97TH CONGRESS
1ST SESSION

H. R. 1321

To direct the Secretary of Commerce to encourage the formation and operation of export trading companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1981

Mr. GIBBONS introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

---

A BILL

To direct the Secretary of Commerce to encourage the formation and operation of export trading companies, 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 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Export Pro-
5 motion and Export Trading Company Act of 1981".

6 STATEMENT OF PURPOSE AND FINDINGS

7 SEC. 2. (a) It is the purpose of this Act, in order to
8 make United States exporters more competitive with export-

1 ers of other countries, to direct the Secretary of Commerce to
2 encourage and promote the formation and operation of export
3 trading companies by providing advice and information to in-
4 terested persons.

5 (b) The Congress finds that—

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

9 (2) the Department of Commerce also has the re-
10 sponsibility of facilitating the export of finished prod-
11 ucts from United States manufacturers;

12 (3) tens of thousands of United States companies
13 produce exportable goods or services but do not engage
14 in exporting;

15 (4) although the United States is the world's lead-
16 ing agricultural exporting nation, many farm products
17 are not marketed as widely and effectively abroad as
18 they could be through producer-owned export trading
19 companies;

20 (5) exporting requires extensive specialized knowl-
21 edge and skills and entails risks, not otherwise as-
22 sumed, the costs of which smaller producers cannot
23 absorb because of an inability to achieve economies of
24 scale;

1 (6) exporting services in the United States are
2 fragmented into a multitude of separate functions; com-
3 panies attempting to offer comprehensive export trade
4 services lack financial leverage to reach a significant
5 number of potential United States exporters;
6 (7) the United States lacks well-developed export
7 trade intermediaries, such as trading companies, which
8 can achieve economies of scale and acquire expertise
9 enabling them to export goods and services profitably,
10 at low per unit cost to producers;
11 (8) the development of export trading companies
12 in the United States has been hampered by insular
13 business attitudes and by Government regulations;
14 (9) entities which are owned or subsidized by for-
15 eign governments compete directly with private United
16 States exporters for shares of the world market;
17 (10) the rapidly growing service-related industries
18 are vital to the well-being of the United States econo-
19 my since they create jobs for seven out of every ten
20 Americans, provide 65 per centum of the Nation's
21 gross national product, and offer the greatest potential
22 for significantly increased industrial trade involving fin-
23 ished products; and
24 (11) small- and medium-sized businesses in the
25 United States engaged in international transactions

1 would benefit from the development of export trading
2 companies, which would enable them to pool resources
3 and technical expertise and to achieve economies of
4 scale and would otherwise assist them in competing in
5 foreign markets.

6 DEFINITIONS

7 SEC. 3. (a) As used in this Act—

8 (1) the term "export trade" means trade or com-
9 merce in goods produced in the United States, or serv-
10 ices produced in the United States, which are export-
11 ed, or in the course of being exported, from the United
12 States to any other country;

13 (2) the term "goods produced in the United
14 States" means goods manufactured, produced, grown,
15 or extracted in the United States, not more than 50
16 per centum of the fair market value of which is attrib-
17 utable to articles imported into the United States;

18 (3) the term "services produced in the United
19 States" includes, but is not limited to, amusement, ar-
20 chitectural, automatic data processing, business, com-
21 munications, consulting, engineering, financial, insur-
22 ance, legal, management, repair, training, and trans-
23 portation services, not less than 50 per centum of the
24 fair market value of which is provided by United

1 States citizens or is otherwise attributable to the
2 United States;
3 (4) the term "export trade services" includes, but
4 is not limited to, international market research, adver-
5 tising, marketing, insurance, legal assistance, transpor-
6 tation, including trade documentation and freight for-
7 warding, communication and processing of foreign
8 orders to and for exporters and foreign purchasers,
9 warehousing, foreign exchange, and financing, when
10 provided in order to facilitate the export of goods or
11 services produced in the United States;
12 (5) the term "export trading company" means a
13 company which does business under the laws of the
14 United States or any State and which is organized and
15 operated principally for the purpose of—
16 (A) exporting goods produced in the United
17 States or services produced in the United States;
18 and
19 (B) facilitating the exportation of goods pro-
20 duced in the United States or services produced in
21 the United States by unaffiliated persons by pro-
22 viding one or more export trade services;
23 (6) the term "United States" means the several
24 States of the United States, the District of Columbia,
25 the Commonwealth of Puerto Rico, the Virgin Islands,

1 American Samoa, Guam, the Commonwealth of the
2 Northern Mariana Islands, and the Trust Territory of
3 the Pacific Islands;
4 (7) the term "Secretary" means the Secretary of
5 Commerce;
6 (8) the term "State" includes the District of Co-
7 lumbia; and
8 (9) the term "company" means any corporation,
9 partnership, association, or similar organization.
10 (b) The Secretary may by regulation further define any
11 term defined in subsection (a), in order to carry out the pur-
12 poses of this Act.

13 FUNCTIONS OF THE SECRETARY

14 SEC. 4. The Secretary shall promote and encourage the
15 formation and operation of export trading companies by pro-
16 viding information and advice to interested persons. The Sec-
17 retary shall provide a referral service to facilitate contact be-
18 tween producers of exportable goods and services and con-
19 cerns offering export trade services.

20 ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED
21 EXPORT TRADING COMPANIES

22 SEC. 5. Nothing in this Act preempts or otherwise re-
23 stricts or prevents any State or local government or other
24 governmental authority from organizing, owning, or other-
25 wise participating in or supporting export trading companies.

1 ELIGIBILITY UNDER THE WEBB-POMERENE ACT

2 SEC. 6. Section 2 of the Webb-Pomerene Act (15
3 U.S.C. 62) is amended—

4 (1) by inserting after "engaged solely in such
5 export trade," the following: "or with respect solely to
6 its export trade (as defined in section 3(1) of the
7 Export Promotion and Export Trading Company Act
8 of 1980), any export trading company as defined in
9 section 3(5) of the Export Promotion and Export Trad-
10 ing Company Act of 1981,"; and

11 (2) by inserting "or such export trading company"
12 after "association" each place, after the first, it ap-
13 pears.

14 TASK FORCE STUDY

15 SEC. 7. Five years after the date of the enactment of
16 this Act, the President shall appoint a task force to study the
17 effect the operation of this Act on domestic competition and
18 on the trade deficit of the United States and to recommend
19 either continuation, revision, or termination of this Act and
20 the amendments made by this Act. Such task force shall,
21 within one year after its appointment, complete such study
22 and submit such recommendations to the President.

○

97TH CONGRESS
1ST SESSION

H. R. 1648

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1981

Mr. LAFALCE (for himself, Mr. GIBBONS, and Mr. HINSON) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, and the Judiciary

---

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, 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 TITLE I—EXPORT TRADING COMPANIES

4 SHORT TITLE

5 SEC. 101. This title may be cited as the "Export Trad-
6 ing Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

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

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

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

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

1 (6) State and local government activities which
2 initiate, facilitate, or expand export of products and
3 services are an important and irreplaceable source for
4 expansion of total United States exports, as well as for
5 experimentation in the development of innovative
6 export programs keyed to local, State, and regional
7 economic needs;
8 (7) the development of export trading companies
9 in the United States has been hampered by insular
10 business attitudes and by Government regulations; and
11 (8) if United States export trading companies are
12 to be successful in promoting United States exports
13 and in competing with foreign trading companies, they
14 must be able to draw on the resources, expertise, and
15 knowledge of the United States banking system, both
16 in the United States and abroad.
17 (b) The purpose of this Act is to increase United States
18 exports of products and services, particularly by small,
19 medium-size and minority concerns, by encouraging more ef-
20 ficient provision of export trade services to American produc-
21 ers and suppliers.
22 DEFINITIONS
23 SEC. 103. (a) As used in this Act—
24 (1) the term "export trade" means trade or com-
25 merce in goods produced in the United States or serv-

1 ices produced in the United States, and exported, or in
2 the course of being exported, from the United States to
3 any foreign nation;

4 (2) the term "goods produced in the United
5 States" means tangible property manufactured, pro-
6 duced, grown, or extracted in the United States, the
7 cost of the imported raw materials and components
8 thereof shall not exceed 50 per centum of the sales
9 price;

10 (3) the term "services produced in the United
11 States" includes, but is not limited to accounting,
12 amusement, architectural, automatic data processing,
13 business, communications, construction franchising and
14 licensing, consulting, engineering, financial, insurance,
15 legal, management, repair, tourism, training, and
16 transportation services, not less than 50 per centum of
17 the sales or billings of which is provided by United
18 States citizens or is otherwise attributable to the
19 United States;

20 (4) the term "export trade services" includes, but
21 is not limited to, consulting, international market re-
22 search, advertising, marketing, insurance, product re-
23 search and design, legal assistance, transportation, in-
24 cluding trade documentation and freight forwarding,
25 communication and processing of foreign orders to and

1 for exporters and foreign purchasers, warehousing, for-
2 eign exchange, and financing, when provided in order
3 to facilitate the export of goods or services produced in
4 the United States;

5 (5) the term "export trading company" means a
6 company, whether operated for profit or as a nonprofit
7 organization, which does business under the laws of
8 the United States or any State and which is organized
9 and operated principally for the purposes of—

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

12 (B) facilitating the exportation of goods and
13 services produced in the United States by unaffil-
14 iated persons by providing one or more export
15 trade services;

16 (6) the term "United States" means the several
17 States of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, the Virgin Islands,
19 American Samoa, Guam, the Commonwealth of the
20 Northern Mariana Islands, and the Trust Territory of
21 the Pacific Islands;

22 (7) the term "Secretary" means the Secretary of
23 Commerce; and

1 (8) the term "company" means any corporation,
2 partnership, association, or similar organization, wheth-
3 er operated for profit or as a nonprofit organization.
4 (b) The Secretary is authorized, by regulation, to further
5 define such terms consistent with this section.

6 FUNCTIONS OF THE SECRETARY OF COMMERCE

7 SEC. 104. The Secretary shall promote and encourage
8 the formation and operation of export trading companies by
9 providing information and advice to interested persons and by
10 facilitating contact between producers of exportable goods
11 and services and firms offering export trade services.

12 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
13 BANK HOLDING COMPANIES, AND INTERNATIONAL
14 BANKING CORPORATIONS

15 SEC. 105. (a) For the purpose of this section—
16 (1) the term "banking organization" means any
17 State bank, national bank, Federal savings bank, bank-
18 ers' bank, bank holding company, Edge Act Corpora-
19 tion, or Agreement Corporation;
20 (2) the term "State bank" means any bank which
21 is incorporated under the laws of any State, any terri-
22 tory of the United States, the Commonwealth of
23 Puerto Rico, Guam, American Samoa, the Common-
24 wealth of the Northern Mariana Islands, or the Virgin
25 Islands, or any bank (except a national bank) which is

1 operating under the Code of Law for the District of
2 Columbia (hereinafter referred to as a "District bank");
3 (3) the term "State member bank" means any
4 State bank, including a bankers' bank, which is a
5 member of the Federal Reserve System;
6 (4) the term "State nonmember insured bank"
7 means any State bank, including a bankers' bank,
8 which is not a member of the Federal Reserve System,
9 but the deposits of which are insured by the Federal
10 Deposit Insurance Corporation;
11 (5) the term "bankers' bank" means any bank in-
12 sured by the Federal Deposit Insurance Corporation if
13 the stock of such bank is owned exclusively by other
14 banks (except to the extent State law requires direc-
15 tors' qualifying shares) and if such bank is engaged ex-
16 clusively in providing banking services for other banks
17 and their officers, directors, or employees;
18 (6) the term "bank holding company" has the
19 same meaning as in the Bank Holding Company Act of
20 1956;
21 (7) the term "Edge Act Corporation" means a
22 corporation organized under section 25(a) of the Fed-
23 eral Reserve Act;

1 (8) the term "Agreement Corporation" means a
2 corporation operating subject to section 25 of the Fed-
3 eral Reserve Act;
4 (9) the term "appropriate Federal banking
5 agency" means—
6 (A) the Comptroller of the Currency with re-
7 spect to a national bank or any District bank;
8 (B) the Board of Governors of the Federal
9 Reserve System with respect to a State member
10 bank, bank holding company, Edge Act Corpora-
11 tion, or Agreement Corporation;
12 (C) the Federal Deposit Insurance Corpora-
13 tion with respect to a State nonmember insured
14 bank except a District bank; and
15 (D) the Federal Home Loan Bank Board
16 with respect to a Federal savings bank.
17 In any situation where the banking organization hold-
18 ing or making an investment in an export trading com-
19 pany is a subsidiary of another banking organization
20 which is subject to the jurisdiction of another agency,
21 and some form of agency approval or notification is re-
22 quired, such approval or notification need only be ob-
23 tained from or made to, as the case may be, the appro-
24 priate Federal banking agency for the banking organi-

1 zation making or holding the investment in the export
2 trading company;
3 (10) the term "capital and surplus" means paid in
4 and unimpaired capital and surplus, and includes un-
5 divided profits;
6 (11) an "affiliate" of a banking organization or
7 export trading company is a person who controls, is
8 controlled by, or is under common control with such
9 banking organization or export trading company;
10 (12) the terms "control" and "subsidiary" shall
11 have the same meanings assigned to those terms in
12 section 2 of the Bank Holding Company Act of 1956,
13 and the terms "controlled" and "controlling" shall be
14 construed consistently with the term "control" as de-
15 fined in section 2 of the Bank Holding Company Act of
16 1956; and
17 (13) for the purposes of this section, the term
18 "export trading company" means a company which
19 does business under the laws of the United States or
20 any State and which is exclusively engaged in activi-
21 ties related to international trade, whether operated for
22 profit or as a nonprofit organization: *Provided, how-*
23 *ever,* That any such company must also either meet
24 the definition of export trading company in section
25 103(a)(5) of this Act, or be organized and operated

1 principally for the purpose of providing export trade
2 services, as defined in section 103(a)(4) of this Act:
3 *Provided further,* That any such company, for purposes
4 of this section, (A) may engage in or hold shares of a
5 company engaged in the business of underwriting, sell-
6 ing, or distributing securities in the United States only
7 to the extent that its banking organization investor
8 may do so under applicable Federal and State banking
9 law and regulations, and (B) may not engage in manu-
10 facturing or agricultural production activities.

11 (b)(1) Notwithstanding any prohibition, restriction, limi-
12 tation, condition, or requirement of any law applicable only
13 to banking organizations, a banking organization, subject to
14 the limitations of subsection (c) and the procedures of this
15 subsection, may invest directly and indirectly in the aggre-
16 gate, up to 5 per centum of its consolidated capital and sur-
17 plus (25 per centum in the case of an Edge Act Corporation
18 or Agreement Corporation not engaged in banking) in the
19 voting stock or other evidences of ownership of one or more
20 export trading companies. A banking organization may—

21 (A) invest up to an aggregate amount of
22 $10,000,000 in one or more export trading companies
23 without the prior approval of the appropriate Federal
24 banking agency, if such investment does not cause an

1 export trading company to become a subsidiary of the
2 investing banking organization; and
3 (B) make investments in excess of an aggregate
4 amount of $10,000,000 in one or more export trading
5 companies, or make any investment or take any other
6 action which causes an export trading company to
7 become a subsidiary of the investing banking organiza-
8 tion of which will cause more than 50 per centum of
9 the voting stock of an export trading company to be
10 owned or controlled by banking organizations, only
11 with the prior approval of the appropriate Federal
12 banking agency.
13 Any banking organization which makes an investment under
14 authority of clause (A) of the preceding sentence shall
15 promptly notify the appropriate Federal banking agency of
16 such investment and shall file such reports on such invest-
17 ment as such agency may require. If, after receipt of any
18 such notification, the appropriate Federal banking agency de-
19 termines, after notice and opportunity for hearing, that the
20 export trading company is a subsidiary of the investing bank-
21 ing organization, it shall have authority to disapprove the
22 investment or impose conditions on such investment under
23 authority of subsection (d). In furtherance of such authority,
24 the appropriate Federal banking agency may require divesti-
25 ture of any voting stock or other evidences of ownership pre-

1 viously acquired, and may impose conditions necessary for
2 the termination of any controlling relationship.

3 (2) If a banking organization proposes to make any in-
4 vestment or engage in any activity included within the fol-
5 lowing two subparagraphs, it must give the appropriate Fed-
6 eral banking agency ninety days prior written notice before it
7 makes such investment or engages in such activity:

8 (A) any additional investment in an export trading
9 company subsidiary; or

10 (B) the engagement by any export trading
11 company subsidiary in any line of activity, including
12 specifically the taking of title to goods, wares, mer-
13 chandise, or commodities, if such activity was not dis-
14 closed in any prior application for approval.

15 During the notification period provided under this paragraph,
16 the appropriate Federal banking agency may, by written
17 notice, disapprove the proposed investment or activity or
18 impose conditions on such investment or activity under au-
19 thority of subsection (d). An additional investment or activity
20 covered by this paragraph may be made or engaged in, as the
21 case may be, prior to the expiration of the notification period
22 if the appropriate Federal banking agency issues written
23 notice of its intent not to disapprove.

24 (3) In the event of the failure of the appropriate Federal
25 banking agency to act on any application for approval under

1 paragraph (1)(B) of this subsection within a period of one
2 hundred and twenty days, which period begins on the date
3 the application has been accepted for processing by the ap-
4 propriate Federal banking agency, the application shall be
5 deemed to have been granted. In the event of the failure of
6 the appropriate Federal banking agency either to disapprove
7 or to impose conditions on any investment or activity subject
8 to the prior notification requirements of paragraph (2) of this
9 subsection within the sixty-day period provided therein, such
10 period beginning on the date the notification has been re-
11 ceived by the appropriate Federal banking agency, such in-
12 vestment or activity may be made or engaged in, as the case
13 may be, any time after the expiration of such period.

14 (c) The following limitations apply to export trading
15 companies and the investments in such companies by banking
16 organizations:

17 (1) The name of any export trading company shall
18 not be similar in any respect to that of a banking orga-
19 nization that owns any of its voting stock or other evi-
20 dences of ownership.

21 (2) The total historical cost of the direct and indi-
22 rect investments by a banking organization in an
23 export trading company combined with extensions of
24 credit by the banking organization and its direct and
25 indirect subsidiaries to such export trading company

1 shall not exceed 10 per centum of the banking organi-
2 zation's capital and surplus.

3 (3) A banking organization that owns any voting
4 stock or other evidences of ownership of an export
5 trading company shall terminate its ownership of such
6 stock if the export trading company takes positions in
7 commodities or commodities contracts, in securities, or
8 in foreign exchange, other than as may be necessary in
9 the course of its business operations.

10 (4) No banking organization holding voting stock
11 or other evidences of ownership of any export trading
12 company may extend credit or cause any affiliate to
13 extend credit to any export trading company or to cus-
14 tomers of such company on terms more favorable than
15 those afforded similar borrowers in similar circum-
16 stances, and such extension of credit shall not involve
17 more than the normal risk of repayment or present
18 other unfavorable features.

19 (d)(1) In the case of every application under subsection
20 (b)(1)(B) of this section, the appropriate Federal banking
21 agency shall take into consideration the financial and man-
22 agerial resources, competitive situation, and future prospects
23 of the banking organization and export trading company con-
24 cerned, and the benefits of the proposal to United States
25 business, industrial, and agricultural concerns (with special

1 emphasis on small, medium-size and minority concerns), and
2 to improving United States competitiveness in world mar-
3 kets. The appropriate Federal banking agency may not ap-
4 prove any investment for which an application has been filed
5 under subsection (b)(1)(B) if it finds that the export benefits of
6 such proposal are outweighed in the public interest by any
7 adverse financial, managerial, competitive, or other banking
8 factors associated with the particular investment. Any disap-
9 proval order issued under this section must contain a state-
10 ment of the reasons for disapproval.

11 (2) In approving any application submitted under sub-
12 section (b)(1)(B), the appropriate Federal banking agency
13 may impose such conditions which, under the circumstances
14 of such case, it may deem necessary (A) to limit a banking
15 organization's financial exposure to an export trading com-
16 pany, or (B) to prevent possible conflicts of interest or unsafe
17 or unsound banking practices. With respect to the taking of
18 title to goods, wares, merchandise, or commodities by any
19 export trading company subsidiary of a banking organization,
20 the appropriate Federal banking agencies may, by order, reg-
21 ulation, or guidelines, establish standards designed to ensure
22 against any unsafe or unsound practices that could adversely
23 affect a controlling banking organization investor. In particu-
24 lar, the appropriate Federal banking agencies may establish
25 inventory-to-capital ratios, based on the capital of the export

1 trading company subsidiary, for those circumstances in which
2 the export trading company subsidiary may bear a market
3 risk on inventory held.

4 (3) In determining whether to impose any condition
5 under the preceding paragraph (2), or in imposing such condi-
6 tion, the appropriate Federal banking agency must give due
7 consideration to the size of the banking organization and
8 export trading company involved, the degree of investment
9 and other support to be provided by the banking organization
10 to the export trading company, and the identity, character,
11 and financial strength of any other investors in the export
12 trading company. The appropriate Federal banking agency
13 shall not impose any conditions or set standards for the
14 taking of title which unnecessarily disadvantage, restrict or
15 limit export trading companies in competing in world markets
16 or in achieving the purposes of section 102 of this Act. In
17 particular, in setting standards for the taking of title under
18 the preceding paragraph (2), the appropriate Federal banking
19 agencies shall give special weight to the need to take title in
20 certain kinds of trade transactions, such as international
21 barter transactions.

22 (4) Notwithstanding any other provision of this Act, the
23 appropriate Federal banking agency may, whenever it has
24 reasonable cause to believe that the ownership or control of
25 any investment in an export trading company constitutes a

1 serious risk to the financial safety, soundness, or stability of
2 the banking organization and is inconsistent with sound bank-
3 ing principles or with the purposes of this Act or with the
4 Financial Institutions Supervisory Act of 1966, order the
5 banking organization, after due notice and opportunity for
6 hearing, to terminate (within one hundred and twenty days or
7 such longer period as the Board may direct in unusual cir-
8 cumstances) its investment in the export trading company.
9 (5) On or before two years after enactment of this Act,
10 the appropriate Federal banking agencies shall jointly report
11 to the Committee on Banking, Housing, and Urban Affairs of
12 the Senate and the Committee on Banking, Finance and
13 Urban Affairs of the House of Representatives their recom-
14 mendations with respect to the implementation of this sec-
15 tion, their recommendations on any changes in United States
16 law to facilitate the financing of United States exports, espe-
17 cially by small, medium-size and minority business concerns,
18 and their recommendations on the effects of ownership of
19 United States banks by foreign banking organizations affili-
20 ated with trading companies doing business in the United
21 States.
22 (e)(1) Any party aggrieved by an order of an appropriate
23 Federal banking agency under this section may obtain a
24 review of such order in the United States court of appeals
25 within any circuit wherein such organization has its principal

1 place of business, or in the court of appeals for the District of
2 Columbia Circuit, by filing a notice of appeal in such court
3 within thirty days from the date of such order, and simulta-
4 neously sending a copy of such notice by registered or certi-
5 fied mail to the appropriate Federal banking agency. The
6 appropriate Federal banking agency shall promptly certify
7 and file in such court the record upon which the order was
8 based. The court shall set aside any order found to be (A)
9 arbitrary, capricious, an abuse of discretion, or otherwise not
10 in accordance with law; (B) contrary to constitutional right,
11 power, privilege or immunity; or, (C) in excess of statutory
12 jurisdiction, authority, or limitations, or short of statutory
13 right; or (D) without observance of procedure required by
14 law. Except for violations of subsection (b)(3) of this section,
15 the court shall remand for further consideration by the appro-
16 priate Federal banking agency any order set aside solely for
17 procedural errors and may remand for further consideration
18 by the appropriate Federal banking agency any order set
19 aside for substantive errors. Upon remand, the appropriate
20 Federal banking agency shall have no more than sixty days
21 from date of issuance of the court's order to cure any proce-
22 dural error or reconsider its prior order. If the agency fails to
23 act within this period, the application or other matter subject
24 to review shall be deemed to have been granted as a matter
25 of law.

1 (f)(1) The appropriate Federal banking agencies are au-
2 thorized and empowered to issue such rules, regulations, and
3 orders, to require such reports, to delegate such functions,
4 and to conduct such examinations of subsidiary export trad-
5 ing companies, as each of them may deem necessary in order
6 to perform their respective duties and functions under this
7 section and to administer and carry out the provisions and
8 purposes of this section and prevent evasions thereof.

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

14 (g) Nothing in this section shall at any time prevent any
15 State from adopting a law prohibiting banks chartered under
16 the laws of such State from investing in export trading com-
17 panies or applying conditions, limitations, or restrictions on
18 investments by banks chartered under the laws of such State
19 in export trading companies in addition to any conditions,
20 limitations, or restrictions provided under this section.

21 INITIAL INVESTMENTS AND OPERATING EXPENSES

22 SEC. 106. (a) The Economic Development Administra-
23 tion and the Small Business Administration are directed, in
24 their consideration of applications by export trading compa-
25 nies for loans and guarantees, and operating grants to non-

1 profit organizations, including applications to make new in-
2 vestments related to the export of goods or services produced
3 in the United States and to meet operating expenses, to give
4 special weight to export-related benefits, including opening
5 new markets for United States goods and services abroad and
6 encouraging the involvement of small, medium-size and mi-
7 nority businesses or agricultural concerns in the export
8 market.

9 (b) There are authorized to be appropriated as necessary
10 to meet the purposes of this section, $20,000,000 for each
11 fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts
12 appropriated pursuant to the authority of this subsection shall
13 be in addition to amounts appropriated under the authority of
14 other Acts.

15 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
16 INVENTORY

17 SEC. 107. The Export-Import Bank of the United
18 States is authorized and directed to establish a program to
19 provide guarantees for loans extended by financial institu-
20 tions or other private creditors to export trading companies
21 as defined in section 103(5) of this Act, or to other exporters,
22 when such loans are secured by export accounts receivable or
23 inventories of exportable goods, and when in the judgment of
24 the Board of Directors—

1 (1) the private credit market is not providing ade-
2 quate financing to enable otherwise creditworthy
3 export trading companies or exporters to consummate
4 export transactions; and
5 (2) such guarantees would facilitate expansion of
6 exports which would not otherwise occur.
7 The Board of Directors shall attempt to insure that a major
8 share of any loan guarantees ultimately serves to promote
9 exports from small, medium-size and minority businesses or
10 agricultural concerns. Guarantees provided under the author-
11 ity of this section shall be subject to limitations contained in
12 annual appropriations Acts.

13 TITLE II—EXPORT TRADE ASSOCIATIONS

14 SHORT TITLE

15 SEC. 201. This title may be cited as the "Export Trade
16 Association Act of 1981".

17 FINDINGS; DECLARATION OF PURPOSE

18 SEC. 202. (a) FINDINGS.—The Congress finds and de-
19 clares that—
20 (1) the exports of the American economy are re-
21 sponsible for creating and maintaining one out of every
22 nine manufacturing jobs in the United States and for
23 generating $1 out of every $7 of total United States
24 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;
21 and
22 (7) the Department of Commerce has as one of its
23 responsibilities the development and promotion of
24 United States exports.

1 (b) PURPOSE.—It is the purpose of this Act to encour-
2 age American exports by establishing an office within the
3 Department of Commerce to encourage and promote the for-
4 mation of export trade associations through the Webb-
5 Pomerene Act, by making the provisions of that Act explic-
6 itly applicable to the exportation of services, and by transfer-
7 ring the responsibility for administering that Act from the
8 Federal Trade Commission to the Secretary of Commerce.

9 DEFINITIONS

10 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66)
11 is amended by striking out the first section (15 U.S.C. 61)
12 and inserting in lieu thereof the following:

13 **"SECTION 1. DEFINITIONS.**

14 "As used in this Act—

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

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

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

24 "(B) management, legal, engineering, archi-
25 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' means activities or agreements
5 in the course of export trade.
6 "(4) METHODS OF OPERATION.—The term
7 'methods of operation' means the methods by which an
8 association or export trading company conducts or pro-
9 poses to conduct export trade.
10 "(5) TRADE WITHIN THE UNITED STATES.—The
11 term 'trade within the United States' whenever used in
12 this Act means trade or commerce among the several
13 States or in any territory of the United States, or in
14 the District of Columbia, or between any such territory
15 and another, or between any such territory or territo-
16 ries and any State or States or the District of Colum-
17 bia, or between the District of Columbia and any State
18 or States.
19 "(6) ASSOCIATION.—The term 'association'
20 means any combination, by contract or other arrange-
21 ment, of persons who are citizens of the United States,
22 partnerships which are created under and exist pursu-
23 ant to the laws of any State or of the United States, or
24 corporations, whether operated for profit or organized
25 as nonprofit corporations, which are created under and

1 exist pursuant to the laws of any State or of the
2 United States.

3 "(7) EXPORT TRADING COMPANY.—The term
4 'export trading company' means an export trading
5 company as defined in section 103(5) of the Export
6 Trading Company Act of 1980.

7 "(8) 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), sections 5 and
10 6 of the Federal Trade Commission Act (15 U.S.C.
11 45, 46), and any State antitrust or unfair competition
12 law.

13 "(9) SECRETARY.—The term 'Secretary' means
14 the Secretary of Commerce.

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

18 "(11) COMMISSION.—The term 'Commission'
19 means the Federal Trade Commission.".

20 ANTITRUST EXEMPTION

21 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
22 is amended by striking out section 2 (15 U.S.C. 62) and
23 inserting in lieu thereof the following:

1 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

2 "(a) ELIGIBILITY.—The export trade, export trade
3 activities, and methods of operation of any association, en-
4 tered into for the sole purpose of engaging in export trade,
5 and engaged in or proposed to be engaged in such export
6 trade, and the export trade, export trade activities and meth-
7 ods of operation of any export trading company, that—

8 "(1) serve to preserve or promote export trade;

9 "(2) result in neither a substantial lessening of
10 competition or restraint of trade within the United
11 States nor a substantial restraint of the export trade of
12 any competitor of such association or export trading
13 company;

14 "(3) do not unreasonably enhance, stabilize, or
15 depress prices within the United States of the goods,
16 wares, merchandise, or services of the class exported
17 by such association or export trading company;

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

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

1 association or export trading company or its members;
2 and
3 "(6) do not constitute trade or commerce in the
4 licensing of patents, technology, trademarks, or know-
5 how, except as incidental to the sale of the goods,
6 wares, merchandise, or services exported by the associ-
7 ation or export trading company or its members
8 shall, when certified according to the procedures set forth in
9 this Act, be eligible for the exemption provided in subsection
10 (b).
11 "(b) EXEMPTION.—An association or an export trading
12 company and its members are exempt from the operation of
13 the antitrust laws with respect to their export trade, export
14 trade activities and methods of operation that are specified in
15 a certificate issued according to the procedures set forth in
16 this Act, carried out in conformity with the provisions, terms,
17 and conditions prescribed in such certificate and engaged in
18 during the period in which such certificate is in effect. The
19 subsequent revocation or invalidation in whole or in part of
20 such certificate shall not render an association or its members
21 or an export trading company or its members, liable under
22 the antitrust laws for such export trade, export trade activi-
23 ties, or methods of operation engaged in during such period.
24 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
25 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this

1 Act, the Attorney General or Commission has formally
2 advised the Secretary of disagreement with his determination
3 to issue a proposed certificate, and the Secretary has none-
4 theless issued such proposed certificate or an amended certifi-
5 cate, the exemption provided by this section shall not be
6 effective until thirty days after the issuance of such
7 certificate.".

8 AMENDMENT OF SECTION 3

9 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
10 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

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

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

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

17 ADMINISTRATION: ENFORCEMENT: REPORTS

18 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
19 (15 U.S.C. 61–66) is amended by striking out sections 4 and
20 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
21 following sections:

22 **"SEC. 4. CERTIFICATION.**

23 "(a) PROCEDURE FOR APPLICATION.—Any associ-
24 ation, or export trading company seeking certification under

1 this Act shall file with the Secretary a written application for
2 certification setting forth the following:

3 "(1) The name of the association or export trad-
4 ing company.

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

8 "(3) The names and addresses of all of the offi-
9 cers, stockholders, and members of the association or
10 export trading company.

11 "(4) A copy of the certificate or articles of incor-
12 poration and bylaws, if the association or export trad-
13 ing company is a corporation; or a copy of the articles,
14 partnership, joint venture, or other agreement or con-
15 tract under which the association or export trading
16 company conducts or proposes to conduct its export
17 trade activities, or contract of association, if the associ-
18 ation or export trading company is unincorporated.

19 "(5) A description of the goods, wares, merchan-
20 dise, or services which the association or export trad-
21 ing company or their members export or propose to
22 export.

23 "(6) A description of the domestic and interna-
24 tional conditions, circumstances, and factors which
25 show that the association or export trading company

1 and its activities will serve a specified need in promot-
2 ing the export trade of the described goods, wares,
3 merchandise, or services.

4 "(7) The export trade activities in which the asso-
5 ciation or export trading company intends to engage
6 and the methods by which the association or export
7 trading company conducts or proposes to conduct
8 export trade in the described goods, wares, merchan-
9 dise, or services, including, but not limited to, any
10 agreements to sell exclusively to or through the associ-
11 ation or export trading company, any agreements with
12 foreign persons who may act as joint selling agents,
13 any agreements to acquire a foreign selling agent, any
14 agreements for pooling tangible or intangible property
15 or resources, or any territorial, price-maintenance,
16 membership, or other restrictions to be imposed upon
17 members of the association or export trading company.

18 "(8) The names of all countries where export
19 trade in the described goods, wares, merchandise, or
20 services is conducted or proposed to be conducted by
21 or through the association or export trading company.

22 "(9) Any other information which the Secretary
23 may request concerning the organization, operation,
24 management, or finances of the association or export
25 trading company; the relation of the association or

1 export trading company to other associations, corpora-
2 tions, partnerships, and individuals; and competition or
3 potential competition, and effects of the association or
4 export trading company thereon. The Secretary may
5 request such information as part of an initial applica-
6 tion or as a necessary supplement thereto. The Secre-
7 tary may not request information under this paragraph
8 which is not reasonably available to the person making
9 application or which is not necessary for certification of
10 the prospective association or export trading company.
11 "(b) ISSUANCE OF CERTIFICATE.—
12 "(1) NINETY-DAY PERIOD.—The Secretary shall
13 issue a certificate to an association or export trading
14 company within ninety days after receiving the applica-
15 tion for certification or necessary supplement thereto if
16 the Secretary, after consultation with the Attorney
17 General and Commission, determines that the associ-
18 ation and, its export trade, export trade activities and
19 methods of operation, or export trading company, and
20 its export trade, export trade activities and methods of
21 operation meet the requirements of section 2 of this
22 Act and will serve a specified need in promoting the
23 export trade of the goods, wares, merchandise, or serv-
24 ices described in the application for certification. The
25 certificate shall specify the permissible export trade,

1 export trade activities and methods of operation of the
2 association or export trading company and shall include
3 any terms and conditions the Secretary deems neces-
4 sary to comply with the requirements of section 2 of
5 this Act. The Secretary shall deliver to the Attorney
6 General and the Commission a copy of any certificate
7 that he proposes to issue. The Attorney General or
8 Commission may, within fifteen days thereafter, give
9 written notice to the Secretary of an intent to offer
10 advice on the determination. The Attorney General or
11 Commission may, after giving such written notice and
12 within forty-five days of the time the Secretary has de-
13 livered a copy of a proposed certificate, formally advise
14 the Secretary and the petitioning association or export
15 trading company of disagreement with the Secretary's
16 determination. The Secretary shall not issue any certif-
17 icate prior to the expiration of such forty-five-day
18 period unless he has (A) received no notice of intent to
19 offer advice by the Attorney General or the Commis-
20 sion within fifteen days after delivering a copy of a
21 proposed certificate, or (B) received any noticed formal
22 advice of disagreement or written confirmation that no
23 formal disagreement will be transmitted from the At-
24 torney General and the Commission. After the forty-
25 five-day period or, if no notice of intent to offer advice

1 has been given, after the fifteen-day period, the Secre-
2 tary shall either issue the proposed certificate, issue an
3 amended certificate, or deny the application. Upon
4 agreement of the applicant, the Secretary may delay
5 taking action for not more than thirty additional days
6 after the forty-five-day period. Before offering advice
7 on a proposed certification, the Attorney General and
8 Commission shall consult in an effort to avoid, wher-
9 ever possible, having both agencies offer advice on any
10 application.

11 "(2) EXPEDITED CERTIFICATION.—In those in-
12 stances where the temporary nature of the export trade
13 activities, deadlines for bidding on contracts or filling
14 orders, or any other circumstances beyond the control
15 of the association or export trading company which
16 have a significant impact on its export trade, make the
17 90-day period for application approval described in
18 paragraph (1) of this subsection, or an amended appli-
19 cation approval as provided in subsection (c) of this
20 section, impractical for the association or export trad-
21 ing company seeking certification, such association or
22 export trading company may request and may receive
23 expedited action on its application for certification.

24 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
25 ASSOCIATIONS.—Any association registered with the

1 Federal Trade Commission under this Act as of April
2 3, 1980, may file with the Secretary an application for
3 automatic certification of any export trade, export
4 trade activities, and methods of operation in which it
5 was engaged prior to enactment of the Export Trade
6 Association Act of 1980. Any such application must be
7 filed within 180 days after the date of enactment of
8 such Act and shall be acted upon by the Secretary in
9 accordance with the procedures provided by this sec-
10 tion. The Secretary shall issue to the association a cer-
11 tificate specifying the permissible export trade, export
12 trade activities, and methods of operation that he de-
13 termines are shown by the application (including any
14 necessary supplement thereto), on its face, to be eligi-
15 ble for certification under this Act, and including any
16 terms and conditions the Secretary deems necessary to
17 comply with the requirements of section 2(a) of this
18 Act, unless the Secretary possesses information clearly
19 indicating that the requirements of section 2(a) are not
20 met.

21 "(4) APPEAL OF DETERMINATION.—If the Secre-
22 tary determines not to issue a certificate to an associ-
23 ation or export trading company which has submitted
24 an application or an amended application for certifica-
25 tion, then he shall—

1 "(A) notify the association or export trading
2 company of his determination and the reasons for
3 his determination, and
4 "(B) upon request made by the association or
5 export trading company afford it an opportunity
6 for a hearing with respect to that determination in
7 accordance with section 557 of title 5, United
8 States Code.
9 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
10 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
11 terial change in the membership, export trade, export trade
12 activities, or methods of operation, of an association or export
13 trading company then it shall report such change to the Sec-
14 retary and may apply to the Secretary for an amendment of
15 its certificate. Any application for an amendment to a certifi-
16 cate shall set forth the requested amendment of the certifi-
17 cate and the reasons for the requested amendment. Any re-
18 quest for the amendment of a certificate shall be treated in
19 the same manner as an original application for a certificate.
20 If the request is filed within thirty days after a material
21 change which requires the amendment, and if the requested
22 amendment is approved, then there shall be no interruption in
23 the period for which the certificate is in effect.
24 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
25 BY SECRETARY.—After notifying the association or export

1 trading company involved and after an opportunity for hear-
2 ing pursuant to section 554 of title 5, United States Code,
3 the Secretary, on his own initiative—

4 "(1) may require that the organization or oper-
5 ation of the association or export trading company be
6 modified to correspond with its certification, or

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

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

15 "(1) The Attorney General or the Commission
16 may bring an action against an association or export
17 trading company or its members to invalidate, in whole
18 or in part, its certificate on the ground that the export
19 trade, export trade activities or methods of operation of
20 the association or export trading company fail or have
21 failed to meet the requirements of section 2 of this Act.
22 Except in the case of an action brought during the
23 period before an antitrust exemption becomes effective,
24 as provided for in section 2(c), the Attorney General or
25 Commission shall notify any association or export trad-

1 ing company or member thereof, against which it in-
2 tends to bring an action for invalidation, thirty days in
3 advance, as to its intent to file an action under this
4 subsection. The district court shall consider any issues
5 presented in any such action de novo and if it finds
6 that the requirements of section 2 are not met, it shall
7 issue an order declaring the certificate invalid or any
8 other order necessary to effectuate the purposes of this
9 Act and the requirements of section 2.

10 "(2) Any action brought under this subsection
11 shall be considered an action described in section 1337
12 of title 28, United States Code. Pending any such
13 action which was brought during the period any ex-
14 emption is held in abeyance pursuant to section 2(c) of
15 this Act, the court may make such temporary restrain-
16 ing order or prohibition as shall be deemed just in the
17 premises.

18 "(3) No person other than the Attorney General
19 or Commission shall have standing to bring an action
20 against an association or export trading company or
21 their respective members for failure of the association
22 or export trading company or their respective export
23 trade, export trade activities or methods of operation to
24 meet the eligibility requirements of section 2 of this
25 Act.

1 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
2 ation and each export trading company and any subsidiary
3 thereof shall comply with United States export control laws
4 pertaining to the export or transshipment of any goods on the
5 Commodity Control List to controlled countries. Such laws
6 shall be complied with before actual shipment.

7 **"SEC. 5. GUIDELINES.**

8 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety-
9 days after the enactment of the Export Trade Association
10 Act of 1980, the Secretary, after consultation with the Attor-
11 ney General, and the Commission shall publish proposed
12 guidelines for purposes of determining whether export trade,
13 export trade activities and methods of operation of an associ-
14 ation or export trading company will meet the requirements
15 of section 2 of this Act.

16 "(b) PUBLIC COMMENT PERIOD.—Following publica-
17 tion of the proposed guidelines, and any proposed revision of
18 guidelines, interested parties shall have thirty days to com-
19 ment on the proposed guidelines. The Secretary shall review
20 the comments and, after consultation with the Attorney Gen-
21 eral, and Commission, publish final guidelines within thirty
22 days after the last day on which comments may be made
23 under the preceding sentence.

24 "(c) PERIODIC REVISION.—After publication of the
25 final guidelines, the Secretary shall periodically review the

1 guidelines and, after consultation with the Attorney General,
2 and the Commission, propose revisions as needed.

3 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
4 ACT.—The promulgation of guidelines under this section
5 shall not be considered rulemaking for purposes of subchapter
6 II of chapter 5 of title 5, United States Code, and section
7 553 of such title shall not apply to their promulgation.

8 **"SEC. 6. ANNUAL REPORTS.**

9 "Every certified association or export trading company
10 shall submit to the Secretary an annual report, in such form
11 and at such time as he may require, which report updates
12 where necessary the information described by section 4(a) of
13 this Act.

14 **"SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF**
15 **COMMERCE.**

16 "The Secretary shall establish within the Department of
17 Commerce an office to promote and encourage to the great-
18 est extent feasible the formation of export trade associations
19 and export trading companies through the use of provisions of
20 this Act in a manner consistent with this Act. The Office of
21 Export Trade in the Department of Commerce shall report to
22 the congressional committees of appropriate jurisdiction on
23 an annual basis, all East-West trade transactions requiring
24 validated licenses, and any other relevant information on the

1 role of United States export trading companies or subsidiaries
2 thereof in East-West trade.

3 "SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING
4 ASSOCIATIONS.

5 "(a) ELIGIBILITY.—To be eligible for the antitrust ex-
6 emption provided by this section, an association must have
7 been registered with the Federal Trade Commission under
8 this Act on April 3, 1980.

9 "(b) DURATION.—The antitrust exemption provided by
10 this section shall extend only to the existence of an eligible
11 association, and to agreements made and acts done by such
12 association, prior to one hundred and eighty days after the
13 date of enactment of the Export Trade Association Act of
14 1980, or, in the event that an eligible association files an
15 application for certification pursuant to section 4 of this Act
16 during such one hundred and eighty days, prior to the Secre-
17 tary's determination on such application becoming final.

18 "(c) EXEMPTION.—Subject to the limitations in subsec-
19 tions (a) and (b), nothing contained in sections 1 to 7 of the
20 Sherman Act shall be construed as declaring to be illegal an
21 association entered into for the sole purpose of engaging in
22 export trade and actually engaged solely in such export
23 trade, or an agreement made or act done in the course of
24 export trade by such association, provided such association,
25 agreement, or act is not in restraint of trade within the

1 United States, and is not in restraint of the export trade of
2 any domestic competitor of such association: *Provided*, That
3 such association does not, either in the United States or else-
4 where, enter into any agreement, understanding, or conspir-
5 acy, or do any act which artificially or intentionally enhances
6 or depresses prices within the United States of commodities
7 of the class exported by such association, or which substan-
8 tially lessens competition within the United States or other-
9 wise restrains trade therein.

10 **"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
11 **REPORT INFORMATION.**

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

23 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
24 MISSION.—Whenever the Secretary believes that an appli-
25 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom, to the Attorney General or Commission,
7 or any employee or officer thereof, for official use in connec-
8 tion with an investigation or judicial or administrative pro-
9 ceeding under this Act or the antitrust laws to which the
10 United States or the Commission is or may be a party. Such
11 information may only be disclosed by the Secretary upon a
12 prior certification that the information will be maintained in
13 confidence and will only be used for such official law enforce-
14 ment purposes.

15 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
16 **UNITED STATES OBLIGATIONS.**

17 "At such time as the United States undertakes binding
18 international obligations by treaty or statute, to the extent
19 that the operations of any export trade association or export
20 trading company, certified under this Act, are inconsistent
21 with such international obligations, the Secretary may re-
22 quire the association or export trading company to modify its
23 respective operations, and in so doing afford the association
24 or export trading company a reasonable opportunity to

1 comply therewith, so as to be consistent with such interna-
2 tional obligations.

3 **"SEC. 11. REGULATIONS.**

4 "The Secretary, after consultation with the Attorney
5 General and the Commission, shall promulgate such rules
6 and regulations as may be necessary to carry out the pur-
7 poses of this Act.

8 **"SEC. 12. TASK FORCE STUDY.**

9 "Seven years after the date of enactment of the Export
10 Trade Association Act of 1980, the President shall appoint,
11 by and with the advice and consent of the Senate, a task
12 force to examine the effect of the operation of this Act on
13 domestic competition and on United States international
14 trade and to recommend either continuation, revision, or ter-
15 mination of the Webb-Pomerene Act. The task force shall
16 have one year to conduct its study and to make its recom-
17 mendations to the President.".

18 (b) REDESIGNATION OF SECTION 6.—The Act is
19 amended—

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

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

24 **"SEC. 13. SHORT TITLE.".**

O

97TH CONGRESS
1ST SESSION

H. R. 1799

Entitled: "The Export Trading Company Act of 1981".

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1981

Mr. BONKER (for himself and Mr. BINGHAM) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, the Judiciary, and Ways and Means

---

A BILL

Entitled: "The Export Trading Company Act of 1981".

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 1981".

6 FINDINGS; DECLARATION OF PURPOSE

7 SEC. 2. (a) The Congress finds that—
8 (1) United States exports are responsible for cre-
9 ating and maintaining one out of every nine manufac-
10 turing jobs in the United States and for generating one

1 out of every seven dollars of total United States goods
2 produced;
3 (2) the rapidly growing service-related industries
4 are vital to the well-being of the United States econo-
5 my inasmuch as they create jobs for seven out of every
6 ten Americans, provide 65 percent of the Nation's
7 gross national product, and offer the greatest potential
8 for significantly increased industrial trade involving fin-
9 ished products;
10 (3) trade deficits contribute to the decline of the
11 dollar on international currency markets and have an
12 inflationary impact on the United States economy;
13 (4) tens of thousands of small- and medium-sized
14 United States businesses produce exportable goods or
15 services but do not engage in exporting;
16 (5) export trade services in the United States are
17 fragmented into a multitude of separate functions, and
18 companies attempting to offer export trade services
19 lack financial leverage to reach a significant number of
20 potential United States exporters;
21 (6) the United States needs well-developed export
22 trade intermediaries which can achieve economies of
23 scale and acquire expertise enabling them to export
24 goods and services profitable, at low per unit cost to
25 producers;

1 (7) the development of export trading companies
2 in the United States has been hampered by business
3 attitudes and by Goverment regulations;
4 (8) those activities of State and local governmen-
5 tal authorities which initiate, facilitate, or expand ex-
6 ports of goods and services can be an important source
7 for expansion of total United States exports, as well as
8 for experimentation in the development of innovative
9 export programs keyed to local, State, and regional
10 economic needs;
11 (9) if United States trading companies are to be
12 successful in promoting United States exports and in
13 competing with foreign trading companies, they should
14 be able to draw on the resources, expertise, and
15 knowledge of the United States banking system, both
16 in the United States and abroad; and
17 (10) the Department of Commerce is responsible
18 for the development and promotion of United States
19 exports, and especially for facilitating the export of fin-
20 ished products by United States manufacturers.
21 (b) It is the purpose of this Act to increase United
22 States exports of products and services by encouraging more
23 efficient provision of export trade services to American pro-
24 ducers and suppliers, in particular by establishing an office
25 within the Department of Commerce to encourage and pro-

1 mote the formation of export trade associations and export
2 trading companies, by making the provisions of the Webb-
3 Pomerene Act explicitly applicable to the exportation of serv-
4 ices, and by transferring the responsibility for administering
5 that Act from the Federal Trade Commission to the Secre-
6 tary of Commerce.

7 DEFINITIONS

8 SEC. 3. (a) As used in this Act—

9 (1) the term "export trade" means trade or com-
10 merce in goods produced in the United States, or serv-
11 ices produced in the United States, which are ex-
12 ported, or in the course of being exported, from the
13 United States to any other country;

14 (2) the term "goods produced in the United
15 States" means tangible property manufactured, pro-
16 duced, grown, or extracted in the United States, not
17 more than 50 percent of the fair market value (as de-
18 termined under regulations issued by the Secretary) of
19 which is attributable to articles imported into the
20 United States;

21 (3) the term "services produced in the United
22 States" includes, but is not limited to, amusement, ar-
23 chitectural, automatic data processing, business, com-
24 munications, consulting, engineering, financial, insur-
25 ance, legal, management, repair, training, and trans-

1 portation services, not less than 50 percent of the fair
2 market value (as determined under regulations issued
3 by the Secretary) of which is provided by United
4 States citizens or is otherwise attributable to the
5 United States;

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

16 (5) the term "export trading company" means a
17 company which does business under the laws of the
18 United States or any State and which is organized and
19 operated principally for the purposes of—

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

23 (B) facilitating the exportation of goods pro-
24 duced in the United States and services produced

1 in the United States by unaffiliated persons by
2 providing one or more export trade services;
3 (6) the term "State" means any of the several
4 States of the United States, the District of Columbia,
5 the Commonwealth of Puerto Rico, the Virgin Islands,
6 American Samoa, Guam, the Commonwealth of the
7 Northern Mariana Islands, and the Trust Territory of
8 the Pacific Islands;
9 (7) the term "United States" means the several
10 States of the United States, the District of Columbia,
11 the Commonwealth of Puerto Rico, the Virgin Islands,
12 American Samoa, Guam, the Commonwealth of the
13 Northern Mariana Islands, and the Trust Territory of
14 the Pacific Islands;
15 (8) the term "Secretary" means the Secretary of
16 Commerce; and
17 (9) the term "company" means any person or any
18 corporation, partnership, association, or similar
19 organization.
20 (b) The Secretary may by regulation further define any
21 term defined in subsection (a), in order to carry out the pur-
22 poses of this Act.

1 OFFICE OF EXPORT TRADE IN DEPARTMENT OF
2 COMMERCE

3 SEC. 4. The Secretary shall establish within the De-
4 partment of Commerce an office to promote and encourage to
5 the greatest extent feasible the formation of export trade as-
6 sociations and export trading companies. Such office shall
7 provide information and advice to interested persons and
8 shall provide a referral service to facilitate contact between
9 producers of exportable goods and services and firms offering
10 export trade services.

11 TITLE I—EXPORT TRADING COMPANIES

12 INVESTMENT IN EXPORT TRADING COMPANIES BY
13 BANKING ORGANIZATIONS

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

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

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

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

1 (4) the term "State member bank" means any
2 State bank, including a bankers' bank, which is a
3 member of the Federal Reserve System;
4 (5) the term "State nonmember insured bank"
5 means any State bank, including a bankers' bank,
6 which is not a member of the Federal Reserve System,
7 but the deposits of which are insured by the Federal
8 Deposit Insurance Corporation;
9 (6) the term "bankers' bank" means any bank
10 which (A) is organized solely to do business with other
11 financial institutions, (B) is owned primarily by the fi-
12 nancial institutions with which it does business, and (C)
13 does not do business with the general public;
14 (7) the term "bank holding company" has the
15 same meaning as in the Bank Holding Company Act of
16 1956;
17 (8) the term "Edge Act Corporation" means a
18 corporation organized under section 25(a) of the Fed-
19 eral Reserve Act;
20 (9) the term "Agreement Corporation" means a
21 corporation operating subject to section 25 of the Fed-
22 eral Reserve Act;
23 (10) the term "appropriate Federal banking
24 agency" means—

1 (A) the Comptroller of the Currency with re-
2 spect to a national bank or a District bank;
3 (B) the Board of Governors of the Federal
4 Reserve System with respect to a State member
5 bank, bank holding company, Edge Act Corpora-
6 tion or Agreement Corporation;
7 (C) the Federal Deposit Insurance Corpora-
8 tion with respect to a State nonmember insured
9 bank; and
10 (D) the Federal Home Loan Bank Board
11 with respect to a Federal savings bank;
12 (11) the term "capital and surplus" means paid in
13 an unimpaired capital and surplus, and includes undi-
14 vided profits and such other items as the appropriate
15 Federal banking agency considers appropriate;
16 (12) an "affiliate" of a bank organization or
17 export trading company is a person who controls, is
18 controlled by, or is under common control with such
19 banking organization or export trading company;
20 (13) the term "subsidiary" means, with respect to
21 any banking organization—
22 (A) any company 25 percent or more of
23 whose voting shares (excluding shares owned by
24 the United States) are directly or indirectly owned

1 or controlled by such banking organization or are
2 held by it with power to vote;
3 (B) any company the election of a majority of
4 whose directors is controlled in any manner by
5 such banking organization; or
6 (C) any company with respect to the man-
7 agement or policies of which such banking organi-
8 zation has the power, directly or indirectly, to ex-
9 ercise a controlling influence, as determined by
10 the appropriate Federal banking agency, after
11 notice and opportunity for a hearing;
12 (14) a banking organization has control over any
13 company if—
14 (A) the banking organization directly or indi-
15 rectly or acting through one or more other person
16 owns, controls, or has power to vote 25 percent
17 or more of any class of voting securities of the
18 company;
19 (B) the banking organization controls in any
20 manner the election of a majority of the directors
21 or trustees of the company; or
22 (C) the appropriate Federal banking agency
23 determines, after notice and opportunity for a
24 hearing, that the banking organization directly or

1 indirectly exercises a controlling influence over
2 the management or policies of the company; and
3 (15) the term "export trading company" has the
4 same meaning as in section 3(5) of this Act, and means
5 any company organized and operating principally for
6 the purpose of providing export trade services, as de-
7 fined in section 3(4) of this Act.
8 (b)(1) Notwithstanding any other provision of law, a
9 banking organization, subject to the limitations of subsection
10 (c) and the procedures of this subsection, may invest directly
11 and indirectly up to 5 percent, in the aggregate, of its consol-
12 idated capital and surplus (or, in the case of an Edge Act
13 Corporation or Agreement Corporation not engaged in bank-
14 ing, 25 percent) in the voting stock or other evidences of
15 ownership of one or more export trading companies. A bank-
16 ing organization may—
17 (A) invest up to an aggregate amount of
18 $10,000,000 in one or more export trading companies
19 without the prior approval of the appropriate Federal
20 banking agency, if such investment does not cause an
21 export trading company to become a subsidiary of the
22 investing banking organization; and
23 (B) make investments in excess of an aggregate
24 amount of $10,000,000 in one or more export trading
25 companies, or make an investment or take any other

1 action which causes an export trading company to
2 become a subsidiary of the investing banking organiza-
3 tion or which will cause more than 50 percent of the
4 voting stock or other evidences of ownership of an
5 export trading company to be owned or controlled by
6 banking organizations, only if the banking organization
7 making such investments or taking such action notifies
8 the appropriate Federal banking agency of such invest-
9 ments or action and only if that banking organization
10 receives the prior approval of the appropriate Federal
11 banking agency for such investments or action.

12 (2) Any banking organization which makes an invest-
13 ment under paragraph (1)(A) shall promptly notify the appro-
14 priate Federal banking agency of such investment and shall
15 file such reports on such investment as such agency may re-
16 quire. If, after receipt of any such notification, the appropri-
17 ate Federal banking agency determines, after notice and op-
18 portunity for hearing, that the export trading company is a
19 subsidiary of the investing banking organization, the appro-
20 priate Federal banking organization may disapprove the in-
21 vestment or impose conditions on such investment under sub-
22 section (d). The appropriate Federal banking agency may
23 also require divestiture of any voting stock or other evidences
24 of ownership previously acquired, and may impose conditions
25 necessary for the termination of any controlling relationship.

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

7 (4) Before—

8 (A) a banking organization makes any investment
9 in an export trading company subsidiary other than an
10 investment for which notification has been made pursu-
11 ant to paragraph (1)(B), or

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

17 the banking organization shall notify the appropriate Federal
18 banking agency. The banking organization may make the in-
19 vestment described in subparagraph (A), or the export trad-
20 ing company subsidiary may engage in the activity described
21 in subparagraph (B), as the case may be—

22 (i) at the end of the 60-day period beginning on
23 the date on which the appropriate Federal banking
24 agency receives the notification required by this para-

1 graph, if such agency fails either to disapprove or to
2 impose conditions on such investment or activity,
3 (ii) subject to any conditions imposed by such
4 agency on such investment or activity during such 60-
5 day period, or
6 (iii) before the end of such 60-day period, if such
7 agency notifies the banking organization in writing of
8 its intent not to disapprove or impose conditions on the
9 investment or activity.
10 During such 60-day period, the appropriate Federal banking
11 agency may disapprove the proposed investment or activity
12 or impose conditions on such investment or activity under
13 subsection (d).
14 (5) In any case in which a banking organization makes
15 an investment, or an export trading company subsidiary of a
16 banking organization engages in an activity, of which notifi-
17 cation to, or approval by, the appropriate Federal banking
18 agency is required by this subsection, and that banking orga-
19 nization is a subsidiary of another banking organization
20 which is subject to the jurisdiction of another appropriate
21 Federal banking agency, such notification or approval need
22 only be made to or obtained from the appropriate Federal
23 banking agency for the banking organization which makes
24 the investment or whose export trading company engages in
25 the activity.

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

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

11 (3) A banking organization that owns any voting stock
12 or other evidences of ownership of an export trading com-
13 pany shall terminate its ownership of such stock if the export
14 trading company takes positions in commodities or commod-
15 ities contracts other than those necessary in the course of its
16 business operations.

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

1 (d)(1) This subsection applies to investment or actions
2 described in subsection (b)(1)(B), any investment described in
3 subsection (b)(1)(A) in an export trading company which the
4 appropriate Federal banking organization determines is a
5 subsidiary of the banking organization making the invest-
6 ment, and any investment or activity described in subpara-
7 graph (A) or (B) of subsection (b)(4).

8 (2) Before the appropriate Federal banking agency exer-
9 cises the authority of this subsection to approve, disapprove,
10 or impose conditions on a proposed investment, action, or
11 activity, such agency shall transmit a copy of such proposal
12 to the Secretary of Commerce. The Secretary, not later than
13 30 days after the date on which such proposal is so transmit-
14 ted, may present to such agency the views of the Department
15 of Commerce on the proposal. In weighing the export related
16 benefits of such proposal, the appropriate Federal banking
17 agency shall consider any views of the Department of Com-
18 merce submitted under this paragraph.

19 (3) In the case of every investment, action, or activity to
20 which this subsection applies, the appropriate Federal bank-
21 ing agency shall take into consideration the financial and
22 managerial resources, competitive situation, and future pros-
23 pects of the banking organization and export trading compa-
24 ny concerned, and the benefits of the proposal to United
25 States business, industrial, and agricultural concerns, and to

1 improving United States competitiveness in world markets.
2 The appropriate Federal banking agency may not approve
3 any proposed investment, action, or activity to which this
4 subsection applies if it finds that the export benefits of such
5 proposal are outweighed in the public interest by any adverse
6 financial, managerial, competitive, or other banking factors
7 associated with the proposal. Any disapproval order issued
8 under this section shall contain a statement of the reasons
9 for such disapproval.

10 (4) In approving any investment, action, or activity to
11 which this subsection applies, the appropriate Federal bank-
12 ing agency may impose such conditions which, under the cir-
13 cumstances of the particular case, it considers necessary (A)
14 to limit a banking organization's financial exposure to an
15 export trading company or (B) to prevent possible conflicts of
16 interest or unsafe or unsound banking practices. With respect
17 to the taking of title to goods or commodities, or the holding
18 of title to inventory, by any export trading company subsidi-
19 ary of a banking organization, the appropriate Federal bank-
20 ing agencies shall issue regulations which establish standards
21 designed to ensure against any unsafe or unsound practices
22 that could adversely affect a controlling banking organization
23 investor. Such standards should be established not later than
24 270 days after the date of enactment of this Act. If an export
25 trading company subsidiary of a banking organization pro-

1 poses to take title to goods or commodities, or to hold title to
2 inventory, in a manner which does not conform to such
3 standards, or prior to the establishment of such standards, it
4 may only do so with the prior approval of the appropriate
5 Federal banking agency and subject to such conditions and
6 limitations as such agency may impose under this paragraph.
7 (5) In determining whether to impose any condition
8 under paragrah (4), the appropriate Federal banking agency
9 shall consider the size of the banking organization and export
10 trading company involved, the degree of investment and
11 other support to be provided by the banking organization to
12 the export trading company, and the identity, character, and
13 financial strength of any other investors in the export trading
14 company. The appropriate Federal banking agency shall not
15 impose any conditions or set standards for the taking of title
16 to goods or commodities, or the holding of title to inventory,
17 which conditions or standards unnecessarily disadvantage, re-
18 strict, or limit export trading companies in competing in
19 world markets or in achieving the purposes of section 2 of
20 this Act. In setting standards under paragraph (4) for the
21 taking of title to goods or commodities or the holding of title
22 to inventory, the appropriate Federal banking agencies shall
23 give special weight to the need to take such title in certain
24 kinds of trade tranactions such as international barter trans-
25 actions.

1 (6) Notwithstanding any other provision of this Act, if
2 the appropriate Federal banking agency has reasonable cause
3 to believe that the ownership or control by a banking organi-
4 zation of any investment in an export trading company con-
5 stitutes a serious risk to the financial safety, soundness, or
6 stability of the banking organization and is inconsistent with
7 sound banking principles or with the purposes of this Act,
8 such agency may order the banking organization, after notice
9 and opportunity for a hearing, to terminate (within 120 days
10 or such longer period as such agency may direct in unusual
11 circumstances) its investment in the export trading company.
12 (7) Not later than two years after the date of enactment
13 of this Act, the appropriate Federal banking agencies shall
14 submit to the Committee on Banking, Housing, and Urban
15 Affairs of the Senate and the Committee on Banking, Fi-
16 nance and Urban Affairs of the House of Representatives, a
17 report, prepared jointly by such agencies, on the implementa-
18 tion of this section. Such report shall contain the recommen-
19 dations of such agencies with respect to the implementation
20 of this section, any changes in United States law they recom-
21 mend to facilitate the financing of United States exports,
22 especially exports by small and medium-sized business con-
23 cerns, and the recommendations of such agencies on the ef-
24 fects of ownership of United States banks by foreign banking

1 organizations affiliated with trading companies doing business
2 in the United States.

3 (e) Any party aggrieved by an order of an appropriate
4 Federal banking agency under this section may obtain a
5 review of such order in the United States court of appeals for
6 any circuit in which such organization has its principal place
7 of business, or in the United States Court of Appeals for the
8 District of Columbia, by filing a notice of appeal in such court
9 within 30 days after the date of such order, and
10 simultaneously sending a copy of such notice by registered or
11 certified mail to the appropriate Federal banking agency. The
12 appropriate Federal banking agency shall promptly certify
13 and file in such court the record upon which the order was
14 based. The court shall set aside any order found to be (A)
15 arbitrary, capricious, an abuse of discretion, or otherwise not
16 in accordance with law; (B) contrary to constitutional right,
17 power, privilege, or immunity; (C) in excess of statutory ju-
18 risdiction, authority, or limitations, or short of statutory
19 rights; or (D) without observance of procedure required by
20 law. Except for violations of subsection (b)(3) of this section,
21 the court shall remand for further consideration by the appro-
22 priate Federal banking agency any order set aside solely for
23 procedural errors and may remand for further consideration
24 by the appropriate Federal banking agency any order set
25 aside for substantive errors. Upon remand, the appropriate

1 Federal banking agency shall, within 60 days after the date
2 of issuance of the court's order, correct any such procedural
3 error or, in the case of a substantive error, reconsider its
4 prior order. If the agency fails to act within such 60-day
5 period, the application or other matter which was the subject
6 of the review shall be deemed to have been granted as a
7 matter of law.

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

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

18 INITIAL INVESTMENTS AND OPERATING EXPENSES

19 SEC. 102. (a) The Economic Development Administra-
20 tion and the Small Business Administration shall, in consid-
21 ering applications by export trading companies for loans and
22 guarantees, including applications to make new investments
23 related to the export of goods produced in the United States
24 or services produced in the United States and to meet operat-
25 ing expenses, give special weight to export-related benefits,

1 including opening new markets for United States goods and
2 services abroad and encouraging the involvement of small or
3 medium-sized businesses or agricultural concerns in the
4 export market.

5 (b) There are authorized to be appropriated to carry out
6 this section $20,000,000 for each of the fiscal years 1982,
7 1983, 1984, and 1985. Amounts appropriated under this sub-
8 section shall be in addition to amounts appropriated under
9 any other provision of law.

10 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
11 INVENTORY

12 SEC. 103. The Export-Import Bank of the United
13 States shall provide guarantees for loans extended by finan-
14 cial institutions or other private creditors to export trading
15 companies as defined in section 3(5) of this Act, or to other
16 exports, when such loans are secured by export accounts re-
17 ceivable or inventories or exportable goods, and when in the
18 judgment of the Board of Directors—

19 (1) the private credit market is not providing ade-
20 quate financing to enable otherwise creditworthy
21 export trading companies or exporters to consummate
22 export transactions; and

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

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

3 TITLE II—ANTITRUST PROVISIONS

4 DEFINITIONS

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

8 "SECTION 1. DEFINITIONS.

9 "As used in this Act—

10 "(1) EXPORT TRADE.—The term 'export trade'
11 means trade or commerce in goods or services ex-
12 ported, or in the course of being exported, from the
13 United States to any other country.

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

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

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

22 "(C) financial, insurance, transportation, and
23 communication services.

1 "(3) EXPORT TRADE ACTIVITIES.—The term
2 'export trade activities' means activities and agree-
3 ments made in the course of export trade.
4 "(4) STATE.—The term 'State' includes the Dis-
5 trict of Columbia.
6 "(5) UNITED STATES.—The term 'United States'
7 means the States and the territories and possessions of
8 the United States.
9 "(6) TRADE WITHIN THE UNITED STATES.—The
10 term 'trade within the United States' means trade or
11 commerce within any territory or possession of the
12 United States or between or among the States and ter-
13 ritories and possessions of the United States.
14 "(7) METHODS OF OPERATION.—The term
15 'methods of operation' means the methods by which an
16 association or export trading company conducts or pro-
17 poses to conduct export trade.
18 "(8) ASSOCIATION.—The term 'association'
19 means any combination, by contract or other arrange-
20 ment, of two or more persons (A) who are citizens of
21 the United States, or (B) which are partnerships or
22 corporations created and existing under the laws of any
23 State or of the United States.
24 "(9) EXPORT TRADING COMPANY.—The term
25 'export trading company' means an export trading

1 company as defined in section 3(5) of the Export Trad-
2 ing Company Act of 1980.
3 "(10) ANTITRUST LAWS.—The term 'antitrust
4 laws' means the Act of July 2, 1890 (commonly
5 known as the Sherman Act; 15 U.S.C. 1–7); sections
6 73 through 77 of the Act of August 27, 1894 (com-
7 monly known as the Wilson Tariff Act; 15 U.S.C.
8 8–11); and the Clayton Act (15 U.S.C. 12 et seq.);
9 "(11) SECRETARY.—The term 'Secretary' means
10 the Secretary of Commerce.
11 "(12) ATTORNEY GENERAL.—The term 'Attorney
12 General' means the Attorney General of the United
13 States.
14 "(13) COMMISSION.—The term 'Commission'
15 means the Federal Trade Commission.".
16 ANTITRUST EXEMPTION
17 SEC. 202. The Webb-Pomerene Act (15 U.S.C. 61–66)
18 is amended by striking out section 2 (15 U.S.C. 62) and
19 inserting in lieu thereof the following:
20 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.
21 "(a) ELIGIBILITY.—Any association entered into for the
22 sole purpose of engaging in export trade and actually en-
23 gaged or proposed to be engaged solely in such export trade
24 and the export trade activities and methods of operation of
25 such association, and the export trade, export trade activities,

1 and methods of operation of any export trading company,
2 shall, when such association or export trading company is
3 certified in accordance with the procedures set forth in this
4 Act, be eligible for the exemption provided in subsection (b),
5 if—

6 "(1) such association or its export trade, export
7 trade activities, or methods of operation, or the export
8 trade, export trade activities, or methods of operation
9 of such export trading company are not in restraint of
10 trade within the United States and are not in restraint
11 of the export trade of any domestic competitor of such
12 association or export trading company; and

13 "(2) such association or export trading company
14 does not, either in the United States or elsewhere,
15 enter into any agreement, understanding, or conspiracy
16 or do any act which artificially or intentionally en-
17 hances or depresses prices within the United States of
18 goods or services of the class exported by such associ-
19 ation or export trading company, or which substantially
20 lessens competition within the United States or other-
21 wise restrains trade in the United States.

22 "(b) EXEMPTION.—An association or export trading
23 company and the members of such association or export trad-
24 ing company are exempt from the operation of the antitrust
25 laws with respect to the export trade, export trade activities,

1 or methods of operation of such association or export trading
2 company that are specified in a certificate issued in accord-
3 ance with the procedures set forth in this Act and that are
4 carried out in conformity with the provisions, terms, and con-
5 ditions prescribed in such certificate and are engaged in
6 during the period in which such certificate is in effect. The
7 subsequent revocation or invalidation of such certificate shall
8 not render the association or its members or an export trad-
9 ing company or its members liable under the antitrust laws
10 for such export trade, export trade activities, or methods of
11 operation engaged in during such period.".

12 TECHNICAL AMENDMENT

13 SEC. 203. (a) The Webb-Pomerene Act (15 U.S.C.
14 61–66) is amended by inserting immediately before section 3
15 (15 U.S.C. 63) the following:

16 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
17 ATIONS PERMITTED.".

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

21 ADMINISTRATION; ENFORCEMENT; REPORTS

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

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

1 (2) by inserting immediately before such section
2 the following:
3 "SEC. 11. SHORT TITLE.".
4 (b) The Webb-Pomerene Act (15 U.S.C. 61–66) is
5 amended by striking out sections 4 and 5 (15 U.S.C. 64 and
6 65) and inserting in lieu thereof the following sections:
7 "SEC. 4. CERTIFICATION.
8 "(a) PROCEDURE FOR APPLICATION.—Any association
9 or export trading company seeking certification under this
10 Act shall file with the Secretary a written application for
11 certification setting forth the following:
12 "(1) The name of the association or export trad-
13 ing company.
14 "(2) The location of all of the offices or places of
15 business of the association or export trading company
16 in the United States and abroad.
17 "(3) The names and addresses of all of the offi-
18 cers, stockholders, and members of the association or
19 export trading company.
20 "(4) A copy of the certificate or articles of
21 incorporation and bylaws of the association or export
22 trading company, if the association or export trading
23 company is a corporation; or a copy of the articles,
24 partnership, joint venture, or other agreement or con-
25 tract under which the association or export trading

1 company conducts or proposes to conduct its export
2 trade activities or contract of association, if the associ-
3 ation or export trading company is unincorporated.
4 "(5) A description of the goods and services which
5 the association or export trading company or the mem-
6 bers of the association or export trading company
7 export or propose to export.
8 "(6) The export trade activities in which the asso-
9 ciation or export trading company intends to engage
10 and the methods by which the association or export
11 trading company conducts or proposes to conduct
12 export trade in the described goods or services, includ-
13 ing, but not limited to, any agreements to sell exclu-
14 sively to or through the association or export trading
15 company, any agreements with foreign persons who
16 may act as joint selling agents, any agreements to ac-
17 quire a foreign selling agent, any agreements for pool-
18 ing tangible or intangible property or resources, or any
19 territorial, price-maintenance, membership, or other re-
20 strictions to be imposed upon members of the associ-
21 ation or export trading company.
22 "(7) Any other information which the Secretary
23 may request concerning the organization, operation,
24 management, or finances of the association or export
25 trading company; the relation of the association or

1 export trading company to other associations, corpora-
2 tions, partnerships, and individuals; and the effects of
3 the association or export trading company on competi-
4 tion or potential competition. The Secretary may re-
5 quest such information as part of an initial application
6 for certification or as a necessary supplement thereto.
7 The Secretary may not request information under this
8 paragraph which is not reasonably available to the
9 person making the application or which is not neces-
10 sary for certification of the association or export trad-
11 ing company.
12 "(b) ISSUANCE OF CERTIFICATE.—
13 "(1) NINETY-DAY PERIOD.—The Secretary shall
14 issue a certificate to an association or export trading
15 company within 90 days after receiving the application
16 for certification or necessary supplement thereto if the
17 Secretary, after consultation with the Attorney Gener-
18 al and Commission, determines that the association and
19 its export trade, export trade activities, and methods of
20 operation, or the export trading company and its
21 export trade, export trade activities, and methods of
22 operation, meet the requirements of section 2 of this
23 Act. The certificate shall specify the permissible export
24 trade, export trade activities, and methods of operation
25 of the association or export trading company and shall

1 include any terms and conditions the Secretary consid-
2 ers necessary to comply with the requirements of sec-
3 tion 2 of this Act. The Secretary shall deliver to the
4 Attorney General and the Commission a copy of any
5 certificate that the Secretary proposes to issue under
6 this section.

7 "(2) EXPEDITED CERTIFICATION.—In those in-
8 stances where the temporary nature of the export trade
9 activities of an association or export trading company,
10 deadlines for bidding on contracts or filling orders, or
11 any other circumstances beyond the control of an asso-
12 ciation or export trading company which have a signifi-
13 cant impact on its export trade, make the 90-day
14 period for approval of an application provided in para-
15 graph (1) of this subsection, or for approval of an appli-
16 cation for an amendment provided in subsection (c) of
17 this section, impractical for the association or export
18 trading company seeking certification, such association
19 or export trading company may request and the Secre-
20 tary may grant expedited action on the application.

21 "(3) APPEAL OF DETERMINATION.—If the Secre-
22 tary determines not to issue a certificate to an associ-
23 ation or export trading company which has submitted
24 an application under this section for certification or for
25 amendment of a certificate, the Secretary shall—

1 "(A) notify the association or export trading
2 company of that determination and the reasons for
3 the determination, and
4 "(B) upon the request of the association or
5 export trading company, afford the association or
6 export trading company an opportunity for a hear-
7 ing with respect to that determination, in accord-
8 ance with sections 556 and 557 of title 5, United
9 States Code.
10 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
11 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
12 terial change in the membership, export trade, export trade
13 activities, or methods of operation of an association or export
14 trading company to which a certificate has been issued under
15 this section, the association or export trading company shall
16 report such change to the Secretary and may apply to the
17 Secretary for an amendment of its certificate. Any applica-
18 tion for an amendment to a certificate shall set forth the re-
19 quested amendment and the reasons for the requested amend-
20 ment. Any request for the amendment of a certificate shall be
21 treated in the same manner as an original application for a
22 certificate. If the request is filled within 30 days after a ma-
23 terial change which requires the amendment, and if the re-
24 quested amendment is approved, then there shall be no inter-
25 ruption in the period for which the certificate is in effect.

1 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
2 BY SECRETARY.—After notifying the association or export
3 trading company involved and after an opportunity for a
4 hearing in accordance with section 554 of title 5, United
5 States Code, the Secretary—
6 "(1) may require that the organization or oper-
7 ation of the association or export trading company be
8 modified to correspond with its certificate, or
9 "(2) shall, upon a determination that the export
10 trade, export trade activities, or methods of operation
11 of the association or export trading company no longer
12 meet the requirements of section 2 of this Act, revoke
13 the certificate or make such amendments as may be
14 necessary to satisfy the requirements of such section.
15 "(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
16 ATTORNEY GENERAL OR COMMISSION.—
17 "(1) COURT ACTION.—The Attorney General or
18 the Commission may bring an action in an appropriate
19 United States district court against an association or
20 its members or an export trading company or its mem-
21 bers to invalidate, in whole or in part, a certificate
22 issued under this section to the association or export
23 trading company on the ground that the export trade,
24 export trade activities, or methods of operation of the
25 association or export trading company fail or have

1 failed to meet the requirements of section 2 of this Act.
2 The Attorney General or Commission may not file
3 such action until 30 days after notifying the association
4 or export trading company or members concerned of
5 the intent to file the action. The court shall consider de
6 novo any issues presented in any such action. If the
7 court finds that any requirement of section 2 is not
8 met, the court shall issue an order declaring the certifi-
9 cate, in whole or in part, invalid and may issue any
10 other order necessary to meet the requirements of sec-
11 tion 2 and to carry out the purposes of this Act. Any
12 action brought under this subsection shall be consid-
13 ered an action described in section 1337 of title 28,
14 United States Code.

15 "(2) STANDING.—No person other than the At-
16 torney General or Commission shall have standing to
17 bring an action against an association or its members
18 or an export trading company or its members for fail-
19 ure of the association or export trading company or the
20 export trade, export trade activities, or methods of op-
21 eration of the association or export trading company to
22 meet the requirements of section 2 of this Act.

23 "SEC. 5. GUIDELINES.

24 "(a) INITIAL PROPOSED GUIDELINES.—Within 90
25 days after the date of enactment of the Export Trading Com-

1 pany Act of 1981, the Secretary, after consultation with the
2 Attorney General and the Commission, shall publish pro-
3 posed guidelines for determining whether export trade,
4 export trade activities, and methods of operation of an associ-
5 ation or export trading company meet the requirements of
6 section 2 of this Act.

7 "(b) PUBLIC COMMENT PERIOD.—After publishing pro-
8 posed guidelines pursuant to subsection (a), and any proposed
9 revision of such guidelines, interested parties shall have 30
10 days to comment on the proposed guidelines or proposed re-
11 vision. The Secretary shall review any such comments re-
12 ceived and, after consultation with the Attorney General and
13 the Commission, shall publish final guidelines within 30 days
14 after the last day on which comments may be made under the
15 preceding sentence.

16 "(c) PERIODIC REVISION.—After publication of the
17 final guidelines pursuant to subsection (b), the Secretary shall
18 periodically review the guidelines and, after consultation with
19 the Attorney General and the Commission, shall, in accord-
20 ance with the procedures in this section, make any necessary
21 revisions in the guidelines.

22 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
23 ACT.—The promulgation of guidelines under this section
24 shall not be considered rule making for purposes of sub-
25 chapter II of chapter 5 of title 5, United States Code.

1 "SEC. 6. ANNUAL REPORTS.

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

8 "SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL
9 REPORT INFORMATION.

10 "(a) GENERAL RULE.—Portions of applications for cer-
11 tification and amendments thereto and reports of material
12 changes, filed under section 4 of this Act, and annual reports
13 submitted under section 6 of this Act, that contain trade se-
14 crets or confidential business or financial information, the dis-
15 closure of which would harm the competitive position of the
16 person submitting such information shall be confidential, and,
17 except as authorized by this section, no officer or employee,
18 or former officer or employee, of the United States shall dis-
19 close any such confidential information.

20 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
21 MISSION.—The Secretary shall make available applications
22 for certification and for amendments thereto and reports of
23 material changes, filed under section 4 of this Act, and
24 annual reports submitted pursuant to section 6 of this Act, or
25 any information derived from such applications or reports, to
26 the Attorney General or Commission, or any employee or

1 officer thereof, for official use in connection with an investi-
2 gation or judicial or administrative proceeding under this Act
3 or the antitrust laws to which the United States or the Com-
4 mission is or may be a party. The Secretary may disclose any
5 such document or information only upon a prior certification
6 by the recipient of the document or information that the doc-
7 ument or information will be maintained in confidence and
8 will only be used for such official law enforcement purposes.
9 "(c) DISCLOSURE TO CONGRESS.—Nothing in this sec-
10 tion shall be construed to authorize the withholding of infor-
11 mation from the Congress, and any information obtained
12 under this Act shall be made available upon request to any
13 committee or subcommittee of Congress of appropriate juris-
14 diction.
15 "SEC. 8. INTERNATIONAL OBLIGATIONS.
16 "The Secretary may require any association or export
17 trading company certified under this Act to modify its oper-
18 ations so as to be consistent with any international obligation
19 which the United States assumes by treaty or statute.
20 "SEC. 9. REGULATIONS.
21 "The Secretary, after consultation with the Attorney
22 General and the Commission, shall issue such regulations as
23 may be necessary to carry out the purposes of this Act.

1 "SEC. 10. TASK FORCE STUDY.

2 "Five years after the date of enactment of the Export
3 Trading Company Act of 1980, the President shall appoint a
4 task force to study the effect of the operation of this Act on
5 domestic competition and on the trade deficit of the United
6 States and to recommend either continuation, revision, or
7 termination of this Act. Such task force shall, within one year
8 after its appointment, complete such study and submit such
9 recommendations to the President.".

10 CONTINUING EXEMPTION FOR EXISTING ASSOCIATIONS;
11 AUTOMATIC CERTIFICATION

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

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

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

13 TITLE III—TAXATION OF EXPORT TRADING
14 COMPANIES

15 APPLICATION OF DISC RULES TO EXPORT TRADING
16 COMPANIES

17 SEC. 301. (a) Paragraph (3) of section 992(d) of the In-
18 ternal Revenue Code of 1954 (relating to ineligible corpora-
19 tions) is amended by inserting before the comma at the end
20 thereof the following: "(other than a financial institution
21 which is a banking organization as defined in section
22 101(a)(1) of the Export Trading Company Act of 1980 in-
23 vesting in the voting stock of an export trading company (as
24 defined in section 3(5) of the Export Trading Company Act

1 of 1980) in accordance with the provisions of section 101 of
2 such Act)".
3 (b) Paragraph (1) of section 993(a) of the Internal Reve-
4 nue Code of 1954 (relating to qualified export receipts of a
5 DISC) is amended—
6 (1) by striking out "and" at the end of subpara-
7 graph (G),
8 (2) by striking out the period at the end of sub-
9 paragraph (H) and inserting in lieu thereof ", and",
10 and
11 (3) by adding at the end thereof the following new
12 subparagraph:
13 "(I) in the case of a DISC which is an
14 export trading company (as defined in section 3(5)
15 of the Export Trading Company Act of 1980), or
16 which is a subsidiary of such a company, gross re-
17 ceipts from the export of services produced in the
18 United States (as defined in section 3(3) of such
19 Act) or from export trade services (as defined in
20 section 3(4) of such Act.".
21 (c) The Secretary of Commerce, after consultation with
22 the Secretary of the Treasury, shall develop, prepare, and
23 distribute to interested parties, including potential exporters,
24 information concerning the manner in which an export trad-
25 ing company can utilize the provisions of part IV of sub-

1 chapter N of chapter 1 of the Internal Revenue Code of 1954
2 (relating to domestic international sales corporations), and
3 any advantages or disadvantages which may reasonably be
4 expected from the election of DISC status or the establish-
5 ment of a subsidiary corporation which is a DISC.

