of France or Japan or Korea, or any other major country. And it would seem to me that the results simply would be to ask that the 6th largest American exporter either divest itself of its ownership in the United States company, which would doubtless reduce the effectiveness of this marketing world-wide, or withdraw its operations.

So I would urge that the subject of providing nondiscriminatory conditions under foreign law to companies wishing to invest abroad be considered on its merits elsewhere.

A step in that direction is in the OECD code on investment. That is well established. We have bilateral treaties of friendship, commerce, and navigation with a number of countries, including Japan. If the provisions of that treaty were enforced, I think it would be much more effective with respect to Japan in facilitating American investment in that country than any other step.

And I think that this bill is too important, quite frankly, to be encumbered by any objectives that are desirable in themselves, but can better be achieved through other mechanisms.

I would like to see it eliminated.

Senator STEVENSON. Well, I think you and the Chamber of Commerce can have some work cut out if our experience with the Edge Act is any portent of what will happen. We will enact another law giving American business new opportunity to compete in the world, but everybody else will come and take advantage of it. That's what's happened to the Edge Act provisions, which we authored right here in this committee.

#### JAPANESE TAKE ADVANTAGE OF EDGE ACT

I think just about every company that has come in to take advantage of those provisions has been Japanese. I'm not sure there's been one American company come in yet to set up an Edge Act corporation to enhance its trade.

I think that most of the people don't even think that they can do that.

Mr. HESTER. Riggs just notified me that they did last week in the Bahamas.

Senator STEVENSON. Well, we passed the law and then the Japanese come and take advantage of it. Unless we wake up—we've got a little educating to do. It's not just the government; it's business. It's American industry.

Yes, sir?

Mr. REES. There are two kinds of export trading companies. One is an ordinary export trading company. Anyone can have one. I could start one tomorrow. If I call it an export trading company, it's an export trading company.

You also have an export trading company under this act. The act is not exclusive. It doesn't say that if you don't come under this act, you're not an export trading company.

However, by coming under the act, you do get a lot of Government benefits. That should be the criterion. We don't prevent foreigners from coming in and owning an export trading company. Nevertheless, if they want to own an export trading company that qualifies under your bill, then I think that you have a right to put in restrictions on ownership because you are giving benefits, whether it be tax benefits or actual subsidies of Eximbank financing or whatever it might be.

Senator STEVENSON. I just don't see on the basis of past experience much drive on the part of American business, as you yourself indicated. Even if they did, our traders go to colleges and high schools now. They don't even have a language.

In fact, you don't even learn English. [Laughter.]

Let alone Japanese or a European language. That troubles me, restricting foreign participation in these companies.

And I hope that we can do something to provide more financial assistance for them. We've got some dilemmas there, too.

The Eximbank is already under great pressure, as you've acknowledged. That's one reason why we just permit Exim guarantees, where available. And it should occur to you that while we didn't mention SBA and EDA, they are potential sources of Government financing.

Yes, sir?

Mr. LIEBMAN. I have a comment on that, Mr. Chairman. One of the things that I kept myself busy doing yesterday before coming over here today was trying to find out why this new pre-export financing program of SBA, so loudly announced on March 1, at least on the west coast, hasn't gotten even off homeplate.

The banks, the participating banks, are not buying the program one bit. And it's a cruel hoax.

Senator STEVENSON. Why is that?

Mr. LIEBMAN. They advance a number of reasons.

Senator STEVENSON. The banks?

Mr. LIEBMAN. The banks complain about documentation, the fact that it's 75 percent cover instead of 90 percent cover, the low interest, relatively speaking, of course, spread available to them under this program.

And after my conversations here in town, I'm not sure that the banks on the west coast are all right. I'm not sure that there shouldn't be some perhaps smaller banks allowed to participate in the program that might be a little more aggressive, but I think

that it's illustrative of the kind of hitches that we constantly encounter when we try to get these programs to work.

And the exporters are the ones who suffer.

Senator STEVENSON. That why we put in Exim instead of SBA, because we know the history there. But maybe we can take a look at SBA and do something to make them supportive.

Ms. Schueler?

Ms. SCHUELER. Senator Stevenson, I would just like to briefly comment. On behalf of the subcommittee, we would have to study this reciprocity provision before we come to any conclusion.

But on my own behalf, I think I failed to mention that we're a DISC corporation and a small business. I do think that we operate with one arm tied behind our backs. We do not have the advantages of our major industrialized trading partners—Japan, Germany, and so on.

And what we should attempt to do, in my humble view, is to give us those advantages because you have companies coming in from Japan, from Germany, from England, from France, who are taking over what we as Americans are not doing.

And they have the help of their government to do that. And I think we ought to help those companies that are engaged in export and provide those incentives for additional companies to get into the export field.

#### MONEY RATES ARE UNCOMPETITIVE

Our rates, our money rates, are so uncompetitive, and other countries like Germany and Japan, et cetera, they think in long term, not short or medium term. Five years is really nothing. They think long term.

And when you're up against, say, a possible turnkey operation and you're up against competition from Germany which finances this on a long-term basis at 3 percent, we can't even touch it.

I mean we've got Japan bidding, and something just has to be done because the benefits to the United States are not going to be immediate; they're going to be long term. And we have to think long term in terms of export because there's a cause and effect.

You can't have an immediate, positive influx of profits.

Having been in the export field for 72 years, and all our products go overseas—they're all U.S. made—it's a long-term investment. And we have to recognize that.

It's not a short-term, one, two, three thing.

Senator STEVENSON. Mr. Fox mentioned, this is one of many, many things that need to be done. But I think what you say is ironic.

The interest rates are lower in West Germany and in Japan because they're competitive and because we're not competitive, we have much higher interest rates, which will keep us noncompetitive.

Ms. SCHUELER. Also, heretofore, it wasn't a matter of surviving to be in the export market. We have a fantastic market here. For Germany, it was a matter of survival. For Japan, it is a matter of survival.

Senator STEVENSON. But it's becoming a matter of survival here. Sure, it's becoming a matter of survival here and we should give it the priority that survival dictates.

Thank you.

Mr. Fox?

Mr. Fox. Senator Stevenson, I think it's very important. I would like to very much endorse what Ms. Schueler said with respect to the long term. And I think there is no evidence that the executive branch views the developments in a longer term.

Recently, Secretary Bergsten appeared before the subcommittee with respect to Eximbank and cited the improvement in the trade figures last year, and there was a 23-percent improvement in our exports. There was a statement that attributed part of that improvement to the export expansion policies of the U.S. Government.

Well, there have been no changes in the export expansion policies of the U.S. Government. The Eximbank had to come back up to the funding level of earlier years because it had been reduced to virtually zero.

But aside from Eximbank financing, which now is under further restraint as to the amount available, no such efforts were made. And anyone who knows anything about the economics of the situation knows that the U.S. export performance improvement last year was basically business cycle related.

As the economies abroad turned up, they bought more of our goods, and the export figures were quite good. But either there is a failure to understand that or a willingness to cite any improvement as an indication of success of policies which have not had the power to change the situation.

#### MISSTATEMENT OF THE ISSUE

The conclusion that I come to is that the Congress has the major opportunity and responsibility to call a spade a spade and to insist on a demonstration of the effectiveness of the policies being cited by the administration for the improvement. Two weeks ago, there was issued from the White House a statement of the removal or steps toward the removal of export disincentives. In fact, not a single item had been removed, and one item that is very difficult for us—we all disfavor bribery—that's not even called a problem. It's not the problem of the requirements of the Anti-Corruption Act. It's only the interpretation of the requirements that have to be modified—a total misstatement of the issue.

That is the case with respect to a number of other ones. I believe that unless the export problem is viewed in the longer term, there is simply no way to deal with the situation with any prospect of success.

Senator STEVENSON. Well, I agree completely. As a matter of fact, in these discussions between the executive and legislative branches, I've been the one who's said that failure to accompany familiar, orthodox, disciplines monetary steps with some long- and short-term recognition of structural weaknesses in the economy and action won't even overcome the inflationary psychology, which we're so bent on doing something about.

And judging from the stock market yesterday—and there is nothing in the bond market—we may be getting pooped already. I'll bet you it doesn't take very long for the Europeans to take a closer look to that—to that whole program—and the dollar begins to sink again.

The President's program on structure is to defer it all to a commission in the 1980s.

Well, I think that's about all we have time for for now. I do thank you for your helpful comments.

In spite of those last comments of mine, I think there is a lot of support building up in Congress for action, and the bills we're considering today are ripe for action in the Senate. I don't know about the House. We'll have to get some help from you.

Mr. REES. I've talked to several potential authors on the Banking and Currency Committee, and I think we might persuade them to introduce the bill in the next few weeks.

Senator STEVENSON. I hope we can do more than get it introduced.

Mr. REES. Again, it's the complexity of the rules probably. It's best to have an omnibus bill, and then have a series of bills which would go to specific committees. We could then take whatever we get out of these committees and reconstitute an anonymous bill.

Senator STEVENSON. Rather than do it in conference?

Mr. REES. Now that the conference is breaking up, they can put it in place. |

Senator STEVENSON. One thing at a time around here.

Thank you. The committee is adjourned.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

# EXPORT TRADING COMPANY ACT OF 1980

THURSDAY, APRIL 3, 1980

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

The subcommittee met at 3:05 p.m. in room 5302 of the Dirksen Senate Office Building, Senator Adlai E. Stevenson, chairman of the subcommittee, presiding.

Present: Senators Stevenson and Heinz.

Also present: Senator Danforth.

Senator STEVENSON. The subcommittee will come to order. We resume our hearings this afternoon on legislation to promote U.S. export trading companies. I invite all of the witnesses to come forward.

STATEMENTS OF PHILIP KLUTZNICK, SECRETARY OF COMMERCE; ROBERT HORMATS, DEPUTY UNITED STATES TRADE REPRESENTATIVE; C. FRED BERGSTEN, ASSISTANCE SECRETARY OF THE TREASURY FOR INTERNATIONAL AFFAIRS; AND DEANE HINTON, ASSISTANT SECRETARY OF STATE FOR ECONOMIC AND BUSINESS AFFAIRS

Senator STEVENSON. Mr. Secretary, we will hear from you.

Secretary KLUTZNICK. I am pleased to appear this afternoon before the International Finance Subcommittee to present the administration's views on S. 2379 and S. 864. These bills have the common objective of encouraging exports by American industries. S. 2379 would authorize a new entity under U.S. law—export trading companies. S. 864 would extensively amend the Webb-Pomerene Export Trade Act to clarify the antitrust exemption that may be available for exporting activities.

The administration applauds the aim of these bills. We agree that an increase in exports is of utmost importance to the Nation's economic well-being. The administration also endorses the concept of export trading companies and the effort to clarify the application of the antitrust laws to export activities. As discussed in my testimony, there are certain provisions in the legislation that give us some difficulty and we will be glad to work with the committee to resolve them.

## THE NEED FOR INCREASED U.S. EXPORTS

A healthy and expanding U.S. export sector has become increasingly essential to a strong U.S. economy, the stability of our external accounts, and our critical fight against inflation. Exports (1)

contribute significantly to U.S. jobs, production, and economic growth; (2) enable important economies of scale, thereby contributing to the most efficient use of U.S. resources and to reduce prices at home; and (3) provide the most constructive way of paying for U.S. imports of both essential and desired commodities, and thus strengthen the dollar.

U.S. industries must be able to compete abroad if they are to maintain their ability to compete at home. More than ever before, the growth and vitality of U.S. exports contribute to the prospect for continued growth and vitality of our economy as a whole.

In 1970 the Federal Republic of Germany replaced the United States as the world's leading exporter of manufactured goods. Today Japan threatens to drop the United States to third place. At the same time, newly industrializing countries have presented us with increasing competition from a new quarter, as these countries become exporters of many manufactured goods.

Fewer than 1 in 10 of U.S. manufacturing firms now sells a portion of its production abroad—20,000 out of 250,000 firms. Yet we believe that the competitiveness of our products—in terms of price, quality, and delivery schedules—would permit a doubling of this figure.

Most of these potential exporters are small- or medium-sized businesses. These firms lack the know-how and financial resources to export. They often lack the incentive as well, because our domestic market is the largest and most open in the world. Unless we make exporting easier for these firms, they are not likely to expand into overseas markets.

We should learn from the experience of West Germany, Japan, France, Hong Kong, and many other successful exporting countries. All use some form of sophisticated export trading company to help promote their exports. These companies not only represent many small manufacturers that could not export on their own, they also promote consortia of companies to provide overseas services for sometimes massive projects.

#### PROMOTING EXPORTS THROUGH EXPORT TRADING COMPANIES

Unlike many of our major trading partners, the United States does not yet have large export trading entities, aside from the major international grain companies. To be sure, there are some 700-800 export management companies operating throughout the country. These companies are mostly quite small, however; they are not sufficient size to offer a full range of export services to small- and medium-sized manufacturing firms.

S. 2379 provides several incentives to the formation of U.S. export trading companies as a means of stimulating exports by small and medium-size firms. Clearly, there is no single model for an American export trading company. We cannot and should not copy the Japanese trading company, which could pose a number of problems for competitive behavior in the U.S. market. Instead, we must isolate the essential characteristics of successful exporting entities and blend them with our general principles of economic competition and bank soundness.

There are, I believe, three general characteristics of a successful export trading entity. First, it provides a "one stop" facility for any sized firm interested in exporting. The export trading company provides market analysis, distribution services, documentation, transportation, financing, and after-sale services. The company achieves economies of scale in all these areas over what smaller individual companies could hope to achieve.

Second, the successful export trading company will search out U.S. producers of products for which the company has discovered markets overseas. It will not simply await passively a U.S. manufacturer interested in exporting.

Third, by its very existence, an export trading company should limit the capital outlay and risk that any individual company will have to assume to launch a realistic exporting effort.

Export trading companies with these characteristics are most likely to be formed by those that already operate in international markets. A manufacturer that exports its own products may find it profitable to use its overseas network for selling some products of smaller U.S. companies that will not export on their own. Similarly, many banks already have global coverage by agents or correspondent banks. These banks are already in the business of evaluating risks, understanding foreign markets, and providing financing. They are logical candidates to form export trading companies. No matter what the origins or ownership of the export trading company, its purpose and aim will remain the same—to export products of U.S. companies that do not now export in significant quantities.

#### THE EXPORT TRADING COMPANY ACT—S. 2379

I commend you and your staff on the changes made in the export trading company bill. It is definitely superior to the bill the Commerce Department testified on last September. The new bill, joined with the proposed Webb-Pomerene amendments in S. 864, contain the necessary elements to promote exporting by companies that do not now export, including small and minority business. I would like to comment specifically on four aspects of the proposed bill: (1) bank participation, (2) Eximbank's role, (3) DISC and subchapter S tax provisions, and (4) antitrust immunity.

#### BANK EQUITY PARTICIPATION IN EXPORT TRADING COMPANIES

Because of their expertise and financial resources, banks could play an important role in successful development of export trading companies. The administration supports the purpose of S. 2379 to permit bank ownership of export trading company operations. We must recognize, though, that allowing banks and Edge Act corporations to invest in commercial operations requires a change in the longstanding policy of this country to separate banking from other commercial activities.

The administration believes that the bill's purpose of promoting bank participation in export trading companies can be realized while safeguarding the integrity of our financial institutions, through a provision of broad oversight of banking participation by the appropriate regulatory agencies. In particular:

One, initial investment in an export trading company would be subject to prior notification and approval by the appropriate regulatory agencies, which would work with the subcommittee to establish clear standards for acceptable investment.

Two, significant new lines of activity or a substantial increase in investment by the parent bank organization would require further approval.

Three, regulatory authorities would have broad discretion to limit a banking organization's financial exposure to an ETC.

Four, bank-owned export trading companies could take title to goods for which they have firm export orders and under other conditions as authorized by the appropriate regulatory agency.

Five, bank-owned ETC's could not own manufacturing facilities or other commercial concerns.

The administration believes that the supervisory agencies can develop and administer standards within these general guidelines that will permit effective bank participation in export trading companies.

#### FINANCE AND TAX PROVISIONS

1. Eximbank's role.—S. 2379 would also empower the Export-Import Bank to use its credit and insurance resources in support of export trading companies. The administration fully endorses the basic principle that Eximbank support should be available to these companies. We do however, have serious reservations about the provisions of Eximbank financing and guarantees for start-up costs and operating expenses, and guarantees for export inventories. These activities would dilute the basic mission of Eximbank—to promote exports—by requiring Eximbank to become involved in domestic credit operations, where it has no expertise.

Given these difficulties and the advantage of tying this activity to domestic development finance, the administration proposes to explore more fully existing authorities such as those provided in the Economic Development Administration and Small Business Administration statutes to determine where the authority contained in sections 6 and 7 should be lodged.

The private credit market already has adequate funds to provide for broad-scale financing of inventories without Federal participation. We therefore recommend that the provision for guarantees for inventories be deleted.

The provision of guarantees for loans based on export accounts receivable appears acceptable but needs to be clarified. This provision is similar to the Foreign Credit Insurance Association programs. It would help small and medium-sized exporters secure the working capital necessary to expand their operations. However, there is nothing in the bill as presently drafted which would prevent large, well-established exporters from using this facility to reduce their own cost of capital, crowding out the smaller, lesser creditworthy borrower. We recommend the insertion of a provision limiting the magnitude of this type of financing to ensure that the bill's purpose of stimulating additional exports is served.

2. Tax issues.—DISC. Section 10 of the proposed bill would make export trading companies, or subsidiaries of such companies, eligi-

ble for DISC tax deferral status for their exports of both goods and services.

Many, if not all, ETC's should be able to meet the requirements of present DISC legislation and benefit from DISC tax deferral status. Modification of U.S. banking laws to permit bank ownership of export trading companies will effectively expand DISC coverage without requiring any change in the DISC statute itself. However, to amend DISC legislation to cover exports of all services, as well as services provided by other U.S. firms to export trading companies, as S. 2379 would do, would definitely alter the nature and scope of the DISC program and substantially increase its revenue costs. The present realities of the budget situation do not permit such an extension at this time. It could also raise questions about our international obligations in this area and our concerns for tax equity.

There appears to be significant leeway for export trading companies to provide a wide variety of export services which would qualify for DISC treatment. Admittedly, what can be done under the DISC statute falls short of the broad list of export trade services contemplated in S. 2379: not all of these could receive DISC status. The tax benefits which are already available, however, are substantial and in our view will provide meaningful stimulus to the formation of bank-owned ETCs.

Subchapter S. S. 2379 would also make two amendments in the subchapter S provisions of the Internal Revenue Code. The first amendment would allow an ETC to qualify for subchapter S even though it had more than 15 shareholders. The present restriction on the number of shareholders seems reasonable and not likely to hamper significantly the development of Export Trade Corporations. Accordingly, we are opposed to this amendment.

The second amendment proposed by S. 2379 would relax the current restriction that a subchapter S corporation derive at least 80 percent of its gross receipts from the United States. The administration has commented upon and generally supported a proposal by the Joint Committee on Taxation to overhaul subchapter S, including elimination of the 80-percent restriction.

However, because few ETC's are likely to be owned by individuals, as subchapter S requires, this provision is not a critical element of support for export trading companies and we would recommend its deletion from S. 2379. Instead, we would encourage the Congress to proceed with the general overhaul of subchapter S so that an export trading company will not be disqualified because it sells goods or provide services outside the United States.

The bill would permit States and other Government entities to own, participate in, or otherwise support export trading companies. We oppose the concept of State ownership of export trading companies on principle. State ownership is not necessary and could pose possible problems of favoritism, as well as questions on immunity from antitrust laws and taxation by the Federal Government.

Before concluding on S. 2379 I want to assure the committee that, in accordance with section 10(c), the Commerce Department will be pleased to develop, prepare, and distribute helpful information on how an export trading company can utilize DISC status, in consultation with the Treasury Department. Also, may I suggest

that in section 4, the explicit reference to the Assistant Secretary for Trade Promotion be deleted. Rather the bill should place responsibility for promoting and encouraging the formation of trading companies in the Secretary of Commerce, subject to delegation.

#### ANTITRUST EXEMPTION

We understand that some segments of the business community have considerable uncertainty over application of the antitrust laws to export efforts involving products of domestic competitors. The problem, we are told, is particularly acute for small- and medium-sized companies, which are often not in a position to obtain advice from antitrust counsel, or to cope with the legal risks that some feel remain after legal counsel's best advice. These companies are therefore reluctant to achieve the economies of scale necessary for exporting by using a single entity to export their products. They may, in fact, decide to refrain from any cooperative exporting effort, and that decision may mean no exporting effort at all.

The need of business is for assurance that specified cooperative exports activities will not subject them to antitrust liability. The administration sympathizes with this need. At the same time, we do not want to create an antitrust exemption that may have anti-competitive effects in the United States. We believe that the best approach is to amend the Webb-Pomerene Act to provide a flexible procedure for certifying the planned activities of American businesses that wish to engage in exporting action that might be perceived to raise antitrust problems.

Under the procedure that the administration foresees, one or more companies would present to the Department of Commerce a reasonably detailed statement of what export activities are planned. Applicants could include, for example, manufacturers, construction companies, or companies selling other services. An applicant or applicant group could also include an enterprise that planned to coordinate the export efforts of others with marketing, financing, and other assistance, and that would buy the merchandise of these companies for export. Certification would be determined on the basis of statutory standards by the Commerce Department, with the participation of the Attorney General. Joint activities would be certified only if they would help promote export trade and would not likely result in a substantial lessening of competition in U.S. commerce. Modifications in the application that would conform it to these standards might be suggested. In appropriate situations, we might place limits on the number or kind of new members or customers that could be added before the applicant would have to file for an amended certification. In short, we would have a flexible process that could be tailored to the particulars of any situation.

Once certification was granted the certified entity would be exempted from antitrust liability for the activities described in the certification. The immunity would not extend to activities not covered in the certification. The Department of Commerce could revoke the certification if the entity's activities ceased to conform to the statutory standards. The Attorney General and the Federal

Trade Commission would be empowered to seek decertification on their own initiative.

This approach to an antitrust exemption for export activities will provide the desired certainty to exporters, it also allows our anti-trust enforcers to guard against extension of an exemption to potentially anticompetitive activities. This approach would combine the promotion of export-oriented enterprises by S. 2379 with the creation by S. 864 of a procedure for obtaining an antitrust exemption. Extension of the Webb-Pomerene exemption to specifically covered services, as contemplated by both bills, will allow construction companies, consultants, export companies, and other providers of services to contribute to our national effort to increase exports.

The approach we have recommended today is comprehensive. It will provide an important stimulus to export trade. Necessary anti-trust exemption for exporters will be provided by Webb-Pomerene. It is adaptable to any situation in which potential exporters may find themselves. Under these circumstances we do not see the need for a special antitrust exemption for export trading companies, such as that provided in S. 2379.

In conclusion, Mr. Chairman, the administration believes the time has come to take concrete steps to encourage exports. We feel that your bill, S. 2379, and Senator Danforth's, S. 864, are positive steps. We look forward to working closely with you on these bills.

[The following letters were ordered inserted in the record at this point:]

ADLAI E. STEVENSON  
ILLINOIS

United States Senate  
WASHINGTON, D.C. 20519

COMMITTEE ON BANKING, HOUSING  
AND URBAN AFFAIRS  
SUBCOMMITTEE ON  
INTERNATIONAL FINANCE (CHAIRMAN)  
COMMITTEE ON COMMERCE,  
SCIENCE AND TRANSPORTATION  
SUBCOMMITTEE ON SCIENCE,  
TECHNOLOGY AND SPACE (CHAIRMAN)  
SELECT COMMITTEE ON ETHICS  
(CHAIRMAN)  
SELECT COMMITTEE ON  
INTELLIGENCE  
SUBCOMMITTEE ON THE COLLECTION,  
PRODUCTION AND QUALITY OF  
INTELLIGENCE (CHAIRMAN)  
DEMOCRATIC POLICY COMMITTEE

April 11, 1980

The Honorable Philip Klutznick  
Secretary of Commerce  
Department of Commerce  
Fourteenth Street at Constitution Avenue, NW  
Washington, D. C. 20230

Dear Mr. Secretary:

Thank you for your favorable testimony before the International Finance Subcommittee on April 3rd on the export trading company and trade association proposals. I look forward to working with you to secure passage of appropriate legislation.

I would appreciate receiving for the hearing record your response to the following questions:

1. You recommended in your statement that the bank regulatory authorities be given broad legal authority to approve any banking organization investment in an export trading company.

A. Should we not provide that certain minimal investments could be made without approval? For example, should not a bank or Edge Corporation be allowed to acquire up to 5% of the voting stock of an ETC without regulatory approval? Do not bank holding companies already have this ability under the Bank Holding Company Act? Why not extend this limited authority to Edge Corporation and banks for ETC investments. Would this make it easier for small banks to participate?

B. I am concerned that if we give the regulatory authorities too broad an approval authority with no time constraints on acting, they can pigeonhole ETC investment applications for an inordinate period of time, thus frustrating bank participation. As set forth in S. 2379, should we not have a 60 or perhaps 90-day period within which the regulatory authorities must act on an application?

C. I am also concerned that the standards governing bank investments give appropriate weight to the export benefits of bank involvement. As you know, under my bill, the agencies must consider the Commerce Department's views on export benefits and may only disapprove banking organization investments if the export-related benefits are outweighed by certain adverse financial, managerial or other conditions. Could we take this as the guiding approach to agency consideration of bank investment applications and provide further that in acting on any application the agency would have authority to impose conditions necessary to prevent unsound banking practices, conflicts of interest, undue concentration of resources, decreased or unfair competition, or excessive commercial or speculative risks? In other words, absent specific negative banking considerations an application should be approved. In approving the application, however, the agency could impose reasonable conditions designed to limit bank risks associated with the investment.

2. In your statement, you seemed to suggest at several points that bank-owned ETCs should be subject to special regulation of their activities by the bank regulatory agencies, presumably to limit risk. For example you suggest that the agencies have authority to set financial limitations for a bank-owned ETC, and approve new lines of activity.

A. Do the agencies really need this authority in the case of non-controlling investments? If a bank takes a 10% interest in an ETC, why should that ETC find itself under the regulatory thumb of a banking agency? Would this discourage ETCs from taking in banks as participants? Should not the degree of regulation correspond to the degree of bank involvement?

B. Could we not thus draw a line above which the agencies would have this broader regulatory authority? How about drawing that line where a banking organization has the ability to control an ETC? An ETC controlled by a bank would thus be subject to somewhat more regulation than an ETC which merely had a bank as a minority investor.

C. And could we not differentiate regulation by the type of banking organization investor? For example, Edge Corporations and bank holding companies do not accept deposits from the general public. Should we not thus further differentiate regulation by the type of banking organization investor? For example, give the agencies broader authority when a bank is to take a direct investment in an ETC.

3. In your statement you seemed to state clearly that bank-owned ETCs should be able to take title to goods, but then you qualified this somewhat. You mentioned that bank-owned ETCs should be able to take title against firm export orders and otherwise be able to take title as authorized by the bank regulatory agencies.

A. I think you would agree that if a trading company cannot take title to goods, then it cannot offer its customers the one-stop service which you agree is one of the chief attractions of a trading company. Thus, would you agree that, to be successful, bank-owned ETCs must be able to take title? And, again, should not any authority of the bank regulators to impose conditions in this regard correspond to the degree of bank participation? Why burden an ETC with various requirements on taking title if it has only one bank investor with a minority interest?

B. Why special emphasis on taking title against firm export orders abroad? What if an ETC has a firm order for an import order in a barter transaction? Would that qualify? Why require any other way of taking title to pass some special regulatory approval? It seems to me a given that ETCs must be able to take title, and that no special approval authority should be required to do this, even in the case of bank-owned ETCs. I have no objection to the regulatory agencies requiring that a bank-controlled ETC conduct its operation in a manner that safeguards against

unsound commercial risks or speculation; I see no need, however, for specific limitations on the ability to take title. Taking title is, in fact, often a valuable protection. Lending on an unsecured basis is probably much more risky than taking title as middleman in an export transaction. An unsecured bank creditor goes to the end of the line in bankruptcy court and often winds up with a few cents on the dollar. An ETC whose purchaser defaults has title to the goods and can sell these in the market and sue the purchaser for any remaining contract claim. Thus, I see no need for any special limitations on the ability to take title in this bill.

4. I cannot understand why the bank regulatory agencies are so constrained about permitting U. S. banking organizations to invest in U. S. export trading companies when they let foreign banks come here, buy U. S. banks, and own foreign trading companies that sell to the United States. Why not put the U. S. banking system to work in support of U.S. exports, rather than in support of foreign imports? Does not the existence of this foreign competition lend support to the proposition that we should not overregulate or overburden U. S. bank-owned ETCs?

5. Would the safeguards you refer to in your statement allow a bank-owned trading company to hold inventory for export? I cannot imagine how a trading company could function without inventory.

6. Your statement suggests that bank-owned trading companies not be allowed to own manufacturing facilities "or other commercial concerns." The trading company itself is a "commercial concern." If trading companies cannot own "commercial concerns," what can they do?

7. You say the "private credit market already has adequate funds to provide for broad-scale financing of inventories without Federal participation." The question is not adequacy of funds but willingness to bear risks. To what extent does the private credit market presently finance inventories for U. S. export management or export trading companies, or other exporters?

8. Most countries rely on their banking system to play a major role in promoting exports. S. 2379 contemplates an increased role for U. S. banks through trading companies. Has the Commerce Department examined the role of banks in advancing the exports of other countries? What are foreign countries doing that the U. S. is not?

9. Financing of export accounts receivable and inventories of tradeable goods seem to be much easier in foreign countries than in the U. S. Why is that? Are foreign governments facilitating such financing through their counterparts to Eximbank or through their commercial banks?

10. S. 2379 has been unfairly criticized as pointing the way to giant conglomerates headed by banks which would control manufacturing, shipping, engage in commodity speculation, and so forth. I do not see anything in the bill which exempts trading companies from the domestic application of the antitrust laws, do you? Banks could not invest more than ten percent of their capital in all such investments, which is hardly enough to take over the economy, is it? Bank-owned trading companies would be subject to domestic antitrust laws as well as indirect supervision by bank regulatory agencies -- so where do these exaggerated fears come from? We do not have to have zaibatsu, do we, in order to have a significant number of effective trading companies?

11. One of our witnesses two weeks ago recommended that foreign ownership of U. S. export trading companies be based on reciprocity. That is, where foreign countries restrict ownership by U. S. persons of trading companies, U. S. law should restrict ownership of U. S. export trading companies by foreign persons. What is your view?

12. It has been suggested that the definition of "export trading companies" in the bill should be made more precise. For example, it was suggested that such companies should derive at least 50 percent of their income, on the average, from U. S. exports, as such exports are defined in the bill. It was also suggested that such companies should derive at least 10 percent of their income, on average, from providing export trade services to unaffiliated persons. What is your view on such provisions?

13. You oppose State ownership of export trading companies in principle, but what about port authorities and other such entities? Do you oppose in principle their ownership of export trading companies? And, what is there in the Constitution or statutes to prevent a State from owning a trading company?

With best wishes,

Sincerely,





THE SECRETARY OF COMMERCE  
Washington, D.C. 20230

MAY 09 1980

Dear Adlai,

Thank you for your letters concerning the Administration's position on S. 2379, the Export Trading Company Act of 1980, and your proposed revision of Section 5 of this bill. I regret the delay in responding to you.

The new version of Section 5, subject to a few key changes which I will suggest, offers a sound basis for bank participation in export trading companies (ETCs) while safeguarding the integrity of our financial institutions. The provision for oversight of banking participation by the appropriate regulatory agencies is a key factor in the new version of Section 5 which I welcome as positive response to my testimony.

The Treasury Department has consulted closely with the Federal Reserve Board, its own Comptroller of the Currency, and the Federal Deposit Insurance Corporation, in developing a formal Administration position on these key aspects of bank participation. The Federal Reserve Board may have some reservations on these proposals and will be responding with comments of its own.

(1) Investment without prior approval. We propose that any state or national bank, Edge Act or Agreement Corporation, bank holding company, or banker's bank could invest directly up to 5 percent of its capital and surplus in less than 25 percent of the voting stock or other evidences of ownership of any export trading company, without obtaining the prior approval of the appropriate Federal banking agency. If the appropriate agency determines, however, that this investment constitutes effective control of the export trading company, it would have the right to disapprove the investment within 60 days following notification.

Additional equity investments which would bring a bank's investments in a single ETC above five percent of capital and surplus or 25 percent of ETC voting stock, or if they result in effective control, would require agency approval. Aggregate direct or indirect investments in one or more ETCs, whether or not they require approval individually, could not exceed 10 percent of a bank's capital and surplus.

-2-

(2) Investment with prior approval. Any bank or banking organization could invest more than the threshold levels of 5 percent of a bank's capital and surplus or 25 percent of the voting stock of an export trading company with prior approval of the appropriate regulatory agency having jurisdiction over the bank institution making the direct investment. We expect that the regulatory agencies will be sympathetic to applications for investment by banks, and that the review process will not unnecessarily restrict investment which would be beneficial to U.S. exports, while maintaining the overall safety and soundness of the banking institutions.

(3) Definition of bank control. Consistent with the definition of control in the Bank Holding Company Act, we propose that control for the purposes of initial investment without approval, broader supervisory responsibilities of the regulatory agencies, and the ability of bank-owned ETCs to hold inventory or take title to goods, be defined as twenty-five percent or greater ownership of ETC voting stock, unless the appropriate regulatory agency determines in a particular case that control exists at a lower level of ownership.

(4) Title to goods. We propose that ETCs with non-controlling bank investments could take title to goods without restriction. ETCs with controlling bank investment could take title to goods against firm orders, or as approved by the appropriate regulatory agency on a case-by-case basis.

(5) Holding inventory. We propose that ETCs with non-controlling bank investments could hold inventory without restrictions. ETCs with controlling bank investment could hold inventory in their own warehouse on consignment or finance arrangements, but could not take title to goods until a firm order was received, or if the appropriate regulatory agency otherwise approved.

(6) Export benefits review by Commerce. We would delete the specific reference requiring regulatory agencies to request the Commerce Department to undertake an analysis of the export benefits of an investment requiring agency approval. Commerce and other agencies could present specific views on a voluntary basis. Regulatory agency consideration of bank investments would take into account the potential export benefits of the proposal in general terms, without specific reference to small and medium-sized businesses or improving U.S. competitiveness in world markets.

(7) Court review. We propose that in reviewing regulatory agency decisions, the Court of Appeals be permitted either to set aside or to remand cases to the agency on substantive grounds, as defined in the revised Section 5. When the Court reverses an agency decision on procedural grounds, it would be required to remand to the agency involved.

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(8) Bankers' banks. Finally, since S. 2379 now includes no definition of "bankers' banks", we suggest that a definition be added, as well as an indication of the appropriate regulatory agency.

We support banking participation in export trading companies if these principles are incorporated within a revised Section 5. This position comes a long way toward meeting your objectives in this area, while safeguarding the safety and soundness of the investing bank.

I am also enclosing a number of specific responses to questions posed in your April 11 letter that were not answered in the above summary of bank participation issues.

Sincerely,



Secretary of Commerce

Enclosures

Honorable Adlai E. Stevenson  
United States Senate  
Washington, D.C. 20510

#6

Question: Your statement suggests that bank-owned trading companies not be allowed to own manufacturing facilities "or other commercial concerns." The trading company itself is a "commercial concern." If trading companies cannot own "commercial concerns," what can they do?

Answer: A trading company may be a DISC, provided it meets the requirements of current DISC legislation. As such, it may acquire and receive income in the form of dividends and interest from certain foreign investments which are related to exports from the United States. This would include (1) stock or securities in a foreign export sales subsidiary; (2) stock in securities of a controlled foreign real property holding company, holding title to foreign export facilities of the DISC; and (3) stock or securities of an unrelated foreign corporation, provided that the ownership is in furtherance of export sales and provided that the direct or indirect stock ownership by the trading company DISC is less than 10 percent of the total combined voting power of the foreign corporation (this is limited to investments that might be required in unrelated foreign distributors or to help finance a customer's purchase of U.S. exports). The foregoing are permitted investments under the DISC law (sec. 993(e)). In addition, the trading company, if it did not itself elect DISC status, could own the stock of a DISC. Bank-owned trading

- 2 -

companies could own warehouses if essential to their operations and approved by the appropriate regulatory agency. However, they should not own airlines, shipping lines, or real property except as indicated above.

#7

Question: You say the "private credit market already has adequate funds to provide for broad-scale financing of inventories without Federal participation." The question is not adequacy of funds but willingness to bear risks. To what extent does the private credit market presently finance inventories for U.S. export management or export trading companies, or other exporters?

Answer: Specific figures are not available on the extent to which the private credit market finances inventories for U.S. exporters. However, we have had no evidence of a significant failure of the credit market to provide adequate inventory financing at competitive rates. The United States possesses the broadest, most fully-developed financial market in the world. Short-term credits (which would cover inventories) represent the most extensively-developed portion of that market. The funds clearly are there for creditworthy borrowers.

Eximbank guarantees for inventory financing would simply have the effect of diverting credit from one class of borrowers to another, and moreover, would represent a potentially enormous drain on Exim's resources at a time of budgetary stringency. The Administration has therefore opposed Eximbank guarantees on financing for export trading company inventories, as distinct from guarantees for export accounts receivable -- which we support as consistent with present FCIA programs, less costly to Eximbank's budget, and of more direct benefit to U.S. exports.

Question: Most countries rely on their banking system to play a major role in promoting exports. S. 2379 contemplates an increased role for U.S. banks through trading companies. Has the Commerce Department examined the role of banks in advancing the exports of other countries? What are foreign countries doing that the U.S. is not?

Answer: A full answer to this question would require more resources and a greater research effort than can be brought to bear within the time available to answer the Committee's questions. However, a partial answer can be assembled from Eximbank's semiannual reports to Congress on export credit competition and from information provided by U.S. Embassies abroad.

Several of the official export credit programs of other major industrial nations enlist the support of, or work through, their national banking systems to promote exports. For example,

- The French rely much more extensively on official refinancing of commercial bank loans than on direct official lending. Essentially all medium- and long-term export projects receive preferential fixed-rate financing through rediscounting or credit guarantees.
- In Germany, an association of 58 commercial banks has formed a pool of funds to help ensure that export credit applicants can find financing, especially for projects which might be too big for any one bank.

- 2 -

- Japan has established especially close working relations among banks, government agencies, and exporters. The Bank of Japan allocates credit quarterly on a bank-by-bank basis, but once the credit is allocated, exercises no control with respect to which borrowers will have access to it.
- The United Kingdom's export credit agency makes interest subsidy payments directly to banks providing medium- and long-term export credits, or combines subsidies with refinancing of the later maturities of commercial bank export loans. Such benefits have been made available for essentially all export contracts valued at one million pounds and having repayment periods of over two years.

Although our evidence is incomplete, indications accumulated over the past few years strongly suggest that in other major industrial nations, the export promotion role of commercial banks in themselves is not very different from that of U.S. banks. The main differences arise in the ways in which some official export credit agencies use the banks to provide interest rate subsidies.

#9

Question: Financing of export accounts receivable and inventories of tradeable goods seem to be much easier in foreign countries than in the U.S. Why is that? Are foreign governments facilitating such financing through their counterparts to Eximbank or through their commercial banks?

Answer: The great majority of the efforts of official export credit agencies, both in the United States and in other major industrial countries, are directed toward assisting long-term "big ticket" export projects rather than short-term needs such as inventory finance. Important examples would include aircraft, nuclear power plants, and ships. We have no evidence that financing export accounts receivable and inventories of traded goods is significantly easier in other countries than in the United States. If the Committee does have such evidence, we would very much like to have it.

In some countries there are credit programs which would appear potentially useful for financing inventories or export accounts receivable. For example, France has just instituted a system of "revolving" prefinancing credits which appears aimed at short-term inventory financing, but its practical significance so far is unknown.

Both Japan and the United Kingdom provide government insurance and guarantees against commercial and political risk for short-term supplier and bank credits, constituting a form of support for

-2-

export accounts receivable. The British and Japanese programs are generally similar to FCIA insurance offered in the United States, except that the foreign premiums are lower, reflecting the use of subsidies in Britain and of group rates to trade associations in Japan.

In addition, the United Kingdom, France, and others maintain certain programs, such as export inflation insurance or exchange risk guarantees, which might be applied to inventories or accounts receivable as part of a larger, long-term project. However, most foreign exports credit systems do not devote much of their effort to such short-term needs as inventory financing.

#10

Question: S. 2379 has been unfairly criticized as pointing the way to giant conglomerates headed by banks which would control manufacturing, shipping, engage in commodity speculation, and so forth. I do not see anything in the bill which exempts trading companies from the domestic application of the antitrust laws, do you? Banks could not invest more than ten percent of their capital in all such investment, which is hardly enough to take over the economy, is it? Bank-owned trading companies would be subject to domestic antitrust agencies -- so where do these exaggerated fears come from? We do not have to have zaibatsu, do we, in order to have a significant number of effective trading companies?

Answer: We find nothing in S. 2379 evidencing an intent to exempt trading companies from domestic application of the antitrust laws. The procedures for granting antitrust exemptions outlined in our April 3 testimony would, when finalized, provide necessary clarification on the application of the antitrust laws to export activities. We agree that effective trading companies need not evolve into huge zaibatsu dominating both our domestic and export trade.

#11

Question: One of our witnesses two weeks ago recommended that foreign ownership of U.S. export trading companies be based on reciprocity. That is, where foreign countries restrict ownership by U.S. persons of trading companies, U.S. law should restrict ownership of U.S. export trading companies by foreign persons. What is your view?

Answer: Many major foreign banks own trading companies and confirming houses and can provide convenient one-stop service for exports, including financing, credit checks, foreign exchange, advice on markets and connections to vital distribution channels. These offer a valuable channel to U.S. exporters. We should not jeopardize this benefit to U.S. exporters without any improvement in the condition for U.S. trading companies abroad. The U.S. principle of national treatment is consistent with the long-standing U.S. policy of fostering competition on an equitable basis and promoting free world-trade and capital flows. Reciprocity implies a country-by-country differentiation of policy which is essentially negative and which runs counter to traditional U.S. policy of neither discouraging nor encouraging foreign investment in the United States. However, the Administration is prepared to review complaints of discriminatory practices or unfair treatment by other countries and to consider whether any action needs to be taken.

#12

Question: It has been suggested that the definition of "export trading companies" in the bill should be made more precise. For example, it was suggested that such companies should derive at least 50 percent of their income, on the average, from U.S. exports, as such exports are defined in the bill. It was also suggested that such companies should derive at least 10 percent of their income, on average, from providing export trade services to unaffiliated persons. What is your view on such provisions?

Answer: We oppose both the restrictions suggested. They impose unwarranted and unnecessary restraints which would impair the operating efficiency of the export trading companies. There is already a highly effective limitation in the requirements for DISC status, including the rule that 95 percent of income must be export related. This would not prevent import activity, but the income could not qualify for DISC benefit. Moreover, a certain amount of import activity may be inevitable and necessary to effect certain export business. With regard to export services performed for unaffiliated persons, while such business should be encouraged, I see nothing to be gained from making it a condition of export trading company status.