6 (d) The amendments made by this section shall apply
7 with respect to taxable years beginning after December 31,
8 1982.

9 SUBCHAPTER S STATUS FOR EXPORT TRADING
10 COMPANIES

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

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

23 (c) The amendments made by this section shall apply
24 with respect to taxable years beginning after December 31,
25 1982.

O

97TH CONGRESS
1ST SESSION

H. R. 2123

To encourage the formation and operation of export trading companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1981

Mr. GIBBONS introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, the Judiciary, and Ways and Means

---

A BILL

To encourage the formation and operation of export trading companies, 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 SHORT TITLE

4 SECTION 1. This Act may be cited as "The Export
5 Trading Company Act of 1981".

6 FINDINGS; DECLARATION OF PURPOSE

7 SEC. 2. (a) The Congress finds that—
8 (1) United States exports are responsible for cre-
9 ating and maintaining one out of every nine manufac-

1 turing jobs in the United States and for generating one
2 out of every seven dollars of total United States goods
3 produced;
4 (2) the rapidly growing service-related industries
5 are vital to the well-being of the United States econo-
6 my inasmuch as they create jobs for seven out of every
7 ten Americans, provide 65 percent of the Nation's
8 gross national product, and offer the greatest potential
9 for significantly increased industrial trade involving fin-
10 ished products;
11 (3) trade deficits contribute to the decline of the
12 dollar on international currency markets and have an
13 inflationary impact on the United States economy;
14 (4) trade barriers and disincentives reduce the
15 competitive position of, and the export opportunities
16 for, United States goods and services;
17 (5) tens of thousands of small- and medium-sized
18 United States businesses produce exportable goods or
19 services but do not engage in exporting;
20 (6) export trade services in the United States are
21 fragmented into a multitude of separate functions, and
22 companies attempting to offer export trade services
23 lack financial leverage to reach a significant number of
24 potential United States exporters;

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

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

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

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

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

1 (b) It is the purpose of this Act to increase United
2 States exports of products and services by encouraging more
3 efficient provision of export trade services to American pro-
4 ducers and suppliers and by identifying and reducing trade
5 barriers and disincentives, in particular by establishing an
6 office within the Department of Commerce to encourage and
7 promote the formation of export trade associations and export
8 trading companies, by making the provisions of the Webb-
9 Pomerene Act explicitly applicable to the exportation of serv-
10 ices, and by transferring the responsibility for administering
11 that Act from the Federal Trade Commission to the Secre-
12 tary of Commerce.

13 DEFINITIONS

14 SEC. 3. (a) As used in this Act—

15 (1) the term "export trade" means trade or com-
16 merce in goods produced in the United States, or serv-
17 ices produced in the United States, which are ex-
18 ported, or in the course of being exported, from the
19 United States to any other country;

20 (2) the term "goods produced in the United
21 States" means tangible property manufactured, pro-
22 duced, grown, or extracted in the United States, not
23 more than 50 percent of the fair market value (as de-
24 termined under regulations issued by the Secretary) of

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 percent of the fair
9 market value (as determined under regulations issued
10 by the Secretary) of which is provided by United
11 States citizens or is otherwise attributable to the
12 United States;
13 (4) the term "export trade services" includes, but
14 is not limited to, international market research, adver-
15 tising, marketing, insurance, legal assistance, transpor-
16 tation, including trade documentation and freight for-
17 warding, communication and processing of foreign
18 orders to and for exporters and foreign purchasers,
19 warehousing, foreign exchange, and financing, when
20 provided in order to facilitate the export of goods pro-
21 duced in the United States or services produced in the
22 United States;
23 (5) the term "export trading company" means a
24 company which does business under the laws of the

1 United States or any State and which is organized and
2 operated principally for the purposes of—
3 (A) exporting goods produced in the United
4 States or services produced in the United States;
5 and
6 (B) facilitating the exportation of goods pro-
7 duced in the United States and services produced
8 in the United States by unaffiliated persons by
9 providing one or more export trade services;
10 (6) the term "State" means any of the several
11 States of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, the Virgin Islands,
13 American Samoa, Guam, the Commonwealth of the
14 Northern Mariana Islands, and the Trust Territory of
15 the Pacific Islands;
16 (7) the term "United States" means the several
17 States of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, the Virgin Islands,
19 American Samoa, Guam, the Commonwealth of the
20 Northern Mariana Islands, and the Trust Territory of
21 the Pacific Islands;
22 (8) the term "Secretary" means the Secretary of
23 Commerce; and

1 (9) the term "company" means any person or any
2 corporation, partnership, association, or similar
3 organization.
4 (b) The Secretary may by regulation further define any
5 term defined in subsection (a), in order to carry out the pur-
6 poses of this Act.

7 OFFICE OF EXPORT TRADE IN DEPARTMENT OF
8 COMMERCE

9 SEC. 4. The Secretary shall establish within the De-
10 partment of Commerce an office to promote and encourage to
11 the greatest extent feasible the formation of export trade as-
12 sociations and export trading companies. Such office shall
13 provide information and advice to interested persons and
14 shall provide a referral service to facilitate contact between
15 producers of exportable goods and services and firms offering
16 export trade services.

17 TITLE I—EXPORT TRADING COMPANIES

18 INVESTMENT IN EXPORT TRADING COMPANIES BY
19 BANKING ORGANIZATIONS

20 SEC. 101. (a) For purposes of this section—
21 (1) the term "banking organization" means any
22 State member bank, State nonmember insured bank,
23 national bank, Federal savings bank, bankers' bank,
24 bank holding company, Edge Act Corporation, or
25 Agreement Corporation;

1 (2) the term "State bank" means any bank which
2 is incorporated under the laws of any State (other than
3 the District of Columbia);
4 (3) the term "District bank" means any bank
5 (except a national bank) which is operating under the
6 Code of Law for the District of Columbia;
7 (4) the term "State member bank" means any
8 State bank, including a bankers' bank, which is a
9 member of the Federal Reserve System;
10 (5) the term "State nonmember insured bank"
11 means any State bank, including a bankers' bank,
12 which is not a member of the Federal Reserve System,
13 but the deposits of which are insured by the Federal
14 Deposit Insurance Corporation;
15 (6) the term "bankers' bank" means any bank
16 which (A) is organized solely to do business with other
17 financial institutions, (B) is owned primarily by the fi-
18 nancial institutions with which it does business, and (C)
19 does not do business with the general public;
20 (7) the term "bank holding company" has the
21 same meaning as in the Bank Holding Company Act of
22 1956;
23 (8) the term "Edge Act Corporation" means a
24 corporation organized under section 25(a) of the Fed-
25 eral Reserve Act;

1 (9) the term "Agreement Corporation" means a
2 corporation operating subject to section 25 of the Fed-
3 eral Reserve Act;
4 (10) the term "appropriate Federal banking
5 agency" means—
6 (A) the Comptroller of the Currency with re-
7 spect to a national bank or a District bank;
8 (B) the Board of Governors of the Federal
9 Reserve System with respect to a State member
10 bank, bank holding company, Edge Act Corpora-
11 tion or Agreement Corporation;
12 (C) the Federal Deposit Insurance Corpora-
13 tion with respect to a State nonmember insured
14 bank; and
15 (D) the Federal Home Loan Bank Board
16 with respect to a Federal savings bank;
17 (11) the term "capital and surplus" means paid in
18 an unimpaired capital and surplus, and includes undi-
19 vided profits and such other items as the appropriate
20 Federal banking agency considers appropriate;
21 (12) an "affiliate" of a bank organization or
22 export trading company is a person who controls, is
23 controlled by, or is under common control with such
24 banking organization or export trading company;

1 (13) the term "subsidiary" means, with respect to
2 any banking organization—
3 (A) any company 25 percent or more of
4 whose voting shares (excluding shares owned by
5 the United States) are directly or indirectly owned
6 or controlled by such banking organization or are
7 held by it with power to vote;
8 (B) any company the election of a majority of
9 whose directors is controlled in any manner by
10 such banking organization; or
11 (C) any company with respect to the man-
12 agement or policies of which such banking organi-
13 zation has the power, directly or indirectly, to ex-
14 ercise a controlling influence, as determined by
15 the appropriate Federal banking agency, after
16 notice and opportunity for a hearing;
17 (14) a banking organization has control over any
18 company if—
19 (A) the banking organization directly or indi-
20 rectly or acting through one or more other person
21 owns, controls, or has power to vote 25 percent
22 or more of any class of voting securities of the
23 company;

1 (B) the banking organization controls in any
2 manner the election of a majority of the directors
3 or trustees of the company; or
4 (C) the appropriate Federal banking agency
5 determines, after notice and opportunity for a
6 hearing, that the banking organization directly or
7 indirectly exercises a controlling influence over
8 the management or policies of the company; and
9 (15) the term "export trading company" has the
10 same meaning as in section 3(5) of this Act, and means
11 any company organized and operating principally for
12 the purpose of providing export trade services, as de-
13 fined in section 3(4) of this Act.
14 (b)(1) Notwithstanding any other provision of law, a
15 banking organization, subject to the limitations of subsection
16 (c) and the procedures of this subsection, may invest directly
17 and indirectly up to 5 percent, in the aggregate, of its consol-
18 idated capital and surplus (or, in the case of an Edge Act
19 Corporation or Agreement Corporation not engaged in bank-
20 ing, 25 percent) in the voting stock or other evidences of
21 ownership of one or more export trading companies. A bank-
22 ing organization may—
23 (A) invest up to an aggregate amount of
24 $10,000,000 in one or more export trading companies
25 without the prior approval of the appropriate Federal

1 banking agency, if such investment does not cause an
2 export trading company to become a subsidiary of the
3 investing banking organization; and
4 (B) make investments in excess of an aggregate
5 amount of $10,000,000 in one or more export trading
6 companies, or make an investment or take any other
7 action which causes an export trading company to
8 become a subsidiary of the investing banking organiza-
9 tion or which will cause more than 50 percent of the
10 voting stock or other evidences of ownership of an
11 export trading company to be owned or controlled by
12 banking organizations, only if the banking organization
13 making such investments or taking such action notifies
14 the appropriate Federal banking agency of such invest-
15 ments or action and only if that banking organization
16 receives the prior approval of the appropriate Federal
17 banking agency for such investments or action.
18 (2) Any banking organization which makes an invest-
19 ment under paragraph (1)(A) shall promptly notify the appro-
20 priate Federal banking agency of such investment and shall
21 file such reports on such investment as such agency may re-
22 quire. If, after receipt of any such notification, the appropri-
23 ate Federal banking agency determines, after notice and op-
24 portunity for hearing, that the export trading company is a
25 subsidiary of the investing banking organization, the appro-

1 priate Federal banking organization may disapprove the in-
2 vestment or impose conditions on such investment under sub-
3 section (d). The appropriate Federal banking agency may
4 also require divestiture of any voting stock or other evidences
5 of ownership previously acquired, and may impose conditions
6 necessary for the termination of any controlling relationship.
7 (3) In the event of the failure of the appropriate Federal
8 banking agency to act on any application for approval under
9 paragraph (1)(B) of this subsection within the 90-day period
10 which begins on the date the application is received by the
11 appropriate Federal banking agency, the application shall be
12 deemed to have been granted.
13 (4) Before—
14 (A) a banking organization makes any investment
15 in an export trading company subsidiary other than an
16 investment for which notification has been made pursu-
17 ant to paragraph (1)(B), or
18 (B) an export trading company subsidiary of a
19 banking organization engages in any activity, including
20 the taking of title of goods or commodities, which was
21 not disclosed in any prior application for approval
22 under this section,
23 the banking organization shall notify the appropriate Federal
24 banking agency. The banking organization may make the in-
25 vestment described in subparagraph (A), or the export trad-

1 ing company subsidiary may engage in the activity described
2 in subparagraph (B), as the case may be—
3 (i) at the end of the 60-day period beginning on
4 the date on which the appropriate Federal banking
5 agency receives the notification required by this para-
6 graph, if such agency fails either to disapprove or to
7 impose conditions on such investment or activity,
8 (ii) subject to any conditions imposed by such
9 agency on such investment or activity during such 60-
10 day period, or
11 (iii) before the end of such 60-day period, if such
12 agency notifies the banking organization in writing of
13 its intent not to disapprove or impose conditions on the
14 investment or activity.
15 During such 60-day period, the appropriate Federal banking
16 agency may disapprove the proposed investment or activity
17 or impose conditions on such investment or activity under
18 subsection (d).
19 (5) In any case in which a banking organization makes
20 an investment, or an export trading company subsidiary of a
21 banking organization engages in an activity, of which notifi-
22 cation to, or approval by, the appropriate Federal banking
23 agency is required by this subsection, and that banking orga-
24 nization is a subsidiary of another banking organization
25 which is subject to the jurisdiction of another appropriate

1 Federal banking agency, such notification or approval need
2 only be made to or obtained from the appropriate Federal
3 banking agency for the banking organization which makes
4 the investment or whose export trading company engages in
5 the activity.

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

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

16 (3) A banking organization that owns any voting stock
17 or other evidences of ownership of an export trading com-
18 pany shall terminate its ownership of such stock if the export
19 trading company takes positions in commodities or commod-
20 ities contracts other than those necessary in the course of its
21 business operations.

22 (4) No banking organization holding voting stock or
23 other evidences of ownership of any export trading company
24 may extend credit or cause any affiliate to extend credit to
25 any export trading company or to customers of such company

1 on terms more favorable than those afforded similar borrow-
2 ers in similar circumstances, and such extension of credit
3 shall not involve more than the normal risk of repayment or
4 present other unfavorable features.

5 (d)(1) This subsection applies to investment or actions
6 described in subsection (b)(1)(B), any investment described in
7 subsection (b)(1)(A) in an export trading company which the
8 appropriate Federal banking organization determines is a
9 subsidiary of the banking organization making the invest-
10 ment, and any investment or activity described in subpara-
11 graph (A) or (B) of subsection (b)(4).

12 (2) Before the appropriate Federal banking agency exer-
13 cises the authority of this subsection to approve, disapprove,
14 or impose conditions on a proposed investment, action, or
15 activity, such agency shall transmit a copy of such proposal
16 to the Secretary of Commerce. The Secretary, not later than
17 30 days after the date on which such proposal is so transmit-
18 ted, may present to such agency the views of the Department
19 of Commerce on the proposal. In weighing the export related
20 benefits of such proposal, the appropriate Federal banking
21 agency shall consider any views of the Department of Com-
22 merce submitted under this paragraph.

23 (3) In the case of every investment, action, or activity to
24 which this subsection applies, the appropriate Federal bank-
25 ing agency shall take into consideration the financial and

1 managerial resources, competitive situation, and future pros-
2 pects of the banking organization and export trading compa-
3 ny concerned, and the benefits of the proposal to United
4 States business, industrial, and agricultural concerns, and to
5 improving United States competitiveness in world markets.
6 The appropriate Federal banking agency may not approve
7 any proposed investment, action, or activity to which this
8 subsection applies if it finds that the export benefits of such
9 proposal are outweighed in the public interest by any adverse
10 financial, managerial, competitive, or other banking factors
11 associated with the proposal. Any disapproval order issued
12 under this section shall contain a statement of the reasons
13 for such disapproval.

14 (4) In approving any investment, action, or activity to
15 which this subsection applies, the appropriate Federal bank-
16 ing agency may impose such conditions which, under the cir-
17 cumstances of the particular case, it considers necessary (A)
18 to limit a banking organization's financial exposure to an
19 export trading company or (B) to prevent possible conflicts of
20 interest or unsafe or unsound banking practices. With respect
21 to the taking of title to goods or commodities, or the holding
22 of title to inventory, by any export trading company subsidi-
23 ary of a banking organization, the appropriate Federal bank-
24 ing agencies shall issue regulations which establish standards
25 designed to ensure against any unsafe or unsound practices

1 that could adversely affect a controlling banking organization
2 investor. Such standards should be established not later than
3 270 days after the date of enactment of this Act. If an export
4 trading company subsidiary of a banking organization pro-
5 poses to take title to goods or commodities, or to hold title to
6 inventory, in a manner which does not conform to such
7 standards, or prior to the establishment of such standards, it
8 may only do so with the prior approval of the appropriate
9 Federal banking agency and subject to such conditions and
10 limitations as such agency may impose under this paragraph.
11 (5) In determining whether to impose any condition
12 under paragraph (4), the appropriate Federal banking agency
13 shall consider the size of the banking organization and export
14 trading company involved, the degree of investment and
15 other support to be provided by the banking organization to
16 the export trading company, and the identity, character, and
17 financial strength of any other investors in the export trading
18 company. The appropriate Federal banking agency shall not
19 impose any conditions or set standards for the taking of title
20 to goods or commodities, or the holding of title to inventory,
21 which conditions or standards unnecessarily disadvantage, re-
22 strict, or limit export trading companies in competing in
23 world markets or in achieving the purposes of section 2 of
24 this Act. In setting standards under paragraph (4) for the
25 taking of title to goods or commodities or the holding of title

1 to inventory, the appropriate Federal banking agencies shall
2 give special weight to the need to take such title in certain
3 kinds of trade transactions such as international barter trans-
4 actions.

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

16 (7) Not later than two years after the date of enactment
17 of this Act, the appropriate Federal banking agencies shall
18 submit to the Committee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee on Banking, Fi-
20 nance and Urban Affairs of the House of Representatives, a
21 report, prepared jointly by such agencies, on the implementa-
22 tion of this section. Such report shall contain the recommen-
23 dations of such agencies with respect to the implementation
24 of this section, any changes in United States law they recom-
25 mend to facilitate the financing of United States exports,

1 especially exports by small and medium-sized business con-
2 cerns, and the recommendations of such agencies on the ef-
3 fects of ownership of United States banks by foreign banking
4 organizations affiliated with trading companies doing business
5 in the United States.

6 (e) Any party aggrieved by an order of an appropriate
7 Federal banking agency under this section may obtain a
8 review of such order in the United States court of appeals for
9 any circuit in which such organization has its principal place
10 of business, or in the United States Court of Appeals for the
11 District of Columbia, by filing a notice of appeal in such court
12 within 30 days after the date of such order, and
13 simultaneously sending a copy of such notice by registered or
14 certified mail to the appropriate Federal banking agency. The
15 appropriate Federal banking agency shall promptly certify
16 and file in such court the record upon which the order was
17 based. The court shall set aside any order found to be (A)
18 arbitrary, capricious, an abuse of discretion, or otherwise not
19 in accordance with law; (B) contrary to constitutional right,
20 power, privilege, or immunity; (C) in excess of statutory ju-
21 risdiction, authority, or limitations, or short of statutory
22 rights; or (D) without observance of procedure required by
23 law. Except for violations of subsection (b)(3) of this section,
24 the court shall remand for further consideration by the appro-
25 priate Federal banking agency any order set aside solely for

1 procedural errors and may remand for further consideration
2 by the appropriate Federal banking agency any order set
3 aside for substantive errors. Upon remand, the appropriate
4 Federal banking agency shall, within 60 days after the date
5 of issuance of the court's order, correct any such procedural
6 error or, in the case of a substantive error, reconsider its
7 prior order. If the agency fails to act within such 60-day
8 period, the application or other matter which was the subject
9 of the review shall be deemed to have been granted as a
10 matter of law.

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

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

21 INITIAL INVESTMENTS AND OPERATING EXPENSES

22 SEC. 102. (a) The Economic Development Administra-
23 tion and the Small Business Administration shall, in consid-
24 ering applications by export trading companies for loans and
25 guarantees, including applications to make new investments

1 related to the export of goods produced in the United States
2 or services produced in the United States and to meet operat-
3 ing expenses, give special weight to export-related benefits,
4 including opening new markets for United States goods and
5 services abroad and encouraging the involvement of small or
6 medium-sized businesses or agricultural concerns in the
7 export market.

8 (b) There are authorized to be appropriated to carry out
9 this section $20,000,000 for each of the fiscal years 1982,
10 1983, 1984, and 1985. Amounts appropriated under this sub-
11 section shall be in addition to amounts appropriated under
12 any other provision of law.

13 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
14 INVENTORY

15 SEC. 103. The Export-Import Bank of the United
16 States shall provide guarantees for loans extended by finan-
17 cial institutions or other private creditors to export trading
18 companies as defined in section 3(5) of this Act, or to other
19 exports, when such loans are secured by export accounts re-
20 ceivable or inventories or exportable goods, and when in the
21 judgment of the Board of Directors—

22 (1) the private credit market is not providing ade-
23 quate financing to enable otherfise creditworthy
24 export trading companies or exporters to consummate
25 export transactions; and

1 (2) such guarantees would facilitate expansion of
2 exports which would not otherwise occur.
3 Guarantees provided under this section shall be subject to
4 limitations contained in annual appropriations Acts.

5 TITLE II—ANTITRUST PROVISIONS

6 DEFINITIONS

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

10 "SECTION 1. DEFINITIONS.

11 "As used in this Act—

12 "(1) EXPORT TRADE.—The term 'export trade'
13 means trade or commerce in goods or services ex-
14 ported, or in the course of being exported, from the
15 United States to any other country.

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

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

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

24 "(C) financial, insurance, transportation, and
25 communication services.

1 "(3) EXPORT TRADE ACTIVITIES.—The term
2 'export trade activities' means activities and agree-
3 ments made in the course of export trade.
4 "(4) STATE.—The term 'State' includes the Dis-
5 trict of Columbia.
6 "(5) UNITED STATES.—The term 'United States'
7 means the States and the territories and possessions of
8 the United States.
9 "(6) TRADE WITHIN THE UNITED STATES.—The
10 term 'trade within the United States' means trade or
11 commerce within any territory or possession of the
12 United States or between or among the States and ter-
13 ritories and possessions of the United States.
14 "(7) METHODS OF OPERATION.—The term
15 'methods of operation' means the methods by which an
16 association or export trading company conducts or pro-
17 poses to conduct export trade.
18 "(8) ASSOCIATION.—The term 'association'
19 means any combination, by contract or other arrange-
20 ment, of two or more persons (A) who are citizens of
21 the United States, or (B) which are partnerships or
22 corporations created and existing under the laws of any
23 State or of the United States.
24 "(9) EXPORT TRADING COMPANY.—The term
25 'export trading company' means an export trading

1 company as defined in section 3(5) of the Export Trad-
2 ing Company Act of 1980.
3 "(10) ANTITRUST LAWS.—The term 'antitrust
4 laws' means the Act of July 2, 1890 (commonly
5 known as the Sherman Act; 15 U.S.C. 1–7); sections
6 73 through 77 of the Act of August 27, 1894 (com-
7 monly known as the Wilson Tariff Act; 15 U.S.C.
8 8–11); and the Clayton Act (15 U.S.C. 12 et seq.);
9 "(11) SECRETARY.—The term 'Secretary' means
10 the Secretary of Commerce.
11 "(12) ATTORNEY GENERAL.—The term 'Attorney
12 General' means the Attorney General of the United
13 States.
14 "(13) COMMISSION.—The term 'Commission'
15 means the Federal Trade Commission.".
16 ANTITRUST EXEMPTION
17 SEC. 202. The Webb-Pomerene Act (15 U.S.C. 61–66)
18 is amended by striking out section 2 (15 U.S.C. 62) and
19 inserting in lieu thereof the following:
20 **"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**
21 "(a) ELIGIBILITY.—Any association entered into for the
22 sole purpose of engaging in export trade and actually en-
23 gaged or proposed to be engaged solely in such export trade
24 and the export trade activities and methods of operation of
25 such association, and the export trade, export trade activities,

1 and methods of operation of any export trading company,
2 shall, when such association or export trading company is
3 certified in accordance with the procedures set forth in this
4 Act, be eligible for the exemption provided in subsection (b),
5 if—

6 "(1) such association or its export trade, export
7 trade activities, or methods of operation, or the export
8 trade, export trade activities, or methods of operation
9 of such export trading company are not in restraint of
10 trade within the United States and are not in restraint
11 of the export trade of any domestic competitor of such
12 association or export trading company; and

13 "(2) such association or export trading company
14 does not, either in the United States or elsewhere,
15 enter into any agreement, understanding, or conspiracy
16 or do any act which artificially or intentionally en-
17 hances or depresses prices within the United States of
18 goods or services of the class exported by such associ-
19 ation or export trading company, or which substantially
20 lessens competition within the United States or other-
21 wise restrains trade in the United States.

22 "(b) EXEMPTION.—An association or export trading
23 company and the members of such association or export trad-
24 ing company are exempt from the operation of the antitrust
25 laws with respect to the export trade, export trade activities,

1 or methods of operation of such association or export trading
2 company that are specified in a certificate issued in accord-
3 ance with the procedures set forth in this Act and that are
4 carried out in conformity with the provisions, terms, and con-
5 ditions prescribed in such certificate and are engaged in
6 during the period in which such certificate is in effect. The
7 subsequent revocation or invalidation of such certificate shall
8 not render the association or its members or an export trad-
9 ing company or its members liable under the antitrust laws
10 for such export trade, export trade activities, or methods of
11 operation engaged in during such period.".

12 TECHNICAL AMENDMENT

13 SEC. 203. (a) The Webb-Pomerene Act (15 U.S.C.
14 61–66) is amended by inserting immediately before section 3
15 (15 U.S.C. 63) the following:

16 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
17 ATIONS PERMITTED.".

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

21 ADMINISTRATION; ENFORCEMENT; REPORTS

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

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

1 (2) by inserting immediately before such section
2 the following:
3 "SEC. 11. SHORT TITLE.".
4 (b) The Webb-Pomerene Act (15 U.S.C. 61–66) is
5 amended by striking out sections 4 and 5 (15 U.S.C. 64 and
6 65) and inserting in lieu thereof the following sections:
7 "SEC. 4. CERTIFICATION.
8 "(a) PROCEDURE FOR APPLICATION.—Any association
9 or export trading company seeking certification under this
10 Act shall file with the Secretary a written application for
11 certification setting forth the following:
12 "(1) The name of the association or export trad-
13 ing company.
14 "(2) The location of all of the offices or places of
15 business of the association or export trading company
16 in the United States and abroad.
17 "(3) The names and addresses of all of the offi-
18 cers, stockholders, and members of the association or
19 export trading company.
20 "(4) A copy of the certificate or articles of
21 incorporation and bylaws of the association or export
22 trading company, if the association or export trading
23 company is a corporation; or a copy of the articles,
24 partnership, joint venture, or other agreement or con-
25 tract under which the association or export trading

1 company conducts or proposes to conduct its export
2 trade activities or contract of association, if the associ-
3 ation or export trading company is unincorporated.
4 "(5) A description of the goods and services which
5 the association or export trading company or the mem-
6 bers of the association or export trading company
7 export or propose to export.
8 "(6) The export trade activities in which the asso-
9 ciation or export trading company intends to engage
10 and the methods by which the association or export
11 trading company conducts or proposes to conduct
12 export trade in the described goods or services, includ-
13 ing, but not limited to, any agreements to sell exclu-
14 sively to or through the association or export trading
15 company, any agreements with foreign persons who
16 may act as joint selling agents, any agreements to ac-
17 quire a foreign selling agent, any agreements for pool-
18 ing tangible or intangible property or resources, or any
19 territorial, price-maintenance, membership, or other re-
20 strictions to be imposed upon members of the associ-
21 ation or export trading company.
22 "(7) Any other information which the Secretary
23 may request concerning the organization, operation,
24 management, or finances of the association or export
25 trading company; the relation of the association or

1 export trading company to other associations, corpora-
2 tions, partnerships, and individuals; and the effects of
3 the association or export trading company on competi-
4 tion or potential competition. The Secretary may re-
5 quest such information as part of an initial application
6 for certification or as a necessary supplement thereto.
7 The Secretary may not request information under this
8 paragraph which is not reasonably available to the
9 person making the application or which is not neces-
10 sary for certification of the association or export trad-
11 ing company.
12 "(b) ISSUANCE OF CERTIFICATE.—
13 "(1) NINETY-DAY PERIOD.—The Secretary shall
14 issue a certificate to an association or export trading
15 company within 90 days after receiving the application
16 for certification or necessary supplement thereto if the
17 Secretary, after consultation with the Attorney Gener-
18 al and Commission, determines that the association and
19 its export trade, export trade activities, and methods of
20 operation, or the export trading company and its
21 export trade, export trade activities, and methods of
22 operation, meet the requirements of section 2 of this
23 Act. The certificate shall specify the permissible export
24 trade, export trade activities, and methods of operation
25 of the association or export trading company and shall

1 include any terms and conditions the Secretary consid-
2 ers necessary to comply with the requirements of sec-
3 tion 2 of this Act. The Secretary shall deliver to the
4 Attorney General and the Commission a copy of any
5 certificate that the Secretary proposes to issue under
6 this section.

7 "(2) EXPEDITED CERTIFICATION.—In those in-
8 stances where the temporary nature of the export trade
9 activities of an association or export trading company,
10 deadlines for bidding on contracts or filling orders, or
11 any other circumstances beyond the control of an asso-
12 ciation or export trading company which have a signifi-
13 cant impact on its export trade, make the 90-day
14 period for approval of an application provided in para-
15 graph (1) of this subsection, or for approval of an appli-
16 cation for an amendment provided in subsection (c) of
17 this section, impractical for the association or export
18 trading company seeking certification, such association
19 or export trading company may request and the Secre-
20 tary may grant expedited action on the application.

21 "(3) APPEAL OF DETERMINATION.—If the Secre-
22 tary determines not to issue a certificate to an associ-
23 ation or export trading company which has submitted
24 an application under this section for certification or for
25 amendment of a certificate, the Secretary shall—

1 "(A) notify the association or export trading
2 company of that determination and the reasons for
3 the determination, and
4 "(B) upon the request of the association or
5 export trading company, afford the association or
6 export trading company an opportunity for a hear-
7 ing with respect to that determination, in accord-
8 ance with sections 556 and 557 of title 5, United
9 States Code.
10 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
11 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
12 terial change in the membership, export trade, export trade
13 activities, or methods of operation of an association or export
14 trading company to which a certificate has been issued under
15 this section, the association or export trading company shall
16 report such change to the Secretary and may apply to the
17 Secretary for an amendment of its certificate. Any applica-
18 tion for an amendment to a certificate shall set forth the re-
19 quested amendment and the reasons for the requested amend-
20 ment. Any request for the amendment of a certificate shall be
21 treated in the same manner as an original application for a
22 certificate. If the request is filled within 30 days after a ma-
23 terial change which requires the amendment, and if the re-
24 quested amendment is approved, then there shall be no inter-
25 ruption in the period for which the certificate is in effect.

1 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
2 BY SECRETARY.—After notifying the association or export
3 trading company involved and after an opportunity for a
4 hearing in accordance with section 554 of title 5, United
5 States Code, the Secretary—
6 "(1) may require that the organization or oper-
7 ation of the association or export trading company be
8 modified to correspond with its certificate, or
9 "(2) shall, upon a determination that the export
10 trade, export trade activities, or methods of operation
11 of the association or export trading company no longer
12 meet the requirements of section 2 of this Act, revoke
13 the certificate or make such amendments as may be
14 necessary to satisfy the requirements of such section.
15 "(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
16 ATTORNEY GENERAL OR COMMISSION.—
17 "(1) COURT ACTION.—The Attorney General or
18 the Commission may bring an action in an appropriate
19 United States district court against an association or
20 its members or an export trading company or its mem-
21 bers to invalidate, in whole or in part, a certificate
22 issued under this section to the association or export
23 trading company on the ground that the export trade,
24 export trade activities, or methods of operation of the
25 association or export trading company fail or have

1 failed to meet the requirements of section 2 of this Act.
2 The Attorney General or Commission may not file
3 such action until 30 days after notifying the association
4 or export trading company or members concerned of
5 the intent to file the action. The court shall consider de
6 novo any issues presented in any such action. If the
7 court finds that any requirement of section 2 is not
8 met, the court shall issue an order declaring the certifi-
9 cate, in whole or in part, invalid and may issue any
10 other order necessary to meet the requirements of sec-
11 tion 2 and to carry out the purposes of this Act. Any
12 action brought under this subsection shall be consid-
13 ered an action described in section 1337 of title 28,
14 United States Code.

15 "(2) STANDING.—No person other than the At-
16 torney General or Commission shall have standing to
17 bring an action against an association or its members
18 or an export trading company or its members for fail-
19 ure of the association or export trading company or the
20 export trade, export trade activities, or methods of op-
21 eration of the association or export trading company to
22 meet the requirements of section 2 of this Act.

23 "SEC. 5. GUIDELINES.

24 "(a) INITIAL PROPOSED GUIDELINES.—Within 90
25 days after the date of enactment of the Export Trading Com-

1 pany Act of 1981, the Secretary, after consultation with the
2 Attorney General and the Commission, shall publish pro-
3 posed guidelines for determining whether export trade,
4 export trade activities, and methods of operation of an associ-
5 ation or export trading company meet the requirements of
6 section 2 of this Act.

7 "(b) PUBLIC COMMENT PERIOD.—After publishing pro-
8 posed guidelines pursuant to subsection (a), and any proposed
9 revision of such guidelines, interested parties shall have 30
10 days to comment on the proposed guidelines or proposed re-
11 vision. The Secretary shall review any such comments re-
12 ceived and, after consultation with the Attorney General and
13 the Commission, shall publish final guidelines within 30 days
14 after the last day on which comments may be made under the
15 preceding sentence.

16 "(c) PERIODIC REVISION.—After publication of the
17 final guidelines pursuant to subsection (b), the Secretary shall
18 periodically review the guidelines and, after consultation with
19 the Attorney General and the Commission, shall, in accord-
20 ance with the procedures in this section, make any necessary
21 revisions in the guidelines.

22 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
23 ACT.—The promulgation of guidelines under this section
24 shall not be considered rule making for purposes of sub-
25 chapter II of chapter 5 of title 5, United States Code.

1 "SEC. 6. ANNUAL REPORTS.

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

8 "SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL
9 REPORT INFORMATION.

10 "(a) GENERAL RULE.—Portions of applications for cer-
11 tification and amendments thereto and reports of material
12 changes, filed under section 4 of this Act, and annual reports
13 submitted under section 6 of this Act, that contain trade se-
14 crets or confidential business or financial information, the dis-
15 closure of which would harm the competitive position of the
16 person submitting such information shall be confidential, and,
17 except as authorized by this section, no officer or employee,
18 or former officer or employee, of the United States shall dis-
19 close any such confidential information.

20 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
21 MISSION.—The Secretary shall make available applications
22 for certification and for amendments thereto and reports of
23 material changes, filed under section 4 of this Act, and
24 annual reports submitted pursuant to section 6 of this Act, or
25 any information derived from such applications or reports, to
26 the Attorney General or Commission, or any employee or

1 officer thereof, for official use in connection with an investi-
2 gation or judicial or administrative proceeding under this Act
3 or the antitrust laws to which the United States or the Com-
4 mission is or may be a party. The Secretary may disclose any
5 such document or information only upon a prior certification
6 by the recipient of the document or information that the doc-
7 ument or information will be maintained in confidence and
8 will only be used for such official law enforcement purposes.
9 "(c) DISCLOSURE TO CONGRESS.—Nothing in this sec-
10 tion shall be construed to authorize the withholding of infor-
11 mation from the Congress, and any information obtained
12 under this Act shall be made available upon request to any
13 committee or subcommittee of Congress of appropriate juris-
14 diction.

15 **"SEC. 8. INTERNATIONAL OBLIGATIONS.**

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

20 **"SEC. 9. REGULATIONS.**

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

1 "SEC. 10. TASK FORCE STUDY.

2 "Five years after the date of enactment of the Export
3 Trading Company Act of 1980, the President shall appoint a
4 task force to study the effect of the operation of this Act on
5 domestic competition and on the trade deficit of the United
6 States and to recommend either continuation, revision, or
7 termination of this Act. Such task force shall, within one year
8 after its appointment, complete such study and submit such
9 recommendations to the President.".

10 CONTINUING EXEMPTION FOR EXISTING ASSOCIATIONS;
11 AUTOMATIC CERTIFICATION

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

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

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

13 TITLE III—TRADE BARRIERS AND DISINCEN-
14 TIVES RELATING TO UNITED STATES EX-
15 PORTS

16 GENERAL ACTIONS TO REDUCE TRADE BARRIERS AND
17 DISINCENTIVES

18 SEC. 301. It is the sense of the Congress that—

19 (1) in order to maximize export opportunities for
20 United States business (including export trading com-
21 panies) in foreign markets, the appropriate agencies of
22 the Federal Government, in coordination with repre-
23 sentatives of the private sector, should (A) fully imple-
24 ment at the domestic level those agreements to reduce
25 trade barriers that were concluded in the Multilateral

1 Trade Negotiations and approved by the Congress
2 under section 2 of the Trade Agreements Act of 1979,
3 and (B) closely monitor foreign government compliance
4 with, and vigorously enforce United States rights
5 under, such agreements;

6 (2) in developing, coordinating, and administering
7 United States economic policies and programs, includ-
8 ing decisions to impose, continue, or eliminate policies
9 and practices which create disincentives to United
10 States exports, greater consideration should be given
11 to the foreign trade implications of such policies and
12 programs and their effect on the domestic and interna-
13 tional competitive position of the United States; and

14 (3) the President should pursue the negotiation of
15 further agreements with foreign countries providing, on
16 the basis of mutuality, for the harmonization, reduc-
17 tion, or elimination of remaining barriers to (and other
18 distortions of) international trade in goods and services,
19 or providing for the prohibition of or limitations on the
20 imposition of such barriers (or other distortions).

21 INVENTORY OF TRADE BARRIERS AND DISINCENTIVES OF
22 FOREIGN COUNTRIES AGAINST UNITED STATES EXPORTS

23 SEC. 302. The United States Trade Representative
24 shall prepare within six months after the date of the enact-
25 ment of this Act, and thereafter maintain on a continuing

1 basis, a comprehensive inventory of the barriers and disincen-
2 tives maintained by foreign countries against United States
3 exports of goods and services. Such inventory shall include,
4 with respect to each barrier or disincentive maintained by
5 each foreign country, a description of the barrier or disincen-
6 tive and its operation, the legal basis for the barrier or disin-
7 centive, the product or service concerned, an assessment of
8 the relative importance of the barrier or disincentive to ex-
9 ports of the United States and of other countries, the efforts
10 being made, if any, to obtain the reduction, harmonization, or
11 elimination of the barrier or disincentive, and any other infor-
12 mation deemed relevant by the United States Trade Repre-
13 sentative. The Secretary, the Secretary of Agriculture, and
14 the Secretary of State shall make available such information,
15 resources, and other assistance as the United States Trade
16 Representative may reasonably require for purposes of carry-
17 ing out this section.

18 EXPORT SECTOR STUDIES

19 SEC. 303. (a) Section 1110 of the Trade Agreements
20 Act of 1979 (19 U.S.C.) is amended—

21 (1) by inserting at the end thereof the following
22 new subsection:

23 "(c) EXPORT SECTOR STUDIES.—Not later than March
24 31, 1982, the President shall submit to the Congress studies
25 concerning (1) the recent changes in, and the factors bearing

1 on, the competitive position in domestic and foreign markets
2 of major United States export-oriented product sectors; and
3 (2) the policies, practices, and programs, including changes in
4 disincentives and trade barriers of the United States and of
5 foreign countries, that will be required to maintain and to
6 strengthen the competitive position of these sectors in world
7 markets."; and

8 (2) by amending the title to read as follows:

9 **"SEC. 1110. STUDIES REGARDING EXPORT TRADE POLICY.".**

10 (b) The table of contents of such Act of 1979 is amended
11 by striking out

"Sec. 1110. Study of Export Trade Policy."

12 and inserting in lieu thereof

"Sec. 1110. Studies Regarding Export Trade Policy.".

O

97TH CONGRESS
1ST SESSION

H. R. 2326

To amend the Sherman Act and the Clayton Act to exclude from the application of such Acts certain conduct involving exports.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1981

Mr. RODINO (for himself and Mr. MCCLORY) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Sherman Act and the Clayton Act to exclude from the application of such Acts certain conduct involving exports.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Trade Antitrust
4 Improvements Act of 1981".
5 SEC. 2. The Sherman Act (15 U.S.C. 1 et seq.) is
6 amended by inserting after section 6 the following new
7 section:

1 "SEC. 7. This Act shall not apply to conduct involving
2 trade or commerce with any foreign nation unless such con-
3 duct has a direct and substantial effect on trade or commerce
4 within the United States or has the effect of excluding a do-
5 mestic person from trade or commerce with such foreign
6 nation.".

7 SEC. 3. Section 7 of the Clayton Act (15 U.S.C. 18) is
8 amended by adding at the end thereof the following:

9 "This section shall not apply to joint ventures limited
10 solely to export trading, in goods or services, from the United
11 States to a foreign nation.".

O

97TH CONGRESS
1ST SESSION

H. R. 2812

To amend the Clayton Act to limit the circumstances under which foreign governments may sue for violations of the antitrust laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1981

Mr. BUTLER (for himself, Mr. BROOKS, Mr. MAZZOLI, Mr. EVANS of Georgia, Mr. IRELAND, Mr. RAILSBACK, Mr. FISH, Mr. MOORHEAD, Mr. JOHNSTON, and Mr. WHITLEY) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Clayton Act to limit the circumstances under which foreign governments may sue for violations of the antitrust laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 4 of the Clayton Act (15 U.S.C. 15) is
4 amended—
5 (1) by striking out "That" and inserting in lieu
6 thereof "(a) Except as provided in subsection (b) and
7 subsection (c)," and

1 (2) by adding at the end thereof the following new
2 subsections:
3 "(b) Any person who is a foreign government or an in-
4 strumentality of a foreign government may not sue, as pro-
5 vided in subsection (a), for damages for an injury unless—
6 "(1) the conduct prohibited by the antitrust laws
7 and alleged to have caused such injury was forbidden
8 under the laws of such foreign government applicable
9 to conduct within its national boundaries during the
10 time the prohibited conduct occurred;
11 "(2) the laws of such foreign government applica-
12 ble to conduct similar to the conduct of the person
13 sued under this section were enforced by such foreign
14 government; and
15 "(3) under the laws of such foreign government,
16 the United States may recover actual damages for an
17 injury to its business or property by reason of conduct
18 similar to the conduct of the person sued under this
19 section.
20 "(c) Any person who is a foreign government or an in-
21 strumentality of a foreign government may not recover under
22 subsection (a) an amount in excess of the actual damages
23 sustained by it and the cost of suit, including a reasonable
24 attorney's fee.".

1 SEC. 2. The amendments made by the first section of
2 this Act shall apply in any action commenced under section 4
3 of the Clayton Act before or after the date of the enactment
4 of this Act for the recovery of any penalty, forfeiture, liabili-
5 ty, or damages unless the judgment in such action is final on
6 or before the date of the enactment of this Act.

○

97TH CONGRESS
1ST SESSION

H. R. 2851

To encourage exports by facilitating the formation and operation of export trading companies and export trade associations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1981

Mr. PATTERSON introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, and the Judiciary

---

A BILL

To encourage exports by facilitating the formation and operation of export trading companies and export trade associations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (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);
24 (6) State and local government activities which
25 initiate, facilitate, or expand export of products and

1 services are an important and irreplaceable source for
2 expansion of total United States exports, as well as for
3 experimentation in the development of innovative
4 export programs keyed to local, State, and regional
5 economic needs;

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

9 (8) if United States export trading companies are
10 to be successful in promoting United States exports
11 and in competing with foreign trading companies, they
12 must be able to draw on the resources, expertise, and
13 knowledge of the United States banking system, both
14 in the United States and abroad.

15 (b) The purpose of this Act is to increase United States
16 exports of products and services, particularly by small,
17 medium-size and minority concerns, by encouraging more ef-
18 ficient provision of export trade services to American produc-
19 ers and suppliers.

20 DEFINITIONS

21 SEC. 103. (a) As used in this Act—

22 (1) the term "export trade" means trade or com-
23 merce in goods produced in the United States or serv-
24 ices produced in the United States, and exported, or in

1 the course of being exported, from the United States to
2 any foreign nation;
3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, the
6 cost of the imported raw materials and components
7 thereof shall not exceed 50 per centum of the sales
8 price;
9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and
15 transportation services, not less than 50 per centum of
16 the sales or billings of which is provided by United
17 States citizens or is otherwise attributable to the
18 United States;
19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market re-
21 search, advertising, marketing, insurance, product re-
22 search and design, legal assistance, transportation, in-
23 cluding trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing, for-

1 eign exchange, and financing, when provided in order
2 to facilitate the export of goods or services produced in
3 the United States;

4 (5) the term "export trading company" means a
5 company, whether operated for profit or as a nonprofit
6 organization, which does business under the laws of
7 the United States or any State and which is organized
8 and operated principally for the purposes of—

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

11 (B) facilitating the exportation of goods and
12 services produced in the United States by unaffil-
13 iated persons by providing one or more export
14 trade services;

15 (6) the term "United States" means the several
16 States of the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, the Virgin Islands,
18 American Samoa, Guam, the Commonwealth of the
19 Northern Mariana Islands, and the Trust Territory of
20 the Pacific Islands;

21 (7) the term "Secretary" means the Secretary of
22 Commerce; and

23 (8) the term "company" means any corporation,
24 partnership, association, or similar organization, wheth-
25 er operated for profit or as a nonprofit organization.

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

3 FUNCTIONS OF THE SECRETARY OF COMMERCE

4 SEC. 104. The Secretary shall promote and encourage
5 the formation and operation of export trading companies by
6 providing information and advice to interested persons and by
7 facilitating contact between producers of exportable goods
8 and services and firms offering export trade services.

9 OWNERSHIP OF EXPORT TRADING COMPANIES BY
10 BANKING ORGANIZATIONS

11 SEC. 105. (a) For purposes of this section—
12 (1) the term "banking organization" means any
13 bankers' bank, bank holding company, Edge Act Cor-
14 poration, or Agreement Corporation;
15 (2) the term "bankers' bank" means any bank in-
16 sured by the Federal Deposit Insurance Corporation if
17 the stock of such bank is owned exclusively by other
18 banks (except to the extent State law requires direc-
19 tors' qualifying shares) and if such bank is engaged ex-
20 clusively in providing banking services for other banks
21 and their officers, directors, or employees;
22 (3) the term "bank holding company" shall have
23 the same meaning given such term in section 2 of the
24 Bank Holding Company Act of 1956;

1 (4) the term "Edge Act Corporation" means a
2 corporation organized under section 25(a) of the Fed-
3 eral Reserve Act;
4 (5) the term "Agreement Corporation" means a
5 corporation operating subject to section 25 of the Fed-
6 eral Reserve Act;
7 (6) the term "capital and surplus" means paid in
8 and unimpaired capital and surplus, and includes un-
9 divided profits;
10 (7) an "affiliate" of a banking organization or
11 export trading company is a person who controls, is
12 controlled by, or is under common control with such
13 banking organization or export trading company;
14 (8) the term "Board" means the Board of Gover-
15 nors of the Federal Reserve System;
16 (9) the terms "control" and "subsidiary" shall
17 have the same meanings assigned to those terms in
18 section 2 of the Bank Holding Company Act of 1956,
19 and the terms "controlled" and "controlling" shall be
20 construed consistently with the term "control" as de-
21 fined in section 2 of the Bank Holding Company Act of
22 1956; and
23 (10) for the purposes of this section, the term
24 "export trading company" means a company which
25 does business under the laws of the United States or

1 any State and which is exclusively engaged in activi-
2 ties related to international trade, whether operated for
3 profit or as a nonprofit organization, except that—
4 (A) any such company must also either meet
5 the definition of export trading company in section
6 103(a)(5) of this Act, or be organized and operat-
7 ed principally for the purpose of providing export
8 trade services, as defined in section 103(a)(4) of
9 this Act; and
10 (B) for purposes of this section, any such
11 company—
12 (i) may engage in or hold shares of a
13 company engaged in the business of under-
14 writing, selling, or distributing securities in
15 the United States only to the extent that its
16 banking organization investor may do so
17 under applicable Federal and State banking
18 law and regulations; and
19 (ii) may not engage in manufacturing or
20 agricultural production activities.
21 (b)(1) Notwithstanding any prohibition, restriction, limi-
22 tation, condition, or requirement of any law applicable only
23 to banking organizations, a banking organization, subject to
24 the limitations of subsection (c) and the procedures of this
25 subsection, may invest directly and indirectly in the aggre-

1 gate, up to 10 per centum of its consolidated capital and
2 surplus in the voting stock or other evidences of ownership of
3 one or more export trading companies. A banking organiza-
4 tion may—

5 (A) invest up to an aggregate amount of
6 $10,000,000 in one or more export trading companies
7 without the prior approval of the Board, if such invest-
8 ment does not cause an export trading company to
9 become a subsidiary of the investing banking organiza-
10 tion; and

11 (B) make investments in excess of an aggregate
12 amount of $10,000,000 in one or more export trading
13 companies, or make any investment or take any other
14 action which causes an export trading company to
15 become a subsidiary of the investing banking organiza-
16 tion or which will cause more than 50 per centum of
17 the voting stock of an export trading company to be
18 owned or controlled by banking organizations, only
19 with the prior approval of the Board.

20 Any banking organization which makes an investment under
21 the authority of clause (A) of the preceding sentence shall
22 promptly notify the Board of such investment and shall file
23 such reports on such investment as the Board may require.
24 If, after receipt of any such notification, the Board deter-
25 mines, after notice and opportunity for hearing, that the

1 export trading company is a subsidiary of the investing bank-
2 ing organization, it shall have authority to disapprove the
3 investment or impose conditions on such investment under
4 the authority of subsection (d). In furtherance of such author-
5 ity, the Board may require divestiture of any voting stock or
6 other evidences of ownership previously acquired, and may
7 impose conditions necessary for the termination of any con-
8 trolling relationship.

9 (2) If a banking organization proposes to make any in-
10 vestment or engage in any activity included within the fol-
11 lowing two subparagraphs, it must give the Board ninety
12 days prior written notice before it makes such investment or
13 engages in such activity:

14 (A) any additional investment in an export trading
15 company subsidiary; or

16 (B) the engagement by any export trading compa-
17 ny subsidiary in any line of activity, including specifi-
18 cally the taking of title to goods, wares, merchandise,
19 or commodities, if such activity was not disclosed in
20 any prior application for approval.

21 During the notification period provided under this paragraph,
22 the Board may, by written notice, disapprove the proposed
23 investment or activity or impose conditions on such invest-
24 ment or activity under authority of subsection (d). An addi-
25 tional investment or activity covered by this paragraph may

1 be made or engaged in, as the case may be, prior to the
2 expiration of the notification period if the Board issues writ-
3 ten notice of its intent not to disapprove.

4 (3) In the event of the failure of the Board to act on any
5 application for approval under paragraph (1)(B) of this sub-
6 section within a period of one hundred and twenty days,
7 which period begins on the date the application has been ac-
8 cepted for processing by the Board, the application shall be
9 deemed to have been granted. In the event of the failure of
10 the Board either to disapprove or to impose conditions on any
11 investment or activity subject to the prior notification re-
12 quirements of paragraph (2) of this subsection within the
13 sixty-day period provided therein, such period beginning on
14 the date the notification is received by the Board, such in-
15 vestment or activity may be made or engaged in, as the case
16 may be, any time after the expiration of such period.

17 (c) The following limitations apply to export trading
18 companies and the investments in such companies by banking
19 organizations:

20 (1) The name of any export trading company shall
21 not be similar in any respect to that of a banking orga-
22 nization that owns any of its voting stock or other evi-
23 dences of ownership.

24 (2) The total historical cost of the direct and indi-
25 rect investments by a banking organization in an

1 export trading company combined with extensions of
2 credit by the banking organization and its direct and
3 indirect subsidiaries to such export trading company
4 shall not exceed 10 per centum of the banking organi-
5 zation's capital and surplus.

6 (3) A banking organization that owns any voting
7 stock or other evidences of ownership of an export
8 trading company shall terminate its ownership of such
9 stock if the export trading company takes positions in
10 commodities or commodities contracts, in securities, or
11 in foreign exchange, other than as may be necessary in
12 the course of its business operations.

13 (4) No banking organization holding voting stock
14 or other evidences of ownership of any export trading
15 company may extend credit or cause any affiliate to
16 extend credit to any export trading company or to cus-
17 tomers of such company on terms more favorable than
18 those afforded similar borrowers in similar circum-
19 stances, and such extension of credit shall not involve
20 more than the normal risk of repayment or present
21 other unfavorable features.

22 (d)(1) In the case of every application under subsection
23 (b)(1)(B) of this section, the Board shall take into considera-
24 tion the financial and managerial resources, competitive situ-
25 ation, and future prospects of the banking organization and

1 export trading company concerned, and the benefits of the
2 proposal to United States business, industrial, and agricultur-
3 al concerns (with special emphasis on small, medium-sized
4 and minority concerns), and to improving United States com-
5 petitiveness in world markets. The Board may not approve
6 any investment for which an application has been filed under
7 subsection (b)(1)(B) if it finds that the export benefits of such
8 proposal are outweighed in the public interest by any adverse
9 financial, managerial, competitive, or other banking factors
10 associated with the particular investment. Any disapproval
11 order issued under this section must contain a statement of
12 the reasons for disapproval.

13 (2) In approving any application submitted under sub-
14 section (b)(1)(B), the Board may impose such conditions
15 which, under the circumstances of such case, it may deem
16 necessary (A) to limit a banking organization's financial ex-
17 posure to an export trading company, or (B) to prevent possi-
18 ble conflicts of interest or unsafe or unsound banking prac-
19 tices. With respect to the taking of title to goods, wares,
20 merchandise, or commodities by any export trading company
21 subsidiary of a banking organization, the Board may, by
22 order, regulation, or guidelines, establish standards designed
23 to ensure against any unsafe or unsound practices that could
24 adversely affect a controlling banking organization investor.
25 In particular, the Board may establish inventory-to-capital

1 ratios, based on the capital of the export trading company
2 subsidiary, for those circumstances in which the export trad-
3 ing company subsidiary may bear a market risk on inventory
4 held.

5 (3) In determining whether to impose any condition
6 under the preceding paragraph (2), or in imposing such condi-
7 tion, the Board must give due consideration to the size of the
8 banking organization and export trading company involved,
9 the degree of investment and other support to be provided by
10 the banking organization to the export trading company, and
11 the identity, character, and financial strength of any other
12 investors in the export trading company. The Board shall not
13 impose any conditions or set standards for the taking of title
14 which unnecessarily disadvantage, restrict or limit export
15 trading companies in competing in world markets or in
16 achieving the purposes of section 102 of this Act. In particu-
17 lar, in setting standards for the taking of title under the pre-
18 ceding paragraph (2), the Board shall give special weight to
19 the need to take title in certain kinds of trade transactions,
20 such as international barter transactions.

21 (4) Notwithstanding any other provision of this Act, the
22 Board may, whenever it has reasonable cause to believe that
23 the ownership or control of any investment in an export trad-
24 ing company constitutes a serious risk to the financial safety,
25 soundness, or stability of the banking organization and is in-

1 consistent with sound banking principles or with the purposes
2 of this Act or with the Financial Institutions Supervisory Act
3 of 1966, order the banking organization, after due notice and
4 opportunity for hearing, to terminate (within one hundred and
5 twenty days or such longer period as the Board may direct in
6 unusual circumstances) its investment in the export trading
7 company.

8 (5) On or before two years after enactment of this Act,
9 the Board shall report to the Committee on Banking, Hous-
10 ing, and Urban Affairs of the Senate and the Committee on
11 Banking, Finance and Urban Affairs of the House of Repre-
12 sentatives its recommendations with respect to the imple-
13 mentation of this section, its recommendations on any
14 changes in United States law to facilitate the financing of
15 United States exports, especially by small, medium-sized and
16 minority business concerns, and their recommendations on
17 the effects of ownership of United States banks by foreign
18 banking organizations affiliated with trading companies doing
19 business in the United States.

20 (e)(1) Any party aggrieved by an order of the Board
21 under this section may obtain a review of such order in the
22 United States court of appeals within any circuit wherein
23 such organization has its principal place of business, or in the
24 court of appeals for the District of Columbia Circuit, by filing
25 a notice of appeal in such court within thirty days from the

1 date of such order, and simultaneously sending a copy of such
2 notice by registered or certified mail to the Board. The Board
3 shall promptly certify and file in such court the record upon
4 which the order was based. The court shall set aside any
5 order found to be (A) arbitrary, capricious, an abuse of discre-
6 tion, or otherwise not in accordance with law; (B) contrary to
7 constitutional right, power, privilege or immunity; or, (C) in
8 excess of statutory jurisdiction, authority, or limitations, or
9 short of statutory right; or (D) without observance of proce-
10 dure required by law. Except for violations of subsection
11 (b)(3) of this section, the court shall remand for further con-
12 sideration by the Board any order set aside solely for proce-
13 dural errors and may remand for further consideration by the
14 Board any order set aside for substantive errors. Upon
15 remand, the Board shall have no more than sixty days from
16 date of issuance of the court's order to cure any procedural
17 error or reconsider its prior order. If the Board fails to act
18 within this period, the application or other matter subject to
19 review shall be deemed to have been granted as a matter of
20 law.

21 (f) The Board is authorized and empowered to issue
22 such rules, regulations, and orders, to require such reports, to
23 delegate such functions, and to conduct such examinations of
24 subsidiary export trading companies, as it deems necessary in
25 order to perform its duties and functions under this section

1 and to administer and carry out the provisions and purposes
2 of this section and prevent evasions thereof.

3 INITIAL INVESTMENTS AND OPERATING EXPENSES

4 SEC. 106. (a) The Economic Development Administra-
5 tion and the Small Business Administration are directed, in
6 their consideration of applications by export trading compa-
7 nies for loans and guarantees, and operating grants to non-
8 profit organizations, including applications to make new in-
9 vestments related to the export of goods or services produced
10 in the United States and to meet operating expenses, to give
11 special weight to export-related benefits, including opening
12 new markets for United States goods and services abroad and
13 encouraging the involvement of small, medium-sized and mi-
14 nority businesses or agricultural concerns in the export
15 market.

16 (b) There are hereby authorized to be appropriated to
17 carry out the provisions of this section not to exceed
18 $20,000,000 per fiscal year beginning with fiscal year 1982
19 and ending with fiscal year 1986. Amounts appropriated pur-
20 suant to the authority of this subsection shall be in addition
21 to amounts appropriated under the authority of other Acts.

22 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
23 INVENTORY

24 SEC. 107. The Export-Import Bank of the United
25 States is authorized and directed to establish a program to

1 provide guarantees for loans extended by financial institu-
2 tions or other private creditors to export trading companies
3 as defined in section 103(5) of this Act, or to other exporters,
4 when such loans are secured by export accounts receivable or
5 inventories of exportable goods, and when in the judgment of
6 the Board of Directors—

7 (1) the private credit market is not providing ade-
8 quate financing to enable otherwise creditworthy
9 export trading companies or exporters to consummate
10 export transactions; and

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

13 The Board of Directors shall attempt to insure that a major
14 share of any loan guarantee ultimately serves to promote ex-
15 ports from small, medium-sized and minority businesses or
16 agricultural concerns. Guarantees provided under the author-
17 ity of this section shall be subject to limitations contained in
18 annual appropriations Acts.

19 TITLE II—EXPORT TRADE ASSOCIATIONS

20 SHORT TITLE

21 SEC. 201. This title may be cited as the "Export Trade
22 Association Act of 1981".

23 FINDINGS; DECLARATION OF PURPOSE

24 SEC. 202. (a) FINDINGS.—The Congress finds and de-
25 clares that—

1 (1) the exports of the American economy are re-
2 sponsible for creating and maintaining one out of every
3 nine manufacturing jobs in the United States and for
4 generating $1 out of every $7 of total United States
5 goods produced;
6 (2) exports will play an even larger role in the
7 United States economy in the future in the face of
8 severe competition from foreign government-owned and
9 subsidized commercial entities;
10 (3) between 1968 and 1977 the United States
11 share of total world exports fell from 19 per centum to
12 13 per centum;
13 (4) trade deficits contribute to the decline of the
14 dollar on international currency markets, fueling infla-
15 tion at home;
16 (5) service-related industries are vital to the well-
17 being of the American economy inasmuch as they
18 create jobs for seven out of every ten Americans, pro-
19 vide 65 per centum of the Nation's gross national
20 product, and represent a small but rapidly rising per-
21 centage of United States international trade;
22 (6) small and medium-sized firms are prime bene-
23 ficiaries of joint exporting, through pooling of technical
24 expertise, help in achieving economies of scale, and as-

1 sistance in competing effectively in foreign markets;
2 and
3 (7) the Department of Commerce has as one of its
4 responsibilities the development and promotion of
5 United States exports.
6 (b) PURPOSE.—It is the purpose of this Act to encour-
7 age American exports by establishing an office within the
8 Department of Commerce to encourage and promote the for-
9 mation of export trade associations through the Webb-
10 Pomerene Act, by making the provisions of that Act explicit-
11 ly applicable to the exportation of services, and by transfer-
12 ring the responsibility for administering that Act from the
13 Federal Trade Commission to the Secretary of Commerce.
14 DEFINITIONS
15 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66)
16 is amended by striking out the first section (15 U.S.C. 61)
17 and inserting in lieu thereof the following:
18 "SECTION 1. DEFINITIONS.
19 "As used in this Act—
20 "(1) EXPORT TRADE.—The term 'export trade'
21 means trade or commerce in goods, wares, merchan-
22 dise, or services exported, or in the course of being ex-
23 ported from the United States or any territory thereof
24 to any foreign nation.

1 "(2) SERVICE.—The term 'service' means intangi-
2 ble economic output, including, but not limited to—
3 "(A) business, repair, and amusement
4 services;
5 "(B) management, legal, engineering, archi-
6 tectural, and other professional services; and
7 "(C) financial, insurance, transportation, and
8 communication services.
9 "(3) EXPORT TRADE ACTIVITIES.—The term
10 'export trade activities' means activities or agreements
11 in the course of export trade.
12 "(4) METHODS OF OPERATION.—The term
13 'methods of operation' means the methods by which an
14 association or export trading company conducts or pro-
15 poses to conduct export trade.
16 "(5) TRADE WITHIN THE UNITED STATES.—The
17 term 'trade within the United States' whenever used in
18 this Act means trade or commerce among the several
19 States or in any territory of the United States, or in
20 the District of Columbia, or between any such territory
21 and another, or between any such territory or territo-
22 ries and any State or States or the District of Colum-
23 bia, or between the District of Columbia and any State
24 or States.

1 "(6) ASSOCIATION.—The term 'association'
2 means any combination, by contract or other arrange-
3 ment, of persons who are citizens of the United States,
4 partnerships which are created under and exist pursu-
5 ant to the laws of any State or of the United States, or
6 corporations, whether operated for profit or organized
7 as nonprofit corporations, which are created under and
8 exist pursuant to the laws of any State or of the
9 United States.

10 "(7) EXPORT TRADING COMPANY.—The term
11 'export trading company' means an export trading
12 company as defined in section 103(5) of the Export
13 Trading Company Act of 1980.

14 "(8) ANTITRUST LAWS.—The term 'antitrust
15 laws' means the antitrust laws defined in the first sec-
16 tion of the Clayton Act (15 U.S.C. 12), sections 5 and
17 6 of the Federal Trade Commission Act (15 U.S.C.
18 45, 46), and any State antitrust or unfair competition
19 law.

20 "(9) SECRETARY.—The term 'Secretary' means
21 the Secretary of Commerce.

22 "(10) ATTORNEY GENERAL.—The term 'Attorney
23 General' means the Attorney General of the United
24 States.

1 "(11) COMMISSION.—The term 'Commission'
2 means the Federal Trade Commission.".

3 ANTITRUST EXEMPTION

4 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
5 is amended by striking out section 2 (15 U.S.C. 62) and
6 inserting in lieu thereof the following:

7 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

8 "(a) ELIGIBILITY.—The export trade, export trade
9 activities, and methods of operation of any association, en-
10 tered into for the sole purpose of engaging in export trade,
11 and engaged in or proposed to be engaged in such export
12 trade, and the export trade, export trade activities and meth-
13 ods of operation of any export trading company, that—

14 "(1) serve to preserve or promote export trade;

15 "(2) result in neither a substantial lessening of
16 competition or restraint of trade within the United
17 States nor a substantial restraint of the export trade of
18 any competitor of such association or export trading
19 company;

20 "(3) do not unreasonably enhance, stabilize, or
21 depress prices within the United States of the goods,
22 wares, merchandise, or services of the class exported
23 by such association or export trading company;

24 "(4) do not constitute unfair methods of competi-
25 tion against competitors engaged in the export trade of

1 goods, wares, merchandise, or services of the class ex-
2 ported by such association or export trading company;
3 "(5) do not include any act which results, or may
4 reasonably be expected to result, in the sale for con-
5 sumption or resale within the United States of the
6 goods, wares, merchandise, or services exported by the
7 association or export trading company or its members;
8 and
9 "(6) do not constitute trade or commerce in the
10 licensing of patents, technology, trademarks, or know-
11 how, except as incidental to the sale of the goods,
12 wares, merchandise, or services exported by the associ-
13 ation or export trading company or its members
14 shall, when certified according to the procedures set forth in
15 this Act, be eligible for the exemption provided in subsection
16 (b).
17 "(b) EXEMPTION.—An association or an export trading
18 company and its members are exempt from the operation of
19 the antitrust laws with respect to their export trade, export
20 trade activities and methods of operation that are specified in
21 a certificate issued according to the procedures set forth in
22 this Act, carried out in conformity with the provisions, terms,
23 and conditions prescribed in such certificate and engaged in
24 during the period in which such certificate is in effect. The
25 subsequent revocation or invalidation in whole or in part of

1 such certificate shall not render an association or its members
2 or an export trading company or its members, liable under
3 the antitrust laws for such export trade, export trade activi-
4 ties, or methods of operation engaged in during such period.
5 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
6 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
7 Act, the Attorney General or Commission has formally ad-
8 vised the Secretary of disagreement with his determination to
9 issue a proposed certificate, and the Secretary has nonethe-
10 less issued such proposed certificate or an amended certifi-
11 cate, the exemption provided by this section shall not be ef-
12 fective until thirty days after the issuance of such certifi-
13 cate.".

14 AMENDMENT OF SECTION 3

15 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
16 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—
17 (1) by inserting immediately before section 3 (15
18 U.S.C. 63) the following:
19 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
20 ATIONS PERMITTED.".
21 (2) by striking out "SEC. 3. That nothing" in sec-
22 tion 3 and inserting in lieu thereof "Nothing".

23 ADMINISTRATION: ENFORCEMENT: REPORTS

24 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
25 (15 U.S.C. 61–66) is amended by striking out sections 4 and

1 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
2 following sections:

3 "SEC. 4. CERTIFICATION.

4 "(a) PROCEDURE FOR APPLICATION.—Any associ-
5 ation, or export trading company seeking certification under
6 this Act shall file with the Secretary a written application for
7 certification setting forth the following:

8 "(1) The name of the association or export trad-
9 ing company.

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

13 "(3) The names and addresses of all of the offi-
14 cers, stockholders, and members of the association or
15 export trading company.

16 "(4) A copy of the certificate or articles of incor-
17 poration and bylaws, if the association or export trad-
18 ing company is a corporation; or a copy of the articles,
19 partnership, joint venture, or other agreement or con-
20 tract under which the association or export trading
21 company conducts or proposes to conduct its export
22 trade activities, or contract of association, if the associ-
23 ation or export trading company is unincorporated.

24 "(5) A description of the goods, wares, merchan-
25 dise, or services which the association or export trad-

1 ing company or their members export or propose to
2 export.
3 "(6) A description of the domestic and interna-
4 tional conditions, circumstances, and factors which
5 show that the association or export trading company
6 and its activities will serve a specified need in promot-
7 ing the export trade of the described goods, wares,
8 merchandise, or services.
9 "(7) The export trade activities in which the asso-
10 ciation or export trading company intends to engage
11 and the methods by which the association or export
12 trading company conducts or proposes to conduct
13 export trade in the described goods, wares, merchan-
14 dise, or services, including, but not limited to, any
15 agreements to sell exclusively to or through the associ-
16 ation or export trading company, any agreements with
17 foreign persons who may act as joint selling agents,
18 any agreements to acquire a foreign selling agent, any
19 agreements for pooling tangible or intangible property
20 or resources, or any territorial, price-maintenance,
21 membership, or other restrictions to be imposed upon
22 members of the association or export trading company.
23 "(8) The names of all countries where export
24 trade in the described goods, wares, merchandise, or

1 services is conducted or proposed to be conducted by
2 or through the association or export trading company.
3 "(9) Any other information which the Secretary
4 may request concerning the organization, operation,
5 management, or finances of the association or export
6 trading company; the relation of the association or
7 export trading company to other associations, corpora-
8 tions, partnerships, and individuals; and competition or
9 potential competition, and effects of the association or
10 export trading company thereon. The Secretary may
11 request such information as part of an initial applica-
12 tion or as a necessary supplement thereto. The Secre-
13 tary may not request information under this paragraph
14 which is not reasonably available to the person making
15 application or which is not necessary for certification of
16 the prospective association or export trading company.
17 "(b) ISSUANCE OF CERTIFICATE.—
18 "(1) NINETY-DAY PERIOD.—The Secretary shall
19 issue a certificate to an association or export trading
20 company within ninety days after receiving the applica-
21 tion for certification or necessary supplement thereto if
22 the Secretary, after consultation with the Attorney
23 General and Commission, determines that the associ-
24 ation and, its export trade, export trade activities and
25 methods of operation, or export trading company, and

1 its export trade, export trade activities and methods of
2 operation meet the requirements of section 2 of this
3 Act and will serve a specified need in promoting the
4 export trade of the goods, wares, merchandise, or serv-
5 ices described in the application for certification. The
6 certificate shall specify the permissible export trade,
7 export trade activities and methods of operation of the
8 association or export trading company and shall include
9 any terms and conditions the Secretary deems neces-
10 sary to comply with the requirements of section 2 of
11 this Act. The Secretary shall deliver to the Attorney
12 General and the Commission a copy of any certificate
13 that he proposes to issue. The Attorney General or
14 Commission may, within fifteen days thereafter, give
15 written notice to the Secretary of an intent to offer
16 advice on the determination. The Attorney General or
17 Commission may, after giving such written notice and
18 within forty-five days of the time the Secretary has de-
19 livered a copy of a proposed certificate, formally advise
20 the Secretary and the petitioning association or export
21 trading company of disagreement with the Secretary's
22 determination. The Secretary shall not issue any certif-
23 icate prior to the expiration of such forty-five-day
24 period unless he has (A) received no notice of intent to
25 offer advice by the Attorney General or the Commis-

1 sion within fifteen days after delivering a copy of a
2 proposed certificate, or (B) received any noticed formal
3 advice of disagreement or written confirmation that no
4 formal disagreement will be transmitted from the At-
5 torney General and the Commission. After the forty-
6 five-day period or, if no notice of intent to offer advice
7 has been given, after the fifteen-day period, the Secre-
8 tary shall either issue the proposed certificate, issue an
9 amended certificate, or deny the application. Upon
10 agreement of the applicant, the Secretary may delay
11 taking action for not more than thirty additional days
12 after the forty-five-day period. Before offering advice
13 on a proposed certification, the Attorney General and
14 Commission shall consult in an effort to avoid, wher-
15 ever possible, having both agencies offer advice on any
16 application.

17 "(2) EXPEDITED CERTIFICATION.—In those in-
18 stances where the temporary nature of the export trade
19 activities, deadlines for bidding on contracts or filling
20 orders, or any other circumstances beyond the control
21 of the association or export trading company which
22 have a significant impact on its export trade, make the
23 ninety-day period for application approval described in
24 paragraph (1) of this subsection, or an amended appli-
25 cation approval as provided in subsection (c) of this

1 section, impractical for the association or export trad-
2 ing company seeking certification, such association or
3 export trading company may request and may receive
4 expedited action on its application for certification.

5 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
6 ASSOCIATIONS.—Any association registered with the
7 Federal Trade Commission under this Act as of April
8 3, 1980, may file with the Secretary an application for
9 automatic certification of any export trade, export
10 trade activities, and methods of operation in which it
11 was engaged prior to enactment of the Export Trade
12 Association Act of 1980. Any such application must be
13 filed within one hundred and eighty days after the date
14 of enactment of such Act and shall be acted upon by
15 the Secretary in accordance with the procedures pro-
16 vided by this section. The Secretary shall issue to the
17 association a certificate specifying the permissible
18 export trade, export trade activities, and methods of
19 operation that he determines are shown by the applica-
20 tion (including any necessary supplement thereto), on
21 its face, to be eligible for certification under this Act,
22 and including any terms and conditions the Secretary
23 deems necessary to comply with the requirements of
24 section 2(a) of this Act, unless the Secretary possesses

1 information clearly indicating that the requirements of
2 section 2(a) are not met.
3 "(4) APPEAL OF DETERMINATION.—If the Secre-
4 tary determines not to issue a certificate to an associ-
5 ation or export trading company which has submitted
6 an application or an amended application for certifica-
7 tion, then he shall—
8 "(A) notify the association or export trading
9 company of his determination and the reasons for
10 his determination, and
11 "(B) upon request made by the association or
12 export trading company afford it an opportunity
13 for a hearing with respect to that determination in
14 accordance with section 557 of title 5, United
15 States Code.
16 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
17 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
18 terial change in the membership, export trade, export trade
19 activities, or methods of operation, of an association or export
20 trading company then it shall report such change to the Sec-
21 retary and may apply to the Secretary for an amendment of
22 its certificate. Any application for an amendment to a certifi-
23 cate shall set forth the requested amendment of the certifi-
24 cate and the reasons for the requested amendment. Any re-
25 quest for the amendment of a certificate shall be treated in

1 the same manner as an original application for a certificate.
2 If the request is filed within thirty days after a material
3 change which requires the amendment, and if the requested
4 amendment is approved, then there shall be no interruption in
5 the period for which the certificate is in effect.

6 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
7 BY SECRETARY.—After notifying the association or export
8 trading company involved and after an opportunity for hear-
9 ing pursuant to section 554 of title 5, United States Code,
10 the Secretary, on his own initiative—

11 "(1) may require that the organization or oper-
12 ation of the association or export trading company be
13 modified to correspond with its certification, or

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

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

22 "(1) The Attorney General or the Commission
23 may bring an action against an association or export
24 trading company or its members to invalidate, in whole
25 or in part, its certificate on the ground that the export

1 trade, export trade activities or methods of operation of
2 the association or export trading company fail or have
3 failed to meet the requirements of section 2 of this Act.
4 Except in the case of an action brought during the
5 period before an antitrust exemption becomes effective,
6 as provided for in section 2(c), the Attorney General or
7 Commission shall notify any association or export trad-
8 ing company or member thereof, against which it in-
9 tends to bring an action for invalidation, thirty days in
10 advance, as to its intent to file an action under this
11 subsection. The district court shall consider any issues
12 presented in any such action de novo and if it finds
13 that the requirements of section 2 are not met, it shall
14 issue an order declaring the certificate invalid or any
15 other order necessary to effectuate the purposes of this
16 Act and the requirements of section 2.

17 "(2) Any action brought under this subsection
18 shall be considered an action described in section 1337
19 of title 28, United States Code. Pending any such
20 action which was brought during the period any ex-
21 emption is held in abeyance pursuant to section 2(c) of
22 this Act, the court may make such temporary restrain-
23 ing order or prohibition as shall be deemed just in the
24 premises.

1 "(3) No person other than the Attorney General
2 or Commission shall have standing to bring an action
3 against an association or export trading company or
4 their respective members for failure of the association
5 or export trading company or their respective export
6 trade, export trade activities or methods of operation to
7 meet the eligibility requirements of section 2 of this
8 Act.

9 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
10 ation and each export trading company and any subsidiary
11 thereof shall comply with United States export control laws
12 pertaining to the export or transshipment of any goods on the
13 Commodity Control List to controlled countries. Such laws
14 shall be complied with before actual shipment.

15 "SEC. 5. GUIDELINES.

16 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
17 days after the enactment of the Export Trade Association
18 Act of 1980, the Secretary, after consultation with the Attor-
19 ney General, and the Commission shall publish proposed
20 guidelines for purposes of determining whether export trade,
21 export trade activities and methods of operation of an associ-
22 ation or export trading company will meet the requirements
23 of section 2 of this Act.

24 "(b) PUBLIC COMMENT PERIOD.—Following publica-
25 tion of the proposed guidelines, and any proposed revision of

1 guidelines, interested parties shall have thirty days to com-
2 ment on the proposed guidelines. The Secretary shall review
3 the comments and, after consultation with the Attorney Gen-
4 eral, and Commission, publish final guidelines within thirty
5 days after the last day on which comments may be made
6 under the preceding sentence.

7 "(c) PERIODIC REVISION.—After publication of the
8 final guidelines, the Secretary shall periodically review the
9 guidelines and, after consultation with the Attorney General,
10 and the Commission, propose revisions as needed.

11 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
12 ACT.—The promulgation of guidelines under this section
13 shall not be considered rulemaking for purposes of subchapter
14 II of chapter 5 of title 5, United States Code, and section
15 553 of such title shall not apply to their promulgation.

16 **"SEC. 6. ANNUAL REPORTS.**

17 "Every certified association or export trading company
18 shall submit to the Secretary an annual report, in such form
19 and at such time as he may require, which report updates
20 where necessary the information described by section 4(a) of
21 this Act.

22 **"SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF**
23 **COMMERCE.**

24 "The Secretary shall establish within the Department of
25 Commerce an office to promote and encourage to the great-

1 est extent feasible the formation of export trade associations
2 and export trading companies through the use of provisions of
3 this Act in a manner consistent with this Act. The Office of
4 Export Trade in the Department of Commerce shall report to
5 the congressional committees of appropriate jurisdiction on
6 an annual basis, all East-West trade transactions requiring
7 validated licenses, and any other relevant information on the
8 role of United States export trading companies or subsidiaries
9 thereof in East-West trade.

10 "SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING
11 ASSOCIATIONS.

12 "(a) ELIGIBILITY.—To be eligible for the antitrust ex-
13 emption provided by this section, an association must have
14 been registered with the Federal Trade Commission under
15 this Act on April 3, 1980.

16 "(b) DURATION.—The antitrust exemption provided by
17 this section shall extend only to the existence of an eligible
18 association, and to agreements made and acts done by such
19 association, prior to one hundred and eighty days after the
20 date of enactment of the Export Trade Association Act of
21 1980, or, in the event that an eligible association files an
22 application for certification pursuant to section 4 of this Act
23 during such one hundred and eighty days, prior to the Secre-
24 tary's determination on such application becoming final.

1 "(c) EXEMPTION.—Subject to the limitations in subsec-
2 tions (a) and (b), nothing contained in sections 1 to 7 of the
3 Sherman Act shall be construed as declaring to be illegal an
4 association entered into for the sole purpose of engaging in
5 export trade and actually engaged solely in such export
6 trade, or an agreement made or act done in the course of
7 export trade by such association, provided such association,
8 agreement, or act is not in restraint of trade within the
9 United States, and is not in restraint of the export trade of
10 any domestic competitor of such association: *Provided,* That
11 such association does not, either in the United States or else-
12 where, enter into any agreement, understanding, or conspir-
13 acy, or do any act which artificially or intentionally enhances
14 or depresses prices within the United States of commodities
15 of the class exported by such association, or which substan-
16 tially lessens competition within the United States or other-
17 wise restrains trade therein.

18 **"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
19 **REPORT INFORMATION.**

20 "(a) GENERAL RULE.—Portions of applications made
21 under section 4, including amendments to such applications,
22 and annual reports made under section 6 that contain trade
23 secrets or confidential business or financial information, the
24 disclosure of which would harm the competitive position of
25 the person submitting such information shall be confidential,

1 and, except as authorized by this section, no officer or em-
2 ployee, or former officer or employee, of the United States
3 shall disclose any such confidential information, obtained by
4 him in any manner in connection with his service as such an
5 officer or employee.

6 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
7 MISSION.—Whenever the Secretary believes that an appli-
8 cant may be eligible for a certificate, or has issued a certifi-
9 cate to an association or export trading company, he shall
10 promptly make available all materials filed by the applicant,
11 association or export trading company, including applications
12 and supplements thereto, reports of material changes, appli-
13 cations for amendments and annual reports, and information
14 derived therefrom, to the Attorney General or Commission,
15 or any employee or officer thereof, for official use in connec-
16 tion with an investigation or judicial or administrative pro-
17 ceeding under this Act or the antitrust laws to which the
18 United States or the Commission is or may be a party. Such
19 information may only be disclosed by the Secretary upon a
20 prior certification that the information will be maintained in
21 confidence and will only be used for such official law enforce-
22 ment purposes.

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 or export
6 trading company, certified under this Act, are inconsistent
7 with such international obligations, the Secretary may re-
8 quire the association or export trading company to modify its
9 respective operations, and in so doing afford the association
10 or export trading company a reasonable opportunity to
11 comply therewith, so as to be consistent with such interna-
12 tional obligations.

13 "SEC. 11. REGULATIONS.

14 "The Secretary, after consultation with the Attorney
15 General and the Commission, shall promulgate such rules
16 and regulations as may be necessary to carry out the pur-
17 poses of this Act.

18 "SEC. 12. TASK FORCE STUDY.

19 "Seven years after the date of enactment of the Export
20 Trade Association Act of 1980, the President shall appoint,
21 by and with the advice and consent of the Senate, a task
22 force to examine the effect of the operation of this Act on
23 domestic competition and on United States international
24 trade and to recommend either continuation, revision, or ter-
25 mination of the Webb-Pomerene Act. The task force shall

1 have one year to conduct its study and to make its recom-
2 mendations to the President.".

3 (b) REDESIGNATION OF SECTION 6.—The Act is
4 amended—

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

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

9 **"SEC. 13. SHORT TITLE.".**

O

97TH CONGRESS
1ST SESSION

H. R. 3066

To simplify trade procedures regarding sales of United States products abroad, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1981

Mr. EVANS of Georgia introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

---

A BILL

To simplify trade procedures regarding sales of United States products abroad, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Trade Procedures Simpli-
fication Act of 1980".