#13

Question: You oppose State ownership of export trading companies in principle, but what about port authorities and other such entities? Do you oppose in principle their ownership of export trading companies? And, what is there in the Constitution or statutes to prevent a State from owning a trading company?

Answer: In my testimony I pointed out that state ownership of trading companies could pose possible problems of favoritism, as well as questions on immunity from antitrust laws and taxation by the Federal Government. The same problems would apply to state-created entities possessing, by virtue of statute, or otherwise, powers or privileges denied to private enterprise.

In particular, since debt obligations of State and local government units are exempt from taxation, assistance in the form of loan guarantees to State or local government-owned export trading companies will result in a Federal guarantee of tax-exempt obligations. The Administration and Congress have opposed such guaranteed tax-exempt obligations since they would create an obligation, compete against other municipal borrowers who do not receive such guarantees, and are inefficient since the revenue losses to the Treasury exceed the interest rate benefits to the State or local borrowers. Tax-exempt local government units would include port authorities.

Although we are not aware of any legal bar which would prevent states from owning export trading companies, or other commercial concerns, the Administration does not wish to actively encourage such ownership.



THE SECRETARY OF COMMERCE  
Washington, D.C. 20230

May 12, 1980

Dear Adlai,

This letter supplements my April 3, 1980, testimony on S. 2379 and S. 864 with a more detailed Administration position on an antitrust exemption for export trade activities.

As you know, I reported during my April 3 testimony that the Administration had been unable to agree on the form of participation by the Justice Department in the process of certifying certain export activities to be exempt from application of the antitrust laws. Since that time, extensive consultations among the Commerce Department, USTR, the Justice Department, and other agencies have led to Administration agreement upon the form of that participation. Accordingly, I am pleased to state on behalf of the Administration that, with the few changes I have noted below, we could support an antitrust provision for export trade associations and export trading companies such as that contained in title II of the draft committee print of May 3, 1980. (The Administration has not yet considered whether the antitrust exemption should be applicable, as proposed in the May 3 print, to individual companies, other than export trading companies, which are not part of an export trade association.)

1. The Administration believes that the Attorney General and the Federal Trade Commission should have an opportunity to review any certificate that the Commerce Department proposes to issue before that certificate becomes effective. This review would allow for consultations between the Commerce Department and the antitrust enforcement agencies in an effort to avoid issuing certificates for activities that would have anti-competitive effects in the United States. The Commerce Department would be free to issue a certificate even if an antitrust agency objected. However, when such an objection had formally been lodged, the antitrust exemption provided for in the certificate would not take effect for thirty days. I have enclosed language drafted by the Administration to implement this principle.
2. The Administration believes that the Attorney General or the Federal Trade Commission should be able to seek preliminary relief during this thirty-day period to prevent the antitrust exemption from taking effect. Normal judicial standards for preliminary relief in antitrust cases would apply. Therefore, the following language, which appears in other antitrust laws, should be included in the provision for invalidation of the certificate by the Attorney General or the Commission:

- 2 -

"Pending such action, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

In this regard, the provision requiring thirty-day notice before an antitrust agency institutes an action for invalidation is inappropriate and should not apply in the case of an action brought in any thirty-day period before an exemption takes effect.

In order for the antitrust enforcement agencies to comment knowledgeably upon the competitive consequences of granting a certificate, these agencies must have the information provided by applicants for certificates. However, the agencies need this information only where they will actually be called upon to comment. Accordingly, the following language should be included in the beginning of the provision on disclosure of information to the Attorney General and the Commission:

Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, he shall promptly make available all materials filed by the applicant, association or export trading company, including applications and supplements thereto, reports of material changes, applications for amendments and annual reports, and information derived therefrom....

We are, of course, prepared to assist you or the Committee in any way in drafting suitable language or in rectifying the minor drafting problems in the current draft committee print.

Sincerely,

  
Secretary of Commerce

Enclosure

Honorable Adlai E. Stevenson  
United States Senate  
Washington, D.C. 20510

Addition of section 2(b)(2), on page 25 of draft Committee Print:

"DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.--Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate."

Addition to section 4(b)(1), page 29 of draft Committee Print:

"The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary of disagreement with his determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five day period unless he has (a) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a

proposed certificate, or (b) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application."

ADAM E. STEVENSON  
ILLINOIS

United States Senate  
WASHINGTON, D.C. 20510

COMMITTEE ON BANKING, HOUSING  
AND URBAN AFFAIRS  
SUBCOMMITTEE ON  
INTERNATIONAL FINANCE (CHAIRMAN)  
COMMITTEE ON COMMERCE,  
SCIENCE AND TRANSPORTATION  
SUBCOMMITTEE ON SCIENCE,  
TECHNOLOGY AND SPACE (CHAIRMAN)  
SELECT COMMITTEE ON ETHICS  
(CHAIRMAN)  
SELECT COMMITTEE ON  
INTELLIGENCE  
SUBCOMMITTEE ON THE COLLECTION,  
PRODUCTION AND QUALITY OF  
INTELLIGENCE (CHAIRMAN)  
DEMOCRATIC POLICY COMMITTEE

April 15, 1980

The Honorable C. Fred Bergsten  
Assistant Secretary of the Treasury for  
International Affairs  
Department of the Treasury  
Fifteenth Street at Pennsylvania Avenue, NW  
Washington, D. C. 20220

Dear Mr. Bergsten:

In his testimony before the Subcommittee on International Finance, Secretary Klutznick noted that the Administration questioned the necessity for the DISC provisions contained in S. 2379. Both you and Secretary Klutznick have indicated to the Subcommittee that many of the export services which would be provided by an export trading company would qualify for DISC treatment under the present statute. In order to clarify this point for the record, it would be helpful if you would provide the Subcommittee with an enumeration of the export services currently eligible for DISC treatment, together with an indication of which of the "export trade services" contemplated by S. 2379 would be ineligible for DISC treatment. During the hearing you stated that extending DISC benefits to services exports as provided in S. 2379 would cost \$200 to \$500 million in gross revenue, and "export trade services" would cost another \$100 to \$200 million. Please provide for the record the assumptions and calculations on which those estimates are based.

With respect to the Subchapter S provisions of S. 2379, it is my understanding that the Administration would support measures to ensure that export trading companies will not be disqualified from electing Subchapter S treatment by virtue of export trade activities performed

outside the United States. I also understand, however, that the Administration takes the position that any such initiatives should be included in a comprehensive revision of the statute. Any clarification you may wish to make concerning this issue would be most welcome.

I am also enclosing copies of letters I have sent to Secretary Klutznick and Governor Wallich concerning the banking provisions in S. 2379. I invite your comments on those points as well.

With best wishes,

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Albert".

Enclosures



ASSISTANT SECRETARY

## DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

MAY 9 1960

Dear Senator Stevenson:

In response to your letter of April 15 regarding the Administration's testimony on the DISC and Subchapter S amendments of S.2379, the present DISC legislation includes in its definition of qualified export receipts:

- Gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States;
- Interest on any obligation which is a qualified export asset, which in turn includes (1) the accounts receivable or evidences of indebtedness arising by reason of transactions of the DISC or a related DISC and (2) obligations issued, guaranteed, or insured, in whole or in part, by the Ex-Im Bank;
- Gross receipts for engineering and architectural services for construction projects located (or proposed for location) outside the United States;
- Commissions on export sales;
- Gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

These and other definitions are set forth in Internal Revenue Code section 993 and the regulations issued thereunder. Leasing and rental receipts include those from motion picture films and similar property produced in the United States. Managerial services would apparently include many of the items enumerated in the definition of "export trade services" in S.2379, but would not include trade financing. If such financing were guaranteed or insured by the Ex-Im Bank, however, it would be a qualified receipt. They also might not include "foreign exchange", depending how this is defined. The present DISC legislation does require that such managerial services be performed for a DISC, a restriction which S.2379 would not impose.

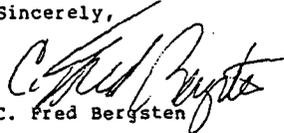
- 2 -

With respect to Subchapter S, the Treasury has commented informally upon draft legislation to overhaul Subchapter S. The draft would eliminate the requirement that a Subchapter S corporation derive 20 percent or more (not 80 percent or more, as we misstated in our testimony) of its income from the United States. Although we have expressed our reservations about certain other provisions of the draft legislation, we do support overhaul of the Subchapter S rules in general and eliminating the source-of-income requirement in particular.

The methods we used in estimating the tax revenue impact of S.2379 are set forth in an attachment. Please let us know if you wish further amplification of our views.

My staff has been working closely with the Federal Reserve Bank, the Comptroller of the Currency, and FDIC, as well as other Administration agencies in preparing responses to the banking questions addressed to Secretary Klutznick. Formal responses will be sent to you as soon as possible.

Sincerely,



C. Fred Bergsten

The Honorable  
Adlai E. Stevenson  
United States Senate  
Washington, D.C. 20510

Attachment

## Explanation of Revenue Estimates for S. 2379

The Treasury's revenue estimates for S.2379 are exceedingly rough and intended only to indicate the order of magnitude of the monies involved. More precise revenue estimates cannot be developed because the definitions of "services produced in the United States" and "export trade services" (see sections 3(a)(3) and 3 (a)(4), respectively) are open-ended: each definition gives an illustrative list, but notes that the definition is not limited to the illustrations. "Services produced in the United States" would include services provided by United States citizens, apparently without regard to where the services are performed or where the citizens are resident, and services which are otherwise attributable to the United States".

The problem of estimating the revenue effect is further compounded by the lack of published statistics conforming even roughly to the illustrative services listed in S.2379. Our estimate of the revenue cost/extent of DISC benefits to "services produced in the United States" was based on the Survey of Current Business, June 1979, Table 1, p.34, which shows that total U.S. credits for travel, passenger fares, other transportation, fees and royalties, and all other private services amounted to \$27.2 billion in 1978. Unpublished data derived from tax returns of DISC's whose primary industry is management, engineering and architectural services showed a rate of return equal to 11.8 percent of receipts. From that we inferred that \$3.2 billion (11.8 percent of \$27.2 billion) in service-industry profits might have qualified for DISC benefits in 1978 had "services produced in the United States" qualified for DISC benefits. Because a new DISC can defer 50 percent of its net income from taxation and the maximum statutory corporate income tax rate is 46 percent, the potential revenue cost in 1978 might have been \$740 million (46 percent of 50 percent of \$3.2 billion). Although the value of services has probably grown significantly since 1978, we believed that a more conservative estimate of \$200-\$500 million was appropriate given the unavoidable difficulties of constructing this estimate.

The revenue impact of extending DISC benefits to "export trade services" was based on our projection that the value of U.S. merchandise exports will be \$237 billion in 1981. We then noted that "export promotion expenses", as defined in the existing DISC legislation, averaged 3.2 percent of DISC receipts in the most recent year (DISC year 1978) for which data are available. Because "export promotion expenses" do not include export financing, which "export trade services" as defined in S2379 would, the \$7.5 billion obtained by taking 3.2 percent of \$237 billion would understate, perhaps substantially, the potential magnitude of qualifying export trade services. Making the same assumptions as above regarding the profitability and tax saving to be realized by corporations providing the specified services, the potential revenue cost would be approximately \$200 million (i.e., 46 percent of 50 percent of 11.8 percent of \$7.5 billion). Once again, we stated a conservative, "ball park" estimate of \$100-\$200 million.

Senator STEVENSON. Thank you, Mr. Secretary. That was a positive statement worth waiting for. [Laughter.]

I think it moves us toward agreement and also action, at least in the Senate. If there is no objection and you can wait around a little, Mr. Secretary, we will proceed with additional statements and then go to questions for all of you. Thank you, sir.

Did you have time for lunch?

Ambassador HORMATS. Barely.

Senator STEVENSON. Welcome back.

Ambassador HORMATS. Mr. Chairman, the Office of the U.S. trade representative strongly supports the position just stated by Secretary Klutznick. Ambassador Askew and I have worked closely with Secretary Klutznick on this subject because we strongly support your objectives, Mr. Chairman, and those of Senator Danforth and share a common commitment to strengthen U.S. export performance.

Legislation to facilitate creation of export trading companies and to modernize the Webb-Pomerene Act can be an important contribution to an improved U.S. export effort. S. 2379 and revised S. 864 will strengthen the ability of American firms, particularly small- and medium-sized firms, to compete more effectively in world markets [reading from statement].

[The complete statement follows.]

STATEMENT OF AMBASSADOR ROBERT D. HORMATS  
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE  
OF THE SENATE COMMITTEE ON  
BANKING, HOUSING AND URBAN AFFAIRS  
THURSDAY, APRIL 3, 1980

Mr. Chairman, the Office of the United States Trade Representative strongly supports the position just stated by Secretary Klutznick. Ambassador Askew and I have worked closely with Secretary Klutznick and his colleagues on this subject because we strongly support your objectives and share a common commitment to strengthen U.S. export performance. Legislation to facilitate creation of export trading companies and to modernize the Webb-Pomerene Act can be an important contribution to an improved U.S. export effort. S. 2379, and revised S. 864 will strengthen the ability of American firms -- particularly small and middle-sized firms to compete more effectively in world markets.

The recent concluded Trade Agreements of the Tokyo Round offer important new opportunities to expand American exports. They also offer improved assurances that international trade will be conducted on a fair and equitable basis. It is important that American business, including firms which may not have been able to take full advantage of export opportunities in the past, be able to respond to this greater openness in the world market.

No one piece of legislation can, of course, insure stronger U.S. competitiveness. Domestic economic policies, policies of our trading partners, the productivity of labor and business, and the cost of inputs into the economic process are, in many cases, determinative factors. But the government has responsibility both to continue to reduce disincentives which unnecessarily discourage exports, to vigilantly encourage reduction of barriers other countries impose to U.S. exports, as we did in the Tokyo Round, and to help U.S. firms take advantage of the opportunities of the world market.

Your bill, Mr. Chairman, S. 2379, and Senator Danforth's are important contributions. Both economically and psychologically they open new possibilities for a wide range of companies which in the past have not been able to take advantage of export opportunities.

Let me now turn to the need for your bill, Mr. Chairman.

For many U.S. firms, foreign markets are a forbidding terrain -- involving unfamiliar risks, particular skills and experience, and commitment of time and resources beyond those possessed by many smaller and medium-sized companies. The enormous effort needed to develop a foreign market is frequently

possible for companies which produce in large volume, but prohibitive for companies with smaller volumes of output.

The Department of Commerce estimates there are 10,000 U.S. firms which could export profitably but do not. Most of these firms are smaller companies located outside our major cities.

Many of these companies do not export simply because they do not have the funds to invest in needed market development abroad nor the time or personnel to master customs documents, shipping, packaging, marketing, and the myriad of details involved in exporting. These companies need someone to market their products for them. They need a way to spread among many firms the risks and costs they cannot afford on an individual basis.

As proposed by your bill, S. 2379, trading companies could pool talent and resources to do market analyses and market the goods on behalf of thousands of U.S. manufacturers. Such trading companies have been responsible for much of the success of Japan and Korea in selling their products around the world.

The United States has trading companies, particularly for commodities, but only in limited sectors at present. There are also small export management companies in the United States. However, the difficulty in securing adequate financing to expand such low-profit margin enterprises prevents export management companies from reaching more than a small fraction of the American companies which could export. Bank ownership of Export Trading Companies makes available new financial resources as well as new networks of contacts with potential U.S. exporters and knowledge of foreign markets.

Trading companies could provide all export services -- including financing, transportation, warehousing, packaging, and marketing for a diversified array of products in a variety of markets. They could offer smaller manufacturers an inexpensive way to export their products abroad.

We look forward to working with you to help these proposals become a reality.

Mr. HORMATS. The Department of Commerce estimates, as Secretary Klutznick indicated, that there are 10,000 U.S. firms which could export profitably but do not. Most of these firms are smaller companies located outside our major cities [reading from statement.]

Senator STEVENSON. Thank you, sir.

Secretary Bergsten?

Mr. BERGSTEN. Mr. Chairman, I have no prepared statement. I would simply say that we at Treasury have worked closely with Commerce, STR, and the other agencies to try to forge a unified and responsive position on this issue. I am here to answer any questions that you might care to direct to me.

Senator STEVENSON. You have worked hard, you say, to develop a unified position, and you are unified I trust.

Mr. BERGSTEN. That is right. I should have made that even clearer.

Senator STEVENSON. Thank you. And Secretary Hinton?

Mr. HINTON. Mr. Chairman, I am grateful to you, sir, for this opportunity to appear before this subcommittee in order to comment on S. 2379, which is designed to facilitate the formation and operation of export trading companies.

I originally asked to testify because of my own personal commitment and because of the commitment of the Department of State to the expansion of U.S. exports. I am happy today we are unified and that it is a privilege to appear in support of the administration's position as set forth just now by Secretary Klutznick [reading from statement].

[The complete statement follows:]

STATEMENT OF THE HONORABLE DEANE R. HINTON  
ASSISTANT SECRETARY OF STATE  
FOR ECONOMIC AND BUSINESS AFFAIRS  
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE  
OF THE SENATE COMMITTEE ON  
BANKING, HOUSING AND URSAN AFFAIRS

Export Trading Companies

I am pleased to have this opportunity to appear before this Subcommittee in order to comment on S. 2379, which is designed to facilitate the formation and operation of export trading companies. I have asked to testify because of my own personal commitment--and that of the Department of State--to the expansion of U.S. exports.

Export expansion is of vital importance to our balance of payments and the strength of our economy. With a 1979 trade deficit of \$24.7 billion and a projected 1980 deficit of \$30 billion, taking into account the increase in our oil import bill from \$60 billion to \$90 billion a year, our need for strong export performance has never been greater.

Maintaining our competitive position in world markets also furthers our broad foreign policy interests. Our commitment to an open world trading system depends on our ability to hold our own in that system. And healthy

two-way trade relations provide valuable support for our political and security relationships with other countries.

Over the coming months and years, the need to promote exports will not diminish. We will continue to face massive oil deficits. And other countries, which import more of their oil than we do, will be under more pressure to maintain and improve their competitive positions. We simply must do more to promote exports.

I will leave to the representatives of other agencies the task of commenting on specific provisions of the bill. I understand that there are problems, including such issues as the compatibility of possible tax incentives with our GATT commitments and anti-trust considerations. I hope the Congress and the Administration working together can resolve these matters. For my part, it is clear that we need new instruments, such as export trading companies, if we are going to have an effective export promotion program. Other countries, notably Japan and Korea, have demonstrated how effective trading companies can be. They can be particularly valuable to small and medium-sized firms which now shy away from the international market because they need help with foreign languages and currencies, with unfamiliar marketing conditions, or with bewildering regulations and procedures.

Mr. Chairman, export trading companies will obviously not solve all our problems. The Administration will need to push ahead with other export developing programs. Our export effort will continue to have the full support of the Department of State. Even more important, American business will have to make the effort--and take the risks--required to take advantage of new export opportunities. Measures to facilitate export trading companies would, however, be an important step in the right direction--a step that I strongly endorse.

Mr. HINTON. Secretary Klutznick has already commented on specific positions of the two bills before this subcommittee. I recognize there are problems including such issues as the compatibility of possible tax incentives with our GAP commitments and the antitrust considerations which the Secretary has reviewed. I am confident that the Congress and the administration working together can resolve these matters satisfactorily.

For our part in State, it is clear that we need new instruments such as export trading companies if we are going to have an effective export promotion program. Other countries, notably Japan and Korea, have demonstrated how effective trading companies can be.

As Ambassador Hormats has pointed out, they can be valuable to small- and medium-sized firms which now shy away from the international market because they need help with currencies and foreign languages, exchange controls, unfamiliar marketing or the bewildering array of regulations.

Mr. Chairman, I am under no illusions. Export trading companies will not solve all of our problems. The administration will need to push ahead with other export development programs. We will need your continuing support. You can be certain as we move ahead of the full support of the Department of State.

Finally and perhaps most important of all, American business will have to make the effort and take the risk required to take advantage of the new export opportunities that I am hopeful the Government can provide. Measures to facilitate export trading companies would, however, be an important step in the right direction, and it is a step that we in State strongly support.

Thank you very much.

Senator STEVENSON. Thank you, sir. The conventional economic wisdom: balanced budget and minor credit controls could become an excuse for doing nothing to attack the underlying structural causes of inflation and economic stagnation. These complementary measures are aimed at the declining competitiveness of the United States in a highly competitive interdependent world. As such, they go straight to the principal cause of inflation and economic stagnation.

So I am encouraged, not only by the administration's support of this measure—and I agree that many more are needed to address the cause of economic weakness—but also because it does indicate that we may not content ourselves with the conventional economic wisdom.

Now there are a few loose ends to tie up. We won't get them all tied up today, but I am confident on the basis of what you have said that they can be tied up.

There are a couple of issues that I would like to raise and see if we can't get them wound up today or at least get positions—the administration's position clarified.

With respect to antitrust—this is really more in Senator Danforth's bailiwick than mine—you are supporting the certification procedure, and I think that is probably enough. I understand, though, that you are supporting a certification procedure with respect to entities and not individual transactions.

Secretary KLUTZNICK. That's correct.

Senator STEVENSON. It is the entity that gets the certification, subject of course to decertification if its activities weren't consistent with its certification.

Secretary KLUTZNICK. That's correct.

#### ELIGIBILITY FOR DISC TREATMENT

Senator STEVENSON. Now you made some comments about the eligibility of services for DISC treatment. Now I wasn't too clear from the testimony what services would be eligible and what would not be eligible. Is this a distinction that already exists in the law that would be carried over for trading companies?