5 FINDING AND CONCLUSIONS

6 SEC. 2. (a) The Congress finds that—

7 (1) the unpredictable and conflicting nature of
8 antitrust enforcement and interpretation by United
9 States agencies has caused unnecessary confusion

1 among exporters as to the scope of legitimate overseas
2 activities;
3 (2) the antitrust laws relating to export sales are
4 extremely complex; yet most small- and medium-sized
5 companies likely to export do not as a practical matter
6 have access to specialized legal advice in this area;
7 (3) the application of antitrust laws to exporting
8 activities does not reflect critical differences in compet-
9 itive conditions among various country markets for dif-
10 ferent products;
11 (4) the extension of court-made rules developed in
12 the context of domestic commerce to overseas activities
13 does not always reflect the intent of antitrust legisla-
14 tion, and needlessly inhibits legitimate and much-
15 needed export sales; and
16 (5) United States agencies applying antitrust laws
17 to export sales do not sufficiently coordinate interpreta-
18 tion and enforcement practices among themselves, or
19 with other agencies responsible for foreign policy, in-
20 ternational trade policy, export promotion, and interna-
21 tional monetary policy.
22 (b) The Congress concludes that—
23 (1) exporters should not be subject to conflicting
24 demands by diverse United States agencies applying
25 antitrust laws extraterritorially;

(2) United States agencies enforcing antitrust laws should help reduce uncertainty by informing small- and medium-sized companies in a clear, direct, and inexpensive manner, of conduct and structural arrangements which will not be subject to antitrust prosecutions if associated with the export of particular products or services to specific country markets during specified time periods;

(3) legal interpretations and enforcement practices associated with the application of antitrust laws to export activities, as well as the economic consequences of such interpretations and practices, should be communicated to Congress and the public in a timely and effective manner;

(4) conduct and structural arrangements of United States exporters which materially expand overseas sales should be permitted: *Provided,* That they do not have a substantial negative impact on our commerce with foreign nations or otherwise conflict with basic substantive principles and objectives of existing antitrust laws; and

(5) legal interpretations and enforcement practices associated with the application of antitrust laws to export activities should be developed in concordance with considerations underlying foreign relations, inter-

national trade and monetary policy, national security, and export promotion.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "structural arrangement" means a situation or course of action that affects the pattern of ownership or control in industry.

(2) The term "conduct" means a practice that may affect domestic competition but does not directly affect the structure of ownership or control in industry.

(3) The term "disclosure" means a statement published by the Attorney General or the Assistant Attorney General for the antitrust division under section 5(a) describing conduct and structural arrangements relating to export sales that will not be subject to criminal or civil prosecution under the antitrust laws.

(4) The term "antitrust laws" means the Sherman Act, the Federal Trade Commission Act, the Clayton Act, and any other Acts in pari materia.

STUDIES BY ATTORNEY GENERAL

SEC. 4. (a) The Attorney General, in consultation with the Secretary of Commerce and the heads of other United States agencies with enforcement responsibility under the antitrust laws, shall conduct studies to determine whether—

1 (1) the conduct and structural arrangements em-
2 ployed in various countries by various types and sizes
3 of United States businesses to expand exports conflict
4 significantly with basic antitrust principles; and
5 (2) a more liberal enforcement policy for overseas
6 activities than would be appropriate for domestic trans-
7 actions would impede thorough implementation of the
8 legislative intent of the antitrust laws.
9 (b) On the basis of studies carried out under subsection
10 (a), or other information available to the Department of Jus-
11 tice, the Attorney General shall identify conduct and struc-
12 tural arrangements associated with particular types of export
13 sales which the Attorney General determines would not war-
14 rant criminal or civil prosecution under the antitrust laws by
15 the Department of Justice.
16 (c) The initial studies made under subsection (a) shall be
17 completed within one year after the date of enactment of this
18 Act and shall be updated annually.
19 PROCEDURES
20 SEC. 5. (a) The Attorney General shall—
21 (1) publish a description of conduct and structural
22 arrangements identified pursuant to section 4(b) as not
23 meriting criminal or civil prosecution under the anti-
24 trust laws and shall make the published description
25 available to all potentially interested exporters; and

1 (2) establish procedures to assure a prompt re-
2 sponse to—
3 (A) petitions from individual exporters or
4 classes of exporters for the issuance of descrip-
5 tions under paragraph (1); and
6 (B) petitions from an individual exporter or
7 group of exporters for the issuance of a statement
8 of civil and criminal enforcement intentions con-
9 cerning specific conduct in which the petitioner
10 proposes to engage, or structual arrangements the
11 petitioner proposes to establish, in connection
12 with exports.
13 (b) The Secretary of Commerce may intervene at any
14 time to request that the Attorney General publish a descrip-
15 tion under subsection (a)(1) with respect to conduct or struc-
16 tural arrangements or to reconsider a description published
17 under such subsection. Within thirty days after receiving
18 such a request from the Secretary, the Attorney General
19 shall take whatever action he determines to be appropriate
20 with respect to the request and inform the Secretary of the
21 determination and action taken. The action of the Attorney
22 General shall be final and shall not be subject to judicial
23 review.
24 (c) The Attorney General shall establish appropriate
25 forms and procedures for the purpose of—

1 (1) communicating disclosures issued under sub-
2 section (a) to affected parties;
3 (2) informing exporters of specific actions they
4 must take to obtain disclosures pursuant to subsection
5 (a), or to be deemed covered by disclosures made pur-
6 suant to subsection (a)(2);
7 (3) determining actions exporters have taken in
8 reliance on such descriptions; and
9 (4) identifying problems associated with discharg-
10 ing the evaluation, disclosure, and monitoring functions
11 authorized under this Act.
12 (d) Upon request, the Secretary of Commerce may, on a
13 reimbursable basis, provide legal assistance to existing and
14 potential exporters who are unable to obtain specialized anti-
15 trust counsel. Such assistance shall be limited to assistance in
16 obtaining enforcement intention disclosures provided for
17 under subsection (a)(2).
18 (e) Agency proceedings and agency actions (as defined
19 in paragraphs (12) and (13), respectively, of section 551 of
20 title 5, United States Code) under this Act shall not be sub-
21 ject to subchapter II of chapter 5 of title 5, United States
22 Code (other than sections 552, 552a, and 552b).

1 COMPLIANCE BY EXPORTERS

2 SEC. 6. (a) Notwithstanding any other provision of law,
3 an exporter shall not be subject to civil or criminal prosecu-
4 tion under the antitrust laws by any Federal agency if—

5 (1) the exporter, or group of exporters, notifies
6 the Attorney General, pursuant to procedures estab-
7 lished under section 5(c)(2), that the exporter or group
8 intends to engage in conduct or to establish structural
9 arrangements which have been designated by the At-
10 torney General as conduct or structural arrangements
11 not subject to civil or criminal prosecution under the
12 antitrust laws, and the Attorney General does not
13 object to the proposed conduct or arrangement within
14 thirty days and inform such exporter, or group of ex-
15 porters, of the specific reasons why the proposed con-
16 duct and structural arrangements are not covered by
17 disclosures made pursuant to section 5(a); or

18 (2) the exporter requests a statement of civil and
19 criminal enforcement intentions concerning a particular
20 transaction pursuant to section 5(a)(2)(B), and within
21 sixty days after the date of the request—

22 (A) receives an approval from the Attorney
23 General, or

24 (B) does not receive an objection in writing
25 from the Attorney General to the transaction set-

1 ting forth the specific reasons why the transaction
2 is in conflict with specific provisions of the anti-
3 trust laws.
4 (b) Whenever the Attorney General objects to proposed
5 conduct or structural arrangements under paragraph (1) or
6 (2) of subsection (a)—
7 (1) the Attorney General shall notify the exporter
8 or group of exporters of such objections within thirty
9 days (sixty days in the case of a request described in
10 paragraph (2) of such subsection) of receiving notifica-
11 tion regarding the proposed conduct or structural ar-
12 rangements and shall notify the exporter or group of
13 exporters involved that they may request that a hear-
14 ing be held on the objections to the proposed conduct
15 or structural arrangement;
16 (2) the exporter or exporters involved shall notify
17 the Attorney General within fifteen days after receiv-
18 ing the objections if they wish to have a hearing;
19 (3) the Attorney General shall conduct any such
20 hearing within thirty days after the date on which the
21 request for a hearing under paragraph (2) is received
22 by the Department of Justice;
23 (4) such hearing shall continue for no more than
24 thirty days; and

1 (5) the Attorney General shall make the disclo-
2 sure determination within fifteen days after the comple-
3 tion of such hearing, notify the exporter or group of
4 exporters of the determination, and publish the deter-
5 mination.

6 (c) A determination by the Attorney General under sub-
7 section (b) shall be final and shall not be subject to judicial
8 review.

9 INJUNCTIONS

10 SEC. 7. The Attorney General may request any United
11 States district court to issue an injunction regarding a disclo-
12 sure under section 5(a)(2) of this Act, when the Attorney
13 General determines that—

14 (1) the activity of the exporter or group of export-
15 ers is acting outside of the scope of the disclosure;

16 (2) the circumstances under which the disclosure
17 was issued have substantially changed; or

18 (3) the disclosure was issued upon inaccurate or
19 fraudulent information.

20 REPORTS AND DISCLOSURES

21 SEC. 8. On December 31 of each year, the Attorney
22 General, the Secretary of Commerce, and the heads of other
23 United States agencies directly affected by disclosures under
24 this Act shall each file with the Congress, and make public, a
25 detailed report of—

1 (1) all actions by the appropriate department or
2 agency, or by other interested public and private par-
3 ties, taken pursuant to this Act;
4 (2) any problems associated with the implementa-
5 tion of this Act;
6 (3) the specific plans of the appropriate depart-
7 ment or agency to carry out its responsibilities (if any)
8 under the Act in the next fiscal year; and
9 (4) any recommendations for amendment of this
10 Act.

11 AUTHORIZATION OF APPROPRIATIONS

12 SEC. 9. (a). There are authorized to be appropriated to
13 the Attorney General such sums as may be necessary for the
14 purpose of carrying out this Act.
15 (b) There are authorized to be appropriated to the Sec-
16 retary of Commerce such sums as may be necessary for fiscal
17 year 1981 for the sole purpose of covering costs associated
18 with initial implementation of section 5(d) of this Act.

19 EFFECTIVE DATE

20 SEC. 10. This Act shall take effect on October 1, 1981.

O

97TH CONGRESS
1ST SESSION

H. R. 3173

To establish a national export policy for the United States.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1981

Mr. AUCOIN (for himself, Mr. FRENZEL, Mr. ALEXANDER, Mr. BROWN of Ohio, Mr. LAFALCE, Mr. LOWRY of Washington, Mr. GIBBONS, Mr. LONG of Louisiana, Mr. HAMILTON, Mr. SIMON, Mr. STANTON of Ohio, Mr. DERWINSKI, Mr. BONKER, Mr. NEAL, Mr. RICHMOND, Mr. PRITCHARD, Mr. MOAKLEY, Mr. WILLIAMS, Mr. AKAKA, Mr. BENJAMIN, Mr. EVANS of Georgia, Mr. MURPHY, Mr. HUGHES, Mr. MINETA, Mr. HORTON, Mr. MOLLOHAN, Mr. FORSYTHE, and Mr. SAWYER) introduced the following bill; which was referred jointly to the Committees on Agriculture, Banking, Finance and Urban Affairs, Foreign Affairs, Energy and Commerce, the Judiciary, Small Business, and Ways and Means

---

A BILL

To establish a national export policy for the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Export Policy Act of 1981".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—GENERAL FINDINGS AND PURPOSES

Sec. 101. Findings.
Sec. 102. Purposes.

TITLE II—EXPORT FINANCING

PART 1—FINDINGS AND PURPOSE

Sec. 201. Findings and purpose.

PART 2—COMPETITIVE EXPORT FINANCING

Sec. 221. Export expansion facility amendments.
Sec. 222. Export-Import Bank board of directors.
Sec. 223. Legislative consideration of limits on Export-Import Bank activities.

TITLE III—EXPORT-RELATED TAX POLICY

Sec. 301. Findings; conclusions.
Sec. 302. Partial exclusion for earned income from sources without the United States and for foreign housing costs.
Sec. 303. Reasonable estimation of bad debt reserves for export receivables.
Sec. 304. Clarification of tax treatment of certain research and experimental expenditures.
Sec. 305. Clarification of the tax treatment of foreign currency fluctuation losses on export receivables.
Sec. 306. Deadline for exempting exports from the manufacturers excise tax.
Sec. 307. Use of foreign trade zones in exporting.
Sec. 308. Application of DISC rules to export trading companies.
Sec. 309. Subchapter S status for export trading companies.

TITLE IV—ANTITRUST

PART 1—FINDINGS AND CONCLUSIONS

Sec. 401. Findings and conclusions.

PART 2—REVISION OF WEBB-POMERENE ACT

Sec. 421. Webb-Pomerene Act amendments.

PART 3—ANTITRUST PROCEDURES SIMPLIFICATION

Sec. 431. Definitions.
Sec. 432. Studies by Attorney General.
Sec. 433. Procedures.
Sec. 434. Compliance by exporters.
Sec. 435. Injunctions.
Sec. 436. Reports and disclosures.

Sec. 437. Authorization of appropriations.
Sec. 438. Effective date.

TITLE V—AMENDMENTS TO OTHER LAWS THAT HINDER EXPORTS

PART 1—FINDINGS AND CONCLUSIONS

Sec. 501. Findings and conclusions.

PART 2—BUSINESS ACCOUNTING AND FOREIGN TRADE SIMPLIFICATON

Sec. 521. Findings and conclusions.
Sec. 522. Amendment of short title.
Sec. 523. Accounting standards.
Sec. 524. Repeal of section 30A.
Sec. 525. Definitions.
Sec. 526. Authority to issue guidelines.
Sec. 527. Conforming changes in Internal Revenue Code.
Sec. 528. International agreements.

PART 3—EXPORT COMPETITIVENESS STATEMENTS; PAPERWORK

Sec. 531. Export competitiveness statements.
Sec. 532. Reduction of export paperwork.

TITLE VI—EXPORT AWARENESS AND EXPORT PROMOTION PROGRAMS

PART 1—FINDINGS; CONCLUSIONS

Sec. 601. Statement of findings and conclusions.

PART 2—EXPORT TRADING COMPANIES

Sec. 621. Short title.
Sec. 622. Findings.
Sec. 623. Definitions.
Sec. 624. Functions of the Secretary of Commerce.
Sec. 625. Ownership of export trading companies by banks, bank holding companies, and international banking corporations.
Sec. 626. Initial investments and operating expenses.
Sec. 627. Guarantees for export accounts receivable and inventory.

PART 3—SMALL BUSINESS ACT AMENDMENTS

Sec. 631. Small business export financing assistance.

PART 4—JOINT EXPORT MARKETING ASSISTANCE

Sec. 641. Establishment of program.
Sec. 642. Marketing proposals.
Sec. 643. Financial agreement.

Sec. 644. Authorization of appropriations.

PART 5—EXPORT OF SERVICES

Sec. 651. Export of services.

TITLE VII—AGRICULTURAL EXPORTS

Sec. 701. Statement of findings and conclusions.

PART 1—COMMODITY CREDIT CORPORATION FINANCING FOR CERTAIN SALES

Sec. 711. Financing for short-term export credit sales of agricultural commodities.

PART 2—EXPORT-IMPORT BANK CREDITS

Sec. 721. Export-Import Bank credits for agricultural commodities.

TITLE VIII—INTERNATIONAL AGREEMENTS

Sec. 801. Findings and conclusions.
Sec. 802. Multilateral Trade Agreement of 1979 and followup.
Sec. 803. International Financing Code.
Sec. 804. International code of business conduct.
Sec. 805. International code on reciprocity on enforcement of antitrust.
Sec. 806. Multilateral code on fair trade in services.

TITLE IX—GOVERNMENT SUPPORT OF EXPORT GOALS

PART 1—FINDINGS AND CONCLUSIONS

Sec. 901. Statement of findings and conclusions.

PART 2—OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS

Sec. 921. Short title.

Subpart A—Overseas Private Investment Corporation

Sec. 925. Purpose and policy.
Sec. 926. Capital of corporation.
Sec. 927. Organization and management.
Sec. 928. Investment insurance and other programs.
Sec. 929. Issuing authority, direct investment fund and reserves.
Sec. 930. Income and revenues.
Sec. 931. General provisions relating to insurance and guaranty program.
Sec. 932. Definitions.
Sec. 933. General provisions and powers.
Sec. 934. Small business development.
Sec. 935. Reports to the Congress.

Subpart B—Amendment of Foreign Assistance Act of 1961

Sec. 941. Conforming amendments.
Sec. 942. Transition provisions.

PART 3—ROLE OF ALL UNITED STATES AGENCIES IN EXPORT EXPANSION

Sec. 951. Export potential to be considered.
Sec. 952. Office of Management and Budget.
Sec. 953. Role of the Justice Department.
Sec. 954. Small Business Administration.
Sec. 955. Department of Energy.
Sec. 956. The Congress.

PART 4—NATIONAL EXPORT COUNCIL

Sec. 961. Establishment and membership.
Sec. 962. Functions.
Sec. 963. Administrative provisions.
Sec. 964. Annual report.
Sec. 965. Authorizations.

PART 5—COMMERCE DEPARTMENT

Sec. 971. Commercial officers overseas.
Sec. 972. Training of commercial officers.
Sec. 973. Rank and privileges.
Sec. 974. Relationship to diplomatic mission.
Sec. 975. Functions and duties.
Sec. 976. Assignment to United States.
Sec. 977. Office space, equipment, and administrative and clerical personnel.
Sec. 978. Agency, services, personnel, and facilities.
Sec. 979. Performance of functions in foreign localities.
Sec. 980. Reports and dispatches—availability to interested Government agencies.
Sec. 981. Representative allowances.
Sec. 982. Allowances and benefits.
Sec. 983. Advance payment for rent and other services: Funds for courtesies to foreign representatives.

PART 6—REVIEW OF UNITED STATES EXPORT PROGRAMS

Sec. 991. Review.

1 # TITLE I—GENERAL FINDINGS AND PURPOSES

2 **SEC. 101. FINDINGS.**

3 The Congress finds that—

4 (1) exports have become critical to the health of

5 the United States economy, doubling in 10 years to

1 reach 10 percent of the gross national product, ac-
2 counting directly or indirectly, for 1 out of 9 jobs, over
3 25 percent of agricultural output, and over one-fourth
4 of goods produced;
5 (2) exports can play a major role in improving the
6 economic well-being of the United States—
7 (A) by providing the most constructive means
8 to pay for essential imports of raw materials,
9 fuels, and other goods;
10 (B) by helping to stem inflation;
11 (C) by creating jobs;
12 (D) by enhancing productivity;
13 (E) by helping to strengthen the value of the
14 dollar in world markets; and
15 (F) by supporting the United States influence
16 in international economic and political spheres;
17 and, with world markets growing at twice the pace of
18 the domestic economy, exports offer a promising oppor-
19 tunity for economic growth;
20 (3) the United States international trade position
21 has been deteriorating in the face of strong competition
22 from the export-oriented nations in Europe, East Asia,
23 and the developing world, lagging productivity gains in
24 United States industries, and declining investment in
25 development of new technology; the United States

share of world exports is falling, growth of exports is not keeping up with that of other competitor nations, the United States no longer leads the world in manufactured goods exports, and both merchandise trade and the balance of payments have registered repeated record deficits;

(4) it is essential to the national interest that expansion of exports of United States farm products and other goods and services be a principal national goal;

(5) as all other successful trading nations have done, the United States must give priority to export expansion and take measures to develop a strong, comprehensive, internally consistent approach that deals with both current and longer range problems facing our economy;

(6) international trade activities are inextricably tied to domestic economic developments; thus there should be consistency between domestic and international economic policies with the objective of strengthening the United States economy generally, increasing the financial and competitive capabilities of United States industry and improving the income and working conditions of United States workers;

(7) the United States needs an aggressive policy which takes positive action to promote United States

1 exports and improve the competitiveness of United
2 States industry rather than passively awaiting currency
3 and price changes, foreign trade barriers, and other in-
4 ternational developments; and
5 (8) previous policies and programs have not
6 achieved adequate improvement in United States
7 export performance and therefore must be supple-
8 mented and supplanted by other measures designed to
9 serve this end.
10 **SEC. 102. PURPOSES.**
11 The purposes of this Act are—
12 (1) to improve the international balance-of-pay-
13 ments and trade positions of the United States by es-
14 tablishing a national export policy that makes export
15 expansion a national priority;
16 (2) to achieve consistency and harmony of purpose
17 between Government policies and practices that affect
18 exports in order to provide a more coherent and effec-
19 tive implementation of export expansion policies;
20 (3) to declare it the policy of the United States
21 Government to provide strong support for United
22 States exporters by utilizing the maximum available
23 resources of the United States Government to promote
24 the export of United States goods and services except

1 where contrary to the national security or national eco-
2 nomic interests;
3 (4) to expand the Nation's exports of goods and
4 services by enhancing the ability and encouraging the
5 private sector to cooperate fully with Government in
6 fostering and facilitating export expansion;
7 (5) to increase understanding of the benefits of ex-
8 ports by establishing educational programs and other
9 awareness activities that will change attitudes;
10 (6) to improve the competitiveness of United
11 States industry in international markets by making
12 adequate export credits available to exporters of all
13 sizes that are flexible enough to meet the competition;
14 (7) to offer incentives to United States industry to
15 export through adjustments in the United States tax
16 system;
17 (8) to clarify, modify, or eliminate existing laws,
18 rules, or regulations that unduly burden or disadvan-
19 tage exporters;
20 (9) to institute programs that provide specific tools
21 of the trade and a better trading environment for
22 small- and medium-sized firms to develop export
23 markets;
24 (10) to encourage continuation of efforts to reduce
25 foreign barriers to United States exports and unfair

1 practices through international negotiations and agree-
2 ments; and
3 (11) to ensure that all Government agencies in a
4 position to assist export expansion efforts are properly
5 set up to do so and make adjustments in functions as
6 appropriate to provide adequate support to exporters.

7 TITLE II—EXPORT FINANCING

8 **PART 1—FINDINGS AND PURPOSE**

9 **SEC. 201. FINDINGS AND PURPOSE.**

10 (a) FINDINGS.—The Congress finds that—
11 (1) export financing has become an increasingly
12 important factor in determining export sales;
13 (2) there is a growing tendency by the major trad-
14 ing partners of the United States to resort to the use
15 of predatory financing arrangements to gain competi-
16 tive advantage for their exporters;
17 (3) other major trading countries have been un-
18 willing to negotitate an end to such practices and have
19 rejected a series of United States proposals to
20 strengthen provisions of the International Arrangement
21 on Guidelines for Officially Supported Export Credits;
22 (4) since the December 1980 failure of the OECD
23 countries to reach an international agreement eliminat-
24 ing destructive competition in the use of export credit
25 subsidies, measures to strengthen programs of the

1 Export-Import Bank of the United States are required
2 to ensure continued United States export competitive-
3 ness; and
4 (5) the ability of the Export-Import Bank to con-
5 duct its business in an efficient and timely manner is
6 hampered by the lack of continuity among the Bank's
7 directors.
8 (b) PURPOSE.—It is the purpose of this title—
9 (1) to give the Export-Import Bank additional re-
10 sources to enable United States exporters to compete
11 in countries that are not traditional markets for United
12 States exports; and
13 (2) to remove the institutional obstacles to the ef-
14 ficient functioning of the Export-Import Bank.

15 **PART 2—COMPETITIVE EXPORT FINANCING**

16 **SEC. 221. EXPORT EXPANSION FACILITY AMENDMENTS.**

17 (a) IN GENERAL.—Section 1(a) of Public Law 90-390
18 (12 U.S.C. 635j(a)) is amended to read as follows:
19 "(a) It is the policy of the Congress that the Export-
20 Import Bank of the United States (hereinafter referred to as
21 the 'Bank') should, particularly in the presence of foreign of-
22 ficially supported export credit competition, facilitate through
23 loans, guarantees, and insurance (including coinsurance and
24 reinsurance) exports to countries which, in the judgment of
25 the Board of Directors of the Bank—

1 "(1) do not currently have sufficient access to in-
2 ternational credit facilities to finance additional imports
3 from the United States;
4 "(2) are demonstrating reasonable progress
5 toward economic stabilization and development;
6 "(3) offer adequate formal assurances of repay-
7 ment or foreign exchange availability through govern-
8 ment or other official trade or monetary authorities;
9 and
10 "(4) could make a significant contribution to the
11 long-term interests of the United States through in-
12 creased trade.".
13 (b) INCREASE IN CONTRACTUAL LIABILITY LIMIT.—
14 Section 1(b) of Public Law 90–390 (12 U.S.C. 635j(b)) is
15 amended by striking out "$500,000,000" and inserting in
16 lieu thereof "$1,000,000,000".
17 (c) EXPORT EXPANSION FACILITY.—Section 1 of
18 Public Law 90–390 (12 U.S.C. 635j) is amended by adding
19 at the end thereof the following:
20 "(d) The activities authorized by this Act shall be car-
21 ried out through a facility designated as the 'Export Expan-
22 sion Facility', and all loans, guarantees, and insurance made
23 under the authority of this Act shall be assigned to the Export
24 Expansion Facility.".

1 (d) CAPITALIZATION OF FACILITY.—Public Law
2 90–390 is amended by adding at the end thereof the
3 following:
4 "SEC. 6. The Export Expansion Facility shall be cap-
5 italized during the first year after the date of enactment of
6 the National Export Policy Act of 1981 in the amount of
7 $25,000,000 which shall be set aside from the Bank's accu-
8 mulated earnings. To ensure the continuing availability of
9 funds thereafter, the Board of Directors of the Bank shall
10 determine annually that portion of the Bank's earnings
11 needed to be retained for general purposes, and shall specify
12 that portion needed to capitalize the Export Expansion Fa-
13 cility. In any event, for each year thereafter through 1986,
14 not less than 30 per centum of the net income of the Bank or
15 $20,000,000, whichever is less, shall be set aside each year
16 for the Export Expansion Facility.".
17 **SEC. 222. EXPORT-IMPORT BANK BOARD OF DIRECTORS.**
18 The fifth sentence of section 3(c) of the Export-Import
19 Bank Act of 1945 is amended to read as follows: "The term
20 of office of each director, including the Chairman and the
21 Vice Chairman, shall be 10 years, except that of the direc-
22 tors first appointed pursuant to this sentence, one shall serve
23 for a term of 2 years, one shall serve for a term of 4 years,
24 one shall serve for a term of 6 years, one shall serve for a
25 term of 8 years, and one shall serve for a term of 10 years,

1 as designated by the President at the time of the
2 appointment.".

3 SEC. 223. LEGISLATIVE CONSIDERATION OF LIMITS ON
4 EXPORT-IMPORT BANK ACTIVITIES.

5 Beginning in 1982, the Appropriations Committees of
6 the House of Representatives and the Senate shall consider
7 limitations on the credit, guaranty, and insurance activities of
8 the Export-Import Bank when they consider appropriations
9 for international trade activities of the United States rather
10 than when they consider appropriations for foreign assistance
11 activities of the United States.

12 TITLE III—EXPORT-RELATED TAX POLICY

13 SEC. 301. FINDINGS; CONCLUSIONS.

14 (a) FINDINGS.—The Congress finds that—

15 (1) certain provisions of the Tax Code concerning
16 the taxation of income earned abroad discourage
17 United States citizens and businesses from undertaking
18 important economic activities which would contribute
19 significantly to an expansion of exports from the
20 United States, which would open foreign markets to
21 American products, and which would materially im-
22 prove our balance of trade and payments, and that
23 such provisions place United States businesses at a
24 competitive disadvantage and increase their costs by

1 imposing a higher tax burden than is borne by many
2 foreign competitors;
3 (2) certain provisions of the Tax Code concerning
4 reserves for bad debts arising from exports, certain re-
5 search and experimental expenditures, and foreign cur-
6 rency losses on export receivables discourage United
7 States businesses from engaging in export trade and
8 commerce;
9 (3) certain provisions of the Tax Code unfairly
10 penalize United States exporters whose business is ad-
11 versely affected by war, civil unrest, or similar condi-
12 tions in foreign nations; and
13 (4) such provisions, by discouraging United States
14 businesses from engaging in foreign trade and com-
15 merce, cause a loss of jobs and income in the Ameri-
16 can economy.
17 (b) CONCLUSIONS.—The Congress concludes that—
18 (1) the Government should actively promote the
19 interest and participation of United States businesses in
20 foreign trade and should eliminate the tax disincentives
21 which unnecessarily impede United States exports; and
22 (2) removing tax disincentives should encourage
23 United States businesses to engage in foreign trade
24 and commerce, thereby improving our balance of pay-

1 ments and providing jobs and income for American
2 workers.

3 **SEC. 302. PARTIAL EXCLUSION FOR EARNED INCOME FROM**
4 **SOURCES WITHOUT THE UNITED STATES AND**
5 **FOR FOREIGN HOUSING COSTS.**

6 (a) IN GENERAL.—Section 911 of the Internal Revenue
7 Code of 1954 (relating to income earned by individuals in
8 certain camps) is amended to read as follows:

9 **"SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE**
10 **UNITED STATES; FOREIGN HOUSING COSTS.**

11 "(a) EARNED INCOME EXCLUSION.—In the case of an
12 individual who is—

13 "(1) a citizen of the United States and who estab-
14 lishes to the satisfaction of the Secretary that he has
15 been a bona fide resident of a foreign country or coun-
16 tries for an uninterrupted period which includes an
17 entire taxable year, or

18 "(2) a citizen or resident of the United States and
19 who, during any period of 12 consecutive months, is
20 present in a foreign country or countries during at
21 least 330 full days in such period,

22 there may be excluded from the gross income of such individ-
23 ual, and exempt from taxation under this subtitle, amounts
24 received by such individual from sources within a foreign
25 country or countries (except amounts paid by the United

1 States or any agency thereof) which constitute earned income
2 attributable to services performed by such individual during
3 the period described in paragraph (1) or (2), whichever is
4 appropriate.

5 "(b) DEFINITION OF EARNED INCOME.—For purposes
6 of this section, the term 'earned income' means wages, sala-
7 ries, or professional fees, and other amounts received as com-
8 pensation for personal services actually rendered, but does
9 not include that part of the compensation derived by the tax-
10 payer for personal services rendered by him to a corporation
11 which represents a distribution of earnings or profits rather
12 than a reasonable allowance as compensation for the personal
13 services actually rendered. In the case of a taxpayer engaged
14 in a trade or business in which both personal services and
15 capital are material income-producing factors, under regula-
16 tions prescribed by the Secretary, a reasonable allowance as
17 compensation for the personal services rendered by the tax-
18 payer, not in excess of 30 percent of his share of the net
19 profits of such trade or business, shall be considered as
20 earned income.

21 "(c) SPECIAL RULES.—

22 "(1) LIMITATIONS ON AMOUNT OF EXCLU-
23 SION.—The amount excluded from the gross income of
24 an individual under subsection (a) for any taxable year
25 shall not exceed an amount which shall be computed

1 on a daily basis at an annual rate of compensation
2 equal to the sum of—
3 "(A) $50,000, plus
4 "(B) 50 percent of the amount of compensa-
5 tion received by such individual in such taxable
6 year which exceeds $50,000,
7 for each day of the taxable year during which such in-
8 dividual is present in a foreign country.
9 "(2) ATTRIBUTION TO YEAR IN WHICH SERVICES
10 ARE PERFORMED.—For purposes of applying para-
11 graph (1), amounts received shall be considered re-
12 ceived in the taxable year in which the services to
13 which the amounts are attributable are performed.
14 "(3) TREATMENT OF COMMUNITY INCOME.—In
15 applying paragraph (1) with respect to amounts re-
16 ceived from services performed by a husband or wife
17 which are community income under community proper-
18 ty laws applicable to such income, the aggregate
19 amount excludable under subsection (a) from the gross
20 income of such husband and wife shall equal the
21 amount which would be excludable if such amounts did
22 not constitute such community income.
23 "(4) REQUIREMENT AS TO TIME OF RECEIPT.—
24 No amount received after the close of the taxable year
25 following the taxable year in which the services to

1 which the amounts are attributable are performed may
2 be excluded under subsection (a).
3 "(5) CERTAIN AMOUNTS NOT EXCLUDABLE.—No
4 amount—
5 "(A) received as a pension or annuity, or
6 "(B) included in gross income by reason of
7 section 402(b) (relating to taxability of beneficiary
8 of nonexempt trust), section 403(c) (relating to
9 taxability of beneficiary under a nonqualified an-
10 nuity), or section 403(d) (relating to taxability of
11 beneficiary under certain forfeitable contracts pur-
12 chased by exempt organizations),
13 may be excluded under subsection (a).
14 "(6) TEST OF BONA FIDE RESIDENCE.—A state-
15 ment by an individual who has earned income from
16 sources within a foreign country to the authorities of
17 that country that he is not a resident of that country, if
18 he is held not subject as a resident of that country to
19 the income tax of that country by its authorities with
20 respect to such earnings shall be conclusive evidence
21 with respect to such earnings that he is not a bona fide
22 resident of that country for purposes of subsection (a).
23 "(7) FOREIGN TAXES PAID ON EXCLUDED
24 INCOME NOT CREDITABLE OR DEDUCTIBLE.—An indi-
25 vidual shall not be allowed as a deduction or as a

1 credit against the tax imposed by this chapter any
2 credit or deduction for the amont of taxes paid or ac-
3 crued to a foreign country or possession of the United
4 States, to the extent that such deduction or credit is
5 properly allocable to or chargeable against amounts ex-
6 cluded from gross income under this subsection, other
7 than the deduction allowed by section 217 (relating to
8 moving expenses).
9 "(d) HOUSING COST EXCLUSION.—
10 "(1) IN GENERAL.—In the case of an individual
11 described in subsection (a), there shall be excluded
12 from the gross income of such individual, and exempt
13 from taxation under this subtitle, in addition to any
14 amounts excluded and exempt under subsection (a), an
15 amount equal to the housing cost amount.
16 "(2) HOUSING COST AMOUNT.—For purposes of
17 this subsection, the housing cost amount is the amount
18 by which an individual's housing expenses for the tax-
19 able year exceed 16 percent of the salary of an em-
20 ployee of the United States who is compenstated at a
21 rate equal to the annual rate paid for step 1 of grade
22 GS–14.
23 "(3) HOUSING EXPENSES.—The term 'housing
24 expenses' means the reasonable expenses paid or in-
25 curred during the taxable year by or on behalf of an

1 individual for housing for the individual (and, if the
2 reside with him, for his spouse and dependents) in a
3 foreign country. The term—
4 "(A) includes expenses attributable to the
5 housing (such as utilities and insurance), but
6 "(B) does not include interest and taxes of
7 the kind deductible under section 163 or 164 or
8 any amount allowable as a deduction under sec-
9 tion 216(a).
10 Housing expenses shall not be treated as reasonable to
11 the extent such expenses are lavish or extravagant
12 under the circumstances.
13 "(4) SECOND FOREIGN HOUSEHOLD.—If an indi-
14 viudal described in subsection (a) maintains a separate
15 household outside the United States for his spouse and
16 dependents and they do not reside with him because of
17 living conditions which are dangerous, unhealthful, or
18 otherwise adverse, then the words 'if they reside with
19 him' in paragraph (3) shall be disregarded.".
20 (b) CLERICAL AMENDMENTS.—
21 (1) The table of sections for subpart B of part III
22 of subchapter N of chapter 1 of such Code is amended
23 by striking out the item relating to section 911 and in-
24 serting in lieu thereof the following:

"Sec. 911. Earned income from sources without the United States; foreign housing costs.".

1 (2) Sections 43(c)(1)(B), 1302(b)(2)(A)(i),
2 1304(b)(1), 1402(a)(8), 6012(c), and 6091(b)(1)(B)(iii)
3 are each amended by striking out "relating to income
4 earned by employees in certain camps" and inserting
5 in lieu thereof "relating to earned income from sources
6 without the United States and foreign housing costs".
7 (c) EMPLOYEES LIVING IN CAMPS.—Section 119 of the
8 Internal Revenue Code of 1954 is amended by adding the
9 following new subsection:
10 "(c) EMPLOYEES LIVING IN CAMPS.—In the case of an
11 individual who is furnished lodging in a camp by or on behalf
12 of his employer, such camp shall be considered to be part of
13 the business premises of the employer. For purposes of this
14 section a camp constitutes lodging which is—
15 "(1) provided by or on behalf of the employer be-
16 cause the place at which such individual renders serv-
17 ices is in an area where satisfactory housing is not
18 available on the open market,
19 "(2) located, as near as practicable, in the vicinity
20 of the place at which such individual renders services,
21 and
22 "(3) furnished in a common area (or enclave)
23 which is not available to the public.".
24 (d) REPEAL OF DEDUCTION FOR CERTAIN EXPENSES
25 OF LIVING ABROAD.—

1 (1) IN GENERAL.—Section 913 of the Internal
2 Revenue Code of 1954 (relating to deduction for cer-
3 tain expenses of living abroad) is hereby repealed.
4 (2) CONFORMING AMENDMENTS.—
5 (A) The table of sections for subpart B of
6 part III of subchapter N of chapter 1 of such
7 Code is amended by striking out the item relating
8 to section 913.
9 (B) Section 62 of such Code (relating to defi-
10 nition of adjusted gross income) is amended by
11 striking out paragraph (14).
12 (e) EFFECTIVE DATE.—The amendments made by this
13 section shall apply with respect to taxable years beginning
14 after December 31, 1981.

15 **SEC. 303. REASONABLE ESTIMATION OF BAD DEBT RESERVES**
16 **FOR EXPORT RECEIVABLES.**

17 Subsection (c) of section 166 of the Internal Revenue
18 Code of 1954 (relating to reserve for bad debts) is amended
19 to read as follows:
20 "(c) RESERVE FOR BAD DEBTS.—
21 "(1) GENERAL RULE.—In lieu of any deduction
22 under subsection (a), there shall be allowed (in the dis-
23 cretion of the Secretary) a deduction for a reasonable
24 addition to a reserve for bad debts.

1 "(2) REASONABLE ESTIMATION FOR BAD DEBTS
2 IN CONNECTION WITH EXPORTS.—
3 "(A) SEPARATE RESERVE.—A taxpayer en-
4 gaged in the trade or business of selling export
5 property or services for use outside the United
6 States may establish a separate reserve for bad
7 debts with respect to that trade or business.
8 "(B) ANNUAL ADDITION.—The amount
9 added to any such separate reserve for the taxable
10 year shall not exceed the greater of—
11 "(i) 15 percent of the taxable income
12 from sources without the United States
13 (within the meaning of section 862(b)) for the
14 taxable year attributable to such trade or
15 business, or
16 "(ii) 2 percent of the taxpayer's export
17 receivables outstanding as of the close of the
18 taxable year.
19 "(C) MAXIMUM RESERVE.—No amount may
20 be added to any such reserve for the taxable year
21 which would cause the total amount credited to
22 the reserve as of the close of the taxable year to
23 exceed 5 percent of the taxpayer's export receiv-
24 ables outstanding as of the close of the taxable
25 year.

1 "(D) DEFINITIONS.—For purposes of this
2 paragraph—
3 "(i) EXPORT RECEIVABLES.—The term
4 'export receivables' means accounts receiv-
5 able for export receipts.
6 "(ii) EXPORT RECEIPTS.—The term
7 'export receipts' means gross receipts from
8 the sale of export property or services for
9 use outside the United States.
10 "(iii) EXPORT PROPERTY.—The term
11 'export property' has the same meaning as
12 such term has in section 971(e).".

13 **SEC. 304. CLARIFICATION OF TAX TREATMENT OF CERTAIN**
14 **RESEARCH AND EXPERIMENTAL EXPENDI-**
15 **TURES.**

16 Section 174 of the Internal Revenue Code of 1954 (re-
17 lating to research and experimental expenditures) is amended
18 by redesignating subsection (e) as (f), and by inserting imme-
19 diately after subsection (d) the following new subsection:
20 "(e) CERTAIN EXPORT-RELATED EXPENDITURES.—
21 At the election of the taxpayer, made in accordance with
22 regulations prescribed by the Secretary, amounts paid or in-
23 curred for the following items may be treated as research or
24 experimental expenditures under subsection (a) or (b):

1 "(1) FOREIGN MARKET STUDIES, ETC.—Amounts
2 paid or incurred in connection with the survey or anal-
3 ysis of foreign markets and products.
4 "(2) FOREIGN MARKETING EXPENSES.—
5 Amounts paid or incurred in connection with market-
6 ing, outside the United States, goods produced in the
7 United States, including, but not limited to, amounts
8 paid or incurred in adapting United States products to
9 meet foreign market requirements.
10 "(3) FOREIGN PATENT COSTS.—Amounts paid or
11 incurred in connection with the application for, or
12 maintenance of, international and foreign patents and
13 trademarks (without regard to whether the taxpayer is
14 the owner of, or the owner of the rights to, the United
15 States patent for the item) for use in the taxpayer's
16 trade or business.".

17 **SEC. 305. CLARIFICATION OF THE TAX TREATMENT OF FOR-**
18 **EIGN CURRENCY FLUCTUATION LOSSES ON**
19 **EXPORT RECEIVABLES.**

20 Section 165 of the Internal Revenue Code of 1954 (re-
21 lating to losses) is amended by redesignating subsection (i) as
22 subsection (j), and by inserting after subsection (h) the follow-
23 ing new subsection:
24 "(i) LOSSES ATTRIBUTABLE TO FOREIGN CURRENCY
25 FLUCTUATIONS ON EXPORT RECEIVABLES.—

1 "(1) GENERAL RULE.—At the election of the tax-
2 payer, there shall be allowed as a deduction an amount
3 equal to the foreign currency fluctuation loss of the
4 taxpayer for the taxable year with respect to export
5 receivables. The election shall be made at such time
6 and in such manner as the Secretary may prescribe,
7 and may be made on a currency-by-currency basis.

8 "(2) DEFINITIONS; SPECIAL RULES.—For pur-
9 poses of this subsection—

10 "(A) FOREIGN CURRENCY FLUCTUATION
11 LOSS.—The term 'foreign currency fluctuation
12 loss' means the amount by which the value,
13 stated in United States dollars, of an export re-
14 ceivable, payable in foreign currency, on the later
15 of—

16 "(i) the first day of the taxable year, or

17 "(ii) the date on which the export re-
18 ceivable was created,

19 exceeds the value of the export receivable, stated
20 in United States dollars, on the last day of the
21 taxable year.

22 "(B) EXPORT RECEIVABLE.—The term
23 'export receivable' has the same meaning as in
24 section 166(c)(2)(D)(i).

1 "(C) DEDUCTION ALLOWED ONLY TO TAX-
2 PAYER WHOSE TRADE OR BUSINESS CREATED
3 THE EXPORT RECEIVABLE.—The deduction al-
4 lowed by this subsection shall be allowed only to
5 the taxpayer whose trade or business created the
6 export receivable with respect to which the de-
7 duction is allowable.
8 "(3) RECAPTURE UPON RECEIPT.—If the amount
9 received by the taxpayer in satisfaction of an export
10 receivable exceeds—
11 "(A) the value of that receivable, stated in
12 United States dollars, on the date on which it was
13 created, reduced by
14 "(B) the sum of the amounts allowed for all
15 taxable years under this subsection with respect
16 to that receivable,
17 then, for purposes of this chapter, the amount realized
18 by the taxpayer in satisfaction of that receivable shall
19 be increased by the amount of such excess.
20 "(4) APPLICATION WITH SECTION 166.—For the
21 purpose of determining the amount of the deduction al-
22 lowable under section 166(a) for any taxable year for a
23 debt which is an export receivable for which a deduc-
24 tion has been claimed under this subsection, the adjust-
25 ed basis shall be reduced by the sum of any deductions

1 allowed under this subsection for that and all prior tax-
2 able years.
3 "(5) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as may be necessary to carry
5 out this subsection.".

6 **SEC. 306. DEADLINE FOR EXEMPTING EXPORTS FROM THE**
7 **MANUFACTURERS EXCISE TAX.**

8 (a) IN GENERAL.—Section 4221(b) of the Internal Rev-
9 enue Code of 1954 (relating to certain tax-free sales) is
10 amended by adding at the end thereof the following: "The
11 Secretary may extend the 6-month deadline with respect to
12 exports for an additional 12 months if he determines, after
13 consultation with the Secretary of State, that exports were
14 delayed because of war, civil unrest, or similar adverse condi-
15 tions in a foreign nation.".

16 (b) EFFECTIVE DATE.—The amendment made by this
17 section shall apply to taxable years beginning after December
18 31, 1978.

19 **SEC. 307. USE OF FOREIGN TRADE ZONES IN EXPORTING.**

20 (a) The Act of June 18, 1934 (commonly known as the
21 Foreign Trade Zones Act; 19 U.S.C. 81a et seq.), is
22 amended by inserting after section 3 the following new
23 section:

24 "SEC. 3A. (a) The Secretary is authorized to approve
25 the duty-free entry of—

1 "(1) machinery and materials to be used solely in
2 the manufacture or production of goods in a zone if
3 such goods are not subsequently entered into the
4 customs territory of the United States, and
5 "(2) fuel and materials consumed solely in the
6 manufacture or production of such goods, in the same
7 manner and subject to the same limitations as foreign
8 merchandise brought into such zone without being sub-
9 ject to the customs laws of the United States under
10 section 3 of this Act. The Secretary shall approve such
11 duty-free entry if he determines that such action con-
12 forms to an application approved by the Board under
13 subsection (b).
14 "(b) Any grantee may apply to the Board for the appli-
15 cation of the provisions of this section to any project conduct-
16 ed, or proposed to be conducted, within the zone, operated
17 and maintained by the grantee. The Board may approve any
18 such application if it determines that—
19 "(1) the application of this section is essential to
20 the successful operation of the project which is the
21 subject of the application;
22 "(2) domestic machinery, materials, and fuel are
23 not available at prices comparable to the foreign ma-
24 chinery, materials, and fuel which are proposed to be
25 used or consumed in the operation of such project, or

1 at prices which would permit the successful operation
2 of such project;
3 "(3) the total value of the goods to be manufac-
4 tured or produced and exported will exceed the duties
5 which (but for the application of this section) would
6 apply to the entry of machinery, materials, and fuel to
7 be used or consumed in the manufacture or production
8 of such goods and the total retail value of such goods
9 would be in excess of $100,000; and
10 "(4) the establishment and operation of the project
11 for which the application is made would not, deter-
12 mined by the Board, significantly reduce the export op-
13 erations of similar existing businesses.
14 "(c) Upon receipt of each application, the Board shall
15 publish a notice in the Federal Register to solicit the views of
16 the general public, to be submitted to the Board within 30
17 days after publication of the notice. The Board shall have 30
18 days after such views are submitted to reject or approve the
19 application, except that it may order an additional 60-day
20 extension for the purpose of requiring the applicant to submit
21 additional supporting information. A final determination shall
22 be made no later than 120 days after submission of the appli-
23 cation.
24 "(d) Approval granted under subsections (b) and (c) of
25 this section shall be valid for 6 years, and every interested

1 manufacturer shall reapply for approval with the Board under
2 subsections (b) and (c) at 6-year intervals.

3 "(e) Machinery, fuel, materials, or manufactured goods
4 imported pursuant to this section shall be subject to duty and
5 taxation at regular rates if subsequently entered into the cus-
6 toms territory of the United States.

7 "(f) The Board shall promulgate such rules and regula-
8 tions as it considers necessary to carry out the purposes of
9 this section. Such rules and regulations shall be designed in
10 such a way as to eliminate unnecessary paperwork, to sim-
11 plify forms, and to expedite all proceedings.".

12 (b) REPORT.—Section 16(c) of such Act is amended by
13 inserting after "grantee." the following new sentence: "The
14 report shall also contain a summary of activities and pro-
15 grams of the Board in each zone intended to increase the use
16 of foreign trade zones to expand United States exports and
17 such proposals as the Secretary shall make to expand the use
18 of foreign trade zones in exporting.".

19 **SEC. 308. APPLICATION OF DISC RULES TO EXPORT TRADING**
20 **COMPANIES.**

21 (a) ELIGIBLE ORGANIZATIONS.—Paragraph (3) of sec-
22 tion 992(d) of the Internal Revenue Code of 1954 (relating to
23 ineligible corporations) is amended by inserting before the
24 comma at the end thereof the following: "(other than a finan-
25 cial institution which is a banking organization as defined in

1 section 625(a)(1) of this Act investing in the voting stock of
2 an export trading company (as defined in section 623(a)(5) of
3 this Act) in accordance with the provisions of section 105 of
4 this Act)".

5 (b) RECEIPTS FROM SERVICES.—Paragraph (1) of sec-
6 tion 993(a) of the Internal Revenue Code of 1954 (relating to
7 qualified export receipts of a DISC) is amended—

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

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

13 (3) by adding at the end thereof the following new
14 subparagraph:

15 "(I) in the case of a DISC which is an
16 export trading company (as defined in section
17 623(a)(5) of the National Export Policy Act of
18 1981), or which is a subsidiary of such a com-
19 pany, gross receipts from the export of services
20 produced in the United States (as defined in sec-
21 tion 623(a)(3) of such Act) or from export trade
22 services (as defined in section 623(a)(4) of such
23 Act).".

24 (c) PUBLICITY.—The Secretary of Commerce, after
25 consultation with the Secretary of the Treasury, shall devel-

1 op, prepare, and distribute to interested parties, including po-
2 tential exporters, information concerning the manner in
3 which an export trading company can utilize the provisions of
4 part IV of subchapter N of chapter 1 of the Internal Revenue
5 Code of 1954 (relating to domestic international sales corpo-
6 rations), and any advantages or disadvantages which may
7 reasonably be expected from the election of DISC status or
8 the establishment of a subsidiary corporation which is a
9 DISC.

10 (d) EFFECTIVE DATE.—The amendments made by this
11 section shall apply with respect to taxable years beginning
12 after December 31, 1981.

13 **SEC. 309. SUBCHAPTER S STATUS FOR EXPORT TRADING COM-**
14 **PANIES.**

15 (a) IN GENERAL.—Paragraph (2) of section 1371(a) of
16 the Internal Revenue Code of 1954 (relating to the definition
17 of a small business corporation) is amended by inserting
18 ", except in the case of the shareholders of an export trading
19 company (as defined in section 623(a)(5) of the National
20 Export Policy Act of 1981) if such shareholders are other-
21 wise small business corporations for the purpose of this sub-
22 chapter," after "shareholder".

23 (b) CONFORMING AMENDMENT.—The first sentence of
24 section 1372(e)(4) of such Code (relating to foreign income) is

1 amended by inserting ", other than an export trading com-
2 pany," after "small business corporation".
3 (c) EFFECTIVE DATE.—The amendments made by this
4 section shall apply with respect to taxable years beginning
5 after December 31, 1981.

6 TITLE IV—ANTITRUST

7 PART 1—FINDINGS AND CONCLUSIONS

8 SEC. 401. FINDINGS AND CONCLUSIONS.

9 (a) FINDINGS.—The Congress finds that—
10 (1) the application of current United States anti-
11 trust laws to international trade activities serves as a
12 restraint on exports;
13 (2) the purpose of United States antitrust laws to
14 foster competition reflects a basic premise of our free
15 enterprise system;
16 (3) the domestic application of the antitrust laws
17 clearly—
18 (A) encourages efficient resource allocations,
19 (B) stimulates the use of efficient methods of
20 production and distribution,
21 (C) encourages progressive technology and
22 high productivity, and
23 (D) serves the public by affording goods and
24 services at the most reasonable price;

1 (4) the benefits of applying current antitrust laws
2 to United States trade overseas where, in many cases,
3 competition as understood in the United States does
4 not exist, are not so clear;
5 (5) the application of United States antitrust laws
6 to extraterritorial trading is highly complex and am-
7 biguous, making full compliance difficult and costly and
8 sometimes resulting in a restraint on exports rather
9 than an encouragement of competition;
10 (6) the difficulties antitrust laws present to export-
11 ers are compounded by the conflicting jurisdictions
12 over enforcement of those laws between the States and
13 the United States Department of Justice and Federal
14 Trade Commission, and assurances from one agency
15 that it will not prosecute a particular export trade ac-
16 tivity is not necessarily binding on the others and does
17 not preclude private treble damage litigation; and
18 (7) the obligations imposed upon the conduct and
19 structure of businesses by United States antitrust laws
20 have few parallels among major foreign competitors or
21 in most overseas markets for United States exports.
22 (b) CONCLUSIONS.—The Congress therefore concludes
23 that—
24 (1) decisions on the interpretation and enforce-
25 ment of United States antitrust laws should reflect the

1 national interest in expanded export trade and should
2 not restrain unnecessarily the United States ability to
3 be an aggressive exporter of goods and services;
4 (2) a comprehensive study of the international as-
5 pects of the United States antitrust laws, applicable
6 rules of court, related statutes, administrative proce-
7 dures, and their applications, consequences, and inter-
8 pretation by the courts and Federal agencies should be
9 undertaken to determine what reforms are required to
10 improve the ability of United States enterprises to
11 compete effectively abroad;
12 (3) changes in the antitrust laws for export trade
13 purposes should not tamper with their application to
14 domestic commerce;
15 (4) antitrust laws should permit normal interna-
16 tional business practices, particularly those regarding
17 product marketing techniques, licensing, and bidding
18 procedures, and should recognize the realities of widely
19 differing foreign markets as long as they do not ad-
20 versely affect domestic competition;
21 (5) the application of United States antitrust laws
22 to international activities must be clearly defined prior
23 to enforcement;
24 (6) uncoordinated and conflicting actions by agen-
25 cies with concurrent jurisdiction should be eliminated;

1 (7) the Webb-Pomerene Act should be amended to
2 allow business associations to obtain preclearance from
3 the Department of Commerce for the joint exporting of
4 goods or services that will grant antitrust immunity for
5 certified activities;
6 (8) a formal business review process should be es-
7 tablished at the Department of Justice to permit pre-
8 clearance with respect to the nonapplicability of anti-
9 trust laws to a firm's overseas activities that will
10 assure against prosecution for antitrust violations; and
11 (9) procedures for efficiently informing existing
12 and potential exporters of legal requirements and their
13 impact on specific categories of export transactions
14 should be developed.

15 **PART 2—REVISION OF WEBB-POMERENE ACT**

16 **SEC. 421. WEBB-POMERENE ACT AMENDMENTS.**

17 (a) PURPOSE.—It is the purpose of this section to en-
18 courage American exports by establishing an office within the
19 Department of Commerce to encourage and promote the for-
20 mation of export trade associations through the Webb-Po-
21 merene Act, by making the provisions of that Act explicitly
22 applicable to the exportation of services, and by transferring
23 the responsibility for administering that Act from the Federal
24 Trade Commission to the Secretary of Commerce.

1 (b) DEFINITIONS.—The Webb-Pomerene Act (15
2 U.S.C. 61–66) is amended by striking out the first section
3 (15 U.S.C. 61) and inserting in lieu thereof the following:
4 "SECTION 1. DEFINITIONS.
5 "As used in this Act—
6 "(1) EXPORT TRADE.—The term 'export trade'
7 means trade or commerce in goods, wares, merchan-
8 dise, or services exported, or in the course of being ex-
9 ported from the United States or any territory thereof
10 to any foreign nation.
11 "(2) SERVICE.—The term 'service' means intangi-
12 ble economic output, including, but not limited to—
13 "(A) business, repair, and amusement serv-
14 ices;
15 "(B) management, legal, engineering, archi-
16 tectural, and other professional services; and
17 "(C) financial, insurance, transportation, and
18 communication services.
19 "(3) EXPORT TRADE ACTIVITIES.—The term
20 'export trade activities' means activities or agreements
21 in the course of export trade.
22 "(4) METHODS OF OPERATION.—The term
23 'methods of operation' means the methods by which an
24 association or export trading company conducts or pro-
25 poses to conduct export trade.

1 "(5) TRADE WITHIN THE UNITED STATES.—The
2 term 'trade within the United States' whenever used in
3 this Act means trade or commerce among the several
4 States or in any territory of the United States, or in
5 the District of Columbia, or between any such territory
6 and another, or between any such territory or territo-
7 ries and any State or States or the District of Colum-
8 bia, or between the District of Columbia and any State
9 or States.

10 "(6) ASSOCIATION.—The term 'association'
11 means any combination, by contract or other arrange-
12 ment, of persons who are citizens of the United States,
13 partnerships which are created under and exist pursu-
14 ant to the laws of any State or of the United States, or
15 corporations, whether operated for profit or organized
16 as nonprofit corporations, which are created under and
17 exist pursuant to the laws of any State or of the
18 United States.

19 "(7) EXPORT TRADING COMPANY.—The term
20 'export trading company' means an export trading
21 company as defined in section 623(5) of the Export
22 Trading Company Act of 1982.

23 "(8) ANTITRUST LAWS.—The term 'antitrust
24 laws' means the antitrust laws defined in the first sec-
25 tion of the Clayton Act (15 U.S.C. 12), sections 5 and

1 6 of the Federal Trade Commission Act (15 U.S.C.
2 45, 46), and any State antitrust or unfair competition
3 law.
4 "(9) SECRETARY.—The term 'Secretary' means
5 the Secretary of Commerce.
6 "(10) ATTORNEY GENERAL.—The term "Attor-
7 ney General" means the Attorney General of the
8 United States.
9 "(11) COMMISSION.—The term 'Commission'
10 means the Federal Trade Commission.".
11 (c) ANTITRUST EXEMPTION.—The Webb-Pomerene
12 Act (15 U.S.C. 61–66) is amended by striking out section 2
13 (15 U.S.C. 62) and inserting in lieu thereof the following:
14 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.
15 "(a) ELIGIBILITY.—The export trade, export trade ac-
16 tivities, and methods of operation of any association, entered
17 into for the sole purpose of engaging in export trade, and
18 engaged in or proposed to be engaged in such export trade,
19 and the export trade, export trade activities and methods of
20 operation of any export trading company, that—
21 "(1) serve to preserve or promote export trade;
22 "(2) result in neither a substantial lessening of
23 competition or restraint of trade within the United
24 States nor a substantial restraint of the export trade of

1 any competitor of such association or export trading
2 company;
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 or export trading company;
7 "(4) do not constitute unfair methods of competi-
8 tion against competitors engaged in the export trade of
9 goods, wares, merchandise, or services of the class ex-
10 ported by such association or export trading company;
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 export trading company or its members;
16 and
17 "(6) do not constitute trade or commerce in the
18 licensing of patents, technology, trademarks, or know-
19 how, except as incidental to the sale of the goods,
20 wares, merchandise, or services exported by the associ-
21 ation or export trading company or its members
22 shall, when certified according to the procedures set forth in
23 this Act, be eligible for the exemption provided in subsection
24 (b).

1 "(b) EXEMPTION.—An association or an export trading
2 company and its members are exempt from the operation of
3 the antitrust laws with respect to their export trade, export
4 trade activities and methods of operation that are specified in
5 a certificate issued according to the procedures set forth in
6 this Act, carried out in conformity with the provisions, terms,
7 and conditions prescribed in such certificate and engaged in
8 during the period in which such certificate is in effect. The
9 subsequent revocation or invalidation in whole or in part of
10 such certificate shall not render an association or its members
11 or an export trading company or its members, liable under
12 the antitrust laws for such export trade, export trade activi-
13 ties, or methods of operation engaged in during such period.
14 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
15 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
16 Act, the Attorney General or Commission has formally ad-
17 vised the Secretary of disagreement with his determination to
18 issue a proposed certificate, and the Secretary has nonethe-
19 less issued such proposed certificate or an amended certifi-
20 cate, the exemption provided by this section shall not be ef-
21 fective until thirty days after the issuance of such certifi-
22 cate.".
23 (d) AMENDMENT OF SECTION 3.—The Webb-Pomerene
24 Act (15 U.S.C. 61–66) is amended—

1 (1) by inserting immediately before section 3 (15
2 U.S.C. 63) the following:
3 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
4 ATIONS PERMITTED.",
5 (2) by striking out "SEC. 3. That nothing" in sec-
6 tion 3 and inserting in lieu thereof "Nothing"
7 (e) ADMINISTRATION; ENFORCEMENT; REPORTS.—
8 (1) IN GENERAL.—The Webb-Pomerene Act (15
9 U.S.C. 61–66) is amended by striking out sections 4
10 and 5 (15 U.S.C. 64 and 65) and inserting in lieu
11 thereof the following sections:
12 "SEC. 4. CERTIFICATION.
13 "(a) PROCEDURE FOR APPLICATION.—Any associ-
14 ation, or export trading company seeking certification under
15 this Act shall file with the Secretary a written application for
16 certification setting forth the following:
17 "(1) The name of the association or export trad-
18 ing company.
19 "(2) The location of all of the offices or places of
20 business of the association or export trading company
21 in the United States and abroad.
22 "(3) The names and addresses of all of the offi-
23 cers, stockholders, and members of the association or
24 export trading company.

1 "(4) A copy of the certificate or articles of incor-
2 poration and bylaws, if the association or export trad-
3 ing company is a corporation; or a copy of the articles,
4 partnership, joint venture, or other agreement or con-
5 tract under which the association or export trading
6 company conducts or proposes to conduct its export
7 trade activities, or contract of association if the associ-
8 ation or export trading company is unincorporated.

9 "(5) A description of the goods, wares, merchan-
10 dise, or services which the association or export trad-
11 ing company or their members export or propose to
12 export.

13 "(6) A description of the domestic and interna-
14 tional conditions, circumstances, and factors which
15 show that the association or export trading company
16 and its activities will serve a specified need in promot-
17 ing the export trade of the described goods, wares,
18 merchandise, or services.

19 "(7) The export trade activities in which the asso-
20 ciation or export trading company intends to engage
21 and the methods by which the association or export
22 trading company conducts or proposes to conduct
23 export trade in the described goods, wares, merchan-
24 dise, or services, including, but not limited to, any
25 agreements to sell exclusively to or through the associ-

1 ation or export trading company, any agreements with
2 foreign persons who may act as joint selling agents,
3 any agreements to acquire a foreign selling agent, any
4 agreements for pooling tangible or intangible property
5 or resources, or any territorial, price-maintenance,
6 membership, or other restrictions to be imposed upon
7 members of the association or export trading company.
8 "(8) The names of all countries where export
9 trade in the described goods, wares, merchandise, or
10 services is conducted or proposed to be conducted by
11 or through the association or export trading company.
12 "(9) Any other information which the Secretary
13 may request concerning the organization, operation,
14 management, or finances of the association or export
15 trading company; the relation of the association or
16 export trading company to other associations, corpora-
17 tions, partnerships, and individuals; and competition or
18 potential competition, and effects of the association or
19 export trading company thereon. The Secretary may
20 request such information as part of an initial applica-
21 tion or as a necessary supplement thereto. The Secre-
22 tary may not request information under this paragraph
23 which is not reasonably available to the person making
24 application or which is not necessary for certification of
25 the prospective association or export trading company.

1 "(b) ISSUANCE OF CERTIFICATE.—

2 "(1) NINETY-DAY PERIOD.—The Secretary shall
3 issue a certificate to an association or export trading
4 company within ninety days after receiving the applica-
5 tion for certification or necessary supplement thereto if
6 the Secretary, after consultation with the Attorney
7 General and Commission, determines that the associ-
8 ation and, its export trade, export trade activities and
9 methods of operation, or export trading company, and
10 its export trade, export trade activities and methods of
11 operation meet the requirements of section 2 of this
12 Act and will serve a specified need in promoting the
13 export trade of the goods, wares, merchandise, or serv-
14 ices described in the application for certification. The
15 certificate shall specify the permissible export trade,
16 export trade activities and methods of operation of the
17 association or export trading company and shall include
18 any terms and conditions the Secretary deems neces-
19 sary to comply with the requirements of section 2 of
20 this Act. The Secretary shall deliver to the Attorney
21 General and the Commission a copy of any certificate
22 that he proposes to issue. The Attorney General or
23 Commission may, within fifteen days thereafter, give
24 written notice to the Secretary of an intent to offer
25 advice on the determination. The Attorney General or

1 Commission may, after giving such written notice and
2 within forty-five days of the time the Secretary has de-
3 livered a copy of a proposed certificate, formally advise
4 the Secretary and the petitioning association or export
5 trading company of disagreement with the Secretary's
6 determination. The Secretary shall not issue any certif-
7 icate prior to the expiration of such forty-five-day
8 period unless he has (A) received no notice of intent to
9 offer advice by the Attorney General or the Commis-
10 sion within fifteen days after delivering a copy of a
11 proposed certificate, or (B) received any noticed formal
12 advice of disagreement or written confirmation that no
13 formal disagreement will be transmitted from the At-
14 torney General and the Commission. After the forty-
15 five-day period or, if no notice of intent to offer advice
16 has been given, after the fifteen-day period, the Secre-
17 tary shall either issue the proposed certificate, issue an
18 amended certificate, or deny the application. Upon
19 agreement of the applicant, the Secretary may delay
20 taking action for not more than thirty additional days
21 after the forty-five-day period. Before offering advice
22 on a proposed certification, the Attorney General and
23 Commission shall consult in an effort to avoid, wher-
24 ever possible, having both agencies offer advice on any
25 application.

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 or export trading company which
6 have a significant impact on its export trade, make the
7 ninety-day period for application approval described in
8 paragraph (1) of this subsection, or an amended appli-
9 cation approval as provided in subsection (c) of this
10 section, impractical for the association or export trad-
11 ing company seeking certification, such association or
12 export trading company may request and may receive
13 expedited action on its application for certification.
14 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
15 ASSOCIATIONS.—Any association registered with the
16 Federal Trade Commission under this Act as of April
17 3, 1980, may file with the Secretary an application for
18 automatic certification of any export trade, export
19 trade activities, and methods of operation in which it
20 was engaged prior to enactment of the Export Trade
21 Association Act of 1982. Any such application must be
22 filed within one hundred and eighty days after the date
23 of enactment of such Act and shall be acted upon by
24 the Secretary in accordance with the procedures pro-
25 vided by this section. The Secretary shall issue to the

1 association a certificate specifying the permissible
2 export trade, export trade activities, and methods of
3 operation that he determines are shown by the applica-
4 tion (including any necessary supplement thereto), on
5 its face, to be eligible for certification under this Act,
6 and including any terms and conditions the Secretary
7 deems necessary to comply with the requirements of
8 section 2(a) of this Act, unless the Secretary possesses
9 information clearly indicating that the requirements of
10 section 2(a) are not met.

11 "(4) APPEAL OF DETERMINATION.—If the Secre-
12 tary determines not to issue a certificate to an associ-
13 ation or export trading company which has submitted
14 an application or an amended application for certifica-
15 tion, then he shall—

16 "(A) notify the association or export trading
17 company of his determination and the reasons for
18 his determination, and

19 "(B) upon request made by the association or
20 export trading company afford it an opportunity
21 for a hearing with respect to that determination in
22 accordance with section 557 of title 5, United
23 States Code.

24 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
25 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-

1 terial change in the membership, export trade, export trade
2 activities, or methods of operation, of an association or export
3 trading company then it shall report such change to the Sec-
4 retary and may apply to the Secretary for an amendment of
5 its certificate. Any application for an amendment to a certifi-
6 cate shall set forth the requested amendment of the certifi-
7 cate and the reasons for the requested amendment. Any re-
8 quest for the amendment of a certificate shall be treated in
9 the same manner as an original application for a certificate.
10 If the request is filed within thirty days after a material
11 change which requires the amendment, and if the requested
12 amendment is approved, then there shall be no interruption in
13 the period for which the certificate is in effect.

14 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
15 BY SECRETARY.—After notifying the association or export
16 trading company involved and after an opportunity for hear-
17 ing pursuant to section 554 of title 5, United States Code,
18 the Secretary, on his own initiative—

19 "(1) may require that the organization or oper-
20 ation of the association or export trading company be
21 modified to correspond with its certification, or

22 "(2) shall, upon a determination that the export
23 trade, export trade activities or methods of operation of
24 the association or export trading company no longer
25 meet the requirements of section 2 of this Act, revoke

1 the certificate or make such amendments as may be
2 necessary to satisfy the requirements of such section.
3 "(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
4 ATTORNEY GENERAL OR COMMISSION.—
5 "(1) The Attorney General or the Commission
6 may bring an action against an association or export
7 trading company or its members to invalidate, in whole
8 or in part, its certificate on the ground that the export
9 trade, export trade activities or methods of operation of
10 the association or export trading company fail or have
11 failed to meet the requirements of section 2 of this Act.
12 Except in the case of an action brought during the
13 period before an antitrust exemption becomes effective,
14 as provided for in section 2(c), the Attorney General or
15 Commission shall notify any association or export trad-
16 ing company or member thereof, against which it in-
17 tends to bring an action for invalidation, thirty days in
18 advance, as to its intent to file an action under this
19 subsection. The district court shall consider any issues
20 presented in any such action de novo and if it finds
21 that the requirements of section 2 are not met, it shall
22 issue an order declaring the certificate invalid or any
23 other order necessary to effectuate the purposes of this
24 Act and the requirements of section 2.

1 "(2) Any action brought under this subsection
2 shall be considered an action described in section 1337
3 of title 28, United States Code. Pending any such
4 action which was brought during the period any ex-
5 emption is held in abeyance pursuant to section 2(c) of
6 this Act, the court may make such temporary restrain-
7 ing order or prohibition as shall be deemed just in the
8 premises.

9 "(3) No person other than the Attorney General
10 or Commission shall have standing to bring an action
11 against an association or export trading company or
12 their respective members for failure of the association
13 or export trading company or their respective export
14 trade, export trade activities or methods of operation to
15 meet the eligibility requirements of section 2 of this
16 Act.

17 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
18 ation and each export trading company and any subsidiary
19 thereof shall comply with United States export control laws
20 pertaining to the export of transshipment of any goods on the
21 Commodity Control List to controlled countries. Such laws
22 shall be complied with before actual shipment.

23 **"SEC. 5. GUIDELINES.**

24 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
25 days after the enactment of the National Export Policy Act

1 of 1981, the Secretary, after consultation with the Attorney
2 General, and the Commission shall publish proposed guide-
3 lines for purposes of determining whether export trade,
4 export trade activities and methods of operation of an associ-
5 ation or export trading company will meet the requirements
6 of section 2 of this Act.

7 "(b) PUBLIC COMMENT PERIOD.—Following publica-
8 tion of the proposed guidelines, and any proposed revision of
9 guidelines, interested parties shall have thirty days to com-
10 ment on the proposed guidelines. The Secretary shall review
11 the comments and, after consultation with the Attorney Gen-
12 eral, and Commission, publish final guidelines within thirty
13 days after the last day on which comments may be made
14 under the preceding sentence.

15 "(c) PERIODIC REVISION.—After publication of the
16 final guidelines, the Secretary shall periodically review the
17 guidelines and, after consultation with the Attorney General,
18 and the Commission, propose revisions as needed.

19 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
20 ACT.—The promulgation of guidelines under this section
21 shall not be considered rulemaking for purposes of subchapter
22 II of chapter 5 of title 5, United States Code, and section
23 553 of such title shall not apply to their promulgation.

1 "SEC. 6. ANNUAL REPORTS.

2 "Every certified association or export trading company
3 shall submit to the Secretary an annual report, in such form
4 and at such time as he may require, which report updates
5 where necessary the information described by section 4(a) of
6 this Act.

7 "SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF
8 COMMERCE.

9 "The Secretary shall establish within the Department of
10 Commerce an office to promote and encourage to the great-
11 est extent feasible the formation of export trade associations
12 and export trading companies through the use of provisions of
13 this Act in a manner consistent with this Act. The Office of
14 Export Trade in the Department of Commerce shall report to
15 the congressional committees of appropriate jurisdiction on
16 an annual basis, all East-West trade transactions requiring
17 validated licenses, and any other relevant information on the
18 role of the United States export trading companies or subsid-
19 iaries thereof in East-West trade.

20 "SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING
21 ASSOCIATIONS.

22 "(a) ELIGIBILITY.—To be eligible for the antitrust ex-
23 emption provided by this section, an association must have
24 been registered with the Federal Trade Commission under
25 this Act on April 3, 1981.

1 "(b) DURATION.—The antitrust exemption provided by
2 this section shall extend only to the existence of an eligible
3 association, and to agreements made and acts done by such
4 association, prior to one hundred and eighty days after the
5 date of enactment of the National Export Policy Act of 1981,
6 or, in the event that an eligible association files an applica-
7 tion for certification pursuant to section 4 of this Act during
8 such one hundred and eighty days, prior to the Secretary's
9 determination on such application becoming final.

10 "(c) EXEMPTION.—Subject to the limitations in subsec-
11 tions (a) and (b), nothing contained in sections 1 to 7 of the
12 Sherman Act shall be construed as declaring to be illegal an
13 association entered into for the sole purpose of engaging in
14 export trade and actually engaged solely in such export
15 trade, or an agreement made or act done in the course of
16 export trade by such association, provided such association,
17 agreement, or act is not in restraint of trade within the
18 United States, and is not in restraint of the export trade of
19 any domestic competitor of such association: *Provided*, That
20 such association does not, either in the United States or else-
21 where, enter into any agreement, understanding, or con-
22 spiracy, or do any act which artificially or intentionally en-
23 hances or depresses prices within the United States of com-
24 modities of the class exported by such association, or which

1 substantially lessens competition within the United States or
2 otherwise restrains trade therein.

3 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
4 REPORT INFORMATION.

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

16 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
17 MISSION.—Whenever the Secretary believes that an appli-
18 cant may be eligible for a certificate, or has issued a certifi-
19 cate to an association or export trading company, he shall
20 promptly make available all materials filed by the applicant,
21 association or export trading company, including applications
22 and supplements thereto, reports of material changes, appli-
23 cations for amendments and annual reports, and information
24 derived therefrom, to the Attorney General or Commission,
25 or any employee or officer thereof, for official use in connec-

1 tion with an investigation or judicial or administrative pro-
2 ceeding under this Act or the antitrust laws to which the
3 United States or the Commission is or may be a party. Such
4 information may only be disclosed by the Secretary upon a
5 prior certification that the information will be maintained in
6 confidence and will only be used for such official law enforce-
7 ment purposes.

8 "SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH
9 UNITED STATES OBLIGATIONS.

10 "At such time as the United States undertakes binding
11 international obligations by treaty or statute, to the extent
12 that the operations of any export trade association or export
13 trading company, certified under this Act, are inconsistent
14 with such international obligations, the Secretary may re-
15 quire the association or export trading company to modify its
16 respective operations, and in so doing afford the association
17 or export trading company a reasonable opportunity to
18 comply therewith, so as to be consistent with such interna-
19 tional obligations.

20 "SEC. 11. REGULATIONS.

21 "The Secretary, after consultation with the Attorney
22 General and the Commission, shall promulgate such rules
23 and regulations as may be necessary to carry out the pur-
24 poses of this Act.

1 "SEC. 12. TASK FORCE STUDY.

2 "Seven years after the date of enactment of the Export
3 Trade Association Act of 1982, the President shall appoint,
4 by and with the advice and consent of the Senate, a task
5 force to examine the effect of the operation of this Act on
6 domestic competition and on United States international
7 trade and to recommend either continuation, revision, or ter-
8 mination of the Webb-Pomerene Act. The task force shall
9 have one year to conduct its study and to make its recom-
10 mendations to the President.".

11 (2) REDESIGNATION OF SECTION 6.—The Act is
12 amended—

13 (A) by striking out "SEC. 6." in section 6
14 (15 U.S.C. 66), and

15 (B) by inserting immediately before such sec-
16 tion the following:

17 "SEC. 13. SHORT TITLE.".

18 PART 3—ANTITRUST PROCEDURES
19 SIMPLIFICATION

20 SEC. 431. DEFINITIONS.

21 For purposes of this part—

22 (1) The term "structural arrangement" means a
23 situation or course of action that affects the pattern of
24 ownership or control in industry.

1 (2) The term "conduct" means a practice that
2 may affect domestic competition but does not directly
3 affect the structure of ownership or control in industry.
4 (3) The term "disclosure" means a statement pub-
5 lished by the Attorney General or the Assistant Attor-
6 ney General for the Antitrust Division under section
7 5(a) describing conduct and structural arrangements re-
8 lating to export sales that will not be subject to crimi-
9 nal or civil prosecution under the antitrust laws.
10 (4) The term "antitrust laws" means the Sherman
11 Act, the Federal Trade Commission Act, the Clayton
12 Act, and any other Acts in pari materia.
13 **SEC. 432. STUDIES BY ATTORNEY GENERAL.**
14 (a) IN GENERAL.—The Attorney General, in consulta-
15 tion with the Secretary of Commerce and the heads of other
16 United States agencies with enforcement responsibility under
17 the antitrust laws, shall conduct studies to determine
18 whether—
19 (1) the conduct and structural arrangements em-
20 ployed in various countries by various types and sizes
21 of United States businesses to expand exports conflict
22 significantly with basic antitrust principles; and
23 (2) a more liberal enforcement policy for overseas
24 activities than would be appropriate for domestic trans-

1 actions would impede thorough implementation of the
2 legislative intent of the antitrust laws.
3 (b) IDENTIFICATION OF CONDUCT AND STRUCTURAL
4 ARRANGEMENTS.—On the basis of studies carried out under
5 subsection (a), or other information available to the Depart-
6 ment of Justice, the Attorney General shall identify conduct
7 and structural arrangements associated with particular types
8 of export sales which the Attorney General determines would
9 not warrant criminal or civil prosecution under the antitrust
10 laws by the Department of Justice.
11 (c) DEADLINE FOR INITIAL STUDIES.—The initial
12 studies made under subsection (a) shall be completed within 1
13 year after the date of enactment of this Act and shall be
14 updated annually.
15 **SEC. 433. PROCEDURES.**
16 (a) ATTORNEY GENERAL.—The Attorney General
17 shall—
18 (1) publish a description of conduct and structural
19 arrangements identified pursuant to section 432(b) as
20 not meriting criminal or civil prosecution under the
21 antitrust laws and shall make the published description
22 available to all potentially interested exporters; and
23 (2) establish procedures to assure a prompt re-
24 sponse to—

1 (A) petitions from individual exporters or
2 classes of exporters for the issuance of descrip-
3 tions under paragraph (1); and
4 (B) petitions from an individual exporter or
5 group of exporters for the issuance of a statement
6 of civil and criminal enforcement intentions con-
7 cerning specific conduct in which the petitioner
8 proposes to engage, or structural arrangements
9 the petitioner proposes to establish, in connection
10 with exports.
11 (b) SECRETARY OF COMMERCE.—The Secretary of
12 Commerce may intervene at any time to request that the
13 Attorney General publish a description under subsection
14 (a)(1) with respect to conduct or structural arrangements or
15 to reconsider a description published under such subsection.
16 Within 30 days after receiving such a request from the Sec-
17 retary, the Attorney General shall take whatever action he
18 determines to be appropriate with respect to the request and
19 inform the Secretary of the determination and action taken.
20 The action of the Attorney General shall be final and shall
21 not be subject to judicial review.
22 (c) FORMS AND PROCEDURES FOR OBTAINING DISCLO-
23 SURES.—The Attorney General shall establish appropriate
24 forms and procedures for the purpose of—

1 (1) communicating disclosures issued under sub-
2 section (a) to affected parties;
3 (2) informing exporters of specific actions they
4 must take to obtain disclosures pursuant to subsection
5 (a), or to be deemed covered by disclosures made pur-
6 suant to subsection (a)(2);
7 (3) determining actions exporters have taken in
8 reliance on such descriptions; and
9 (4) identifying problems associated with discharg-
10 ing the evaluation, disclosure, and monitoring functions
11 authorized under this Act.
12 (d) PROVISION OF LEGAL ASSISTANCE.—Upon re-
13 quest, the Secretary of Commerce may, on a reimbursable
14 basis, provide legal assistance to existing and potential ex-
15 porters who are unable to obtain specialized antitrust coun-
16 sel. Such assistance shall be limited to assistance in obtaining
17 enforcement intention disclosures provided for under subsec-
18 tion (a)(2).
19 (e) APPLICABILITY OF ADMINISTRATIVE PROCEDURE
20 ACT RULES.—Agency proceedings and agency actions (as
21 defined in paragraphs (12) and (13), respectively, of section
22 551 of title 5, United States Code) under this part shall not
23 be subject to subchapter II of chapter 5 of title 5, United
24 States Code (other than sections 552, 552a, and 552b).

1 SEC. 434. COMPLIANCE BY EXPORTERS.

2 (a) ANTITRUST EXEMPTION.—Notwithstanding any
3 other provision of law, an exporter shall not be subject to
4 civil or criminal prosecution under the antitrust laws by any
5 Federal agency if—

6 (1) the exporter, or group of exporters, notifies
7 the Attorney General, pursuant to procedures estab-
8 lished under section 433(c)(2), that the exporter or
9 group intends to engage in conduct or to establish
10 structural arrangements which have been designated
11 by the Attorney General as conduct or structural ar-
12 rangements not subject to civil or criminal prosecution
13 under the antitrust laws, and the Attorney General
14 does not object to the proposed conduct or arrange-
15 ment within 30 days and inform such exporter, or
16 group of exporters, of the specific reasons why the pro-
17 posed conduct and structural arrangements are not
18 covered by disclosures made pursuant to section
19 433(a); or

20 (2) the exporter requests a statement of civil and
21 criminal enforcement intentions concerning a particular
22 transaction pursuant to section 433(a)(2)(B), and within
23 60 days after the date of the request—

24 (A) receives an approval from the Attorney
25 General, or

1 (B) does not receive an objection in writing
2 from the Attorney General to the transaction set-
3 ting forth the specific reasons why the transaction
4 is in conflict with specific provisions of the anti-
5 trust laws.
6 (b) OBJECTIONS TO PROPOSED ACTIVITY.—Whenever
7 the Attorney General objects to proposed conduct or struc-
8 tural arrangements under paragraph (1) or (2) of subsection
9 (a)—
10 (1) the Attorney General shall notify the exporter
11 or group of exporters of such objections within 30 days
12 (60 days in the case of a request described in para-
13 graph (2) of such subsection) or receiving notification
14 regarding the proposed conduct or structural arrange-
15 ments and shall notify the exporter or group of export-
16 ers involved that they may request that a hearing be
17 held on the objections to the proposed conduct or
18 structural arrangement;
19 (2) the exporter or exporters involved shall notify
20 the Attorney General within 15 days after receiving
21 the objections if they wish to have a hearing;
22 (3) the Attorney General shall conduct any such
23 hearing within 30 days after the date on which the re-
24 quest for a hearing under paragraph (2) is received by
25 the Department of Justice;

1 (4) such hearing shall continue for no more than
2 30 days; and
3 (5) the Attorney General shall make the disclo-
4 sure determination within 15 days after the completion
5 of such hearing, notify the exporter or group of export-
6 ers of the determination, and publish the determination.
7 (c) FINALITY OF DETERMINATION.—A determination
8 by the Attorney General under subsection (b) shall be final
9 and shall not be subject to judicial review.

10 **SEC. 435. INJUNCTIONS.**

11 The Attorney General may request any United States
12 district court to issue an injunction regarding a disclosure
13 under section 433(a)(2) of this Act, when the Attorney Gen-
14 eral determines that—
15 (1) the activity of the exporter or group of export-
16 ers is acting outside of the scope of the disclosure;
17 (2) the circumstances under which the disclosure
18 was issued have substantially changed; or
19 (3) the disclosure was issued upon inaccurate or
20 fraudulent information.

21 **SEC. 436. REPORTS AND DISCLOSURES.**

22 On December 31 of each year, the Attorney General,
23 the Secretary of Commerce, and the heads of other United
24 States agencies directly affected by disclosures under this

1 part shall each file with the Congress, and make public, a
2 detailed report of—
3 (1) all actions by the appropriate department or
4 agency, or by other interested public and private par-
5 ties, taken pursuant to this part;
6 (2) any problems associated with the implementa-
7 tion of this part;
8 (3) the specific plans of the appropriate depart-
9 ment or agency to carry out its responsibilities (if any)
10 under this part in the next fiscal year; and
11 (4) any recommendations for amendment of this
12 part.

13 **SEC. 437. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) ATTORNEY GENERAL.—There are authorized to be
15 appropriated to the Attorney General such sums as may be
16 necessary for the purpose of carrying out this part.
17 (b) SECRETARY OF COMMERCE.—There are authorized
18 to be appropriated to the Secretary of Commerce such sums
19 as may be necessary for fiscal year 1981 for the sole purpose
20 of covering costs associated with initial implemention of sec-
21 tion 433(d) of this part.

22 **SEC. 438. EFFECTIVE DATE.**

23 This part shall take effect on October 1, 1981.

TITLE V—AMENDMENTS TO OTHER LAWS THAT HINDER EXPORTS

PART 1—FINDINGS AND CONCLUSIONS

SEC. 501. FINDINGS AND CONCLUSIONS.

(a) FINDINGS.—The Congress finds that—

(1) there are a number of United States laws, regulations, controls, and policies that have been instituted to serve legitimate domestic economic, political and ethical needs but which have little regard for their cost in terms of an adverse impact on exports;

(2) the effects of some of these laws, regulations, and policies have been to prohibit exports, raise the cost of producing goods for export, increase the uncertainty or cost of export transactions, and lengthen the time and increase the risk of negotiating and completing export transactions.

(3) it is in the national interest to avoid restraints on exports except when national security or foriegn policy considerations clearly outweigh the total costs of the impairment to trade;

(4) the unpredictable and unclear nature of the enforcement, interpretation, and jurisdiction of many of these laws and regulations has contributed to a climate of debilitating uncertainty among businessmen involved in exports; and

1 (5) the United States agencies responsible for en-
2 forcement or interpretation of the above laws and poli-
3 cies do not sufficiently coordinate interpretation and
4 enforcement practices among themselves, or with other
5 agencies responsible for international trade policy,
6 export promotion, foreign policy, and international
7 monetary policy.
8 (b) CONCLUSIONS.—The Congress concludes that—
9 (1) laws and regulations promoting and constrain-
10 ing international trade should be designed to reflect dif-
11 ferences in enterprise size, trade experience, industry
12 type, and product destinations in order to minimize
13 costs and maximize benefits of such laws and regula-
14 tions absorbed by the private sector;
15 (2) export impact statements should be required
16 for all policies and regulations affecting exports, to de-
17 termine as accurately as possible the extent of damage
18 to our trading interests caused by them, and to weigh
19 these costs against foreign policy considerations;
20 (3) some of the problems addressed in the laws
21 and regulations demand an international approach and
22 appropriate international agreements should be initiated
23 and sought by the United States agencies responsible
24 for trade treaties and by the President; and

1 (4) business should be allowed to obtain promptly
2 and efficiently binding statements of interpretation and
3 applications.

4 **PART 2—BUSINESS ACCOUNTING AND FOREIGN**
5 **TRADE SIMPLIFICATION**

6 **SEC. 521. FINDINGS AND CONCLUSIONS.**

7 (a) FINDINGS.—The Congress finds that—
8 (1) the enactment of the Foreign Corrupt Prac-
9 tices Act of 1977 was a positive and significant step
10 toward the important objective of prohibiting bribery of
11 foreign government officials by United States compa-
12 nies in order to obtain, retain, or direct business;
13 (2) the unpredictable and unclear nature of the en-
14 forcement, interpretation, and jurisdiction of the For-
15 eign Corrupt Practices Act of 1977 by United States
16 agencies has caused unnecessary confusion among ex-
17 isting and potential exporters as to the scope of legiti-
18 mate overseas business activities;
19 (3) the Foreign Corrupt Practices Act of 1977
20 does not reflect important differences in competitive
21 conditions among various cultures and country markets
22 for different products and services;
23 (4) the accounting standards requirements of the
24 Foreign Corrupt Practices Act of 1977, which apply to
25 all issuers of securities regardless of size, market, or

1 the presence of international transactions, are exces-
2 sive and result in costly and unnecessary paperwork
3 burdens;

4 (5) United States agencies responsible for enforce-
5 ment of the Foreign Corrupt Practices Act of 1977 do
6 not sufficiently coordinate interpretation and enforce-
7 ment practices among themselves, or with other agen-
8 cies responsible for international trade policy, export
9 promotion, foreign policy, international monetary
10 policy, and other related civil and criminal statutes;
11 and

12 (6) it is in the best interests of all countries to
13 maintain responsible standards of corporate conduct in
14 foreign markets to preserve free and equitable trading
15 practices.

16 (b) CONCLUSIONS.—The Congress concludes that—

17 (1) the principal objectives of the Foreign Corrupt
18 Practices Act of 1977 are desirable, beneficial, and im-
19 portant to our Nation as well as to our relationships
20 with our trading partners, and these objectives should
21 remain the central intent of the Act;

22 (2) exporters should not be subject to unclear,
23 conflicting, and potentially damaging demands by di-
24 verse United States agencies responsible for enforce-
25 ment of the Foreign Corrupt Practices Act of 1977;

1 (3) conduct and structural arrangements of United
2 States exporters should be permitted if they do not
3 have a negative impact on our commerce with foreign
4 nations, restrict fair competition, or otherwise conflict
5 with the basic principles of the Foreign Corrupt Prac-
6 tices Act of 1977;
7 (4) the accounting standards requirements of the
8 Foreign Corrupt Practices Act of 1977 should be inte-
9 grated with concepts of materiality accepted by the ac-
10 counting profession, and should take into consideration
11 the size and operations of issuers of securities;
12 (5) legal interpretations and general compliance
13 and enforcement practices associated with the Foreign
14 Corrupt Practices Act of 1977 should be developed in
15 accordance with considerations underlying foreign
16 policy relations, international trade, export promotion,
17 international monetary policy, and other related civil
18 and criminal statutes; and
19 (6) a solution to the problem of corrupt payments
20 by firms to obtain or retain business demands on inter-
21 national approach, accordingly appropriate interna-
22 tional agreements should be initiated and sought by the
23 United States agencies responsible for trade agree-
24 ments and by the President.

1 **SEC. 522. AMENDMENT OF SHORT TITLE.**

2 Section 101 of the Foreign Corrupt Practices Act of
3 1977 is amended to read as follows:

4 "SHORT TITLE

5 "SEC. 101. This title may be cited as the 'Business
6 Practices and Records Act'.".

7 **SEC. 523. ACCOUNTING STANDARDS.**

8 (a) Section 13(b)(2) of the Securities Exchange Act of
9 1934 is amended by striking out clauses (A) and (B) and
10 inserting in lieu thereof the following:

11 "(A) make and keep books, accounting records,
12 and accounts which reflect in reasonable detail the
13 transactions of the issuer (including the disposition of
14 assets) in all material respects so as (i) to permit prep-
15 aration of financial statements in conformity with gen-
16 erally accepted accounting principles or other criteria
17 applicable to such statements, and (ii) to maintain ac-
18 countability for assets; and

19 "(B) devise and maintain a system of internal ac-
20 counting controls sufficient to provide reasonable assur-
21 ances that in all material respects—

22 "(i) transactions are executed in accordance
23 with management's general or specific authoriza-
24 tion;

25 "(ii) transactions are recorded as necessary
26 (I) to permit preparation of financial statements in

1 conformity with generally accepted accounting
2 principles or any other criteria applicable to such
3 statements, and (II) to maintain accountability for
4 assets;
5 "(iii) access to assets is permitted only in ac-
6 cordance with management's general or specific
7 authorization; and
8 "(iv) the recorded accountability for assets is
9 compared with the existing assets at reasonable
10 intervals and appropriate action is taken with re-
11 spect to any differences.".
12 (b) Section 13(b) of the Securities Exchange Act of
13 1934 is amended by adding at the end thereof the following:
14 "(4) A person shall be liable in any action or proceeding
15 arising under paragraph (2) only for intentionally falsifying,
16 or causing to be falsified, any book, accounting record, or
17 account described therein or for the intentionally wrongful
18 maintenance of a system of internal accounting controls
19 which is not consistent with the purposes of paragraph (2), or
20 any intentionally wrongful attempt to circumvent the internal
21 accounting controls established pursuant to such paragraph.
22 "(5) Where a person holds 50 per centum or less of the
23 equity capital of a domestic or foreign firm, the provisions of
24 paragraph (2) require only that the issuer proceed in good
25 faith to use its influence, to the extent reasonable under the

1 issuer's circumstances, including the relative degree of its
2 ownership or control over the domestic or foreign firm and
3 under the laws and practices governing the business oper-
4 ations of the country in which such firm is located, to cause
5 transactions and dispositions of assets having a material
6 effect as defined in subparagraphs (A) and (B) of paragraph
7 (2) of the issuer's interest in the foreign controlled firm to be
8 carried out consistent with the purposes of such paragraph.
9 Such an issuer shall be conclusively presumed to have com-
10 plied with the provisions of paragraph (2) by demonstrating
11 good faith efforts to use such influence.".

12 **SEC. 524. REPEAL OF SECTION 30A.**

13 (a) Section 30A of the Securities Exchange Act of 1934
14 is repealed.

15 (b) Section 104 of the Business Practices and Records
16 Act is amended by inserting "or any issuer" after "any do-
17 mestic concern" whenever it appears except in section
18 104(b)(1)(B).

19 (c) Section 104(a) of such Act is amended by striking
20 out ", other than an issuer which is subject to section 30A of
21 the Securities Exchange Act of 1934".

22 (d) Section 104(a)(3) of such Act is amended by striking
23 out "while knowing or having reason to know" after "any
24 person," and inserting in lieu thereof the following: "with the
25 intention of directing or authorizing".

1 (e) Section 104(b)(1)(B) of such Act is amended by in-
2 serting "or any issuer which willfully violates subsection (a)"
3 before "shall, upon conviction".
4 The caption of section 104 of such Act is amended to
5 read as follows: "BUSINESS PRACTICES".
6 **SEC. 525. DEFINITIONS.**
7 (a) Section 13(b) of the Securities Exchange Act of
8 1934 is amended by adding at the end thereof the following:
9 "(6) For the purpose of this section, the terms
10 'reasonable detail' and 'reasonable assurances' mean
11 such level of detail and degree of assurances as would
12 satisfy prudent individuals in the conduct of their own
13 affairs, having in mind a comparison between benefits
14 to be obtained and costs to be incurred in obtaining
15 such benefits.
16 "(7) For the purpose of this section, the term
17 'material' is used in the same sense as in generally ac-
18 cepted accounting principles when those principles are
19 applied to the preparation and presentation of financial
20 statements of the issuer.".
21 (b) The Business Practices and Records Act is amended
22 by inserting after section 104(d)(3) the following:
23 "(4) The term 'issuer' means any issuer which
24 has a class of securities registered pursuant to section
25 12 of the Securities Exchange Act of 1934 or which is

1 required to file reports under section 15(d) of the Secu-
2 rities Exchange Act of 1934.
3 "(e) For the purpose of this Act, an offer, payment,
4 promise to pay, or authorization of the payment of any
5 money, or offer, gift, promise to give, or authorization of the
6 giving of anything of value shall not include an item of value
7 that constitutes, or is intended as no more than, an item
8 given as a courtesy, a token of regard and esteem, or in
9 return for hospitality, and is not meant to include marketing
10 education, or expenses related to the demonstration or expla-
11 nation of products, or operations of an issuer or a domestic
12 concern, including travel and lodging, if such marketing ac-
13 tivities, demonstrations, or explanations, or related expenses
14 pertain to the business presentation associated with the sell-
15 ing of goods and services.
16 "(f) Nothing in this Act shall prohibit any offer, pay-
17 ment, promise to pay, or authorization of the payment of any
18 money, or offer, gift, promise to give, or authorization of the
19 giving of anything of value which is lawful under the laws
20 and regulations of the country, in which the foreign official,
21 who is the intended recipient serves or in which the foreign
22 political party or official thereof or foreign political candidate
23 who is the intended recipient principally operates.
24 "(g) This section shall be the exclusive provision under
25 the laws of the United States authorizing a civil or criminal

1 proceeding by the United States against a domestic concern
2 or an issuer for making use of the mails or any means or
3 instrumentality of interstate commerce in the manner and for
4 the purposes proscribed by this section or for actions of a
5 domestic concern or an issuer which are taken in furtherance
6 of such conduct.".

7 **SEC. 526. AUTHORITY TO ISSUE GUIDELINES.**

8 Title I of the Business Practices and Records Act is
9 amended by adding at the end thereof the following:

10 "GUIDELINES AND GENERAL PROCEDURES FOR
11 COMPLIANCE

12 "SEC. 105. (a) Not later than 6 months after the date of
13 enactment of this section, an interagency task force to be
14 chaired by the United States Trade Representative and to
15 include the Secretary of State, the Secretary of Commerce,
16 the Secretary of the Treasury, and the Attorney General,
17 after consultation with representatives of the business com-
18 munity and the interested public through public notice and
19 comment and in public hearings, shall issue—

20 "(1) guidelines describing specific types of conduct
21 and structural arrangements associated with common
22 types of export sales arrangements and business con-
23 tracts which such interagency task force determines
24 constitute compliance with the provisions of section
25 104 of this Act; and

1 "(2) general precautionary procedures which issu-
2 ers or domestic concerns may use on a voluntary basis
3 to ensure compliance with this Act, and to create a re-
4 buttable presumption of compliance with this Act.
5 The guidelines and procedures referred to in the preceding
6 sentence shall be issued in accordance with sections 551
7 through 557 of title 5, United States Code.
8 "(b) The Attorney General, after consultation with
9 other Federal agencies and representatives from the business
10 community, shall establish a Business Practices and Records
11 Act Review Procedure for the purpose of providing responses
12 to specific inquiries concerning enforcement intentions under
13 this Act. The Attorney General shall issue opinions, within
14 30 days, in response to requests from issuers and domestic
15 concerns, regarding compliance with the requirements of the
16 provisions of section 104 of this Act. An opinion that certain
17 conduct does not involve a violation shall be final and binding
18 on all parties, subject to the discovery of new evidence.
19 When appropriate, and at reasonable intervals, the responses
20 derived from the review procedure will be reviewed by the
21 Attorney General to determine whether such compilation of
22 responses should be included in a new guideline pursuant to
23 subsection (a).
24 "(c) Any document or other material provided to, re-
25 ceived by, or prepared in the Department of Justice, or any

1 other department or agency of the United States Govern-
2 ment, in connection with a request by an issuer or domestic
3 concern for a statement of present enforcement intentions
4 under the Business Practices and Records Act Review Pro-
5 cedure shall be exempt from disclosure under section 552 of
6 title 5, United States Code, regardless of whether the De-
7 partment responds to such a request or the applicant with-
8 draws such request prior to receiving a response. If any re-
9 quest is withdrawn or does not receive a response from the
10 Justice Department, any document or other material submit-
11 ted in connection with such request shall be returned to the
12 requesting party, and any other document or other material
13 submitted to, received by, or prepared by the Attorney Gen-
14 eral in consideration of such request shall either be returned
15 if the document or material originated from a source outside
16 the United States Government or shall be destroyed. Within
17 60 days after the withdrawal of a request or the communica-
18 tion of the decision not to respond to the request, the Depart-
19 ment of Justice shall certify to the requesting party that any
20 such document or material has been returned to the request-
21 ing party or the originating nongovernmental party or has
22 been destroyed in accordance with this section. The Attorney
23 General shall protect the privacy of each applicant, and all
24 documents supplied are for use by the Justice Department
25 only. Without the express written permission of the issuer or

1 domestic concern which furnished the document, neither the
2 Department of Justice nor any other department or agency of
3 the United States, may use or rely upon any document, or
4 any information contained in any document, submitted pursu-
5 ant to the Business Practices and Records Act Review Pro-
6 cedure for any purpose other than preparing a response to
7 the specific inquiry in support of which the document was
8 provided. The Review Procedure shall be developed and in-
9 stituted in accordance with sections 551 through 557 and
10 701 through 706 of title 5, United States Code.

11 "(d) The Attorney General shall make a special effort to
12 provide timely compliance guidance to potential exporters,
13 and smaller businesses, who as a practical matter are unable
14 to obtain specialized counsel on issues pertaining to this Act.
15 Such assistance shall be limited to requests for enforcement
16 intention disclosures provided for under this Act, and expla-
17 nations of accounting standards requirements, and payments
18 and practices requirements.

19 "(e)(1) On September 1 of each year the Attorney Gen-
20 eral shall transmit to the Congress and make public a de-
21 tailed report on all actions which it and other interested
22 public and private parties have taken pursuant to this Act,
23 along with its views on problems associated with implemen-
24 tation, its plans for the next fiscal year to further implement
25 the Act, and recommendations for amendment.

1 "(2) On September 1 of each year the Securities and
2 Exchange Commission shall file with the Congress a detailed
3 report on all actions which it has taken pursuant to section
4 13(b) of the Securities Exchange Act, its views on problems
5 associated with implementation, its plans for the next fiscal
6 year to further implement such section, and its recommenda-
7 tions for amendment.".

8 **SEC. 527. CONFORMING CHANGES IN INTERNAL REVIEW**
9 **CODE.**

10 Paragraph (1) of section 162(c) of the Internal Revenue
11 Code of 1954 is amended by striking out "the laws of the
12 United States if such laws were applicable to such payment
13 and to such official or employee" and inserting in lieu thereof
14 "the Business Practices and Records Act".

15 **SEC. 528. INTERNATIONAL AGREEMENTS.**

16 (a) It is the sense of the Congress that the President
17 should pursue the negotiation of bilateral and multilateral
18 agreements among the largest possible number of nations
19 which would establish standards of conduct for international
20 business practices and which would create a process by
21 which problems and conflicts associated with such practices
22 could be resolved, and to explore through negotiations an
23 international agreement for rates of commissions.

24 (b) It is the sense of the Congress that, within one year
25 after the date of enactment of this Act, the President shall

1 report to Congress on the progress of these negotiations, and
2 those steps which the Administration and Congress should
3 consider taking in the event that the negotiations referred to
4 in subsection (a) do not successfully eliminate the competitive
5 disadvantage of United States business. Within 60 days of
6 receipt of the President's report, Congress shall begin a full
7 oversight review of the Business Practices and Records Act,
8 including its effectiveness in fulfilling its goals and purposes,
9 effects upon export promotion, United States competitive-
10 ness, foreign policy relations, small business considerations,
11 costs of compliance, and appropriateness of penalties and
12 those steps set out in the report to Congress as provided in
13 the preceding sentence.

14 (c) Not later than 6 months after the date of the enact-
15 ment of this Act, the President shall submit to the appropri-
16 ate committees of the Congress a report identifying and as-
17 sessing the legal and practical consequences of specific ac-
18 tions that the United States could take under existing law
19 against—

20 (1) those nations which are not cooperating with
21 the United States in international efforts to prevent
22 bribery of foreign officials, candidates, or parties in
23 third countries; and

24 (2) those persons or business enterprises organized
25 and operating in other nations that are engaging in

1 bribery of foreign officials, candidates, or parties in
2 third countries to the commercial and competitive dis-
3 advantage of the overseas operations of the United
4 States industry.

5 This report shall also include recommendations for any ap-
6 propriate new legislation required to give the President au-
7 thority to take action against such nations and against such
8 persons or business enterprises. In addition, the report shall
9 contain an analysis of the potential effect on United States
10 national security of the continuation of bribery of foreign offi-
11 cials, candidates, and parties by persons and business enter-
12 prises of other nations. The findings and recommendations of
13 this report shall be included on the agenda of the full over-
14 sight review of the Business Practices and Records Act to be
15 conducted under subsection (b).

16 **PART 3—EXPORT COMPETITIVENESS STATEMENTS;**
17 **PAPERWORK**

18 **SEC. 531. EXPORT COMPETITIVENESS STATEMENTS.**

19 (a) IN GENERAL.—Whenever an issuing authority takes
20 a significant action which, in the judgment of the issuing au-
21 thority, could affect adversely exports of United States goods
22 and services, or the international competitive position of the
23 United States and its exporters, he shall include in any docu-
24 ment embodying or giving effect to such action an export
25 competitiveness impact statement.

1 (b) DEFINITIONS.—For purposes of this section—

2 (1) SIGNIFICANT ACTION.—The term "significant
3 action" includes, but is not limited to—

4 (A) rulemaking (as defined in paragraph (5)
5 of section 551 of title 5, United States Code),

6 (B) promulgating regulations,

7 (C) developing and implementing programs,
8 and

9 (D) proclamations and orders issued by the
10 President.

11 (2) EXPORT COMPETITIVENESS IMPACT STATE-
12 MENT.—The term "export competitiveness statement"
13 means a written statement which includes, but is not
14 limited to, an analysis of—

15 (A) whether the significant action is a unilat-
16 eral action on the part of the United States or
17 part of a multilateral action by several countries,

18 (B) the estimated value of United States ex-
19 ports which will be affected by the action,

20 (C) the industries which will be affected by
21 the action,

22 (D) any efforts made by the issuing authority
23 to solicit the views of affected industries and of
24 the views of such industries,

1 (E) alternative plans of action and the rea-
2 sons for not choosing any such alternative plan,
3 and
4 (F) whether the effect, directly or indirectly,
5 of the action will be to give to foreign competi-
6 tors, including domestic affiliates of foreign com-
7 petitors, an advantage or right which would not
8 be enjoyed absent such action.
9 (3) ISSUING AUTHORITY.—The term "issuing au-
10 thority" means the President and the head of any de-
11 partment or agency of the executive branch of the
12 United States Government.
13 (c) NO RIGHT OF ACTION CREATED.—This section
14 does not confer any right of action on any person to stay the
15 development, preparation, issuance, or implementation of any
16 significant action.
17 **SEC. 532. REDUCTION OF EXPORT PAPERWORK.**
18 (a) FINDINGS.—The Congress finds that an average
19 export shipment requires as many as 46 different documents
20 and 360 copies and may cost as much as $375 for documen-
21 tation alone. Such voluminous paperwork requirements may
22 act as a deterrent to exports.
23 (b) PAPERWORK TO BE REDUCED.—It is the sense of
24 Congress that export paperwork must be reduced to encour-
25 age export sales. All agencies shall minimize the burden of

1 paperwork and reporting requirements to the greatest extent
2 feasible, with particular reference to small businesses and
3 new-to-market exporters, and reporting requirements shall be
4 designed with reference to the most recent information proc-
5 essing technology.

6 TITLE VI—EXPORT AWARENESS AND EXPORT 7 PROMOTION PROGRAMS

8 PART 1—FINDINGS; CONCLUSIONS

9 SEC. 601. STATEMENT OF FINDINGS AND CONCLUSIONS.

10 (a) FINDINGS.—The Congress finds that—

11 (1) development of a greater awareness of the
12 benefits of exports and programs for the promotion of
13 exports are critical elements in the improvement of our
14 export performance;

15 (2) there is a widespread lack of understanding of
16 the importance of trade and exports to the financial
17 and economic vitality of the United States;

18 (3) many United States firms are unaware or un-
19 interested in export sales opportunities, or lack the
20 marketing experience to successfully penetrate foreign
21 markets;

22 (4) the Federal Government is unable to carry the
23 whole burden of achieving expansion of exports;

24 (5) substantial long-term support from business,
25 labor, educational institutions, State and local govern-

1 ments, port authorities, banks, media, and other sectors
2 of the general public is required to develop and main-
3 tain effective education and trade promotion programs;
4 (6) services, including returns on overseas invest-
5 ments, are an increasingly important factor in the
6 United States trade balance; but the rate of growth of
7 service exports is below that of several of our industri-
8 alized competitors;
9 (7) only 10 percent of the United States firms ca-
10 pable of exporting are doing so, while over 90 per-
11 cent of exports are accounted for by relatively few
12 companies;
13 (8) total and per capita export promotion assist-
14 ance extended by the United States Government to ex-
15 porters is significantly below the average extended by
16 the governments of foreign industrialized nations;
17 (9) export trade intermediaries, such as trading
18 companies, can achieve economies of scale and acquire
19 expertise enabling them to export goods and services
20 profitably, at low per unit cost to producers;
21 (10) the United States lacks well-developed export
22 trade intermediaries to package export trade services
23 at reasonable prices (exporting services are fragmented
24 into a multitude of separate functions; companies at-
25 tempting to offer comprehensive export trade services

1 lack financial leverage to reach a significant portion of
2 potential United States exporters);
3 (11) the development of export trading companies
4 in the United States has been hampered by insular
5 business attitudes and by Government regulations; and
6 (12) if United States export trading companies are
7 to be successful in promoting United States exports
8 and in competing with foreign trading companies, they
9 must be able to draw on the resources, expertise, and
10 knowledge of the United States banking system, both
11 in the United States and abroad.
12 (b) CONCLUSIONS.—Congress concludes that—
13 (1) the emphasis on export promotion programs
14 should be on encouraging public-private sector cooper-
15 ation;
16 (2) because of its national and international scope,
17 the Federal Government can and should play a key
18 role in guiding other sectors to achieve common export
19 goals through continuation and establishment of broad-
20 based programs to educate the public on exporting and
21 to assist United States exporters to introduce and pro-
22 mote their products and services overseas;
23 (3) increased efforts must be made by the Federal
24 Government to enlist the assistance of private sector
25 organizations in assisting United States exporters, and

1 funding and other incentives must be made available in
2 such reasonable, effective, and efficient amounts to sus-
3 tain such activities;

4 (4) private organizations familiar with exporters,
5 such as chambers of commerce, American chambers of
6 commerce abroad, trade associations, and financial in-
7 stitutions should bear a larger share of the burden of
8 educating the public on the importance of export ex-
9 pansion and insuring that public concerns are well un-
10 derstood by United States Government officials admin-
11 istering export-related programs;

12 (5) all trade-related Government agencies should
13 consult with appropriate segments of the private sector
14 on all economic policies and improve the liaison be-
15 tween Government agencies and American business or-
16 ganizations and individual exporters;

17 (6) United States Government marketing assist-
18 ance programs should emphasize servicing individual
19 firms in preference to the use of resources for general-
20 ized information and assistance;

21 (7) service exports must be provided assistance
22 equivalent to the export of manufacturers, with new
23 assistance programs developed where service export-
24 ers' needs differ and can be properly identified;

1 (8) service exports should be encouraged by the
2 United States Government, and export policy should be
3 based on the principle of reciprocal export opportuni-
4 ties and treatment;
5 (9) support for export education programs should
6 be increased through Federal and non-Federal pro-
7 grams that are supplemented by related programs de-
8 signed to facilitate exporting, such as foreign language
9 training and translation and international financing;
10 (10) special assistance should be provided to new-
11 to-export firms, particularly smaller or medium-sized
12 firms that may lack the resources to export on an indi-
13 vidual basis;
14 (11) financial assistance, through special loan and
15 guaranty programs, should be made available to ex-
16 porters; and
17 (12) financial support for export promotion pro-
18 grams should be given a higher budgetary and policy
19 priority to make financial assistance and incentive pro-
20 grams equivalent to those of our foreign industrial
21 competitors.

22 **PART 2—EXPORT TRADING COMPANIES**

23 **SEC. 621. SHORT TITLE.**

24 This title may be cited as the "Export Trading Com-
25 pany Act of 1981".

1 **SEC. 622. FINDINGS.**

2 (a) The Congress finds and declares that—

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

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

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

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

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

1 (6) State and local government activities which
2 initiate, facilitate, or expand export of products and
3 services are an important and irreplaceable source for
4 expansion of total United States exports, as well as for
5 experimentation in the development of innovative
6 export programs keyed to local, State, and regional
7 economic needs;
8 (7) the development of export trading companies
9 in the United States has been hampered by insular
10 business attitudes and by Government regulations; and
11 (8) if United States export trading companies are
12 to be successful in promoting United States exports
13 and in competing with foreign trading companies, they
14 must be able to draw on the resources, expertise, and
15 knowledge of the United States banking system, both
16 in the United States and abroad.
17 (b) The purpose of this part is to increase United States
18 exports of products and services, particularly by small,
19 medium size and minority concerns, by encouraging more ef-
20 ficient provision of export trade services to American produc-
21 ers and suppliers.
22 **SEC. 623. DEFINITIONS.**
23 (a) As used in this part—
24 (1) the term "export trade" means trade or com-
25 merce in goods produced in the United States or serv-

1 ices produced in the United States, and exported, or in
2 the course of being exported, from the United States to
3 any foreign nation;

4 (2) the term "goods produced in the United
5 States" means tangible property manufactured, pro-
6 duced, grown, or extracted in the United States, the
7 cost of the imported raw materials and components
8 thereof shall not exceed 50 percent of the sales price;

9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and
15 transportation services, not less than 50 percent of the
16 sales or billings of which is provided by United States
17 citizens or is otherwise attributable to the United
18 States;

19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market re-
21 search, advertising, marketing, insurance, product re-
22 search and design, legal assistance, transportation, in-
23 cluding trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing, for-

1 eign exchange, and financing, when provided in order
2 to facilitate the export of goods or services produced in
3 the United States;

4 (5) the term "export trading company" means a
5 company, whether operated for profit or as a nonprofit
6 organization, which does business under the laws of
7 the United States or any State and which is organized
8 and operated principally for the purposes of—

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

11 (B) facilitating the exportation of goods and
12 services produced in the United States by unaffil-
13 iated persons by providing one or more export
14 trade services;

15 (6) the term "United States" means the several
16 States of the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, the Virgin Islands,
18 American Samoa, Guam, the Commonwealth of the
19 Northern Mariana Islands, and the Trust Territory of
20 the Pacific Islands;

21 (7) the term "Secretary" means the Secretary of
22 Commerce; and

23 (8) the term "company" means any corpora-
24 tion, partnership, association, or similar organization,

1 whether operated for profit or as a nonprofit organiza-
2 tion.
3 (b) The Secretary is authorized, by regulation, to further
4 define such terms consistent with this section.

5 **SEC. 624. FUNCTIONS OF THE SECRETARY OF COMMERCE.**

6 The Secretary shall promote and encourage the forma-
7 tion and operation of export trading companies by providing
8 information and advice to interested persons and by facilitat-
9 ing contact between producers and exportable goods and
10 services and firms offering export trade services.

11 **SEC. 625. OWNERSHIP OF EXPORT TRADING COMPANIES BY**
12 **BANKS, BANK HOLDING COMPANIES, AND IN-**
13 **TERNATIONAL BANKING CORPORATIONS.**

14 (a) For the purpose of this section—
15 (1) the term "banking organization" means any
16 State bank, national bank, Federal savings bank, bank-
17 ers' bank, bank holding company, Edge Act Corpora-
18 tion, or Agreement Corporation;
19 (2) the term "State bank" means any bank which
20 is incorporated under the laws of any State, any terri-
21 tory of the United States, the Commonwealth of
22 Puerto Rico, Guam, American Samoa, the Common-
23 wealth of the Northern Mariana Islands, or the Virgin
24 Islands, or any bank (except a national bank) which is

1 operating under the Code of Law for the District of
2 Columbia (hereinafter referred to as a "District bank");
3 (3) the term "State member bank" means any
4 State bank, including a bankers' bank, which is a
5 member of the Federal Reserve System;
6 (4) the term "State nonmember insured bank"
7 means any State bank, including a bankers' bank,
8 which is not a member of the Federal Reserve System,
9 but the deposits of which are insured by the Federal
10 Deposit Insurance Corporation;
11 (5) the term "bankers' bank" means any bank in-
12 sured by the Federal Deposit Insurance Corporation if
13 the stock of such bank is owned exclusively by other
14 banks (except to the extent State law requires direc-
15 tors' qualifying shares) and if such bank is engaged ex-
16 clusively in providing banking services for other banks
17 and their officers, directors, or employees;
18 (6) the term "bank holding company" has the
19 same meaning as in the Bank Holding Company Act of
20 1956;
21 (7) the term "Edge Act Corporation" means a
22 corporation organized under section 25(a) of the Fed-
23 eral Reserve Act;

1 (8) the term "Agreement Corporation" means a
2 corporation operating subject to section 25 of the Fed-
3 eral Reserve Act;
4 (9) the term "appropriate Federal banking
5 agency" means—
6 (A) the Comptroller of the Currency with re-
7 spect to a national bank or any District bank;
8 (B) the Board of Governors of the Federal
9 Reserve System with respect to a State member
10 bank, bank holding company, Edge Act Corpora-
11 tion, or Agreement Corporation;
12 (C) the Federal Deposit Insurance Corpora-
13 tion with respect to a State nonmember insured
14 bank except a District bank; and
15 (D) the Federal Home Loan Bank Board
16 with respect to a Federal savings bank.
17 In any situation where the banking organization hold-
18 ing or making an investment in an export trading com-
19 pany is a subsidiary of another banking organization
20 which is subject to the jurisdiction of another agency,
21 and some form of agency approval or notification is re-
22 quired, such approval or notification need only be ob-
23 tained from or made to, as the case may be, the appro-
24 priate Federal banking agency for the banking organi-

1 zation making or holding the investment in the export
2 trading company;
3 (10) the term "capital and surplus" means paid in
4 and unimpaired capital and surplus, and includes undi-
5 vided profits;
6 (11) an "affiliate" of a banking organization or
7 export trading company is a person who controls, is
8 controlled by, or is under common control with such
9 banking organization or export trading company;
10 (12) the terms "control" and "subsidiary" shall
11 have the same meanings assigned to those terms in
12 section 2 of the Bank Holding Company Act of 1956,
13 and the terms "controlled" and "controlling" shall be
14 construed consistently with the term "control" as de-
15 fined in section 2 of the Bank Holding Company Act of
16 1956; and
17 (13) for the purposes of this section, the term
18 "export trading company" means a company which
19 does business under the laws of the United States or
20 any State and which is exclusively engaged in activi-
21 ties related to international trade, whether operated for
22 profit or as a nonprofit organization: *Provided, how-*
23 *ever,* That any such company must also either meet
24 the definition of export trading company in section
25 103(a)(5) of this Act, or be organized and operated

1 principally for the purpose of providing export trade
2 services, as defined in section 103(a)(4) of this Act:
3 *Provided further,* That nothing in this Act shall be
4 construed to permit any such company, for purposes of
5 this section, (A) to engage in the business of under-
6 writing, selling, or distributing securities, or (B) to
7 engage in manufacturing or agricultural production ac-
8 tivities.

9 (b)(1) Notwithstanding any prohibition, restriction, limi-
10 tation, condition, or requirement of any law applicable only
11 to banking organizations, a banking organization, subject to
12 the limitations of subsection (c) and the procedures of this
13 subsection, may invest directly and indirectly in the aggre-
14 gate, up to 5 percent of its consolidated capital and surplus
15 (25 percent in the case of an Edge Act Corporation or
16 Agreement Corporation not engaged in banking) in the
17 voting stock or other evidences of ownership of one or more
18 export trading companies. A banking organization may—

19 (A) invest up to an aggregate amount of
20 $10,000,000 in one or more export trading companies
21 without the prior approval of the appropriate Federal
22 banking agency, if such investment does not cause an
23 export trading company to become a subsidiary of the
24 investing banking organization; and

1 (B) make investments in excess of an aggregate
2 amount of $10,000,000 in one or more export trading
3 companies, or make any investment or take any other
4 action which causes an export trading company to
5 become a subsidiary of the investing banking organiza-
6 tion or which will cause more than 50 percent of the
7 voting stock of an export trading company to be owned
8 or controlled by banking organizations, only with the
9 prior approval of the appropriate Federal banking
10 agency.
11 Any banking organization which makes an investment under
12 authority of clause (A) of the preceding sentence shall
13 promptly notify the appropriate Federal banking agency of
14 such investment and shall file such reports on such invest-
15 ment as such agency may require. If, after receipt of any
16 such notification, the appropriate Federal banking agency de-
17 termines, after notice and opportunity for hearing, that the
18 export trading company is a subsidiary of the investing bank-
19 ing organization, it shall have authority to disapprove the
20 investment or impose conditions on such investment under
21 authority of subsection (d). In furtherance of such authority,
22 the appropriate Federal banking agency may require divesti-
23 ture of any voting stock or other evidences of ownership pre-
24 viously acquired, and may impose conditions necessary for
25 the termination of any controlling relationship.

1 (2) If a banking organization proposes to make any in-
2 vestment or engage in any activity included within the fol-
3 lowing two subparagraphs, it must give the appropriate Fed-
4 eral banking agency ninety days prior written notice before it
5 makes such investment or engages in such activity.

6 (A) any additional investment in an export trading
7 company subsidiary; or

8 (B) the engagement by any export trading compa-
9 ny subsidiary in any line of activity, including specifi-
10 cally the taking of title to goods, wares, merchandise,
11 or commodities, if such activity was not disclosed in
12 any prior application for approval.

13 During the notification period provided under this paragraph,
14 the appropriate Federal banking agency may, by written
15 notice, disapprove the proposed investment or activity or
16 impose conditions on such investment or activity under au-
17 thority of subsection (d). An additional investment or activity
18 covered by this paragraph may be made or engaged in, as the
19 case may be, prior to the expiration of the notification period
20 if the appropriate Federal banking agency issues written
21 notice of its intent not to disapprove.

22 (3) In the event of the failure of the appropriate Federal
23 banking agency to act on any application for approval under
24 paragraph (1)(B) of this subsection within a period of 120
25 days, which period begins on the date the application has

1 been accepted for processing by the appropriate Federal
2 banking agency, the application shall be deemed to have been
3 granted. In the event of the failure of the appropriate Federal
4 banking agency either to disapprove or to impose conditions
5 on any investment or activity subject to the prior notification
6 requirements of paragraph (2) of this subsection within the
7 60-day period provided therein, such period beginning on the
8 date the notification has been received by the appropriate
9 Federal banking agency, such investment or activity may be
10 made or engaged in, as the case may be, any time after the
11 expiration of such period.

12 (c) The following limitations apply to export trading
13 companies and the investments in such companies by banking
14 organizations:

15 (1) The name of any export trading company shall
16 not be similar in any respect to that of a banking orga-
17 nization that owns any of its voting stock or other evi-
18 dences of ownership.

19 (2) The total historical cost of the direct and indi-
20 rect investments by a banking organization in an
21 export trading company combined with extensions of
22 credit by the banking organization and its direct and
23 indirect subsidiaries to such export trading company
24 shall not exceed 10 percent of the banking organiza-
25 tion's capital and surplus.

1 (3) A banking organization that owns any voting
2 stock or other evidences of ownership of an export
3 trading company shall terminate its ownership of such
4 stock if the export trading company takes positions in
5 commodities or commodities contracts, in securities, or
6 in foreign exchange, other than as may be necessary in
7 the course of its business operations.
8 (4) No banking organization holding voting stock
9 or other evidences of ownership of any export trading
10 company may extend credit or cause any affiliate to
11 extend credit to any export trading company or to cus-
12 tomers of such company on terms more favorable than
13 those afforded similar borrowers in similar circum-
14 stances, and such extension of credit shall not involve
15 more than the normal risk of repayment or present
16 other unfavorable features.
17 (d)(1) In the case of every application under subsection
18 (b)(1)(B) of this section, the appropriate Federal banking
19 agency shall take into consideration the financial and man-
20 agerial resources, competitive situation, and future prospects
21 of the banking organization and export trading company con-
22 cerned, and the benefits of the proposal to United States
23 business, industrial, and agricultural concerns (with special
24 emphasis on small, medium-size and minority concerns) and
25 to improving United States competitiveness in world mar-

1 kets. The appropriate Federal banking agency may not ap-
2 prove any investment for which an application has been filed
3 under subsection (b)(1)(B) if it finds that the export benefits of
4 such proposal are outweighed in the public interest by any
5 adverse financial, managerial, competitive, or other banking
6 factors associated with the particular investment. Any disap-
7 proval order issued under this section must contain a state-
8 ment of the reasons for disapproval.

9 (2) In approving any application submitted under sub-
10 section (b)(1)(B), the appropriate Federal banking agency
11 may impose such conditions which, under the circumstances
12 of such case, it may deem necessary (A) to limit a banking
13 organization's financial exposure to an export trading com-
14 pany, or (B) to prevent possible conflicts of interest or unsafe
15 or unsound banking practices. With respect to the taking of
16 title to goods, wares, merchandise, or commodities by any
17 export trading company subsidiary of a banking organization,
18 the appropriate Federal banking agencies may, by order, reg-
19 ulation, or guidelines, establish standards designed to ensure
20 against any unsafe or unsound practices that could adversely
21 affect a controlling banking organization investor. In particu-
22 lar, the appropriate Federal banking agencies may establish
23 inventory-to-capital ratios, based on the capital of the export
24 trading company subsidiary, for those circumstances in which

1 the export trading company subsidiary may bear a market
2 risk on inventory held.

3 (3) In determining whether to impose any condition
4 under the preceding paragraph (2), or in imposing such condi-
5 tion, the appropriate Federal banking agency must give due
6 consideration to the size of the banking organization and
7 export trading company involved, the degree of investment
8 and other support to be provided by the banking organization
9 to the export trading company, and the identity, character,
10 and financial strength of any other investors in the export
11 trading company. The appropriate Federal banking agency
12 shall not impose any conditions or set standards for the
13 taking of title which unnecessarily disadvantage, restrict or
14 limit export trading companies in competing in world markets
15 or in achieving the purposes of section 102 of this Act. In
16 particular, in setting standards for the taking of title under
17 the preceding paragraph (2), the appropriate Federal banking
18 agencies shall give special weight to the need to take title in
19 certain kinds of trade transactions, such as international
20 barter transactions.

21 (4) Notwithstanding any other provision of this part, the
22 appropriate Federal banking agency may, whenever it has
23 reasonable cause to believe that the ownership or control of
24 any investment in an export trading company constitutes a
25 serious risk to the financial safety, soundness, or stability of

1 the banking organization and is inconsistent with sound bank-
2 ing principles or with the purposes of this Act or with the
3 Financial Institutions Supervisory Act of 1966, order the
4 banking organization, after due notice and opportunity for
5 hearing, to terminate (within 120 days or such longer period
6 as the Board may direct in unusual circumstances) its invest-
7 ment in the export trading company.

8 (5) On or before 2 years after enactment of this Act, the
9 appropriate Federal banking agencies shall jointly report to
10 the Committee on Banking, Housing, and Urban Affairs of
11 the Senate and the Committee on Banking, Finance and
12 Urban Affairs of the House of Representatives their recom-
13 mendations with respect to the implementation of this sec-
14 tion, their recommendations on any changes in United States
15 law to facilitate the financing of United States exports, espe-
16 cially by small, medium-size and minority business concerns,
17 and their recommendations on the effects of ownership of
18 United States banks by foreign banking organizations affili-
19 ated with trading companies doing business in the United
20 States.

21 (e) Any party aggrieved by an order of an appropriate
22 Federal banking agency under this section may obtain a
23 review of such order in the United States court of appeals
24 within any circuit wherein such organization has its principal
25 place of business, or in the court of appeals for the District of

1 Columbia Circuit, by filing a notice of appeal in such court
2 within 30 days from the date of such order, and simulta-
3 neously sending a copy of such notice by registered on certi-
4 fied mail to the appropriate Federal banking agency. The ap-
5 propriate Federal banking agency shall promptly certify and
6 file in such court the record upon which the order was based.
7 The court shall set aside any order found to be (A) arbitrary,
8 capricious, an abuse of discretion, or otherwise not in accord-
9 ance with law; (B) contrary to constitutional right, power,
10 privilege or immunity; or, (C) in excess of statutory jurisdic-
11 tion, authority, or limitations, or short of statutory right; or
12 (D) without observance of procedure required by law. Except
13 for violations of subsection (b)(3) of this section, the court
14 shall remand for further consideration by the appropriate
15 Federal banking agency any order set aside solely for proce-
16 dural errors and may remand for further consideration by the
17 appropriate Federal banking agency any order set aside for
18 substantive errors. Upon remand, the appropriate Federal
19 banking agency shall have no more than 60 days from date of
20 issuance of the court's order to cure any procedural error or
21 reconsider its prior order. If the agency fails to act within
22 this period, the application or other matter subject to review
23 shall be deemed to have been granted as a matter of law.
24 (f)(1) The appropriate Federal banking agencies are au-
25 thorized and empowered to issue such rules, regulations, and

1 orders, to require such reports, to delegate such functions,
2 and to conduct such examinations of subsidiary export trad-
3 ing companies, as each of them may deem necessary in order
4 to perform their respective duties and functions under this
5 section and to administer and carry out the provisions and
6 purposes of this section and prevent evasions thereof.

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

12 (g) Nothing in this legislation shall be construed to
13 permit a State chartered bank to invest in an export trading
14 company unless the State chartered bank is specifically per-
15 mitted to do so by any State law.

16 **SEC. 626. INITIAL INVESTMENTS AND OPERATING EXPENSES.**

17 (a) The Economic Development Administration and the
18 Small Business Administration are directed, in their consider-
19 ation of applications by export trading companies for loans
20 and guarantees, and operating grants to nonprofit organiza-
21 tions, including applications to make new investments related
22 to the export of goods or services produced in the United
23 States and to meet operating expenses, to give special weight
24 to export-related benefits, including opening new markets for
25 United States goods and services abroad and encouraging the

1 involvement of small, medium-size and minority businesses or
2 agricultural concerns in the export market.

3 (b) There are authorized to be appropriated as necessary
4 to meet the purposes of this section, $10,000,000 for each
5 fiscal year, 1982, 1983, 1984, 1985, and 1986. Amounts
6 appropriated pursuant to the authority of this subsection shall
7 be in addition to amounts appropriated under the authority of
8 other Acts.

9 **SEC. 627. GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE**
10 **AND INVENTORY.**

11 The Export-Import Bank of the United States is author-
12 ized and directed to establish a program to provide guaran-
13 tees for loans extended by financial institutions or other pri-
14 vate creditors to export trading companies as defined in sec-
15 tion 103(5) of this Act, or to other exporters, when such
16 loans are secured by export accounts receivable or inven-
17 tories of exportable goods, and when in the judgment of the
18 Board of Directors—

19 (1) the private credit market is not providing ade-
20 quate financing to enable otherwise creditworthy
21 export trading companies or exporters to consummate
22 export transactions; and

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

1 The Board of Directors shall attempt to insure that a major
2 share of any loan guarantees ultimately serves to promote
3 exports from small, medium-size and minority businesses or
4 agricultural concerns. Guarantees provided under the author-
5 ity of this section shall be subject to limitations contained in
6 annual appropriations Acts.

7 **PART 3—SMALL BUSINESS ACT AMENDMENTS**

8 **SEC. 631. SMALL BUSINESS EXPORT FINANCING ASSISTANCE.**

9 (a) EXPORT FINANCING ASSISTANCE.—Section 7(a) of
10 the Small Business Act is amended by inserting "to finance
11 export assistance," before "to finance plant construction,".

12 (b) MAXIMUM AMOUNT OF LOAN.—Section 7(a)(4) of
13 the Small Business Act is amended by adding at the end
14 thereof the following new sentence: "In the case of any de-
15 ferred participation loan or extension or revolving line of
16 credit made under this subsection for export purposes, the
17 total amount outstanding and committed (by participation or
18 otherwise) to the borrower from the revolving fund estab-
19 lished by section 4(c)(1)(B) of this Act shall not exceed
20 $750,000.".

21 **PART 4—JOINT EXPORT MARKETING ASSISTANCE**

22 **SEC. 641. ESTABLISHMENT OF PROGRAM.**

23 (a) IN GENERAL.—The Secretary of Commerce (herein-
24 after referred to as the "Secretary") shall establish a pro-

1 gram in accordance with the provisions of this part to pro-
2 mote export marketing activities for domestic industry.

3 (b) COOPERATIVE AGREEMENTS.—The Secretary may
4 enter into cooperative agreements with industrial corpora-
5 tions or groups of noncompeting corporations with limited ex-
6 perience in exporting to develop foreign markets for their
7 products which would require a minimum 2-year effort upon
8 the approval of a proposal from such corporation or group of
9 corporations in accordance with section 642.

10 (c) RESEARCH.—Upon entering an agreement pursuant
11 to subsection (b) the Secretary shall direct specific market
12 research for the products involved in foreign markets—

13 (1) to measure the opportunity for particular ele-
14 ments of the product field;

15 (2) to determine advantageous methods of pursu-
16 ing opportunities; and

17 (3) to indicate the potential term of activity and
18 the prospects for success.

19 **SEC. 642. MARKETING PROPOSALS.**

20 (a) SUBMISSION OF PROPOSAL.—On the basis of the
21 research under section 651, interested industrial corporations
22 or groups of noncompeting corporations may prepare and
23 submit a proposal incorporating specific marketing actions, a
24 timetable for such actions and such other relevant informa-

1 tion as the Secretary may require to the Secretary for ap-
2 proval.

3 (b) REVIEW OF SUBMISSIONS.—Proposals submitted
4 under subsection (a) shall be reviewed by the Secretary and
5 the Small Business Administration and any Federal agency
6 involved in the product to be marketed.

7 **SEC. 643. FINANCIAL AGREEMENT.**

8 (a) MARKETING AGREEMENTS.—The Secretary of
9 Commerce, after approving a proposal submitted under sec-
10 tion 642, may enter into an agreement with the entity which
11 submitted such proposal to share the cost of such marketing
12 for a period not to exceed 3 years.

13 (b) MAXIMUM FEDERAL SHARE.—The Federal share
14 of participation in such agreement shall not exceed 50 per-
15 cent of the reasonable costs of such program.

16 (c) REPAYMENT REQUIREMENT.—Any agreement en-
17 tered into under this section shall require that the entity en-
18 tering into the agreement shall repay the Federal share over
19 a 5-year period beginning at the expiration of the Federal
20 participation.

21 **SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated to carry out the
23 provisions of this part such sums as may be necessary.

1 PART 5—EXPORT OF SERVICES

2 SEC. 651. EXPORT OF SERVICES.

3 (a) IN GENERAL.—Within 6 months after the enact-
4 ment of this Act, each United States Government agency and
5 the representatives of the United States Government to any
6 international organization shall (1) identify and analyze all
7 programs which could significantly affect the export or use of
8 United States firms' services; (2) make available to United
9 States firms which are engaged or interested in the export of
10 services from the United States such information and main-
11 tain current information about such programs; (3) establish
12 within the agency, or, in the case of international organiza-
13 tions, make the United States representatives responsible for,
14 programs to publicize export-related programs for services
15 and establish a liaison to the private sector to receive com-
16 ments regarding the development and administration of such
17 programs; and (4) undertake to modify, where feasible and
18 consistent with the laws of the United States, those programs
19 which have been determined to have a negative effect or
20 whose administration or design have an adverse effect on the
21 export of services of the United States.

22 (b) SECRETARY OF COMMERCE.—The Secretary of
23 Commerce and the Department of Commerce shall have lead
24 responsibility within the United States Government for co-
25 ordinating the programs authorized by this section and for

1 any other service-sector export promotion program except as
2 otherwise specified by law.

3 (c) DISC STUDY.—The Department of the Treasury
4 shall study and report to the Congress within 6 months after
5 the enactment of this Act the feasibility of extending DISC
6 treatment to the export of services and the reasons why serv-
7 ice industries should not receive tax treatment equivalent to
8 the manufacturing sector.

9 TITLE VII—AGRICULTURAL EXPORTS

10 **SEC. 702. STATEMENT OF FINDINGS AND CONCLUSIONS.**

11 (a) FINDINGS.—The Congress finds that—

12 (1) agricultural exports are vital to current and
13 future United States trade health;

14 (2) agricultural exports have been a major positive
15 factor in the United States balance of trade, exceeding
16 the value of agricultural imports for nearly 20 years; in
17 1979 agricultural exports provided a surplus of
18 $16,000,000,000 and an estimated $20,000,000,000
19 surplus in 1980;

20 (3) a large volume of agricultural exports is essen-
21 tial to United States agriculture—

22 (A) exports are now responsible for 15 per-
23 cent of the jobs in farming and 20 percent of
24 gross farm sales;

1 (B) production from one-third of the har-
2 vested acres in the United States is exported; and
3 (C) growers of rice, cotton, citrus fruits and
4 tobacco are particularly dependent on foreign
5 markets for their livelihood;
6 (4) in 1979 the $32,000,000,000 of agricultural
7 exports provided employment for about 1,600,000
8 workers and generated $63,000,000,000 of total eco-
9 nomic activity;
10 (5) the percentage share of total exports account-
11 ed for by agricultural exports is high, 19 percent, but
12 there are signs that growth of the agricultural product
13 share is slowing; and
14 (6) as much as two-thirds of United States agri-
15 cultural exports are subject to some trade restriction
16 abroad.
17 (b) CONCLUSIONS.—The Congress concludes that—
18 (1) it is critical to our export efforts and to our
19 economic strength in general to insure that United
20 States agriculture can continue to maintain or improve
21 its position in world trade;
22 (2) the executive branch must continue its efforts
23 to implement the Multilateral Trade Agreement of
24 1979 and to urge further removal of tariff and nontariff
25 barriers abroad on United States agricultural products;

1 (3) adequate funds must be made available so that
2 the Department of Agriculture can continue to carry
3 out and expand its successful foreign market develop-
4 ment programs, particularly in Western Europe and
5 Japan, but also in new market areas of Southeast
6 Asia, the Middle East, Africa, Eastern Europe, and
7 China;
8 (4) the Agricultural Trade Act of 1978 should be
9 fully and aggressively implemented, particularly with
10 regard to our overseas marketing activities;
11 (5) United States agricultural representatives
12 overseas should hold the same rank and importance as
13 our other commercial and economic representatives
14 making clear the significance the United States
15 attaches to agricultural exports;
16 (6) the United States Government should pursue
17 policies that guarantee a dependable supply of food and
18 fiber at reasonable prices, and should only resort to
19 embargoes on export of agricultural products when our
20 foreign policy objectives can be achieved in no other
21 way;
22 (7) adequate and competitive financing for agricul-
23 tural exports must be made available through the Com-
24 modity Credit Corporation credit program and the
25 United States Export-Import Bank as required;

1 (8) efforts must be made to insure adequate avail-
2 ability of grain supplies, protection against wide price
3 fluctuations and fair prices for United States grain
4 farmers; and
5 (9) farm cooperatives must be encouraged to
6 expand their export activities by permitting them a
7 more direct role in export financing arrangements and
8 developing joint marketing ventures.

9 **PART 1—COMMODITY CREDIT CORPORATION**
10 **FINANCING FOR CERTAIN SALES**

11 **SEC. 711. FINANCING FOR SHORT-TERM EXPORT CREDIT**
12 **SALES OF AGRICULTURAL COMMODITIES.**

13 The Commodity Credit Corporation Charter Act (15
14 U.S.C. 714–714p) is amended by adding at the end thereof
15 the following new section:
16 "SEC. 20. AGRICULTURAL EXPORT CREDIT REVOLV-
17 ING FUND.—(a) There is established in the Treasury a re-
18 volving fund to be known as the Agricultural Export Credit
19 Revolving Fund, which shall be available without fiscal year
20 limitation, for (1) use in carrying out the provisions of section
21 5(f) of this Act, and (2) making loans for the construction or
22 acquisition of facilities in foreign countries to improve the
23 capacity of such countries for handling, marketing, process-
24 ing, storing, or distributing agricultural commodities pro-
25 duced in and exported from the United States.

1 "(b) All sums received by the Corporation from the liq-
2 uidation of loans made to carry out the purposes described in
3 section 5(f) shall be added to and become a part of such fund
4 together with funds appropriated to such fund.

5 "(c) There is authorized to be appropriated to the Agri-
6 cultural Export Credit Revolving Fund the sum of
7 $2,000,000,000 during each of the fiscal years beginning Oc-
8 tober 1, 1981, October 1, 1982, and October 1, 1983.

9 "(d) The Secretary shall submit an annual report to the
10 Congress not later than December 1 of each year with re-
11 spect to the export credit sales program carried out by the
12 Corporation in the last fiscal year. Such report shall include
13 the names of the countries extended credit under such pro-
14 gram, the total amount of such credit in the case of each such
15 country in such fiscal year, and a discussion and evaluation of
16 the marketing development activities of the Corporation
17 under this Act during such fiscal year. The first such report
18 shall be submitted to the Congress not later than Decem-
19 ber 1, 1981.

20 "(e) The revolving fund created by this section is abol-
21 ished effective October 1, 1984, and all unobligated money in
22 such fund on September 30, 1984, shall be transferred to and
23 become a part of the miscellaneous receipts account of the
24 Treasury.".

1 **PART 2—EXPORT-IMPORT BANK CREDITS**

2 **SEC. 721. EXPORT-IMPORT BANK CREDITS FOR AGRICULTUR-**
3 **AL COMMODITIES.**

4 Section 2 of the Export-Import Bank Act of 1945 is
5 amended by adding at the end thereof the following:

6 "(d)(1) Subject to paragraph (2), for each fiscal year be-
7 ginning after September 30, 1981, the ratio that the amount
8 of credit which the Bank extends and in which it participates
9 to finance the export of agricultural commodities bears to the
10 total amount of credit which the Bank extends or in which it
11 participates shall not be less than the ratio that the dollar
12 value of exports of agricultural commodities during the imme-
13 diately preceding fiscal year bears to the dollar value of all
14 exports during such preceding fiscal year, except that if a
15 significant dollar amount of any agricultural or nonagricul-
16 tural item was embargoed in any such year, the immediately
17 preceding fiscal year in which no such embargo occurred
18 shall be used for purposes of this paragraph.

19 "(2) Paragraph (1) does not apply to any fiscal year
20 with respect to which—

21 "(A) the Bank determines and reports to the Con-
22 gress that the demand for credit to finance exports of
23 agricultural commodities is insufficient to equal or
24 exceed the ratio which would be required; or

25 "(B) the Secretary of Agriculture determines that
26 the level of exports of agricultural commodities is or

1 will be adequate without credit which the Bank ex-
2 tends or in which it participates.".

3 TITLE VIII—INTERNATIONAL AGREEMENTS

4 SEC. 801. FINDINGS AND CONCLUSIONS.

5 (a) FINDINGS.—The Congress finds that—

6 (1) there is a high degree of interdependence
7 among world economies today which makes it neces-
8 sary to consider the international effects of national
9 economic policies and actions,

10 (2) multilateral negotiations and agreements are
11 preferable to unilateral action as a solution to many
12 United States trade problems,

13 (3) United States international economic policy
14 has been treated as a tool of national security and for-
15 eign policy objectives rather than a major objective in
16 its own right and has consequently not been in the best
17 interests of United States economic growth,

18 (4) multinational trade agreements and codes
19 reached so far have not achieved adequate removal of
20 artificial barriers to United States products abroad, and

21 (5) the international negotiating strength of the
22 United States has been hindered by its deteriorating in-
23 ternational trade balance.

24 (b) CONCLUSIONS.—The Congress concludes that—

1 (1) international economic policy, particularly
2 trade policy, must be given highest priority among
3 United States national objectives,
4 (2) the United States must change the focus of its
5 international economic policies from helping other
6 countries achieve economic growth to helping ourselves
7 develop a stronger economy through increased exports,
8 (3) the time has come to stop thinking only of the
9 world reponsibilities of the United States and start de-
10 manding its rights as an international trader through
11 international negotiations and agreements,
12 (4) trade should no longer be viewed as the only
13 foreign policy weapon of the United States to the det-
14 riment of exports, and
15 (5) the United States must continue to seek solu-
16 tions to its international trade problems through nego-
17 tiations on such key areas as tariffs, nontariff barriers,
18 financing codes, foreign business practices, antitrust
19 applications, and international treatment of services.
20 **SEC. 802. MULTILATERAL TRADE AGREEMENT OF 1979 AND**
21 **FOLLOWUP.**
22 (a) IN GENERAL.—It is the sense of Congress that—
23 (1) the agreements on tariff provisions and codes
24 on nontraiff barriers reached in the multilateral trade

1 agreement of 1979 be strongly implemented and imme-
2 diate action taken against violating nations, and
3 (2) the 1979 Multilateral Trade Agreement,
4 though an important step forward, did not achieve ade-
5 quate removal of foreign tariff and nontariff barriers to
6 United States products and services and the executive
7 branch must continue its efforts to secure a freer world
8 trading environment through multilateral negotiations.
9 (b) STANDBY PROGRAM FOR AGRICULTURAL COM-
10 MODITIES.—
11 (1) IN GENERAL.—In order to encourage the im-
12 plementation of international agreements concerning
13 agricultural commodities, the Secretary of Agriculture
14 is authorized and directed to formulate a special export
15 subsidy program for agricultural commodities. Such
16 program shall be designed to neutralize the effects of
17 export subsidy programs instituted by foreign countries
18 or instrumentalities to encourage exports of their agri-
19 cultural commodities to foreign markets other than the
20 United States.
21 (2) IMPLEMENTATION AFTER PRESIDENTIAL DE-
22 TERMINATION.—The Secretary shall implement the
23 special export subsidy program formulated under sub-
24 section (a) of this section only when the President—

1 (A) makes a determination under section 301
2 of the Trade Act of 1974 (19 U.S.C. 2411) that
3 action by the United States is appropriate to
4 obtain the elimination of an act, policy, or prac-
5 tice of a foreign country or instrumentality that
6 results in—
7 (i) substantial displacement of United
8 States exports of agricultural commodities to
9 foreign markets, or
10 (ii) prices for such commodities materi-
11 ally below prices of other suppliers of the
12 same commodity to the same market, and
13 (B) determines that such act, policy, or prac-
14 tice of the foreign country or instrumentality con-
15 cerned involves the use of an export subsidy pro-
16 gram to encourage exports of agricultural com-
17 modities to foreign markets other than the United
18 States.
19 (3) ROLE OF COMMODITY CREDIT CORPORA-
20 TION.—In carrying out the special subsidy program
21 pursuant to the provisions of subsections (a) and (b) of
22 this section, the Secretary of Agriculture is authorized
23 to utilize the funds and facilities of the Commodity
24 Credit Corporation.

1 (4) AGRICULTURAL COMMODITY DEFINED.—For
2 purposes of this section, the term "agricultural com-
3 modity" means any agricultural commodity produced in
4 the United States.

5 SEC. 803. INTERNATIONAL FINANCING CODE.

6 (a) NEGOTIATIONS.—It is the sense of the Congress
7 that the President should enter into negotiations with other
8 countries for the purpose of obtaining an international agree-
9 ment under which United States exporters and foreign ex-
10 porters will be placed in substantially equal competitive posi-
11 tions with respect to official export financing.

12 (b) REPORT.—The President shall transmit to the Con-
13 gress a report not later than January 1, 1982, concerning
14 steps taken toward the negotiation of such an international
15 export finance agreement.

16 SEC. 804. INTERNATIONAL CODE OF BUSINESS CONDUCT.

17 (a) FINDINGS.—The Congress finds that—

18 (1) American companies competing in domestic
19 and foreign markets are increasingly losing sales and
20 market shares to their foreign competitors;

21 (2) this deterioration in the international market-
22 ing position of American business jeopardizes the eco-
23 nomic health of the United States, threatens to in-
24 crease unemployment, and has aggravated inflationary

1 pressures by diminishing the international value of the
2 dollar;
3 (3) one of the significant factors causing deteriora-
4 tion in this international marketing position is the fact
5 that United States businessmen are prohibited by the
6 Business Practices and Records Act from engaging in
7 certain practices that are pursued by our trading com-
8 petitors;
9 (4) it is in the best interests of all industrial coun-
10 tries to maintain responsible standards of corporate
11 conduct in foreign markets; and
12 (5) the Congressional Joint Economic Committee
13 unanimously recommended in its 1980 Annual Report
14 that the answer to this problem is not a relaxation of
15 standards of American business in foreign and domestic
16 trade, but an insistence upon the elimination of corrupt
17 practices by foreign nationals, and consequently, that
18 the President should initiate an effort to encourage ad-
19 herence to the principles contained in the Foreign Cor-
20 rupt Practices Act by our competitors and customers
21 abroad, utilizing international forums and other appro-
22 priate multilateral channels.
23 (b) CONCLUSIONS.—It is the sense of the Congress
24 that—

1 (1) the President shall utilize appropriate interna-
2 tional fora to urge the development and adoption of an
3 International Code of Business Conduct,
4 (2) the President should pursue the negotiation of
5 bilateral and multilateral agreements among the largest
6 possible number of industrialized and developing coun-
7 tries which would establish standards of ethical and
8 equitable conduct of international business and which
9 would establish the mechanisms to resolve the diplo-
10 matic, commercial, and legal problems associated with
11 such practices, and
12 (3) on January 2, 1982, the President shall report
13 back to the Congress as to the progress on these
14 negotiations.
15 (c) JOINT ECONOMIC COMMITTEE RECOMMENDA-
16 TIONS.—Within 60 days of receipt of the President's report,
17 the Joint Economic Committee shall report to the Congress
18 its recommendations as to how best to proceed with negotia-
19 tions toward an international code of business conduct or how
20 otherwise to rectify the current competitive imbalance which
21 adversely affects United States exports of goods and services.
22 **SEC. 805. INTERNATIONAL CODE ON RECIPROCITY ON EN-**
23 **FORCEMENT OF ANTITRUST.**
24 It is the sense of the Congress that—

1 (1) the executive branch seek an international
2 agreement that achieves multinational harmonization of
3 antitrust laws for the purpose of overriding the imposi-
4 tion of conflicting judicial and regulatory requirements
5 on the separate components of multinational enterprise,
6 (2) all nations be urged to adopt uniform antitrust
7 policies, and
8 (3) that a permanent international body open to
9 all countries under the aegis of the OECD be estab-
10 lished to resolve jurisdictional conflicts in antitrust
11 matters.

12 **SEC. 806. MULTILATERAL CODE ON FAIR TRADE IN SERVICES.**

13 It is the sense of Congress that the United States should
14 undertake to obtain a multilateral code for the treatment of
15 international trade in services, including investment. Further-
16 more, it is the sense of Congress that until such an interna-
17 tional code is agreed to, the principles of fairness and equity
18 should apply to such trade in services, including reciprocity
19 of treatment and mutual, equivalent benefits.

20 TITLE IX—GOVERNMENT SUPPORT OF EXPORT
21 GOALS

22 **PART 1—FINDINGS AND CONCLUSIONS**

23 **SEC. 901. STATEMENT OF FINDINGS AND CONCLUSIONS.**

24 (a) FINDINGS.—The Congress finds that—

1 (1) many United States Government organizations
2 not directly associated with international trade activi-
3 ties and policies, have an impact on United States
4 exports,
5 (2) those organizations are not sufficiently aware
6 of the importance of exports to United States national
7 goals, and, therefore, are not making decisions and
8 taking actions that will assist our export efforts, and
9 (3) other successful trading nations have placed
10 high priority on export expansion and can rely on
11 consistent support for that goal from all arms of gov-
12 ernment.
13 (b) CONCLUSIONS.—The Congress concludes that—
14 (1) to achieve our goal of export expansion, all of
15 the available resources of the United States Govern-
16 ment must be used to assist and promote the export of
17 United States goods and services except where con-
18 trary to the national security or national economic in-
19 terests, and
20 (2) in addition to the United States Trade Repre-
21 sentative; the United States Department of Com-
22 merce's International Trade Administration, the De-
23 partment of Agriculture's Foreign Agricultural Service,
24 and the Department of State, which have specific
25 export promotion functions, all other departments,

1 agencies, and organizations (including, but not limited
2 to, the Office of Management and Budget, the Justice
3 Department, the Overseas Private Investment Corpo-
4 ration, the International Development and Cooperation
5 Agency, the Department of Education, the Department
6 of Energy, the Small Business Administration, the
7 Treasury Department, and the Congress) will consider
8 the impact on exports of their policies, decisions, and
9 programs and where possible and appropriate, take
10 positive steps to help export expansion goals.

11 **PART 2—OVERSEAS PRIVATE INVESTMENT**
12 **CORPORATION AMENDMENTS**

13 **SEC. 921. SHORT TITLE.**

14 This part may be cited as the "Overseas Private Invest-
15 ment Corporation Act of 1981".

16 **Subpart A—Overseas Private Investment Corporation**

17 **SEC. 925. PURPOSE AND POLICY.**

18 (a) ESTABLISHMENT AS INDEPENDENT AGENCY.—The
19 Overseas Private Investment Corporation (the "Corpora-
20 tion") created by the Foreign Assistance Act of 1969 is
21 hereby established as an independent agency of the United
22 States of America. The Corporation shall serve the national
23 interest by mobilizing and facilitating the participation of
24 United States private capital and skills in less developed
25 friendly countries and areas in order to increase United

1 States trade with, and contribute to the economic and social
2 development of, such countries and areas.
3 (b) FUNCTIONS.—In carrying out its purpose, the Cor-
4 poration, utilizing broad criteria, shall undertake—
5 (1) to conduct financing, insurance, and reinsur-
6 ance operations on a self-sustaining basis, taking into
7 account in its financing operations the economic and fi-
8 nancial soundness of projects;
9 (2) to utilize private credit and investment institu-
10 tions and the Corporation's guaranty authority as the
11 principal means of mobilizing capital investment funds;
12 (3) to broaden private participation and revolve its
13 funds through selling its direct investments to private
14 investors whenever it can appropriately do so on satis-
15 factory terms;
16 (4) to conduct its insurance operations with due
17 regard to principles of risk management including ef-
18 forts to share its insurance risks and reinsurance risks;
19 (5) to the maximum degree possible consistent
20 with its purposes—
21 (A) to give preferential consideration in its
22 investment insurance, reinsurance, and guaranty
23 activities to investment projects sponsored by or
24 involving United States small business; and

1 (B) to increase the proportion of projects
2 sponsored by or significantly involving United
3 States small business to at least 30 percent of all
4 projects insured, reinsured, or guaranteed by the
5 Corporation;
6 (6) to consider in the conduct of its operations the
7 extent to which less-developed country governments
8 are receptive to private enterprise, domestic and for-
9 eign, and their willingness and ability to maintain con-
10 ditions which enable private enterprise to make its full
11 contribution to the development process;
12 (7) to foster private initiative and competition and
13 discourage monopolistic practices;
14 (8) to further to the greatest degree possible, in a
15 manner consistent with its goals, the balance-of-pay-
16 ments and employment objectives of the United States;
17 (9) to conduct its activities in consonance with the
18 international trade, investment, financial, development,
19 and foreign policies of the United States Government;
20 (10) to advise and assist, within its field of compe-
21 tence, interested agencies of the United States and
22 other organizations, both public and private, national
23 and international, with respect to projects and pro-
24 grams relating to the development of private enterprise
25 in less-developed countries and areas;

1 (11)(A) to decline to issue any contract of insur-
2 ance or reinsurance, or any guaranty, or to enter into
3 any agreement to provide financing for an eligible in-
4 vestor's proposed investment if the Corporation deter-
5 mines that such investment is likely to cause such in-
6 vestor (or the sponsor of an investment project in
7 which such investor is involved) significantly to reduce
8 the number of his employees in the United States be-
9 cause he is replacing his United States production with
10 production from such investment which involves sub-
11 stantially the same product for substantially the same
12 market as his United States production; and (B) to
13 monitor conformance with the representations of the
14 investor on which the Corporation relied in making the
15 determination required by clause (1);
16 (12) to decline to issue any contract of insurance
17 or reinsurance, or any guaranty, or to enter into any
18 agreement to provide financing for an eligible inves-
19 tor's proposed investment if the Corporation deter-
20 mines that such investment is likely to cause a signifi-
21 cant reduction in the number of employees in the
22 United States; and
23 (13) to the maximum extent practicable, to give
24 preferential consideration in the Corporation's oper-
25 ations to investment projects in the less developed

1 friendly countries and areas which have per capita in-
2 comes of $580 or less in 1977 dollars.

3 **SEC. 926. CAPITAL OF CORPORATION.**

4 The capital of the Corporation shall consist of
5 $50,000,000 of which $40,000,000 has been made available
6 and paid in through the appropriation process and
7 $10,000,000 has been made available through a transfer
8 from the Corporation's earned income. The Corporation may
9 increase its capital from time to time by transfers from its
10 earned income. Capital paid into the Corporation shall be
11 evidenced by an equivalent amount of capital stock issued to
12 the Secretary of the Treasury.

13 **SEC. 927. ORGANIZATION AND MANAGEMENT.**

14 (a) STRUCTURE OF THE CORPORATION.—The Corpo-
15 ration shall have a Board of Directors, a President, an Ex-
16 ecutive Vice President, and such other officers and staff as
17 the Board of Directors may determine.

18 (b) BOARD OF DIRECTORS.—All powers of the Corpo-
19 ration shall vest in and be exercised by or under the authority
20 of its Board of Directors (the "Board") which shall consist of
21 13 Directors, including the Chairman. The United States
22 Trade Representative shall be the Chairman of the Board, ex
23 officio. The Director of the United States International De-
24 velopment Cooperation Agency shall be the Vice Chairman
25 of the Board, ex officio. Seven Directors (other than the

1 President of the Corporation, appointed pursuant to subsec-
2 tion (c) who shall also serve as a Director) shall be appointed
3 by the President of the United States, by and with the advice
4 and consent of the Senate, and shall not be officials or em-
5 ployees of the Government of the United States. At least 1 of
6 the 7 Directors appointed under the preceding sentence shall
7 be experienced in small business, one in organized labor, one
8 in cooperatives, and one in international trade. Each such
9 Director shall be appointed for a term of no more than 3
10 years. The terms of no more than 3 such Directors shall
11 expire in any one year. Such Directors shall serve until their
12 successors are appointed and qualified and may be reap-
13 pointed. The other Directors shall be officials of the Govern-
14 ment of the United States, designated by and serving at the
15 pleasure of the President of the United States. All Directors
16 who are not officers of the Corporation or officials of the
17 Government of the United States shall be compensated at a
18 rate equivalent to that of level IV of the Executive Schedule
19 (5 U.S.C. 5315) when actually engaged in the business of the
20 Corporation and may be paid per diem in lieu of subsistence
21 at the applicable rate prescribed in the standardized Govern-
22 ment travel regulations, as amended, from time to time,
23 while away from their homes or usual places of business.
24 (c) PRESIDENT OF THE CORPORATION.—The Presi-
25 dent of the Corporation shall be appointed by the President of

1 the United States, by and with the advice and consent of the
2 Senate, and shall serve at the pleasure of the President. In
3 making such appointment, the President shall take into ac-
4 count private business experience of the appointee. The
5 President of the Corporation shall be its Chief Executive Of-
6 ficer and responsible for the operations and management of
7 the Corporation, subject to bylaws and policies established by
8 the Board.

9 (d) OFFICERS AND STAFF.—The Executive Vice Presi-
10 dent of the Corporation shall be appointed by the President of
11 the United States, by and with the advice and consent of the
12 Senate, and shall serve at the pleasure of the President.
13 Other officers, attorneys, employees, and agents shall be se-
14 lected and appointed by the Corporation, and shall be vested
15 with such powers and duties as the Corporation may deter-
16 mine. Of such persons employed by the Corporation, not to
17 exceed twenty-five may be appointed, compensated, or re-
18 moved without regard to the civil service laws and regula-
19 tions. Under such regulations as the President of the United
20 States may prescribe, officers and employees of the United
21 States Government who are appointed to any of the above
22 positions may be entitled, upon removal from such position,
23 except for cause, to reinstatement to the position occupied at
24 the time of appointment or to a position of comparable grade
25 and salary. Such positions shall be in addition to those other-

1 wise authorized by law, including those authorized by section
2 5108 of title 5, United States Code.

3 (e) EXPERTS, CONSULTANTS, AND RETIRED OFFI-
4 CERS.—Experts and consultants or organizations thereof
5 may, as authorized by section 3109 of title 5, United States
6 Code, be employed for the performance of functions under
7 this part, and individuals so employed may be compensated
8 at rates not in excess of the daily equivalent of the highest
9 rate which may be paid to an employee under the General
10 Schedule established by section 5332 of title 5, United States
11 Code, and while away from their homes or regular places of
12 business, they may be paid actual travel expenses and per
13 diem in lieu of subsistence at the applicable rate prescribed in
14 the standardized Government travel regulations. Such con-
15 tracts may be renewed from time to time without limitation.
16 Service of an individual as an expert or consultant under this
17 subsection shall not be considered as employment or holding
18 of office or position bringing such individual within the provi-
19 sions of section 3323(a) of title 5, United States Code.

20 SEC. 928. INVESTMENT INSURANCE AND OTHER PROGRAMS.

21 (a) The Corporation is hereby authorized to do the
22 following:

23 (1) INVESTMENT INSURANCE.—

24 (A) To issue insurance, upon such terms and
25 conditions as the Corporation may determine, to

1 eligible investors assuring protection in whole or
2 in part against any or all of the following risks
3 with respect to projects which the Corporation
4 has approved—
5 (i) inability to convert into United
6 States dollars other currencies, or credits in
7 such currencies, received from or in respect
8 of the project;
9 (ii) loss due to expropriation or confisca-
10 tion by action of a foreign government; and
11 (iii) loss due to war, revolution, insur-
12 rection, or civil strife.
13 (B) Recognizing that major private invest-
14 ments in less developed friendly countries or areas
15 are often made by enterprises in which there is
16 multinational participation, including significant
17 United States private participation, the Corpora-
18 tion may make arrangements with foreign govern-
19 ments (including agencies, instrumentalities, or
20 political subdivisions thereof) or with multilateral
21 organizations and institutions for sharing liabilities
22 assumed under investment insurance for such in-
23 vestments and may in connection therewith issue
24 insurance to investors not otherwise eligible here-
25 under, except that liabilities assumed by the Cor-

1 poration under the authority of this subsection
2 shall be consistent with the purposes of this title
3 and that the maximum share of liabilities so as-
4 sumed shall not exceed the proportionate partici-
5 pation by eligible investors in the total project
6 financing.

7 (C) Not more than 10 percent of the maxi-
8 mum contingent liability of investment insurance
9 which the Corporation is authorized to issue
10 under this subsection shall be issued to a single
11 investor.

12 (2) INVESTMENT GUARANTIES.—To issue to eli-
13 gible investors guaranties of loans and other invest-
14 ments made by such investors assuring against loss due
15 to such risks and upon such terms and conditions as
16 the Corporation may determine, but such guaranties on
17 other than loan investments shall not exceed 75 per-
18 cent of such investment, and except for loan invest-
19 ments for credit unions made by eligible credit unions
20 or credit union associations, the aggregate amount of
21 investment (exclusive of interest and earnings) so guar-
22 anteed with respect to any project shall not exceed, at
23 the time of issuance of any such guaranty, 75 percent
24 of the total investment committed to any such project
25 as determined by the Corporation, which determination

1 shall be conclusive for purposes of the Corporation's
2 authority to issue any such guaranty, but not more
3 than 10 percent of the maximum contingent liability of
4 investment guaranties which the Corporation is author-
5 ized to issue as set forth in section 929(a)(2) shall be
6 issued to a single investor.

7 (3) DIRECT INVESTMENT.—To make loans in
8 United States dollars repayable in dollars or loans in
9 foreign currencies (including, without regard to section
10 1415 of the Supplemental Appropriation Act, 1953,
11 such foreign currencies which the Secretary of the
12 Treasury may determine to be excess to the normal re-
13 quirements of the United States and the Director of
14 the Bureau of the Budget may allocate) to firms pri-
15 vately owned or of mixed private and public ownership
16 upon such terms and conditions as the Corporation
17 may determine. The Corporation may not purchase or
18 invest in any stock in any other corporation, except
19 that it may (A) accept as evidence of indebtedness debt
20 securities convertible to stock, but such debt securities
21 shall not be converted to stock while held by the Cor-
22 poration, and (B) acquire stock through the enforce-
23 ment of any lien or pledge or otherwise to satisfy a
24 previously contracted indebtedness which would other-
25 wise be in default, or as the result of any payment

1 under any contract of insurance or guaranty. The Cor-
2 poration shall dispose of any stock it may so acquire as
3 soon as reasonably feasible under the circumstances
4 then pertaining. Loans may be made under this subsec-
5 tion only for projects that are sponsored by or signifi-
6 cantly involve United States small business or
7 cooperatives.

8 (4) INVESTMENT ENCOURAGEMENT.—To initiate
9 and support through financial participation, incentive
10 grant, or otherwise, and on such terms and conditions
11 as the Corporation may determine, the identification,
12 assessment, surveying and promotion of private invest-
13 ment opportunities, utilizing wherever feasible and ef-
14 fective the facilities of private investors, except that—

15 (A) the Corporation shall not finance any
16 survey to ascertain the existence, location, extent,
17 or quality of, or to determine the feasibility of un-
18 dertaking operations for the extraction of oil or
19 gas; and

20 (B) expenditures financed by the Corporation
21 during any fiscal year on surveys to ascertain the
22 existence, location, extent, or quality of, or to de-
23 termine the feasibility of undertaking operations
24 for the extraction of nonfuel minerals may not
25 exceed $200,000.

1 (5) SPECIAL ACTIVITIES.—To administer and
2 manage special projects and programs, including pro-
3 grams of financial and advisory support which provide
4 private technical, professional, or managerial assistance
5 in the development of human resources, skills, technol-
6 ogy, capital savings, and intermediate financial and in-
7 vestment institutions and cooperatives. The funds for
8 these projects and programs may, with the Corpora-
9 tion's concurrence, be transferred to it for such pur-
10 poses from other sources, public or private.

11 (6) OTHER INSURANCE FUNCTIONS.—

12 (A) To make and carry out contracts of in-
13 surance or reinsurance, or agreements to associate
14 or share risks, with insurance companies, financial
15 institutions, any other persons, or groups thereof,
16 and employing the same where appropriate, as its
17 agent, or acting as their agent, in the issuance
18 and servicing of insurance, the adjustment of
19 claims, the exercise of subrogation rights, the
20 ceding and accepting of reinsurance, and in any
21 other matter incident to an insurance business;
22 except that (i) such agreements and contracts
23 shall be consistent with the purposes of the Cor-
24 poration set forth in section 925 of this Act and
25 shall be on equitable terms and (ii) the Corpora-

1 tion shall not make or carry out any association
2 or risk-sharing agreement for the direct under-
3 writing of insurance by the Corporation with
4 others, other than on an individual basis where
5 such direct underwriting facilitates the purposes of
6 the Corporation as set forth in section 925 of this
7 Act.

8 (B) To enter into pooling or other risksharing
9 agreements with other national or multinational
10 insurance or financing agencies as groups of such
11 agencies.

12 (C) To hold an ownership interest in any as-
13 sociation or other entity established for the pur-
14 poses of sharing risks under investment insurance.

15 (D) To issue, upon such terms and conditions
16 as it may determine, reinsurance of liabilities as-
17 sumed by other insurers or groups thereof in re-
18 spect of risks referred to in paragraph (1)(A).

19 (b) The authority granted by subparagraph (C) may be
20 exercised notwithstanding the prohibition under paragraph
21 (3) against the Corporation purchasing or investing in any
22 stock in any other corporation. The amount of reinsurance of
23 liabilities under this part which the Corporation may issue
24 shall not in the aggregate exceed at any one time an amount
25 equal to the amount authorized for the maximum contingent

1 liability outstanding at any one time under section 929(a)(1).
2 All reinsurance issued by the Corporation under this subsec-
3 tion shall require that the reinsured party retain for his own
4 account specified portions of liability, whether first loss or
5 otherwise.

6 SEC. 929. ISSUING AUTHORITY, DIRECT INVESTMENT FUND
7 AND RESERVES.

8 (a)(1) LIABILITY UNDER SECTION 928(a).—The maxi-
9 mum contingent liability outstanding at any one time pursu-
10 ant to insurance issued under section 928(a) shall not exceed
11 $10,000,000,000.

12 (2) LIABILITY UNDER SECTION 928(b).—The maxi-
13 mum contingent liability outstanding at any one time pursu-
14 ant to guaranties issued under section 928(b) shall not exceed
15 in the aggregate $1,000,000,000.

16 (3) LIMITATION.—The Corporation shall not make any
17 commitment to issue any investment guaranty that would
18 result in a fractional reserve less than 25 percent of the
19 maximum contingent liability then outstanding against guar-
20 anties issued or commitments made pursuant to section
21 928(b) or similar predecessor guaranty authority.