Secretary KLUTZNICK. We are talking rather about tax treatment when it comes to DISC.

Senator STEVENSON. That's right.

Secretary KLUTZNICK. We are not recommending an amendment to DISC. As a consequence, we are not expanding for budget reasons the possibilities of substantial losses of revenue. Therefore, that which is not presently included in DISC, as I understand our present approach, would not be in there. In other words, DISC would prevail as it is, and the tax benefits would be limited to the exporting companies that DISC would qualify, that they would qualify under DISC as it is without expanding it.

Senator STEVENSON. We said all services would be eligible. You say that some services would be eligible. The determination as to which would be made under existing laws and regulations, if I understand you correctly.

Secretary KLUTZNICK. At the present time, DISC treatment is available to services which are ancillary to goods exports in addition to architectural and design work and export management services. Extension to service exports generally is likely to be very costly in terms of tax revenue. In other words, what is presently available under DISC would continue to be available.

Mr. BERGSTEN. If I might just add, DISC now defines the term "qualified export receipts" to include a number of services transactions. I might tick them off just to indicate what those are. It's receipts for engineering or architectural services for construction

projects located outside the United States, which is a very important component of a number of trade transactions. It includes commissions on export sales, which is obviously an important thing in setting up the export trading companies. It includes services related and subsidiary to the corporation's own export sales or the sales on which it earns the commission. That leaves some scope for definition of a particular case, but it gives a fairly broad coverage.

It includes managerial services provided to another DISC, which under Treasury regulation includes services such as export market studies, provision of shipping arrangements, and contacting potential foreign purchasers. So that has got a lot of the elements in it that you are trying to cover.

It covers the interest earned on any qualified export asset which is held in the DISC itself. So whereas it is true that this list doesn't include all export trade services that are contemplated in S. 2379, a number of very important services transactions are included and would go, I think, in at least a significant direction toward covering the kinds of items that you want us to cover.

Senator STEVENSON. I want to recognize and thank Senator Danforth for the major contribution he has made to this effort. His bill, which in itself is important, has also been instrumental in resolving one of the stickiest issues with respect to trading companies.

Senator Danforth?

Senator DANFORTH. Mr. Chairman, thank you very much for letting an interloper be a part of your hearing on this.

Senate bill 864 is a bill which is of keen interest to me. I introduced it on the 4th of April a year ago. Tomorrow is its first birthday. I have been keenly interested in what kind of birthday present it would get from the administration. Frankly, I was hopeful for a little more than I got.

I would like to address some questions to Secretary Klutznick, if I may.

#### DETAILED STATEMENTS TO COMMERCE DEPARTMENT

Mr. Secretary, in your prepared statement, you talk about the procedure that "the administration foresees for amending the Webb-Pomerene Act" and just itemize the points one at a time. You say that one or more companies would present to the Department of Commerce a reasonably detailed statement of what export activities are planned as a foreseen component of the bill is identical to S. 864, is it not?

Secretary KLUTZNICK. Yes.

Senator DANFORTH. And then you say that applicants could be construction companies or companies selling other services. An applicant or applicant group could also include an enterprise that plans to coordinate the export efforts of others with marketing, financing, and other assistance, and that would buy the merchandise of these companies for export. That is also identical with the provisions of S. 864; is it not?

Secretary KLUTZNICK. I don't have it before me, but that is my recollection.

Senator DANFORTH. If you would take my word for it.

Secretary KLUTZNICK. You would know better than I, Senator.

Senator DANFORTH. And you say certification would be determined on the basis of statutory standards by the Commerce Department, with the participation of the attorney general. Joint activities would be certified only if they would help promote export trade and would not likely result in a substantial lessening of competition in U.S. commerce. Modifications in the applications would conform it to the standards. With conformance would be suggestions we might place limits on the number and kinds of customers that could be added before the applicant would have to file for an amended certification.

In short, we would have a flexible process that could be tailored to the particulars of any situation. That is also identical to S. 864; is it not?

Secretary KLUTZNICK. I have asked for a copy of the bill. I would assume—it is your language, and therefore if you say it is, I would assume so also.

Senator DANFORTH. Then you say once certification was granted, the certified entity would be exempted from antitrust liability for the activities described in the certification; the immunity would not extend to activities not covered in the certification. That also is identical to S. 864; is it not?

Secretary KLUTZNICK. It sounds that way to me, sir.

Senator DANFORTH. And you say the Department of Commerce could revoke the certification if the entity's activities ceased to conform to the statutory standards. That is also identical to S. 864; is it not?

Secretary KLUTZNICK. Yes.

Senator DANFORTH. And finally, the attorney general and the Federal Trade Commission would be empowered to seek decertification on their own initiative. That also is identical to S. 864; is it not?

Secretary KLUTZNICK. Yes.

Senator DANFORTH. Mr. Secretary, are you here to speak for the administration?

Secretary KLUTZNICK. I have been instructed to do so.

Senator DANFORTH. Does the administration or does it not endorse S. 864?

Secretary KLUTZNICK. Well, with some modifications, of course. But, in the main, the references that you make, we do.

Senator DANFORTH. The administration does endorse S. 864, with some modifications?

Secretary KLUTZNICK. Yes.

Senator DANFORTH. Would you please tell me what those modifications would be?

#### “CONSULTATION” VS. “PARTICIPATION”

Secretary KLUTZNICK. In the main, there has been no complete agreement on the certification process. The language used is not “consultation”; it is “participation” of the Attorney General. I think your proposal has “consultation.” The word we have is “participation.”

Senator DANFORTH. What do you mean the word you have is “participation”?

Secretary KLUTZNICK. In my statement, the word we have used is "participation."

Senator DANFORTH. So that is a substantive difference, in your opinion?

Secretary KLUTZNICK. It could prove to be such, as the statutory provisions are broadly drawn. "Consultation" and "participation" may not mean the same thing.

Senator DANFORTH. What other changes or alterations do you have?

Secretary KLUTZNICK. I think that's about it, Senator.

Senator DANFORTH. That's it?

Secretary KLUTZNICK. Yes.

Senator DANFORTH. Why didn't you simply flatly endorse S. 864?

Secretary KLUTZNICK. Senator, we have been 2 weeks in discussions on this matter, to achieve what we had. If we had another week, we might have worked it out. As it is, we have to work out some of the details in the statutory provisions, which we can do—

Senator DANFORTH. Who has a problem with the difference between "participation" and "consultation"—who in the administration?

Secretary KLUTZNICK. I don't know that we will end up having a problem. We just haven't had enough time to finish it.

Senator DANFORTH. Mr. Secretary, let me tell you my understanding of what I thought and hoped was going to happen today. We, in my office have been working with various officials in the administration to attempt to tie down a definite and unequivocal commitment to endorse S. 864. And we had one relatively, I think, minor—well, it wasn't minor; it was of some significance—but one item of controversy that we were negotiating with the antitrust division of the Justice Department on. And we worked that out.

And I had on my schedule for 2 o'clock this afternoon a meeting with administration officials. It was my understanding that at that meeting the administration was going to take the position that, having worked out the one remaining wrinkle—which was not, by the way, "participation" or "consultation"—having worked out the one remaining wrinkle, that the administration would testify before Senator Stevenson with an unequivocal endorsement and a strong statement of support of S. 864.

Now, instead of that, you say the administration foresees—and then you set out my bill. Quite frankly, I am surprised that there is any equivocation whatever. But it is my understanding that sometime late yesterday you or someone else in your department called up somebody in the Justice Department and said, "Wait a second. We know you have worked it all out, but hold the horses." Is that right?

Secretary KLUTZNICK. Senator, you know, this is the second day that I have testified on something where I am told that something happened. I only report what I know happened. We have paid tribute to your bill because it deserves tribute. I will not give testimony that my department is sure is not completely accurate to any committee.

Now, I don't know what discussions you had with whom, but I think it is decidedly unfair to suggest that I was bound by those

discussions. I don't know what they are. I know that our people worked late last night in order to arrive at the language that's here, with the interested agencies.

You have heard a complete endorsement here of all of the principles that are involved. I would think we have made tremendous progress in this period of time, and I am somewhat surprised to be told that someone else in the administration has agreed to something else on the provisions which I discussed. I don't know who they are, Senator. And I can only speak for what I know.

Senator DANFORTH. Does the buck ever stop in the Commerce Department?

Secretary KLUTZNICK. The buck stops here. And Senator Stevenson knows it full well. I called him 2 weeks ago and said we were going to try to work this out, could we have that time. He gave us the time. It would seem to me that we used that time rather constructively.

#### COOPERATION A ONE-WAY STREET

Senator DANFORTH. Mr. Secretary, I tell you rather frankly, I hope I am not sounding paranoid to you, but my experience with the administration is that cooperation is purely a one-way street, that the administration is forever coming around to my office asking me to support this, that, or the other thing, but to get an unequivocal endorsement from the administration on something that is important to me, which I happen to introduce, not a day or two ago but a year ago tomorrow, is almost like pulling teeth.

And frankly, I don't understand it. I don't understand the failure to come to my office at 2 o'clock and make a firm and unequivocal statement of support. Nor do I understand the failure of the administration to do that at 3 o'clock in this subcommittee hearing.

It seems to me that this is a matter that has been hashed over and over and over again, that our office has talked to not only the Commerce Department but the Justice Department, STR, about these provisions, that this is clearly the way to go in amending Webb-Pomerene.

Now, as I say, I hate to be paranoid about it, but my immediate concern was, Oh, no, here is a Republican Senator introducing a bill and the administration pulling its punches for that reason and that reason alone.

Senator STEVENSON. Will the Senator yield?

Is your position with respect to the Senator's bill any different from your position with respect to my bill?

Secretary KLUTZNICK. No.

Senator STEVENSON. Whatever your position is, Mr. Secretary, I am grateful for it.

Secretary KLUTZNICK. Thank you, Senator.

Senator Danforth—

Senator DANFORTH. Is it the same degree of support for S. 864 as for the other one?

Secretary KLUTZNICK. If you will read the end, I have even got your name in there. [Laughter.]

Senator DANFORTH. I am not interested in your name.

Secretary KLUTZNICK. The only thing—listen, I am perfectly willing to be as patient as you want me to be. But to suggest that the only reason that we have not given you what someone gave you at 2 o'clock yesterday—and you haven't even told me who that someone was, at 2 o'clock—when we were working yet at 9 o'clock last night on this, is because you are a Republican Senator, then you didn't hear me read your name. I don't think that's fair, Senator, frankly.

Senator DANFORTH. Well, Mr. Secretary, I tell you, I don't know what the situation in the administration is. This is hardly an 11th-hour bill. It has been around for a year now. There has been ample opportunity to analyze it, and I was looking forward to a firm and unequivocal endorsement of this bill. And I don't know whether I have got it or not.

Now, is "participation" and "consultation"—is that distinction, is that the only problem we have? Is that the only difference?

Secretary KLUTZNICK. That is apparently the only one we have between us. There are other problems I called attention to in Senator Stevenson's bill where we don't agree.

Senator DANFORTH. I am just talking about S. 864. Is that the sole problem?

Secretary KLUTZNICK. That's the only problem we have. I think it is soluble.

Senator DANFORTH. If we can resolve that problem—and I have not studied that one—but if we can resolve that problem, then, speaking for the administration now—are you speaking for the administration—willing to endorse and support S. 864?

Secretary KLUTZNICK. We have said so, and I see no reason why we shouldn't continue to say so. But I would call your attention to the fact that the two bills involved here are both interrelated. They have to work together in the sense of providing what we need in the field. Consequently, I would assume the best thing to do is to have the staffs get together and go over any questions that are unresolved that appear to be unresolved.

As far as the Danforth bill is concerned, we have not resolved the one issue.

Senator DANFORTH. That is the only issue?

Secretary KLUTZNICK. That's the only one I know of.

Senator DANFORTH. Are you taking the position that S. 864—I am not quarreling at all with S. 2379, but it is a different subject—are you taking the position that unless there is a S. 2379 or something comparable to it, there can be no S. 864?

Secretary KLUTZNICK. I didn't say that, and I am not prepared to comment on anything other than what I have said, which is the administration's position. We have said that we are in favor of establishing exporting trade companies and trading companies under the conditions and modifications of Senator Stevenson's bill. And we have mentioned particularly, as put forth under the Danforth bill.

Senator DANFORTH. That is the trading company issue, and the Webb-Pomerene issue, if they are both related to encouraging American businesses to export. But they are two different issues.

Now, are you tying in S. 864 somehow to the success of S. 2379? Are you willing to support S. 864 on its own merits?

Secretary KLUTZNICK. I stand on my statement as I have given it, as the administration's statement. You must understand—you have been here long enough and this bill has been here long enough—that the language in that statement was carefully drawn. I have said everything that the administration—all of us—agreed should be said in support. And it seems to me that we are down to next to nothing, and I don't understand, frankly, why we should be charged with some information you got at 2 o'clock yesterday, when we were still working at 9 o'clock last night.

Senator DANFORTH. I don't understand what the some information was I got at 2 o'clock yesterday.

Secretary KLUTZNICK. Information that was different from what this is.

Senator DANFORTH. Not any information; just trying to work out mutual understanding between the administration and a Member of the Senate. That's no information; that's simply trying to work things out. And we thought we had it worked out.

Secretary KLUTZNICK. I am saying to you that at 2 o'clock yesterday we were still at work and we didn't finish until 9 o'clock last night. And this represents the finished statement. And I think it is clear. I frankly thought you would say it is quite an achievement.

Senator DANFORTH. Thank you, Mr. Chairman.

Senator STEVENSON. Senator Heinz?

Senator HEINZ. Mr. Chairman, thank you.

Mr. Klutznick, I listened very carefully to your dialog with Senator Danforth. I sponsor both his bill and Senator Stevenson's bill, and I have got to confess I don't understand what your position is. I understand exactly what is in your statement, but I don't understand what your position really is.

#### TRIGGER PRICING MECHANISM

I had the same problem last night when we had a discussion with you in front of the Steel Caucus, where I asked you a very simple question about the trigger pricing mechanism and the request by specialty steel companies to come in under the trigger pricing mechanism. And you said that, well, if there is no trigger pricing mechanism for basic steel, there can't possibly be one for specialty steel, even though we are talking about different items and trigger prices apply item by item, not company by company or country by country.

Now, I think if you are going to have the kind of working relationship that I think you would like to have with the Senate or with the House, with Senator Danforth or anybody else, frankly, you are going to have to be a lot clearer and a lot less difficult for us to figure out, because that is twice in 24 hours I have run into the same thing.

Secretary KLUTZNICK. Could you get the record for yesterday and see if I said what you just quoted I said?

Senator HEINZ. There was no record taken yesterday. There was no transcript.

Secretary KLUTZNICK. I didn't know.

Senator HEINZ. Mr. Hormats was there and I am sure he listened very carefully to it. You may consult with him or my staff if you are in doubt.

Secretary KLUTZNICK. I think I know what I said on specialty steel and I said very clearly that since there was no trigger price mechanism—that part is correct—we were not considering specialty steel. If it is reinstated, we would review the position on specialty steel.

Senator HEINZ. Then I asked you if that wasn't in effect a "no" and you said, "no, it is just what I said." And you played games.

The fact is that the trigger pricing mechanism can be imposed for some products that are only made by specialty steel companies, and what you are doing, whether you want to admit it or not, is you are saying we're only going to have trigger pricing on basic steel and until we have that we won't have it anyplace else, if indeed we ever have it anyplace else. But you wouldn't come out and say that.

Secretary KLUTZNICK. I came out to say that I hoped if we had trigger prices we could reconsider that item, and that wasn't enough.

Ambassador HORMATS. May I make a comment on that, sir? I think what the Secretary said yesterday reflects the policy that we are trying to pursue. We have these seven major cases that the Secretary's Department is trying to process. It takes an enormous amount of time and a large number of people to do it.

At the same time there are a number of complications relating to specialty steel which you are quite aware, such as the large number of sources. We don't know the most efficient source. There are lots of varieties, 60 or 70 some at a minimum. At this point in time we are reviewing it, but as a result of the existence of these cases and the need to process them, it is extremely difficult to contemplate adopting a trigger price system.

Senator HEINZ. Specialty steel has as much relevance to the cases filed by U.S. Steel on basic steel as Senator Danforth's bill, S. 864, has to S. 2379. That is the whole point. You are doing the same thing all over again exactly.

Ambassador HORMATS. There is no question but that steel is not the same as carbon steel. It is a question of the burden on the Department of Commerce, which is trying its best to respond to these cases and do a lot of other things, and the matter is still, as the Secretary said, under review. A final decision has not been made in the negative. I think that is the important point.

#### PRIVATE CREDIT MARKET

Senator HEINZ. Let's try for a minute to see if we can't get down to cases on Senator Stevenson's bill, S. 2379. Let me address you, Mr. Secretary. Mr. Klutznick, in your testimony you supported deletion of the provision for guarantees for inventories, because the private credit market already has adequate funds to provide for broad-scale financing of inventories without Federal participation.

On what surveys or reports did you rely in coming to that conclusion?

Secretary KLUTZNICK. Are you referring to the first paragraph?

Senator HEINZ. Yes, "The private credit market has already—already has adequate funds to provide for broad-scale financing of inventories without Federal participation."

On what do you base that?

Secretary KLUTZNICK. This came out of the discussions among ourselves, the banking authorities, and the Treasury. I am not an expert on available funds, and this is a conclusion that the administration has reached based on that.

Senator HEINZ. This is a current credit market. I am just wondering who you talked with at this point in time that would say that there is adequate financing for anything.

Secretary KLUTZNICK. We talked to the Federal Reserve, we talked to the Treasury.

Senator HEINZ. You talked to the Federal Reserve?

Secretary KLUTZNICK. Yes.

Senator HEINZ. Did you talk to anybody else?

Secretary KLUTZNICK. We talked to the Treasury, but not to Mr. Bergsten.

Senator HEINZ. Mr. Secretary, could I respectfully suggest that you broaden the consultation and participation in this instance to go beyond the Federal Reserve and ask whether or not banks—ask some of the banks, perhaps, whether or not they have ever or would ever engage in this kind of financing. My indications are that they won't.

Senator STEVENSON. That is why we put it in. This went in long before the current credit crunch. It just has not been the practice of American banks to finance inventories. I don't know why. But we are up against, have been before the credit crunch, a deeply rooted practice in the banking fraternity here that we are trying to do something about by this measure, which would permit guarantees and cooperative financing with the Exim Bank. One of the purposes was to try to get the banks started financing.

Excuse me.

Senator HEINZ. Thank you, Mr. Chairman.

Secretary KLUTZNICK. As far as any money being available today for almost any kind of venture, I am fully aware that it is very, very restricted for a variety of reasons. I have carried the statement here as representing the best judgment of those in the know. I will be glad to reexamine the question. That's all I can say.

Senator HEINZ. My only request, Secretary, is that you direct somebody in the Department to consult a little bit more broadly with some of the financial institutions. You come from a great city, Chicago, with great banks that are internationally active. Perhaps there are one or two of those people you could call personally on the phone.

Secretary KLUTZNICK. I will be delighted to. I can call them on the phone very easily. I owe them enough money.

Senator HEINZ. I sympathize.

Secretary KLUTZNICK. Thank you.

Senator HEINZ. I will direct this question to Mr. Bergsten, Secretary Klutznick's testimony, where he is speaking for the administration, the testimony recommends against extending DISC to the export of all services and to services provided U.S. firms, to export

trading companies. And he has listed several reasons. The first seems to me to be very short-sighted.

#### TAX REVENUE REDUCTIONS

Your concern is this provision would reduce tax revenues. However, if this move does encourage an increase in exports, isn't this likely a shortfall in revenues that wouldn't even otherwise occur, and in the long run the Treasury would really be better off to incur a shortfall on business they wouldn't otherwise have if they didn't encourage what they count as a shortfall?

As a matter of fact, there is information, Mr. Bergsten—I am sure you are familiar with it—from the Congressional Budget Office that suggests that \$1 billion worth of exports is worth about 40,000 to 50,000 jobs, and that employing that many people is worth about \$1 billion to the Treasury Department, which I know you represent faithfully and well.

Really, how much of a reduction net in tax revenues would be created here?

Mr. BERGSTEN. Well, we have tried to do an analysis of the gross impact first on tax revenues of the services provisions in the bill. It is tough to do because we don't have data on the same categories as are provided for in the bill itself. We do come up with a rough estimate that if you extend the DISC benefits to "services produced in the United States," across the board, going beyond the extensive list of services that are now covered under DISC, you would get a gross revenue cost on the order of \$200 million to \$500 million.

And if you extended it to "export trade services," you might get another \$100 million to \$200 million.

Now, if you would like, what I can do is go back to our original analysis, give you the numbers on gross exports from which this derives, and then calculate back through to the gross tax receipts that would be generated, and then trade them off one against the other.

Senator HEINZ. I think that would be extremely helpful.

Mr. HINTON. I wonder if I could intervene, not on the revenue point, but it is my understanding there is an additional consideration in the administration's position. We have subscribed as a principal trading country in the Tokyo Round negotiations to GATT code on some of these that are countervailing. DISC was an issue there. Many of our trading partners view DISC as an unwarranted export subsidy. We defend this.

It is my understanding that the extension to further coverage, as suggested in Senator Stevenson's bill, could indeed be challenged internationally as possibly not compatible with our commitment, even though there is a revenue consideration.

Senator HEINZ. You think the Japanese are in a position to call the kettle black.

Mr. HINTON. I think if we are to successfully limit, as we are trying, their subsidy practices, that we should be in conformity with the international rules of the game, yes, sir.