22 (4) LIMITATION BY CONGRESS.—The Congress, in con-
23 sidering the budget programs transmitted by the President
24 for the Corporation, pursuant to section 104 of the Govern-
25 ment Corporation Control Act, as amended, may limit the

1 obligations and contingent liabilities to be undertaken under
2 section 928 (a) and (b) as well as the use of funds for operat-
3 ing and administrative expenses.

4 (5) CONTINUATION OF AUTHORITY.—The authority of
5 section 928 (a) and (b) shall continue until September 30,
6 1985.

7 (b) REVOLVING FUND.—There shall be established a re-
8 volving fund, known as the Direct Investment Fund, to be
9 held by the Corporation. Such fund shall consist initially of
10 amounts made available under section 926, shall be available
11 for the purposes authorized under section 926(c), shall be
12 charged with realized losses and credited with realized gains
13 and shall be credited with such additional sums as may be
14 transferred to it under the provisions of section 930.

15 (c) INSURANCE AND GUARANTY FUND.—There shall
16 be established in the Treasury of the United States an insur-
17 ance and guaranty fund, which shall have separate accounts
18 to be known as the Insurance Reserve and the Guaranty
19 Reserve, which reserves shall be available for discharge of
20 liabilities, as provided in section 929(d), until such time as all
21 such liabilities have been discharged or have expired or until
22 all such reserves have been expended in accordance with the
23 provisions of this section. Such fund shall be funded by: (1)
24 the funds heretofore transferred to the Corporation out of
25 funds available to discharge liabilities under predecessor

1 guaranty authority or made available to the Corporation
2 under predecessor guaranty authority, and (2) such sums as
3 shall be appropriated pursuant to section 929(e) for such pur-
4 poses. The allocation of such funds to each such reserve shall
5 be determined by the Board after consultation with the Sec-
6 retary of the Treasury. Additional amounts may thereafter be
7 transferred to such reserves pursuant to section 930.

8 (d) PAYMENTS.—Any payment made to discharge
9 liabilities under investment insurance or reinsurance issued
10 under section 928 or under similar predecessor guaranty au-
11 thority shall be paid first out of the insurance reserve, as long
12 as such reserve remains available, and thereafter out of funds
13 made available pursuant to section 929(e). Any payments
14 made to discharge liabilities under guaranties issued under
15 section 928(b) or under similar predecessor guaranty authori-
16 ty shall be paid first out of the guaranty reserve as long as
17 such reserve remains available, and thereafter out of funds
18 made available pursuant to section 929(e).

19 (e) AUTHORIZATION OF APPROPRIATIONS.—There are
20 authorized to be appropriated to the Corporation, to remain
21 available until expended, such amounts as may be necessary
22 from time to time to replenish or increase the insurance and
23 guaranty fund, to discharge the liabilities under insurance,
24 reinsurance, or guaranties issued by the Corporation or
25 issued under predecessor guaranty authority, or to discharge

1 obligations of the Corporation purchased by the Secretary of
2 the Treasury pursuant to this subsection. However, no ap-
3 propriations shall be made to augment the insurance reserve
4 until the amount of funds in the insurance reserve is less than
5 $25,000,000. Any appropriations to augment the insurance
6 reserve shall then only be made either pursuant to specific
7 authorization enacted after the date of enactment of this Act,
8 or to satisfy the full faith and credit provision of section 931.
9 In order to discharge liabilities under investment insurance,
10 reinsurance or guaranties, the Corporation is authorized to
11 issue from time to time for purchase by the Secretary of the
12 Treasury its notes, debentures, bonds, or other obligations;
13 but the aggregate amount of such obligations outstanding at
14 any one time shall not exceed $250,000,000. Any such obli-
15 gation shall be repaid to the Treasury within 2 years after
16 the date of issue of such obligation. Any such obligation shall
17 bear interest at a rate determined by the Secretary of the
18 Treasury, taking into consideration the current average
19 market yield on outstanding marketable obligations of the
20 United States of comparable maturities during the month
21 preceding the issuance of any obligation authorized by this
22 subsection. The Secretary of the Treasury shall purchase any
23 obligation of the Corporation issued under this subsection,
24 and for such purchase he may use as a public debt transac-
25 tion the proceeds of the sale of any securities issued under

1 the Second Liberty Bond Act after the date of enactment of
2 this Act. The purpose for which securities may be issued
3 under such Bond Act shall include any such purchase.

4 **SEC. 930. INCOME AND REVENUES.**

5 In order to carry out the purposes of the Corporation,
6 all revenues and income transferred to or earned by the Cor-
7 poration, from whatever source derived, shall be held by the
8 Corporation and shall be available to carry out its purposes,
9 including without limitation—

10 (1) payment of all expenses of the Corporation, in-
11 cluding investment promotion expenses;

12 (2) transfers and additions to the insurance or
13 guaranty reserves, the direct investment fund estab-
14 lished pursuant to section 929, the capital of the Cor-
15 poration, and such other funds or reserves as the Cor-
16 poration may establish, at such time and in such
17 amounts as the Board may determine; and

18 (3) payment of dividends, on capital stock, which
19 shall consist of and be paid from net earnings of the
20 Corporation after payments, transfers, and additions
21 under paragraphs (1) and (2).

22 **SEC. 931. GENERAL PROVISIONS RELATING TO INSURANCE**
23 **AND GUARANTY PROGRAM.**

24 (a) IN GENERAL.—Insurance, guaranties, and reinsur-
25 ance issued under this Act shall cover investment made in

1 connection with projects in any less developed friendly coun-
2 try or area with the government to which the President of
3 the United States has agreed to institute a program for insur-
4 ance, guaranties, or reinsurance. The Corporation shall de-
5 termine that suitable arrangements exist for protecting the
6 interest of the Corporation in connection with any insurance,
7 guaranty, or reinsurance issued under this Act, including ar-
8 rangements concerning ownership, use, and disposition of the
9 currency, credits, assets, or investments on account of which
10 payment under such insurance, guaranty, or reinsurance is to
11 be made, and right, title, claim, or cause of action existing in
12 connection therewith.

13 (b) CERTAIN PREEXISTING OBLIGATIONS.—All guar-
14 anties issued prior to July 1, 1956, all guaranties issued
15 under sections 202(b) and 413(b) of the Mutual Security Act
16 of 1954, all guaranties heretofore issued pursuant to prior
17 guaranty authorities repealed by the Foreign Assistance Act
18 of 1969, all insurance, reinsurance, and guaranties issued
19 pursuant to title IV of the Foreign Assistance Act of 1961,
20 and this Act shall constitute obligations, in accordance with
21 the terms of such insurance, reinsurance, or guaranties, of
22 the United States of America and the full faith and credit of
23 the United States of America is hereby pledged for the full
24 payment and performance of such obligations.

1 (c) FEES.—Fees shall be charged for insurance, guar-
2 anty, and reinsurance coverage in amounts to be determined
3 by the Corporation. In the event fees charged for investment
4 insurance, guaranties, or reinsurance are reduced, fees to be
5 paid under existing contracts for the same type of insurance,
6 guaranties, or reinsurance and for similar guaranties issued
7 under predecessor guaranty authority may be reduced.
8 (d) LIMITATION ON PERIOD.—No insurance, guaranty,
9 or reinsurance of any equity investment shall extend beyond
10 20 years from the date of issuance.
11 (e) LIMITATION ON COMPENSATION.—Compensation
12 for insurance, reinsurance, or guaranties issued under this
13 Act shall not exceed the dollar value, as of the date of the
14 investment, of the investment made in the project with the
15 approval of the Corporation plus interest, earnings or profits
16 actually accrued on said investment to the extent provided by
17 such insurance, reinsurance, or guaranty, except that the
18 Corporation may provide (1) that appropriate adjustments in
19 the insured dollar value be made to reflect the replacement
20 cost of project assets, and (2) that compensation for loss
21 under insurance of equity investment shall be equal to the net
22 book value attributable to such equity investment on the date
23 of loss. The Corporation shall limit the amount of direct in-
24 surance and reinsurance issued by it under section 104 so
25 that risk of loss as to at least 10 percent of the total invest-

1 ment of the insured and its affiliates in the project is borne by
2 the insured and such affiliates, except that limitation shall not
3 apply to direct insurance or reinsurance of (1) investments by
4 small businesses or (2) loans by banks or other financial insti-
5 tutions to unrelated parties.

6 (f) FRAUD, ETC.—No payment may be made under any
7 guaranty, insurance, or reinsurance issued pursuant to this
8 Act for any loss arising out of fraud or misrepresentation for
9 which the party seeking payment is responsible.

10 (g) FOREIGN INVESTMENT INSURANCE.—Insurance,
11 guaranties, or reinsurance of a loan or equity investment of
12 an eligible investor in a foreign bank, finance company, or
13 other credit institution shall extend only to such loan or
14 equity investment and not to any individual loan or equity
15 investment made by such foreign bank, finance company, or
16 other credit institution.

17 (h) PAYMENT OF CLAIMS.—Claims arising as a result
18 of insurance, reinsurance or guaranty operations under this
19 part or under predecessor guaranty authority may be settled,
20 and disputes arising as a result thereof may be arbitrated
21 with the consent of the parties, on such terms and conditions
22 as the Corporation may determine. Payment made pursuant
23 to any such settlement, or as a result of an arbitration award,
24 shall be final and conclusive notwithstanding any other provi-
25 sion of law.

1 (i) CONTRACTS PRESUMED TO COMPLY.—Each guar-
2 anty contract executed by such officer or officers as may be
3 designated by the Board shall be conclusively presumed to be
4 issued in compliance with the requirements of this part.

5 (j) LIMITATIONS ON PAYMENTS.—

6 (1) No payment may be made under any insur-
7 ance or reinsurance which is issued under this part on
8 or after the date of enactment of this Act for any loss
9 occurring with respect to a project, if the preponderant
10 cause of such loss was an act by the investor seeking
11 payment under this part, by a person possessing major-
12 ity ownership and control of the investor at the time of
13 the act, or by any agent of such investor or controlling
14 person, and a court of the United States has entered a
15 final judgment that such act constituted a violation
16 under the Business Practices and Records Act.

17 (2) The Corporation shall adopt regulations set-
18 ting forth appropriate conditions under which any
19 person convicted under the Business Practices and
20 Records Act for an offense related to a project insured
21 or otherwise supported by the Corporation shall be
22 suspended, for a period of not more than 5 years, from
23 eligibility to receive any insurance, reinsurance, guar-
24 anty loan, or other financial support authorized by this
25 Act.

1 SEC. 932. DEFINITIONS.

2 As used in this part—

3 (1) the term "investment" includes any contribu-
4 tion or commitment of funds, commodities, capital
5 goods, equipment, services, patents, processes, or tech-
6 niques, in the form of (A) a loan or loans to an ap-
7 proved project, (B) the purchase of a share of owner-
8 ship in any such project, (C) participation in royalties,
9 earnings, or profits of any such project, and (D) the
10 furnishing of commodities, capital goods, equipment, or
11 services pursuant to a lease or other contract;

12 (2) the term "expropriation" includes, but is not
13 limited to, any abrogation, repudiation, or impairment
14 by a foreign government of its own contract with an
15 investor with respect to a project, where such abroga-
16 tion, repudiation, or impairment is not caused by the
17 investor's own fault or misconduct, and materially ad-
18 versely affects the continued operation of the project;

19 (3) the term "eligible investor" means: (A) United
20 States citizens; (B) corporations, partnerships, or other
21 associations including nonprofit associations, created
22 under the laws of the United States or any State or
23 territory thereof in which the United States citizens
24 have a significant interest; and (C) foreign corpora-
25 tions, partnerships, or other associations majority con-
26 trol of which is held by such United States citizens,

1 corporations, partnerships, or other associations, how-
2 ever, in the case of any loan investment a final deter-
3 mination of eligibility may be made at the time the in-
4 surance or guaranty is issued; in all other cases, the
5 investor must be eligible at the time a claim arises as
6 well as the time the insurance or guaranty is issued;
7 and

8 (4) the term "predecessor guaranty authority"
9 means prior guaranty authorities (other than housing
10 guaranty authorities) repealed by this part, the Foreign
11 Assistance Act of 1969, sections 202(b) and 413(b) of
12 the Mutual Security Act of 1954, and section 111(b)(3)
13 of the Economic Cooperation Act of 1948, as amended
14 (exclusive of authority relating to informational media
15 guaranties).

16 **SEC. 933. GENERAL PROVISIONS AND POWERS.**

17 (a) PRINCIPAL OFFICE.—The Corporation shall have
18 its principal office in the District of Columbia and shall be
19 deemed, for purposes of venue in civil actions, to be resident
20 thereof.

21 (b) PREDECESSOR PROGRAMS.—The Corporation shall
22 retain all obligations, assets, and related rights and responsi-
23 bilities arising out of, or related to, predecessor programs and
24 authorities similar to those provided for in section 928 (a),
25 (b), and (d).

1 (c) GOVERNMENT CORPORATION CONTROL ACT.—The
2 Corporation shall be subject to the applicable provisions of
3 the Government Corporation Control Act, except as other-
4 wise provided in this Act.

5 (d) GENERAL AUTHORITY.—To carry out the purposes
6 of this Act, the Corporation is authorized to adopt and use a
7 corporate seal, which shall be judicially noticed; to sue and
8 be sued in its corporate name; to adopt, amend, and repeal
9 bylaws governing the conduct of its business and the per-
10 formance of the powers and duties granted to or imposed
11 upon it by law; to acquire, hold, or dispose of, upon such
12 terms and conditions as the Corporation may determine, any
13 property, real, personal, or mixed, tangible or intangible, or
14 any interest therein; to invest funds derived from fees and
15 other revenues in obligations of the United States and to use
16 the proceeds therefrom, including earnings and profits, as it
17 shall deem appropriate; to indemnify directors, officers, em-
18 ployees, and agents of the Corporation for liabilities and ex-
19 penses incurred in connection with their Corporation activi-
20 ties; to require bonds of officers, employees, and agents and
21 pay the premiums therefor; notwithstanding any other provi-
22 sion of law, to represent itself or to contract for representa-
23 tion in all legal and arbitral proceedings; to purchase, dis-
24 count, rediscount, sell, and negotiate, with or without its en-
25 dorsement or guaranty, and guarantee notes, participation

1 certificates, and other evidence of indebtedness (provided that
2 the Corporation shall not issue its own securities, except par-
3 ticipation certificates for the purpose of carrying out section
4 925(c) or participation certificates as evidence of indebted-
5 ness held by the Corporation in connection with settlement of
6 claims under section 931(h)); to make and carry out such
7 contracts and agreements as are necessary and advisable in
8 the conduct of its business; to exercise the priority of the
9 Government of the United States in collecting debts from
10 bankrupt, insolvent, or decedents' estates; to determine the
11 character of and the necessity for its obligations and expendi-
12 tures, and the manner in which they shall be incurred, al-
13 lowed, and paid, subject to provisions of law specifically ap-
14 plicable to Government corporations; to collect or compro-
15 mise any obligations assigned to or held by the Corporation
16 including any legal or equitable rights accruing to the Corpo-
17 ration; and to take such actions as may be necessary or ap-
18 propriate to carry out the powers herein or hereafter specifi-
19 cally conferred upon it.

20 (e) USE OF FUNDS.—Funds made available for the pur-
21 pose of this part may be used for printing and binding without
22 regard to the provisions of any other law, and for expendi-
23 tures outside the United States for the procurement of sup-
24 plies and services without regard to such laws and regula-
25 tions governing the obligation and expenditure of funds of the

1 United States Government as may be necessary to accom-
2 plish the purposes of this part.

3 (f) APPLICATION OF OTHER LAWS.—No provision of
4 any other law shall prohibit the operation of the programs
5 authorized by this part in any less developed country if the
6 President of the United States has determined that their op-
7 eration is important to the national interest.

8 (g) ENVIRONMENTAL IMPLICATIONS.—The Corpora-
9 tion shall develop and implement specific criteria intended to
10 minimize the potential environmental implications of projects
11 undertaken by investors abroad in accordance with any of the
12 programs authorized by this part.

13 (h) TRADE PROFILE.—The Corporation shall prepare
14 and maintain for each investment project it insures, finances,
15 or reinsures, a profile consisting of data appropriate to meas-
16 ure the expected trade and developmental effects of such
17 project.

18 (i) HUMAN RIGHTS, ETC.—The Corporation shall take
19 into account in the conduct of its programs in a country, in
20 consultation with the Secretary of State, all available infor-
21 mation about observance of and respect for human rights and
22 fundamental freedoms in such country and the effect the op-
23 eration of such programs will have on human rights and fun-
24 damental freedoms in such country. The Corporation shall
25 not provide any insurance, reinsurance, guaranty, or loan for

1 any project in a country when the Secretary of State has
2 made a determination under section 116 of the Foreign As-
3 sistance Act that the government of such country engages in
4 a consistent pattern of gross violations of internationally rec-
5 ognized human rights unless such a project will directly bene-
6 fit the needs of the needy people in such a country or the
7 national security interest of the United States.

8 (j) APPLICATION OF 18 U.S.C. 955.—The provisions of
9 section 955 of title 18 of the United States Code shall not
10 apply to prevent any person, including any individual, part-
11 nership, corporation, or association, from acting for, or par-
12 ticipating in, any operation or transaction arising under this
13 part, or from acquiring any obligation issued in connection
14 with any operation or transaction arising under this part.

15 (k) OVERRIDE OF RENEGOTIATION ACT.—Whenever
16 the President of the United States determines it to be in fur-
17 therance of the purposes of this part, the functions authorized
18 under this part may be performed without regard to such
19 provisions of law (other than the Renegotiation Act of 1951
20 (50 U.S.C. App. 1211 et seq.)), regulating the making, per-
21 formance, amendment, or modification of contracts and the
22 expenditure of funds of the United States Government as the
23 President may specify.

24 (l) CONTRACTS, ETC.—The Corporation may make and
25 perform agreements and contracts with, or enter other trans-

1 actions with, any individual, corporation, or other body of
2 persons, government or government agency, whether within
3 or without the United States and international organizations
4 in furtherance of the purposes and within the limitations of
5 this part.

6 (m) CARRYOVER OF FUNDS.—Except as otherwise pro-
7 vided in this part, funds shall be available to carry out the
8 provisions of this part as authorized and appropriated each
9 fiscal year. Provisions of this Act authorizing the appropri-
10 ation of funds shall be construed to authorize the granting in
11 any appropriation Act of authority to enter into contracts
12 within the amounts so authorized to be appropriated, creating
13 obligations in advance of appropriations.

14 (n) FOREIGN CURRENCIES.—Foreign currencies re-
15 ceived by the Corporation as a result of its operations may be
16 transferred to the Secretary of the Treasury for sale to agen-
17 cies of the United States Government for payment of their
18 obligations outside the United States, and the United States
19 dollars received as reimbursement shall be returned to the
20 Corporation. Foreign currencies so received which are in
21 excess of the requirements of the United States Government
22 in payment of its obligations outside the United States shall
23 be available for the authorized purposes of this part.

24 (o) GIFTS, BEQUESTS, ETC.—The Corporation may
25 accept and use in furtherance of the purposes of this part,

1 money, funds, property, and services of any kind made avail-
2 able by gift, devise, bequest, grant, or otherwise for such
3 purpose.

4 **SEC. 934. SMALL BUSINESS DEVELOPMENT.**

5 The Corporation shall undertake, in cooperation with
6 appropriate departments, agencies, and instrumentalities of
7 the United States as well as private entities and others, to
8 broaden the participation of United States small business, co-
9 operatives, and other small United States investors in the
10 development of small private enterprise in less developed
11 friendly countries or areas. The Corporation shall allocate up
12 to 50 percent of its annual net income, after making suitable
13 provision for transfers and additions to reserves, to assist and
14 facilitate the development of projects consistent with the pro-
15 visions of this section. Such funds may be expended, notwith-
16 standing the requirements of section 925(a), on such terms
17 and conditions as the Corporation may determine, through
18 loans, grants, or other programs authorized by section 928.

19 **SEC. 935. REPORTS TO THE CONGRESS.**

20 After the end of each fiscal year, the Corporation shall
21 submit to the Congress a complete and detailed report of its
22 operations during such fiscal year. Such report shall in-
23 clude—

24 (1) an assessment, based upon the profiles re-
25 quired by section 933(h), of the trade and development

1 impact and benefits of the projects with respect to
2 which such profiles are prepared, and of the extent to
3 which the operations of the Corporation complement or
4 are compatible with the trade and development policies
5 of the United States; and
6 (2) a description of any project for which the Cor-
7 poration—
8 (A) refused to provide any insurance, reinsur-
9 ance, guaranty, financing, or other financial sup-
10 port, on account of gross violations of human
11 rights referred to in section 933(i); or
12 (B) notwithstanding such violations, provided
13 such insurance, reinsurance, guaranty, financing,
14 or financial support, on the basis of a determina-
15 tion (i) that the project will directly benefit the
16 needy people in the country in which the project
17 is located, or (ii) that the national security interest
18 so requires.

19 **Subpart B—Amendment of Foreign Assistance Act of 1961**

20 **SEC. 941. CONFORMING AMENDMENTS.**

21 The Foreign Assistance Act of 1961 is hereby amended
22 as follows:
23 (1) Section 222 is amended by deleting the paren-
24 thetical language in line three of subsection (a) thereof

1 and inserting: "(as defined in section 108(c) of the
2 Overseas Private Investment Corporation Act)"
3 (2) Section 222A is amended by deleting subsec-
4 tions (f) and (g) thereof.
5 (3) Section 610 is amended by deleting the follow-
6 ing language in subsection (a) thereof: "(except funds
7 made available pursuant to title IV of chapter 2 of part
8 I)".
9 (4) Section 620 is amended by deleting subsection
10 (l) thereof.
11 (5) Section 636 is amended by deleting the follow-
12 ing language in subsection (f) thereof: "or by the Cor-
13 poration established under title IV of chapter 2 of part
14 I with respect to loan activities which it carries out
15 under the provisions of the Agricultural Trade Devel-
16 opment and Assistance Act of 1954, as amended".
17 (6) Title IV of chapter 2 of part I of the Foreign
18 Assistance Act of 1961 is repealed.
19 **SEC. 942. TRANSITION PROVISIONS.**
20 (a) CONTINUATION OF OPIC FUNCTIONS AND AU-
21 THORITY.—The amendments made by this part shall not be
22 construed to effect a termination of any statutory authority
23 for the Overseas Private Investment Corporation, except to
24 the extent that such amendments provide for a change in the
25 statutory authority for the Corporation as it existed on the

1 day before the date of enactment of this Act. The status of
2 any employee, equipment, funds, or authority for credits,
3 loans, or guarantees by the Corporation on the day before the
4 date of enactment of this Act shall not be affected by the
5 amendments made by this part except to the extent that the
6 statutory authority for the Corporation, as amended by this
7 part, is different from that of the Corporation on the day
8 before such date.

9 (b) SAVINGS PROVISIONS.—

10 (1) All orders, determinations, rules, regulations,
11 permits, grants, contracts, certificates, licenses, and
12 privileges—

13 (A) which have been issued, made, granted,
14 or allowed to become effective by the Corporation
15 of by a court of competent jurisdiction in the per-
16 formance of functions which are carried out under
17 the amendments made by this Act, and

18 (B) which are in effect at the time this part
19 takes effect,

20 shall continue in effect according to their terms until
21 modified, terminated, superseded, set aside, or revoked
22 in accordance with the law by the Corporation, by a
23 court of competent jurisdiction, or by operation of law.

24 (2) The amendments made by this part shall not
25 affect any proceedings, including notices of proposed

1 rulemaking, or any application for any license, permit,
2 certificate, or financial assistance pending on the effec-
3 tive date of this Act before the Corporation; but such
4 proceedings and applications, to the extent that they
5 relate to functions for which the authority is reenacted,
6 shall be continued. Orders shall be issued in such pro-
7 ceedings, appeals shall be taken therefrom, and pay-
8 ments shall be made pursuant to such orders, as if this
9 part had not been enacted; and orders issued in any
10 such proceedings shall continue in effect until modified,
11 terminated, superseded, or revoked by the Corporation,
12 by a court of competent jurisdiction, or by operation of
13 law. Nothing in this paragraph shall be deemed to pro-
14 hibit the discontinuance or modification of any such
15 proceeding under the same terms and conditions and to
16 the same extent that such proceeding could have been
17 discontinued or modified if this part had not been
18 enacted.

19 (3) The provisions of this part shall not affect
20 suits commenced prior to the effective date of this part,
21 and, in all such suits, proceedings shall be had, appeals
22 taken, and judgments rendered in the same manner
23 and effect as if this part had been enacted.

24 (4) No suit, action, or other proceeding com-
25 menced by or against any officer in the official capacity

1 of such individual as an officer of the Corporation shall
2 abate by reason of the enactment of this part. No
3 cause of action by or against the Corporation, or by or
4 against any officer thereof in the official capacity of
5 such officer, shall abate by reason of the enactment of
6 this part.

7 (c) TECHNICAL AND CONFORMING CHANGES.—The
8 President of the Overseas Private Investment Corporation
9 shall, within 90 days after the date of enactment of this Act,
10 submit to the Committee on Foreign Relations of the Senate
11 and the Committee on Foreign Affairs of the House of Rep-
12 resentatives, a draft of any technical or conforming changes
13 in the Foreign Assistance Act of 1961, and any other statute
14 of the United States, which are necessary to reflect the
15 changes in the substantive provisions of law, and cross-refer-
16 ences to provisions made by this part.

17 **PART 3—ROLE OF ALL UNITED STATES AGENCIES**
18 **IN EXPORT EXPANSION**

19 **SEC. 951. EXPORT POTENTIAL TO BE CONSIDERED.**

20 When considering which projects or other activities to
21 include in United States foreign aid programs around the
22 world, the potential for United States exports in the short,
23 medium, and long run shall be a primary decisionmaking
24 factor.

1 **SEC. 952. OFFICE OF MANAGEMENT AND BUDGET.**

2 Budget allocated to export-related activities should re-
3 flect the new high priority assigned to export expansion.
4 Office of Management and Budget should do everything in its
5 power to assure that adequate budget allocations are made
6 available to carry out the programs prescribed in this Act and
7 others considered necessary by export policymakers. Budget
8 cuts should be called for only when the reviews of export
9 expansion programs called for in section 913 indicate such a
10 need. Personnel assigned to examine and determine budget
11 levels for export-related programs should have adequate
12 knowledge and training in the international trade field to un-
13 derstand what is required to achieve export policy objectives.

14 **SEC. 953. ROLE OF THE JUSTICE DEPARTMENT.**

15 In interpreting and implementing laws that affect inter-
16 national trade and business practices, the Department of Jus-
17 tice should do what it can to facilitate procedures for export-
18 ers. In cases of vagueness in the laws, interpretations should
19 favor export interests unless clearly against the national
20 interest.

21 **SEC. 954. SMALL BUSINESS ADMINISTRATION.**

22 Small businesses often require special assistance to
23 enter the export market. The Small Business Administration
24 can play a key role in advising small business, augmenting
25 programs of the International Trade Administration. In addi-
26 tion to the new programs called for in this Act, the staff of

1 the Small Business Administration should be generally aware
2 of the benefits of export to small business development and
3 should use every opportunity to provide information and as-
4 sistance to potential exporters.

5 **SEC. 955. DEPARTMENT OF ENERGY.**

6 In making policy decision on coal, nuclear power fuels
7 and other energy matters, the impact on the ability of the
8 United States to export in a reliable manner should be a key
9 consideration.

10 **SEC. 956. THE CONGRESS.**

11 Each committee of the Congress shall include in their
12 reports of bills and resolutions a section on the effect, if any,
13 of the bill or resolution on the international competitiveness
14 of the United States, including, but not limited to, exports,
15 productivity, research, testing, and development, financing,
16 disincentives or restraints, and additional production, manu-
17 facturing, or distribution costs.

18 **PART 4—NATIONAL EXPORT COUNCIL**

19 **SEC. 961. ESTABLISHMENT AND MEMBERSHIP.**

20 (a) IN GENERAL.—There is hereby created a National
21 Export Council (hereinafter referred to as "the Council")
22 which shall be composed of the following members:

23 (1)(A) the Secretary of State;

24 (B) the Secretary of the Treasury;

25 (C) the Secretary of Agriculture;

1 (D) the Secretary of Commerce;

2 (E) the Secretary of Labor;

3 (F) the United States Trade Representative;

4 (G) The President and Chairman of the Export-
5 Import Bank of the United States; and

6 (H) the Administrator of the Small Business Ad-
7 ministration;

8 (2) 3 Members of the United States Senate, desig-
9 nated by the President of the Senate and 3 Members of
10 the United States House of Representatives designated
11 by the Speaker of the House;

12 (3) 3 Governors of States or territories, designat-
13 ed by the President; and

14 (4) no more than eighteen private citizens repre-
15 senting business and industry, agriculture, international
16 banking, and labor to be appointed by the President,
17 including at least 5 small business persons who are ac-
18 tively involved in export trade.

19 (b) CHAIRMAN.—The President shall appoint a Chair-
20 man of the Council from among its private citizen members
21 who shall preside over the meetings of the Council.

22 (c) EXECUTIVE DIRECTOR.—The Secretary of Com-
23 merce, with the concurrence of the Chairman, shall appoint
24 an Executive Director.

1 SEC. 962. FUNCTIONS.

2 (a) IN GENERAL.—The Council shall serve as a nation-
3 al advisory body on matters relating to United States export
4 trade. In carrying out such functions, the Council shall—

5 (1) survey and evaluate the export promotion and
6 development activities of the communities represented
7 by the membership;

8 (2) identify and examine specific problems which
9 business, industrial, and agricultural practices may
10 cause for export trade;

11 (3) examine the needs of business, industry, and
12 agriculture to expand their efforts; and

13 (4) recommend specific legislative and administra-
14 tive solutions to these problems and needs.

15 (b) LIAISON; EXPORT EXPANSION ENCOURAGE-
16 MENT.—The Council shall—

17 (1) act as liaison among the communities repre-
18 sented by its membership and may provide a forum for
19 those communities on current and emerging problems
20 and issues in the field of export promotion and develop-
21 ment, and

22 (2) encourage the business, industrial, and agricul-
23 tural communities to enter new foreign markets and to
24 expand existing export programs.

25 (c) ADVICE ON FEDERAL MATTERS.—The Council shall
26 provide advice on Federal plans and actions that affect export

1 promotion and development policies which have an impact on
2 those communities represented by its membership.

3 (d) EXECUTIVE AND OTHER COMMITTEES.—The
4 Council shall establish an executive committee and such
5 other subordinate committees it considers necessary for the
6 performance of its functions including, but not limited to,
7 committees on export administration, export expansion and
8 domestic disincentives, small business and export promotion,
9 the General Agreement on Tariffs and Trade and the Multi-
10 Lateral Trade Negotiations, and Agriculture and East-West
11 Trade. The chairman and members of the executive and sub-
12 ordinate committees shall be designated by the Chairman of
13 the Council from among the membership of the Council.

14 **SEC. 963. ADMINISTRATIVE PROVISIONS.**

15 (a) IN GENERAL.—The Secretary of Commerce shall
16 provide the Council, including its executive and subordinate
17 committees, with administrative and staff services, support
18 and facilities as may be necessary for the effective perform-
19 ance of its functions.

20 (b) COMPENSATION.—Each member of the Council, in-
21 cluding its executive and subordinate committees, who is not
22 otherwise paid a salary by the Federal Government, shall
23 receive no compensation from the United States by virtue of
24 their service on the Council, but all members may receive the

1 transportation and travel expenses, including per diem in lieu
2 of subsistence, authorized by law.

3 (c) APPLICATION OF FEDERAL ADVISORY COMMITTEE
4 ACT.—The functions of the President under the Federal Ad-
5 visory Committee Act (5 U.S.C. App. I) except that of re-
6 porting annually to the Congress, which are applicable to the
7 Council shall be performed by the Secretary of Commerce.

8 **SEC. 964. ANNUAL REPORT.**

9 The Council shall transmit to the President and the
10 Congress, not later than March 31 of each year, a full report
11 on its activities, and the activities of its subordinate
12 committees.

13 **SEC. 965. AUTHORIZATIONS.**

14 There are authorized to be appropriated such sums as
15 may be necessary to carry out this title.

16 **PART 5—COMMERCE DEPARTMENT**

17 **SEC. 971. COMMERCIAL OFFICERS OVERSEAS.**

18 In order to develop, maintain, and expand international
19 markets for the products and services of the United States; to
20 insure the promotion and protection of United States trade
21 and commercial services abroad for United States trade and
22 commercial interests around the world; to provide trade and
23 commercial services abroad for United States firms and busi-
24 nesses and trade and commercial organizations; and to secure
25 trade and commercial information useful for the expansion of

1 exports of United States products and services, the Secretary
2 of Commerce (hereinafter referred to in this part as the "Sec-
3 retary") is authorized to appoint such commercial ministers,
4 commercial counselors, and commercial attachés, who shall
5 be employees of the Department of Commerce (and who shall
6 report to the Under Secretary for International Trade), as
7 the Secretary determines to be necessary to carry out the
8 purposes of this title and to assign such commercial minis-
9 ters, commercial counselors, and commercial attachés to
10 service abroad.

11 **SEC. 972. TRAINING OF COMMERCIAL OFFICERS.**

12 Upon appointment, commercial officers shall participate
13 in training sessions designed by the Secretary, in cooperation
14 with the Department of State, the Foreign Service Institute,
15 and other Federal agencies, to study export and import pro-
16 grams and to examine the needs of United States businesses
17 for export information and assistance. As part of this training
18 program the Secretary shall assign each officer to a field
19 office of the Department to work in conjunction with the De-
20 partment's field personnel responsible for implementation of
21 export programs.

22 **SEC. 973. RANK AND PRIVILEGES.**

23 Commercial ministers, commercial counselors, and com-
24 mercial attachés assigned to posts abroad shall be accorded
25 the same rank and privileges as those of other ministers,

1 counselors, or attachés in the United States embassies and
2 consulates.

3 **SEC. 974. RELATIONSHIP TO DIPLOMATIC MISSION.**

4 Upon the request of the Secretary, the Secretary of
5 State shall regularly and officially attach the commercial
6 ministers, commercial counselors, and commercial attachés
7 appointed and assigned hereunder to the diplomatic mission
8 of the United States in the country in which such commerical
9 ministers, commercial counselors, or commercial attachés or
10 other personnel are to be assigned by the Secretary, and
11 shall obtain for them diplomatic privileges and immunities
12 equivalent to those enjoyed by Foreign Service personnel of
13 comparable rank and salary.

14 **SEC. 975. FUNCTIONS AND DUTIES.**

15 Commercial ministers, commercial counselors, and com-
16 mercial attachés appointed and assigned abroad by the Secre-
17 tary under the title, and other personnel employed under
18 their direction, in furtherance of the purposes set forth in
19 section 971 and in accordance with regulations prescribed by
20 the Secretary, shall have the following functions and duties:

21 (1) trade and commercial services, including, but
22 not limited to—

23 (A) protection and promotion of United
24 States trade and commercial interests and invest-

1 ments, including industrial property rights, within
2 their districts;
3 (B) current market oriented assistance to
4 United States firms and businesses visiting or op-
5 erating within their districts;
6 (C) appointments and introductions for
7 United States business persons visiting within
8 their districts;
9 (D) assistance in pursuing trade opportuni-
10 ties;
11 (E) assistance, when appropriate, in the ad-
12 justment of trade and commercial disputes involv-
13 ing United States firms or commercial and finan-
14 cial interest; and
15 (F) assistance to other United States Gov-
16 ernment agencies or State agencies, and to firms
17 and businesses with respect to trade missions,
18 trade fairs, and other international trade and com-
19 mercial exhibitions;
20 (2) export promotion, including, but not limited
21 to—
22 (A) the promotion of United States exports
23 and commercial interests in their districts;

1 (B) the creation, within the scope of their
2 duties and as appropriate, of a demand for United
3 States products and services in such districts; and
4 (C) the promotion of tourism in the United
5 States by residents of the districts to which they
6 are assigned;
7 (3) semiannual reports to the Secretary including,
8 but not limited to, the following information:
9 (A) market conditions, commercial develop-
10 ments, and the economic climate within their dis-
11 tricts, emphasizing changes between reports;
12 (B) implementation of and compliance with
13 the provisions of multilateral and bilateral trade
14 agreements with the United States by the govern-
15 ment, agencies, or instrumentalities of the country
16 to which they are assigned;
17 (C) specific industry and commodity condi-
18 tions;
19 (D) foreign law and business practices affect-
20 ing United States trade and commercial interests;
21 and
22 (E) trade opportunities on an industry basis;
23 (4) maintain and make available current data on
24 the commercial standing and capacity of foreign firms
25 within their districts; and

1 (5) such other functions and duties as the Secre-
2 tary determines to be necessary and proper for achiev-
3 ing the purposes of this title.

4 **SEC. 976. ASSIGNMENT TO UNITED STATES.**

5 Any officer or employee appointed and assigned to a
6 post abroad pursuant to this part may, in the discretion of the
7 Secretary, be assigned for duty in the continental United
8 States without regard to the civil service laws (and without
9 reduction in grade if an appropriate position at the employ-
10 ee's grade is not available in any agency of the Department
11 of Commerce) for a period of not more than 3 years.

12 **SEC. 977. OFFICE SPACE, EQUIPMENT, AND ADMINISTRATIVE**
13 **AND CLERICAL PERSONNEL.**

14 The Secretary of State, upon request of the Secretary,
15 shall provide office space, equipment, facilities, and such
16 other administrative and clerical services as may be required
17 for the performance of the functions and duties of the com-
18 mercial ministers, commercial counselors, and commercial at-
19 tachés appointed and assigned abroad under this part, and
20 other personnel employed under their direction, appropriate
21 to Foreign Service officers or other personnel of the same
22 rank and salary. The Secretary is authorized to reimburse or
23 advance funds to the Secretary of State for such services.
24 The Secretary is authorized, in accordance with applicable
25 law and regulations prescribed by the Secretary, to employ

1 locally such United States nationals or other personnel, as
2 the Secretary deems necessary to further the purpose set
3 forth in section 971 of this part or to the exercise and carry-
4 ing out of the functions and duties of the commercial minis-
5 ters, commercial counselors, and commercial attachés and
6 other personnel appointed and assigned abroad under this
7 part.

8 **SEC. 978. AGENCY, SERVICES, PERSONNEL, AND FACILITIES.**

9 Upon the request of the Secretary, each Federal agency
10 may make its services, personnel, and facilities available to
11 the commercial ministers, commercial counselors, and com-
12 mercial attachés appointed and assigned to a post abroad
13 under this part in the performance of their functions and
14 duties. The Secretary is authorized to reimburse or advance
15 funds to any such agency for services, personnel, and facili-
16 ties so made available.

17 **SEC. 979. PERFORMANCE OF FUNCTIONS IN FOREIGN LOCAL-**
18 **ITIES.**

19 Each commercial minister, commercial counselor, or
20 commercial attaché appointed and assigned under this part to
21 a United States diplomatic mission abroad, may carry out the
22 functions and duties authorized hereunder in such other na-
23 tions as the Secretary, in consultation with the Secretary of
24 State, may determine to be necessary and proper in order to
25 carry out the purposes of this part.

1 SEC. 980. REPORTS AND DISPATCHES—AVAILABILITY TO IN-
2 TERESTED GOVERNMENT AGENCIES.

3 The reports and dispatches prepared by the commercial
4 ministers, commercial counselors, or commercial attachés ap-
5 pointed and assigned abroad under this title shall be made
6 available to the Department of State, the Small Business
7 Administration, and to other interested agencies of the
8 Government.

9 SEC. 981. REPRESENTATIVE ALLOWANCES.

10 Any commercial minister, commercial counselor, or
11 commercial attaché appointed and assigned by the Secretary
12 to a post abroad under this part, under regulations prescribed
13 by the Secretary, may be authorized to receive a represen-
14 tation allowance in an amount to be determined by
15 considering—

16 (1) the extent to which such commercial minister,
17 commercial counselor, or commercial attaché can effec-
18 tively use funds to further the purposes of this part;

19 (2) travel and entertainment expenses customary
20 in the private trade for persons of comparable rank and
21 salary; and

22 (3) the customs and practices in the nation to
23 which he or she is assigned.

24 SEC. 982. ALLOWANCES AND BENEFITS.

25 The Secretary may, under such rules and regulations as
26 may be prescribed by the President or his designee, provide

1 to the commercial ministers, commercial counselors, and
2 commercial attachés appointed and assigned under this part,
3 allowances and benefits similar to those provided by title IX
4 of the Foreign Service Act of 1946. Leaves of absence for
5 commercial ministers, commercial counselors, and commer-
6 cial attachés appointed and assigned under this part shall be
7 on the same basis as is provided for Foreign Service of the
8 United States by the Annual and Sick Leave Act of 1951.

9 **SEC. 983. ADVANCE PAYMENT FOR RENT AND OTHER SERV-**
10 **ICES: FUNDS FOR COURTESIES TO FOREIGN**
11 **REPRESENTATIVES.**

12 In any foreign country where customs or practices re-
13 quire payment in advance for rent or other service, such pay-
14 ment may be authorized by the Secretary in accordance with
15 regulations prescribed by the Secretary, upon consultation
16 with the Secretary of State. Funds available for the purposes
17 of this part may be used for extending courtesies to repre-
18 sentatives of foreign countries, when so provided in appropri-
19 ation or other law.

20 **PART 6—REVIEW OF UNITED STATES EXPORT**
21 **PROGRAMS**

22 **SEC. 991. REVIEW.**

23 (a) REPORT BY COMPTROLLER GENERAL.—Within 12
24 months after the enactment of this Act, the Comptroller Gen-
25 eral of the United States shall (1) report to the Congress of

1 the United States on his analysis of the organization of inter-
2 national trading and financing programs of the United States;
3 (2) compare and analyze the structure and effectiveness of
4 foreign export promotion programs; (3) evaluate the trade ac-
5 tivities of the International Trade Administration of the De-
6 partment of Commerce, Export-Import Bank, Overseas Pri-
7 vate Investment Corporation, and trade analysis capability of
8 the Office of Management and Budget, Department of the
9 Treasury, and Department of State; and (4) make such rec-
10 ommendations as he deems feasible for the establishment or
11 reorganization of new export promotion agencies or the adop-
12 tion of new programs.

13 (b) ASSISTANCE.—In carrying out his functions under
14 section 904(a), the Comptroller General shall have such co-
15 operation and support services from the Library of Congress
16 and the Congressional Research Service as required.

17 (c) PERIODIC REVIEW.—It is the sense of Congress
18 that the appropriate committees of Congress shall review the
19 trade organization of the United States Government on a
20 regular and periodic basis and evaluate the performance and
21 effectiveness of such organization and, if appropriate, recom-
22 mend the reorganization of such functions to increase the ex-
23 ports and international competitiveness of United States
24 firms.

O

97TH CONGRESS
1ST SESSION

H. R. 3538

To amend the Internal Revenue Code of 1954 relating to the application of DISC rules to export trading companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1981

Mr. LAFALCE introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1954 relating to the application of DISC rules to export trading companies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) paragraph (3) of section 992(d) of the Internal Reve-
4 nue Code of 1954 (relating to ineligible corporations) is
5 amended by inserting before the comma at the end thereof
6 the following: "(other than a financial institution which is a
7 banking organization (as defined in section 993(h)(4)) invest-

1 ing in the voting stock of an export trading company (as de-
2 fined in section 993(h)(1))).''
3 (b) Paragraph (1) of section 993(a) of such Code (relat-
4 ing to qualified export receipts of a DISC) is amended—
5 (1) by striking out ''and'' at the end of subpara-
6 graph (G),
7 (2) by striking out the period at the end of sub-
8 paragraph (H) and inserting in lieu thereof '', and'',
9 and
10 (3) by adding at the end thereof the following new
11 subparagraph:
12 ''(I) in the case of a DISC which is an
13 export trading company, or which is a subsidiary
14 of such a company, gross receipts from the export
15 of services produced in the United States or from
16 export trade services.''
17 (c) Section 993 of such Code is amended by adding at
18 the end thereof the following new subsection:
19 ''(h) DEFINITIONS RELATING TO EXPORT TRADING
20 COMPANIES.—For purposes of this part—
21 ''(1) EXPORT TRADING COMPANY.—The term
22 'export trading company' means a company which does
23 business under the laws of the United States or any
24 State and which is organized and operated principally
25 for the purposes of—

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

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

"(2) SERVICES PRODUCED IN THE UNITED STATES.—The term 'services produced in the United States' includes, but is not limited to, amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services, not less than 50 percent of the fair market value of which is provided by United States citizens or is otherwise attributable to the United States.

"(3) EXPORT TRADE SERVICES.—The term 'export trade services' includes, but is not limited to, international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing when provided in order to fa-

1 cilitate the export of goods or services produced in the
2 United States.
3 "(4) BANKING ORGANIZATION.—The term 'bank-
4 ing organization' means any State or national bank,
5 bank holding company, Edge Act Corporation, or
6 Agreement Corporation.
7 "(5) BANK HOLDING COMPANY.—The term 'bank
8 holding company' has the same meaning as in the
9 Bank Holding Company Act of 1956.
10 "(6) EDGE ACT CORPORATION.—The term 'Edge
11 Act Corporation' means a corporation organized under
12 section 25(a) of the Federal Reserve Act.
13 "(7) AGREEMENT CORPORATION.—The term
14 'Agreement Corporation' means a corporation operat-
15 ing subject to section 25 of the Federal Reserve Act."
16 (d) The Secretary of Commerce, after consultation with
17 the Secretary of the Treasury, shall develop, prepare, and
18 distribute to interested parties, including potential exporters,
19 information concerning the manner in which an export trad-
20 ing company can utilize the provisions of part IV of sub-
21 chapter N of chapter 1 of the Internal Revenue Code of 1954
22 (relating to domestic international sales corporations), and
23 any advantages or disadvantages which may reasonably be
24 expected from the election of DISC status or the establish-
25 ment of a subsidiary corporation which is a DISC.

1 (e) The amendments made by this section shall apply
2 with respect to taxable years beginning after December 31,
3 1981.

4 SEC. 2. (a) Paragraph (1) of section 1371(a) of the In-
5 ternal Revenue Code of 1954 (relating to definition of small
6 business corporation) is amended by inserting ", except in the
7 case of the shareholders of an export trading company (as
8 defined in section 993(h)) if such shareholders are otherwise
9 small business corporations for the purpose of this sub-
10 chapter," after "shareholders".

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

15 (c) The amendments made by this section shall apply
16 with respect to taxable years beginning after December 31,
17 1981.

97TH CONGRESS
1ST SESSION

H. R. 5235

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving exports.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 1981

Mr. RODINO (for himself, Mr. BROOKS, Mr. BUTLER, Mr. EDWARDS of Alabama, Mr. EVANS of Georgia, Mr. HUGHES, Mr. HYDE, Mr. MAZZOLI, Mr. MCCLORY, Mr. MOORHEAD, Mr. RAILSBACK, and Mr. SEIBERLING) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving exports.

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

3 AMENDMENT TO SHERMAN ACT

4 SECTION 1. The Sherman Act (15 U.S.C. 1 et seq.) is
5 amended by inserting after section 6 the following new sec-
6 tion:

1 "SEC. 7. This Act shall apply to conduct involving
2 export trade or export commerce, with foreign nations, only
3 if such conduct has a direct, substantial, and reasonably for-
4 seeable effect on—
5 "(1) trade or commerce which is not trade or
6 commerce with foreign nations; or
7 "(2) export trade or export commerce, with for-
8 eign nations, of a domestic person, and only to the
9 extent of the injury to such domestic person.".

10 AMENDMENT TO CLAYTON ACT

11 SEC. 2. Section 7 of the Clayton Act (15 U.S.C. 18) is
12 amended by adding at the end thereof the following undesig-
13 nated paragraph:
14 "This section shall not apply to any joint venture limit-
15 ed to export commerce with foreign nations.".

16 AMENDMENT TO FEDERAL TRADE COMMISSION ACT

17 SEC. 3. Section 5(a) of the Federal Trade Commission
18 Act (15 U.S.C. 45(a)) is amended by adding at the end there-
19 of the following new paragraph:
20 "(3)(A) This subsection shall apply to unfair methods of
21 competition involving export commerce with foreign nations
22 only if such methods of competition have a direct, substantial,
23 and reasonably forseeable effect on—
24 "(i) commerce which is not commerce with foreign
25 nations; or

1 "(ii) export commerce of a domestic person with
2 foreign nations, and only to the extent of the injury to
3 such domestic person.".

○

Union Calendar No. 425

97TH CONGRESS
2D SESSION

H. R. 5235

[Report No. 97-686]

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving exports.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 1981

Mr. RODINO (for himself, Mr. BROOKS, Mr. BUTLER, Mr. EDWARDS of California, Mr. EVANS of Georgia, Mr. HUGHES, Mr. HYDE, Mr. MAZZOLI, Mr. MCCLORY, Mr. MOORHEAD, Mr. RAILSBACK, and Mr. SEIBERLING) introduced the following bill; which was referred to the Committee on the Judiciary

AUGUST 2, 1982

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on December 15, 1981]

A BILL

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving exports.

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

1 *SHORT TITLE*

2 *SECTION 1. This Act may be cited as the "Foreign*
3 *Trade Antitrust Improvements Act of 1982".*

4 *AMENDMENT TO SHERMAN ACT*

5 *SEC. 2. The Sherman Act (15 U.S.C. 1 et seq.) is*
6 *amended by inserting after section 6 the following new sec-*
7 *tion:*

8 *"SEC. 7. This Act shall not apply to conduct involving*
9 *trade or commerce (other than import trade or import com-*
10 *merce) with foreign nations unless—*

11 *"(1) such conduct has a direct, substantial, and*
12 *reasonably foreseeable effect—*

13 *"(A) on trade or commerce which is not*
14 *trade or commerce with foreign nations, or on*
15 *import trade or import commerce with foreign na-*
16 *tions; or*

17 *"(B) on export trade or export commerce*
18 *with foreign nations, of a person engaged in such*
19 *trade or commerce in the United States; and*

20 *"(2) such effect is the basis of the violation al-*
21 *leged under this Act.*

22 *If this Act applies to such conduct only because of the oper-*
23 *ation of paragraph (1)(B), then this Act shall apply to such*
24 *conduct only for injury to export business in the United*
25 *States.".*

1 *AMENDMENT TO CLAYTON ACT*

2 *SEC. 3. Section 7 of the Clayton Act (15 U.S.C. 18) is*
3 *amended by adding at the end thereof the following undesig-*
4 *nated paragraph:*

5 *"This section shall not apply to the formation or oper-*
6 *ation of any joint venture limited to commerce, other than*
7 *import commerce, with foreign nations.".*

8 *AMENDMENT TO FEDERAL TRADE COMMISSION ACT*

9 *SEC. 4. Section 5(a) of the Federal Trade Commission*
10 *Act (15 U.S.C. 45(a)) is amended by adding at the end*
11 *thereof the following new paragraph:*

12 *"(3) This subsection shall not apply to unfair methods*
13 *of competition involving commerce with foreign nations (other*
14 *than import commerce) unless—*

15 *"(A) such methods of competition have a direct,*
16 *substantial, and reasonably foreseeable effect—*

17 *"(i) on commerce which is not commerce*
18 *with foreign nations, or on import commerce with*
19 *foreign nations; or*

20 *"(ii) on export commerce with foreign na-*
21 *tions, of a person engaged in such commerce in*
22 *the United States; and*

23 *"(B) such effect is the basis of the violation al-*
24 *leged under this subsection.*

1 *If this subsection applies to such methods of competition only*
2 *because of the operation of subparagraph (A)(ii), this subsec-*
3 *tion shall apply to such conduct only for injury to export*
4 *business in the United States.".*

Amend the title so as to read: "A bill to amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving trade with foreign nations.".

Union Calendar No. 425

97TH CONGRESS
2D SESSION

H. R. 5235

[Report No. 97-686]

A BILL

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving exports.

AUGUST 2, 1982

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

97TH CONGRESS
2D SESSION

H. R. 5235

IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, JULY 12), 1982
Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving trade with foreign nations.

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 "Foreign
5 Trade Antitrust Improvements Act of 1982".

6 AMENDMENT TO SHERMAN ACT

7 SEC. 2. The Sherman Act (15 U.S.C. 1 et seq.) is
8 amended by inserting after section 6 the following new
9 section:

"SEC. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce), with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO CLAYTON ACT

SEC. 3. Section 7 of the Clayton Act (15 U.S.C. 18) is amended by adding at the end thereof the following undesignated paragraph:

"This section shall not apply to the formation or operation of any joint venture limited to commerce, other than import commerce, with foreign nations.".

1 AMENDMENT TO FEDERAL TRADE COMMISSION ACT

2 SEC. 4. Section 5(a) of the Federal Trade Commission
3 Act (15 U.S.C. 45(a)) is amended by adding at the end there-
4 of the following new paragraph:

5 "(3) This subsection shall not apply to unfair methods of
6 competition involving commerce with foreign nations (other
7 than import commerce) unless—

8 "(A) such methods of competition have a direct,
9 substantial, and reasonably foreseeable effect—

10 "(i) on commerce which is not commerce
11 with foreign nations, or on import commerce with
12 foreign nations; or

13 "(ii) on export commerce with foreign na-
14 tions, of a person engaged in such commerce in
15 the United States; and

16 "(B) such effect gives rise to a claim under the
17 provisions of this subsection, other than this paragraph.
18 If this subsection applies to such methods of competition only
19 because of the operation of subparagraph (A)(ii), this subsec-
20 tion shall apply to such conduct only for injury to export
21 business in the United States.".

Passed the House of Representatives August 3, 1982.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

97TH CONGRESS
2D SESSION

H. R. 5604

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1982

Mr. MCDADE (for himself and Mr. IRELAND) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, and the Judiciary

---

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

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

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

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

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

(6) State and local government activities which initiate, facilitate, or expand export of products and

1 services are an important and irreplaceable source for
2 expansion of total United States exports, as well as for
3 experimentation in the development of innovative
4 export programs keyed to local, State, and regional
5 economic needs;

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

9 (8) if United States export trading companies are
10 to be successful in promoting United States exports
11 and in competing with foreign trading companies, they
12 must be able to draw on the resources, expertise, and
13 knowledge of the United States banking system, both
14 in the United States and abroad.

15 (b) The purpose of this Act is to increase United States
16 exports of products and services, particularly by small,
17 medium-size, and minority concerns, by encouraging more ef-
18 ficient provision of export trade services to American produc-
19 ers and suppliers.

20 DEFINITIONS

21 SEC. 103. (a) As used in this Act—

22 (1) the term "export trade" means trade or com-
23 merce in goods produced in the United States or serv-
24 ices produced in the United States, and exported, or in

1 the course of being exported, from the United States to
2 any foreign nation;
3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, the
6 cost of the imported raw materials and components
7 thereof shall not exceed 50 per centum of the sales
8 price;
9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and trans-
15 portation services, not less than 50 per centum of the
16 sales or billings of which is provided by United States
17 citizens or is otherwise attributable to the United
18 States;
19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market re-
21 search, advertising, marketing, insurance, product re-
22 search and design, legal assistance, transportation, in-
23 cluding trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing, for-

1 eign exchange, and financing, when provided in order
2 to facilitate the export of goods or services produced in
3 the United States;

4 (5) the term "export trading company" means a
5 company, whether operated for profit or as a nonprofit
6 organization, which does business under the laws of
7 the United States or any State and which is organized
8 and operated principally for the purposes of—

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

11 (B) facilitating the exportation of goods or
12 services produced in the United States by unaffil-
13 iated persons by providing one or more export
14 trade services;

15 (6) the term "United States" means the several
16 States of the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, the Virgin Islands,
18 American Samoa, Guam, the Commonwealth of the
19 Northern Mariana Islands, and the Trust Territory of
20 the Pacific Islands;

21 (7) the term "Secretary" means the Secretary of
22 Commerce; and

23 (8) the term "company" means any corporation,
24 partnership, association, or similar organization, wheth-
25 er operated for profit or as a nonprofit organization.

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

3 FUNCTIONS OF THE SECRETARY OF COMMERCE

4 SEC. 104. The Secretary shall promote and encourage
5 the formation and operation of export trading companies by
6 providing information and advice to interested persons and by
7 facilitating contact between producers of exportable goods
8 and services and firms offering export trade services.

9 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
10 BANK HOLDING COMPANIES, AND INTERNATIONAL
11 BANKING CORPORATIONS

12 SEC. 105. (a) For the purpose of this section—

13 (1) the term "banking organization" means any
14 State bank, national bank, Federal savings bank, bank-
15 ers' bank, bank holding company, Edge Act Corpora-
16 tion, or Agreement Corporation;

17 (2) the term "State bank" means any bank or
18 bankers' bank which is incorporated under the laws of
19 any State, any territory of the United States, the Com-
20 monwealth of Puerto Rico, Guam, American Samoa,
21 the Commonwealth of the Northern Mariana Islands,
22 or the Virgin Islands;

23 (3) the term "State member bank" means any
24 State bank which is a member of the Federal Reserve
25 System;

1 (4) the term "State nonmember insured bank"
2 means any State bank which is not a member of the
3 Federal Reserve System, but the deposits of which are
4 insured by the Federal Deposit Insurance Corporation;
5 (5) the term "bankers' bank" means any bank in-
6 sured by the Federal Deposit Insurance Corporation if
7 the stock of such bank is owned exclusively by other
8 banks (except to the extent directors' qualifying shares
9 are required by law) and if such bank is engaged exclu-
10 sively in providing banking services for other banks
11 and their officers, directors, or employees;
12 (6) the term "bank holding company" has the
13 same meaning as in the Bank Holding Company Act of
14 1956;
15 (7) the term "Edge Act Corporation" means a
16 corporation organized under section 25(a) of the Fed-
17 eral Reserve Act;
18 (8) the term "Agreement Corporation" means a
19 corporation operating subject to section 25 of the Fed-
20 eral Reserve Act;
21 (9) the term "appropriate Federal banking
22 agency" means—
23 (A) the Comptroller of the Currency with re-
24 spect to a national bank or any bank located in
25 the District of Columbia;

1 (B) the Board of Governors of the Federal
2 Reserve System with respect to a State member
3 bank, bank holding company, Edge Act Corpora-
4 tion, or Agreement Corporation;
5 (C) the Federal Deposit Insurance Corpora-
6 tion with respect to a State nonmember insured
7 bank; and
8 (D) the Federal Home Loan Bank Board
9 with respect to a Federal savings bank.
10 In any situation where the banking organization hold-
11 ing or making an investment in an export trading com-
12 pany is a subsidiary of another banking organization
13 which is subject to the jurisdiction of another agency,
14 and some form of agency approval or notification is re-
15 quired, such approval or notification need only be ob-
16 tained from or made to, as the case may be, the appro-
17 priate Federal banking agency for the banking organi-
18 zation making or holding the investment in the export
19 trading company;
20 (10) the term "capital and surplus" shall be de-
21 fined by the appropriate Federal banking agency;
22 (11) an "affiliate" of a banking organization has
23 the same meaning as an "affiliate" of a member bank
24 under section 2 of the Banking Act of 1933, and, with
25 respect to a bank holding company, includes any bank

1 or other subsidiary of such company, the term "subsidi-
2 ary" has the same meaning as in section 2 of the Bank
3 Holding Company Act of 1956;

4 (12) the terms "control" and "subsidiary" shall
5 have the same meanings assigned to those terms in
6 section 2 of the Bank Holding Company Act of 1956,
7 and the terms "controlled" and "controlling" shall be
8 construed consistently with the term "control" as de-
9 fined in section 2 of the Bank Holding Company Act of
10 1956, except that for purpose of the Export Trading
11 Company Act of 1981, the determination of control as
12 provided in section 2(a)(2) of the Bank Holding Com-
13 pany Act of 1956 shall be made by the appropriate
14 Federal banking agency; and

15 (13) for the purposes of this section, the term
16 "export trading company" means a company which
17 does business under the laws of the United States or
18 any State and which is exclusively engaged in activi-
19 ties related to international trade, whether operated for
20 profit or as a nonprofit organization: *Provided, how-*
21 *ever,* That any such company must also either meet the
22 definition of export trading company in section
23 103(a)(5) of this Act, or be organized and operated
24 principally for the purpose of providing export trade
25 services, as defined in section 103(a)(4) of this Act:

1 *Provided further,* That any such company, for purposes
2 of this section, (A) may engage in or hold shares of a
3 company engaged in the business of underwriting, sell-
4 ing, or distributing securities in the United States only
5 to the extent that its banking organization investor
6 may do so under applicable Federal and State banking
7 law and regulations, and (B) may not engage in manu-
8 facturing or agricultural production activities.

9 (b)(1) Notwithstanding any prohibition, restriction, limi-
10 tation, condition, or requirement of any law applicable only to
11 banking organizations, a banking organization, subject to the
12 limitations of subsection (c) and the procedures of this subsec-
13 tion, may invest directly and indirectly in the aggregate, up
14 to 5 per centum of its consolidated capital and surplus (25 per
15 centum in the case of an Edge Act Corporation or Agree-
16 ment Corporation not engaged in banking) in the voting stock
17 or other evidences of ownership of one or more export trad-
18 ing companies. A banking organization may—

19 (A) invest up to an aggregate amount of
20 $10,000,000 in one or more export trading companies
21 without the prior approval of the appropriate Federal
22 banking agency, if such investment does not cause an
23 export trading company to become a subsidiary of the
24 investing banking organization; and

1 (B) make investments in excess of an aggregate
2 amount of $10,000,000 in one or more export trading
3 companies, or make any investment or take any other
4 action which causes an export trading company to
5 become a subsidiary of the investing banking organiza-
6 tion or which will cause more than 50 per centum of
7 the voting stock of an export trading company to be
8 owned or controlled by banking organizations, only
9 with the prior approval of the appropriate Federal
10 banking agency.
11 Any banking organization which makes an investment under
12 authority of clause (A) of the preceding sentence shall
13 promptly notify the appropriate Federal banking agency of
14 such investment and shall file such reports on such invest-
15 ment as such agency may require. If, after receipt of any
16 such notification, the appropriate Federal banking agency de-
17 termines that the export trading company is a subsidiary of
18 the investing banking organization, it shall have authority to
19 disapprove the investment or impose conditions on such in-
20 vestment under authority of subsection (d). In furtherance of
21 such authority, the appropriate Federal banking agency, after
22 notice and opportunity for hearing, may require divestiture of
23 any voting stock or other evidences of ownership previously
24 acquired, and may impose conditions necessary for the termi-
25 nation of any controlling relationship.

1 (2) If a banking organization proposes to make any in-
2 vestment or engage in any activity included within the fol-
3 lowing two subparagraphs, it must give the appropriate Fed-
4 eral banking agency ninety days prior written notice before it
5 makes such investment or engages in such activity:

6 (A) any additional investment in an export trading
7 company subsidiary; or

8 (B) the engagement by any export trading
9 company subsidiary in any line of activity, including
10 specifically the taking of title to goods, wares, mer-
11 chandise, or commodities, if such activity was not dis-
12 closed in any prior application for approval.

13 During the notification period provided under this paragraph,
14 the appropriate Federal banking agency may, by written
15 notice, disapprove the proposed investment or activity or
16 impose conditions on such investment or activity under au-
17 thority of subsection (d). An additional investment or activity
18 covered by this paragraph may be made or engaged in, as the
19 case may be, prior to the expiration of the notification period
20 if the appropriate Federal banking agency issues written
21 notice of its intent not to disapprove.

22 (3) In the event of the failure of the appropriate Federal
23 banking agency to act on any application for approval under
24 paragraph (1)(B) of this subsection within a period of one
25 hundred and twenty days, which period begins on the date

1 the application has been accepted for processing by the ap-
2 propriate Federal banking agency, the application shall be
3 deemed to have been granted. In the event of the failure of
4 the appropriate Federal banking agency either to disapprove
5 or to impose conditions on any investment or activity subject
6 to the prior notification requirements of paragraph (2) of this
7 subsection within the ninety-day period provided therein,
8 such period beginning on the date the notification has been
9 received by the appropriate Federal banking agency, such
10 investment or activity may be made or engaged in, as the
11 case may be, any time after the expiration of such period.
12 (c) The following limitations apply to export trading
13 companies and the investments in such companies by banking
14 organizations:
15 (1) The name of any export trading company shall
16 not be similar in any respect to that of a banking orga-
17 nization that owns any of its voting stock or other evi-
18 dences of ownership except where a majority of the
19 outstanding voting stock or other evidences of owner-
20 ship of the company is owned or controlled by such
21 banking organization.
22 (2) The total historical cost of the direct and indi-
23 rect investments by a banking organization in an
24 export trading company combined with extensions of
25 credit by the banking organization and its direct and

1 indirect subsidiaries to such export trading company
2 shall not exceed 10 per centum of the banking
3 organization's capital and surplus.

4 (3) A banking organization that owns any voting
5 stock or other evidences of ownership of an export
6 trading company may be required, by the appropriate
7 Federal banking agency, to terminate its ownership or
8 shall be subject to limitations or conditions which may
9 be imposed by such agency, if the agency determines
10 that the company has taken positions in commodities or
11 commodities contracts, in securities, or in foreign ex-
12 change, other than as may be necessary in the course
13 of its business operations.

14 (4) No banking organization holding voting stock
15 or other evidences of ownership of any export trading
16 company may extend credit or cause any affiliate to
17 extend credit to any export trading company or to cus-
18 tomers of such company on terms more favorable than
19 those afforded similar borrowers in similar circum-
20 stances, and such extension of credit shall not involve
21 more than the normal risk of repayment or present
22 other unfavorable features.

23 (d)(1) In the case of every application under subsection
24 (b)(1)(B) of this section, the appropriate Federal banking
25 agency shall take into consideration the financial and man-

1 agerial resources, competitive situation, and future prospects
2 of the banking organization and export trading company con-
3 cerned, and the benefits of the proposal to United States
4 business, industrial, and agricultural concerns (with special
5 emphasis on small, medium-size, and minority concerns), and
6 to improving United States competitiveness in world mar-
7 kets. The appropriate Federal banking agency may not ap-
8 prove any investment for which an application has been filed
9 under subsection (b)(1)(B) if it finds that the export benefits of
10 such proposal are outweighed in the public interest by any
11 adverse financial, managerial, competitive, or other banking
12 factors associated with the particular investment. Any disap-
13 proval order issued under this section must contain a state-
14 ment of the reasons for disapproval.

15 (2) In approving any application submitted under sub-
16 section (b)(1)(B), the appropriate Federal banking agency
17 may impose such conditions which, under the circumstances
18 of such case, it may deem necessary (A) to limit a banking
19 organization's financial exposure to an export trading com-
20 pany, or (B) to prevent possible conflicts of interest or unsafe
21 or unsound banking practices. With respect to the taking of
22 title to goods, wares, merchandise, or commodities by any
23 export trading company subsidiary of a banking organization,
24 the appropriate Federal banking agencies may, by order, reg-
25 ulation, or guidelines, establish standards designed to ensure

1 against any unsafe or unsound practices that could adversely
2 affect a controlling banking organization investor. In particu-
3 lar, the appropriate Federal banking agencies may establish
4 inventory-to-capital ratios, based on the capital of the export
5 trading company subsidiary, for those circumstances in which
6 the export trading company subsidiary may bear a market
7 risk on inventory held.

8 (3) In determining whether to impose any condition
9 under the preceding paragraph (2), or in imposing such condi-
10 tion, the appropriate Federal banking agency must give due
11 consideration to the size of the banking organization and
12 export trading company involved, the degree of investment
13 and other support to be provided by the banking organization
14 to the export trading company, and the identity, character,
15 and financial strength of any other investors in the export
16 trading company. The appropriate Federal banking agency
17 shall not impose any conditions or set standards for the
18 taking of title which unnecessarily disadvantage, restrict, or
19 limit export trading companies in competing in world markets
20 or in achieving the purposes of section 102 of this Act. In
21 particular, in setting standards for the taking of title under
22 the preceding paragraph (2), the appropriate Federal banking
23 agencies shall give special weight to the need to take title in
24 certain kinds of trade transactions, such as international
25 barter transactions.

1 (4) Notwithstanding any other provision of this Act, the
2 appropriate Federal banking agency may, whenever it has
3 reasonable cause to believe that the ownership or control of
4 any investment in an export trading company constitutes a
5 serious risk to the financial safety, soundness, or stability of
6 the banking organization and is inconsistent with sound bank-
7 ing principles or with the purposes of this Act or with the
8 Financial Institutions Supervisory Act of 1966, order the
9 banking organization, after due notice and opportunity for
10 hearing, to terminate (within one hundred and twenty days or
11 such longer period as the appropriate Federal banking
12 agency may direct in unusual circumstances) its investment
13 in the export trading company.

14 (5) On or before two years after enactment of this Act,
15 the appropriate Federal banking agencies shall jointly report
16 to the Committee on Banking, Housing, and Urban Affairs of
17 the Senate and the Committee on Banking, Finance and
18 Urban Affairs of the House of Representatives their recom-
19 mendations with respect to the implementation of this sec-
20 tion, their recommendations on any changes in United States
21 law to facilitate the financing of United States exports, espe-
22 cially by small, medium-size, and minority business concerns,
23 and their recommendations on the effects of ownership of
24 United States banks by foreign banking organizations affili-

1 ated with trading companies doing business in the United
2 States.

3 (6) The appropriate Federal banking agency may, by
4 regulation or order, exempt from the collateral requirements
5 of section 23A of the Federal Reserve Act any loan or exten-
6 sion of credit made by a national or State bank to an export
7 trading company affiliate if the agency determines such ex-
8 emption is necessary to finance the operating expenses of an
9 affiliated export trading company and does not expose the
10 bank to undue financial risks. This paragraph does not apply
11 to bank affiliates currently exempt from the requirements of
12 section 23A.

13 (e)(1) Any party aggrieved by an order of an appropriate
14 Federal banking agency under this section may obtain a
15 review of such order in the United States court of appeals
16 within any circuit wherein such organization has its principal
17 place of business, or in the court of appeals for the District of
18 Columbia Circuit, by filing a notice of appeal in such court
19 within thirty days from the date of such order, and simulta-
20 neously sending a copy of such notice by registered or certi-
21 fied mail to the appropriate Federal banking agency. The
22 appropriate Federal banking agency shall promptly certify
23 and file in such court the record upon which the order was
24 based. The court shall set aside any order found to be (A)
25 arbitrary, capricious, an abuse of discretion, or otherwise not

1 in accordance with law; (B) contrary to constitutional right,
2 power, privilege or immunity; (C) in excess of statutory juris-
3 diction, authority, or limitations, or short of statutory right;
4 or (D) without observance of procedure required by law.

5 (2) Except for violations of subsection (b)(3) of this sec-
6 tion, the court shall remand for further consideration by the
7 appropriate Federal banking agency any order set aside
8 solely for procedural errors and may remand for further con-
9 sideration by the appropriate Federal banking agency any
10 order set aside for substantive errors. Upon remand, the ap-
11 propriate Federal banking agency shall have no more than
12 sixty days from date of issuance of the court's order to cure
13 any procedural error or reconsider its prior order. If the
14 agency fails to act within this period, the application or other
15 matter subject to review shall be deemed to have been grant-
16 ed as a matter of law.

17 (f)(1) The appropriate Federal banking agencies are au-
18 thorized and empowered to issue such rules, regulations, and
19 orders, to require such reports, to delegate such functions,
20 and to conduct such examinations of subsidiary export trad-
21 ing companies, as each of them may deem necessary in order
22 to perform their respective duties and functions under this
23 section and to administer and carry out the provisions and
24 purposes of this section and prevent evasions thereof.

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

6 (g) Nothing in this section shall at any time prevent any
7 State from adopting a law prohibiting banks chartered under
8 the laws of such State from investing in export trading com-
9 panies or applying conditions, limitations, or restrictions on
10 investments by banks chartered under the laws of such State
11 in export trading companies in addition to any conditions,
12 limitations, or restrictions provided under this section.

13 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
14 INVENTORY

15 SEC. 106. The Export-Import Bank of the United
16 States is authorized and directed to establish a program to
17 provide guarantees for loans extended by financial institu-
18 tions or other private creditors to export trading companies
19 as defined in section 103(5) of this Act, or to other exporters,
20 when such loans are secured by export accounts receivable or
21 inventories of exportable goods, and when in the judgment of
22 the Board of Directors—

23 (1) the private credit market is not providing ade-
24 quate financing to enable otherwise creditworthy

1 export trading companies or exporters to consummate
2 export transactions; and
3 (2) such guarantees would facilitate expansion of
4 exports which would not otherwise occur.
5 The Board of Directors shall attempt to insure that a major
6 share of any loan guarantees ultimately serves to promote
7 exports from small, medium-size, and minority businesses or
8 agricultural concerns. Guarantees provided under the author-
9 ity of this section shall be subject to limitations contained in
10 annual appropriations Acts.

11 INITIAL INVESTMENTS AND OPERATING EXPENSES

12 SEC. 107. (a) The Economic Development Administra-
13 tion and the Small Business Administration are directed, in
14 their consideration of applications by export trading compa-
15 nies for loans and guarantees, and operating grants to non-
16 profit organizations, including applications to make new in-
17 vestments related to the export of goods or services produced
18 in the United States and to meet operating expenses, to give
19 special weight to export-related benefits, including opening
20 new markets for United States goods and services abroad and
21 encouraging the involvement of small, medium-size and mi-
22 nority businesses or agricultural concerns in the export
23 market.
24 (b) There are authorized to be appropriated as necessary
25 to meet the purposes of this section, $20,000,000 for each

1 fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts
2 appropriated pursuant to the authority of this subsection shall
3 be in addition to amounts appropriated under the authority of
4 other Acts.

5 TITLE II—EXPORT TRADE ASSOCIATIONS

6 SHORT TITLE

7 SEC. 201. This title may be cited as the "Export Trade
8 Association Act of 1981".

9 FINDINGS; DECLARATION OF PURPOSE

10 SEC. 202. (a) FINDINGS.—The Congress finds and de-
11 clares that—

12 (1) the exports of the American economy are re-
13 sponsible for creating and maintaining one out of every
14 nine manufacturing jobs in the United States and for
15 generating $1 out of every $7 of total United States
16 goods produced;

17 (2) exports will play an even larger role in the
18 United States economy in the future in the face of
19 severe competition from foreign government-owned and
20 subsidized commercial entities;

21 (3) between 1968 and 1977 the United States
22 share of total world exports fell from 19 per centum to
23 13 per centum;

1 (4) trade deficits contribute to the decline of the
2 dollar on international currency markets, fueling infla-
3 tion at home;
4 (5) service-related industries are vital to the well
5 being of the American economy inasmuch as they
6 create jobs for seven out of every ten Americans, pro-
7 vide 65 per centum of the Nation's gross national
8 product, and represent a small but rapidly rising per-
9 centage of United States international trade;
10 (6) agriculture constitutes the foundation of the
11 economy of the United States and will continue to be a
12 leading sector in United States export growth;
13 (7) small- and medium-sized firms are prime
14 beneficiaries of joint exporting, through pooling of tech-
15 nical expertise, help in achieving economies of scale,
16 and assistance in competing effectively in foreign mar-
17 kets; and
18 (8) the Department of Commerce has as one of its
19 responsibilities the development and promotion of
20 United States exports.
21 (b) PURPOSE.—It is the purpose of this title to encour-
22 age American exports by directing the Department of Com-
23 merce to encourage and promote the formation of export
24 trade associations through the Webb-Pomerene Act, by
25 making the provisions of that Act explicitly applicable to the

1 exportation of services, and by transferring the responsibility
2 for administering that Act from the Federal Trade Commis-
3 sion to the Secretary of Commerce.

4 DEFINITIONS

5 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66)
6 is amended by striking out the first section (15 U.S.C. 61)
7 and inserting in lieu thereof the following:

8 "SECTION 1. DEFINITIONS.

9 "As used in this Act—

10 "(1) EXPORT TRADE.—The term 'export trade'
11 means trade or commerce in goods, wares, merchan-
12 dise, or services exported, or in the course of being ex-
13 ported from the United States or any territory thereof
14 to any foreign nation.

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

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

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

21 "(C) financial, insurance, transportation, in-
22 formational and any other data-based services,
23 and communication services.

1 "(3) EXPORT TRADE ACTIVITIES.—The term
2 'export trade activities' means activities or agreements
3 in the course of export trade.
4 "(4) METHODS OF OPERATION.—The term
5 'methods of operation' means the methods by which an
6 association or export trading company conducts or pro-
7 poses to conduct export trade.
8 "(5) TRADE WITHIN THE UNITED STATES.—The
9 term 'trade within the United States' whenever used in
10 this Act means trade or commerce among the several
11 States or in any territory of the United States, or in
12 the District of Columbia, or between any such territory
13 and another, or between any such territory or territo-
14 ries and any State or States or the District of Colum-
15 bia, or between the District of Columbia and any State
16 or States.
17 "(6) ASSOCIATION.—The term 'association'
18 means any combination, by contract or other arrange-
19 ment, of persons who are citizens of the United States,
20 partnerships which are created under and exist pursu-
21 ant to the laws of any State or of the United States, or
22 corporations, whether operated for profit or organized
23 as nonprofit corporations, which are created under and
24 exist pursuant to the laws of any State or of the
25 United States.

1 "(7) EXPORT TRADING COMPANY.—The term
2 'export trading company' means an export trading
3 company as defined in section 103(5) of the Export
4 Trading Company Act of 1981.
5 "(8) ANTITRUST LAWS.—The term 'antitrust
6 laws' means the antitrust laws defined in the first sec-
7 tion of the Clayton Act (15 U.S.C. 12), sections 5 and
8 6 of the Federal Trade Commission Act (15 U.S.C.
9 45, 46), and any State antitrust or unfair competition
10 law.
11 "(9) SECRETARY.—The term 'Secretary' means
12 the Secretary of Commerce.
13 "(10) ATTORNEY GENERAL.—The term 'Attorney
14 General' means the Attorney General of the United
15 States.
16 "(11) COMMISSION.—The term 'Commission'
17 means the Federal Trade Commission.".
18 ANTITRUST EXEMPTION
19 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
20 is amended by striking out section 2 (15 U.S.C. 62) and in-
21 serting in lieu thereof the following:
22 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.
23 "(a) ELIGIBILITY.—The export trade, export trade ac-
24 tivities, and methods of operation of any association, entered
25 into for the sole purpose of engaging in export trade, and

1 engaged in or proposed to be engaged in such export trade,
2 and the export trade, export trade activities and methods of
3 operation of any export trading company, that—

4 "(1) serve to preserve or promote export trade;

5 "(2) result in neither a substantial lessening of
6 competition or restraint of trade within the United
7 States nor a substantial restraint of the export trade of
8 any competitor of such association or export trading
9 company;

10 "(3) do not unreasonably enhance, stabilize, or de-
11 press prices within the United States of the goods,
12 wares, merchandise, or services of the class exported
13 by such association or export trading company;

14 "(4) do not constitute unfair methods of competi-
15 tion against competitors engaged in the export trade of
16 goods, wares, merchandise, or services of the class ex-
17 ported by such association or export trading company;

18 "(5) do not include any act which results, or may
19 reasonably be expected to result, in the sale for con-
20 sumption or resale within the United States of the
21 goods, wares, merchandise, or services exported by the
22 association or export trading company or its members;
23 and

24 "(6) do not constitute trade or commerce in the
25 licensing of patents, technology, trademarks, or know-

1 how, except as incidental to the sale of the goods,
2 wares, merchandise, or services exported by the associ-
3 ation or export trading company or its members
4 shall, when certified according to the procedures set forth in
5 this Act, be eligible for the exemption provided in subsection
6 (b).

7 "(b) EXEMPTION.—An association or an export trading
8 company and its members are exempt from the operation of
9 the antitrust laws with respect to their export trade, export
10 trade activities and methods of operation that are specified in
11 a certificate issued according to the procedures set forth in
12 this Act, carried out in conformity with the provisions, terms,
13 and conditions prescribed in such certificate and engaged in
14 during the period in which such certificate is in effect. The
15 subsequent revocation in whole or in part of such certificate
16 shall not render an association or its members or an export
17 trading company or its members, liable under the antitrust
18 laws for such export trade, export trade activities, or methods
19 of operation engaged in during such period.

20 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
21 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
22 Act, the Attorney General or the Commission has formally
23 advised the Secretary of disagreement with his determination
24 to issue a proposed certificate, and the Secretary has none-
25 theless issued such proposed certificate or an amended certifi-

1 cate, the exemption provided by this section shall not be
2 effective until thirty days after the issuance of such
3 certificate.".

4 AMENDMENT OF SECTION 3

5 SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61–66)
6 is amended—

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

9 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
10 ATIONS PERMITTED.",

11 and

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

14 ADMINISTRATION: ENFORCEMENT: REPORTS

15 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
16 (15 U.S.C. 61–66) is amended by striking out sections 4 and
17 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
18 following sections:

19 "SEC. 4. CERTIFICATION.

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

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

1 "(2) The location of all of the offices or places of
2 business of the association or export trading company
3 in the United States and abroad.
4 "(3) The names and addresses of all of the offi-
5 cers, stockholders, and members of the association or
6 export trading company.
7 "(4) A copy of the certificate or articles of incor-
8 poration and bylaws, if the association or export trad-
9 ing company is a corporation; or a copy of the articles,
10 partnership, joint venture, or other agreement or con-
11 tract under which the association or export trading
12 company conducts or proposes to conduct its export
13 trade activities, or contract of association, if the associ-
14 ation or export trading company is unincorporated.
15 "(5) A description of the goods, wares, merchan-
16 dise, or services which the association or export trad-
17 ing company or their members export or propose to
18 export.
19 "(6) A description of the domestic and inter-
20 national conditions, circumstances, and factors which
21 show that the association or export trading company
22 and its activities will serve a specified need in promot-
23 ing the export trade of the described goods, wares,
24 merchandise, or services.

1 "(7) The export trade activities in which the asso-
2 ciation or export trading company intends to engage
3 and the methods by which the association or export
4 trading company conducts or proposes to conduct
5 export trade in the described goods, wares, merchan-
6 dise, or services, including, but not limited to, any
7 agreements to sell exclusively to or through the associ-
8 ation or export trading company, any agreements with
9 foreign persons who may act as joint selling agents,
10 any agreements to acquire a foreign selling agent, any
11 agreements for pooling tangible or intangible property
12 or resources, or any territorial, price-maintenance,
13 membership, or other restrictions to be imposed upon
14 members of the association or export trading company.
15 "(8) The names of all countries where export
16 trade in the described goods, wares, merchandise, or
17 services is conducted or proposed to be conducted by
18 or through the association or export trading company.
19 "(9) Any other information which the Secretary
20 may request concerning the organization, operation,
21 management, or finances of the association or export
22 trading company; the relation of the association or
23 export trading company to other associations, corpora-
24 tions, partnerships, and individuals; and competition or
25 potential competition, and effects of the association or

1 export trading company thereon. The Secretary may
2 request such information as part of an initial application
3 or as a necessary supplement thereto. The Secre-
4 tary may not request information under this paragraph
5 which is not reasonably available to the person making
6 application or which is not necessary for certification of
7 the prospective association or export trading company.
8 "(b) ISSUANCE OF CERTIFICATE.—
9 "(1) NINETY-DAY PERIOD.—The Secretary shall
10 issue a certificate to an association or export trading
11 company within ninety days after receiving the applica-
12 tion for certification or necessary supplement thereto if
13 the Secretary, after consultation with the Attorney
14 General and Commission, determines that the associ-
15 ation and, its export trade, export trade activities and
16 methods of operation, or export trading company, and
17 its export trade, export trade activities and methods of
18 operation meet the requirements of section 2 of this
19 Act and will serve a specified need in promoting the
20 export trade of the goods, wares, merchandise, or serv-
21 ices described in the application for certification. The
22 certificate shall specify the permissible export trade,
23 export trade activities and methods of operation of the
24 association or export trading company and shall include
25 any terms and conditions the Secretary deems neces-

1 sary to comply with the requirements of section 2 of
2 this Act. The Secretary shall deliver to the Attorney
3 General and the Commission a copy of any certificate
4 that he proposes to issue. The Attorney General or
5 Commission may, within fifteen days thereafter, give
6 written notice to the Secretary of an intent to offer
7 advice on the determination. The Attorney General or
8 Commission may, after giving such written notice and
9 within forty-five days of the time the Secretary has de-
10 livered a copy of a proposed certificate, formally advise
11 the Secretary and the petitioning association or export
12 trading company of disagreement with the Secretary's
13 determination. The Secretary shall not issue any certif-
14 icate prior to the expiration of such forty-five-day
15 period unless he has (A) received no notice of intent to
16 offer advice by the Attorney General or the Commis-
17 sion within fifteen days after delivering a copy of a
18 proposed certificate, or (B) received any noticed formal
19 advice of disagreement or written confirmation that no
20 formal disagreement will be transmitted from the At-
21 torney General and the Commission. After the forty-
22 five-day period or, if no notice of intent to offer advice
23 has been given, after the fifteen-day period, the Secre-
24 tary shall either issue the proposed certificate, issue an
25 amended certificate, or deny the application. Upon

1 agreement of the applicant, the Secretary may delay
2 taking action for not more than thirty additional days
3 after the forty-five-day period. Before offering advice
4 on a proposed certification, the Attorney General and
5 Commission shall consult in an effort to avoid, wherev-
6 er possible, having both agencies offer advice on any
7 application.

8 "(2) EXPEDITED CERTIFICATION.—In those in-
9 stances where the temporary nature of the export trade
10 activities, deadlines for bidding on contracts or filling
11 orders, or any other circumstances beyond the control
12 of the association or export trading company which
13 have a significant impact on its export trade, make the
14 ninety-day period for application approval described in
15 paragraph (1) of this subsection, or an amended appli-
16 cation approval as provided in subsection (c) of this
17 section, impractical for the association or export trad-
18 ing company seeking certification, such association or
19 export trading company may request and may receive
20 expedited action on its application for certification.

21 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
22 ASSOCIATIONS.—Any association registered with the
23 Federal Trade Commission under this Act as of Janu-
24 ary 19, 1981, may file with the Secretary an applica-
25 tion for automatic certification of any export trade,

1 export trade activities, and methods of operation in
2 which it was engaged prior to enactment of the Export
3 Trade Association Act of 1981. Any such application
4 must be filed within one hundred and eighty days after
5 the date of enactment of such Act and shall be acted
6 upon by the Secretary in accordance with the proce-
7 dures provided by this section. The Secretary shall
8 issue to the association a certificate specifying the per-
9 missible export trade, export trade activities, and meth-
10 ods of operation that he determines are shown by the
11 application (including any necessary supplement there-
12 to), on its face, to be eligible for certification under this
13 Act, and including any terms and conditions the Secre-
14 tary deems necessary to comply with the requirements
15 of section 2(a) of this Act, unless the Secretary pos-
16 sesses information clearly indicating that the require-
17 ments of section 2(a) are not met.

18 "(4) APPEAL OF DETERMINATION.—If the Secre-
19 tary determines not to issue a certificate to an associ-
20 ation or export trading company which has submitted
21 an application for certification, or for an amendment of
22 a certificate, then he shall—

23 "(A) notify the association or export trading
24 company of his determination and the reasons for
25 his determination, and

1 "(B) upon request made by the association or
2 export trading company, afford it an opportunity
3 for reconsideration with respect to that determina-
4 tion.

5 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
6 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
7 terial change in the membership, export trade activities, or
8 methods of operation, of an association or export trading
9 company then it shall report such change to the Secretary
10 and may apply to the Secretary for an amendment of its cer-
11 tificate. Any application for an amendment to a certificate
12 shall set forth the requested amendment of the certificate and
13 the reasons for the requested amendment. Any request for
14 the amendment of a certificate shall be treated in the same
15 manner as an original application for a certificate.

16 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
17 BY SECRETARY.—

18 "(1) The Secretary on his own initiative shall,
19 upon a determination that the export trade, export
20 trade activities or methods of operation of an associ-
21 ation or export trading company no longer comply with
22 the requirements of section 2 of this Act, revoke its
23 certificate or make such amendments as may be neces-
24 sary to comply with the requirements of such section.

1 "(2) Prior to revoking or amending a certificate,
2 the Secretary shall—
3 "(A) notify the holder of the certificate in
4 writing of the facts or conduct which may warrant
5 the action, and
6 "(B) provide the holder of the certificate an
7 opportunity for such hearing as may be appropri-
8 ate in the circumstances.
9 "(3) Before revoking or amending a certificate
10 pursuant to this subsection the Secretary may in his
11 discretion provide the holder of the certificate an op-
12 portunity to achieve compliance within a reasonable
13 period of time not to exceed ninety days, except that
14 nothing in this paragraph shall affect any action under
15 section 4(e) of this Act.
16 "(e) ACTION FOR REVOCATION OF CERTIFICATE BY
17 ATTORNEY GENERAL OR COMMISSION.—
18 "(1) The Attorney General or the Commission
19 may bring an action against an association or export
20 trading company or its members to invalidate, in whole
21 or in part, its certificate on the ground that the export
22 trade, export trade activities or methods of operation of
23 the association or export trading company fail or have
24 failed to meet the requirements of section 2 of this Act.
25 Except in the case of an action brought during the

1 period before an antitrust exemption becomes effective,
2 as provided for in section 2(c), the Attorney General or
3 Commission shall notify any association or export trad-
4 ing company or member thereof, against which it in-
5 tends to bring an action for revocation thirty days in
6 advance, as to its intent to file an action under this
7 subsection. The district court shall consider any issues
8 presented in any such action de novo and if it finds
9 that the requirements of section 2 are not met, it shall
10 issue an order revoking the certificate or any other
11 order necessary to effectuate the purposes of this Act
12 and the requirements of section 2.

13 "(2) Any action brought under this subsection
14 shall be considered an action described in section 1337
15 of title 28, United States Code. Pending any such
16 action which was brought during the period any ex-
17 emption is held in abeyance pursuant to section 2(c) of
18 this Act, the court may make such temporary restrain-
19 ing order or prohibition as shall be deemed just in the
20 premises.

21 "(3) No person other than the Attorney General
22 or Commission shall have standing to bring an action
23 against an association or export trading company or
24 their respective members for failure of the association
25 or export trading company or their respective export

1 trade, export trade activities or methods of operation to
2 meet the eligibility requirements of section 2 of this
3 Act.

4 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
5 ation and each export trading company and any subsidiary
6 thereof shall comply with United States export control laws
7 pertaining to the export or transshipment of any goods on the
8 Commodity Control List to controlled countries. Such laws
9 shall be complied with before actual shipment.

10 "(g) JUDICIAL REVIEW.—Final orders of the Secretary
11 under this section shall be subject to judicial review pursuant
12 to chapter 7 of title 5, United States Code.

13 **"SEC. 5. GUIDELINES.**

14 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
15 days after the enactment of the Export Trade Association
16 Act of 1981, the Secretary, after consultation with the Attor-
17 ney General, and the Commission shall publish proposed
18 guidelines for purposes of determining whether export trade,
19 export trade activities and methods of operation of an associ-
20 ation or export trading company will meet the requirements
21 of section 2 of this Act.

22 "(b) PUBLIC COMMENT PERIOD.—Following publica-
23 tion of the proposed guidelines, and any proposed revision of
24 guidelines, interested parties shall have thirty days to com-
25 ment on the proposed guidelines. The Secretary shall review

1 the comments and, after consultation with the Attorney Gen-
2 eral, and Commission, publish final guidelines within thirty
3 days after the last day on which comments may be made
4 under the preceding sentence.

5 "(c) PERIODIC REVISION.—After publication of the
6 final guidelines, the Secretary shall periodically review the
7 guidelines and, after consultation with the Attorney General,
8 and the Commission, propose revisions as needed.

9 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
10 ACT.—The promulgation of guidelines under this section
11 shall not be considered rulemaking for purposes of subchapter
12 II of chapter 5 of title 5, United States Code, and section
13 553 of such title shall not apply to their promulgation.

14 **"SEC. 6. ANNUAL REPORTS.**

15 "Every certified association or export trading company
16 shall submit to the Secretary an annual report, in such form
17 and at such time as he may require, which report updates
18 where necessary the information described by section 4(a) of
19 this Act.

20 **"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
21 **REPORT INFORMATION.**

22 "(a) GENERAL RULE.—Portions of applications made
23 under section 4, including amendments to such applications,
24 and annual reports made under section 6 that contain trade
25 secrets or confidential business or financial information, the

1 disclosure of which would harm the competitive position of
2 the person submitting such information shall be confidential,
3 and, except as authorized by this section, no officer or em-
4 ployee, or former officer or employee, of the United States
5 shall disclose any such confidential information, obtained by
6 him in any manner in connection with his service as such an
7 officer or employee.

8 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
9 MISSION.—Whenever the Secretary believes that an appli-
10 cant may be eligible for a certificate, or has issued a certifi-
11 cate to an association or export trading company, he shall
12 promptly make available all materials filed by the applicant,
13 association or export trading company, including applications
14 and supplements thereto, reports of material changes, appli-
15 cations for amendments and annual reports, and information
16 derived therefrom, to the Attorney General or Commission,
17 or any employee or officer thereof, for official use in connec-
18 tion with an investigation or judicial or administrative pro-
19 ceeding under this Act or the antitrust laws to which the
20 United States or the Commission is or may be a party. Such
21 information may only be disclosed by the Secretary upon a
22 prior certification that the information will be maintained in
23 confidence and will only be used for such official law enforce-
24 ment purposes.

1 "SEC. 8. 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 or export
6 trading company, certified under this Act, are inconsistent
7 with such international obligations, the Secretary may re-
8 quire the association or export trading company to modify its
9 respective operations, and in so doing afford the association
10 or export trading company a reasonable opportunity to
11 comply therewith, so as to be consistent with such interna-
12 tional obligations.

13 "SEC. 9. REGULATIONS.

14 "The Secretary, after consultation with the Attorney
15 General and the Commission, shall promulgate such rules
16 and regulations as may be necessary to carry out the pur-
17 poses of this Act.

18 "SEC. 10. TASK FORCE STUDY.

19 "Seven years after the date of enactment of the Export
20 Trade Association Act of 1981, the President shall appoint,
21 by and with the advice and consent of the Senate, a task
22 force to examine the effect of the operation of this Act on
23 domestic competition and on United States international
24 trade and to recommend either continuation, revision, or ter-
25 mination of the Webb-Pomerene Act. The task force shall

1 have one year to conduct its study and to make its recom-
2 mendations to the President.".

3 (b) REDESIGNATION OF SECTION 6.—The Act is
4 amended—

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

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

9 "SEC. 11. SHORT TITLE.".

10 EFFECTIVE DATE WITH REGARD TO EXISTING
11 ASSOCIATIONS

12 SEC. 207. (a) GENERAL RULE.—The amendments to
13 the Webb-Pomerene Act set forth in sections 203, 204, 205,
14 and 206 of this Act shall become effective with regard to an
15 existing association described in subsection (b) only at such
16 time as the association may elect to be certified pursuant to
17 subsection (c).

18 (b) ELECTION TO CONTINUE UNDER PRIOR LAW.—
19 Application of the antitrust laws to any association which as
20 of January 1, 1981, had filed with the Commission the infor-
21 mation specified under section 5 of the Webb-Pomerene Act
22 as in effect immediately prior to the date of enactment of this
23 Act shall continue to be governed by the standards set forth
24 in that Act, unless such association elects to seek certification
25 under subsection (c).

1 (c) ELECTION TO APPLY FOR CERTIFICATION.—Any
2 association to which subsection (b) applies may, at any time
3 after the effective date of this Act, file an application for
4 certification with the Secretary containing the information set
5 forth in section 4(a) of the Webb-Pomerene Act, as amended
6 by section 206 of this Act. The Secretary shall consider and
7 act upon such application in the manner provided in section
8 4(b) of the Webb-Pomerene Act, as amended by section 206
9 of this Act. The association filing an application pursuant to
10 this subsection shall continue to be subject to subsection (b) of
11 this section until the Secretary issues a certificate and such
12 certificate has been accepted by the association; the associ-
13 ation must decide whether or not to accept such certificate no
14 later than thirty days after the Secretary's determination
15 with respect thereto has become final.

○

97TH CONGRESS
2D SESSION

H. R. 6016

To permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1982

Mr. ST GERMAIN (for himself, Mr. REUSS, Mr. MINISH, Mr. ANNUNZIO, Mr. FAUNTROY, Mr. NEAL, Mr. PATTERSON, Mr. BLANCHARD, Mr. LAFALCE, Mr. EVANS of Indiana, Mr. D'AMOURS, Ms. OAKAR, Mr. BARNARD, Mr. LOWRY of Washington, Mr. SCHUMER, Mr. FRANK, Mr. WILLIAM J. COYNE, Mr. STANTON of Ohio, Mr. MCKINNEY, Mr. LEACH of Iowa, Mr. PARRIS, MR. WORTLEY, Mr. LOWERY of California, Mr. JAMES K. COYNE, and Mr. BEREUTER) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

---

A BILL

To permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.

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 "Bank Export
5 Services Act".

1 INVESTMENTS IN EXPORT TRADING COMPANIES

2 SEC. 2. (a) Section 4(c) of the Bank Holding Company
3 Act of 1956 (12 U.S.C. 1843(c)) is amended—

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

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

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

9 "(14) shares of any company which is an export
10 trading company whose acquisition (including each ac-
11 quisition of shares) or formation by a bank holding
12 company has been approved by the Board, except that
13 such investments, whether direct or indirect, in such
14 shares shall not exceed 5 per centum of the bank hold-
15 ing company's consolidated capital and surplus. No ap-
16 proval may be granted by the Board under this para-
17 graph unless the Board has taken into consideration
18 the financial and managerial resources, competitive sit-
19 uation, and future prospects of the bank holding com-
20 pany and the export trading company involved and has
21 imposed such restrictions, by regulation or otherwise,
22 as the Board deems necessary to prevent conflicts of
23 interest, unsafe or unsound banking practices, undue
24 concentration of resources, and decreased or unfair
25 competition. Notwithstanding any other provision of

1 law, in any case in which a bank holding company in-
2 vests in an export trading company, such bank holding
3 company shall be deemed to be a member bank, with
4 respect to such export trading company, for purposes
5 of section 23A of the Federal Reserve Act, and such
6 export trading company shall be deemed to be an affili-
7 ate for purposes of such section, except that amounts
8 invested pursuant to the first sentence of this para-
9 graph shall not apply with respect to the limitations
10 imposed under section 23A of the Federal Reserve
11 Act. For purposes of this paragraph, the term 'export
12 trading company' means a company which does busi-
13 ness under the laws of the United States or any State
14 and which is organized and operated exclusively for
15 purposes of exporting goods or services produced in the
16 United States or which facilitates the exportation of
17 goods or services produced in the United States by un-
18 affiliated persons by providing one or more export
19 trade services. For purposes of this paragraph, the
20 term 'export trade services' includes consulting, inter-
21 national market research, advertising, marketing, prod-
22 uct research and design, legal assistance, transporta-
23 tion, including trade documentation and freight for-
24 warding, communication and processing of foreign
25 orders to and for exporters and foreign purchasers,

1 warehousing, foreign exchange, and financing, when
2 provided in order to facilitate the export of goods or
3 services produced in the United States. For purposes of
4 this paragraph, an export trading company (A) may
5 engage in or hold shares of a company engaged in the
6 business of underwriting, selling, or distributing securi-
7 ties in the United States only to the extent that its
8 bank holding company investor may do so under appli-
9 cable Federal and State banking law and regulations,
10 and (B) may not engage in manufacturing or agricul-
11 tural production activities. The name of the export
12 trading company involved shall not be similar in any
13 respect to the name of the bank holding company
14 which owns any of its voting stock or other evidences
15 of ownership.".
16 (b) Section 25(a) of the Federal Reserve Act (12 U.S.C.
17 611 et seq.) is amended—
18 (1) in the first paragraph of subsection (c), by in-
19 serting "(1)" after "(c)"; and
20 (2) by inserting after the first paragraph of subsec-
21 tion (c) the following:
22 "(2)(A) Notwithstanding any other provision of law,
23 with the approval of the Board of Governors of the Federal
24 Reserve System, a corporation organized under this section
25 may purchase and hold stock or other certificates of owner-

1 ship in any other corporation which is an export trading com-
2 pany. No approval may be granted by the Board under this
3 paragraph unless the Board has taken into consideration the
4 financial and managerial resources, competitive situation, and
5 future prospects of the corporations involved and has imposed
6 such restrictions, by regulation or otherwise, as the Board
7 deems necessary to prevent conflicts of interest, unsafe or
8 unsound banking practices, undue concentration of resources,
9 and decreased or unfair competition. No corporation orga-
10 nized under this section shall invest in such export trading
11 companies in an amount in excess of 25 per centum of its
12 own capital and surplus. The second proviso of paragraph (1)
13 shall apply to any corporation referred to in this paragraph.
14 "(B) Notwithstanding any other provision of law, in any
15 case in which a corporation organized under this section pur-
16 chases or holds stock or other certificates of ownership in any
17 other corporation which is an export trading company, such
18 acquiring corporation, or any bank or banking institution
19 which purchases or holds stock or other certificates of owner-
20 ship in such acquiring corporation, shall be deemed to be a
21 member bank, with respect to such export trading company,
22 for purposes of section 23A of this Act, and such export trad-
23 ing company shall be deemed to be an affiliate for purposes of
24 such section, except that amounts invested pursuant to sub-

1 paragraph (A) shall not apply with respect to the limitations
2 imposed under section 23A of this Act.
3 "(C) For purposes of this section—
4 "(i) the term 'export trading company' means a
5 company which does business under the laws of the
6 United States or any State and which is organized and
7 operated exclusively for purposes of exporting goods or
8 services produced in the United States or which facili-
9 tates the exportation of goods or services produced in
10 the United States by unaffiliated persons by providing
11 one or more export trade services; and
12 "(ii) the term 'export trade services' includes con-
13 sulting, international market research, advertising,
14 marketing, product research and design, legal assist-
15 ance, transportation, including trade documentation and
16 freight forwarding, communication and processing of
17 foreign orders to and for exporters and foreign purchas-
18 ers, warehousing, foreign exchange, and financing,
19 when provided in order to facilitate the export of goods
20 or services produced in the United States.
21 "(D) For purposes of this subsection, an export trading
22 company—
23 "(i) may engage in or hold shares of a company
24 engaged in the business of underwriting, selling, or dis-
25 tributing securities in the United States only to the

1 extent that the corporation which is organized under
2 this section and which invests in the company defined
3 in this clause may do so under applicable Federal and
4 State banking law and regulations; and
5 "(ii) may not engage in manufacturing or agricul-
6 tural production activities.
7 "(E) The name of the export trading company involved
8 shall not be similar in any respect to the name of the corpora-
9 tion organized under this section which owns any of its
10 voting stock or other evidences of ownership.".

11 BANKERS' ACCEPTANCES

12 SEC. 3. The seventh paragraph of section 13 of the Fed-
13 eral Reserve Act (12 U.S.C. 372) is amended to read as
14 follows:
15 "(7)(A) Any depository institution, as defined in section
16 19(b)(1)(A), and any Federal or State branch or agency of a
17 foreign bank subject to reserve requirements under section 7
18 of the International Banking Act of 1978 (hereinafter in this
19 paragraph referred to as 'institutions'), may accept drafts or
20 bills of exchange drawn upon it having not more than six
21 months' sight to run, exclusive of days of grace—
22 "(i) which grow out of transactions involving the
23 importation or exportation of goods;
24 "(ii) which grow out of transactions involving the
25 domestic shipment of goods; or

1 "(iii) which are secured at the time of acceptance
2 by a warehouse receipt or other such document con-
3 veying or securing title covering readily marketable
4 staples.

5 "(B) No institution shall accept such bills, or be obligat-
6 ed for a participation share in such bills, in an amount equal
7 at any time in the aggregate to more than 150 per centum of
8 its paid up and unimpaired capital stock and surplus or its
9 equivalent, as defined by the Board, in the case of a United
10 States branch or agency of a foreign bank.

11 "(C) The Board, under such conditions as it may pre-
12 scribe, may authorize, by regulation or order, any institution
13 to accept such bills, or be obligated for a participation share
14 in such bills, in an amount not exceeding at any time in the
15 aggregate 200 per centum of its paid up and unimpaired capi-
16 tal stock and surplus or its equivalent, as defined by the
17 Board, in the case of a United States branch or agency of a
18 foreign bank.

19 "(D) Notwithstanding subparagraphs (B) and (C), with
20 respect to any institution, the aggregate acceptances, includ-
21 ing obligations for a participation share in such acceptances,
22 growing out of domestic transactions shall not exceed 50 per
23 centum of the aggregate of all acceptances, including obliga-
24 tions for a participation share in such acceptances, authorized
25 for such institution under this paragraph.

1 "(E) No institution shall accept bills, or be obligated for
2 a participation share in such bills, whether in a foreign or
3 domestic transaction, for any one person, partnership, corpo-
4 ration, association or other entity in an amount equal at any
5 time in the aggregate to more than 10 per centum of its paid
6 up and unimpaired capital stock and surplus, unless the insti-
7 tution is secured either by attached documents or by some
8 other actual security growing out of the same transaction as
9 the acceptance.

10 "(F) The limitations contained in this paragraph shall
11 not apply to that portion of an acceptance which is issued by
12 an institution and which is covered by a participation agree-
13 ment sold to another bank or a corporation regulated under
14 section 25 or section 25(a) of this Act.

15 "(G) In order to carry out the purposes of this para-
16 graph, the Board may define any of the terms used in this
17 paragraph, and, with respect to institutions which do not
18 have capital or capital stock, the Board shall define an equiv-
19 alent measure to which the limitations contained in this para-
20 graph shall apply."

○

Union Calendar No. 387

97TH CONGRESS
2D SESSION

H. R. 6016

[Report No. 97–629]

To permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1982

Mr. ST GERMAIN (for himself, Mr. REUSS, Mr. MINISH, Mr. ANNUNZIO, Mr. FAUNTROY, Mr. NEAL, Mr. PATTERSON, Mr. BLANCHARD, Mr. LAFALCE, Mr. EVANS of Indiana, Mr. D'AMOURS, Ms. OAKAR, Mr. BARNARD, Mr. LOWRY of Washington, Mr. SCHUMER, Mr. FRANK, Mr. WILLIAM J. COYNE, Mr. STANTON of Ohio, Mr. MCKINNEY, Mr. LEACH of Iowa, Mr. PARRIS, Mr. WORTLEY, Mr. LOWERY of California, Mr. JAMES K. COYNE, and Mr. BEREUTER) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

JULY 1, 1982

Additional sponsors: Mr. VENTO and Mr. HOYER

JULY 1, 1982

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 31, 1982]

A BILL

To permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.

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 "Bank*
5 *Export Services Act".*

6 *INVESTMENTS IN EXPORT TRADING COMPANIES*

7 *SEC. 2. Section 4(c) of the Bank Holding Company*
8 *Act of 1956 (12 U.S.C. 1843(c)) is amended—*

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

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

14 *(3) by inserting after paragraph (13) the follow-*
15 *ing:*

16 *"(14) shares of any company which is an export*
17 *trading company whose acquisition (including each ac-*
18 *quisition of shares) or formation by a bank holding*
19 *company has not been disapproved by the Board pur-*
20 *suant to this paragraph, except that such investments,*
21 *whether direct or indirect, in such shares shall not*

exceed 5 per centum of the bank holding company's consolidated capital and surplus.

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

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

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

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

1 *"(I) such disapproval is necessary to*
2 *prevent unsafe or unsound banking practices,*
3 *undue concentration of resources, decreased*
4 *or unfair competition, or conflicts of interest;*
5 *"(II) the financial or managerial re-*
6 *sources of the companies involved warrant*
7 *disapproval; or*
8 *"(III) the bank holding company fails*
9 *to furnish the information required under*
10 *clause (iii).*
11 *"(v) Within three days after a decision to*
12 *disapprove an investment, the Board shall notify*
13 *the bank holding company in writing of the disap-*
14 *proval and shall provide a written statement of the*
15 *basis for the disapproval.*
16 *"(vi) A proposed investment may be made*
17 *prior to expiration of the disapproval period if the*
18 *Board issues written notice of its intent not to*
19 *disapprove the investment.*
20 *"(B)(i) The total amount of extensions of*
21 *credit by a bank holding company which invests*
22 *in an export trading company, when combined*
23 *with all such extensions of credit by all the sub-*
24 *sidiaries of such bank holding company, to an*
25 *export trading company shall not exceed at any*

one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

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

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

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

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in

1 *the United States only to the extent that any*
2 *bank holding company which invests in such*
3 *export trading company may do so under ap-*
4 *plicable Federal and State banking laws and*
5 *regulations; and*
6 *"(ii) may not engage in agricultural*
7 *production activities or in manufacturing,*
8 *except for such incidental product modifica-*
9 *tion, including repackaging, reassembling or*
10 *extracting byproducts, as is necessary to*
11 *enable United States goods or services to*
12 *conform with requirements of a foreign coun-*
13 *try and to facilitate their sale in foreign*
14 *countries.*
15 *"(D) A bank holding company which invests*
16 *in an export trading company may be required,*
17 *by the Board, to terminate its investment or may*
18 *be made subject to such limitations or conditions*
19 *as may be imposed by the Board, if the Board de-*
20 *termines that the export trading company has*
21 *taken positions in commodities or commodities*
22 *contracts, in securities, or in foreign exchange,*
23 *other than as may be necessary in the course of*
24 *the export trading company's business operations.*
25 *"(E) For purposes of this paragraph—*

1 *"(i) the term 'export trading company'*
2 *means a company which does business under*
3 *the laws of the United States or any State*
4 *and which is organized and operated exclu-*
5 *sively for purposes of exporting goods or*
6 *services produced in the United States or for*
7 *purposes of facilitating the exportation of*
8 *goods or services produced in the United*
9 *States by unaffiliated persons by providing*
10 *one or more export trade services. Any export*
11 *trading company may perform such import-*
12 *ing or other activities as are reasonably re-*
13 *lated to and incident to an export transac-*
14 *tion, if the overall effect of such activities is*
15 *to enhance the exportation of goods or serv-*
16 *ices produced in the United States;*
17 *"(ii) the term 'export trade services' in-*
18 *cludes consulting, international market re-*
19 *search, advertising, marketing, product re-*
20 *search and design, legal assistance, transpor-*
21 *tation (including trade documentation and*
22 *freight forwarding), communication and*
23 *processing of foreign orders to and for export-*
24 *ers and foreign purchasers, warehousing, for-*
25 *eign exchange, financing, and taking title to*

goods, when such services are provided in order to facilitate the export of goods or services produced in the United States;

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

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

BANKERS' ACCEPTANCES

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

1 *"(7)(A) Any member bank and any Federal or State*
2 *branch or agency of a foreign bank subject to reserve require-*
3 *ments under section 7 of the International Banking Act of*
4 *1978 (hereinafter in this paragraph referred to as 'institu-*
5 *tions'), may accept drafts or bills of exchange drawn upon it*
6 *having not more than six months' sight to run, exclusive of*
7 *days of grace—*
8 *"(i) which grow out of transactions involving the*
9 *importation or exportation of goods;*
10 *"(ii) which grow out of transactions involving the*
11 *domestic shipment of goods; or*
12 *"(iii) which are secured at the time of acceptance*
13 *by a warehouse receipt or other such document convey-*
14 *ing or securing title covering readily marketable sta-*
15 *ples.*
16 *"(B) Except as provided in subparagraph (C), no insti-*
17 *tution shall accept such bills, or be obligated for a participa-*
18 *tion share in such bills, in an amount equal at any time in*
19 *the aggregate to more than 150 per centum of its paid up and*
20 *unimpaired capital stock and surplus or, in the case of a*
21 *United States branch or agency of a foreign bank, its dollar*
22 *equivalent as determined by the Board under subparagraph*
23 *(H).*
24 *"(C) The Board, under such conditions as it may pre-*
25 *scribe, may authorize, by regulation or order, any institution*

1 *to accept such bills, or be obligated for a participation share*
2 *in such bills, in an amount not exceeding at any time in the*
3 *aggregate 200 per centum of its paid up and unimpaired cap-*
4 *ital stock and surplus or, in the case of a United States*
5 *branch or agency of a foreign bank, its dollar equivalent as*
6 *determined by the Board under subparagraph (H).*
7 *"(D) Notwithstanding subparagraphs (B) and (C), with*
8 *respect to any institution, the aggregate acceptances, includ-*
9 *ing obligations for a participation share in such acceptances,*
10 *growing out of domestic transactions shall not exceed 50 per*
11 *centum of the aggregate of all acceptances, including obliga-*
12 *tions for a participation share in such acceptances, author-*
13 *ized for such institution under this paragraph.*
14 *"(E) No institution shall accept bills, or be obligated for*
15 *a participation share in such bills, whether in a foreign or*
16 *domestic transaction, for any one person, partnership, corpo-*
17 *ration, association or other entity in an amount equal at any*
18 *time in the aggregate to more than 10 per centum of its paid*
19 *up and unimpaired capital stock and surplus, or, in the case*
20 *of a United States branch or agency of a foreign bank, its*
21 *dollar equivalent as determined by the Board under subpara-*
22 *graph (H), unless the institution is secured either by attached*
23 *documents or by some other actual security growing out of the*
24 *same transaction as the acceptance.*

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

6 *"(G) In order to carry out the purposes of this para-*
7 *graph, the Board may define any of the terms used in this*
8 *paragraph, and, with respect to institutions which do not*
9 *have capital or capital stock, the Board shall define an equiv-*
10 *alent measure to which the limitations contained in this*
11 *paragraph shall apply.*

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

Amend the title so as to read: "A bill to permit bank holding companies and bankers' banks to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.".

Union Calendar No. 387

97TH CONGRESS
2D SESSION

H. R. 6016

[Report No. 97-629]

A BILL

To permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions.

JULY 1, 1982

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

97TH CONGRESS
1ST SESSION

S. 144

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

IN THE SENATE OF THE UNITED STATES

JANUARY 19 (legislative day, JANUARY 5), 1981

Mr. HEINZ (for himself, Mr. DANFORTH, Mr. BENTSEN, Mr. TSONGAS, Mr. LEVIN, Mr. PRESSLER, Mr. RANDOLPH, Mr. CHAFEE, Mr. GLENN, Mr. EAST, Mr. BUMPERS, Mr. BOREN, Mr. HEFLIN, Mr. LUGAR, Mr. GOLDWATER, Mr. ABDNOR, Mr. BRADLEY, Mr. HATFIELD, Mr. BAUCUS, Mr. STAFFORD, Mr. GORTON, Mr. RUDMAN, Mr. JOHNSTON, Mr. SCHMITT, Mr. MELCHER, Mr. JEPSEN, Mr. SIMPSON, Mr. MATHIAS, Mr. DURENBERGER, Mr. DIXON, Mr. WALLOP, Mr. ARMSTRONG, Mr. SYMMS, Mr. DOLE, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. LONG, Mr. ROTH, Mr. WEICKER, Mr. EAGLETON, Mr. KASTEN, Mr. HUDDLESTON, Mr. SPECTER, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, 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,*

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

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

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

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

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented

1 into a multitude of separate functions; companies at-
2 tempting to offer comprehensive export trade services
3 lack financial leverage to reach a significant portion of
4 potential United States exporters);

5 (6) State and local government activities which
6 initiate, facilitate, or expand export of products and
7 services are an important and irreplaceable source for
8 expansion of total United States exports, as well as for
9 experimentation in the development of innovative
10 export programs keyed to local, State, and regional
11 economic needs;

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

15 (8) if United States export trading companies are
16 to be successful in promoting United States exports
17 and in competing with foreign trading companies, they
18 must be able to draw on the resources, expertise, and
19 knowledge of the United States banking system, both
20 in the United States and abroad.

21 (b) The purpose of this Act is to increase United States
22 exports of products and services, particularly by small,
23 medium-size and minority concerns, by encouraging more ef-
24 ficient provision of export trade services to American produc-
25 ers and suppliers.

1 DEFINITIONS

2 SEC. 103. (a) As used in this Act—

3 (1) the term "export trade" means trade or com-
4 merce in goods produced in the United States or serv-
5 ices produced in the United States, and exported, or in
6 the course of being exported, from the United States to
7 any foreign nation;

8 (2) the term "goods produced in the United
9 States" means tangible property manufactured, pro-
10 duced, grown, or extracted in the United States, the
11 cost of the imported raw materials and components
12 thereof shall not exceed 50 per centum of the sales
13 price;

14 (3) the term "services produced in the United
15 States" includes, but is not limited to accounting,
16 amusement, architectural, automatic data processing,
17 business, communications, construction franchising and
18 licensing, consulting, engineering, financial, insurance,
19 legal, management, repair, tourism, training, and
20 transportation services, not less than 50 per centum of
21 the sales or billings of which is provided by United
22 States citizens or is otherwise attributable to the
23 United States;

24 (4) the term "export trade services" includes, but
25 is not limited to, consulting, international market re-

search, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

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

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

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

1 (7) the term "Secretary" means the Secretary of
2 Commerce; and
3 (8) the term "company" means any corporation,
4 partnership, association, or similar organization, wheth-
5 er operated for profit or as a nonprofit organization.
6 (b) The Secretary is authorized, by regulation, to further
7 define such terms consistent with this section.

8 FUNCTIONS OF THE SECRETARY OF COMMERCE

9 SEC. 104. The Secretary shall promote and encourage
10 the formation and operation of export trading companies by
11 providing information and advice to interested persons and by
12 facilitating contact between producers of exportable goods
13 and services and firms offering export trade services.

14 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
15 BANK HOLDING COMPANIES, AND INTERNATIONAL
16 BANKING CORPORATIONS

17 SEC. 105. (a) For the purpose of this section—
18 (1) the term "banking organization" means any
19 State bank, national bank, Federal savings bank, bank-
20 ers' bank, bank holding company, Edge Act Corpora-
21 tion, or Agreement Corporation;
22 (2) the term "State bank" means any bank which
23 is incorporated under the laws of any State, any terri-
24 tory of the United States, the Commonwealth of
25 Puerto Rico, Guam, American Samoa, the Common-

1 wealth of the Northern Mariana Islands, or the Virgin
2 Islands, or any bank (except a national bank) which is
3 operating under the Code of Law for the District of
4 Columbia (hereinafter referred to as a "District bank");
5 (3) the term "State member bank" means any
6 State bank, including a bankers' bank, which is a
7 member of the Federal Reserve System;
8 (4) the term "State nonmember insured bank"
9 means any State bank, including a bankers' bank,
10 which is not a member of the Federal Reserve System,
11 but the deposits of which are insured by the Federal
12 Deposit Insurance Corporation;
13 (5) the term "bankers' bank" means any bank in-
14 sured by the Federal Deposit Insurance Corporation if
15 the stock of such bank is owned exclusively by other
16 banks (except to the extent State law requires direc-
17 tors' qualifying shares) and if such bank is engaged ex-
18 clusively in providing banking services for other banks
19 and their officers, directors, or employees;
20 (6) the term "bank holding company" has the
21 same meaning as in the Bank Holding Company Act of
22 1956;
23 (7) the term "Edge Act Corporation" means a
24 corporation organized under section 25(a) of the Fed-
25 eral Reserve Act;

1 (8) the term "Agreement Corporation" means a
2 corporation operating subject to section 25 of the Fed-
3 eral Reserve Act;
4 (9) the term "appropriate Federal banking
5 agency" means—
6 (A) the Comptroller of the Currency with re-
7 spect to a national bank or any District bank;
8 (B) the Board of Governors of the Federal
9 Reserve System with respect to a State member
10 bank, bank holding company, Edge Act Corpora-
11 tion, or Agreement Corporation;
12 (C) the Federal Deposit Insurance Corpora-
13 tion with respect to a State nonmember insured
14 bank except a District bank; and
15 (D) the Federal Home Loan Bank Board
16 with respect to a Federal savings bank.
17 In any situation where the banking organization hold-
18 ing or making an investment in an export trading com-
19 pany is a subsidiary of another banking organization
20 which is subject to the jurisdiction of another agency,
21 and some form of agency approval or notification is re-
22 quired, such approval or notification need only be ob-
23 tained from or made to, as the case may be, the appro-
24 priate Federal banking agency for the banking organi-

1 zation making or holding the investment in the export
2 trading company;
3 (10) the term "capital and surplus" means paid in
4 and unimpaired capital and surplus, and includes un-
5 divided profits;
6 (11) an "affiliate" of a banking organization or
7 export trading company is a person who controls, is
8 controlled by, or is under common control with such
9 banking organization or export trading company;
10 (12) the terms "control" and "subsidiary" shall
11 have the same meanings assigned to those terms in
12 section 2 of the Bank Holding Company Act of 1956,
13 and the terms "controlled" and "controlling" shall be
14 construed consistently with the term "control" as de-
15 fined in section 2 of the Bank Holding Company Act of
16 1956; and
17 (13) for the purposes of this section, the term
18 "export trading company" means a company which
19 does business under the laws of the United States or
20 any State and which is exclusively engaged in activi-
21 ties related to international trade, whether operated for
22 profit or as a nonprofit organization: *Provided, how-*
23 *ever,* That any such company must also either meet
24 the definition of export trading company in section
25 103(a)(5) of this Act, or be organized and operated

1 principally for the purpose of providing export trade
2 services, as defined in section 103(a)(4) of this Act:
3 *Provided further,* That any such company, for purposes
4 of this section, (A) may engage in or hold shares of a
5 company engaged in the business of underwriting, sell-
6 ing, or distributing securities in the United States only
7 to the extent that its banking organization investor
8 may do so under applicable Federal and State banking
9 law and regulations, and (B) may not engage in manu-
10 facturing or agricultural production activities.

11 (b)(1) Notwithstanding any prohibition, restriction, limi-
12 tation, condition, or requirement of any law applicable only
13 to banking organizations, a banking organization, subject to
14 the limitations of subsection (c) and the procedures of this
15 subsection, may invest directly and indirectly in the aggre-
16 gate, up to 5 per centum of its consolidated capital and sur-
17 plus (25 per centum in the case of an Edge Act Corporation
18 or Agreement Corporation not engaged in banking) in the
19 voting stock or other evidences of ownership of one or more
20 export trading companies. A banking organization may—

21 (A) invest up to an aggregate amount of
22 $10,000,000 in one or more export trading companies
23 without the prior approval of the appropriate Federal
24 banking agency, if such investment does not cause an

1 export trading company to become a subsidiary of the
2 investing banking organization; and
3 (B) make investments in excess of an aggregate
4 amount of $10,000,000 in one or more export trading
5 companies, or make any investment or take any other
6 action which causes an export trading company to
7 become a subsidiary of the investing banking organiza-
8 tion of which will cause more than 50 per centum of
9 the voting stock of an export trading company to be
10 owned or controlled by banking organizations, only
11 with the prior approval of the appropriate Federal
12 banking agency.
13 Any banking organization which makes an investment under
14 authority of clause (A) of the preceding sentence shall
15 promptly notify the appropriate Federal banking agency of
16 such investment and shall file such reports on such invest-
17 ment as such agency may require. If, after receipt of any
18 such notification, the appropriate Federal banking agency de-
19 termines, after notice and opportunity for hearing, that the
20 export trading company is a subsidiary of the investing bank-
21 ing organization, it shall have authority to disapprove the
22 investment or impose conditions on such investment under
23 authority of subsection (d). In furtherance of such authority,
24 the appropriate Federal banking agency may require divesti-
25 ture of any voting stock or other evidences of ownership pre-

1 viously acquired, and may impose conditions necessary for
2 the termination of any controlling relationship.
3 (2) If a banking organization proposes to make any in-
4 vestment or engage in any activity included within the fol-
5 lowing two subparagraphs, it must give the appropriate Fed-
6 eral banking agency ninety days prior written notice before it
7 makes such investment or engages in such activity:
8 (A) any additional investment in an export trading
9 company subsidiary; or
10 (B) the engagement by any export trading
11 company subsidiary in any line of activity, including
12 specifically the taking of title to goods, wares, mer-
13 chandise, or commodities, if such activity was not dis-
14 closed in any prior application for approval.
15 During the notification period provided under this paragraph,
16 the appropriate Federal banking agency may, by written
17 notice, disapprove the proposed investment or activity or
18 impose conditions on such investment or activity under au-
19 thority of subsection (d). An additional investment or activity
20 covered by this paragraph may be made or engaged in, as the
21 case may be, prior to the expiration of the notification period
22 if the appropriate Federal banking agency issues written
23 notice of its intent not to disapprove.
24 (3) In the event of the failure of the appropriate Federal
25 banking agency to act on any application for approval under

1 paragraph (1)(B) of this subsection within a period of one
2 hundred and twenty days, which period begins on the date
3 the application has been accepted for processing by the ap-
4 propriate Federal banking agency, the application shall be
5 deemed to have been granted. In the event of the failure of
6 the appropriate Federal banking agency either to disapprove
7 or to impose conditions on any investment or activity subject
8 to the prior notification requirements of paragraph (2) of this
9 subsection within the sixty-day period provided therein, such
10 period beginning on the date the notification has been re-
11 ceived by the appropriate Federal banking agency, such in-
12 vestment or activity may be made or engaged in, as the case
13 may be, any time after the expiration of such period.

14 (c) The following limitations apply to export trading
15 companies and the investments in such companies by banking
16 organizations:

17 (1) The name of any export trading company shall
18 not be similar in any respect to that of a banking orga-
19 nization that owns any of its voting stock or other evi-
20 dences of ownership.

21 (2) The total historical cost of the direct and indi-
22 rect investments by a banking organization in an
23 export trading company combined with extensions of
24 credit by the banking organization and its direct and
25 indirect subsidiaries to such export trading company

1 shall not exceed 10 per centum of the banking organi-
2 zation's capital and surplus.
3 (3) A banking organization that owns any voting
4 stock or other evidences of ownership of an export
5 trading company shall terminate its ownership of such
6 stock if the export trading company takes positions in
7 commodities or commodities contracts, in securities, or
8 in foreign exchange, other than as may be necessary in
9 the course of its business operations.
10 (4) No banking organization holding voting stock
11 or other evidences of ownership of any export trading
12 company may extend credit or cause any affiliate to
13 extend credit to any export trading company or to cus-
14 tomers of such company on terms more favorable than
15 those afforded similar borrowers in similar circum-
16 stances, and such extension of credit shall not involve
17 more than the normal risk of repayment or present
18 other unfavorable features.
19 (d)(1) In the case of every application under subsection
20 (b)(1)(B) of this section, the appropriate Federal banking
21 agency shall take into consideration the financial and man-
22 agerial resources, competitive situation, and future prospects
23 of the banking organization and export trading company con-
24 cerned, and the benefits of the proposal to United States
25 business, industrial, and agricultural concerns (with special

1 emphasis on small, medium-size and minority concerns), and
2 to improving United States competitiveness in world mar-
3 kets. The appropriate Federal banking agency may not ap-
4 prove any investment for which an application has been filed
5 under subsection (b)(1)(B) if it finds that the export benefits of
6 such proposal are outweighed in the public interest by any
7 adverse financial, managerial, competitive, or other banking
8 factors associated with the particular investment. Any disap-
9 proval order issued under this section must contain a state-
10 ment of the reasons for disapproval.

11 (2) In approving any application submitted under sub-
12 section (b)(1)(B), the appropriate Federal banking agency
13 may impose such conditions which, under the circumstances
14 of such case, it may deem necessary (A) to limit a banking
15 organization's financial exposure to an export trading com-
16 pany, or (B) to prevent possible conflicts of interest or unsafe
17 or unsound banking practices. With respect to the taking of
18 title to goods, wares, merchandise, or commodities by any
19 export trading company subsidiary of a banking organization,
20 the appropriate Federal banking agencies may, by order, reg-
21 ulation, or guidelines, establish standards designed to ensure
22 against any unsafe or unsound practices that could adversely
23 affect a controlling banking organization investor. In particu-
24 lar, the appropriate Federal banking agencies may establish
25 inventory-to-capital ratios, based on the capital of the export

1 trading company subsidiary, for those circumstances in which
2 the export trading company subsidiary may bear a market
3 risk on inventory held.

4 (3) In determining whether to impose any condition
5 under the preceding paragraph (2), or in imposing such condi-
6 tion, the appropriate Federal banking agency must give due
7 consideration to the size of the banking organization and
8 export trading company involved, the degree of investment
9 and other support to be provided by the banking organization
10 to the export trading company, and the identity, character,
11 and financial strength of any other investors in the export
12 trading company. The appropriate Federal banking agency
13 shall not impose any conditions or set standards for the
14 taking of title which unnecessarily disadvantage, restrict or
15 limit export trading companies in competing in world markets
16 or in achieving the purposes of section 102 of this Act. In
17 particular, in setting standards for the taking of title under
18 the preceding paragraph (2), the appropriate Federal banking
19 agencies shall give special weight to the need to take title in
20 certain kinds of trade transactions, such as international
21 barter transactions.

22 (4) Notwithstanding any other provision of this Act, the
23 appropriate Federal banking agency may, whenever it has
24 reasonable cause to believe that the ownership or control of
25 any investment in an export trading company constitutes a

1 serious risk to the financial safety, soundness, or stability of
2 the banking organization and is inconsistent with sound bank-
3 ing principles or with the purposes of this Act or with the
4 Financial Institutions Supervisory Act of 1966, order the
5 banking organization, after due notice and opportunity for
6 hearing, to terminate (within one hundred and twenty days or
7 such longer period as the Board may direct in unusual cir-
8 cumstances) its investment in the export trading company.
9 (5) On or before two years after enactment of this Act,
10 the appropriate Federal banking agencies shall jointly report
11 to the Committee on Banking, Housing, and Urban Affairs of
12 the Senate and the Committee on Banking, Finance and
13 Urban Affairs of the House of Representatives their recom-
14 mendations with respect to the implementation of this sec-
15 tion, their recommendations on any changes in United States
16 law to facilitate the financing of United States exports, espe-
17 cially by small, medium-size and minority business concerns,
18 and their recommendations on the effects of ownership of
19 United States banks by foreign banking organizations affili-
20 ated with trading companies doing business in the United
21 States.
22 (e)(1) Any party aggrieved by an order of an appropriate
23 Federal banking agency under this section may obtain a
24 review of such order in the United States court of appeals
25 within any circuit wherein such organization has its principal

1 place of business, or in the court of appeals for the District of
2 Columbia Circuit, by filing a notice of appeal in such court
3 within thirty days from the date of such order, and simulta-
4 neously sending a copy of such notice by registered or certi-
5 fied mail to the appropriate Federal banking agency. The
6 appropriate Federal banking agency shall promptly certify
7 and file in such court the record upon which the order was
8 based. The court shall set aside any order found to be (A)
9 arbitrary, capricious, an abuse of discretion, or otherwise not
10 in accordance with law; (B) contrary to constitutional right,
11 power, privilege or immunity; or, (C) in excess of statutory
12 jurisdiction, authority, or limitations, or short of statutory
13 right; or (D) without observance of procedure required by
14 law. Except for violations of subsection (b)(3) of this section,
15 the court shall remand for further consideration by the appro-
16 priate Federal banking agency any order set aside solely for
17 procedural errors and may remand for further consideration
18 by the appropriate Federal banking agency any order set
19 aside for substantive errors. Upon remand, the appropriate
20 Federal banking agency shall have no more than sixty days
21 from date of issuance of the court's order to cure any proce-
22 dural error or reconsider its prior order. If the agency fails to
23 act within this period, the application or other matter subject
24 to review shall be deemed to have been granted as a matter
25 of law.

1 (f)(1) The appropriate Federal banking agencies are au-
2 thorized and empowered to issue such rules, regulations, and
3 orders, to require such reports, to delegate such functions,
4 and to conduct such examinations of subsidiary export trad-
5 ing companies, as each of them may deem necessary in order
6 to perform their respective duties and functions under this
7 section and to administer and carry out the provisions and
8 purposes of this section and prevent evasions thereof.

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

14 (g) Nothing in this section shall at any time prevent any
15 State from adopting a law prohibiting banks chartered under
16 the laws of such State from investing in export trading com-
17 panies or applying conditions, limitations, or restrictions on
18 investments by banks chartered under the laws of such State
19 in export trading companies in addition to any conditions,
20 limitations, or restrictions provided under this section.

21 INITIAL INVESTMENTS AND OPERATING EXPENSES

22 SEC. 106. (a) The Economic Development Administra-
23 tion and the Small Business Administration are directed, in
24 their consideration of applications by export trading compa-
25 nies for loans and guarantees, and operating grants to non-

1 profit organizations, including applications to make new in-
2 vestments related to the export of goods or services produced
3 in the United States and to meet operating expenses, to give
4 special weight to export-related benefits, including opening
5 new markets for United States goods and services abroad and
6 encouraging the involvement of small, medium-size and mi-
7 nority businesses or agricultural concerns in the export
8 market.

9 (b) There are authorized to be appropriated as necessary
10 to meet the purposes of this section, $20,000,000 for each
11 fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts
12 appropriated pursuant to the authority of this subsection shall
13 be in addition to amounts appropriated under the authority of
14 other Acts.

15 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
16 INVENTORY

17 SEC. 107. The Export-Import Bank of the United
18 States is authorized and directed to establish a program to
19 provide guarantees for loans extended by financial institu-
20 tions or other private creditors to export trading companies
21 as defined in section 103(5) of this Act, or to other exporters,
22 when such loans are secured by export accounts receivable or
23 inventories of exportable goods, and when in the judgment of
24 the Board of Directors—

1 (1) the private credit market is not providing ade-
2 quate financing to enable otherwise creditworthy
3 export trading companies or exporters to consummate
4 export transactions; and
5 (2) such guarantees would facilitate expansion of
6 exports which would not otherwise occur.
7 The Board of Directors shall attempt to insure that a major
8 share of any loan guarantees ultimately serves to promote
9 exports from small, medium-size and minority businesses or
10 agricultural concerns. Guarantees provided under the author-
11 ity of this section shall be subject to limitations contained in
12 annual appropriations Acts.

13 TITLE II—EXPORT TRADE ASSOCIATIONS

14 SHORT TITLE

15 SEC. 201. This title may be cited as the "Export Trade
16 Association Act of 1981".

17 FINDINGS; DECLARATION OF PURPOSE

18 SEC. 202. (a) FINDINGS.—The Congress finds and de-
19 clares that—
20 (1) the exports of the American economy are re-
21 sponsible for creating and maintaining one out of every
22 nine manufacturing jobs in the United States and for
23 generating $1 out of every $7 of total United States
24 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;
21 and
22 (7) the Department of Commerce has as one of its
23 responsibilities the development and promotion of
24 United States exports.

1 (b) PURPOSE.—It is the purpose of this Act to encour-
2 age American exports by establishing an office within the
3 Department of Commerce to encourage and promote the for-
4 mation of export trade associations through the Webb-
5 Pomerene Act, by making the provisions of that Act explic-
6 itly applicable to the exportation of services, and by transfer-
7 ring the responsibility for administering that Act from the
8 Federal Trade Commission to the Secretary of Commerce.

9 DEFINITIONS

10 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66)
11 is amended by striking out the first section (15 U.S.C. 61)
12 and inserting in lieu thereof the following:

13 "SECTION 1. DEFINITIONS.

14 "As used in this Act—

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

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

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

24 "(B) management, legal, engineering, archi-
25 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' means activities or agreements
5 in the course of export trade.
6 "(4) METHODS OF OPERATION.—The term
7 'methods of operation' means the methods by which an
8 association or export trading company conducts or pro-
9 poses to conduct export trade.
10 "(5) TRADE WITHIN THE UNITED STATES.—The
11 term 'trade within the United States' whenever used in
12 this Act means trade or commerce among the several
13 States or in any territory of the United States, or in
14 the District of Columbia, or between any such territory
15 and another, or between any such territory or territo-
16 ries and any State or States or the District of Colum-
17 bia, or between the District of Columbia and any State
18 or States.
19 "(6) ASSOCIATION.—The term 'association'
20 means any combination, by contract or other arrange-
21 ment, of persons who are citizens of the United States,
22 partnerships which are created under and exist pursu-
23 ant to the laws of any State or of the United States, or
24 corporations, whether operated for profit or organized
25 as nonprofit corporations, which are created under and

1 exist pursuant to the laws of any State or of the
2 United States.
3 "(7) EXPORT TRADING COMPANY.—The term
4 'export trading company' means an export trading
5 company as defined in section 103(5) of the Export
6 Trading Company Act of 1980.
7 "(8) 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), sections 5 and
10 6 of the Federal Trade Commission Act (15 U.S.C.
11 45, 46), and any State antitrust or unfair competition
12 law.
13 "(9) SECRETARY.—The term 'Secretary' means
14 the Secretary of Commerce.
15 "(10) ATTORNEY GENERAL.—The term 'Attorney
16 General' means the Attorney General of the United
17 States.
18 "(11) COMMISSION.—The term 'Commission'
19 means the Federal Trade Commission.".
20 ANTITRUST EXEMPTION
21 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
22 is amended by striking out section 2 (15 U.S.C. 62) and
23 inserting in lieu thereof the following:

1 "SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

2 "(a) ELIGIBILITY.—The export trade, export trade
3 activities, and methods of operation of any association, en-
4 tered into for the sole purpose of engaging in export trade,
5 and engaged in or proposed to be engaged in such export
6 trade, and the export trade, export trade activities and meth-
7 ods of operation of any export trading company, that—

8 "(1) serve to preserve or promote export trade;

9 "(2) result in neither a substantial lessening of
10 competition or restraint of trade within the United
11 States nor a substantial restraint of the export trade of
12 any competitor of such association or export trading
13 company;

14 "(3) do not unreasonably enhance, stabilize, or
15 depress prices within the United States of the goods,
16 wares, merchandise, or services of the class exported
17 by such association or export trading company;

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

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

1 association or export trading company or its members;
2 and
3 "(6) do not constitute trade or commerce in the
4 licensing of patents, technology, trademarks, or know-
5 how, except as incidental to the sale of the goods,
6 wares, merchandise, or services exported by the associ-
7 ation or export trading company or its members
8 shall, when certified according to the procedures set forth in
9 this Act, be eligible for the exemption provided in subsection
10 (b).
11 "(b) EXEMPTION.—An association or an export trading
12 company and its members are exempt from the operation of
13 the antitrust laws with respect to their export trade, export
14 trade activities and methods of operation that are specified in
15 a certificate issued according to the procedures set forth in
16 this Act, carried out in conformity with the provisions, terms,
17 and conditions prescribed in such certificate and engaged in
18 during the period in which such certificate is in effect. The
19 subsequent revocation or invalidation in whole or in part of
20 such certificate shall not render an association or its members
21 or an export trading company or its members, liable under
22 the antitrust laws for such export trade, export trade activi-
23 ties, or methods of operation engaged in during such period.
24 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
25 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this

1 Act, the Attorney General or Commission has formally
2 advised the Secretary of disagreement with his determination
3 to issue a proposed certificate, and the Secretary has none-
4 theless issued such proposed certificate or an amended certifi-
5 cate, the exemption provided by this section shall not be
6 effective until thirty days after the issuance of such
7 certificate.".

8 AMENDMENT OF SECTION 3

9 SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The
10 Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

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

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

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

17 ADMINISTRATION: ENFORCEMENT: REPORTS

18 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
19 (15 U.S.C. 61–66) is amended by striking out sections 4 and
20 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
21 following sections:

22 **"SEC. 4. CERTIFICATION.**

23 "(a) PROCEDURE FOR APPLICATION.—Any associ-
24 ation, or export trading company seeking certification under

1 this Act shall file with the Secretary a written application for
2 certification setting forth the following:

3 "(1) The name of the association or export trad-
4 ing company.

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

8 "(3) The names and addresses of all of the offi-
9 cers, stockholders, and members of the association or
10 export trading company.

11 "(4) A copy of the certificate or articles of incor-
12 poration and bylaws, if the association or export trad-
13 ing company is a corporation; or a copy of the articles,
14 partnership, joint venture, or other agreement or con-
15 tract under which the association or export trading
16 company conducts or proposes to conduct its export
17 trade activities, or contract of association, if the associ-
18 ation or export trading company is unincorporated.

19 "(5) A description of the goods, wares, merchan-
20 dise, or services which the association or export trad-
21 ing company or their members export or propose to
22 export.

23 "(6) A description of the domestic and interna-
24 tional conditions, circumstances, and factors which
25 show that the association or export trading company

1 and its activities will serve a specified need in promot-
2 ing the export trade of the described goods, wares,
3 merchandise, or services.

4 "(7) The export trade activities in which the asso-
5 ciation or export trading company intends to engage
6 and the methods by which the association or export
7 trading company conducts or proposes to conduct
8 export trade in the described goods, wares, merchan-
9 dise, or services, including, but not limited to, any
10 agreements to sell exclusively to or through the associ-
11 ation or export trading company, any agreements with
12 foreign persons who may act as joint selling agents,
13 any agreements to acquire a foreign selling agent, any
14 agreements for pooling tangible or intangible property
15 or resources, or any territorial, price-maintenance,
16 membership, or other restrictions to be imposed upon
17 members of the association or export trading company.

18 "(8) The names of all countries where export
19 trade in the described goods, wares, merchandise, or
20 services is conducted or proposed to be conducted by
21 or through the association or export trading company.

22 "(9) Any other information which the Secretary
23 may request concerning the organization, operation,
24 management, or finances of the association or export
25 trading company; the relation of the association or

1 export trading company to other associations, corpora-
2 tions, partnerships, and individuals; and competition or
3 potential competition, and effects of the association or
4 export trading company thereon. The Secretary may
5 request such information as part of an initial applica-
6 tion or as a necessary supplement thereto. The Secre-
7 tary may not request information under this paragraph
8 which is not reasonably available to the person making
9 application or which is not necessary for certification of
10 the prospective association or export trading company.
11 "(b) ISSUANCE OF CERTIFICATE.—
12 "(1) NINETY-DAY PERIOD.—The Secretary shall
13 issue a certificate to an association or export trading
14 company within ninety days after receiving the applica-
15 tion for certification or necessary supplement thereto if
16 the Secretary, after consultation with the Attorney
17 General and Commission, determines that the associ-
18 ation and, its export trade, export trade activities and
19 methods of operation, or export trading company, and
20 its export trade, export trade activities and methods of
21 operation meet the requirements of section 2 of this
22 Act and will serve a specified need in promoting the
23 export trade of the goods, wares, merchandise, or serv-
24 ices described in the application for certification. The
25 certificate shall specify the permissible export trade,

1 export trade activities and methods of operation of the
2 association or export trading company and shall include
3 any terms and conditions the Secretary deems neces-
4 sary to comply with the requirements of section 2 of
5 this Act. The Secretary shall deliver to the Attorney
6 General and the Commission a copy of any certificate
7 that he proposes to issue. The Attorney General or
8 Commission may, within fifteen days thereafter, give
9 written notice to the Secretary of an intent to offer
10 advice on the determination. The Attorney General or
11 Commission may, after giving such written notice and
12 within forty-five days of the time the Secretary has de-
13 livered a copy of a proposed certificate, formally advise
14 the Secretary and the petitioning association or export
15 trading company of disagreement with the Secretary's
16 determination. The Secretary shall not issue any certif-
17 icate prior to the expiration of such forty-five-day
18 period unless he has (A) received no notice of intent to
19 offer advice by the Attorney General or the Commis-
20 sion within fifteen days after delivering a copy of a
21 proposed certificate, or (B) received any noticed formal
22 advice of disagreement or written confirmation that no
23 formal disagreement will be transmitted from the At-
24 torney General and the Commission. After the forty-
25 five-day period or, if no notice of intent to offer advice

1 has been given, after the fifteen-day period, the Secre-
2 tary shall either issue the proposed certificate, issue an
3 amended certificate, or deny the application. Upon
4 agreement of the applicant, the Secretary may delay
5 taking action for not more than thirty additional days
6 after the forty-five-day period. Before offering advice
7 on a proposed certification, the Attorney General and
8 Commission shall consult in an effort to avoid, wher-
9 ever possible, having both agencies offer advice on any
10 application.

11 "(2) EXPEDITED CERTIFICATION.—In those in-
12 stances where the temporary nature of the export trade
13 activities, deadlines for bidding on contracts or filling
14 orders, or any other circumstances beyond the control
15 of the association or export trading company which
16 have a significant impact on its export trade, make the
17 90-day period for application approval described in
18 paragraph (1) of this subsection, or an amended appli-
19 cation approval as provided in subsection (c) of this
20 section, impractical for the association or export trad-
21 ing company seeking certification, such association or
22 export trading company may request and may receive
23 expedited action on its application for certification.

24 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
25 ASSOCIATIONS.—Any association registered with the

1 Federal Trade Commission under this Act as of April
2 3, 1980, may file with the Secretary an application for
3 automatic certification of any export trade, export
4 trade activities, and methods of operation in which it
5 was engaged prior to enactment of the Export Trade
6 Association Act of 1980. Any such application must be
7 filed within 180 days after the date of enactment of
8 such Act and shall be acted upon by the Secretary in
9 accordance with the procedures provided by this sec-
10 tion. The Secretary shall issue to the association a cer-
11 tificate specifying the permissible export trade, export
12 trade activities, and methods of operation that he de-
13 termines are shown by the application (including any
14 necessary supplement thereto), on its face, to be eligi-
15 ble for certification under this Act, and including any
16 terms and conditions the Secretary deems necessary to
17 comply with the requirements of section 2(a) of this
18 Act, unless the Secretary possesses information clearly
19 indicating that the requirements of section 2(a) are not
20 met.

21 "(4) APPEAL OF DETERMINATION.—If the Secre-
22 tary determines not to issue a certificate to an associ-
23 ation or export trading company which has submitted
24 an application or an amended application for certifica-
25 tion, then he shall—

1 "(A) notify the association or export trading
2 company of his determination and the reasons for
3 his determination, and
4 "(B) upon request made by the association or
5 export trading company afford it an opportunity
6 for a hearing with respect to that determination in
7 accordance with section 557 of title 5, United
8 States Code.
9 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
10 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
11 terial change in the membership, export trade, export trade
12 activities, or methods of operation, of an association or export
13 trading company then it shall report such change to the Sec-
14 retary and may apply to the Secretary for an amendment of
15 its certificate. Any application for an amendment to a certifi-
16 cate shall set forth the requested amendment of the certifi-
17 cate and the reasons for the requested amendment. Any re-
18 quest for the amendment of a certificate shall be treated in
19 the same manner as an original application for a certificate.
20 If the request is filed within thirty days after a material
21 change which requires the amendment, and if the requested
22 amendment is approved, then there shall be no interruption in
23 the period for which the certificate is in effect.
24 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
25 BY SECRETARY.—After notifying the association or export

1 trading company involved and after an opportunity for hear-
2 ing pursuant to section 554 of title 5, United States Code,
3 the Secretary, on his own initiative—

4 "(1) may require that the organization or oper-
5 ation of the association or export trading company be
6 modified to correspond with its certification, or

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

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

15 "(1) The Attorney General or the Commission
16 may bring an action against an association or export
17 trading company or its members to invalidate, in whole
18 or in part, its certificate on the ground that the export
19 trade, export trade activities or methods of operation of
20 the association or export trading company fail or have
21 failed to meet the requirements of section 2 of this Act.
22 Except in the case of an action brought during the
23 period before an antitrust exemption becomes effective,
24 as provided for in section 2(c), the Attorney General or
25 Commission shall notify any association or export trad-

1 ing company or member thereof, against which it in-
2 tends to bring an action for invalidation, thirty days in
3 advance, as to its intent to file an action under this
4 subsection. The district court shall consider any issues
5 presented in any such action de novo and if it finds
6 that the requirements of section 2 are not met, it shall
7 issue an order declaring the certificate invalid or any
8 other order necessary to effectuate the purposes of this
9 Act and the requirements of section 2.

10 "(2) Any action brought under this subsection
11 shall be considered an action described in section 1337
12 of title 28, United States Code. Pending any such
13 action which was brought during the period any ex-
14 emption is held in abeyance pursuant to section 2(c) of
15 this Act, the court may make such temporary restrain-
16 ing order or prohibition as shall be deemed just in the
17 premises.

18 "(3) No person other than the Attorney General
19 or Commission shall have standing to bring an action
20 against an association or export trading company or
21 their respective members for failure of the association
22 or export trading company or their respective export
23 trade, export trade activities or methods of operation to
24 meet the eligibility requirements of section 2 of this
25 Act.

1 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
2 ation and each export trading company and any subsidiary
3 thereof shall comply with United States export control laws
4 pertaining to the export or transshipment of any goods on the
5 Commodity Control List to controlled countries. Such laws
6 shall be complied with before actual shipment.

7 "SEC. 5. GUIDELINES.

8 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
9 days after the enactment of the Export Trade Association
10 Act of 1980, the Secretary, after consultation with the Attor-
11 ney General, and the Commission shall publish proposed
12 guidelines for purposes of determining whether export trade,
13 export trade activities and methods of operation of an associ-
14 ation or export trading company will meet the requirements
15 of section 2 of this Act.

16 "(b) PUBLIC COMMENT PERIOD.—Following publica-
17 tion of the proposed guidelines, and any proposed revision of
18 guidelines, interested parties shall have thirty days to com-
19 ment on the proposed guidelines. The Secretary shall review
20 the comments and, after consultation with the Attorney Gen-
21 eral, and Commission, publish final guidelines within thirty
22 days after the last day on which comments may be made
23 under the preceding sentence.

24 "(c) PERIODIC REVISION.—After publication of the
25 final guidelines, the Secretary shall periodically review the

1 guidelines and, after consultation with the Attorney General,
2 and the Commission, propose revisions as needed.

3 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
4 ACT.—The promulgation of guidelines under this section
5 shall not be considered rulemaking for purposes of subchapter
6 II of chapter 5 of title 5, United States Code, and section
7 553 of such title shall not apply to their promulgation.

8 **"SEC. 6. ANNUAL REPORTS.**

9 "Every certified association or export trading company
10 shall submit to the Secretary an annual report, in such form
11 and at such time as he may require, which report updates
12 where necessary the information described by section 4(a) of
13 this Act.

14 **"SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF**
15 **COMMERCE.**

16 "The Secretary shall establish within the Department of
17 Commerce an office to promote and encourage to the great-
18 est extent feasible the formation of export trade associations
19 and export trading companies through the use of provisions of
20 this Act in a manner consistent with this Act. The Office of
21 Export Trade in the Department of Commerce shall report to
22 the congressional committees of appropriate jurisdiction on
23 an annual basis, all East-West trade transactions requiring
24 validated licenses, and any other relevant information on the

1 role of United States export trading companies or subsidiaries
2 thereof in East-West trade.

3 "SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING
4 ASSOCIATIONS.

5 "(a) ELIGIBILITY.—To be eligible for the antitrust ex-
6 emption provided by this section, an association must have
7 been registered with the Federal Trade Commission under
8 this Act on April 3, 1980.

9 "(b) DURATION.—The antitrust exemption provided by
10 this section shall extend only to the existence of an eligible
11 association, and to agreements made and acts done by such
12 association, prior to one hundred and eighty days after the
13 date of enactment of the Export Trade Association Act of
14 1980, or, in the event that an eligible association files an
15 application for certification pursuant to section 4 of this Act
16 during such one hundred and eighty days, prior to the Secre-
17 tary's determination on such application becoming final.

18 "(c) EXEMPTION.—Subject to the limitations in subsec-
19 tions (a) and (b), nothing contained in sections 1 to 7 of the
20 Sherman Act shall be construed as declaring to be illegal an
21 association entered into for the sole purpose of engaging in
22 export trade and actually engaged solely in such export
23 trade, or an agreement made or act done in the course of
24 export trade by such association, provided such association,
25 agreement, or act is not in restraint of trade within the

1 United States, and is not in restraint of the export trade of
2 any domestic competitor of such association: *Provided*, That
3 such association does not, either in the United States or else-
4 where, enter into any agreement, understanding, or conspir-
5 acy, or do any act which artificially or intentionally enhances
6 or depresses prices within the United States of commodities
7 of the class exported by such association, or which substan-
8 tially lessens competition within the United States or other-
9 wise restrains trade therein.

10 **"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
11 **REPORT INFORMATION.**

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

23 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
24 MISSION.—Whenever the Secretary believes that an appli-
25 cant may be eligible for a certificate, or has issued a certifi-

1 cate to an association or export trading company, he shall
2 promptly make available all materials filed by the applicant,
3 association or export trading company, including applications
4 and supplements thereto, reports of material changes, appli-
5 cations for amendments and annual reports, and information
6 derived therefrom, to the Attorney General or Commission,
7 or any employee or officer thereof, for official use in connec-
8 tion with an investigation or judicial or administrative pro-
9 ceeding under this Act or the antitrust laws to which the
10 United States or the Commission is or may be a party. Such
11 information may only be disclosed by the Secretary upon a
12 prior certification that the information will be maintained in
13 confidence and will only be used for such official law enforce-
14 ment purposes.

15 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
16 **UNITED STATES OBLIGATIONS.**

17 "At such time as the United States undertakes binding
18 international obligations by treaty or statute, to the extent
19 that the operations of any export trade association or export
20 trading company, certified under this Act, are inconsistent
21 with such international obligations, the Secretary may re-
22 quire the association or export trading company to modify its
23 respective operations, and in so doing afford the association
24 or export trading company a reasonable opportunity to

1 comply therewith, so as to be consistent with such interna-
2 tional obligations.

3 **"SEC. 11. REGULATIONS.**

4 "The Secretary, after consultation with the Attorney
5 General and the Commission, shall promulgate such rules
6 and regulations as may be necessary to carry out the pur-
7 poses of this Act.

8 **"SEC. 12. TASK FORCE STUDY.**

9 "Seven years after the date of enactment of the Export
10 Trade Association Act of 1980, the President shall appoint,
11 by and with the advice and consent of the Senate, a task
12 force to examine the effect of the operation of this Act on
13 domestic competition and on United States international
14 trade and to recommend either continuation, revision, or ter-
15 mination of the Webb-Pomerene Act. The task force shall
16 have one year to conduct its study and to make its recom-
17 mendations to the President.".

18 (b) REDESIGNATION OF SECTION 6.—The Act is
19 amended—

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

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

24 **"SEC. 13. SHORT TITLE.".**

○

AMENDMENT NO. 4

Purpose: To modify the provisions relating to bank ownership of export trading companies.

IN THE SENATE OF THE UNITED STATES—97th Cong., 1st Sess.

S. 144

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

February 6 (legislative day, January 5), 1981

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

AMENDMENTS intended to be proposed by Mr. PROXMIRE

Viz:

1 Beginning on page 10, line 11, strike out all through
2 page 16, line 21 and insert in lieu thereof the following:
3 "(b)(1) Notwithstanding any prohibition, restriction, lim-
4 itation, condition, or requirement of any law applicable only
5 to banking organizations, a banking organization, subject to
6 the limitations of subsection (c) and this subsection and the
7 procedures of this subsection, may invest directly or indirect-
8 ly in the aggregate, not to exceed 5 per centum of its consoli-
9 dated capital and surplus (25 per centum in the case of an
10 Edge Act Corporation or Agreement Corporation not en-

1 gaged in banking) in the voting stock or other evidence of
2 ownership of one or more export trading companies.
3 "(2)(A) A banking organization may—
4 "(i) invest directly or indirectly not more than an
5 aggregate amount of $10,000,000 in one or more
6 export trading companies without the prior approval of
7 the appropriate Federal banking agency; and
8 "(ii) invest directly or indirectly an aggregate
9 amount in excess of $10,000,000 in one or more
10 export trading companies only with the prior approval
11 of the appropriate Federal banking agency.
12 "(B) Any banking organization which makes an invest-
13 ment under authority of subparagraph (A)(i) shall promptly
14 notify the appropriate Federal banking agency of such invest-
15 ment and shall file reports on such investment as such
16 agency may require.
17 "(c) The following limitations shall apply to export trad-
18 ing companies whose shares are held by one or more banking
19 organizations and to the banking organizations holding such
20 shares:
21 "(1) Except as provided in subsection (d), no
22 banking organization may acquire 20 per centum or
23 more of the voting stock or otherwise control an export
24 trading company.

1 "(2) Except as provided in subsection (d), no
2 banking organization may acquire voting stock of an
3 export trading company if such acquisition would result
4 in 50 per centum or more of the voting stock of the
5 export trading company being owned by banking
6 organizations.

7 "(3) The name of an export trading company shall
8 not be similar in any respect to that of a banking orga-
9 nization that owns its shares.

10 "(4) At any point in time, the total dollar amount
11 of the direct and indirect investments by a banking or-
12 ganization in an export trading company combined
13 with extensions of credit to such export trading compa-
14 ny by the banking organization and its direct and indi-
15 rect subsidiaries shall not exceed 10 per centum of the
16 banking organization's capital and surplus.

17 "(5) A banking organization that owns any voting
18 stock of an export trading company shall divest such
19 stock if the export trading company takes a position in
20 commodities or commodities contracts, in securities, or
21 in foreign exchange, other than as may be necessary to
22 facilitate export transactions.

23 "(6) No banking organization holding voting stock
24 or other evidences of ownership of any export trading
25 company may extend credit or cause any affiliate to

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

7 "(d)(1) With the prior approval of the Board of Gover-
8 nors of the Federal Reserve System, but subject to the limi-
9 tations contained in subsections (b)(1) and (c), a bank holding
10 company, bankers' bank, or an Edge Act Corporation may—

11 "(A) acquire 20 per centum or more of the voting
12 stock or otherwise control an export trading company;
13 and

14 "(B) acquire voting stock of an export trading
15 company if such acquisition would result in 50 per
16 centum or more of the voting stock of the export trad-
17 ing company being owned by banking organizations.

18 "(2) The Board of Governors of the Federal Reserve
19 System shall not approve an application under this subsection
20 unless it determines on the basis of the record that—

21 "(A) such investment would contribute significant-
22 ly to the export of goods or services with special em-
23 phasis on small, medium-size, and minority concerns;
24 and

1 "(B) the export trading company agrees to and
2 will operate consistent with minimizing the financial
3 risk of the investing bank holding company, bankers'
4 bank, or Edge Act Corporation or any bank affiliated
5 with such investing bank holding company, bankers'
6 bank, or investing Edge Act Corporation and with
7 maintaining a separation between banking and
8 commerce.

9 "(3) The Board of Governors of the Federal Reserve
10 System, upon receiving an application under this subsection,
11 shall provide a copy to the appropriate Federal and State
12 banking agency of the affiliate banks of the bank holding
13 company and shall consult such agencies before taking final
14 action on the application.

15 "(e)(1)(A) In the case of every application under this
16 section, the appropriate Federal banking agency shall take
17 into consideration—

18 "(i) the financial and managerial resources, com-
19 petitive situation, and future prospects of the banking
20 organization and export trading company involved;

21 "(ii) the benefits of the proposal to United States
22 business, industrial, and agricultural concerns; and

23 "(iii) the benefits to be derived from improving the
24 competitiveness of United States exports in world mar-
25 kets.

1 "(B) The appropriate Federal banking agency may not
2 approve any investment for which an application has been
3 filed under this section unless it finds that there are signifi-
4 cant export benefits and that such benefits clearly outweigh,
5 in the public interest, any adverse financial, managerial, com-
6 petitive, or other banking factors associated with the invest-
7 ment involved.
8 "(C) Any disapproval order issued under this section
9 shall contain a statement of the reasons for such disapproval.
10 "(2) In approving any application submitted under this
11 section, the appropriate Federal banking agency may impose
12 such conditions by regulation or otherwise as it deems neces-
13 sary, considering the circumstances of the investment in-
14 volved—
15 "(A) to limit the banking organization's financial
16 exposure to an export trading company including es-
17 tablishing inventory to capital ratios, based on the cap-
18 ital of the export trading company, for those circum-
19 stances in which the export trading company may bear
20 a risk on inventory held; and
21 "(B) to prevent—
22 "(i) conflicts of interest;
23 "(ii) unsafe or unsound banking practices;
24 "(iii) undue concentration of resources; and
25 "(iv) decreased or unfair competition.

1 "(3)(A) In imposing conditions under paragraph (2), the
2 appropriate Federal banking agency shall give due considera-
3 tion to—
4 "(i) the size of the banking organization and
5 export trading company involved;
6 "(ii) the degree of investment and other support to
7 be provided by the banking organization to the export
8 trading company; and
9 "(iii) the financial strength and management of
10 other investors in the export trading company.
11 "(B) The appropriate Federal banking agency shall not
12 impose any conditions under paragraph (2) which unnecessar-
13 ily disadvantage, restrict, or limit export trading companies
14 in competing in world markets or in achieving the purposes
15 of section 2 of this Act.".
16 On page 17, line 22, strike out "(e)" and insert in lieu
17 thereof "(f)".
18 On page 18, lines 14 and 15, strike out "Except for
19 violations of subsection (b)(3) of this section, the" and insert
20 in lieu thereof "The".
21 On page 19, line 1, strike out "(f)" and insert in lieu
22 thereof "(g)".
23 On page 19, line 14, strike out "(g)" and insert in lieu
24 thereof "(h)".

Amendment No. 4

S. 144

Calendar No. 38

97TH CONGRESS
1ST SESSION

S. 734

[Report No. 97–27]

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

IN THE SENATE OF THE UNITED STATES

MARCH 18, 1981

Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill under authority of the order of the Senate of March 17 (legislative day, February 16), 1981; which was read twice and ordered to be placed on the calendar

---

A BILL

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, 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,*

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

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

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

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

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented

1 into a multitude of separate functions; companies at-
2 tempting to offer comprehensive export trade services
3 lack financial leverage to reach a significant portion of
4 potential United States exporters);

5 (6) State and local government activities which
6 initiate, facilitate, or expand export of products and
7 services are an important and irreplaceable source for
8 expansion of total United States exports, as well as for
9 experimentation in the development of innovative
10 export programs keyed to local, State, and regional
11 economic needs;

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

15 (8) if United States export trading companies are
16 to be successful in promoting United States exports
17 and in competing with foreign trading companies, they
18 must be able to draw on the resources, expertise, and
19 knowledge of the United States banking system, both
20 in the United States and abroad.

21 (b) The purpose of this Act is to increase United States
22 exports of products and services, particularly by small,
23 medium-size, and minority concerns, by encouraging more ef-
24 ficient provision of export trade services to American produc-
25 ers and suppliers.

1 DEFINITIONS

2 SEC. 103. (a) As used in this Act—

3 (1) the term "export trade" means trade or com-
4 merce in goods produced in the United States or serv-
5 ices produced in the United States, and exported, or in
6 the course of being exported, from the United States to
7 any foreign nation;

8 (2) the term "goods produced in the United
9 States" means tangible property manufactured, pro-
10 duced, grown, or extracted in the United States, the
11 cost of the imported raw materials and components
12 thereof shall not exceed 50 per centum of the sales
13 price;

14 (3) the term "services produced in the United
15 States" includes, but is not limited to accounting,
16 amusement, architectural, automatic data processing,
17 business, communications, construction franchising and
18 licensing, consulting, engineering, financial, insurance,
19 legal, management, repair, tourism, training, and
20 transportation services, not less than 50 per centum of
21 the sales or billings of which is provided by United
22 States citizens or is otherwise attributable to the
23 United States;

24 (4) the term "export trade services" includes, but
25 is not limited to, consulting, international market

1 research, advertising, marketing, insurance, product
2 research and design, legal assistance, transportation,
3 including trade documentation and freight forwarding,
4 communication and processing of foreign orders to and
5 for exporters and foreign purchasers, warehousing, for-
6 eign exchange, and financing, when provided in order
7 to facilitate the export of goods or services produced in
8 the United States;

9 (5) the term "export trading company" means a
10 company, whether operated for profit or as a nonprofit
11 organization, which does business under the laws of
12 the United States or any State and which is organized
13 and operated principally for the purposes of—

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

16 (B) facilitating the exportation of goods and
17 services produced in the United States by unaffil-
18 iated persons by providing one or more export
19 trade services;

20 (6) the term "United States" means the several
21 States of the United States, the District of Columbia,
22 the Commonwealth of Puerto Rico, the Virgin Islands,
23 American Samoa, Guam, the Commonwealth of the
24 Northern Mariana Islands, and the Trust Territory of
25 the Pacific Islands;

1 (7) the term "Secretary" means the Secretary of
2 Commerce; and
3 (8) the term "company" means any corporation,
4 partnership, association, or similar organization,
5 whether operated for profit or as a nonprofit
6 organization.
7 (b) The Secretary is authorized, by regulation, to further
8 define such terms consistent with this section.
9 FUNCTIONS OF THE SECRETARY OF COMMERCE
10 SEC. 104. The Secretary shall promote and encourage
11 the formation and operation of export trading companies by
12 providing information and advice to interested persons and by
13 facilitating contact between producers of exportable goods
14 and services and firms offering export trade services.
15 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
16 BANK HOLDING COMPANIES, AND INTERNATIONAL
17 BANKING CORPORATIONS
18 SEC. 105. (a) For the purpose of this section—
19 (1) the term "banking organization" means any
20 State bank, national bank, Federal savings bank, bank-
21 ers' bank, bank holding company, Edge Act Corpora-
22 tion, or Agreement Corporation;
23 (2) the term "State bank" means any bank or
24 bankers' bank which is incorporated under the laws of
25 any State, any territory of the United States, the Com-

1 monwealth of Puerto Rico, Guam, American Samoa,
2 the Commonwealth of the Northern Mariana Islands,
3 or the Virgin Islands;
4 (3) the term "State member bank" means any
5 State bank which is a member of the Federal Reserve
6 System;
7 (4) the term "State nonmember insured bank"
8 means any State bank which is not a member of the
9 Federal Reserve System, but the deposits of which are
10 insured by the Federal Deposit Insurance Corporation;
11 (5) the term "bankers' bank" means any bank in-
12 sured by the Federal Deposit Insurance Corporation if
13 the stock of such bank is owned exclusively by other
14 banks (except to the extent directors' qualifying shares
15 are required by law) and if such bank is engaged exclu-
16 sively in providing banking services for other banks
17 and their officers, directors, or employees;
18 (6) the term "bank holding company" has the
19 same meaning as in the Bank Holding Company Act of
20 1956;
21 (7) the term "Edge Act Corporation" means a
22 corporation organized under section 25(a) of the Fed-
23 eral Reserve Act;

1 (8) the term "Agreement Corporation" means a
2 corporation operating subject to section 25 of the Fed-
3 eral Reserve Act;
4 (9) the term "appropriate Federal banking
5 agency" means—
6 (A) the Comptroller of the Currency with re-
7 spect to a national bank or any bank located in
8 the District of Columbia;
9 (B) the Board of Governors of the Federal
10 Reserve System with respect to a State member
11 bank, bank holding company, Edge Act Corpora-
12 tion, or Agreement Corporation;
13 (C) the Federal Deposit Insurance Corpora-
14 tion with respect to a State nonmember insured
15 bank; and
16 (D) the Federal Home Loan Bank Board
17 with respect to a Federal savings bank.
18 In any situation where the banking organization hold-
19 ing or making an investment in an export trading com-
20 pany is a subsidiary of another banking organization
21 which is subject to the jurisdiction of another agency,
22 and some form of agency approval or notification is
23 required, such approval or notification need only be
24 obtained from or made to, as the case may be, the
25 appropriate Federal banking agency for the banking

1 organization making or holding the investment in the
2 export trading company;
3 (10) the term "capital and surplus" shall be de-
4 fined by the appropriate Federal banking agency;
5 (11) an "affiliate" of a banking organization has
6 the same meaning as an "affiliate" of a member bank
7 under section 2 of the Banking Act of 1933, and, with
8 respect to a bank holding company, includes any bank
9 or other subsidiary of such company, the term "subsid-
10 iary" has the same meaning as in section 2 of the
11 Bank Holding Company Act of 1956;
12 (12) the terms "control" and "subsidiary" shall
13 have the same meanings assigned to those terms in
14 section 2 of the Bank Holding Company Act of 1956,
15 and the terms "controlled" and "controlling" shall be
16 construed consistently with the term "control" as de-
17 fined in section 2 of the Bank Holding Company Act of
18 1956, except that for purpose of the Export Trading
19 Company Act of 1981, the determination of control as
20 provided in section 2(a)(2) of the Bank Holding Com-
21 pany Act of 1956 shall be made by the appropriate
22 Federal banking agency; and
23 (13) for the purposes of this section, the term
24 "export trading company" means a company which
25 does business under the laws of the United States or

1 any State and which is exclusively engaged in activi-
2 ties related to international trade, whether operated
3 for profit or as a nonprofit organization: *Provided,*
4 *however,* That any such company must also either
5 meet the definition of export trading company in sec-
6 tion 103(a)(5) of this Act, or be organized and operated
7 principally for the purpose of providing export trade
8 services, as defined in section 103(a)(4) of this Act:
9 *Provided further,* That any such company, for purposes
10 of this section, (A) may engage in or hold shares of a
11 company engaged in the business of underwriting, sell-
12 ing, or distributing securities in the United States only
13 to the extent that its banking organization investor
14 may do so under applicable Federal and State banking
15 law and regulations, and (B) may not engage in manu-
16 facturing or agricultural production activities.
17 (b)(1) Notwithstanding any prohibition, restriction, limi-
18 tation, condition, or requirement of any law applicable only
19 to banking organizations, a banking organization, subject to
20 the limitations of subsection (c) and the procedures of this
21 subsection, may invest directly and indirectly in the aggre-
22 gate, up to 5 per centum of its consolidated capital and sur-
23 plus (25 per centum in the case of an Edge Act Corporation
24 or Agreement Corporation not engaged in banking) in the

1 voting stock or other evidences of ownership of one or more
2 export trading companies. A banking organization may—
3 (A) invest up to an aggregate amount of
4 $10,000,000 in one or more export trading companies
5 without the prior approval of the appropriate Federal
6 banking agency, if such investment does not cause an
7 export trading company to become a subsidiary of the
8 investing banking organization; and
9 (B) make investments in excess of an aggregate
10 amount of $10,000,000 in one or more export trading
11 companies, or make any investment or take any other
12 action which causes an export trading company to
13 become a subsidiary of the investing banking organiza-
14 tion or which will cause more than 50 per centum of
15 the voting stock of an export trading company to be
16 owned or controlled by banking organizations, only
17 with the prior approval of the appropriate Federal
18 banking agency.
19 Any banking organization which makes an investment under
20 authority of clause (A) of the preceding sentence shall
21 promptly notify the appropriate Federal banking agency of
22 such investment and shall file such reports on such invest-
23 ment as such agency may require. If, after receipt of any
24 such notification, the appropriate Federal banking agency de-
25 termines, after notice and opportunity for hearing, that the

1 export trading company is a subsidiary of the investing bank-
2 ing organization, it shall have authority to disapprove the
3 investment or impose conditions on such investment under
4 authority of subsection (d). In furtherance of such authority,
5 the appropriate Federal banking agency may require divesti-
6 ture of any voting stock or other evidences of ownership pre-
7 viously acquired, and may impose conditions necessary for
8 the termination of any controlling relationship.