Senator HEINZ. You think the Japanese are going to come around in their trading companies? And you know they are not

going to keep prices high when they bring things in, keep them low when they send them out.

Mr. HINTON. I have no illusions about the Japanese, Senator. Senator HEINZ. Free enterprise, no Government support.

Mr. HINTON. It is an economy with aggressive competitors and it is one also that we like to have in international rules. We negotiated the rules. They have subscribed to certain rules. We are determined in this administration to hold them to those rules. And I am suggesting to you that it is an additional consideration that we observe the rules if we expect others to, and if we are going to act against them if they don't observe the rules under that code.

#### VALUE ADDED TAXES

Senator HEINZ. That is an interesting point of view. You might compare DISC to the rebate of value added taxes. Do you believe that what we are proposing here is anywhere near the kind of export subsidy that the rebate of value added taxes, which is prevalent, widespread, omnipresent with our major trading partners—I am thinking particularly of the Western Europeans—you have maintained that DISC is in any way equal or up to the depth of those subsidies represented by VAT rebates?

Mr. HINTON. That is a very complicated subject indeed.

Senator HEINZ. No doubt. I wouldn't want to answer that question either.

Mr. HINTON. I was going to try to give you one answer. It probably will not be fully satisfactory, but I think it is important. Whatever my beliefs are about value added taxes—and I have some very strong ones—it so happens that under the international rules of the game to which the United States subscribes, they are legal.

Senator HEINZ. And? And? And add the rest of the sentence, please.

Mr. HINTON. And under the international rules of the game, that the extension of DISC beyond its present coverage would be a subject——

Senator HEINZ. That is not exactly what the administration maintained all last year. I had the dubious distinction of serving on both this committee and the Senate Finance Committee and we asked—Senator Ribicoff added, I asked, Senator Danforth asked: “Is there anything in here that, in any way, shape, or form, will make DISC inappropriate, wrong, will be in conflict?”

And the answer was—and you can look it up in the hearing records—time after time: “No.”

So, I am a little surprised.

Mr. HINTON. With due respect, I don't see anything inconsistent with what you have just said and what I was trying to say.

Senator HEINZ. Then why can't we extend DISC? We are not deepening DISC; we are just broadening it.

Mr. HINTON. I think that is the difference. The difference is between something which existed, we protected in the course of the negotiations, and where we gave, as I understand it, some obligations that we would not extend it further. And I am making that point to you.

Senator HEINZ. I would just like to state that, to the best of my recollection, there was never any qualification offered by even Mr. Bergsten, who I think was there on occasion in those hearings, that a broadening or change of the breadth of DISC would ever be questioned. And I would love to stand corrected on that, but I don't think you will find that in the hearing record.

Ambassador HORMATS. I think that we have gone over this fairly carefully, and it strikes me that what Fred Bergsten said earlier in listing the various existing components of DISC—that this really gives these trading companies a tremendous breadth and scope for activity.

I think, in our judgment, one needn't get into the DISC issue. The DISC is now accepted in a sort of implicit way by other countries.

I think the key point here is that the qualified export receipts that are eligible should give these trading companies a substantial amount of scope for operation, and I don't think we really need to hit that issue directly to make these companies work effectively.

Senator HEINZ. Thank you, Mr. Chairman.

Senator STEVENSON. Senator Danforth.

Senator DANFORTH. Mr. Secretary, as indicated, I was taken by surprise by this new position on "participation" or "consultation." Who raised this question?

Secretary KLUTZNICK. The question was discussed between the attorney general, Department of Commerce, and others that were involved from time to time, including the U.S. trade representative.

Senator DANFORTH. This has been a change in Administration position. Who determined to make it?

Secretary KLUTZNICK. This statement here was a change?

Senator DANFORTH. As I understand it, your sole problem with S. 864 is that—and I am referring to your statement—"Certification would be determined on the basis of statutory standards by the Commerce Department, with the participation of the Attorney General."

This word, "participation," as opposed to "consultation," as I understand it, is the sole problem that you have with S. 864. Is that correct?

Secretary KLUTZNICK. That's what I have said.

I am getting more advice here than I really need. [Laughter.]

The simple fact is, Senator—and you are much too sophisticated not to understand it—that there has been a change in the position of one of the agencies involved. And we have been engaged in a discussion. It is not the Department of Commerce that was involved.

Senator DANFORTH. Is it the Justice Department?

Secretary KLUTZNICK. They are the ones who will have to ultimately decide it. And we have made great progress, and I think we are close to an agreement.

#### "ALICE IN WONDERLAND" SITUATION

Senator DANFORTH. Well, you know, it is truly an "Alice in Wonderland" situation when, last September, the Deputy Assistant Attorney General, the Antitrust Division, comes before this sub-

committee<sup>1</sup> and testifies on this bill and takes the position—and if you have it in front of you, it is on page 153—takes the position, as I read it, that, given a need test, which is what we just worked out with the Justice Department, and given consultation in the development of administrative regulations to be promulgated by the Secretary of Commerce, that satisfies their requirement.

Now, the need test is precisely the thing that we have been working on for the last few days. So, we have been working on exactly what the Deputy Assistant Attorney General, Mr. Ewing, stated before this committee, this subcommittee, last September. And there was no understanding ever by anybody that, on a case-by-case certification basis, the Justice Department was going to get involved in signing off on each individual certification.

Secretary KLUTZNICK. Senator, I wasn't here last September. I read this. I can tell you what happened in the last 48 hours.

Senator DANFORTH. Please do.

Secretary KLUTZNICK. There have been discussions with that position so that it is not now acceptable. That's all. We are in the midst of changing it, I think. Senator, it's an "Alice in Wonderland" for me, too. [Laughter.]

Senator DANFORTH. Mr. Ewing—he is here, I understand. I am not sure I know him.

Senator STEVENSON. Mr. Ewing, would you stand up, please?

Mr. EWING. I am here. I am not authorized to speak at this point for the administration. The Secretary is speaking for the administration. With deference to the Senator, I think I will continue to let Secretary Klutznick speak.

Senator DANFORTH. Well, you know, Mr. Secretary, when you do business with somebody, eventually you come to the point where you think you have things worked out and you can count on what they tell you. And the problem with this administration, in this matter and so many others, is that all of the time you are telling me that you have your fingers crossed. Now here is a new change in position, deviation, which we are told about right here and now by you in answer to my question, when we thought that over a lengthy period of time, working with the Commerce Department and the Justice Department and STR, we had worked out all the problems of this bill. You now take a position which is flatly contrary to the position taken by the Justice Department in September and tell me, "Oh, by the way, we have changed our view."

Secretary KLUTZNICK. Senator, I told you only one thing: This represents the administration position.

Senator DANFORTH. Today.

Secretary KLUTZNICK. Senator, it represents the administration's position. I did not make any deal with you or anyone else. I have told you forthrightly what that position is. I can't change it for you, no matter how much you preach to me about the fact that you had a different deal.

I said to you also that we are trying our utmost to simplify this situation. I don't think we will have any trouble with it. Now, I think that should be all that I can tell you.

<sup>1</sup> See hearings before this subcommittee—"Export Trading Companies and Trade Associations." Sept. 17 and 18, 1979.

Senator DANFORTH. It is not just simplification; it is a basic, substantive change, as I understand it.

Secretary KLUTZNICK. I can't do anything more than to do what I have done. If you disagree with it, as you do, I can't help you. I am telling you the truth. Do you want something else?

Senator DANFORTH. No, Mr. Secretary. I tell you what I do want: I want an administration which will stick by its word, which will tell you one thing one day and remain true to its word the next day and the day after, and which will not desperately shift its position from one day to another. I think that is a very serious problem we have, and I am not the only one who is experiencing it.

And I would like sometime for the administration to say something and say, "We are going to stick by this, and we are going to go over to the House and stick by it, and we are going to the Senate and stick by it, and we are going to go to conference and stick by it," and not suddenly change a position in the middle of the game. And that is precisely what you have done today. Not even in your testimony, in answer to my question to you.

Secretary KLUTZNICK. Senator, I am awfully sorry. You made some sort of agreement with somebody who apparently is not here.

Senator DANFORTH. Testimony before the subcommittee in September.

Secretary KLUTZNICK. I am sorry, sir. We now have a total commitment on every phase of the Exporting Act in your bill. We have presented it fairly, honorably, and I am prepared to stand by it. And if you have some complaint against someone, you ought not to have it against the people who presented it.

Senator DANFORTH. Who is the administration, Mr. Secretary? Do we have to confer with every one of two-plus-million Americans to get anywhere? I mean, where does the buck stop around this place? You say it starts with you. Who does it stop with?

#### BUCK STOPS HERE

Secretary KLUTZNICK. I was born in Missouri, too. Let's understand where the buck stops. On this one, the buck stops with me. I made this statement. I was born in Missouri, and I know where the buck stopped with another Missourian, and it stops with me here.

Now, I don't think, Senator, with all due respect, that your complaint against this statement is not related, except to an item which you have a different understanding on at one time. This is the total statement supported by all of the interested parties.

Senator DANFORTH. Mr. Klutznick, can we at least understand this: That henceforth you and I can work together and work this out, and that when you speak on this bill you will be speaking for the administration; and then, if it is possible to come together, we will go back to the drawingboards after a year, we will go back again and we will try to work things out; and then, if we work things out, the two of us, one former Missourian who slipped through the net somehow, and one present one, that if somehow we can work things out as just a couple of good old midwesterners, then we have got a deal and we can go with that deal through the markup here and in the House and the floor and in conference?

Secretary KLUTZNICK. You know, that is an invitation for love and affection that I accept. [Laughter.]

I haven't had much of it, Senator.

Senator DANFORTH. I view you, Mr. Secretary, as what you say you are: "The" spokesman for the administration on S. 864, a man who supports the bill with the exception of one problem which we hope to work out and that you and I will work it out together.

Secretary KLUTZNICK. We would be delighted to cooperate. Delighted.

Senator DANFORTH. Is it a deal?

Secretary KLUTZNICK. To cooperate, we will make every effort to work it out together, with all of my colleagues who are working with me.

Senator DANFORTH. No. [Laughter.]

Mr. Secretary, I can't stand it anymore. [Laughter.]

Secretary KLUTZNICK. Senator, just take that chance once, please.

Senator DANFORTH. I have done it. I have done it. I have only been here 3 years, and I am a 90-year-old man.

Secretary KLUTZNICK. You're a young man.

I will work with you alone, but you must understand there is one difference between you and me: you are elected by people; I am appointed to serve the administration. I have kept very quiet with respect to certain things that you have said because I understand you have the right to say it and I am supposed to keep quiet.

I am prepared to work with you, but you must understand I will carry my colleagues with me. Is that satisfactory? I will not disassociate the Department of Commerce—that it is not the United States of America. I am modest about that. There are other agencies that have an interest, and you know it. What you are saying to me, I accept.

I will be delighted to work with you alone. The responsibility will be mine with respect to the other agencies. But I will not mislead you.

Senator DANFORTH. Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

Senator STEVENSON. Mr. Secretary, you propose that EDA and SBA, as opposed to Exim, have the authority for start-up financing for the trading companies. This would be a new business for them. Would you have any objection to some statutory language which made that authority and responsibility explicit for EDA and SBA?

Secretary KLUTZNICK. Throughout here, we suggested that our people and the staff should get down and get the statutory language.

Senator STEVENSON. That is something we could work out, you think? There will be a lot of cooperation around here. I hope it doesn't take much longer.

Secretary KLUTZNICK. Do you want me alone? [Laughter.]

Senator STEVENSON. With all respect, I will give you to Senator Danforth. [Laughter.]

You say you are opposed to State ownership. Some of the port authorities have expressed an interest in creating companies. When you say you oppose State ownership, does that include ownership or participation in trading companies by port authorities?

Secretary KLUTZNICK. Well, our feeling is at this stage of the development of export companies, we ought not to complicate the possible implications or favoritism of some public as against private institution. However, it is a matter that I have not gone into very deeply. It struck me that we have enough work to do without complicating it. Therefore, I accepted that position.

Senator STEVENSON. I hope also, as Senator Heinz mentioned, that you will reexamine the question of Exim financing for inventories, because there may not be credit available. I don't think it has been the practice of U.S. banks to provide that financing. Foreign banks, yes. And if we are right about that, I would hope that the Exim might be given the authority.

It is not something it has to use, but if needed it, it might be helpful, and partly as a means of getting the private banks actively involved in the financing of inventory.

#### BANK OWNERSHIP AND PARTICIPATION

Now for bank ownership and participation in trading companies. As you well know, foreign banks participate very actively in trading companies. Ours do not. I have a little difficulty understanding one of your statements. On page 6 you said, "Initial investment in an export trading"—subparagraph 3—"Regulatory authorities would have broad discretion to limit a banking organization's financial exposure to a trading company."

I believe that bank holding companies now can invest up to—acquire as much as 5 percent of nonbanking companies without any regulatory agency's approval. Would they be able to participate to that extent in trading companies without the approval of a regulatory agency?

Secretary KLUTZNICK. If that is the present rule, there was no change in rules in our discussion, just qualifying export trading companies as such instead of just whatever their existing rules are. I don't think there was any suggestion of change at all of their existing rules.

Senator STEVENSON. We have a number of additional questions, but I think most of mine we could probably take care of in writing and with cooperation. [Laughter.]

Secretary KLUTZNICK. I am delighted to cooperate (see p. 260).

Senator STEVENSON. I want to point out, in view of what has been said, S. 864 can stand or fall on its own. S. 2379, the trading company bill, cannot. It now is dependent on Senator Danforth's bill for the resolution of what has been one of the stickiest, knottiest, most troubling issues of all, namely the treatment of trading companies under the antitrust laws.

So I am just as interested in obtaining favorable action by this committee on his measure as I am on the other. Based on what has transpired today, the very positive statements of the witnesses toward both these bills, I am confident that we can do so.

Are there further questions?

Senator HEINZ. Two brief questions; some things that Mr. Klutznick said about S. 2379. Referring to page 7, why is prior approval necessary for bank participation? Why not simply notification?

## ONLY AGREEMENT OBTAINABLE

Secretary KLUTZNICK. The answer is that that was the only agreement that was obtainable with respect to the matter.

Senator HEINZ. The only agreement obtainable?

Secretary KLUTZNICK. Before we got here, with respect to this matter.

Senator HEINZ. That is a heck of a rationale.

Secretary KLUTZNICK. Well, it's a pretty good answer. [Laughter.]

Senator HEINZ. I won't quarrel with the answer; just a little disappointed with the rationale. It seems to me that prior approval could be fairly significantly discouraging to formation of these companies, and I would hope that through consultation or participation in the very near future you might be able to do better on improving the agreement that was obtainable at this point in time, or at least come up with a rationale.

Secretary KLUTZNICK. We will try, sir.

Senator STEVENSON. I wanted to agree with you. We do have some more work to do on that issue. It would be nice if it could be done with everybody's concurrence. But if that is not possible—

Senator HEINZ. Apparently it is going to be done with everybody's participation. A large net will be required.

Second, what is a significant line of activity or a "substantial increase in investment"? Can you help us define those provisions? And what kind of further approval do you think is going to be needed here?

Secretary KLUTZNICK. The actual spelling out of the details has to go into regulation or statute. But obviously, if there is a change in character it ought to be reviewed. Substantial is certainly more than minimal, but it has to be defined more precisely in the final arrangements.

We have not reached the point of definition in that item. But the indication is a change in the primary character, or in size or in activity.

Senator HEINZ. Well, so you are defining that as a change in character?

Secretary KLUTZNICK. In amount or in size or in activity. If there are significant changes or substantial changes, then obviously it ought to be subject to reexamination.

Senator HEINZ. You are talking about investment subsequent to the initial investment?

Secretary KLUTZNICK. Possibly. It would have to be subsequent.

Senator STEVENSON. You are also talking about the initial investment?

Secretary KLUTZNICK. Well, the initial investment, once it is approved, there is a certification, it would stand until such time as there was a decertification or a substantial change in the character or size and substance. Now, I am not at the moment defining it precisely.

Senator HEINZ. I think you understand that, as stated in your testimony on page 6, that could work a lot of intricacy and confusion without a more—without a clearer definition of what significant or substantial is.

Secretary KLUTZNICK. We will have to require that in the ultimate work.

Senator HEINZ. We would welcome your views on how you would make those judgments quantitatively.

Secretary KLUTZNICK. We will do so.

#### FUNDING FOR STARTUP COSTS

Senator HEINZ. Finally, I understand your concern about Exim funding of startup costs and your interest in EDA and SBA for that purpose. It is incidental, of course, that they are associated with the Commerce Department perhaps more closely than Exim, but that is not really the thrust of my question.

My question relates to whether you have any problems with the amount or amounts of assistance authorized in the bill.

Secretary KLUTZNICK. No. 1, just so as we settle the question about Exim itself, I discussed this with the chairman. He said that they are not qualified to perform a domestic review, and he, among others, suggested that it should be other agencies. You will have noted that we suggested EDA and SBA.

SBA is not within the Department of Commerce, and the ultimate decision will have to be made whether it is one or the other. And of course, as far as either are concerned, the amount that will be available will depend upon what the Congress appropriates and makes available.

Senator HEINZ. You don't really have any comment about the amount?

Secretary KLUTZNICK. I haven't gotten to the point of analyzing startup figures. There is no sense in multiplying them in the air.

Senator HEINZ. Fair enough. Thank you, sir.

Thank you, Mr. Chairman.

Senator STEVENSON. Thank you, gentlemen. And I will—if there is no objection, I will enter a statement by Governor Wallich of the Federal Reserve Board in the record.

[The complete statement and additional material from the Federal Reserve Board follows:]

Statement by  
Henry C. Wallich

Member, Board of Governors of the Federal Reserve System

I am pleased to submit a statement on S. 2379, a bill that is designed to facilitate the formation and operation of export trading companies. My statement on behalf of the Board of Governors is limited to the section of the bill that provides for bank investment in trading companies.

The Board strongly supports the view that the United States needs a strong export sector, and I have been concerned that exports are sometimes hampered by government regulations. It is noteworthy that, under such handicaps, U.S. exports have nevertheless grown rapidly in the past several years. This growth however has reflected in good part the depreciation of the dollar, and the improved competitive position of the United States that has resulted, as well as the benefits from the expansion of economic activity abroad. Over the past two years exports have increased 50 percent in value and 20 percent in volume, with strong performances in both agricultural and manufactured goods. We should expect that growth in our exports will depend in part on growth in the main markets in which we sell. Thus, as economic activity slows abroad, we should expect growth in our export sales to slow also, although we still look for some increase in exports of manufactures this year. Further growth in exports and a narrowing of the U.S. trade deficit in the years ahead will depend on our ability to bring inflation under control and to establish an environment favorable to growth of productivity and the international flows of goods and services.

Among the measures already taken to strengthen U.S. exports are certain actions by the Federal Reserve to increase the capabilities of Edge Corporations to provide international banking services. I recently reviewed these measures before this Subcommittee. These changes in rules for Edge Corporations were in response to the Congressional mandate in the International Banking Act, and were designed to help the financing of exports. One change expanded the powers of

Edge Corporations by permitting them to finance the production of goods for export. A second change permitted Edge Corporations to establish domestic branches, thereby increasing the possibilities for international banking services to expand into new areas. In the nine months since this change in Board regulation, the Board has approved applications for branches of Edge Corporations in 11 cities, including five cities in which no Edges have previously operated. A number of other applications for Edge Corporations are anticipated over the next few months.

The concrete benefits of these actions in expanding international banking services, and in particular in facilitating the financing of U.S. exports will, of course, be observed only gradually. But we believe that they may be significant over the longer run.

The bill before this committee seeks to strengthen U.S. exports by facilitating the establishment of export trading companies that could supply and package a range of services necessary for exporting, and that could also engage directly in selling goods for export. It would enlist the support of U.S. banks for both types of activities by permitting banks and Edge Corporations to invest in export trading companies. In this connection it might be noted that although banks and Edge Corporations cannot now invest in such trading companies, bank holding companies are permitted to hold up to 5 percent of the stock of nonbanking companies as passive investments.

The Board shares the view that banks have expertise in some of the areas noted in the bill. U.S. banks can now provide, either directly or through their Edge Corporations and affiliates, a wide variety of services relating to exports. In addition to a full range of financing services, these include foreign exchange facilities, information on foreign markets and economies, introductions, business references, and advice on arranging shipments. A number

of U.S. banks with sizable networks of international banking and financial facilities have substantial expertise in these areas. Moreover, the provision of these advisory and ancillary services are a useful adjunct to international financing, which is the principal business of many banks and of Edge Corporations. Edge Corporations have wide latitude under the law to provide advisory services related to exporting. In addition, in the case of uncertainty about the permissibility of certain activities, Edge Corporations may apply under the Board's procedures for permission to broaden the scope of the export-related services that they offer. No requests of this sort have yet been received. The Board would of course review any such applications carefully in the light of all the surrounding circumstances.

Extension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond these existing financial facilities. Such an extension would raise basic questions regarding the traditional separation of banking and commerce. This tradition, which stands in sharp contrast to the practice in some countries abroad, helps ensure that banks will remain impartial arbiters of credit and contribute to a healthy competitive environment in the commercial sector.

The separation of banking and commerce has a long tradition in American banking. It is embodied in the Bank Holding Company Act, and endorsed by the Board. That tradition has served this nation well in promoting economic competition and a strong banking system. In addition, the Board has several more specific concerns about a breaching of the separation of banking and commerce, as is proposed in S. 2379.

(a) The possibility that bank-owned companies or manufacturing companies dealing with them will have more favorable access to bank credit than other companies. For example, the associated company might well receive more

liberal credit terms such as lower interest rates, longer maturities, and less stringent collateral requirements. Moreover, as between otherwise equal potential borrowers, the bank might well make credit available to an associated company but not to others. Thus, there is a potential for unfair competition among trading companies.