9 (2) If a banking organization proposes to make any in-
10 vestment or engage in any activity included within the fol-
11 lowing two subparagraphs, it must give the appropriate Fed-
12 eral banking agency ninety days prior written notice before it
13 makes such investment or engages in such activity:

14 (A) any additional investment in an export trading
15 company subsidiary; or

16 (B) the engagement by any export trading
17 company subsidiary in any line of activity, including
18 specifically the taking of title to goods, wares, mer-
19 chandise, or commodities, if such activity was not dis-
20 closed in any prior application for approval.

21 During the notification period provided under this paragraph,
22 the appropriate Federal banking agency may, by written
23 notice, disapprove the proposed investment or activity or
24 impose conditions on such investment or activity under au-
25 thority of subsection (d). An additional investment or activity

1 covered by this paragraph may be made or engaged in, as the
2 case may be, prior to the expiration of the notification period
3 if the appropriate Federal banking agency issues written
4 notice of its intent not to disapprove.

5 (3) In the event of the failure of the appropriate Federal
6 banking agency to act on any application for approval under
7 paragraph (1)(B) of this subsection within a period of one
8 hundred and twenty days, which period begins on the date
9 the application has been accepted for processing by the ap-
10 propriate Federal banking agency, the application shall be
11 deemed to have been granted. In the event of the failure of
12 the appropriate Federal banking agency either to disapprove
13 or to impose conditions on any investment or activity subject
14 to the prior notification requirements of paragraph (2) of this
15 subsection within the ninety-day period provided therein,
16 such period beginning on the date the notification has been
17 received by the appropriate Federal banking agency, such
18 investment or activity may be made or engaged in, as the
19 case may be, any time after the expiration of such period.

20 (c) The following limitations apply to export trading
21 companies and the investments in such companies by banking
22 organizations:

23 (1) The name of any export trading company shall
24 not be similar in any respect to that of a banking orga-
25 nization that owns any of its voting stock or other evi-

1 dences of ownership except where a majority of the
2 outstanding voting stock or other evidences of owner-
3 ship of the company is owned or controlled by such
4 banking organization.

5 (2) The total historical cost of the direct and indi-
6 rect investments by a banking organization in an
7 export trading company combined with extensions of
8 credit by the banking organization and its direct and
9 indirect subsidiaries to such export trading company
10 shall not exceed 10 per centum of the banking organi-
11 zation's capital and surplus.

12 (3) A banking organization that owns any voting
13 stock or other evidences of ownership of an export
14 trading company may be required, by the appropriate
15 Federal banking agency, to terminate its ownership or
16 shall be subject to limitations or conditions which may
17 be imposed by such agency, if the agency determines
18 that the company has taken positions in commodities
19 or commodities contracts, in securities, or in foreign
20 exchange, other than as may be necessary in the
21 course of its business operations.

22 (4) No banking organization holding voting stock
23 or other evidences of ownership of any export trading
24 company may extend credit or cause any affiliate to
25 extend credit to any export trading company or to cus-

1 tomers of such company on terms more favorable than
2 those afforded similar borrowers in similar circum-
3 stances, and such extension of credit shall not involve
4 more than the normal risk of repayment or present
5 other unfavorable features.

6 (d)(1) In the case of every application under subsection
7 (b)(1)(B) of this section, the appropriate Federal banking
8 agency shall take into consideration the financial and man-
9 agerial resources, competitive situation, and future prospects
10 of the banking organization and export trading company con-
11 cerned, and the benefits of the proposal to United States
12 business, industrial, and agricultural concerns (with special
13 emphasis on small, medium-size, and minority concerns), and
14 to improving United States competitiveness in world mar-
15 kets. The appropriate Federal banking agency may not ap-
16 prove any investment for which an application has been filed
17 under subsection (b)(1)(B) if it finds that the export benefits of
18 such proposal are outweighed in the public interest by any
19 adverse financial, managerial, competitive, or other banking
20 factors associated with the particular investment. Any disap-
21 proval order issued under this section must contain a state-
22 ment of the reasons for disapproval.

23 (2) In approving any application submitted under sub-
24 section (b)(1)(B), the appropriate Federal banking agency
25 may impose such conditions which, under the circumstances

1 of such case, it may deem necessary (A) to limit a banking
2 organization's financial exposure to an export trading com-
3 pany, or (B) to prevent possible conflicts of interest or unsafe
4 or unsound banking practices. With respect to the taking of
5 title to goods, wares, merchandise, or commodities by any
6 export trading company subsidiary of a banking organization,
7 the appropriate Federal banking agencies may, by order, reg-
8 ulation, or guidelines, establish standards designed to ensure
9 against any unsafe or unsound practices that could adversely
10 affect a controlling banking organization investor. In particu-
11 lar, the appropriate Federal banking agencies may establish
12 inventory-to-capital ratios, based on the capital of the export
13 trading company subsidiary, for those circumstances in which
14 the export trading company subsidiary may bear a market
15 risk on inventory held.

16 (3) In determining whether to impose any condition
17 under the preceding paragraph (2), or in imposing such condi-
18 tion, the appropriate Federal banking agency must give due
19 consideration to the size of the banking organization and
20 export trading company involved, the degree of investment
21 and other support to be provided by the banking organization
22 to the export trading company, and the identity, character,
23 and financial strength of any other investors in the export
24 trading company. The appropriate Federal banking agency
25 shall not impose any conditions or set standards for the

1 taking of title which unnecessarily disadvantage, restrict, or
2 limit export trading companies in competing in world markets
3 or in achieving the purposes of section 102 of this Act. In
4 particular, in setting standards for the taking of title under
5 the preceding paragraph (2), the appropriate Federal banking
6 agencies shall give special weight to the need to take title in
7 certain kinds of trade transactions, such as international
8 barter transactions.

9 (4) Notwithstanding any other provision of this Act, the
10 appropriate Federal banking agency may, whenever it has
11 reasonable cause to believe that the ownership or control of
12 any investment in an export trading company constitutes a
13 serious risk to the financial safety, soundness, or stability of
14 the banking organization and is inconsistent with sound bank-
15 ing principles or with the purposes of this Act or with the
16 Financial Institutions Supervisory Act of 1966, order the
17 banking organization, after due notice and opportunity for
18 hearing, to terminate (within one hundred and twenty days or
19 such longer period as the appropriate Federal banking
20 agency may direct in unusual circumstances) its investment
21 in the export trading company.

22 (5) On or before two years after enactment of this Act,
23 the appropriate Federal banking agencies shall jointly report
24 to the Committee on Banking, Housing, and Urban Affairs of
25 the Senate and the Committee on Banking, Finance and

1 Urban Affairs of the House of Representatives their recom-
2 mendations with respect to the implementation of this sec-
3 tion, their recommendations on any changes in United States
4 law to facilitate the financing of United States exports, espe-
5 cially by small, medium-size, and minority business concerns,
6 and their recommendations on the effects of ownership of
7 United States banks by foreign banking organizations affili-
8 ated with trading companies doing business in the United
9 States.

10 (6) The appropriate Federal banking agency may, by
11 regulation or order, exempt from the collateral requirements
12 of section 23A of the Federal Reserve Act any loan or exten-
13 sion of credit made by a national or State bank to an export
14 trading company affiliate if the agency determines such ex-
15 emption is necessary to finance the operating expenses of an
16 affiliated export trading company and does not expose the
17 bank to undue financial risks. This paragraph does not apply
18 to bank affiliates currently exempt from the requirements of
19 section 23A.

20 (e)(1) Any party aggrieved by an order of an appropriate
21 Federal banking agency under this section may obtain a
22 review of such order in the United States court of appeals
23 within any circuit wherein such organization has its principal
24 place of business, or in the court of appeals for the District of
25 Columbia Circuit, by filing a notice of appeal in such court

1 within thirty days from the date of such order, and simulta-
2 neously sending a copy of such notice by registered or certi-
3 fied mail to the appropriate Federal banking agency. The
4 appropriate Federal banking agency shall promptly certify
5 and file in such court the record upon which the order was
6 based. The court shall set aside any order found to be (A)
7 arbitrary, capricious, an abuse of discretion, or otherwise not
8 in accordance with law; (B) contrary to constitutional right,
9 power, privilege or immunity; (C) in excess of statutory juris-
10 diction, authority, or limitations, or short of statutory right;
11 or (D) without observance of procedure required by law.
12 (2) Except for violations of subsection (b)(3) of this sec-
13 tion, the court shall remand for further consideration by the
14 appropriate Federal banking agency any order set aside
15 solely for procedural errors and may remand for further con-
16 sideration by the appropriate Federal banking agency any
17 order set aside for substantive errors. Upon remand, the ap-
18 propriate Federal banking agency shall have no more than
19 sixty days from date of issuance of the court's order to cure
20 any procedural error or reconsider its prior order. If the
21 agency fails to act within this period, the application or other
22 matter subject to review shall be deemed to have been grant-
23 ed as a matter of law.
24 (f)(1) The appropriate Federal banking agencies are au-
25 thorized and empowered to issue such rules, regulations, and

1 orders, to require such reports, to delegate such functions,
2 and to conduct such examinations of subsidiary export trad-
3 ing companies, as each of them may deem necessary in order
4 to perform their respective duties and functions under this
5 section and to administer and carry out the provisions and
6 purposes of this section and prevent evasions thereof.

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

12 (g) Nothing in this section shall at any time prevent any
13 State from adopting a law prohibiting banks chartered under
14 the laws of such State from investing in export trading com-
15 panies or applying conditions, limitations, or restrictions on
16 investments by banks chartered under the laws of such State
17 in export trading companies in addition to any conditions,
18 limitations, or restrictions provided under this section.

19 INITIAL INVESTMENTS AND OPERATING EXPENSES

20 SEC. 106. (a) The Economic Development Administra-
21 tion and the Small Business Administration are directed, in
22 their consideration of applications by export trading compa-
23 nies for loans and guarantees, and operating grants to non-
24 profit organizations, including applications to make new in-
25 vestments related to the export of goods or services produced

1 in the United States and to meet operating expenses, to give
2 special weight to export-related benefits, including opening
3 new markets for United States goods and services abroad and
4 encouraging the involvement of small, medium-size, and mi-
5 nority businesses or agricultural concerns in the export
6 market.

7 (b) There are authorized to be appropriated as necessary
8 to meet the purposes of this section $10,000,000 for each of
9 the fiscal years 1982, 1983, 1984, 1985, and 1986. Amounts
10 appropriated pursuant to the authority of this subsection shall
11 be in addition to amounts appropriated under the authority of
12 other Acts.

13 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
14 INVENTORY

15 SEC. 107. The Export-Import Bank of the United
16 States is authorized and directed to establish a program to
17 provide guarantees for loans extended by financial institu-
18 tions or other private creditors to export trading companies
19 as defined in section 103(5) of this Act, or to other exporters,
20 when such loans are secured by export accounts receivable or
21 inventories of exportable goods, and when in the judgment of
22 the Board of Directors—

23 (1) the private credit market is not providing ade-
24 quate financing to enable otherwise creditworthy

1 export trading companies or exporters to consummate
2 export transactions; and
3 (2) such guarantees would facilitate expansion of
4 exports which would not otherwise occur.
5 The Board of Directors shall attempt to insure that a major
6 share of any loan guarantees ultimately serves to promote
7 exports from small, medium-size and minority businesses or
8 agricultural concerns. Guarantees provided under the author-
9 ity of this section shall be subject to limitations contained in
10 annual appropriations Acts.

11 ASSISTANCE FOR SMALL BUSINESS EXPORT MANAGEMENT

12 SEC. 108. (a) The Secretary is authorized to make
13 grants to subsidize the employment of export managers by
14 small business manufacturing firms which have not previous-
15 ly been exporters in substantial amounts. The amount of such
16 a grant may not exceed the lesser of (1) 50 per centum of the
17 salary and other expenses related to the employment of a
18 full-time export manager for a period of one year, or (2)
19 $40,000.
20 (b) To be eligible under this section, each firm must
21 submit to the Secretary an application which—
22 (1) demonstrates that the firm has not derived
23 more than an average of 5 per centum of its sales
24 volume (in monetary terms) from exports during the

1 five most recent years and does not currently employ
2 an export manager;
3 (2) demonstrates that the firm is a small business
4 manufacturing firm, as defined by the Secretary after
5 consulting with the Administrator of the Small Busi-
6 ness Administration;
7 (3) describes the qualifications of a person pro-
8 posed to be hired as the firm's export manager on a
9 full-time basis for a period of at least one year, and
10 describes the terms and conditions of that person's em-
11 ployment by the firm and the amount of the grant ap-
12 plied for to subsidize the costs of that employment; and
13 (4) describes the products and services considered
14 by the firm to be suitable for export and the general
15 outlines of the export program to be undertaken under
16 the direction of the export manager.
17 (c) In selecting firms to receive grants under this sec-
18 tion, the Secretary shall consider the desirability of determin-
19 ing the feasibility of this approach to export promotion in
20 each of the regions of the Department of Commerce and in
21 relation to a variety of products and services which, in the
22 opinion of the Secretary, have export potential.
23 (d) There are authorized to be appropriated to the Sec-
24 retary not to exceed $2,000,000 for each of the fiscal years

1 1982, 1983, and 1984, to carry out the program established
2 by this section.

3 (e) The Secretary shall develop a plan to evaluate the
4 cost-effectiveness of the program of export promotion estab-
5 lished by this section and its effectiveness as compared with
6 other export promotion programs, including the amount of
7 export sales generated by small businesses assisted under this
8 section. For the purpose of the evaluation the Secretary is
9 authorized to require any firm receiving assistance under this
10 section to furnish such information as is deemed appropriate
11 to complete the required evaluation. The Secretary shall
12 make recommendations concerning continuation or expansion
13 of the program and improvements in the program structure.
14 Such evaluation and recommendations shall be submitted to
15 the Congress prior to October 1, 1983.

16 TITLE II—EXPORT TRADE ASSOCIATIONS

17 SHORT TITLE

18 SEC. 201. This title may be cited as the "Export Trade
19 Association Act of 1981".

20 FINDINGS; DECLARATION OF PURPOSE

21 SEC. 202. (a) FINDINGS.—The Congress finds and de-
22 clares that—

23 (1) the exports of the American economy are re-
24 sponsible for creating and maintaining one out of every
25 nine manufacturing jobs in the United States and for

1 generating $1 out of every $7 of total United States
2 goods produced;
3 (2) exports will play an even larger role in the
4 United States economy in the future in the face of
5 severe competition from foreign government-owned and
6 subsidized commercial entities;
7 (3) between 1968 and 1977 the United States
8 share of total world exports fell from 19 per centum to
9 13 per centum;
10 (4) trade deficits contribute to the decline of the
11 dollar on international currency markets, fueling infla-
12 tion at home;
13 (5) service-related industries are vital to the well-
14 being of the American economy inasmuch as they
15 create jobs for seven out of every ten Americans, pro-
16 vide 65 per centum of the Nation's gross national
17 product, and represent a small but rapidly rising per-
18 centage of United States international trade;
19 (6) small- and medium-sized firms are prime bene-
20 ficiaries of joint exporting, through pooling of technical
21 expertise, help in achieving economies of scale, and as-
22 sistance in competing effectively in foreign markets;
23 and

1 (7) the Department of Commerce has as one of its
2 responsibilities the development and promotion of
3 United States exports.

4 (b) PURPOSE.—It is the purpose of this Act to encour-
5 age American exports by establishing an office within the
6 Department of Commerce to encourage and promote the for-
7 mation of export trade associations through the Webb-Po-
8 merene Act, by making the provisions of that Act explicitly
9 applicable to the exportation of services, and by transferring
10 the responsibility for administering that Act from the Federal
11 Trade Commission to the Secretary of Commerce.

12 DEFINITIONS

13 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66)
14 is amended by striking out the first section (15 U.S.C. 61)
15 and inserting in lieu thereof the following:

16 "SECTION 1. DEFINITIONS.

17 "As used in this Act—

18 "(1) EXPORT TRADE.—The term 'export trade'
19 means trade or commerce in goods, wares, merchan-
20 dise, or services exported, or in the course of being ex-
21 ported from the United States or any territory thereof
22 to any foreign nation.

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

1 "(A) business, repair, and amusement
2 services;
3 "(B) management, legal, engineering, archi-
4 tectural, and other professional services; and
5 "(C) financial, insurance, transportation, in-
6 formational and any other data-based services,
7 and communication services.
8 "(3) EXPORT TRADE ACTIVITIES.—The term
9 'export trade activities' means activities or agreements
10 in the course of export trade.
11 "(4) METHODS OF OPERATION.—The term
12 'methods of operation' means the methods by which an
13 association or export trading company conducts or pro-
14 poses to conduct export trade.
15 "(5) TRADE WITHIN THE UNITED STATES.—The
16 term 'trade within the United States' whenever used in
17 this Act means trade or commerce among the several
18 States or in any territory of the United States, or in
19 the District of Columbia, or between any such territory
20 and another, or between any such territory or territo-
21 ries and any State or States or the District of Colum-
22 bia, or between the District of Columbia and any State
23 or States.
24 "(6) ASSOCIATION.—The term 'association'
25 means any combination, by contract or other arrange-

1 ment, of persons who are citizens of the United States,
2 partnerships which are created under and exist pursu-
3 ant to the laws of any State or of the United States, or
4 corporations, whether operated for profit or organized
5 as nonprofit corporations, which are created under and
6 exist pursuant to the laws of any State or of the
7 United States.

8 "(7) EXPORT TRADING COMPANY.—The term
9 'export trading company' means an export trading
10 company as defined in section 103(5) of the Export
11 Trading Company Act of 1981.

12 "(8) ANTITRUST LAWS.—The term 'antitrust
13 laws' means the antitrust laws defined in the first sec-
14 tion of the Clayton Act (15 U.S.C. 12), sections 5 and
15 6 of the Federal Trade Commission Act (15 U.S.C.
16 45, 46), and any State antitrust or unfair competition
17 law.

18 "(9) SECRETARY.—The term 'Secretary' means
19 the Secretary of Commerce.

20 "(10) ATTORNEY GENERAL.—The term 'Attorney
21 General' means the Attorney General of the United
22 States.

23 "(11) COMMISSION.—The term 'Commission'
24 means the Federal Trade Commission.".

1 ANTITRUST EXEMPTION

2 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
3 is amended by striking out section 2 (15 U.S.C. 62) and in-
4 serting in lieu thereof the following:

5 **"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**

6 "(a) ELIGIBILITY.—The export trade, export trade ac-
7 tivities, and methods of operation of any association, entered
8 into for the sole purpose of engaging in export trade, and
9 engaged in or proposed to be engaged in such export trade,
10 and the export trade, export trade activities and methods of
11 operation of any export trading company, that—

12 "(1) serve to preserve or promote export trade;

13 "(2) result in neither a substantial lessening of
14 competition or restraint of trade within the United
15 States nor a substantial restraint of the export trade of
16 any competitor of such association or export trading
17 company;

18 "(3) do not unreasonably enhance, stabilize, or de-
19 press prices within the United States of the goods,
20 wares, merchandise, or services of the class exported
21 by such association or export trading company;

22 "(4) do not constitute unfair methods of competi-
23 tion against competitors engaged in the export trade of
24 goods, wares, merchandise, or services of the class ex-
25 ported by such association or export trading company;

1 "(5) do not include any act which results, or may
2 reasonably be expected to result, in the sale for con-
3 sumption or resale within the United States of the
4 goods, wares, merchandise, or services exported by the
5 association or export trading company or its members;
6 and

7 "(6) do not constitute trade or commerce in the
8 licensing of patents, technology, trademarks, or know-
9 how, except as incidental to the sale of the goods,
10 wares, merchandise, or services exported by the associ-
11 ation or export trading company or its members

12 shall, when certified according to the procedures set forth in
13 this Act, be eligible for the exemption provided in subsection
14 (b).

15 "(b) EXEMPTION.—An association or an export trading
16 company and its members are exempt from the operation of
17 the antitrust laws with respect to their export trade, export
18 trade activities and methods of operation that are specified in
19 a certificate issued according to the procedures set forth in
20 this Act, carried out in conformity with the provisions, terms,
21 and conditions prescribed in such certificate and engaged in
22 during the period in which such certificate is in effect. The
23 subsequent revocation or invalidation in whole or in part of
24 such certificate shall not render an association or its members
25 or an export trading company or its members, liable under

1 the antitrust laws for such export trade, export trade activi-
2 ties, or methods of operation engaged in during such period.
3 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
4 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
5 Act, the Attorney General or the Commission has formally
6 advised the Secretary of disagreement with his determination
7 to issue a proposed certificate, and the Secretary has none-
8 theless issued such proposed certificate or an amended certifi-
9 cate, the exemption provided by this section shall not be
10 effective until thirty days after the issuance of such
11 certificate.".

12 AMENDMENT OF SECTION 3

13 SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61–66)
14 is amended—

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

17 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
18 ATIONS PERMITTED.",

19 and

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

22 ADMINISTRATION: ENFORCEMENT: REPORTS

23 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
24 (15 U.S.C. 61–66) is amended by striking out sections 4 and

1 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
2 following sections:

3 "SEC. 4. CERTIFICATION.

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

8 "(1) The name of the association or export trad-
9 ing company.

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

13 "(3) The names and addresses of all of the offi-
14 cers, stockholders, and members of the association or
15 export trading company.

16 "(4) A copy of the certificate or articles of incor-
17 poration and bylaws, if the association or export trad-
18 ing company is a corporation; or a copy of the articles,
19 partnership, joint venture, or other agreement or con-
20 tract under which the association or export trading
21 company conducts or proposes to conduct its export
22 trade activities, or contract of association, if the associ-
23 ation or export trading company is unincorporated.

24 "(5) A description of the goods, wares, merchan-
25 dise, or services which the association or export trad-

1 ing company or their members export or propose to
2 export.
3 "(6) A description of the domestic and interna-
4 tional conditions, circumstances, and factors which
5 show that the association or export trading company
6 and its activities will serve a specified need in promot-
7 ing the export trade of the described goods, wares,
8 merchandise, or services.
9 "(7) The export trade activities in which the asso-
10 ciation or export trading company intends to engage
11 and the methods by which the association or export
12 trading company conducts or proposes to conduct
13 export trade in the described goods, wares, merchan-
14 dise, or services, including, but not limited to, any
15 agreements to sell exclusively to or through the associ-
16 ation or export trading company, any agreements with
17 foreign persons who may act as joint selling agents,
18 any agreements to acquire a foreign selling agent, any
19 agreements for pooling tangible or intangible property
20 or resources, or any territorial, price-maintenance,
21 membership, or other restrictions to be imposed upon
22 members of the association or export trading company.
23 "(8) The names of all countries where export
24 trade in the described goods, wares, merchandise, or

1 services is conducted or proposed to be conducted by
2 or through the association or export trading company.
3 "(9) Any other information which the Secretary
4 may request concerning the organization, operation,
5 management, or finances of the association or export
6 trading company; the relation of the association or
7 export trading company to other associations, corpora-
8 tions, partnerships, and individuals; and competition or
9 potential competition, and effects of the association or
10 export trading company thereon. The Secretary may
11 request such information as part of an initial applica-
12 tion or as a necessary supplement thereto. The Secre-
13 tary may not request information under this paragraph
14 which is not reasonably available to the person making
15 application or which is not necessary for certification of
16 the prospective association or export trading company.
17 "(b) ISSUANCE OF CERTIFICATE.—
18 "(1) NINETY-DAY PERIOD.—The Secretary shall
19 issue a certificate to an association or export trading
20 company within ninety days after receiving the applica-
21 tion for certification or necessary supplement thereto if
22 the Secretary, after consultation with the Attorney
23 General and Commission, determines that the associ-
24 ation and, its export trade, export trade activities and
25 methods of operation, or export trading company, and

1 its export trade, export trade activities and methods of
2 operation meet the requirements of section 2 of this
3 Act and will serve a specified need in promoting the
4 export trade of the goods, wares, merchandise, or serv-
5 ices described in the application for certification. The
6 certificate shall specify the permissible export trade,
7 export trade activities and methods of operation of the
8 association or export trading company and shall include
9 any terms and conditions the Secretary deems neces-
10 sary to comply with the requirements of section 2 of
11 this Act. The Secretary shall deliver to the Attorney
12 General and the Commission a copy of any certificate
13 that he proposes to issue. The Attorney General or
14 Commission may, within fifteen days thereafter, give
15 written notice to the Secretary of an intent to offer
16 advice on the determination. The Attorney General or
17 Commission may, after giving such written notice and
18 within forty-five days of the time the Secretary has de-
19 livered a copy of a proposed certificate, formally advise
20 the Secretary and the petitioning association or export
21 trading company of disagreement with the Secretary's
22 determination. The Secretary shall not issue any certif-
23 icate prior to the expiration of such forty-five-day
24 period unless he has (A) received no notice of intent to
25 offer advice by the Attorney General or the Commis-

1 sion within fifteen days after delivering a copy of a
2 proposed certificate, or (B) received any noticed formal
3 advice of disagreement or written confirmation that no
4 formal disagreement will be transmitted from the At-
5 torney General and the Commission. After the forty-
6 five-day period or, if no notice of intent to offer advice
7 has been given, after the fifteen-day period, the Secre-
8 tary shall either issue the proposed certificate, issue an
9 amended certificate, or deny the application. Upon
10 agreement of the applicant, the Secretary may delay
11 taking action for not more than thirty additional days
12 after the forty-five-day period. Before offering advice
13 on a proposed certification, the Attorney General and
14 Commission shall consult in an effort to avoid, wher-
15 ever possible, having both agencies offer advice on any
16 application.

17 "(2) EXPEDITED CERTIFICATION.—In those in-
18 stances where the temporary nature of the export trade
19 activities, deadlines for bidding on contracts or filling
20 orders, or any other circumstances beyond the control
21 of the association or export trading company which
22 have a significant impact on its export trade, make the
23 ninety-day period for application approval described in
24 paragraph (1) of this subsection, or an amended appli-
25 cation approval as provided in subsection (c) of this

1 section, impractical for the association or export trad-
2 ing company seeking certification, such association or
3 export trading company may request and may receive
4 expedited action on its application for certification.

5 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
6 ASSOCIATIONS.—Any association registered with the
7 Federal Trade Commission under this Act as of Janu-
8 ary 19, 1981, may file with the Secretary an applica-
9 tion for automatic certification of any export trade,
10 export trade activities, and methods of operation in
11 which it was engaged prior to enactment of the Export
12 Trade Association Act of 1981. Any such application
13 must be filed within one hundred and eighty days after
14 the date of enactment of such Act and shall be acted
15 upon by the Secretary in accordance with the proce-
16 dures provided by this section. The Secretary shall
17 issue to the association a certificate specifying the per-
18 missible export trade, export trade activities, and meth-
19 ods of operation that he determines are shown by the
20 application (including any necessary supplement there-
21 to), on its face, to be eligible for certification under this
22 Act, and including any terms and conditions the Secre-
23 tary deems necessary to comply with the requirements
24 of section 2(a) of this Act, unless the Secretary pos-

1 sesses information clearly indicating that the require-
2 ments of section 2(a) are not met.
3 "(4) APPEAL OF DETERMINATION.—If the Secre-
4 tary determines not to issue a certificate to an associ-
5 ation or export trading company which has submitted
6 an application for certification, or for an amendment of
7 a certificate, then he shall—
8 "(A) notify the association or export trading
9 company of his determination and the reasons for
10 his determination, and
11 "(B) upon request made by the association
12 or export trading company, afford it an oppor-
13 tunity for reconsideration with respect to that
14 determination.
15 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
16 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
17 terial change in the membership, export trade activities, or
18 methods of operation, of an association or export trading
19 company then it shall report such change to the Secretary
20 and may apply to the Secretary for an amendment of its cer-
21 tificate. Any application for an amendment to a certificate
22 shall set forth the requested amendment of the certificate and
23 the reasons for the requested amendment. Any request for
24 the amendment of a certificate shall be treated in the same
25 manner as an original application for a certificate.

1 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
2 BY SECRETARY.—
3 "(1) The Secretary on his own initiative shall,
4 upon a determination that the export trade, export
5 trade activities or methods of operation of an associ-
6 ation or export trading company no longer comply with
7 the requirements of section 2 of this Act, revoke its
8 certificate or make such amendments as may be neces-
9 sary to comply with the requirements of such section.
10 "(2) Prior to revoking or amending a certificate,
11 the Secretary shall—
12 "(A) notify the holder of the certificate in
13 writing of the facts or conduct which may warrant
14 the action, and
15 "(B) provide the holder of the certificate an
16 opportunity for such hearing as may be appropri-
17 ate in the circumstances.
18 "(3) Before revoking or amending a certificate
19 pursuant to this subsection the Secretary may in his
20 discretion provide the holder of the certificate an op-
21 portunity to achieve compliance within a reasonable
22 period of time not to exceed ninety days, except that
23 nothing in this paragraph shall affect any action under
24 section 4(e) of this Act.

1 "(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
2 ATTORNEY GENERAL OR COMMISSION.—
3 "(1) The Attorney General or the Commission
4 may bring an action against an association or export
5 trading company or its members to invalidate, in whole
6 or in part, its certificate on the ground that the export
7 trade, export trade activities or methods of operation of
8 the association or export trading company fail or have
9 failed to meet the requirements of section 2 of this Act.
10 Except in the case of an action brought during the
11 period before an antitrust exemption becomes effective,
12 as provided for in section 2(c), the Attorney General or
13 Commission shall notify any association or export trad-
14 ing company or member thereof, against which it in-
15 tends to bring an action for invalidation, thirty days in
16 advance, as to its intent to file an action under this
17 subsection. The district court shall consider any issues
18 presented in any such action de novo and if it finds
19 that the requirements of section 2 are not met, it shall
20 issue an order declaring the certificate invalid or any
21 other order necessary to effectuate the purposes of this
22 Act and the requirements of section 2.
23 "(2) Any action brought under this subsection
24 shall be considered an action described in section 1337
25 of title 28, United States Code. Pending any such

1 action which was brought during the period any ex-
2 emption is held in abeyance pursuant to section 2(c) of
3 this Act, the court may make such temporary restrain-
4 ing order or prohibition as shall be deemed just in the
5 premises.

6 "(3) No person other than the Attorney General
7 or Commission shall have standing to bring an action
8 against an association or export trading company or
9 their respective members for failure of the association
10 or export trading company or their respective export
11 trade, export trade activities or methods of operation to
12 meet the eligibility requirements of section 2 of this
13 Act.

14 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
15 ation and each export trading company and any subsidiary
16 thereof shall comply with United States export control laws
17 pertaining to the export or transshipment of any goods on the
18 Commodity Control List to controlled countries. Such laws
19 shall be complied with before actual shipment.

20 "(g) JUDICIAL REVIEW.—Final orders of the Secretary
21 under this section shall be subject to judicial review pursuant
22 to chapter 7 of title 5, United States Code.

23 **"SEC. 5. GUIDELINES.**

24 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
25 days after the enactment of the Export Trade Association

1 Act of 1981, the Secretary, after consultation with the Attor-
2 ney General, and the Commission shall publish proposed
3 guidelines for purposes of determining whether export trade,
4 export trade activities and methods of operation of an associ-
5 ation or export trading company will meet the requirements
6 of section 2 of this Act.

7 "(b) PUBLIC COMMENT PERIOD.—Following publica-
8 tion of the proposed guidelines, and any proposed revision of
9 guidelines, interested parties shall have thirty days to com-
10 ment on the proposed guidelines. The Secretary shall review
11 the comments and, after consultation with the Attorney Gen-
12 eral, and Commission, publish final guidelines within thirty
13 days after the last day on which comments may be made
14 under the preceding sentence.

15 "(c) PERIODIC REVISION.—After publication of the
16 final guidelines, the Secretary shall periodically review the
17 guidelines and, after consultation with the Attorney General,
18 and the Commission, propose revisions as needed.

19 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
20 ACT.—The promulgation of guidelines under this section
21 shall not be considered rulemaking for purposes of subchapter
22 II of chapter 5 of title 5, United States Code, and section
23 553 of such title shall not apply to their promulgation.

1 "SEC. 6. ANNUAL REPORTS.

2 "Every certified association or export trading company
3 shall submit to the Secretary an annual report, in such form
4 and at such time as he may require, which report updates
5 where necessary the information described by section 4(a) of
6 this Act.

7 "SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF
8 COMMERCE.

9 "The Secretary shall establish within the Department of
10 Commerce an office to promote and encourage to the great-
11 est extent feasible the formation of export trade associations
12 and export trading companies through the use of provisions of
13 this Act in a manner consistent with this Act. The Office of
14 Export Trade in the Department of Commerce shall report to
15 the congressional committees of appropriate jurisdiction on
16 an annual basis, all East-West trade transactions requiring
17 validated licenses, and any other relevant information on the
18 role of United States export trading companies or subsidiaries
19 thereof in East-West trade.

20 "SEC. 8. CONFIDENTIALITY OF APPLICATION AND ANNUAL
21 REPORT INFORMATION.

22 "(a) GENERAL RULE.—Portions of applications made
23 under section 4, including amendments to such applications,
24 and annual reports made under section 6 that contain trade
25 secrets or confidential business or financial information, the
26 disclosure of which would harm the competitive position of

1 the person submitting such information shall be confidential,
2 and, except as authorized by this section, no officer or em-
3 ployee, or former officer or employee, of the United States
4 shall disclose any such confidential information, obtained by
5 him in any manner in connection with his service as such an
6 officer or employee.

7 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
8 MISSION.—Whenever the Secretary believes that an appli-
9 cant may be eligible for a certificate, or has issued a certifi-
10 cate to an association or export trading company, he shall
11 promptly make available all materials filed by the applicant,
12 association or export trading company, including applications
13 and supplements thereto, reports of material changes, appli-
14 cations for amendments and annual reports, and information
15 derived therefrom, to the Attorney General or Commission,
16 or any employee or officer thereof, for official use in connec-
17 tion with an investigation or judicial or administrative pro-
18 ceeding under this Act or the antitrust laws to which the
19 United States or the Commission is or may be a party. Such
20 information may only be disclosed by the Secretary upon a
21 prior certification that the information will be maintained in
22 confidence and will only be used for such official law enforce-
23 ment purposes.

1 "SEC. 9. 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 or export
6 trading company, certified under this Act, are inconsistent
7 with such international obligations, the Secretary may re-
8 quire the association or export trading company to modify its
9 respective operations, and in so doing afford the association
10 or export trading company a reasonable opportunity to
11 comply therewith, so as to be consistent with such interna-
12 tional obligations.

13 "SEC. 10. REGULATIONS.

14 "The Secretary, after consultation with the Attorney
15 General and the Commission, shall promulgate such rules
16 and regulations as may be necessary to carry out the pur-
17 poses of this Act.

18 "SEC. 11. TASK FORCE STUDY.

19 "Seven years after the date of enactment of the Export
20 Trade Association Act of 1981, the President shall appoint,
21 by and with the advice and consent of the Senate, a task
22 force to examine the effect of the operation of this Act on
23 domestic competition and on United States international
24 trade and to recommend either continuation, revision, or ter-
25 mination of the Webb-Pomerene Act. The task force shall

1 have one year to conduct its study and to make its recom-
2 mendations to the President.".

3 (b) REDESIGNATION OF SECTION 6.—The Act is
4 amended—

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

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

9 **"SEC. 12. SHORT TITLE.".**

10 EFFECTIVE DATE WITH REGARD TO EXISTING
11 ASSOCIATIONS

12 SEC. 207. (a) GENERAL RULE.—The amendments to
13 the Webb-Pomerene Act set forth in sections 203, 204, 205,
14 and 206 of this Act shall become effective with regard to an
15 existing association described in subsection (b) only at such
16 time as the association may elect to be certified pursuant to
17 subsection (c).

18 (b) ELECTION TO CONTINUE UNDER PRIOR LAW.—
19 Application of the antitrust laws to any association which as
20 of January 1, 1981, had filed with the Commission the infor-
21 mation specified under section 5 of the Webb-Pomerene Act
22 as in effect immediately prior to the date of enactment of this
23 Act shall continue to be governed by the standards set forth
24 in that Act, unless such association elects to seek certifica-
25 tion under subsection (c).

1 (c) ELECTION TO APPLY FOR CERTIFICATION.—Any
2 association to which subsection (b) applies may, at any time
3 after the effective date of this Act, file an application for
4 certification with the Secretary containing the information set
5 forth in section 4(a) of the Webb-Pomerene Act, as amended
6 by section 206 of this Act. The Secretary shall consider and
7 act upon such application in the manner provided in section
8 4(b) of the Webb-Pomerene Act, as amended by section 206
9 of this Act. The association filing an application pursuant to
10 this subsection shall continue to be subject to subsection (b)
11 of this section until the Secretary issues a certificate and such
12 certificate has been accepted by the association; the associ-
13 ation must decide whether or not to accept such certificate no
14 later than thirty days after the Secretary's determination
15 with respect thereto has become final.

Calendar No. 38

97TH CONGRESS
1ST SESSION

S. 734

[Report No. 97–27]

A BILL

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

MARCH 18, 1981

Ordered to be placed on the calendar

AMENDMENT NO. 25 Calendar No. 38

Purpose: To establish an International Antitrust Task Force.

IN THE SENATE OF THE UNITED STATES—97th Cong., 1st Sess.

S. 734

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

March 31 (legislative day, February 16), 1981

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MATHIAS

Viz: On page 47, line 16, add the following title III:

1 SHORT TITLE

2 SEC. 301. This title may be cited as the "Commission
3 on the International Application of the United States Anti-
4 trust Laws Act".

5 ESTABLISHMENT OF COMMISSION

6 SEC. 302. (a) There is established the Commission on
7 the International Application of the United States Antitrust
8 Laws (hereinafter referred to as the "Commission").

9 (b) The Commission shall be composed of eighteen
10 members who shall be appointed by the President as follows:

11 (1) four members from the executive branch of the
12 Government:

13 (A) the Vice President of the United States;

1 (B) the Assistant Attorney General for the
2 Antitrust Division;
3 (C) the Chairman of the Federal Trade Com-
4 mission; and
5 (D) the Legal Advisor of the Department of
6 State;
7 (2) four members from the Senate, two members
8 to be named upon the recommendation of the majority
9 leader, and two members to be named upon the recom-
10 mendation of the minority leader;
11 (3) four members from the House of Representa-
12 tives to be named upon the recommendation of the
13 Speaker of the House of Representatives; and
14 (4) six members from the private sector.
15 (c) The Chairman of the Commission shall be the Vice
16 President of the United States.
17 (d) The President shall designate the Assistant Attorney
18 General for the Antitrust Division and the Legal Advisor of
19 the Department of State as the Vice Chairmen of the Com-
20 mission.
21 (e) The majority and minority leaders and the Speaker
22 of the House shall make recommendations for the appoint-
23 ments to be made pursuant to subsection (b) within thirty
24 days of the enactment of this Act.

1 (f) The President shall make all of the appointments in
2 accordance with subsection (b) after receiving the recommen-
3 dations set forth in paragraphs (2) and (3) of subsection (b),
4 but such appointments shall be made no later than sixty days
5 after the date of enactment.

6 (g) The first meeting of the Commission shall be called
7 by the President within thirty days following the date such
8 appointments to the Commission are made.

9 (h) Not more than one-half of the members of each class
10 of members set forth in paragraphs (2), (3), and (4) of subsec-
11 tion (b) shall be from the same political party.

12 (i) The term of office for members shall be for the term
13 of the Commission.

14 (j) A vacancy in the Commission shall not affect its
15 powers, and shall be filled in the same manner in which the
16 original appointment was made.

17 (k) Ten members of the Commission shall constitute a
18 quorum (but a lesser number may hold hearings).

19 (l) The membership of the Commission shall be selected
20 in such a manner as to be broadly representative of the var-
21 ious interests, needs, and concerns which may be affected by
22 the international aspects of the United States antitrust laws.

23 PURPOSES OF THE COMMISSION

24 SEC. 303. (a) The Commission shall—

1 (1) conduct a comprehensive study of and make
2 recommendations concerning the international aspects
3 of the antitrust laws of the United States, the applica-
4 ble rules of court, related statutes, administrative pro-
5 cedures, and their applications, their consequences, and
6 their interpretation by the courts and Federal agencies
7 (hereinafter referred to as "the United States antitrust
8 laws"); and
9 (2) make periodic reports to the President and to
10 the Congress concerning its activities and make a final
11 report to the President and the Congress concerning
12 such comprehensive study.
13 (b) Such comprehensive study shall specifically
14 address—
15 (1) the application of the United States antitrust
16 laws in foreign commerce, and their effect on—
17 (A) the ability of United States enterprises to
18 compete effectively abroad; and
19 (B) the ability of United States enterprises to
20 compete or deal effectively with foreign controlled
21 enterprises in market and nonmarket economies;
22 (2) the effect of the application of the United
23 States antitrust laws on United States relations with
24 other countries;

1 (3) the jurisdiction and scope of the application of
2 the antitrust laws to foreign conduct and foreign
3 parties;
4 (4) the issue of reciprocity between nations with
5 respect to mutual access to markets, equal opportuni-
6 ties for foreign investments, and enforcement of anti-
7 trust laws;
8 (5) the applications of United States rules of court
9 relating to the enforcement of antitrust laws in the
10 context of international transactions (for example, the
11 "per se" and "rule of reason" doctrines);
12 (6) the application of the United States antitrust
13 laws to joint ventures, mergers, acquisitions, and distri-
14 butions and licensing arrangements between and
15 among the United States and foreign based enterprises;
16 and
17 (7) the proper scope and effect of the following on
18 the application of the United States antitrust laws:
19 (A) the rules governing sovereign immunity;
20 (B) the defense of "foreign sovereign compul-
21 sion"; and
22 (C) the doctrine of comity.
23 COMPENSATION OF MEMBERS OF THE COMMISSION
24 SEC. 304. (a) Members of Congress, who are members
25 of the Commission, shall serve without compensation in addi-

1 tion to that received for their services as Members of Con-
2 gress, but they shall be reimbursed for travel, subsistence,
3 and other necessary expenses incurred by them in the per-
4 formance of the duties vested in the Commission.

5 (b) Notwithstanding section 5533 of title 5, United
6 States Code, any member of the Commission who is in the
7 executive branch of the Government shall receive the com-
8 pensation which he would receive if he were not a member of
9 the Commission, plus such additional compensation, if any, as
10 is necessary to make his aggregate salary not in excess of the
11 highest rate for employees compensated at the rate of GS–18
12 of the General Schedule under section 5332 of title 5, United
13 States Code, and he shall be reimbursed for travel, subsist-
14 ence, and other necessary expenses incurred by him in the
15 performance of the duties vested in the Commission.

16 (c) Members from the private sector shall each receive
17 compensation not exceeding $200 per diem when engaged in
18 the performance of duties vested in the Commission, plus re-
19 imbursement for travel, subsistence, and other necessary ex-
20 penses incurred by them in the performance of such duties.

21 POWERS OF THE COMMISSION

22 SEC. 305. (a)(1) The Commission or, on the authoriza-
23 tion of the Commission, any subcommittee thereof, may, for
24 the purpose of carrying out its functions and duties, hold such
25 hearings and sit and act at such times and places, administer

1 such oaths, and require, by subpena or otherwise, the attend-
2 ance and testimony of such witnesses, and the production of
3 such books, records, correspondence, memorandums, papers,
4 and documents as the Commission or such subcommittee may
5 deem advisable. Subpenas may be issued to any person
6 within the jurisdiction of the United States courts, under the
7 signature of the Chairman or Vice Chairmen, or any duly
8 designated member, and may be served by any person desig-
9 nated by the Chairman, the Vice Chairmen, or such member.
10 In the case of the failure of any witness to comply with any
11 subpena or to testify when summoned under authority of this
12 section, the provisions of section 102 through 104, inclusive,
13 of the Revised Statutes (2 U.S.C. 192–194), shall apply to
14 the Commission to the same extent as such provisions apply
15 to Congress.

16 (2) For purposes of Section 552(e) of title 5, United
17 States Code, the Commission shall not be considered to be an
18 agency.

19 (b) Each department, agency, and instrumentality of the
20 executive branch of the Government, including independent
21 agencies, is authorized and directed to furnish to the Com-
22 mission, upon request made by the Chairman or Vice Chair-
23 men, such information as the Commission deems necessary to
24 carry out its functions under this title.

1 (c) Subject to such rules and regulations as may be
2 adopted by the Commission, the Chairman shall have the
3 power to—

4 (1) appoint and fix the compensation of an Execu-
5 tive Director, and such additional staff personnel as he
6 deems necessary, without regard to the provisions of
7 title 5, United States Code, governing appointments in
8 the competitive service, and without regard to the pro-
9 visions of chapter 51 and subchapter III of chapter 53
10 of such title relating to classification and General
11 Schedule pay rates, but at rates not in excess of the
12 maximum rate for GS–18 of the General Schedule
13 under section 5332 of such title, and

14 (2) procure temporary and intermittent services in
15 accordance with the provisions of section 3109 of title
16 5, United States Code, but at rates not to exceed $200
17 per diem for individuals.

18 (d) The Commission is authorized to enter into contracts
19 with Federal or State agencies, private firms, institutions,
20 and individuals for the conduct of research or surveys, the
21 preparation of reports, and other activities necessary to the
22 discharge of its duties to such extent and in such amount as
23 are provided in appropriations Acts.

1 FINAL REPORT

2 SEC. 306. The Commission shall transmit to the Presi-
3 dent and to the Congress not later than one year after the
4 first meeting of the Commission, a final report containing a
5 detailed statement of the findings and conclusions of the
6 Commission, including its recommendations for administra-
7 tive, judicial, and legislative action which it deems advisable.
8 Any formal recommendation made by the Commission to the
9 President and to the Congress must have the majority vote of
10 the Commission as present and voting.

11 EXPIRATION OF THE COMMISSION

12 SEC. 307. Sixty days after the submission to Congress
13 of the final report provided for in section 6, the Commission
14 shall cease to exist.

15 AUTHORIZATION OF APPROPRIATION

16 SEC. 308. There are hereby authorized to be appropri-
17 ated such sums as may be necessary to carry out the activi-
18 ties of the Commission.

19 EFFECTIVE DATE

20 SEC. 309. The provisions of this title shall take effect
21 upon the date of enactment of this title.

Amendment No. 25

S. 734

97TH CONGRESS
1ST SESSION

S. 734

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 1981

Referred to the Committees on Banking, Finance and Urban Affairs, Foreign Affairs, and the Judiciary

AN ACT

To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, 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 TITLE I—EXPORT TRADING COMPANIES

4 SHORT TITLE

5 SEC. 101. This title may be cited as the "Export Trad-
6 ing Company Act of 1981".

7 FINDINGS

8 SEC. 102. (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);
24 (6) State and local government activities which
25 initiate, facilitate, or expand export of products and

1 services are an important and irreplaceable source for
2 expansion of total United States exports, as well as for
3 experimentation in the development of innovative
4 export programs keyed to local, State, and regional
5 economic needs;

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

9 (8) if United States export trading companies are
10 to be successful in promoting United States exports
11 and in competing with foreign trading companies, they
12 must be able to draw on the resources, expertise, and
13 knowledge of the United States banking system, both
14 in the United States and abroad.

15 (b) The purpose of this Act is to increase United States
16 exports of products and services, particularly by small,
17 medium-size, and minority concerns, by encouraging more ef-
18 ficient provision of export trade services to American produc-
19 ers and suppliers.

20 DEFINITIONS

21 SEC. 103. (a) As used in this Act—

22 (1) the term "export trade" means trade or com-
23 merce in goods produced in the United States or serv-
24 ices produced in the United States, and exported, or in

1 the course of being exported, from the United States to
2 any foreign nation;
3 (2) the term "goods produced in the United
4 States" means tangible property manufactured, pro-
5 duced, grown, or extracted in the United States, the
6 cost of the imported raw materials and components
7 thereof shall not exceed 50 per centum of the sales
8 price;
9 (3) the term "services produced in the United
10 States" includes, but is not limited to accounting,
11 amusement, architectural, automatic data processing,
12 business, communications, construction franchising and
13 licensing, consulting, engineering, financial, insurance,
14 legal, management, repair, tourism, training, and
15 transportation services, not less than 50 per centum of
16 the sales or billings of which is provided by United
17 States citizens or is otherwise attributable to the
18 United States;
19 (4) the term "export trade services" includes, but
20 is not limited to, consulting, international market re-
21 search, advertising, marketing, insurance, product re-
22 search and design, legal assistance, transportation, in-
23 cluding trade documentation and freight forwarding,
24 communication and processing of foreign orders to and
25 for exporters and foreign purchasers, warehousing, for-

1 eign exchange, and financing, when provided in order
2 to facilitate the export of goods or services produced in
3 the United States;

4 (5) the term "export trading company" means a
5 company, whether operated for profit or as a nonprofit
6 organization, which does business under the laws of
7 the United States or any State and which is organized
8 and operated principally for the purposes of—

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

11 (B) facilitating the exportation of goods or
12 services produced in the United States by unaffil-
13 iated persons by providing one or more export
14 trade services;

15 (6) the term "United States" means the several
16 States of the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, the Virgin Islands,
18 American Samoa, Guam, the Commonwealth of the
19 Northern Mariana Islands, and the Trust Territory of
20 the Pacific Islands;

21 (7) the term "Secretary" means the Secretary of
22 Commerce; and

23 (8) the term "company" means any corporation,
24 partnership, association, or similar organization, wheth-
25 er operated for profit or as a nonprofit organization.

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

3 FUNCTIONS OF THE SECRETARY OF COMMERCE

4 SEC. 104. The Secretary shall promote and encourage
5 the formation and operation of export trading companies by
6 providing information and advice to interested persons and by
7 facilitating contact between producers of exportable goods
8 and services and firms offering export trade services.

9 OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS,
10 BANK HOLDING COMPANIES, AND INTERNATIONAL
11 BANKING CORPORATIONS

12 SEC. 105. (a) For the purpose of this section—

13 (1) the term "banking organization" means any
14 State bank, national bank, Federal savings bank, bank-
15 ers' bank, bank holding company, Edge Act Corpora-
16 tion, or Agreement Corporation;

17 (2) the term "State bank" means any bank or
18 bankers' bank which is incorporated under the laws of
19 any State, any territory of the United States, the Com-
20 monwealth of Puerto Rico, Guam, American Samoa,
21 the Commonwealth of the Northern Mariana Islands,
22 or the Virgin Islands;

23 (3) the term "State member bank" means any
24 State bank which is a member of the Federal Reserve
25 System;

1 (4) the term "State nonmember insured bank"
2 means any State bank which is not a member of the
3 Federal Reserve System, but the deposits of which are
4 insured by the Federal Deposit Insurance Corporation;
5 (5) the term "bankers' bank" means any bank in-
6 sured by the Federal Deposit Insurance Corporation if
7 the stock of such bank is owned exclusively by other
8 banks (except to the extent directors' qualifying shares
9 are required by law) and if such bank is engaged exclu-
10 sively in providing banking services for other banks
11 and their officers, directors, or employees;
12 (6) the term "bank holding company" has the
13 same meaning as in the Bank Holding Company Act of
14 1956;
15 (7) the term "Edge Act Corporation" means a
16 corporation organized under section 25(a) of the Fed-
17 eral Reserve Act;
18 (8) the term "Agreement Corporation" means a
19 corporation operating subject to section 25 of the Fed-
20 eral Reserve Act;
21 (9) the term "appropriate Federal banking
22 agency" means—
23 (A) the Comptroller of the Currency with re-
24 spect to a national bank or any bank located in
25 the District of Columbia;

1 (B) the Board of Governors of the Federal
2 Reserve System with respect to a State member
3 bank, bank holding company, Edge Act Corpora-
4 tion, or Agreement Corporation;
5 (C) the Federal Deposit Insurance Corpora-
6 tion with respect to a State nonmember insured
7 bank; and
8 (D) the Federal Home Loan Bank Board
9 with respect to a Federal savings bank.
10 In any situation where the banking organization hold-
11 ing or making an investment in an export trading com-
12 pany is a subsidiary of another banking organization
13 which is subject to the jurisdiction of another agency,
14 and some form of agency approval or notification is re-
15 quired, such approval or notification need only be ob-
16 tained from or made to, as the case may be, the appro-
17 priate Federal banking agency for the banking organi-
18 zation making or holding the investment in the export
19 trading company;
20 (10) the term "capital and surplus" shall be de-
21 fined by the appropriate Federal banking agency;
22 (11) an "affiliate" of a banking organization has
23 the same meaning as an "affiliate" of a member bank
24 under section 2 of the Banking Act of 1933, and, with
25 respect to a bank holding company, includes any bank

1 or other subsidiary of such company, the term "subsid-
2 iary" has the same meaning as in section 2 of the
3 Bank Holding Company Act of 1956;
4 (12) the terms "control" and "subsidiary" shall
5 have the same meanings assigned to those terms in
6 section 2 of the Bank Holding Company Act of 1956,
7 and the terms "controlled" and "controlling" shall be
8 construed consistently with the term "control" as de-
9 fined in section 2 of the Bank Holding Company Act of
10 1956, except that for purpose of the Export Trading
11 Company Act of 1981, the determination of control as
12 provided in section 2(a)(2) of the Bank Holding Com-
13 pany Act of 1956 shall be made by the appropriate
14 Federal banking agency; and
15 (13) for the purposes of this section, the term
16 "export trading company" means a company which
17 does business under the laws of the United States or
18 any State and which is exclusively engaged in activi-
19 ties related to international trade, whether operated for
20 profit or as a nonprofit organization: *Provided, how-*
21 *ever,* That any such company must also either meet
22 the definition of export trading company in section
23 103(a)(5) of this Act, or be organized and operated
24 principally for the purpose of providing export trade
25 services, as defined in section 103(a)(4) of this Act:

1 *Provided further,* That any such company, for purposes
2 of this section, (A) may engage in or hold shares of a
3 company engaged in the business of underwriting, sell-
4 ing, or distributing securities in the United States only
5 to the extent that its banking organization investor
6 may do so under applicable Federal and State banking
7 law and regulations, and (B) may not engage in manu-
8 facturing or agricultural production activities.

9 (b)(1) Notwithstanding any prohibition, restriction, limi-
10 tation, condition, or requirement of any law applicable only
11 to banking organizations, a banking organization, subject to
12 the limitations of subsection (c) and the procedures of this
13 subsection, may invest directly and indirectly in the aggre-
14 gate, up to 5 per centum of its consolidated capital and sur-
15 plus (25 per centum in the case of an Edge Act Corporation
16 or Agreement Corporation not engaged in banking) in the
17 voting stock or other evidences of ownership of one or more
18 export trading companies. A banking organization may—

19 (A) invest up to an aggregate amount of
20 $10,000,000 in one or more export trading companies
21 without the prior approval of the appropriate Federal
22 banking agency, if such investment does not cause an
23 export trading company to become a subsidiary of the
24 investing banking organization; and

1 (B) make investments in excess of an aggregate
2 amount of $10,000,000 in one or more export trading
3 companies, or make any investment or take any other
4 action which causes an export trading company to
5 become a subsidiary of the investing banking organiza-
6 tion or which will cause more than 50 per centum of
7 the voting stock of an export trading company to be
8 owned or controlled by banking organizations, only
9 with the prior approval of the appropriate Federal
10 banking agency.
11 Any banking organization which makes an investment under
12 authority of clause (A) of the preceding sentence shall
13 promptly notify the appropriate Federal banking agency of
14 such investment and shall file such reports on such invest-
15 ment as such agency may require. If, after receipt of any
16 such notification, the appropriate Federal banking agency de-
17 termines that the export trading company is a subsidiary of
18 the investing banking organization, it shall have authority to
19 disapprove the investment or impose conditions on such in-
20 vestment under authority of subsection (d). In furtherance of
21 such authority, the appropriate Federal banking agency, after
22 notice and opportunity for hearing, may require divestiture of
23 any voting stock or other evidences of ownership previously
24 acquired, and may impose conditions necessary for the termi-
25 nation of any controlling relationship.

1 (2) If a banking organization proposes to make any in-
2 vestment or engage in any activity included within the fol-
3 lowing two subparagraphs, it must give the appropriate Fed-
4 eral banking agency ninety days prior written notice before it
5 makes such investment or engages in such activity:

6 (A) any additional investment in an export trading
7 company subsidiary; or

8 (B) the engagement by any export trading
9 company subsidiary in any line of activity, including
10 specifically the taking of title to goods, wares, mer-
11 chandise, or commodities, if such activity was not dis-
12 closed in any prior application for approval.

13 During the notification period provided under this paragraph,
14 the appropriate Federal banking agency may, by written
15 notice, disapprove the proposed investment or activity or
16 impose conditions on such investment or activity under au-
17 thority of subsection (d). An additional investment or activity
18 covered by this paragraph may be made or engaged in, as the
19 case may be, prior to the expiration of the notification period
20 if the appropriate Federal banking agency issues written
21 notice of its intent not to disapprove.

22 (3) In the event of the failure of the appropriate Federal
23 banking agency to act on any application for approval under
24 paragraph (1)(B) of this subsection within a period of one
25 hundred and twenty days, which period begins on the date

1 the application has been accepted for processing by the ap-
2 propriate Federal banking agency, the application shall be
3 deemed to have been granted. In the event of the failure of
4 the appropriate Federal banking agency either to disapprove
5 or to impose conditions on any investment or activity subject
6 to the prior notification requirements of paragraph (2) of this
7 subsection within the ninety-day period provided therein,
8 such period beginning on the date the notification has been
9 received by the appropriate Federal banking agency, such
10 investment or activity may be made or engaged in, as the
11 case may be, any time after the expiration of such period.
12 (c) The following limitations apply to export trading
13 companies and the investments in such companies by banking
14 organizations:
15 (1) The name of any export trading company shall
16 not be similar in any respect to that of a banking orga-
17 nization that owns any of its voting stock or other evi-
18 dences of ownership except where a majority of the
19 outstanding voting stock or other evidences of owner-
20 ship of the company is owned or controlled by such
21 banking organization.
22 (2) The total historical cost of the direct and indi-
23 rect investments by a banking organization in an
24 export trading company combined with extensions of
25 credit by the banking organization and its direct and

1 indirect subsidiaries to such export trading company
2 shall not exceed 10 per centum of the banking organi-
3 zation's capital and surplus.

4 (3) A banking organization that owns any voting
5 stock or other evidences of ownership of an export
6 trading company may be required, by the appropriate
7 Federal banking agency, to terminate its ownership or
8 shall be subject to limitations or conditions which may
9 be imposed by such agency, if the agency determines
10 that the company has taken positions in commodities
11 or commodities contracts, in securities, or in foreign
12 exchange, other than as may be necessary in the
13 course of its business operations.

14 (4) No banking organization holding voting stock
15 or other evidences of ownership of any export trading
16 company may extend credit or cause any affiliate to
17 extend credit to any export trading company or to cus-
18 tomers of such company on terms more favorable than
19 those afforded similar borrowers in similar circum-
20 stances, and such extension of credit shall not involve
21 more than the normal risk of repayment or present
22 other unfavorable features.

23 (d)(1) In the case of every application under subsection
24 (b)(1)(B) of this section, the appropriate Federal banking
25 agency shall take into consideration the financial and man-

1 agerial resources, competitive situation, and future prospects
2 of the banking organization and export trading company con-
3 cerned, and the benefits of the proposal to United States
4 business, industrial, and agricultural concerns (with special
5 emphasis on small, medium-size, and minority concerns), and
6 to improving United States competitiveness in world mar-
7 kets. The appropriate Federal banking agency may not ap-
8 prove any investment for which an application has been filed
9 under subsection (b)(1)(B) if it finds that the export benefits of
10 such proposal are outweighed in the public interest by any
11 adverse financial, managerial, competitive, or other banking
12 factors associated with the particular investment. Any disap-
13 proval order issued under this section must contain a state-
14 ment of the reasons for disapproval.

15 (2) In approving any application submitted under sub-
16 section (b)(1)(B), the appropriate Federal banking agency
17 may impose such conditions which, under the circumstances
18 of such case, it may deem necessary (A) to limit a banking
19 organization's financial exposure to an export trading com-
20 pany, or (B) to prevent possible conflicts of interest or unsafe
21 or unsound banking practices. With respect to the taking of
22 title to goods, wares, merchandise, or commodities by any
23 export trading company subsidiary of a banking organization,
24 the appropriate Federal banking agencies may, by order, reg-
25 ulation, or guidelines, establish standards designed to ensure

1 against any unsafe or unsound practices that could adversely
2 affect a controlling banking organization investor. In particu-
3 lar, the appropriate Federal banking agencies may establish
4 inventory-to-capital ratios, based on the capital of the export
5 trading company subsidiary, for those circumstances in which
6 the export trading company subsidiary may bear a market
7 risk on inventory held.

8 (3) In determining whether to impose any condition
9 under the preceding paragraph (2), or in imposing such condi-
10 tion, the appropriate Federal banking agency must give due
11 consideration to the size of the banking organization and
12 export trading company involved, the degree of investment
13 and other support to be provided by the banking organization
14 to the export trading company, and the identity, character,
15 and financial strength of any other investors in the export
16 trading company. The appropriate Federal banking agency
17 shall not impose any conditions or set standards for the
18 taking of title which unnecessarily disadvantage, restrict, or
19 limit export trading companies in competing in world markets
20 or in achieving the purposes of section 102 of this Act. In
21 particular, in setting standards for the taking of title under
22 the preceding paragraph (2), the appropriate Federal banking
23 agencies shall give special weight to the need to take title in
24 certain kinds of trade transactions, such as international
25 barter transactions.

1 (4) Notwithstanding any other provision of this Act, the
2 appropriate Federal banking agency may, whenever it has
3 reasonable cause to believe that the ownership or control of
4 any investment in an export trading company constitutes a
5 serious risk to the financial safety, soundness, or stability of
6 the banking organization and is inconsistent with sound bank-
7 ing principles or with the purposes of this Act or with the
8 Financial Institutions Supervisory Act of 1966, order the
9 banking organization, after due notice and opportunity for
10 hearing, to terminate (within one hundred and twenty days or
11 such longer period as the appropriate Federal banking
12 agency may direct in unusual circumstances) its investment
13 in the export trading company.

14 (5) On or before two years after enactment of this Act,
15 the appropriate Federal banking agencies shall jointly report
16 to the Committee on Banking, Housing, and Urban Affairs of
17 the Senate and the Committee on Banking, Finance and
18 Urban Affairs of the House of Representatives their recom-
19 mendations with respect to the implementation of this sec-
20 tion, their recommendations on any changes in United States
21 law to facilitate the financing of United States exports, espe-
22 cially by small, medium-size, and minority business concerns,
23 and their recommendations on the effects of ownership of
24 United States banks by foreign banking organizations affili-

1 ated with trading companies doing business in the United
2 States.

3 (6) The appropriate Federal banking agency may, by
4 regulation or order, exempt from the collateral requirements
5 of section 23A of the Federal Reserve Act any loan or exten-
6 sion of credit made by a national or State bank to an export
7 trading company affiliate if the agency determines such ex-
8 emption is necessary to finance the operating expenses of an
9 affiliated export trading company and does not expose the
10 bank to undue financial risks. This paragraph does not apply
11 to bank affiliates currently exempt from the requirements of
12 section 23A.

13 (e)(1) Any party aggrieved by an order of an appropriate
14 Federal banking agency under this section may obtain a
15 review of such order in the United States court of appeals
16 within any circuit wherein such organization has its principal
17 place of business, or in the court of appeals for the District of
18 Columbia Circuit, by filing a notice of appeal in such court
19 within thirty days from the date of such order, and simulta-
20 neously sending a copy of such notice by registered or certi-
21 fied mail to the appropriate Federal banking agency. The
22 appropriate Federal banking agency shall promptly certify
23 and file in such court the record upon which the order was
24 based.. The court shall set aside any order found to be (A)
25 arbitrary, capricious, an abuse of discretion, or otherwise not

1 in accordance with law; (B) contrary to constitutional right,
2 power, privilege or immunity; (C) in excess of statutory juris-
3 diction, authority, or limitations, or short of statutory right;
4 or (D) without observance of procedure required by law.

5 (2) Except for violations of subsection (b)(3) of this sec-
6 tion, the court shall remand for further consideration by the
7 appropriate Federal banking agency any order set aside
8 solely for procedural errors and may remand for further con-
9 sideration by the appropriate Federal banking agency any
10 order set aside for substantive errors. Upon remand, the ap-
11 propriate Federal banking agency shall have no more than
12 sixty days from date of issuance of the court's order to cure
13 any procedural error or reconsider its prior order. If the
14 agency fails to act within this period, the application or other
15 matter subject to review shall be deemed to have been grant-
16 ed as a matter of law.

17 (f)(1) The appropriate Federal banking agencies are au-
18 thorized and empowered to issue such rules, regulations, and
19 orders, to require such reports, to delegate such functions,
20 and to conduct such examinations of subsidiary export trad-
21 ing companies, as each of them may deem necessary in order
22 to perform their respective duties and functions under this
23 section and to administer and carry out the provisions and
24 purposes of this section and prevent evasions thereof.

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

6 (g) Nothing in this section shall at any time prevent any
7 State from adopting a law prohibiting banks chartered under
8 the laws of such State from investing in export trading com-
9 panies or applying conditions, limitations, or restrictions on
10 investments by banks chartered under the laws of such State
11 in export trading companies in addition to any conditions,
12 limitations, or restrictions provided under this section.

13 GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND
14 INVENTORY

15 SEC. 106. The Export-Import Bank of the United
16 States is authorized and directed to establish a program to
17 provide guarantees for loans extended by financial institu-
18 tions or other private creditors to export trading companies
19 as defined in section 103(5) of this Act, or to other exporters,
20 when such loans are secured by export accounts receivable or
21 inventories of exportable goods, and when in the judgment of
22 the Board of Directors—

23 (1) the private credit market is not providing ade-
24 quate financing to enable otherwise creditworthy

1 export trading companies or exporters to consummate
2 export transactions; and
3 (2) such guarantees would facilitate expansion of
4 exports which would not otherwise occur.
5 The Board of Directors shall attempt to insure that a major
6 share of any loan guarantees ultimately serves to promote
7 exports from small, medium-size, and minority businesses or
8 agricultural concerns. Guarantees provided under the author-
9 ity of this section shall be subject to limitations contained in
10 annual appropriations Acts.

11 TITLE II—EXPORT TRADE ASSOCIATIONS

12 SHORT TITLE

13 SEC. 201. This title may be cited as the "Export Trade
14 Association Act of 1981".

15 FINDINGS; DECLARATION OF PURPOSE

16 SEC. 202. (a) FINDINGS.—The Congress finds and de-
17 clares that—
18 (1) the exports of the American economy are re-
19 sponsible for creating and maintaining one out of every
20 nine manufacturing jobs in the United States and for
21 generating $1 out of every $7 of total United States
22 goods produced;
23 (2) exports will play an even larger role in the
24 United States economy in the future in the face of

1 severe competition from foreign government-owned and
2 subsidized commercial entities;
3 (3) between 1968 and 1977 the United States
4 share of total world exports fell from 19 per centum to
5 13 per centum;
6 (4) trade deficits contribute to the decline of the
7 dollar on international currency markets, fueling infla-
8 tion at home;
9 (5) service-related industries are vital to the well
10 being of the American economy inasmuch as they
11 create jobs for seven out of every ten Americans, pro-
12 vide 65 per centum of the Nation's gross national
13 product, and represent a small but rapidly rising per-
14 centage of United States international trade;
15 (6) agriculture constitutes the foundation of the
16 economy of the United States and will continue to be a
17 leading sector in United States export growth;
18 (7) small- and medium-sized firms are prime bene-
19 ficiaries of joint exporting, through pooling of technical
20 expertise, help in achieving economies of scale, and as-
21 sistance in competing effectively in foreign markets;
22 and
23 (8) the Department of Commerce has as one of its
24 responsibilities the development and promotion of
25 United States exports.

1 (b) PURPOSE.—It is the purpose of this title to encour-
2 age American exports by directing the Department of Com-
3 merce to encourage and promote the formation of export
4 trade associations through the Webb-Pomerene Act, by
5 making the provisions of that Act explicitly applicable to the
6 exportation of services, and by transferring the responsibility
7 for administering that Act from the Federal Trade Commis-
8 sion to the Secretary of Commerce.

9 DEFINITIONS

10 SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66)
11 is amended by striking out the first section (15 U.S.C. 61)
12 and inserting in lieu thereof the following:

13 "SECTION 1. DEFINITIONS.

14 "As used in this Act—

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

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

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

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

1 "(C) financial, insurance, transportation, in-
2 formational and any other data-based services,
3 and communication services.
4 "(3) EXPORT TRADE ACTIVITIES.—The term
5 'export trade activities' means activities or agreements
6 in the course of export trade.
7 "(4) METHODS OF OPERATION.—The term
8 'methods of operation' means the methods by which an
9 association or export trading company conducts or pro-
10 poses to conduct export trade.
11 "(5) TRADE WITHIN THE UNITED STATES.—The
12 term 'trade within the United States' whenever used in
13 this Act means trade or commerce among the several
14 States or in any territory of the United States, or in
15 the District of Columbia, or between any such territory
16 and another, or between any such territory or territo-
17 ries and any State or States or the District of Colum-
18 bia, or between the District of Columbia and any State
19 or States.
20 "(6) ASSOCIATION.—The term 'association'
21 means any combination, by contract or other arrange-
22 ment, of persons who are citizens of the United States,
23 partnerships which are created under and exist pursu-
24 ant to the laws of any State or of the United States, or
25 corporations, whether operated for profit or organized

1 as nonprofit corporations, which are created under and
2 exist pursuant to the laws of any State or of the
3 United States.

4 "(7) EXPORT TRADING COMPANY.—The term
5 'export trading company' means an export trading
6 company as defined in section 103(5) of the Export
7 Trading Company Act of 1981.

8 "(8) ANTITRUST LAWS.—The term 'antitrust
9 laws' means the antitrust laws defined in the first sec-
10 tion of the Clayton Act (15 U.S.C. 12), sections 5 and
11 6 of the Federal Trade Commission Act (15 U.S.C.
12 45, 46), and any State antitrust or unfair competition
13 law.

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

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

19 "(11) COMMISSION.—The term 'Commission'
20 means the Federal Trade Commission.".

21 ANTITRUST EXEMPTION

22 SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66)
23 is amended by striking out section 2 (15 U.S.C. 62) and in-
24 serting in lieu thereof the following:

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

2 "(a) ELIGIBILITY.—The export trade, export trade ac-
3 tivities, and methods of operation of any association, entered
4 into for the sole purpose of engaging in export trade, and
5 engaged in or proposed to be engaged in such export trade,
6 and the export trade, export trade activities and methods of
7 operation of any export trading company, that—

8 "(1) serve to preserve or promote export trade;

9 "(2) result in neither a substantial lessening of
10 competition or restraint of trade within the United
11 States nor a substantial restraint of the export trade of
12 any competitor of such association or export trading
13 company;

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 or export trading company;

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

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

1 association or export trading company or its members;
2 and
3 "(6) do not constitute trade or commerce in the
4 licensing of patents, technology, trademarks, or know-
5 how, except as incidental to the sale of the goods,
6 wares, merchandise, or services exported by the associ-
7 ation or export trading company or its members
8 shall, when certified according to the procedures set forth in
9 this Act, be eligible for the exemption provided in subsection
10 (b).
11 "(b) EXEMPTION.—An association or an export trading
12 company and its members are exempt from the operation of
13 the antitrust laws with respect to their export trade, export
14 trade activities and methods of operation that are specified in
15 a certificate issued according to the procedures set forth in
16 this Act, carried out in conformity with the provisions, terms,
17 and conditions prescribed in such certificate and engaged in
18 during the period in which such certificate is in effect. The
19 subsequent revocation in whole or in part of such certificate
20 shall not render an association or its members or an export
21 trading company or its members, liable under the antitrust
22 laws for such export trade, export trade activities, or meth-
23 ods of operation engaged in during such period.
24 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
25 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this

1 Act, the Attorney General or the Commission has formally
2 advised the Secretary of disagreement with his determination
3 to issue a proposed certificate, and the Secretary has none-
4 theless issued such proposed certificate or an amended certifi-
5 cate, the exemption provided by this section shall not be
6 effective until thirty days after the issuance of such
7 certificate.".

8 AMENDMENT OF SECTION 3

9 SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61–66)
10 is amended—

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

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

15 and

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

18 ADMINISTRATION: ENFORCEMENT: REPORTS

19 SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act
20 (15 U.S.C. 61–66) is amended by striking out sections 4 and
21 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the
22 following sections:

23 **"SEC. 4. CERTIFICATION.**

24 "(a) PROCEDURE FOR APPLICATION.—Any association
25 or export trading company seeking certification under this

1 Act shall file with the Secretary a written application for
2 certification setting forth the following:

3 "(1) The name of the association or export trad-
4 ing company.

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

8 "(3) The names and addresses of all of the offi-
9 cers, stockholders, and members of the association or
10 export trading company.

11 "(4) A copy of the certificate or articles of incor-
12 poration and bylaws, if the association or export trad-
13 ing company is a corporation; or a copy of the articles,
14 partnership, joint venture, or other agreement or con-
15 tract under which the association or export trading
16 company conducts or proposes to conduct its export
17 trade activities, or contract of association, if the associ-
18 ation or export trading company is unincorporated.

19 "(5) A description of the goods, wares, merchan-
20 dise, or services which the association or export trad-
21 ing company or their members export or propose to
22 export.

23 "(6) A description of the domestic and interna-
24 tional conditions, circumstances, and factors which
25 show that the association or export trading company

1 and its activities will serve a specified need in promot-
2 ing the export trade of the described goods, wares,
3 merchandise, or services.

4 "(7) The export trade activities in which the asso-
5 ciation or export trading company intends to engage
6 and the methods by which the association or export
7 trading company conducts or proposes to conduct
8 export trade in the described goods, wares, merchan-
9 dise, or services, including, but not limited to, any
10 agreements to sell exclusively to or through the associ-
11 ation or export trading company, any agreements with
12 foreign persons who may act as joint selling agents,
13 any agreements to acquire a foreign selling agent, any
14 agreements for pooling tangible or intangible property
15 or resources, or any territorial, price-maintenance,
16 membership, or other restrictions to be imposed upon
17 members of the association or export trading company.

18 "(8) The names of all countries where export
19 trade in the described goods, wares, merchandise, or
20 services is conducted or proposed to be conducted by
21 or through the association or export trading company.

22 "(9) Any other information which the Secretary
23 may request concerning the organization, operation,
24 management, or finances of the association or export
25 trading company; the relation of the association or

1 export trading company to other associations, corpora-
2 tions, partnerships, and individuals; and competition or
3 potential competition, and effects of the association or
4 export trading company thereon. The Secretary may
5 request such information as part of an initial applica-
6 tion or as a necessary supplement thereto. The Secre-
7 tary may not request information under this paragraph
8 which is not reasonably available to the person making
9 application or which is not necessary for certification of
10 the prospective association or export trading company.
11 "(b) ISSUANCE OF CERTIFICATE.—
12 "(1) NINETY-DAY PERIOD.—The Secretary shall
13 issue a certificate to an association or export trading
14 company within ninety days after receiving the applica-
15 tion for certification or necessary supplement thereto if
16 the Secretary, after consultation with the Attorney
17 General and Commission, determines that the associ-
18 ation and, its export trade, export trade activities and
19 methods of operation, or export trading company, and
20 its export trade, export trade activities and methods of
21 operation meet the requirements of section 2 of this
22 Act and will serve a specified need in promoting the
23 export trade of the goods, wares, merchandise, or serv-
24 ices described in the application for certification. The
25 certificate shall specify the permissible export trade,

1 export trade activities and methods of operation of the
2 association or export trading company and shall include
3 any terms and conditions the Secretary deems neces-
4 sary to comply with the requirements of section 2 of
5 this Act. The Secretary shall deliver to the Attorney
6 General and the Commission a copy of any certificate
7 that he proposes to issue. The Attorney General or
8 Commission may, within fifteen days thereafter, give
9 written notice to the Secretary of an intent to offer
10 advice on the determination. The Attorney General or
11 Commission may, after giving such written notice and
12 within forty-five days of the time the Secretary has de-
13 livered a copy of a proposed certificate, formally advise
14 the Secretary and the petitioning association or export
15 trading company of disagreement with the Secretary's
16 determination. The Secretary shall not issue any certif-
17 icate prior to the expiration of such forty-five-day
18 period unless he has (A) received no notice of intent to
19 offer advice by the Attorney General or the Commis-
20 sion within fifteen days after delivering a copy of a
21 proposed certificate, or (B) received any noticed formal
22 advice of disagreement or written confirmation that no
23 formal disagreement will be transmitted from the At-
24 torney General and the Commission. After the forty-
25 five-day period or, if no notice of intent to offer advice

1 has been given, after the fifteen-day period, the Secre-
2 tary shall either issue the proposed certificate, issue an
3 amended certificate, or deny the application. Upon
4 agreement of the applicant, the Secretary may delay
5 taking action for not more than thirty additional days
6 after the forty-five-day period. Before offering advice
7 on a proposed certification, the Attorney General and
8 Commission shall consult in an effort to avoid, wherev-
9 er possible, having both agencies offer advice on any
10 application.

11 "(2) EXPEDITED CERTIFICATION.—In those in-
12 stances where the temporary nature of the export trade
13 activities, deadlines for bidding on contracts or filling
14 orders, or any other circumstances beyond the control
15 of the association or export trading company which
16 have a significant impact on its export trade, make the
17 ninety-day period for application approval described in
18 paragraph (1) of this subsection, or an amended appli-
19 cation approval as provided in subsection (c) of this
20 section, impractical for the association or export trad-
21 ing company seeking certification, such association or
22 export trading company may request and may receive
23 expedited action on its application for certification.

24 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
25 ASSOCIATIONS.—Any association registered with the

1 Federal Trade Commission under this Act as of Janu-
2 ary 19, 1981, may file with the Secretary an applica-
3 tion for automatic certification of any export trade,
4 export trade activities, and methods of operation in
5 which it was engaged prior to enactment of the Export
6 Trade Association Act of 1981. Any such application
7 must be filed within one hundred and eighty days after
8 the date of enactment of such Act and shall be acted
9 upon by the Secretary in accordance with the proce-
10 dures provided by this section. The Secretary shall
11 issue to the association a certificate specifying the per-
12 missible export trade, export trade activities, and meth-
13 ods of operation that he determines are shown by the
14 application (including any necessary supplement there-
15 to), on its face, to be eligible for certification under this
16 Act, and including any terms and conditions the Secre-
17 tary deems necessary to comply with the requirements
18 of section 2(a) of this Act, unless the Secretary pos-
19 sesses information clearly indicating that the require-
20 ments of section 2(a) are not met.