(b) The exposure of the bank that arises from risks encountered in commercial trading and the holding of inventories. This risk is enhanced when high leveraging is involved as is typically the case with trading companies. Margins for error are small in circumstances where the nature of the business necessarily contains the potential for sizable price movements and marked shifts in demands for products. In the case of Japanese banks associated with Japanese trading companies large losses were sustained in one instance where a trading company failed, and difficulties have been encountered by others.

(c) The possibility of conflicts of interest in the exercise of its credit judgment between the bank's fiduciary responsibility to depositors and its ownership interests. Examples of such classic conflicts are legion, the more obvious ones being where bank management runs undue risks in extending credit to such an associated company in the hopes that the company will be successful and provide a handsome return to shareholders and hence management; or where it continues to extend credit to an associated company in distress rather than cut its losses.

(d) The increased complexity of bank supervision. For bank supervisors, as for bank management, there are very substantial differences between supervising banking and financial activities and supervising commercial enterprises, which involve risks that must be evaluated and controlled on the basis of specialized knowledge and expertise.

The Board would be concerned about this legislation also because of the precedent that would be established. In today's environment, with rising prices for energy and the need for painful cuts in many areas of the economy, pressures might well arise for banks to make investments in areas where worthwhile economic and social objectives are being threatened by the need to economize. Taken alone, each of these objectives might be worthwhile, but in aggregate they could represent a substantial claim on bank capital.

We need to remember that bank capital is low already--about \$90 billion for all banks relative to total liabilities of \$1.5 trillion. Capital ratios have been declining over the years, in part as a result of inflation, and there is now little room in bank balance sheets for new generic risks. If we now encourage banks to divert capital from its traditional role as a support for lending activity and to invest it in nonbanking activities, we are necessarily curtailing the amount of lending that banks can do for other purposes. Bank capital can most productively be invested in supporting banking activity.

Edge Corporations, banks and bank holding companies may currently engage in some of the activities offered by trading companies. Moreover, the Board has established procedures under the recently revised Regulation K by which member banks, bank holding companies and Edge Corporations can apply to engage in new international activities, and the Board is committed to processing applications in an expeditious manner. Banks are, of course, not permitted to engage in "buying or selling goods, wares, merchandise or commodities in the United States," and the Board has supported this limitation on bank activity.

If the activities of Edge Corporations and banks were to be extended to permit the buying and selling of goods for export directly--or if a bank holding company were permitted to own more than 5 percent of the shares of an export trading company--the Board believes that special standards for participation in such activity would be needed. Such standards should include limitations on the share of ownership of export trading companies and on the types of activities in which they engage. Our staff would be available to work with Subcommittee staff in seeking standards that would meet the objectives of the bill while retaining appropriate safeguards.

ADLAI E. STEVENSON  
ILLINOIS

United States Senate

WASHINGTON, D.C. 20510

April 10, 1980

- COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
- SUBCOMMITTEE ON INTERNATIONAL FINANCE (CHAIRMAN)
- COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
- SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE (CHAIRMAN)
- SELECT COMMITTEE ON ETHICS (CHAIRMAN)
- SELECT COMMITTEE ON INTELLIGENCE
- SUBCOMMITTEE ON THE COLLECTION, PRODUCTION AND QUALITY OF INTELLIGENCE (CHAIRMAN)
- DEMOCRATIC POLICY COMMITTEE

Mr. Henry C. Wallich  
Board of Governors of the  
Federal Reserve System  
20th & Constitution Avenue, N.W.  
Washington, D.C. 20551

Dear Mr. Wallich:

Thank you for submitting the statement for the record of the hearing on export trading companies (S. 2379) held by the International Finance Subcommittee on April 3, 1980.

In order to assist further the Congress in its action on S. 2379, I would appreciate your response as soon as possible to the attached list of questions.

With best wishes,

Sincerely,



Enclosures

QUESTIONS FOR THE RECORD  
For Henry Wallich, Board of Governors,  
The Federal Reserve System  
Subcommittee on International Finance,  
Senate Banking Committee  
Hearing on Export Trading Companies  
April 3, 1980

1. In your prepared statement, you indicate that U.S. banks can now provide, either directly or indirectly through their Edge Corporations or affiliates, a wide variety of services relating to exports. You specifically indicate that "Edge Corporations have wide latitude under the law to provide advisory services related to exporting."
  - A. Please provide for the record specific references to provisions of the Board's Regulation K which authorize the provision of such services in the United States. Would the Board permit an Edge Corporation to organize a subsidiary in the U.S. to engage solely in providing advisory and other services ancillary to exporting? Could you provide for the record a complete list, since 1970, of all Board or staff actions on applications by Edge Corporations to engage in export services in the United States, including export management activities, export advisory activities, freight-forwarding activities and other activities falling within the definition of export trade services in Section 3(a)(4) of S. 2379? Please include any applications that may have been withdrawn, even if not formally acted upon by the Board, and the stated reasons for any withdrawal.
2. In your prepared statement, you indicate that the "[E]xtension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond these existing financial facilities [for Edge Corporations]."
  - A. In an Appendix to the statement of James B. Sommers, President of The Bankers' Association for Foreign Trade, a 1967 Federal Reserve ruling was cited in which the Board permitted an Edge Corporation to take a non-controlling interest in a combination export-manager that bought goods as principal for resale against firm offsetting export orders. Apparently, the Board felt it had authority to

adopt this ruling without any change in its statutory authority. Does your statement mean that the Board exceeded its authority or its traditional policies under the Edge Act in adopting this 1967 ruling? Has the Board ever repealed this 1967 ruling? Does the Board believe that it now has the authority to permit an Edge Corporation to acquire an equity interest in an export trading company that takes title to goods against firm export orders from abroad?

- B. Banks now take title to large items of personal property in major leasing transactions. Banks also often acquire ownership rights as collateral security in acceptance and other international trade financing transactions. Therefore, taking title, in and of itself, is not the crucial inquiry on risk. In fact, title is the most valuable form of collateral security that a lender -- or middleman in an export transaction -- can have. In this regard, who is better protected in the case of a default, assuming a uniform judgment on creditworthiness in each case -- a bank granting an unsecured standby line of credit overseas, or an ETC taking title to goods for purposes of resale abroad?
- C. As indicated in the Appendix to Mr. Sommers' statement, Congress specifically contemplated in 1919 that Edge Corporations would have the ability to invest in foreign trading companies. Has the Board ever approved any investments by Edge Corporations in foreign trading companies, or in any foreign companies engaged in buying and selling goods? If so, what, if any, differences in risk are there between buying and selling goods abroad and buying and selling goods in the United States? Do not in fact the bank regulatory authorities have better supervisory control when goods are bought and sold here in the United States?
3. In your statement you suggest that permitting U.S. banking organizations to invest in companies that buy and sell goods raises concerns under the long standing separation of banking from commerce in the United States. Isn't it a fact, however, that the Board has permitted large Japanese and other banks affiliated with trading companies that export to and import from the United States to acquire U.S. banks, including specifically the acquisition of Marine Midland Bank by the Hong Kong and Shanghai Banking organization? In this regard, could you provide a list of all foreign bank holding companies with interests of greater than 5%

3.

in a trading company or other commercial or business enterprise that maintains facilities in the U.S. for the purpose of importing to or exporting from the United States? Can you list all Japanese bank holding companies affiliated through Keiretsu with trading companies?

- A. Is the Board taking the position that it is acceptable for U.S. banks to be affiliated with trading companies that export to but do not export from the United States? On what public policy grounds does the Board justify such a distinction? If trading company activities are as fraught with as many problems as you suggest, then on what basis did the Board approve the takeover of Marine Midland by Hong Kong and Shanghai which has an extensive interest in Hutchinson Whampoa, Ltd.?
- B. Isn't the Board better able to supervise the activities of a U.S. trading company affiliate of a U.S. banking organization than a foreign trading company affiliate of a foreign bank holding company? If so, then wouldn't the Board have more authority over a bank-owned export trading company under this bill than it now has over the activities of Japanese and other trading companies affiliated with U.S. banks through common ownership by foreign bank holding companies?
- C. Isn't it true that U.S. banking organizations have always been permitted a broader range of authorities in their international operations, including in the United States, in order to compete abroad and these greater powers have never been deemed in contravention of other "longstanding" principles? For example, aren't Edge Corporations free from the statutory restrictions of the McFadden Act? Hasn't the Board permitted U.S. banking organizations to engage in securities activities abroad that would be prohibited under the Glass-Steagall Act? And didn't Congress specifically contemplate in §4(c)(13) of the Bank Holding Company Act that the "longstanding" principles of section 4 of the Bank Holding Company Act would not apply to international activities?
4. Despite your reservations about some aspects of S. 2379, I appreciate the Board's willingness to work with my staff in formulating standards that would meet the objectives of the bill while retaining appropriate safeguards. In this regard, I am enclosing an additional set of questions on bank participation which I am asking of the Administration and on which I would greatly appreciate the Board's views.

In reading your list of Board "concerns," I was surprised by the omission of the consideration of the many protections included in S. 2379. I believe section 5(e)(1) of S. 2379 protects precisely against the types of preferential lending you discuss in paragraphs (a) and (c) on pages 3 and 4 of your statement. The language in section 5(e)(1) is, in part, virtually identical to language which the Board proposed in section 8(e) of the International Banking Act of 1978.

With respect to "risk" concerns mentioned in paragraph (b) on page 3 of your statement, S. 2379 does not set up a "mandatory" model of Japanese trading companies. Section 5(e)(2) of S. 2379 specifically prevents a U.S. banking organization from investing more than 10% of its capital and surplus in any ETC, and section (f) gives the Board and other agencies broad supervisory and reporting authority. In addition, the banking agencies already have broad supervisory authority under other banking laws to ensure against undue commercial risks. For example, the agencies have broad cease and desist authority to prevent unsound banking practices.

With respect to your stated concerns about capital adequacy, as mentioned above, section 5(e)(2) prevents a banking organization from investing more than 10% of its capital and surplus in one or more export trading companies. The present capital condition of banks is largely a result of archaic laws and regulation which have limited the growth of U.S. banks, have prevented them from expanding across State lines, and have impaired their ability to compete with the growing number of nonbank financial organizations and foreign banks that operate with far fewer restrictions. The net result is that U.S. banks have not been able to grow at satisfactory rates, they are losing market share at home and abroad, and their shares are selling well below book in many cases. They thus become tempting candidates for takeovers by large foreign banks with extensive nonbank operations overseas, and the Board ends up approving the acquisitions because they provide "capital strength" to the U.S. bank. By improving competitiveness, S. 2379 will, in the long run, be a benefit to the financial condition of U.S. banks.

Finally, I would note a misconception in the last paragraph of your statement. S. 2379 does not propose that banks, Edge Corporations, or bank holding companies be permitted to engage directly in commercial export activities -- S. 2379 only authorizes U.S. banking organizations to invest in companies that function

as export trading companies or which engage in export trade services. Maintaining a corporate veil in the case of such activities makes protection and administration much more effective.

I welcome your comments on these observations.



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C. 20551

HENRY C. WALLICH  
MEMBER OF THE BOARD

May 30, 1980

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

Dear Chairman Stevenson:

In further response to your letter of April 10,  
I am pleased to enclose responses for the record of the  
hearing on export trading companies (S. 2379) held by  
your Subcommittee on April 3.

Please let me know if I can be of further  
assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Henry C. Wallich".

Henry C. Wallich

Enclosure

Responses to "Questions for the Record"  
submitted by Senator Stevenson  
attached to April 10, 1980  
letter to Governor Wallich

1. In your prepared statement, you indicate that U.S. banks can now provide, either directly or indirectly through their Edge Corporations or affiliates, a wide variety of services relating to exports. You specifically indicate that "Edge Corporations have wide latitude under the law to provide advisory services related to exporting."
  - A. Please provide for the record specific references to provisions of the Board's Regulation K which authorize the provision of such services in the United States. Would the Board permit an Edge Corporation to organize a subsidiary in the U.S. to engage solely in providing advisory and other services ancillary to exporting? Could you provide for the record a complete list, since 1970, of all Board or staff actions on applications by Edge Corporations to engage in export services in the United States, including export management activities, export advisory activities, freight-forwarding activities and other activities falling within the definition of export trade services in Section 3(a)(4) of S. 2379? Please include any applications that may have been withdrawn, even if not formally acted upon by the Board, and the stated reasons for any withdrawal.

Answer: Section 211.4(e) of Regulation K states that Edge Corporations may engage in activities in the U.S. that are permitted by Section 25(a) of the Federal Reserve Act and in such other activities as the Board determines are incidental to international or foreign business. That Section also lists permissible activities which directly relate to the generation of income for the Edge Corporation. Traditional advisory services furnished by Corporations to exporters, such as provision of information on foreign markets and economies, credit information on potential importers, introductions and advice on arranging shipments are considered inherent powers of Corporations. When a Corporation is affiliated with a bank holding company or bank, the powers of these organizations to provide advisory services are also available to the Corporation's customers. Regulation K contemplates that Corporations will apply to the Board for determinations as to whether other particular services are considered to be incidental to international or foreign business and if the Board finds the requisite nexus with

## 1.A. (continued)

international or foreign business, based upon the facts presented, it may determine that such other services are permissible. A list of the disposition of applications in this area relating to trading company activities since 1970 is attached below.

<u>Date</u>	<u>Applicant/Proposal</u>	<u>Disposition</u>
1/9/74	Lloyds Bank Ltd., London, England to retain indirect investments in Balfour, Williamson Inc. (BW), Export Credit and Marketing Corporation and Export Credit Corporation of New York, N.Y. (ECM) and in Drake American Corporation, New York, N.Y. and Drake American Corporation, Puerto Rico, (DA) under Section 4(c)(a) of the Bank Holding Company Act.	Board approved retention of BW subject to the condition that it cease engaging in the activity of arranging directly the shipment of goods from the U.S. and cease operating three retail stores acquired dpc. Board approved retention of ECM so long as it did not invest more than 5% or acquire control over any company without prior Board approval. Application to retain DA, an export management company, which arranged foreign sales of products manufactured in the U.S. by forming a foreign distribution network for such products, was denied.
6/28/74	Bank of Virginia Company, Richmond, Va. to acquire through Canadian Financial Corporation, Montreal, Canada all the shares of Affiliated Customs Brokers Ltd. Montreal, Canada, (ACB) under Section 4(c)(13) of the BHCA.	Board denied the application because the activities of ACB of customs brokerage, customs consulting and freight forwarding were considered by the Board not to be international or foreign banking or other international or foreign finance operations as required by Section 25(a) of the FRA and Section 225.4(f) of Regulation Y
12/3/74	Provident International Corporation, Philadelphia, Pa. to purchase and hold 24.5% of the stock of Ballagh and Thrall Inc. (BT), a combination export management company.	Application was withdrawn December 3, 1974.

2. In your prepared statement, you indicate that the "[E]xtension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond these existing financial facilities [for Edge Corporations]."
- A. In an Appendix to the statement of James B. Sommers, President of the Bankers' Association for Foreign Trade, a 1967 Federal Reserve ruling was cited in which the Board permitted an Edge Corporation to take a non-controlling interest in a combination export-manager that bought goods as principal for resale against firm offsetting export orders. Apparently, the Board felt it had authority to adopt this ruling without any change in its statutory authority. Does your statement mean that the Board exceeded its authority or its traditional policies under the Edge Act in adopting this 1967 ruling? Has the Board ever repealed this 1967 ruling? Does the Board believe that it now has the authority to permit an Edge Corporation to acquire an equity interest in an export trading company that takes title to goods against firm export orders from abroad?

Answer: In 1967, the Board approved an application by Fidelity International Corporation, Philadelphia, Pa., to acquire a substantial but non-controlling interest in Balthex Corporation, a U.S. company engaged in the combination export management business. In connection with this approval, the Board published an interpretation indicating the approval was limited to the specifics of that case and indicating it was in the nature of an experiment. That interpretation has never been formally withdrawn. However, in January 1974, the Board required Lloyd's Bank Limited, which had just acquired a U.S. bank, to divest its interest in Drake America Corporation, a subsidiary engaged in the combination export management business. Later in the year, the Board also denied an application for a foreign subsidiary of a U.S. bank holding company to engage in customs house brokerage and freight forwarding, activities usually associated with combination export managers.

The revision to Regulation K in June 1979, did not list "Combination Export Manager" as an activity permitted affiliates of Edge Corporations. However, it did include procedures for Edge Corporations and Bank Holding Companies to acquire firms engaged in "non-listed" activities. There is

## 2.A. (continued)

nothing that would prevent U.S. banking organizations to apply to engage in the combination export management business or many of the other activities engaged in by trading companies. Such applications would be judged on their merit in the particular context presented.

- 2.B. Banks now take title to large items of personal property in major leasing transactions. Banks also often acquire ownership rights as collateral security in acceptance and other international trade financing transactions. Therefore, taking title, in and of itself, is not the crucial inquiry on risk. In fact, title is the most valuable form of collateral security that a lender -- or middleman in an export transaction -- can have. In this regard, who is better protected in the case of default, assuming a uniform judgment on creditworthiness in each case -- a bank granting an unsecured standby line of credit overseas, or an ETC taking title to goods for purposes of resale abroad?

Answer: As this question points out, banking organizations are currently able to take title to goods as collateral to loans or as part of a full payout leasing transaction. Other things being equal, holding title to goods as collateral does indeed reduce risk. However, there is an important difference between a bank holding goods as collateral to a loan to a company (which is presumably credit-worthy in its own right), and a bank or its affiliates taking an inventory position in commodities or manufactured goods, as proposed for export trading companies. In the case of a loan to a company secured by goods or in a full payout lease transaction the bank is protected not only by the value of the merchandise, but also by the full financial strength and capital of the borrower. Thus, the bank is not immediately exposed to a loss should the value of the goods decline, since the borrower has other resources with which to repay the bank. On the other hand, if a bank through a subsidiary export trading company were permitted to take positions in goods for its own account, the banking organization could be subject

## 2.B. (continued)

to immediate loss should the value of the goods decline. The holding of inventories of commodities or other goods by subsidiaries of banks would expose banking organizations to an inventory risk which they have not been permitted to assume heretofore, and would tend to increase the amount and nature of risk assumed by the banking system.

- 2.C. As indicated in the Appendix to Mr. Sommers' statement, Congress specifically contemplated in 1919 that Edge Corporations would have the ability to invest in foreign trading companies. Has the Board ever approved any investments by Edge Corporations in foreign trading companies, or in any foreign companies engaged in buying and selling goods? If so, what, if any, differences in risk are there between buying and selling goods abroad and buying and selling goods in the United States? Do not in fact the bank regulatory authorities have better supervisory control when goods are bought and sold here in the United States?

Answer: With respect to past Board actions regarding investments by Edge Act Corporations in export trading companies or in companies that buy and sell goods, one needs to distinguish periods according to the regulations in effect. At the outset (1920) Regulation K did not establish restrictions on investments in certain foreign companies that were not engaged in business in the United States. Nor was application to the Board required in order to make investments in other companies. Federal Reserve records do not show whether any such investments were made. However, U.S. banks were not particularly active abroad during this period and it seems unlikely that any such investments were made. A list of Edge and Agreement Corporations' investments as of 1954 shows no investments in trading companies of similar firms.

Some recent history of Board action in this area is outlined in the response to question 1 above.

## 2.C. (continued)

Under amendments to Regulation K, adopted June 14, 1979, the Board will as a general rule permit an Edge Corporation to have an ownership interest of more than 20 percent only in a financial company. Investments in nonfinancial companies can under certain conditions be made as portfolio investments, and are often made in association with a loan by the bank. Such investments cannot involve an ownership interest of more than 20 percent and are subject to all the following conditions:

- a) all investments of more than \$2 million require specific Board approval;
- b) investments are permissible only in companies that do no business in the United states; and
- c) there is an aggregate limit (100 percent of capital and surplus) on the total of all such portfolio investments by Edge and Agreement Corporations.

This policy of permitting limited portfolio investments by bank Edge Corporations in nonfinancial companies abroad was designed to allow U.S. banking organizations to engage to a limited extent in venture capital financing abroad. The statutory prohibition in Section 25(a) of the Federal Reserve Act against owning companies buying or selling goods in the United States limits the investment to companies that operate entirely abroad. This provision does not limit risk exposure of the investing bank, but it does serve to lessen the risk of potential unfair competition that might arise if investments were made in U.S. companies.

3. In your statement you suggest that permitting U.S. banking organizations to invest in companies that buy and sell goods raises concerns under the long standing separation of banking from commerce in the United States. Isn't it a fact, however, that the Board has permitted large Japanese and other banks affiliated with trading companies that export to and import from the United States to acquire U.S. banks, including specifically the acquisition of Marine Midland Bank by the Hong Kong and Shanghai Banking organization? In this regard, could you provide a list of all foreign bank holding companies with interests of greater than 5% in a trading company or other commercial or business enterprise that maintains facilities in the U.S. for the purpose of importing to or exporting from the United States? Can you list all Japanese bank holding companies affiliated through Keiretsu with trading companies?

Answer: A quick review of the Board's records indicates that the following foreign bank holding companies have interests in foreign trading companies that maintain facilities in the United States. Those listed are in addition to the Honk Kong and Shanghai example cited in your letter. Virtually all of the Japanese holding companies and a number of other foreign holding companies also have noncontrolling interests in foreign commercial companies which do business in the United States.

The list, which was compiled from readily available records, includes only foreign companies that are bank holding companies by virtue of owning a U.S. bank and not those that have only branches or agencies in the United States and are subject to portions of the Banking Holding Company Act as a result of the International Banking Act.

In every case listed below, the foreign bank holding company's interest in the trading company(s) amounted to less than 10 percent of the company(s) voting shares.

Foreign Bank Holding Companies Affiliated with  
Trading Companies that maintain U.S. Facilities

Sanwa Bank, Japan  
Tokai Bank, Japan  
Daiwa Bank, Japan  
Fuji Bank, Japan  
Industrial Bank of Japan  
Kyowa Bank, Japan

Mitsubishi Bank, Japan  
Mitsui Bank, Japan  
Sumitomo Bank, Japan  
Dai-Ichi Kangyo Bank, Japan  
Bank of Tokyo, Japan  
Barclays Bank, U.K.

3.A. Is the Board taking the position that it is acceptable for U.S. banks to be affiliated with trading companies that export to but do not export from the United States? On what public policy grounds does the Board justify such a distinction? If trading company activities are as fraught with as many problems as you suggest, then on what basis did the Board approve the take-over of Marine Midland by Hong Kong and Shanghai which has an extensive interest in Hutchinson Whampoa, Ltd.?

Answer: As the response to the preceding question indicates, banks in some foreign countries are connected with trading companies, although mostly in a minority ownership capacity. These interests usually arise in the context of particular foreign banking systems where banks generally own interests in a wide variety of commercial firms, and they reflect the difference historical circumstances and experiences of these countries. As recognized in the International Banking Act, the United States cannot impose its standards of bank behavior on other sovereign nations nor is it desirable to do so. Moreover, the Board is generally not in a position to require that foreign banks divest of foreign activities in order to engage in banking in the United States. Rather, its primary role is to ascertain whether the foreign bank has been able to operate successfully in its own environment with its different set of risks and safeguards so that it is a source of strength to its U.S. banking operations, and to supervise and regulate the U.S. activities of the foreign bank.

3. B. Isn't the Board better able to supervise the activities of a U.S. trading company affiliate of a U.S. banking organization than a foreign trading company affiliate of a foreign bank holding company? If so, then wouldn't the Board have more authority over a bank-owned export trading company under this bill than it now has over the activities of Japanese and other trading companies affiliated with U.S. banks through common ownership by foreign bank holding companies?

Answer: Clearly the Board would be better able to supervise a domestic trading company affiliate of a domestic bank than a foreign trading company affiliate of a foreign bank. However, as already indicated, the Board is not in the business of regulating and supervising the foreign activities of foreign banks. The Board's primary supervisory responsibility is to assure that U.S. banks are financially sound components of the domestic and international financial markets and to regulate their activities in accordance with U.S. banking practice. Primary responsibility for foreign banks resides with their home supervisory authorities; the Board's responsibility consists largely of assuring that foreign banks' operations in the United States are conducted in a prudent manner. In this regard, the Board seeks to obtain information to enable it to scrutinize transactions between the U.S. banking operations and overseas affiliates, and also monitors the ability of foreign banks to operate successfully in their own environment.

- 3.C. Isn't it true that U.S. banking organizations have always been permitted a broader range of authorities in their international operations, including in the United States, in order to compete abroad and these greater powers have never been deemed in contravention of other "longstanding" principles? For example, aren't Edge Corporations free from the statutory restrictions of the McFadden Act? Hasn't the Board permitted U.S. banking organizations to engage in securities activities abroad that would be prohibited under the Glass-Steagall Act? And didn't Congress specifically contemplate §4(c)(13) of the Bank Holding Company Act that the "longstanding" principles of Section 4 of the Bank Holding Company Act would not apply to international activities?

Answer: The Board has long recognized that, in order for U.S. banks to compete effectively abroad, they must be able to provide many of the same financial services that are offered by their foreign competitors, many of which services would not be permissible domestically. Accordingly, the Board's regulations regarding the foreign branches and subsidiaries of member banks allow activities additional to those permitted in the United States. Moreover, the Board's regulations provide that a U.S. bank may apply to the Board for permission to engage in other activities that are usual in connection with banking abroad. The Board, however, has not permitted U.S. banks to engage abroad in commercial or other activities bearing substantial risks. Furthermore, it does not appear that in enacting Section §4(c)(13) of the Bank Holding Act that Congress intended that the Board would thereby permit banks to engage domestically in those activities that would be permissible abroad within a different environment.

4. Despite your reservations about some aspects of S. 2379, I appreciate the Board's willingness to work with my staff in formulating standards that would meet the objectives of the bill while retaining appropriate safeguards. In this regard, I am enclosing an additional set of questions on bank participation which I am asking of the Administration and on which I would greatly appreciate the Board's views.

Answer: The questions to which you refer deal with the standards for bank participation in ownership of export trading companies. Standards that would meet the concerns I have expressed regarding bank ownership are contained in amendments that were provided to the Committee under letter from Chairman Volcker (copy attached).



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

PAUL A. VOLCKER  
CHAIRMAN

May 12, 1980

The Honorable Adlai E. Stevenson  
United States Senate  
Washington, D. C. 20510

Dear Senator Stevenson:

My letter to you of May 2 expressed certain reservations regarding S. 2379. Those reservations stem not from lack of sympathy with the purpose of this legislation in making export related services available to more firms in the U.S. Rather, we in the Federal Reserve have substantial questions about the degree to which banking organizations should be permitted to participate directly in, or even control, export trading companies. In that connection, we feel strongly that the tradition of separation of banking and commerce has served the country well. To assure that separation is maintained, while permitting a degree of banking participation in support of export trading companies, I would suggest certain amendments to the proposed bill establishing substantive and procedural standards that are necessary with regard to bank involvement in such companies.

Those recommendations, which I endorse, include the following elements: first, no banking organization would be permitted to acquire more than 20 per cent of the voting stock of an export trading company or to control the company in any other manner; second, not more than 50 per cent of an export trading company's voting stock could be owned by any group of banking organizations; third, the aggregate investment by any banking organization would be limited to 5 per cent of its aggregate capital and surplus (25 per cent in the case of Edge and Agreement Corporations) in one or more export trading companies nor could a banking organization lend to an export trading company in an amount which, when combined with its investment, would exceed 10 per cent of the banking organization's capital and surplus; an export trading company would not be permitted to take positions in securities or commodities for speculative purposes; an arms length relationship would be maintained in any lending activity; and the name of the bank could not be used in the name of the export trading company.

Furthermore, we propose that any major commitment to investment in an export trading company--in excess, say, of \$10 to \$15 million--be specifically approved by the Board of Governors

The Honorable Adlai E. Stevenson  
Page Two

in advance. As this suggests, we believe that because of the risks that may attend export trading company activities and the lack of experience of U.S. banks and their regulators in dealing with such companies, it would not be prudent to permit banking organizations to exercise control over export trading companies at this time. For that reason, the Board of Governors cannot support the current version of S. 2379.

The amendments that I am enclosing for the Committee's consideration have been discussed with your staff. We, of course, would be pleased to provide any further assistance.

Sincerely,

S/Paul A. Volcker

Enclosure

Amendment Offered by \_\_\_\_\_

To. S. 2379

Page 9, strike lines 1 through 5.

Page 9, strike lines 6 through 25; page 10, strike lines 1 through 24; pages 11-14 strike lines 1 through 25; and page 15, strike lines 1 through 21; and substitute the following:

(c) Notwithstanding any prohibition, restriction, limitation, condition or requirement of any other law, a banking organization, subject to the limitations of subsection (d) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in not more than 20 per centum of the voting stock or other evidence of ownership of one or more export trading companies. A banking organization may:

- (1) 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;
- (2) make investments in excess of an aggregate amount of \$10,000,000 in one or more export trading companies only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of (1) above shall promptly notify the appropriate Federal banking agency of such investment and shall file reports on such investment as such agency may require.

(d) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

- (1) no banking organization may control directly or indirectly an export trading company;
- (2) no banking organization may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations;
- (3) neither an export trading company nor a banking organization that owns its shares shall make any representation that the export trading company and the banking organization are affiliated. For this purpose, the name of such export trading company shall not be similar in any respect to that of a banking organization that owns its shares;
- (4) 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 shall not exceed 10 per centum of the banking organization's capital and surplus;
- (5) a banking organization that owns any voting stock of an export trading company shall terminate its ownership of such stock if the export trading company takes a position in commodities or commodities contracts other than as may be necessary in the course of its export business;

(6) 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.

(e)(1) In the case of every application under subsection (c)(2) of this section, 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 investment for which an application has been filed under subsection (c)(2) unless it finds that there are significant export benefits and that such benefits clearly outweigh in the public interest any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (c) (2), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem 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.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to 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 and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 2 of this Act.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control 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 or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity

for hearing, to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its investment in the export trading company.

5. In reading your list of Board "concerns," I was surprised by the omission of the consideration of the many protections included in S. 2379. I believe Section 5(e)(1) of S. 2379 protects precisely against the types of preferential lending you discuss in paragraphs (a) and (c) on pages 3 and 4 of your statement. The language in Section 5(e)(1) is, in part, virtually identical to language which the Board proposed in Section 8(c) of the International Banking Act of 1978.

With respect to "risk concerns mentioned in paragraph (b) on page 3 of your statement, S. 2379 does not set up a "mandatory" model of Japanese trading companies. Section 5(e)(2) of S. 2379 specifically prevents a U.S. banking organization from investing more than 10% of its capital and surplus in any ETC, and Section (f) gives the Board and other agencies broad supervisory and reporting authority. In addition, the banking agencies already have broad supervisory authority under other banking laws to ensure against undue commercial risks. For example, the agencies have broad cease and desist authority to prevent unsound banking practices.

With respect to your stated concerns about capital adequacy, as mentioned above, Section 5(e)(2) prevents a banking organization from investing more than 10% of its capital and surplus in one or more export trading companies. The present capital condition of banks is largely a result of archaic laws and regulation which have limited the growth of U.S. banks, have prevented them from expanding across State lines, and have impaired their ability to compete with the growing number of nonbank financial organizations and foreign banks that operate with far fewer restrictions. The net result is that U.S. banks have not been able to grow at satisfactory rates, they are losing market share at home and abroad, and their shares are selling well below book in many cases. They thus become tempting candidates for takeovers by large foreign banks with extensive nonbank operations overseas, and the Board ends up approving the acquisitions because they provide "capital strength" to the U.S. bank. By improving competitiveness, S. 2379 will, in the long run, be a benefit to the financial condition of U.S. banks.

Finally, I would note a misconception in the last paragraph of your statement. S. 2379 does not propose that banks, Edge Corporations, or bank holding companies be permitted to engage directly in commercial export activities -- S. 2379 only authorizes U.S. banking organizations to invest in companies that function as export trading companies or which engage in export trade services. Maintaining a corporate veil in the case of such activities makes protection and administration much more effective.

Answer: As I indicated in my statement, the Board has a number of concerns that could result from a breach in the traditional separation of banking from commerce as a result of bank ownership of export trading companies. I note that §5(e)(1) of S. 2379 addresses one of those concerns by providing that a banking organization may not extend credit to an export trading company in which it has an ownership interest on terms more favorable than those afforded similar borrowers in similar

## 5. (continued)

circumstances. This provision may be viewed as dealing with one dimension of unfair competition, namely, the terms on which credit may be extended.

Another aspect of unfair competition is not dealt with in this legislation. That is the actual credit judgment itself -- whether a bank would lend to an export trading company in which it had an ownership interest, while declining to lend to another company. Evaluation of the credit judgment cannot be made by reference to readily ascertainable statistics, such as interest rates, compensating balance requirements and maturities of credits. In fact, there is probably no effective and efficient way in which bank supervisors could administer a provision such as Section 5(e)(1) to ensure that unfair competition did not result from biases in credit judgments.

Another concern relating to the exercise of a credit judgment is the conflict of interest that may arise between the bank's fiduciary responsibility to depositors and its ownership interest. Again, it is not clear how statutory provisions could be administered to guard against such conflicts of interest. It is the judgment of our staff that the most effective way of curbing the risks regarding credit judgments is through limiting the involvement of banks in non-banking activities.

Your question notes that Section 5(e)(1) follows language proposed by the Board for inclusion in Section 8(e) of the International Banking Act. Section 8(e) concerns the nonbanking activities of foreign banks. These activities are, by law, conducted primarily outside the United States, and the language to which you refer in Section 8(c) is designed to avoid unfair competition on the smaller part of the nonbanking business of foreign banking organizations -- that is, where a credit is extended by the U.S. affiliate of the foreign bank. Moreover, Section 8(e) does not give protection regarding

## 5. (continued)

the credit judgments made by foreign banks. Nor does it bear on the fiduciary responsibility of the foreign bank holding company -- that is the responsibility of a foreign supervisory authority.

Another concern of the Board relates to the risk that would be encountered in commercial trading and the holding of inventories. Because trading companies are likely to be highly leveraged, a relatively small investment in such a company might well involve an investor in a substantial pro rata exposure. In the case of a bank credit to a trading company, the extent of the bank's exposure can be calculated readily, but in the case of a bank investment, potential exposure may be large and uncertain unless bank exposure is explicitly limited to the initial investment, and specified maximum amounts of credits to the trading company and its customers. Absent such a limitation, there could well arise occasions when a bank that was closely identified with the operation of a trading company would take large risks to ensure the continued solvency of that company.

With regard to the issue of capital adequacy, my statement did not address all its ramifications. It merely expressed the opinion that because banking organizations have greater expertise in financing than in the export trading, it would be in the public interest to retain their available capital funds in the banking organizations and to have them assist exports through the provision of financing.

The other more general issues you raise regarding structural factors that limit the availability of bank capital over the longer term, and the ability of U.S. banks to compete with foreign banks and nonbanking institutions, are of course important issues and deserve careful analysis. In my view, however, S. 2379 would affect bank capital at this time primarily by diverting banks' scarce capital funds from financing to investment in the proposed export trading corporations.

## 5. (continued)

Your question stresses the distinction between engaging in trade directly and investing in trading companies. In that connection, one must judge whether a banking organization would feel compelled to come to the rescue of a troubled trading company even if such a company was a legally separate entity. Banking practice suggests that in most cases banks would indeed do so, particularly in situations where the association of the bank with the trading company is common knowledge.

Moreover, if a banking organization were involved in the management of a trading company it is not at all certain that the courts would not pierce the corporate veil. Troubles in an affiliated trading company might also adversely affect depositor confidence in the parent bank.

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Comptroller of the Currency  
Administrator of National Banks

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Washington, D. C. 20219

May 12, 1980

Dear Mr. Chairman:

This is in response to your request for the views of the Office of the Comptroller of the Currency (OCC) on the proposed "Export Trading Company Act of 1980", S. 2379.

The proposed legislation promotes the expansion of U.S. exports by permitting the formation and operation of export trading companies ("ETCs"), which would facilitate the marketing and export of goods and services on behalf of small and medium sized U.S. firms. S.2379 also proposes a leading role for U.S. banks in forming and operating ETCs.

The OCC strongly supports S.2379 with certain reservations. The OCC believes in the need to expand U.S. exports, as well as in the benefits of employing the national and international marketing and financial networks of U.S. banks for export expansion. Bank ownership of ETCs does raise supervisory concerns; however, the OCC believes the proposed legislation can be amended to address those concerns while still permitting a leading role for banks in ETCs.

Specifically, the OCC's primary concern is the degree of exposure a bank-owned ETC may raise for the bank investor. Exposure can be the amount of loans and investment a bank provides an ETC. However, exposure also can include a bank's moral obligations on behalf of a subsidiary which is closely identified with the bank through equity participation, and borrows in the marketplace on the basis of that equity interest.

Accordingly, the OCC suggests the proposed S.2379 be amended to recognize these supervisory concerns. This Office especially recommends during this threshold stage of ETC development that the proposed legislation permit a banking organization to invest the lower of \$10 million or five percent of its consolidated capital funds in less than twenty-five percent of the equity of an ETC without the prior approval of the appropriate federal banking agency. Aggregate bank investments in ETCs should be limited to 10% of a banking organization's consolidated capital funds. At a minimum, any investments by banks in ETCs which require prior approval should be subject to whatever safety and soundness conditions the appropriate banking agency may wish to impose.

Sincerely,



John G. Heimann  
Comptroller of the Currency

Senator STEVENSON. Thank you.  
Secretary KLUTZNICK. Thank you.

[Whereupon, at 4:49 p.m., the subcommittee was adjourned.]

## APPENDIX

STATEMENT OF  
AMERICAN TEXTILE MACHINERY ASSOCIATION  
BEFORE THE  
SUBCOMMITTEE ON INTERNATIONAL FINANCE  
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Re: S. 864 and Senate Amendment Number 1674  
to Amend the Webb-Pomerene Act

March 17, 1980

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The American Textile Machinery Association [ATMA] is a nonprofit trade association representing domestic manufacturers of complete textile machines, accessories, parts, attachments and supplies. Among its more than 130 members are the principal textile machinery manufacturers in the United States.

ATMA members are located throughout the United States, with major concentrations in the states of North and South Carolina, Georgia, Pennsylvania, Rhode Island, Massachusetts and New York. Approximately 27,000 workers produce the equipment and supplies necessary to support a domestic textile industry of over one million workers and a constantly growing international industry.

ATMA's interest in export development has extended over a long period of time. Therefore the opportunity to comment on the role of export trade associations in developing new export markets is appreciated. Because of the textile machinery industry's particular interest

in export trade associations, our statement will focus only on S. 864 and the revised version, Senate Amendment 1674. The position of ATMA can be summarized as follows:

1. In recent years, the United States textile machinery manufacturing industry has experienced a steadily declining balance of trade and employment.

2. In the development of international economic policy, it is essential to recognize the critical importance of exports and the role played by export trade associations in promoting exports.

3. Domestic textile machinery manufacturers are in an adverse competitive position in relation to their foreign competitors.

4. The Webb-Pomerene Act as now written is inadequate to serve its intended purposes. Amendments should be adopted to:

- (a) Expand and clarify its antitrust exemption.
- (b) Transfer administration and enforcement authority to the Commerce Department.
- (c) Extend permissible export trade activities to include "services."
- (d) Exclude from association participation any United States entity that, in fact, is merely a shell for foreign interests.

5. S. 864 would effectively amend the Act to facilitate the entry into and expansion of export markets of U. S. businesses with previously unrealized export potential.

I. The American Textile Machinery Industry Has Experienced a Declining Balance of Trade and Employment.

The U. S. textile machinery industry has experienced steady growth since 1977 in both overall production and in the value of its textile

machinery exports. However, the long range forecast of real growth for the industry estimates an annual average increase in shipments of only 2.0 to 2.5 percent through 1984. Further, despite the industry's increasing strength and stability, the United States has experienced a steadily declining balance of trade in textile machinery. During the period 1975 to 1979, the industry produced machines valued at \$4.53 billion. Of this amount, \$1.49 billion or 31 percent, were for exports. During this same period, domestic textile mills imported \$2.3 billion of foreign textile machinery or about 45 percent of their total purchases, resulting in a negative balance of trade of almost \$1 billion. Further, the total number of employees in the industry has steadily declined, from 46,300 in 1966 to 35,000 in 1974, to 27,000 today.

There is great potential in world markets for the U. S. manufactured textile machinery. For example, the world textile per capita annual consumption is 15 pounds, compared to 60 pounds for each person in the U. S. As the world economy develops, a narrowing of the consumption gap will occur.

World textile consumption, now at 60 billion pounds, is expected to increase to 96 billion pounds by the early 1990's. Fortunately, a large part of that increased consumption will be produced by U. S. mills. But not all of the U. S. increased production will be on U. S. made machines. Clearly there is a solid worldwide market for U. S. textile machinery for which our industry must compete under adverse conditions.

The U.S. textile machinery industry can compete for sales to growing world markets. If sales opportunities are realized, the industry

will be in a position to finance more research and development to provide the next generation of equipment to U. S. buyers.

## II. Exports Play a Critical Role.

In the development of international economic policy, it is essential to recognize the critical role of exports. Exports enable the United States to earn foreign exchange necessary to pay for goods and services purchased in foreign markets. In view of our increasing reliance on imported natural resources, and in particular petroleum, a strong and aggressive export trade must be a high national priority. Only through increased exports can we ease the exceedingly high trade deficits experienced over recent years and predicted for the future. Increased exports not only help ease our balance of payments problems, but also represent a fertile source for providing increased employment. The Commerce Department estimates that each \$1 billion of United States exports supports approximately 40,000 American jobs.

Unfortunately, however, over the past twenty years, U. S. exports have grown at only half the rate of other industrialized nations. The American share of the world market has dropped from 18 percent in the early 1960's to less than 12 percent today.

## III. The Webb-Pomerene Act Was Intended to Improve the Position of U. S. Businesses in International Markets.

The governments of most major industrial countries, and in particular our international trading competitors, purposefully encourage exports through government subsidized financing, favorable tax treatment,

government guarantees or insurance programs, and liberal antitrust provisions. In contrast, U. S. laws and policies place numerous restrictions on the export activity of American business. These restrictions hamper domestic businesses in their efforts to develop export markets. But the heaviest burden is borne by small and medium-sized firms, such as those which predominate in the textile machinery industry. These firms, due to their smaller size, have difficulty in locating potential foreign markets, arranging export financing, negotiating sales and handling shipments and otherwise carrying out the numerous steps involved in successful export marketing.

Before passage of the Webb-Pomerene Act, it was recognized that small American businesses were especially disadvantaged in international trade. With respect to the small business seeking export markets, an early Federal Trade Commission [FTC] report observed:

. . . they have felt keenly their disadvantage in attempting to enter foreign markets single-handed in the face of the powerful, united, and long-established competitors of other nations. They realize that for them export trade must be done largely through the medium of export commission houses and export merchants. But they realize that the advantages -- in some cases the necessity -- of their own direct representation and their own foreign organization if they are to build up an enduring trade. At present, cooperation with the other small manufacturers is the best solution to the difficulty before them.<sup>1</sup>

Congressman Edwin Y. Webb expressed similar concerns during the congressional debates on the original Webb-Pomerene Act:

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<sup>1</sup>/ 1 FTC Report on Cooperation in American Export Trade 200 (1916).

In order to build up an export trade it is necessary to have the most expert representatives in the foreign trade fields to introduce and thoroughly advertise our American goods. This involves a large expenditure of money before the trade can be established. A number of our larger enterprises are able to do this alone, and for this reason the proposed law would not greatly benefit these large enterprises, but our smaller manufacturers and merchants would be prohibited from undertaking such an enterprise because of the tremendous cost that it would involve.<sup>2</sup>

The Webb-Pomerene Act<sup>3</sup> was enacted for the purpose of promoting and expanding the export activity of U. S. businesses and specifically to aid and encourage the high cost of marketing and distributing goods abroad. The export trade association was to be a vehicle through which U. S. businesses could compete more effectively in international markets. The export trade association proved to be effective for expanding U. S. exports in the early years after the Act's signing. By the early 1930's, fifty-seven associations had been created and accounted for 19 percent of total U. S. exports.

Today, however, the inadequacy of the Webb-Pomerene Act to fulfill its statutory purpose is evidenced by the fact that only thirty-three Webb-Pomerene associations are still in existence, and those associations account for only 2 percent of total U. S. exports.

IV. The Webb-Pomerene Act As Currently Written Is Inadequate to Fulfill Its Purpose, and Should Be Amended.

Efforts to identify the underlying causes of this decline of Webb-Pomerene associations have been under way for a decade. Most

2/ 55 Cong. Rec. 3564 (1917).

3/ 15 U.S.C.A. §61 (1973).

prominently mentioned has been the threat of antitrust litigation against Webb-Pomerene associations and association participants. Cases, decided under the Act, have made clear that in its present form, the Act does not preclude the application of U. S. antitrust laws to export trade associations United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199 (1968); United States v. U. S. Alkali Export Ass'n, 86 F.Supp. 59 (S.D. N.Y. 1949); United States v. Minnesota Mining & Mfg. Co., 92 F.Supp. 947 (D. Mass. 1950). Of perhaps equal importance is the perception of the business community that the Federal Trade Commission and Department of Justice go to unreasonable lengths to block the formation of Webb-Pomerene associations.

S. 864 responds to the legal uncertainties associated with Webb-Pomerene associations in several ways. It expands the antitrust exemption<sup>5</sup> to include state as well as Federal laws and provides that the exemption will be denied only where restraint of the export trade of domestic competitors, is "substantial," and where the effect on U. S. prices is "unreasonable." S. 864 further limits the prohibition against "unfair methods of competition" to practices used in export trade against domestic competitors engaged in export trade.<sup>6</sup>

4/ Industry Week, May 26, 1975, at 34.

5/ 15 U.S.C.A. §62 (1973).

6/ The bill specifies, however, that the antitrust exemption does not apply to "trade or commerce in the licensing of patents, technology, trademarks, or knowhow, except as incidental to the sale of goods . . . or services by the association or its members," or to "any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States" of such goods or services.

S. 864 would transfer responsibility for administration of the Act to the Department of Commerce which would be authorized to certify export trade associations upon consultation with the Justice Department and the FTC. The Commerce Department would be authorized to revoke certifications or require modifications to approved certifications. The Justice Department and the FTC would also be empowered to bring an action for revocation of an association's certification. However, in the event of such revocation, neither the association nor its members would be subject to antitrust action for the period during which the certification was in existence as to those export trade activities and methods of operations which were certified.

The bill also provides for creation of a Presidentially appointed task force seven years after enactment. The purpose of the task force would be to review the effect of proposed changes on domestic competition and on the United States' international trade deficit. The task force would recommend either continuance, revision or termination of the Webb-Pomerene Act. Thus, should any additional weaknesses or obstacles surface, a method would be available to pursue further remedial efforts.

A second weakness in existing law relates to the definition of activities which may be undertaken by a Webb-Pomerene association. Permissible "export trade" includes only "trade or commerce in goods, wares, or merchandise exported."<sup>7</sup> Such associations may not presently furnish any services, such as the training of personnel to operate equipment which is

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7/ 15 U.S.C.A. §61 (1973).

exported. This prohibition works a particular disadvantage on the textile machinery industry as a result of certain trends in international textile machinery markets. Textile industries in the highly industrialized countries such as the United States, Canada, England, Western Europe and Japan have limited their capital investments in textile machinery to modernization, rather than expansion. The substantial growth in textile manufacturing markets has occurred in the less developed countries of the Far East, near East, Africa and Eastern Europe. This geographical shift in textile machinery market growth has required U. S. manufacturers to look to less developed countries as the largest market for textile machinery. In these markets, however, the need for a wide variety of training and other services, is crucial.

S. 864, by extending the antitrust exemption to include services, would expand export opportunities for many textile machinery manufacturers whose sales may depend on their ability to organize manufacturing operations, set up equipment and train personnel.

Under the definitional section of S. 864, the bill makes clear that any persons who are citizens of the United States and partnerships or corporations which are created under the laws of any state or of the United States are eligible for participation in Webb-Pomerene associations. ATMA supports the statutory change to restrict Webb-Pomerene participants to U. S. citizens and corporations and partnerships organized in the United States. However, it should be noted that domestic corporations are oftentimes created to act as conduits of foreign built machinery. These "shell" corporations employ few if any American citizens, purchase few if any American goods and

in fact are simply extensions of foreign controlled and operated entities. We believe that the bill should be amended to preclude the participation of such entities in Webb-Pomerene associations.

V. S. 864 Would Effectively Amend the Act to Facilitate the Entry into and Expansion of Export Markets of U. S. Businesses with Previously Unrealized Export Potential.

ATMA supports S. 864 and urges its favorable consideration by this Subcommittee. The legislation is well designed to convert the export trade association into a practical and effective vehicle for significant expansion of our export markets. We commend the members of this committee and others who have pressed forcefully for these reforms, and thank the Committee for the opportunity to express our views.

March 26, 1980



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

re: March 17-18, 1980, Hearings by  
 your Subcommittee on the Export  
 Trading Company Act of 1980.  
S.2379

Dear Senator Stevenson:

The Electronic Industries Association (EIA) requests that this letter be made part of the record on these hearings. We applaud the degree to which the bill presently under consideration has incorporated recommendations made in EIA's September 24, 1979 letter to you on the predecessor bill, S.1663. However, we sincerely urge your Subcommittee's consideration of further improvement in S.2379 on three points:

1. The act should clearly enable trading companies to engage in import and countertrade transactions which abet export transactions, and to engage in multilateral as well as bilateral transactions. That such functions are increasingly required in connection with U.S. exportation is attested by the Department of Commerce's publication in 1978 of a handbook entitled, "East-West COUNTERTRADE Practices: An Introductory Guide for Business." We can add that such practices are increasingly required by less-developed as well as non-market countries.

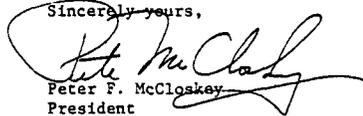
2. EIA's 1979 letter questioned the desirability of specifying a minimum percentage of U.S. Content in the total value of an article being exported by a trading company. We remain apprehensive lest the continued presence in S.2379 of a specified percentage become another export disincentive. Since the intent is to foster a significant increase in U.S. exports and decrease in merchandise trade deficit, the Act should allow companies to export their systems, equipment, and components which, manufactured or assembled in the U.S., have attained competitiveness in the domestic or world market. If competitive products have to be re-designed or re-sourced in order to qualify for handling by a trading company, this would be counterproductive to the Act's intent.

3. The degree of financial support which the Export-Import Bank (EXIM) could actually provide trading companies is problematical. Already, its level of authorizations is being so reduced by budgetary constraints for fiscal year 1981 that EXIM will be unable to finance even the immediate potential deriving from ongoing efforts by the existing export community. We hope that your Subcommittee will continue efforts to resolve this impasse favorably.

In conclusion, EIA supports S.2379, the Export Trading Company Act of 1980, while hoping that the legislative process will serve to improve it in the three particulars described in this letter. Further, if this legislation could be coupled with amendments of the Webb-Pomerene Act clearly permitting manufacturers of similar products to participate in the same trading company, the result would indeed be particularly attractive to small- and medium-sized members of this Association.

In the event that the Administration does elect to testify, we hope that your Subcommittee will accord us opportunity for further comment.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Peter F. McCloskey". The signature is written in dark ink and is positioned above the typed name and title.

Peter F. McCloskey  
President  
Electronic Industries Association (EIA)

cc: Senator H. John Heinz, III

Statement  
of  
Mr. Jack Valenti,  
President  
Motion Picture Export Association of America

I am submitting this statement in support of S. 864 based upon my experience as President of the Motion Picture Export Association of America. I have personally seen the benefits that can be derived by exporters generally from export trade association legislation. I express no position on S. 1663 since my experience derives from export trade association activities, rather than the export activities covered by that bill. It must be well known by now, that I favor any legislation which in fact will promote the export trade of the United States.

In the motion picture industry, the members of our Association have steadily increased the value of their exports through the 35 years of our existence. I estimate that in 1979 the Motion Picture Export Association will have returned to this country approximately \$700 million in export revenues. I do not believe this would have been possible without the benefits conferred by the existing Webb-Pomerene Act. Any expansion of the existing law to include additional exporters must benefit both the revenue potential of those exporters and the United States balance of payments situation. This would certainly be true for those service industries whose operations are analogous to the operations of our member companies.

Last fall, when an extensive review of export trade associations was undertaken by a Presidential Commission appointed for the purpose and studied in detail by an Advisory Panel of business leaders, I presented my views on the need for export trade associations. I not only elaborated on our experiences and the benefits our members derived from existing Webb-Pomerene Act, but also pointed out that these benefits should be available generally to more exporters. The Business Advisory Panel members, not all of whom were proponents of the existing legislation, felt that there was enough merit in my position to recommend expansion of existing legislation. This recommendation was adopted by the Presidential Commission and is embodied in and forms the basis of S. 864. For this reason alone this legislation is worthy of support. When consideration of the needs of the United States for an increase in export trade is also taken into account, this legislation becomes a matter of the utmost urgency.

I wish to refer to one observation of the Business Advisory Panel which I consider significant. Export trade association legislation may not be everyone's cup of tea, but for those who can use it, it is an important and immensely useful instrument of export trading in a world of foreign cartels and foreign government monopolies.

STATEMENT OF AMATEX EXPORT TRADE ASSOCIATION  
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE  
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS  
RE: S.864 AND SENATE AMENDMENT 1674 TO AMEND  
THE WEBB-POMERENE EXPORT TRADE ACT

APRIL 14, 1980

AMATEX Export Trade Association is registered under the provisions of the Webb-Pomerene Export Trade Act of 1918 and is one of the most successful export trade associations in existence. It is also unique in that it is composed of producers of a wide variety of textile machinery and includes non-competitive situations. Most Webb associations are engaged in the sale of fungible commodities. In its seven years of existence, AMATEX has arranged for millions of dollars of exports, particularly to less developed countries. It is not now nor has it ever been designed to supplant the sales efforts of its individual members but to provide additional opportunities for textile machinery companies to participate in major "turnkey" projects overseas requiring goods and services from a number of suppliers. This has enabled member companies of all sizes to increase their export earnings in areas they would have not been able to enjoy absent the services of AMATEX.

AMATEX has always fully complied with the provisions of the Webb-Pomerene Act operating within guidelines established by the federal government. AMATEX is extremely sensitive to the current deficiencies of the Export Trade Act and believes the proposed changes would significantly strengthen the law. In particular, AMATEX favors amendments to the Act which would clarify the antitrust exemption currently afforded by the statute. In its present form, the Export Trade Act merely suggests the limits of the antitrust exemption. Heretofore, the ultimate resolution of this exemption had been

left in the hands of the Justice Department and the courts. This has meant that Webb associations must speculate as to the limits of permissible activities. Given the dangers of violation of antitrust laws, this has tended to constrain the types of functions in which an association is willing to undertake. Thus it is lawyers — not businessmen — who seem to be making many of the decisions. AMATEX wishes to emphasize that it is not requesting significantly expanded antitrust exemptions but merely a statutory clarification of the nature and extent of the exemption.

Another current deficiency in the law is the bifurcated administration of the law. Currently Webb associations must register as well as being subject to Justice Department scrutiny for the same activities. It seems to us that compliance should be centralized in one agency with sole authority to both administer and enforce the Act. Again, Webb associations are at the mercy of changing and even contradicting regulations. This multi-agency enforcement authority creates significant problems.

Third, AMATEX supports proposals to include "services" within the scope of permissible activities. As mentioned previously, AMATEX is engaged exclusively in the bidding and construction of complete projects and "turnkey" textile mill projects overseas. From time to time it may be necessary to include engineering and other services as a package bid. Although such services can currently be separately contracted, AMATEX would like to have the option of including services as an integral part of its package. We stress, however, that the term "services" should be carefully defined in the Act so that there is no doubt as to the meaning of this term.

In conclusion, AMATEX supports the objectives of S.864 and urges its early favorable consideration. We believe that adoption of this bill would encourage other U.S. industries to form export trade associations to the general benefit of American export performance. As in the past, AMATEX reaffirms its intention to fully cooperate with this committee or any other in developing appropriate standards.

**National Governors' Association**

Otto R. Bowen, M.D.  
Governor of Indiana  
Chairman

Stephen B. Farber  
Executive Director

April 30, 1980

The Honorable Adlai E. Stevenson  
456 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Stevenson:

On behalf of the Committee on International Trade and Foreign Relations of the National Governors' Association I am writing to offer an unqualified endorsement of your Export Trading Company Act, S. 2379.

As you know, Senator, the twenty-three Governors on our Committee have given considerable attention in recent months to the critical need for a re-evaluation of federal export policy. We are concerned that new opportunities for export expansion offered by Multilateral Trade Agreements may never be realized unless United States policy-makers act quickly to help our businesses counter the aggressive marketing techniques of our major trade competitors. S. 2379 represents precisely the sort of innovative lawmaking which we called for in our recent Trade Policy Statement. In conjunction with other legislation pending in Congress concerning the Webb-Pomerene Act and international antitrust law, your bill should prove most helpful in restoring our nation's premier position in international trade.

For the twenty-three Governors on our Committee, allow me to express our gratitude for your hard work and imaginative leadership in this area.

Yours very truly,

  
George Busbee  
Governor of Georgia

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Buenos Aires, Argentina



# The American Association of Port Authorities

J. RON BRINSON  
*Executive Vice President*  
1612 K Street, N. W.  
Washington, D. C. 20006  
Tel: 202-331-1263

May 5, 1980

Honorable Adlai E. Stevenson  
Chairman, Subcommittee on  
International Finance  
5300 Dirksen Office Building  
Washington, D.C. 20510

Dear Senator Stevenson:

Your efforts to enact legislation to promote trade development are to be commended and this letter is written for that purpose and to transmit a resolution unanimously approved by the public port authorities of this Association in support of legislation to provide for the licensing of export trading companies, S. 2379.

The public port authorities of the United States are vitally interested in trade promotion and want to encourage you and members of the International Finance Subcommittee and the Senate Banking, Housing and Urban Affairs Committee, to seek enactment of S. 2379 in the 96th Congress.

The American Association of Port Authorities is prepared to assist you in any way possible to ensure prompt action on this important legislation.

With best regards,

Sincerely,

Royal F. Kastens, Jr.  
Director of  
Governmental Relations

Enclosure: Resolution E-16

E- 16

FAVORING LEGISLATION TO ENCOURAGE EXPORTS BY  
PROVIDING FOR THE LICENSING OF EXPORT TRADING  
COMPANIES

WHEREAS, since the President has approved the Act of 1979, which when implemented will provide for new trade opportunities for the United States; and

WHEREAS, these opportunities will expand U. S. exports through our nation's ports; and

WHEREAS, exports have not grown at a significant rate due to various economic and governmental factors; and

WHEREAS, trading companies may be a vehicle to expand U. S. export participation by giving U. S. manufacturers access to traders experienced with a talent pool in the servicing and selling of exports to develop new markets abroad; and

WHEREAS, trading companies have flourished in other countries, particularly Japan and Korea; and

WHEREAS, S. 1663 has been introduced to facilitate the formation of U. S. export trading companies by providing U. S. government loans and guarantees for start-up costs and would allow banks and other entities to participate in these companies under the licensing requirements and supervision of the Department of Commerce;

NOW, THEREFORE, BE IT RESOLVED that the American Association of Port Authorities favors the formation of U. S. export trading companies which will foster U. S. port waterborne commerce; and

BE IT FURTHER RESOLVED that Committee XI, Port Commerce, is hereby authorized and directed to take such action it deems proper and necessary to carry out the policy of this Resolution.

New Resolution.

Recommended by Port Commerce Committee.

Recommended for adoption by the Resolutions Committee

Comments on  
S.2379  
presented by the  
American Institute of Marine Underwriters  
to the Senate Banking Committee

The American Institute of Marine Underwriters (AIMU) is a trade association of 126 insurers, each of which is authorized to underwrite marine insurance in one or more states of the U.S. Together they underwrite 90% of the marine insurance done in this country. The American Marine Insurance Market has an intense interest in any effort to increase U.S. export of services. Transport insurance on cargo in international trade facilitates the export and import of goods, a service vital to our economy. Through its active participation in international competition, the American Marine Market has made significant contributions toward improving the U.S. balance of payments position.

Marine insurance is one of many service industries playing an increasingly important role in U.S. export trade. Despite significant contributions, service industries such as insurance have not received the encouragement and support from government enjoyed by manufacturers of goods. In addition, foreign governments cognizant of the crucial role service industries can play in balance of payment situations, have taken positive steps to encourage their own domestic service sectors. To the detriment of international trade, many countries have gone further and established discriminatory and restrictive measures prohibiting American and other insurance markets from competing for the marine insurance business on the trade with those countries. Such restrictions imposed by some 39 countries have severely hampered the ability of the American Marine Market to compete in the international marketplace. Fortunately, Congress recognized the importance of the service industries such as insurance by giving them recourse against discriminatory practices under the Trade Act of 1974. AIMU has filed two complaints with the U.S. Trade Representative in the hope of combating such unfair policies.

Considerably more sensitivity to the needs of service industries is needed in order for the U.S. service sector to compete on equal footing with its competitors. The proposed legislation now being considered by the Senate Banking Committee, S.2379 would encourage service industries to form or participate in export trade associations.

AIMU supports this measure since it would provide foreign trade incentives to the service sector never available to it before. Steps such as this to enhance the competitiveness of the American service sector are long overdue and a wise policy objective.

Thank you for this opportunity to express our views. Please let us know if we can be of any further assistance.

# amerx

AGRICULTURAL RESOURCES MARKETING •  
MANAGEMENT • LAND DEVELOPMENT

April 30, 1980

Senator Adlai Stevenson  
456 Russell Building  
Washington, D.C. 20027

Dear Senator Stevenson:

representatives:

NEW YORK, NY  
WASHINGTON, DC  
SAN FRANCISCO, CA  
DENVER, COLO.  
VINCENNES, IN  
HONOLULU, HAWAII  
TOKYO, JAPAN  
YOKOHAMA, JAPAN  
MANILA, PHILIPPINES  
HONG KONG  
SEOUL, KOREA  
BEOGRAD, YUGOSLAVIA

We are very interested in the progress of a bill (S.2379) you have authored, proposing the establishment of export trading companies as new entities under U.S. Law.

Amerx, a DISC, is an American trading company, designed in the fashion of Japanese trading companies, with which we have done extensive business since 1974.

We specialize in the export of western states agricultural products, primarily to Pacific Basin markets, and in the import of refined commodity products from Japan.

Our product line includes: alfalfa cubes, pellets, seed, feeder and pure-bred cattle, livestock pesticides, dehydrated vegetables and equipment used in agriculture. We also represent farm cooperatives and breed associations as a sales and marketing agent.

Amerx offers market analysis, distribution, e.g., freight forwarding, documentation, transport, financing, negotiation and liaison with foreign ministries, banks and customers - plus product advertising/promotion in foreign markets.

In addition, we send our own "trade missions", without government support, to countries of commercial interest to us. An example is a recent conference held in Mexico City where our marketing director met with government, banks and agricultural associations regarding the development of "joint venture" agricultural projects, using U.S. and Mexican capital and American expertise.

This activity greatly stimulates interest in U.S. agricultural capabilities and shows a willingness by an American company to become fully involved

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in programs of benefit to developing countries.

Amerx has trading partners and customers in Japan, Manila, Taiwan, Korea, Italy, England, Hong Kong, the Mid-East, Germany, Canada, South America, Australia and New Zealand.

We are more actively seeking Eximbank cooperation and utilization of OCC financing in terms of sale of equipment and commodities.

The participation of banks in our operation is now limited to operational credit lines and LC financing. However, the support of banks as partners, would allow us greater opportunity for the development of trade and would allow us to compete with more rapid success in prime foreign markets.

The American trading company concept is very important and long overdue if the United States is to become more aggressive in seeking and stabilizing new markets for our goods. We fully support your legislation and will offer you any assistance possible in promoting the success of the trading company concept.

Yours truly,



C.A. Dromiack  
President

CAD:nc

cc: Secretary of Commerce, Philip M. Klutznick  
Secretary of Agriculture, Robert Bergland  
Senator John Danforth  
Senator Paul Laxalt  
Representative James Santini