21 "(4) APPEAL OF DETERMINATION.—If the Secre-
22 tary determines not to issue a certificate to an associ-
23 ation or export trading company which has submitted
24 an application for certification, or for an amendment of
25 a certificate, then he shall—

1 "(A) notify the association or export trading
2 company of his determination and the reasons for
3 his determination, and
4 "(B) upon request made by the association or
5 export trading company, afford it an opportunity
6 for reconsideration with respect to that determina-
7 tion.
8 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
9 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-
10 terial change in the membership, export trade activities, or
11 methods of operation, of an association or export trading
12 company then it shall report such change to the Secretary
13 and may apply to the Secretary for an amendment of its cer-
14 tificate. Any application for an amendment to a certificate
15 shall set forth the requested amendment of the certificate and
16 the reasons for the requested amendment. Any request for
17 the amendment of a certificate shall be treated in the same
18 manner as an original application for a certificate.
19 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
20 BY SECRETARY.—
21 "(1) The Secretary on his own initiative shall,
22 upon a determination that the export trade, export
23 trade activities or methods of operation of an associ-
24 ation or export trading company no longer comply with
25 the requirements of section 2 of this Act, revoke its

1 certificate or make such amendments as may be neces-
2 sary to comply with the requirements of such section.
3 "(2) Prior to revoking or amending a certificate,
4 the Secretary shall—
5 "(A) notify the holder of the certificate in
6 writing of the facts or conduct which may warrant
7 the action, and
8 "(B) provide the holder of the certificate an
9 opportunity for such hearing as may be appropri-
10 ate in the circumstances.
11 "(3) Before revoking or amending a certificate
12 pursuant to this subsection the Secretary may in his
13 discretion provide the holder of the certificate an op-
14 portunity to achieve compliance within a reasonable
15 period of time not to exceed ninety days, except that
16 nothing in this paragraph shall affect any action under
17 section 4(e) of this Act.
18 "(e) ACTION FOR REVOCATION OF CERTIFICATE BY
19 ATTORNEY GENERAL OR COMMISSION.—
20 "(1) The Attorney General or the Commission
21 may bring an action against an association or export
22 trading company or its members to invalidate, in whole
23 or in part, its certificate on the ground that the export
24 trade, export trade activities or methods of operation of
25 the association or export trading company fail or have

1 failed to meet the requirements of section 2 of this Act.
2 Except in the case of an action brought during the
3 period before an antitrust exemption becomes effective,
4 as provided for in section 2(c), the Attorney General or
5 Commission shall notify any association or export trad-
6 ing company or member thereof, against which it in-
7 tends to bring an action for revocation thirty days in
8 advance, as to its intent to file an action under this
9 subsection. The district court shall consider any issues
10 presented in any such action de novo and if it finds
11 that the requirements of section 2 are not met, it shall
12 issue an order revoking the certificate or any other
13 order necessary to effectuate the purposes of this Act
14 and the requirements of section 2.

15 "(2) Any action brought under this subsection
16 shall be considered an action described in section 1337
17 of title 28, United States Code. Pending any such
18 action which was brought during the period any ex-
19 emption is held in abeyance pursuant to section 2(c) of
20 this Act, the court may make such temporary restrain-
21 ing order or prohibition as shall be deemed just in the
22 premises.

23 "(3) No person other than the Attorney General
24 or Commission shall have standing to bring an action
25 against an association or export trading company or

1 their respective members for failure of the association
2 or export trading company or their respective export
3 trade, export trade activities or methods of operation to
4 meet the eligibility requirements of section 2 of this
5 Act.

6 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
7 ation and each export trading company and any subsidiary
8 thereof shall comply with United States export control laws
9 pertaining to the export or transshipment of any goods on the
10 Commodity Control List to controlled countries. Such laws
11 shall be complied with before actual shipment.

12 "(g) JUDICIAL REVIEW.—Final orders of the Secretary
13 under this section shall be subject to judicial review pursuant
14 to chapter 7 of title 5, United States Code.

15 "SEC. 5. GUIDELINES.

16 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
17 days after the enactment of the Export Trade Association
18 Act of 1981, the Secretary, after consultation with the Attor-
19 ney General, and the Commission shall publish proposed
20 guidelines for purposes of determining whether export trade,
21 export trade activities and methods of operation of an associ-
22 ation or export trading company will meet the requirements
23 of section 2 of this Act.

24 "(b) PUBLIC COMMENT PERIOD.—Following publica-
25 tion of the proposed guidelines, and any proposed revision of

1 guidelines, interested parties shall have thirty days to com-
2 ment on the proposed guidelines. The Secretary shall review
3 the comments and, after consultation with the Attorney Gen-
4 eral, and Commission, publish final guidelines within thirty
5 days after the last day on which comments may be made
6 under the preceding sentence.

7 "(c) PERIODIC REVISION.—After publication of the
8 final guidelines, the Secretary shall periodically review the
9 guidelines and, after consultation with the Attorney General,
10 and the Commission, propose revisions as needed.

11 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
12 ACT.—The promulgation of guidelines under this section
13 shall not be considered rulemaking for purposes of subchapter
14 II of chapter 5 of title 5, United States Code, and section
15 553 of such title shall not apply to their promulgation.

16 **"SEC. 6. ANNUAL REPORTS.**

17 "Every certified association or export trading company
18 shall submit to the Secretary an annual report, in such form
19 and at such time as he may require, which report updates
20 where necessary the information described by section 4(a) of
21 this Act.

22 **"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL**
23 **REPORT INFORMATION.**

24 "(a) GENERAL RULE.—Portions of applications made
25 under section 4, including amendments to such applications,

1 and annual reports made under section 6 that contain trade
2 secrets or confidential business or financial information, the
3 disclosure of which would harm the competitive position of
4 the person submitting such information shall be confidential,
5 and, except as authorized by this section, no officer or em-
6 ployee, or former officer or employee, of the United States
7 shall disclose any such confidential information, obtained by
8 him in any manner in connection with his service as such an
9 officer or employee.

10 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
11 MISSION.—Whenever the Secretary believes that an appli-
12 cant may be eligible for a certificate, or has issued a certifi-
13 cate to an association or export trading company, he shall
14 promptly make available all materials filed by the applicant,
15 association or export trading company, including applications
16 and supplements thereto, reports of material changes, appli-
17 cations for amendments and annual reports, and information
18 derived therefrom, to the Attorney General or Commission,
19 or any employee or officer thereof, for official use in connec-
20 tion with an investigation or judicial or administrative pro-
21 ceeding under this Act or the antitrust laws to which the
22 United States or the Commission is or may be a party. Such
23 information may only be disclosed by the Secretary upon a
24 prior certification that the information will be maintained in

1 confidence and will only be used for such official law enforce-
2 ment purposes.

3 "SEC. 8. MODIFICATION OF ASSOCIATION TO COMPLY WITH
4 UNITED STATES OBLIGATIONS.

5 "At such time as the United States undertakes binding
6 international obligations by treaty or statute, to the extent
7 that the operations of any export trade association or export
8 trading company, certified under this Act, are inconsistent
9 with such international obligations, the Secretary may re-
10 quire the association or export trading company to modify its
11 respective operations, and in so doing afford the association
12 or export trading company a reasonable opportunity to
13 comply therewith, so as to be consistent with such interna-
14 tional obligations.

15 "SEC. 9. REGULATIONS.

16 "The Secretary, after consultation with the Attorney
17 General and the Commission, shall promulgate such rules
18 and regulations as may be necessary to carry out the pur-
19 poses of this Act.

20 "SEC. 10. TASK FORCE STUDY.

21 "Seven years after the date of enactment of the Export
22 Trade Association Act of 1981, the President shall appoint,
23 by and with the advice and consent of the Senate, a task
24 force to examine the effect of the operation of this Act on
25 domestic competition and on United States international

1 trade and to recommend either continuation, revision, or ter-
2 mination of the Webb-Pomerene Act. The task force shall
3 have one year to conduct its study and to make its recom-
4 mendations to the President.".

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

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

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

11 "SEC. 11. SHORT TITLE.".

12 EFFECTIVE DATE WITH REGARD TO EXISTING
13 ASSOCIATIONS

14 SEC. 207. (a) GENERAL RULE.—The amendments to
15 the Webb-Pomerene Act set forth in sections 203, 204, 205,
16 and 206 of this Act shall become effective with regard to an
17 existing association described in subsection (b) only at such
18 time as the association may elect to be certified pursuant to
19 subsection (c).

20 (b) ELECTION TO CONTINUE UNDER PRIOR LAW.—
21 Application of the antitrust laws to any association which as
22 of January 1, 1981, had filed with the Commission the infor-
23 mation specified under section 5 of the Webb-Pomerene Act
24 as in effect immediately prior to the date of enactment of this
25 Act shall continue to be governed by the standards set forth

1 in that Act, unless such association elects to seek certifica-
2 tion under subsection (c).

3 (c) ELECTION TO APPLY FOR CERTIFICATION.—Any
4 association to which subsection (b) applies may, at any time
5 after the effective date of this Act, file an application for
6 certification with the Secretary containing the information set
7 forth in section 4(a) of the Webb-Pomerene Act, as amended
8 by section 206 of this Act. The Secretary shall consider and
9 act upon such application in the manner provided in section
10 4(b) of the Webb-Pomerene Act, as amended by section 206
11 of this Act. The association filing an application pursuant to
12 this subsection shall continue to be subject to subsection (b)
13 of this section until the Secretary issues a certificate and such
14 certificate has been accepted by the association; the associ-
15 ation must decide whether or not to accept such certificate no
16 later than thirty days after the Secretary's determination
17 with respect thereto has become final.

Passed the Senate April 8 (legislative day, February 16), 1981.

18 Attest: WILLIAM F. HILDENBRAND,

Secretary.

97TH CONGRESS
1ST SESSION

S. 795

To amend the Sherman Act and the Clayton Act to exclude from the application of such Acts certain conduct involving exports.

IN THE SENATE OF THE UNITED STATES

MARCH 25 (legislative day, FEBRUARY 16), 1981

Mr. THURMOND (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Sherman Act and the Clayton Act to exclude from the application of such Acts certain conduct involving exports.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Trade Antitrust
4 Improvements Act of 1981".
5 SEC. 2. The Sherman Act (15 U.S.C. 1 et seq.) is
6 amended by inserting after section 6 the following new
7 section:

1 "SEC. 7. This Act shall not apply to conduct involving
2 trade or commerce with any foreign nation unless such con-
3 duct has a direct and substantial effect on trade and com-
4 merce within the United States or has the effect of excluding
5 a domestic person from trade or commerce with such foreign
6 nation.".

7 SEC. 3. Section 7 of the Clayton Act (15 U.S.C. 18) is
8 amended by adding at the end thereof the following: "This
9 section shall not apply to joint ventures limited solely to
10 export trading, in goods or services, from the United States
11 to a foreign nation.".

○

97TH CONGRESS
1ST SESSION

S. 969

To establish a national export policy for the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, FEBRUARY 16), 1981

Mr. ROTH (for himself, Mr. BENTSEN, Mr. BAUCUS, Mr. CHAFEE, Mr. CRANSTON, Mr. GOLDWATER, Mr. HEINZ, Mr. HELMS, Mr. INOUYE, Mr. PERCY, Mr. RANDOLPH, Mr. RIEGLE, and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To establish a national export policy for the United States.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the "Na-
5 tional Export Policy Act of 1981".

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—GENERAL FINDINGS AND PURPOSES

Sec. 101. Findings.
Sec. 102. Purposes.

TITLE II—EXPORT FINANCING

PART 1—FINDINGS AND PURPOSE

Sec. 201. Findings and purpose.

PART 2—COMPETITIVE EXPORT FINANCING

Sec. 221. Export-Import Bank board of directors.
Sec. 222. Legislative consideration of limits on Export-Import Bank activities.

TITLE III—EXPORT-RELATED TAX POLICY

Sec. 301. Findings; conclusions.
Sec. 302. Partial exclusion for earned income from sources without the United States and for foreign housing costs.
Sec. 303. Reasonable estimation of bad debt reserves for export receivables.
Sec. 304. Clarification of tax treatment of certain research and experimental expenditures.
Sec. 305. Clarification of the tax treatment of foreign currency fluctuation losses on export receivables.
Sec. 306. Deadline for exempting exports from the manufacturers excise tax.
Sec. 307. Use of foreign trade zones in exporting.
Sec. 308. Application of DISC rules to export trading companies.
Sec. 309. Subchapter S status for export trading companies.

TITLE IV—ANTITRUST

PART 1—FINDINGS AND CONCLUSIONS

Sec. 401. Findings and conclusions.

PART 2—REVISION OF WEBB-POMERENE ACT

Sec. 421. Webb-Pomerene Act amendments.

PART 3—ANTITRUST PROCEDURES SIMPLIFICATION

Sec. 431. Definitions.
Sec. 432. Studies by Attorney General.
Sec. 433. Procedures.
Sec. 434. Compliance by exporters.
Sec. 435. Injunctions.
Sec. 436. Reports and disclosures.
Sec. 437. Authorization of appropriations.
Sec. 438. Effective date.

TITLE V—AMENDMENTS TO OTHER LAWS THAT HINDER EXPORTS

PART 1—FINDINGS AND CONCLUSIONS

Sec. 501. Findings and conclusions.

PART 2—BUSINESS ACCOUNTING AND FOREIGN TRADE SIMPLIFICATION

Sec. 521. Findings and conclusions.
Sec. 522. Amendment of short title.
Sec. 523. Accounting standards.
Sec. 524. Repealer; new bribery provision.
Sec. 525. Definitions.
Sec. 526. Exclusivity provision for overseas bribery.
Sec. 527. Authority to issue guidelines.
Sec. 528. Conforming changes in Internal Revenue Code.
Sec. 529. International agreements.

PART 3—EXPORT COMPETITIVENESS STATEMENTS; PAPERWORK

Sec. 531. Export competitiveness statements.
Sec. 532. Reduction of export paperwork.

TITLE VI—EXPORT AWARENESS AND EXPORT PROMOTION PROGRAMS

PART 1—FINDINGS; CONCLUSIONS

Sec. 601. Statement of findings and conclusions.

PART 2—EXPORT TRADING COMPANIES

Sec. 621. Short title.
Sec. 622. Findings.
Sec. 623. Definitions.
Sec. 624. Functions of the Secretary of Commerce.
Sec. 625. Ownership of export trading companies by banks, bank holding companies, and international banking corporations.
Sec. 626. Initial investments and operating expenses.
Sec. 627. Guarantees for export accounts receivable and inventory.

PART 3—SMALL BUSINESS ACT AMENDMENTS

Sec. 631. Small business export financing assistance.

PART 4—JOINT EXPORT MARKETING ASSISTANCE

Sec. 641. Establishment of program.
Sec. 642. Marketing proposals.
Sec. 643. Financial agreement.
Sec. 644. Authorization of appropriations.

PART 5—EXPORT OF SERVICES

Sec. 651. Export of services.

TITLE VII—AGRICULTURAL EXPORTS

Sec. 701. Statement of findings and conclusions.

PART 1—COMMODITY CREDIT CORPORATION FINANCING FOR CERTAIN SALES

Sec. 711. Financing for short-term export credit sales of agricultural commodities.

PART 2—EXPORT-IMPORT BANK CREDITS

Sec. 721. Export-Import Bank credits for agricultural commodities.

TITLE VIII—INTERNATIONAL AGREEMENTS

Sec. 801. Findings and conclusions.
Sec. 802. Multilateral Trade Agreement of 1979 and followup.
Sec. 803. International Financing Code.
Sec. 804. International code of business conduct.
Sec. 805. International code on reciprocity on enforcement of antitrust.
Sec. 806. Multilateral code on fair trade in services.

TITLE IX—GOVERNMENT SUPPORT OF EXPORT GOALS

PART 1—FINDINGS AND CONCLUSIONS

Sec. 901. Statement of findings and conclusions.

PART 2—OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS

Sec. 921. Short title.

Subpart A—Overseas Private Investment Corporation

Sec. 925. Purpose and policy.
Sec. 926. Capital of corporation.
Sec. 927. Organization and management.
Sec. 928. Investment insurance and other programs.
Sec. 929. Issuing authority, direct investment fund and reserves.
Sec. 930. Income and revenues.
Sec. 931. General provisions relating to insurance and guaranty program.
Sec. 932. Definitions.
Sec. 933. General provisions and powers.
Sec. 934. Small business development.
Sec. 935. Reports to the Congress.

Subpart B—Amendment of Foreign Assistance Act of 1961

Sec. 941. Conforming amendments.
Sec. 942. Transition provisions.

PART 3—ROLE OF ALL UNITED STATES AGENCIES IN EXPORT EXPANSION

Sec. 951. Export potential to be considered.
Sec. 952. Office of Management and Budget.
Sec. 953. Role of the Justice Department.
Sec. 954. Small Business Administration.
Sec. 955. Department of Energy.
Sec. 956. The Congress.

PART 4—NATIONAL EXPORT COUNCIL

Sec. 961. Establishment and membership.
Sec. 962. Functions.
Sec. 963. Administrative provisions.
Sec. 964. Annual report.
Sec. 965. Authorizations.

PART 5—COMMERCE DEPARTMENT

Sec. 971. Commercial officers overseas.
Sec. 972. Training of commercial officers.
Sec. 973. Rank and privileges.
Sec. 974. Relationship to diplomatic mission.
Sec. 975. Functions and duties.
Sec. 976. Assignment to United States.
Sec. 977. Office space, equipment, and administrative and clerical personnel.
Sec. 978. Agency, services, personnel, and facilities.
Sec. 979. Performance of functions in foreign localities.
Sec. 980. Reports and dispatches—availability to interested Government agencies.
Sec. 981. Representative allowances.
Sec. 982. Allowances and benefits.
Sec. 983. Advance payment for rent and other services: Funds for courtesies to foreign representatives.

PART 6—REVIEW OF UNITED STATES EXPORT PROGRAMS

Sec. 991. Review.

1 # TITLE I—GENERAL FINDINGS AND PURPOSES

2 **SEC. 101. FINDINGS.**

3 The Congress finds that—

4 (1) exports have become critical to the health of
5 the United States economy, doubling in 10 years to
6 reach 10 percent of the gross national product, ac-

1 counting, directly or indirectly, for 1 out of 9 jobs,
2 over 25 percent of agricultural output, and over one-
3 fourth of goods produced;
4 (2) exports can play a major role in improving the
5 economic well-being of the United States—
6 (A) by providing the most constructive means
7 to pay for essential imports of raw materials,
8 fuels, and other goods;
9 (B) by helping to stem inflation;
10 (C) by creating jobs;
11 (D) by enhancing productivity;
12 (E) by helping to strengthen the value of the
13 dollar in world markets; and
14 (F) by supporting the United States influence
15 in international economic and political spheres;
16 and, with world markets growing at twice the pace of
17 the domestic economy, exports offer a promising
18 opportunity for economic growth;
19 (3) the United States international trade position
20 has been deteriorating in the face of strong competition
21 from the export-oriented nations in Europe, East Asia,
22 and the developing world, lagging productivity gains in
23 United States industries, and declining investment in
24 development of new technology; the United States
25 share of world exports is falling, growth of exports is

1 not keeping up with that of other competitor nations,
2 the United States no longer leads the world in manu-
3 factured goods exports, and both merchandise trade
4 and the balance of payments have registered repeated
5 record deficits;

6 (4) it is essential to the national interest that ex-
7 pansion of exports of United States farm products and
8 other goods and services be a principal national goal;

9 (5) as all other successful trading nations have
10 done, the United States must give priority to export
11 expansion and take measures to develop a strong, com-
12 prehensive, internally consistent approach that deals
13 with both current and longer range problems facing our
14 economy;

15 (6) international trade activities are inextricably
16 tied to domestic economic developments; thus there
17 should be consistency between domestic and interna-
18 tional economic policies with the objective of strength-
19 ening the United States economy generally, increasing
20 the financial and competitive capabilities of United
21 States industry and improving the income and working
22 conditions of United States workers;

23 (7) the United States needs an aggressive policy
24 which takes positive action to promote United States
25 exports and improve the competitiveness of United

1 States industry rather than passively awaiting currency
2 and price changes, foreign trade barriers, and other in-
3 ternational developments; and
4 (8) previous policies and programs have not
5 achieved adequate improvement in United States
6 export performance and therefore must be supple-
7 mented and supplanted by other measures designed to
8 serve this end.

9 **SEC. 102. PURPOSES.**

10 The purposes of this Act are—
11 (1) to improve the international balance-of-pay-
12 ments and trade positions of the United States by es-
13 tablishing a national export policy that makes export
14 expansion a national priority;
15 (2) to achieve consistency and harmony of purpose
16 between Government policies and practices that affect
17 exports in order to provide a more coherent and effec-
18 tive implementation of export expansion policies;
19 (3) to declare it the policy of the United States
20 Government to provide strong support for United
21 States exporters by utilizing the maximum available
22 resources of the United States Government to promote
23 the export of United States goods and services except
24 where contrary to the national security or national eco-
25 nomic interests;

1 (4) to expand the Nation's exports of goods and
2 services by enhancing the ability and encouraging the
3 private sector to cooperate fully with Government in
4 fostering and facilitating export expansion;
5 (5) to increase understanding of the benefits of ex-
6 ports by establishing educational programs and other
7 awareness activities that will change attitudes;
8 (6) to improve the competitiveness of United
9 States industry in international markets by making
10 adequate export credits available to exporters of all
11 sizes that are flexible enough to meet the competition;
12 (7) to offer incentives to United States industry to
13 export through adjustments in the United States tax
14 system;
15 (8) to clarify, modify, or eliminate existing laws,
16 rules, or regulations that unduly burden or disadvan-
17 tage exporters;
18 (9) to institute programs that provide specific tools
19 of the trade and a better trading environment for
20 small- and medium-sized firms to develop export mar-
21 kets;
22 (10) to encourage continuation of efforts to reduce
23 foreign barriers to United States exports and unfair
24 practices through international negotiations and agree-
25 ments; and

1 (11) to ensure that all Government agencies in a
2 position to assist export expansion efforts are properly
3 set up to do so and make adjustments in functions as
4 appropriate to provide adequate support to exports.

5 TITLE II—EXPORT FINANCING

6 **PART 1—FINDINGS AND PURPOSE**

7 **SEC. 201. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) export financing has become an increasingly
10 important factor in determining export sales;

11 (2) there is a growing tendency by the major trad-
12 ing partners of the United States to resort to the use
13 of predatory financing arrangements to gain competi-
14 tive advantage for their exporters;

15 (3) other major trading countries have been un-
16 willing to negotiate an end to such practices and have
17 rejected a series of United States proposals to
18 strengthen provisions of the International Arrangement
19 on Guidelines for Officially Supported Export Credits;

20 (4) since the December 1980 failure of the OECD
21 countries to reach an international agreement eliminat-
22 ing destructive competition in the use of export credit
23 subsidies, measures to strengthen programs of the
24 Export-Import Bank of the United States are required

1 to ensure continued United States export competitive-
2 ness; and
3 (5) the ability of the Export-Import Bank to con-
4 duct its business in an efficient and timely manner is
5 hampered both by the lack of continuity among the
6 Bank's directors.
7 (b) PURPOSE.—It is the purpose of this title to remove
8 the institutional obstacles to the efficient functioning of the
9 Export-Import Bank.

10 **PART 2—COMPETITIVE EXPORT FINANCING**

11 **SEC. 221. EXPORT-IMPORT BANK BOARD OF DIRECTORS.**

12 The fifth sentence of section 3(c) of the Export-Import
13 Bank Act of 1945 is amended to read as follows: "The term
14 of office of each director, including the Chairman and the
15 Vice Chairman, shall be 10 years, except that of the direc-
16 tors first appointed pursuant to this sentence, one shall serve
17 for a term of 2 years, one shall serve for a term of 4 years,
18 one shall serve for a term of 6 years, one shall serve for
19 a term of 8 years, and one shall serve for a term of 10 years,
20 as designated by the President at the time of the
21 appointment.".

22 **SEC. 222. LEGISLATIVE CONSIDERATION OF LIMITS ON**
23 **EXPORT-IMPORT BANK ACTIVITIES.**

24 Beginning in 1982, the Appropriations Committees of
25 the House of Representatives and the Senate shall consider

1 limitations on the credit, guaranty, and insurance activities of
2 the Export-Import Bank when they consider appropriations
3 for international trade activities of the United States rather
4 than when they consider appropriations for foreign assistance
5 activities of the United States.

6 TITLE III—EXPORT-RELATED TAX POLICY

7 **SEC. 301. FINDINGS; CONCLUSIONS.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) certain provisions of the Tax Code concerning
10 the taxation of income earned abroad discourage
11 United States citizens and businesses from undertaking
12 important economic activities which would contribute
13 significantly to an expansion of exports from the
14 United States, which would open foreign markets to
15 American products, and which would materially im-
16 prove our balance of trade and payments, and that
17 such provisions place United States businesses at a
18 competitive disadvantage and increase their costs by
19 imposing a higher tax burden than is borne by many
20 foreign competitors;

21 (2) certain provisions of the Tax Code concerning
22 reserves for bad debts arising from exports, certain re-
23 search and experimental expenditures, and foreign cur-
24 rency losses on export receivables discourage United

1 States businesses from engaging in export trade and
2 commerce;
3 (3) certain provisions of the Tax Code unfairly pe-
4 nalize United States exporters whose business is ad-
5 versely affected by war, civil unrest, or similar condi-
6 tions in foreign nations; and
7 (4) such provisions, by discouraging United States
8 businesses from engaging in foreign trade and com-
9 merce, cause a loss of jobs and income in the Ameri-
10 can economy.
11 (b) CONCLUSIONS.—The Congress concludes that—
12 (1) the Government should actively promote the
13 interest and participation of United States businesses in
14 foreign trade and should eliminate the tax disincentives
15 which unnecessarily impede United States exports; and
16 (2) removing tax disincentives should encourage
17 United States businesses to engage in foreign trade
18 and commerce, thereby improving our balance of pay-
19 ments and providing jobs and income for American
20 workers.

1 **SEC. 302. PARTIAL EXCLUSION FOR EARNED INCOME FROM**
2 **SOURCES WITHOUT THE UNITED STATES AND**
3 **FOR FOREIGN HOUSING COSTS.**

4 (a) IN GENERAL.—Section 911 of the Internal Revenue
5 Code of 1954 (relating to income earned by individuals in
6 certain camps) is amended to read as follows:

7 **"SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE**
8 **UNITED STATES; FOREIGN HOUSING COSTS.**

9 "(a) EARNED INCOME EXCLUSION.—In the case of an
10 individual who is—

11 "(1) a citizen of the United States and who estab-
12 lishes to the satisfaction of the Secretary that he has
13 been a bona fide resident of a foreign country or coun-
14 tries for an uninterrupted period which includes an
15 entire taxable year, or

16 "(2) a citizen or resident of the United States and
17 who, during any period of 12 consecutive months, is
18 present in a foreign country or countries during at
19 least 330 full days in such period,

20 there may be excluded from the gross income of such individ-
21 ual, and exempt from taxation under this subtitle, amounts
22 received by such individual from sources within a foreign
23 country or countries (except amounts paid by the United
24 States or any agency thereof) which constitute earned income
25 attributable to services performed by such individual during

1 the period described in paragraph (1) or (2), whichever is
2 appropriate.

3 "(b) DEFINITION OF EARNED INCOME.—For purposes
4 of this section, the term 'earned income' means wages, sala-
5 ries, or professional fees, and other amounts received as com-
6 pensation for personal services actually rendered, but does
7 not include that part of the compensation derived by the tax-
8 payer for personal services rendered by him to a corporation
9 which represents a distribution of earnings or profits rather
10 than a reasonable allowance as compensation for the personal
11 services actually rendered. In the case of a taxpayer engaged
12 in a trade or business in which both personal services and
13 capital are material income-producing factors, under regula-
14 tions prescribed by the Secretary, a reasonable allowance as
15 compensation for the personal services rendered by the tax-
16 payer, not in excess of 30 percent of his share of the net
17 profits of such trade or business, shall be considered as
18 earned income.

19 "(c) SPECIAL RULES.—

20 "(1) LIMITATIONS ON AMOUNT OF EXCLU-
21 SION.—The amount excluded from the gross income of
22 an individual under subsection (a) for any taxable year
23 shall not exceed an amount which shall be computed
24 on a daily basis at an annual rate of compensation
25 equal to the sum of—

1 "(A) $50,000, plus

2 "(B) 50 percent of the amount of compensa-
3 tion received by such individual in such taxable
4 year which exceeds $50,000 but does not exceed
5 $75,000,

6 for each day of the taxable year during which such in-
7 dividual is present in a foreign country.

8 "(2) ATTRIBUTION TO YEAR IN WHICH SERVICES
9 ARE PERFORMED.—For purposes of applying para-
10 graph (1), amounts received shall be considered re-
11 ceived in the taxable year in which the services to
12 which the amounts are attributable are performed.

13 "(3) TREATMENT OF COMMUNITY INCOME.—In
14 applying paragraph (1) with respect to amounts re-
15 ceived from services performed by a husband or wife
16 which are community income under community prop-
17 erty laws applicable to such income, the aggregate
18 amount excludable under subsection (a) from the gross
19 income of such husband and wife shall equal the
20 amount which would be excludable if such amounts did
21 not constitute such community income.

22 "(4) REQUIREMENT AS TO TIME OF RECEIPT.—
23 No amount received after the close of the taxable year
24 following the taxable year in which the services to

1 which the amounts are attributable are performed may
2 be excluded under subsection (a).
3 "(5) CERTAIN AMOUNTS NOT EXCLUDABLE.—No
4 amount—
5 "(A) received as a pension or annuity, or
6 "(B) included in gross income by reason of
7 section 402(b) (relating to taxability of beneficiary
8 of nonexempt trust), section 403(c) (relating to
9 taxability of beneficiary under a nonqualified an-
10 nuity), or section 403(d) (relating to taxability of
11 beneficiary under certain forfeitable contracts pur-
12 chased by exempt organizations),
13 may be excluded under subsection (a).
14 "(6) TEST OF BONA FIDE RESIDENCE.—A state-
15 ment by an individual who has earned income from
16 sources within a foreign country to the authorities of
17 that country that he is not a resident of that country, if
18 he is held not subject as a resident of that country to
19 the income tax of that country by its authorities with
20 respect to such earnings shall be conclusive evidence
21 with respect to such earnings that he is not a bona fide
22 resident of that country for purposes of subsection (a).
23 "(7) FOREIGN TAXES PAID ON EXCLUDED
24 INCOME NOT CREDITABLE OR DEDUCTIBLE.—An indi-
25 vidual shall not be allowed as a deduction or as a

1 credit against the tax imposed by this chapter any
2 credit or deduction for the amount of taxes paid or ac-
3 crued to a foreign country or possession of the United
4 States, to the extent that such deduction or credit is
5 properly allocable to or chargeable against amounts ex-
6 cluded from gross income under this subsection, other
7 than the deduction allowed by section 217 (relating to
8 moving expenses).

9 "(d) HOUSING COST EXCLUSION.—

10 "(1) IN GENERAL.—In the case of an individual
11 described in subsection (a), there shall be excluded
12 from the gross income of such individual, and exempt
13 from taxation under this subtitle, in addition to any
14 amounts excluded and exempt under subsection (a), an
15 amount equal to the housing cost amount.

16 "(2) HOUSING COST AMOUNT.—For purposes of
17 this subsection, the housing cost amount is the amount
18 by which an individual's housing expenses for the tax-
19 able year exceed 16 percent of the salary of an em-
20 ployee of the United States who is compensated at a
21 rate equal to the annual rate paid for step 1 of grade
22 GS-14.

23 "(3) HOUSING EXPENSES.—The term 'housing
24 expenses' means the reasonable expenses paid or in-
25 curred during the taxable year by or on behalf of an

1 individual for housing for the individual (and, if they
2 reside with him, for his spouse and dependents) in a
3 foreign country. The term—
4 "(A) includes expenses attributable to the
5 housing (such as utilities and insurance), but
6 "(B) does not include interest and taxes of
7 the kind deductible under section 163 or 164 or
8 any amount allowable as a deduction under sec-
9 tion 216(a).
10 Housing expenses shall not be treated as reasonable to
11 the extent such expenses are lavish or extravagant
12 under the circumstances.
13 "(4) SECOND FOREIGN HOUSEHOLD.—If an indi-
14 vidual described in subsection (a) maintains a separate
15 household outside the United States for his spouse and
16 dependents and they do not reside with him because of
17 living conditions which are dangerous, unhealthful, or
18 otherwise adverse, then the words 'if they reside with
19 him' in paragraph (3) shall be disregarded.".
20 (b) CLERICAL AMENDMENTS.—
21 (1) The table of sections for subpart B of part III
22 of subchapter N of chapter 1 of such Code is amended
23 by striking out the item relating to section 911 and in-
24 serting in lieu thereof the following:

"Sec. 911. Earned income from sources without the United States; foreign housing costs.".

1 (2) Sections 43(c)(1)(B), 1302(b)(2)(A)(i),
2 1304(b)(1), 1402(a)(8), 6012(c), and 6091(b)(1)(B)(iii)
3 are each amended by striking out "relating to income
4 earned by employees in certain camps" and inserting
5 in lieu thereof "relating to earned income from sources
6 without the United States and foreign housing costs".
7 (c) EMPLOYEES LIVING IN CAMPS.—Section 119 of the
8 Internal Revenue Code of 1954 is amended by adding the
9 following new subsection:
10 "(c) EMPLOYEES LIVING IN CAMPS.—In the case of an
11 individual who is furnished lodging in a camp by or on behalf
12 of his employer, such camp shall be considered to be part of
13 the business premises of the employer. For purposes of this
14 section a camp constitutes lodging which is—
15 "(1) provided by or on behalf of the employer be-
16 cause the place at which such individual renders serv-
17 ices is in an area where satisfactory housing is not
18 available on the open market,
19 "(2) located, as near as practicable, in the vicinity
20 of the place at which such individual renders services,
21 and
22 "(3) furnished in a common area (or enclave)
23 which is not available to the public.".
24 (d) REPEAL OF DEDUCTION FOR CERTAIN EXPENSES
25 OF LIVING ABROAD.—

1 (1) IN GENERAL.—Section 913 of the Internal
2 Revenue Code of 1954 (relating to deduction for cer-
3 tain expenses of living abroad) is hereby repealed.
4 (2) CONFORMING AMENDMENTS.—
5 (A) The table of sections for subpart B of
6 part III of subchapter N of chapter 1 of such
7 Code is amended by striking out the item relating
8 to section 913.
9 (B) Section 62 of such Code (relating to defi-
10 nition of adjusted gross income) is amended by
11 striking out paragraph (14).
12 (e) EFFECTIVE DATE.—The amendments made by this
13 section shall apply with respect to taxable years beginning
14 after December 31, 1981.

15 **SEC. 303. REASONABLE ESTIMATION OF BAD DEBT RESERVES**
16 **FOR EXPORT RECEIVABLES.**

17 Subsection (c) of section 166 of the Internal Revenue
18 Code of 1954 (relating to reserve for bad debts) is amended
19 to read as follows:
20 "(c) RESERVE FOR BAD DEBTS.—
21 "(1) GENERAL RULE.—In lieu of any deduction
22 under subsection (a), there shall be allowed (in the dis-
23 cretion of the Secretary) a deduction for a reasonable
24 addition to a reserve for bad debts.

1 "(2) REASONABLE ESTIMATION FOR BAD DEBTS
2 IN CONNECTION WITH EXPORTS.—
3 "(A) SEPARATE RESERVE.—A taxpayer en-
4 gaged in the trade or business of selling export
5 property or services for use outside the United
6 States may establish a separate reserve for bad
7 debts with respect to that trade or business.
8 "(B) ANNUAL ADDITION.—The amount
9 added to any such separate reserve for the taxable
10 year shall not exceed the greater of—
11 "(i) 15 percent of the taxable income
12 from sources without the United States
13 (within the meaning of section 862(b)) for the
14 taxable year attributable to such trade or
15 business, or
16 "(ii) 2 percent of the taxpayer's export
17 receivables outstanding as of the close of the
18 taxable year.
19 "(C) MAXIMUM RESERVE.—No amount may
20 be added to any such reserve for the taxable year
21 which would cause the total amount credited to
22 the reserve as of the close of the taxable year to
23 exceed 5 percent of the taxpayer's export receiv-
24 ables outstanding as of the close of the taxable
25 year.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) EXPORT RECEIVABLES.—The term 'export receivables' means accounts receivable for export receipts.

"(ii) EXPORT RECEIPTS.—The term 'export receipts' means gross receipts from the sale of export property or services for use outside the United States.

"(iii) EXPORT PROPERTY.—The term 'export property' has the same meaning as such term has in section 971(e).".

SEC. 304. CLARIFICATION OF TAX TREATMENT OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.

Section 174 of the Internal Revenue Code of 1954 (relating to research and experimental expenditures) is amended by redesignating subsection (e) as (f), and by inserting immediately after subsection (d) the following new subsection:

"(e) CERTAIN EXPORT-RELATED EXPENDITURES.—At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, amounts paid or incurred for the following items may be treated as research or experimental expenditures under subsection (a) or (b):

1 "(1) FOREIGN MARKET STUDIES, ETC.—Amounts
2 paid or incurred in connection with the survey or anal-
3 ysis of foreign markets and products.
4 "(2) FOREIGN MARKETING EXPENSES.—
5 Amounts paid or incurred in connection with market-
6 ing, outside the United States, goods produced in the
7 United States, including, but not limited to, amounts
8 paid or incurred in adapting United States products to
9 meet foreign market requirements.
10 "(3) FOREIGN PATENT COSTS.—Amounts paid or
11 incurred in connection with the application for, or
12 maintenance of, international and foreign patents and
13 trademarks (without regard to whether the taxpayer is
14 the owner of, or the owner of the rights to, the United
15 States patent for the item) for use in the taxpayer's
16 trade or business.".

17 **SEC. 305. CLARIFICATION OF THE TAX TREATMENT OF FOR-**
18 **EIGN CURRENCY FLUCTUATION LOSSES ON**
19 **EXPORT RECEIVABLES.**

20 Section 165 of the Internal Revenue Code of 1954 (re-
21 lating to losses) is amended by redesignating subsection (i) as
22 subsection (j), and by inserting after subsection (h) the follow-
23 ing new subsection:
24 "(i) LOSSES ATTRIBUTABLE TO FOREIGN CURRENCY
25 FLUCTUATIONS ON EXPORT RECEIVABLES.—

1 "(1) GENERAL RULE.—At the election of the tax-
2 payer, there shall be allowed as a deduction an amount
3 equal to the foreign currency fluctuation loss of the
4 taxpayer for the taxable year with respect to export
5 receivables. The election shall be made at such time
6 and in such manner as the Secretary may prescribe,
7 and may be made on a currency-by-currency basis.
8 "(2) DEFINITIONS; SPECIAL RULES.—For pur-
9 poses of this subsection—
10 "(A) FOREIGN CURRENCY FLUCTUATION
11 LOSS.—The term 'foreign currency fluctuation
12 loss' means the amount by which the value,
13 stated in United States dollars, of an export re-
14 ceivable, payable in foreign currency, on the later
15 of—
16 "(i) the first day of the taxable year, or
17 "(ii) the date on which the export re-
18 ceivable was created,
19 exceeds the value of the export receivable, stated
20 in United States dollars, on the last day of the
21 taxable year.
22 "(B) EXPORT RECEIVABLE.—The term
23 'export receivable' has the same meaning as in
24 section 166(c)(2)(D)(i).

1 "(C) DEDUCTION ALLOWED ONLY TO TAX-
2 PAYER WHOSE TRADE OR BUSINESS CREATED
3 THE EXPORT RECEIVABLE.—The deduction al-
4 lowed by this subsection shall be allowed only to
5 the taxpayer whose trade or business created the
6 export receivable with respect to which the de-
7 duction is allowable.
8 "(3) RECAPTURE UPON RECEIPT.—If the amount
9 received by the taxpayer in satisfaction of an export
10 receivable exceeds—
11 "(A) the value of that receivable, stated in
12 United States dollars, on the date on which it was
13 created, reduced by
14 "(B) the sum of the amounts allowed for all
15 taxable years under this subsection with respect
16 to that receivable,
17 then, for purposes of this chapter, the amount realized
18 by the taxpayer in satisfaction of that receivable shall
19 be increased by the amount of such excess.
20 "(4) APPLICATION WITH SECTION 166.—For the
21 purpose of determining the amount of the deduction al-
22 lowable under section 166(a) for any taxable year for a
23 debt which is an export receivable for which a deduc-
24 tion has been claimed under this subsection, the adjust-
25 ed basis shall be reduced by the sum of any deductions

1 allowed under this subsection for that and all prior tax-
2 able years.
3 "(5) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as may be necessary to carry
5 out this subsection.".

6 **SEC. 306. DEADLINE FOR EXEMPTING EXPORTS FROM THE**
7 **MANUFACTURERS EXCISE TAX.**

8 (a) IN GENERAL.—Section 4221(b) of the Internal Rev-
9 enue Code of 1954 (relating to certain tax-free sales) is
10 amended by adding at the end thereof the following: "The
11 Secretary may extend the 6-month deadline with respect to
12 exports for an additional 12 months if he determines, after
13 consultation with the Secretary of State, that exports were
14 delayed because of war, civil unrest, or similar adverse condi-
15 tions in a foreign nation.".
16 (b) EFFECTIVE DATE.—The amendment made by this
17 section shall apply to taxable years beginning after December
18 31, 1978.

19 **SEC. 307. USE OF FOREIGN TRADE ZONES IN EXPORTING.**

20 (a) The Act of June 18, 1934 (commonly known as the
21 Foreign Trade Zones Act; 19 U.S.C. 81a et seq.), is amend-
22 ed by inserting after section 3 the following new section:
23 "SEC. 3A. (a) The Secretary is authorized to approve
24 the duty-free entry of—

1 "(1) machinery and materials to be used solely in
2 the manufacture or production of goods in a zone if
3 such goods are not subsequently entered into the cus-
4 toms territory of the United States, and
5 "(2) fuel and materials consumed solely in the
6 manufacture or production of such goods, in the same
7 manner and subject to the same limitations as foreign
8 merchandise brought into such zone without being sub-
9 ject to the customs laws of the United States under
10 section 3 of this Act. The Secretary shall approve such
11 duty-free entry if he determines that such action con-
12 forms to an application approved by the Board under
13 subsection (b).
14 "(b) Any grantee may apply to the Board for the appli-
15 cation of the provisions of this section to any project con-
16 ducted, or proposed to be conducted, within the zone, operat-
17 ed and maintained by the grantee. The Board may approve
18 any such application if it determines that—
19 "(1) the application of this section is essential to
20 the successful operation of the project which is the
21 subject of the application;
22 "(2) domestic machinery, materials, and fuel are
23 not available at prices comparable to the foreign ma-
24 chinery, materials, and fuel which are proposed to be
25 used or consumed in the operation of such project, or

1 at prices which would permit the successful operation
2 of such project;
3 "(3) the total value of the goods to be manufac-
4 tured or produced and exported will exceed the duties
5 which (but for the application of this section) would
6 apply to the entry of machinery, materials, and fuel to
7 be used or consumed in the manufacture or production
8 of such goods and the total retail value of such goods
9 would be in excess of $100,000; and
10 "(4) the establishment and operation of the project
11 for which the application is made would not, deter-
12 mined by the Board, significantly reduce the export op-
13 erations of similar existing businesses.
14 "(c) Upon receipt of each application, the Board shall
15 publish a notice in the Federal Register to solicit the views of
16 the general public, to be submitted to the Board within 30
17 days after publication of the notice. The Board shall have 30
18 days after such views are submitted to reject or approve the
19 application, except that it may order an additional 60-day
20 extension for the purpose of requiring the applicant to submit
21 additional supporting information. A final determination shall
22 be made no later than 120 days after submission of the
23 application.
24 "(d) Approval granted under subsections (b) and (c) of
25 this section shall be valid for 6 years, and every interested

1 manufacturer shall reapply for approval with the Board under
2 subsections (b) and (c) at 6-year intervals.

3 "(e) Machinery, fuel, materials, or manufactured goods
4 imported pursuant to this section shall be subject to duty and
5 taxation at regular rates if subsequently entered into the cus-
6 toms territory of the United States.

7 "(f) The Board shall promulgate such rules and regula-
8 tions as it considers necessary to carry out the purposes of
9 this section. Such rules and regulations shall be designed in
10 such a way as to eliminate unnecessary paperwork, to sim-
11 plify forms, and to expedite all proceedings.".

12 (b) REPORT.—Section 16(c) of such Act is amended by
13 inserting after "grantee." the following new sentence: "The
14 report shall also contain a summary of activities and pro-
15 grams of the Board in each zone intended to increase the use
16 of foreign trade zones to expand United States exports and
17 such proposals as the Secretary shall make to expand the use
18 of foreign trade zones in exporting.".

19 **SEC. 308. APPLICATION OF DISC RULES TO EXPORT TRADING**
20 **COMPANIES.**

21 (a) ELIGIBLE ORGANIZATIONS.—Paragraph (3) of sec-
22 tion 992(d) of the Internal Revenue Code of 1954 (relating to
23 ineligible corporations) is amended by inserting before the
24 comma at the end thereof the following: "(other than a finan-
25 cial institution which is a banking organization as defined in

1 section 625(a)(1) of this Act investing in the voting stock of
2 an export trading company (as defined in section 623(a)(5) of
3 this Act) in accordance with the provisions of section 105 of
4 this Act)".

5 (b) RECEIPTS FROM SERVICES.—Paragraph (1) of sec-
6 tion 993(a) of the Internal Revenue Code of 1954 (relating to
7 qualified export receipts of a DISC) is amended—

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

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

13 (3) by adding at the end thereof the following new
14 subparagraph:

15 "(I) in the case of a DISC which is an
16 export trading company (as defined in section
17 623(a)(5) of the National Export Policy Act of
18 1981), or which is a subsidiary of such a compa-
19 ny, gross receipts from the export of services pro-
20 duced in the United States (as defined in section
21 623(a)(3) of such Act) or from export trade serv-
22 ices (as defined in section 623(a)(4) of such
23 Act).".

24 (c) PUBLICITY.—The Secretary of Commerce, after
25 consultation with the Secretary of the Treasury, shall devel-

1 op, prepare, and distribute to interested parties, including po-
2 tential exporters, information concerning the manner in
3 which an export trading company can utilize the provisions of
4 part IV of subchapter N of chapter 1 of the Internal Revenue
5 Code of 1954 (relating to domestic international sales corpo-
6 rations), and any advantages or disadvantages which may
7 reasonably be expected from the election of DISC status or
8 the establishment of a subsidiary corporation which is a
9 DISC.

10 (d) EFFECTIVE DATE.—The amendments made by this
11 section shall apply with respect to taxable years beginning
12 after December 31, 1981.

13 **SEC. 309. SUBCHAPTER S STATUS FOR EXPORT TRADING COM-**
14 **PANIES.**

15 (a) IN GENERAL.—Paragraph (2) of section 1371(a) of
16 the Internal Revenue Code of 1954 (relating to the definition
17 of a small business corporation) is amended by inserting ",
18 except in the case of the shareholders of an export trading
19 company (as defined in section 623(a)(5) of the National
20 Export Policy Act of 1981) if such shareholders are other-
21 wise small business corporations for the purpose of this sub-
22 chapter," after "shareholder".

23 (b) CONFORMING AMENDMENT.—The first sentence of
24 section 1372(e)(4) of such Code (relating to foreign income) is

1 amended by inserting ", other than an export trading com-
2 pany," after "small business corporation".
3 (c) EFFECTIVE DATE.—The amendments made by this
4 section shall apply with respect to taxable years beginning
5 after December 31, 1981.

6 TITLE IV—ANTITRUST

7 **PART 1—FINDINGS AND CONCLUSIONS**

8 **SEC. 401. FINDINGS AND CONCLUSIONS.**

9 (a) FINDINGS.—The Congress finds that—
10 (1) the application of current United States anti-
11 trust laws to international trade activities serves as a
12 restraint on exports;
13 (2) the purpose of United States antitrust laws to
14 foster competition reflects a basic premise of our free
15 enterprise system;
16 (3) the domestic application of the antitrust laws
17 clearly—
18 (A) encourages efficient resource allocations,
19 (B) stimulates the use of efficient methods of
20 production and distribution,
21 (C) encourages progressive technology and
22 high productivity, and
23 (D) serves the public by affording goods and
24 services at the most reasonable price;

1 (4) the benefits of applying current antitrust laws
2 to United States trade overseas where, in many cases,
3 competition as understood in the United States does
4 not exist, are not so clear;
5 (5) the application of United States antitrust laws
6 to extraterritorial trading is highly complex and am-
7 biguous, making full compliance difficult and costly and
8 sometimes resulting in a restraint on exports rather
9 than an encouragement of competition;
10 (6) the difficulties antitrust laws present to export-
11 ers are compounded by the conflicting jurisdictions
12 over enforcement of those laws between the States and
13 the United States Department of Justice and Federal
14 Trade Commission, and assurances from one agency
15 that it will not prosecute a particular export trade ac-
16 tivity is not necessarily binding on the others and does
17 not preclude private treble damage litigation; and
18 (7) the obligations imposed upon the conduct and
19 structure of businesses by United States antitrust laws
20 have few parallels among major foreign competitors or
21 in most overseas markets for United States exports.
22 (b) CONCLUSIONS.—The Congress therefore concludes
23 that—
24 (1) decisions on the interpretation and enforce-
25 ment of United States antitrust laws should reflect the

1 national interest in expanded export trade and should
2 not restrain unnecessarily the United States ability to
3 be an aggressive exporter of goods and services;
4 (2) a comprehensive study of the international as-
5 pects of the United States antitrust laws, applicable
6 rules of court, related statutes, administrative proce-
7 dures, and their applications, consequences, and inter-
8 pretation by the courts and Federal agencies should be
9 undertaken to determine what reforms are required to
10 improve the ability of United States enterprises to
11 compete effectively abroad;
12 (3) changes in the antitrust laws for export trade
13 purposes should not tamper with their application to
14 domestic commerce;
15 (4) antitrust laws should permit normal interna-
16 tional business practices, particularly those regarding
17 product marketing techniques, licensing, and bidding
18 procedures, and should recognize the realities of widely
19 differing foreign markets as long as they do not ad-
20 versely affect domestic competition;
21 (5) the application of United States antitrust laws
22 to international activities must be clearly defined prior
23 to enforcement;
24 (6) uncoordinated and conflicting actions by agen-
25 cies with concurrent jurisdiction should be eliminated;

1 (7) the Webb-Pomerene Act should be amended to
2 allow business associations to obtain preclearance from
3 the Department of Commerce for the joint exporting of
4 goods or services that will grant antitrust immunity for
5 certified activities;
6 (8) a formal business review process should be es-
7 tablished at the Department of Justice to permit pre-
8 clearance with respect to the nonapplicability of anti-
9 trust laws to a firm's overseas activities that will
10 assure against prosecution for antitrust violations; and
11 (9) procedures for efficiently informing existing
12 and potential exporters of legal requirements and their
13 impact on specific categories of export transactions
14 should be developed.

15 **PART 2—REVISION OF WEBB-POMERENE ACT**

16 **SEC. 421. WEBB-POMERENE ACT AMENDMENTS.**

17 (a) PURPOSE.—It is the purpose of this section to en-
18 courage American exports by establishing an office within the
19 Department of Commerce to encourage and promote the for-
20 mation of export trade associations through the Webb-
21 Pomerene Act, by making the provisions of that Act explicit-
22 ly applicable to the exportation of services, and by transfer-
23 ring the responsibility for administering that Act from the
24 Federal Trade Commission to the Secretary of Commerce.

1 (b) DEFINITIONS.—The Webb-Pomerene Act (15
2 U.S.C. 61–66) is amended by striking out the first section
3 (15 U.S.C. 61) and inserting in lieu thereof the following:
4 "SECTION 1. DEFINITIONS.
5 "As used in this Act—
6 "(1) EXPORT TRADE.—The term 'export trade'
7 means trade or commerce in goods, wares, merchan-
8 dise, or services exported, or in the course of being ex-
9 ported from the United States or any territory thereof
10 to any foreign nation.
11 "(2) SERVICE.—The term 'service' means intangi-
12 ble economic output, including, but not limited to—
13 "(A) business, repair, and amusement
14 services;
15 "(B) management, legal, engineering, archi-
16 tectural, and other professional services; and
17 "(C) financial, insurance, transportation, and
18 communication services.
19 "(3) EXPORT TRADE ACTIVITIES.—The term
20 'export trade activities' means activities or agreements
21 in the course of export trade.
22 "(4) METHODS OF OPERATION.—The term
23 'methods of operation' means the methods by which an
24 association or export trading company conducts or pro-
25 poses to conduct export trade.

1 "(5) TRADE WITHIN THE UNITED STATES.—The
2 term 'trade within the United States' whenever used in
3 this Act means trade or commerce among the several
4 States or in any territory of the United States, or in
5 the District of Columbia, or between any such territory
6 and another, or between any such territory or territo-
7 ries and any State or States or the District of Colum-
8 bia, or between the District of Columbia and any State
9 or States.

10 "(6) ASSOCIATION.—The term 'association'
11 means any combination, by contract or other arrange-
12 ment, of persons who are citizens of the United States,
13 partnerships which are created under and exist pursu-
14 ant to the laws of any State or of the United States, or
15 corporations, whether operated for profit or organized
16 as nonprofit corporations, which are created under and
17 exist pursuant to the laws of any State or of the
18 United States.

19 "(7) EXPORT TRADING COMPANY.—The term
20 'export trading company' means an export trading
21 company as defined in section 623(5) of the Export
22 Trading Company Act of 1981.

23 "(8) ANTITRUST LAWS.—The term 'antitrust
24 laws' means the antitrust laws defined in the first sec-
25 tion of the Clayton Act (15 U.S.C. 12), sections 5 and

1 6 of the Federal Trade Commission Act (15 U.S.C.
2 45, 46), and any State antitrust or unfair competition
3 law.

4 "(9) SECRETARY.—The term 'Secretary' means
5 the Secretary of Commerce.

6 "(10) ATTORNEY GENERAL.—The term 'Attorney
7 General' means the Attorney General of the United
8 States.

9 "(11) COMMISSION.—The term 'Commission'
10 means the Federal Trade Commission.".

11 (c) ANTITRUST EXEMPTION.—The Webb-Pomerene
12 Act (15 U.S.C. 61–66) is amended by striking out section 2
13 (15 U.S.C. 62) and inserting in lieu thereof the following:

14 **"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.**

15 "(a) ELIGIBILITY.—The export trade, export trade ac-
16 tivities, and methods of operation of any association, entered
17 into for the sole purpose of engaging in export trade, and
18 engaged in or proposed to be engaged in such export trade,
19 and the export trade, export trade activities and methods of
20 operation of any export trading company, that—

21 "(1) serve to preserve or promote export trade;

22 "(2) result in neither a substantial lessening of
23 competition or restraint of trade within the United
24 States nor a substantial restraint of the export trade of

1 any competitor of such association or export trading
2 company;
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 or export trading company;
7 "(4) do not constitute unfair methods of competi-
8 tion against competitors engaged in the export trade of
9 goods, wares, merchandise, or services of the class ex-
10 ported by such association or export trading company;
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 export trading company or its members;
16 and
17 "(6) do not constitute trade or commerce in the
18 licensing of patents, technology, trademarks, or know-
19 how, except as incidental to the sale of the goods,
20 wares, merchandise, or services exported by the associ-
21 ation or export trading company or its members
22 shall, when certified according to the procedures set forth in
23 this Act, be eligible for the exemption provided in subsection
24 (b).

1 "(b) EXEMPTION.—An association or an export trading
2 company and its members are exempt from the operation of
3 the antitrust laws with respect to their export trade, export
4 trade activities and methods of operation that are specified in
5 a certificate issued according to the procedures set forth in
6 this Act, carried out in conformity with the provisions, terms,
7 and conditions prescribed in such certificate and engaged in
8 during the period in which such certificate is in effect. The
9 subsequent revocation or invalidation in whole or in part of
10 such certificate shall not render an association or its members
11 or an export trading company or its members, liable under
12 the antitrust laws for such export trade, export trade activi-
13 ties, or methods of operation engaged in during such period.
14 "(c) DISAGREEMENT OF ATTORNEY GENERAL OR
15 COMMISSION.—Whenever, pursuant to section 4(b)(1) of this
16 Act, the Attorney General or Commission has formally ad-
17 vised the Secretary of disagreement with his determination to
18 issue a proposed certificate, and the Secretary has nonethe-
19 less issued such proposed certificate or an amended certifi-
20 cate, the exemption provided by this section shall not be
21 effective until thirty days after the issuance of such
22 certificate.".
23 (d) AMENDMENT OF SECTION 3.—The Webb-Pomerene
24 Act (15 U.S.C. 61–66) is amended—

1 (1) by inserting immediately before section 3 (15
2 U.S.C. 63) the following:
3 "SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCI-
4 ATIONS PERMITTED.",
5 (2) by striking out "SEC. 3. That nothing" in sec-
6 tion 3 and inserting in lieu thereof "Nothing".
7 (e) ADMINISTRATION; ENFORCEMENT; REPORTS.—
8 (1) IN GENERAL.—The Webb-Pomerene Act (15
9 U.S.C. 61–66) is amended by striking out sections 4
10 and 5 (15 U.S.C. 64 and 65) and inserting in lieu
11 thereof the following sections:
12 "SEC. 4. CERTIFICATION.
13 "(a) PROCEDURE FOR APPLICATION.—Any associ-
14 ation, or export trading company seeking certification under
15 this Act shall file with the Secretary a written application for
16 certification setting forth the following:
17 "(1) The name of the association or export trad-
18 ing company.
19 "(2) The location of all of the offices or places of
20 business of the association or export trading company
21 in the United States and abroad.
22 "(3) The names and addresses of all of the offi-
23 cers, stockholders, and members of the association or
24 export trading company.

1 "(4) A copy of the certificate or articles of incor-
2 poration and bylaws, if the association or export trad-
3 ing company is a corporation; or a copy of the articles,
4 partnership, joint venture, or other agreement or con-
5 tract under which the association or export trading
6 company conducts or proposes to conduct its export
7 trade activities, or contract of association if the associ-
8 ation or export trading company is unincorporated.

9 "(5) A description of the goods, wares, merchan-
10 dise, or services which the association or export trad-
11 ing company or their members export or propose to
12 export.

13 "(6) A description of the domestic and interna-
14 tional conditions, circumstances, and factors which
15 show that the association or export trading company
16 and its activities will serve a specified need in promot-
17 ing the export trade of the described goods, wares,
18 merchandise, or services.

19 "(7) The export trade activities in which the asso-
20 ciation or export trading company intends to engage
21 and the methods by which the association or export
22 trading company conducts or proposes to conduct
23 export trade in the described goods, wares, merchan-
24 dise, or services, including, but not limited to, any
25 agreements to sell exclusively to or through the associ-

1 ation or export trading company, any agreements with
2 foreign persons who may act as joint selling agents,
3 any agreements to acquire a foreign selling agent, any
4 agreements for pooling tangible or intangible property
5 or resources, or any territorial, price-maintenance,
6 membership, or other restrictions to be imposed upon
7 members of the association or export trading company.
8 "(8) The names of all countries where export
9 trade in the described goods, wares, merchandise, or
10 services is conducted or proposed to be conducted by
11 or through the association or export trading company.
12 "(9) Any other information which the Secretary
13 may request concerning the organization, operation,
14 management, or finances of the association or export
15 trading company; the relation of the association or
16 export trading company to other associations, corpora-
17 tions, partnerships, and individuals; and competition or
18 potential competition, and effects of the association or
19 export trading company thereon. The Secretary may
20 request such information as part of an initial applica-
21 tion or as a necessary supplement thereto. The Secre-
22 tary may not request information under this paragraph
23 which is not reasonably available to the person making
24 application or which is not necessary for certification of
25 the prospective association or export trading company.

1 "(b) ISSUANCE OF CERTIFICATE.—

2 "(1) NINETY-DAY PERIOD.—The Secretary shall
3 issue a certificate to an association or export trading
4 company within ninety days after receiving the applica-
5 tion for certification or necessary supplement thereto if
6 the Secretary, after consultation with the Attorney
7 General and Commission, determines that the associ-
8 ation and, its export trade, export trade activities and
9 methods of operation, or export trading company, and
10 its export trade, export trade activities and methods of
11 operation meet the requirements of section 2 of this
12 Act and will serve a specified need in promoting the
13 export trade of the goods, wares, merchandise, or serv-
14 ices described in the application for certification. The
15 certificate shall specify the permissible export trade,
16 export trade activities and methods of operation of the
17 association or export trading company and shall include
18 any terms and conditions the Secretary deems neces-
19 sary to comply with the requirements of section 2 of
20 this Act. The Secretary shall deliver to the Attorney
21 General and the Commission a copy of any certificate
22 that he proposes to issue. The Attorney General or
23 Commission may, within fifteen days thereafter, give
24 written notice to the Secretary of an intent to offer
25 advice on the determination. The Attorney General or

1 Commission may, after giving such written notice and
2 within forty-five days of the time the Secretary has de-
3 livered a copy of a proposed certificate, formally advise
4 the Secretary and the petitioning association or export
5 trading company of disagreement with the Secretary's
6 determination. The Secretary shall not issue any certif-
7 icate prior to the expiration of such forty-five-day
8 period unless he has (A) received no notice of intent to
9 offer advice by the Attorney General or the Commis-
10 sion within fifteen days after delivering a copy of a
11 proposed certificate, or (B) received any noticed formal
12 advice of disagreement or written confirmation that no
13 formal disagreement will be transmitted from the At-
14 torney General and the Commission. After the forty-
15 five-day period or, if no notice of intent to offer advice
16 has been given, after the fifteen-day period, the Secre-
17 tary shall either issue the proposed certificate, issue an
18 amended certificate, or deny the application. Upon
19 agreement of the applicant, the Secretary may delay
20 taking action for not more than thirty additional days
21 after the forty-five-day period. Before offering advice
22 on a proposed certification, the Attorney General and
23 Commission shall consult in an effort to avoid, wherev-
24 er possible, having both agencies offer advice on any
25 application.

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 or export trading company which
6 have a significant impact on its export trade, make the
7 ninety-day period for application approval described in
8 paragraph (1) of this subsection, or an amended appli-
9 cation approval as provided in subsection (c) of this
10 section, impractical for the association or export trad-
11 ing company seeking certification, such association or
12 export trading company may request and may receive
13 expedited action on its application for certification.

14 "(3) AUTOMATIC CERTIFICATION FOR EXISTING
15 ASSOCIATIONS.—Any association registered with the
16 Federal Trade Commission under this Act as of April
17 3, 1980, may file with the Secretary an application for
18 automatic certification of any export trade, export
19 trade activities, and methods of operation in which it
20 was engaged prior to enactment of the Export Trade
21 Association Act of 1981. Any such application must be
22 filed within one hundred and eighty days after the date
23 of enactment of such Act and shall be acted upon by
24 the Secretary in accordance with the procedures pro-
25 vided by this section. The Secretary shall issue to the

1 association a certificate specifying the permissible
2 export trade, export trade activities, and methods of
3 operation that he determines are shown by the applica-
4 tion (including any necessary supplement thereto), on
5 its face, to be eligible for certification under this Act,
6 and including any terms and conditions the Secretary
7 deems necessary to comply with the requirements of
8 section 2(a) of this Act, unless the Secretary possesses
9 information clearly indicating that the requirements of
10 section 2(a) are not met.

11 "(4) APPEAL OF DETERMINATION.—If the Secre-
12 tary determines not to issue a certificate to an associ-
13 ation or export trading company which has submitted
14 an application or an amended application for certifica-
15 tion, then he shall—

16 "(A) notify the association or export trading
17 company of his determination and the reasons for
18 his determination, and

19 "(B) upon request made by the association or
20 export trading company afford it an opportunity
21 for a hearing with respect to that determination in
22 accordance with section 557 of title 5, United
23 States Code.

24 "(c) MATERIAL CHANGES IN CIRCUMSTANCES;
25 AMENDMENT OF CERTIFICATE.—Whenever there is a ma-

1 terial change in the membership, export trade, export trade
2 activities, or methods of operation, of an association or export
3 trading company then it shall report such change to the Sec-
4 retary and may apply to the Secretary for an amendment of
5 its certificate. Any application for an amendment to a certifi-
6 cate shall set forth the requested amendment of the certifi-
7 cate and the reasons for the requested amendment. Any re-
8 quest for the amendment of a certificate shall be treated in
9 the same manner as an original application for a certificate.
10 If the request is filed within thirty days after a material
11 change which requires the amendment, and if the requested
12 amendment is approved, then there shall be no interruption in
13 the period for which the certificate is in effect.

14 "(d) AMENDMENT OR REVOCATION OF CERTIFICATE
15 BY SECRETARY.—After notifying the association or export
16 trading company involved and after an opportunity for hear-
17 ing pursuant to section 554 of title 5, United States Code,
18 the Secretary, on his own initiative—

19 "(1) may require that the organization or oper-
20 ation of the association or export trading company be
21 modified to correspond with its certification, or

22 "(2) shall, upon a determination that the export
23 trade, export trade activities or methods of operation of
24 the association or export trading company no longer
25 meet the requirements of section 2 of this Act, revoke

1 the certificate or make such amendments as may be
2 necessary to satisfy the requirements of such section.
3 "(e) ACTION FOR INVALIDATION OF CERTIFICATE BY
4 ATTORNEY GENERAL OR COMMISSION.—
5 "(1) The Attorney General or the Commission
6 may bring an action against an association or export
7 trading company or its members to invalidate, in whole
8 or in part, its certificate on the ground that the export
9 trade, export trade activities or methods of operation of
10 the association or export trading company fail or have
11 failed to meet the requirements of section 2 of this Act.
12 Except in the case of an action brought during the
13 period before an antitrust exemption becomes effective,
14 as provided for in section 2(c), the Attorney General or
15 Commission shall notify any association or export trad-
16 ing company or member thereof, against which it in-
17 tends to bring an action for invalidation, thirty days in
18 advance, as to its intent to file an action under this
19 subsection. The district court shall consider any issues
20 presented in any such action de novo and if it finds
21 that the requirements of section 2 are not met, it shall
22 issue an order declaring the certificate invalid or any
23 other order necessary to effectuate the purposes of this
24 Act and the requirements of section 2.

1 "(2) Any action brought under this subsection
2 shall be considered an action described in section 1337
3 of title 28, United States Code. Pending any such
4 action which was brought during the period any ex-
5 emption is held in abeyance pursuant to section 2(c) of
6 this Act, the court may make such temporary restrain-
7 ing order or prohibition as shall be deemed just in the
8 premises.

9 "(3) No person other than the Attorney General
10 or Commission shall have standing to bring an action
11 against an association or export trading company or
12 their respective members for failure of the association
13 or export trading company or their respective export
14 trade, export trade activities or methods of operation to
15 meet the eligibility requirements of section 2 of this
16 Act.

17 "(f) COMPLIANCE WITH OTHER LAWS.—Each associ-
18 ation and each export trading company and any subsidiary
19 thereof shall comply with United States export control laws
20 pertaining to the export or transshipment of any goods on the
21 Commodity Control List to controlled countries. Such laws
22 shall be complied with before actual shipment.

23 **"SEC. 5. GUIDELINES.**

24 "(a) INITIAL PROPOSED GUIDELINES.—Within ninety
25 days after the enactment of the National Export Policy Act

1 of 1981, the Secretary, after consultation with the Attorney
2 General, and the Commission shall publish proposed guide-
3 lines for purposes of determining whether export trade,
4 export trade activities, and methods of operation of an associ-
5 ation or export trading company will meet the requirements
6 of section 2 of this Act.

7 "(b) PUBLIC COMMENT PERIOD.—Following publica-
8 tion of the proposed guidelines, and any proposed revision of
9 guidelines, interested parties shall have thirty days to com-
10 ment on the proposed guidelines. The Secretary shall review
11 the comments and, after consultation with the Attorney Gen-
12 eral, and Commission, publish final guidelines within thirty
13 days after the last day on which comments may be made
14 under the preceding sentence.

15 "(c) PERIODIC REVISION.—After publication of the
16 final guidelines, the Secretary shall periodically review the
17 guidelines and, after consultation with the Attorney General,
18 and the Commission, propose revisions as needed.

19 "(d) APPLICATION OF ADMINISTRATIVE PROCEDURE
20 ACT.—The promulgation of guidelines under this section
21 shall not be considered rulemaking for purposes of subchapter
22 II of chapter 5 of title 5, United States Code, and section
23 553 of such title shall not apply to their promulgation.

1 "SEC. 6. ANNUAL REPORTS.

2 "Every certified association or export trading company
3 shall submit to the Secretary an annual report, in such form
4 and at such time as he may require, which report updates
5 where necessary the information described by section 4(a) of
6 this Act.

7 "SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF
8 COMMERCE.

9 "The Secretary shall establish within the Department of
10 Commerce an office to promote and encourage to the great-
11 est extent feasible the formation of export trade associations
12 and export trading companies through the use of provisions of
13 this Act in a manner consistent with this Act. The Office
14 Export Trade in the Department of Commerce shall report to
15 the congressional committees of appropriate jurisdiction on
16 an annual basis, all East-West trade transactions requiring
17 validated licenses, and any other relevant information on the
18 role of United States export trading companies or subsidiaries
19 thereof in East-West trade.

20 "SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING
21 ASSOCIATIONS.

22 "(a) ELIGIBILITY.—To be eligible for the antitrust ex-
23 emption provided by this section, an association must have
24 been registered with the Federal Trade Commission under
25 this Act on January 19, 1981.

1 "(b) DURATION.—The antitrust exemption provided by
2 this section shall extend only to the existence of an eligible
3 association, and to agreements made and acts done by such
4 association, prior to one hundred and eighty days after the
5 date of enactment of the National Export Policy Act of 1981,
6 or, in the event that an eligible association files an applica-
7 tion for certification pursuant to section 4 of this Act during
8 such one hundred and eighty days, prior to the Secretary's
9 determination on such application becoming final.

10 "(c) EXEMPTION.—Subject to the limitations in subsec-
11 tions (a) and (b), nothing contained in sections 1 to 7 of the
12 Sherman Act shall be construed as declaring to be illegal an
13 association entered into for the sole purpose of engaging in
14 export trade and actually engaged solely in such export
15 trade, or an agreement made or act done in the course of
16 export trade by such association, provided such association,
17 agreement, or act is not in restraint of trade within the
18 United States, and is not in restraint of the export trade of
19 any domestic competitor of such association: *Provided,* That
20 such association does not, either in the United States or else-
21 where, enter into any agreement, understanding, or conspir-
22 acy, or do any act which artificially or intentionally enhances
23 or depresses prices within the United States of commodities
24 of the class exported by such association, or which substan-

1 tially lessens competition within the United States or other-
2 wise restrains trade therein.

3 "SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL
4 REPORT INFORMATION.

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

16 "(b) DISCLOSURE TO ATTORNEY GENERAL OR COM-
17 MISSION.—Whenever the Secretary believes that an appli-
18 cant may be eligible for a certificate, or has issued a certifi-
19 cate to an association or export trading company, he shall
20 promptly make available all materials filed by the applicant,
21 association, or export trading company, including applica-
22 tions and supplements thereto, reports of material changes,
23 applications for amendments and annual reports, and infor-
24 mation derived therefrom, to the Attorney General or Com-
25 mission, or any employee or officer thereof, for official use in

1 connection with an investigation or judicial or administrative
2 proceeding under this Act or the antitrust laws to which the
3 United States or the Commission is or may be a party. Such
4 information may only be disclosed by the Secretary upon a
5 prior certification that the information will be maintained in
6 confidence and will only be used for such official law enforce-
7 ment purposes.

8 **"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH**
9 **UNITED STATES OBLIGATIONS.**

10 "At such time as the United States undertakes binding
11 international obligations by treaty or statute, to the extent
12 that the operations of any export trade association or export
13 trading company, certified under this Act, are inconsistent
14 with such international obligations, the Secretary may re-
15 quire the association or export trading company to modify its
16 respective operations, and in so doing afford the association
17 or export trading company a reasonable opportunity to
18 comply therewith, so as to be consistent with such interna-
19 tional obligations.

20 **"SEC. 11. REGULATIONS.**

21 "The Secretary, after consultation with the Attorney
22 General and the Commission, shall promulgate such rules
23 and regulations as may be necessary to carry out the pur-
24 poses of this Act.

1 "SEC. 12. TASK FORCE STUDY.

2 "Seven years after the date of enactment of the Export
3 Trade Association Act of 1981, the President shall appoint,
4 by and with the advice and consent of the Senate, a task
5 force to examine the effect of the operation of this Act on
6 domestic competition and on United States international
7 trade and to recommend either continuation, revision, or ter-
8 mination of the Webb-Pomerene Act. The task force shall
9 have 1 year to conduct its study and to make its recommen-
10 dations to the President.".

11 (2) REDESIGNATION OF SECTION 6.—The Act is
12 amended—

13 (A) by striking out "SEC. 6." in section 6
14 (15 U.S.C. 66), and

15 (B) by inserting immediately before such sec-
16 tion the following:

17 "SEC. 13. SHORT TITLE.".

18 **PART 3—ANTITRUST PROCEDURES**
19 **SIMPLIFICATION**

20 SEC. 431. DEFINITIONS.

21 For purposes of this part—

22 (1) The term "structural arrangement" means a
23 situation or course of action that affects the pattern of
24 ownership or control in industry.

1 (2) The term "conduct" means a practice that
2 may affect domestic competition but does not directly
3 affect the structure of ownership or control in industry.
4 (3) The term "disclosure" means a statement pub-
5 lished by the Attorney General or the Assistant Attor-
6 ney General for the antitrust division under section
7 5(a) describing conduct and structural arrangements re-
8 lating to export sales that will not be subject to crimi-
9 nal or civil prosecution under the antitrust laws.
10 (4) The term "antitrust laws" means the Sherman
11 Act, the Federal Trade Commission Act, the Clayton
12 Act, and any other Acts in pari materia.

13 **SEC. 432. STUDIES BY ATTORNEY GENERAL.**

14 (a) IN GENERAL.—The Attorney General, in consulta-
15 tion with the Secretary of Commerce and the heads of other
16 United States agencies with enforcement responsibility under
17 the antitrust laws, shall conduct studies to determine
18 whether—
19 (1) the conduct and structural arrangements em-
20 ployed in various countries by various types and sizes
21 of United States businesses to expand exports conflict
22 significantly with basic antitrust principles; and
23 (2) a more liberal enforcement policy for overseas
24 activities than would be appropriate for domestic trans-

1 actions would impede thorough implementation of the
2 legislative intent of the antitrust laws.

3 (b) IDENTIFICATION OF CONDUCT AND STRUCTURAL
4 ARRANGEMENTS.—On the basis of studies carried out under
5 subsection (a), or other information available to the Depart-
6 ment of Justice, the Attorney General shall identify conduct
7 and structural arrangements associated with particular types
8 of export sales which the Attorney General determines would
9 not warrant criminal or civil prosecution under the antitrust
10 laws by the Department of Justice.

11 (c) DEADLINE FOR INITIAL STUDIES.—The initial
12 studies made under subsection (a) shall be completed within 1
13 year after the date of enactment of this Act and shall be
14 updated annually.

15 **SEC. 433. PROCEDURES.**

16 (a) ATTORNEY GENERAL.—The Attorney General
17 shall—

18 (1) publish a description of conduct and structural
19 arrangements identified pursuant to section 432(b) as
20 not meriting criminal or civil prosecution under the
21 antitrust laws and shall make the published description
22 available to all potentially interested exporters; and

23 (2) establish procedures to assure a prompt re-
24 sponse to—

1 (A) petitions from individual exporters or
2 classes of exporters for the issuance of descrip-
3 tions under paragraph (1); and
4 (B) petitions from an individual exporter or
5 group of exporters for the issuance of a statement
6 of civil and criminal enforcement intentions con-
7 cerning specific conduct in which the petitioner
8 proposes to engage, or structural arrangements
9 the petitioner proposes to establish, in connection
10 with exports.
11 (b) SECRETARY OF COMMERCE.—The Secretary of
12 Commerce may intervene at any time to request that the
13 Attorney General publish a description under subsection
14 (a)(1) with respect to conduct or structural arrangements or
15 to reconsider a description published under such subsection.
16 Within 30 days after receiving such a request from the Sec-
17 retary, the Attorney General shall take whatever action he
18 determines to be appropriate with respect to the request and
19 inform the Secretary of the determination and action taken.
20 The action of the Attorney General shall be final and shall
21 not be subject to judicial review.
22 (c) FORMS AND PROCEDURES FOR OBTAINING DISCLO-
23 SURES.—The Attorney General shall establish appropriate
24 forms and procedures for the purpose of—

1 (1) communicating disclosures issued under sub-
2 section (a) to affected parties;
3 (2) informing exporters of specific actions they
4 must take to obtain disclosures pursuant to subsection
5 (a), or to be deemed covered by disclosures made pur-
6 suant to subsection (a)(2);
7 (3) determining actions exporters have taken in
8 reliance on such descriptions; and
9 (4) identifying problems associated with discharg-
10 ing the evaluation, disclosure, and monitoring functions
11 authorized under this Act.
12 (d) PROVISION OF LEGAL ASSISTANCE.—Upon re-
13 quest, the Secretary of Commerce may, on a reimbursable
14 basis, provide legal assistance to existing and potential ex-
15 porters who are unable to obtain specialized antitrust coun-
16 sel. Such assistance shall be limited to assistance in obtaining
17 enforcement intention disclosures provided for under subsec-
18 tion (a)(2).
19 (e) APPLICABILITY OF ADMINISTRATIVE PROCEDURE
20 ACT RULES.—Agency proceedings and agency actions (as
21 defined in paragraphs (12) and (13), respectively, of section
22 551 of title 5, United States Code) under this part shall not
23 be subject to subchapter II of chapter 5 of title 5, United
24 States Code (other than sections 552, 552a, and 552b).

1 **SEC. 434. COMPLIANCE BY EXPORTERS.**

2 (a) ANTITRUST EXEMPTION.—Notwithstanding any
3 other provision of law, an exporter shall not be subject to
4 civil or criminal prosecution under the antitrust laws by any
5 Federal agency if—

6 (1) the exporter, or group of exporters, notifies
7 the Attorney General, pursuant to procedures estab-
8 lished under section 433(c)(2), that the exporter or
9 group intends to engage in conduct or to establish
10 structural arrangements which have been designated
11 by the Attorney General as conduct or structural ar-
12 rangements not subject to civil or criminal prosecution
13 under the antitrust laws, and the Attorney General
14 does not object to the proposed conduct or arrange-
15 ment within 30 days and inform such exporter, or
16 group of exporters, of the specific reasons why the pro-
17 posed conduct and structural arrangements are not
18 covered by disclosures made pursuant to section
19 433(a); or

20 (2) the exporter requests a statement of civil and
21 criminal enforcement intentions concerning a particular
22 transaction pursuant to section 433(a)(2)(B), and within
23 60 days after the date of the request—

24 (A) receives an approval from the Attorney
25 General, or

1 (B) does not receive an objection in writing
2 from the Attorney General to the transaction set-
3 ting forth the specific reasons why the transaction
4 is in conflict with specific provisions of the anti-
5 trust laws.

6 (b) OBJECTIONS TO PROPOSED ACTIVITY.—Whenever
7 the Attorney General objects to proposed conduct or struc-
8 tural arrangements under paragraph (1) or (2) of subsection
9 (a)—

10 (1) the Attorney General shall notify the exporter
11 or group of exporters of such objections within 30 days
12 (60 days in the case of a request described in para-
13 graph (2) of such subsection) of receiving notification
14 regarding the proposed conduct or structural arrange-
15 ments and shall notify the exporter or group of export-
16 ers involved that they may request that a hearing be
17 held on the objections to the proposed conduct or
18 structural arrangement;

19 (2) the exporter or exporters involved shall notify
20 the Attorney General within 15 days after receiving
21 the objections if they wish to have a hearing;

22 (3) the Attorney General shall conduct any such
23 hearing within 30 days after the date on which the re-
24 quest for a hearing under paragraph (2) is received by
25 the Department of Justice;

1 (4) such hearing shall continue for no more than
2 30 days; and
3 (5) the Attorney General shall make the disclo-
4 sure determination within 15 days after the completion
5 of such hearing, notify the exporter or group of export-
6 ers of the determination, and publish the determination.
7 (c) FINALITY OF DETERMINATION.—A determination
8 by the Attorney General under subsection (b) shall be final
9 and shall not be subject to judicial review.

10 **SEC. 435. INJUNCTIONS.**

11 The Attorney General may request any United States
12 district court to issue an injunction regarding a disclosure
13 under section 433(a)(2) of this Act, when the Attorney Gen-
14 eral determines that—
15 (1) the activity of the exporter or group of export-
16 ers is acting outside of the scope of the disclosure;
17 (2) the circumstances under which the disclosure
18 was issued have substantially changed; or
19 (3) the disclosure was issued upon inaccurate or
20 fraudulent information.

21 **SEC. 436. REPORTS AND DISCLOSURES.**

22 On December 31 of each year, the Attorney General,
23 the Secretary of Commerce, and the heads of other United
24 States agencies directly affected by disclosures under this

1 part shall each file with the Congress, and make public, a
2 detailed report of—
3 (1) all actions by the appropriate department or
4 agency, or by other interested public and private par-
5 ties, taken pursuant to this part;
6 (2) any problems associated with the implementa-
7 tion of this part;
8 (3) the specific plans of the appropriate depart-
9 ment or agency to carry out its responsibilities (if any)
10 under this part in the next fiscal year; and
11 (4) any recommendations for amendment of this
12 part.

13 **SEC. 437. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) ATTORNEY GENERAL.—There are authorized to be
15 appropriated to the Attorney General such sums as may be
16 necessary for the purpose of carrying out this part.
17 (b) SECRETARY OF COMMERCE.—There are authorized
18 to be appropriated to the Secretary of Commerce such sums
19 as may be necessary for fiscal year 1981 for the sole purpose
20 of covering costs associated with initial implementation of
21 section 433(d) of this part.

22 **SEC. 438. EFFECTIVE DATE.**

23 This part shall take effect on October 1, 1981.

TITLE V—AMENDMENTS TO OTHER LAWS THAT HINDER EXPORTS

PART 1—FINDINGS AND CONCLUSIONS

SEC. 501. FINDINGS AND CONCLUSIONS.

(a) FINDINGS.—The Congress finds that—

(1) there are a number of United States laws, regulations, controls, and policies that have been instituted to serve legitimate domestic economic, political and ethical needs but which have little regard for their cost in terms of an adverse impact on exports;

(2) the effects of some of these laws, regulations, and policies have been to prohibit exports, raise the cost of producing goods for export, increase the uncertainty or cost of export transactions, and lengthen the time and increase the risk of negotiating and completing export transactions;

(3) it is in the national interest to avoid restraints on exports except when national security or foreign policy considerations clearly outweigh the total costs of the impairment to trade;

(4) the unpredictable and unclear nature of the enforcement, interpretation and jurisdiction of many of these laws and regulations has contributed to a climate of debilitating uncertainty among businessmen involved in exports; and

1 (5) the United States agencies responsible for en-
2 forcement or interpretation of the above laws and poli-
3 cies do not sufficiently coordinate interpretation and
4 enforcement practices among themselves, or with other
5 agencies responsible for international trade policy,
6 export promotion, foreign policy, and international
7 monetary policy.
8 (b) CONCLUSIONS.—The Congress concludes that—
9 (1) laws and regulations promoting and constrain-
10 ing international trade should be designed to reflect dif-
11 ferences in enterprise size; trade experience, industry
12 type, and product destinations in order to minimize
13 costs and maximize benefits of such laws and regula-
14 tions absorbed by the private sector;
15 (2) export impact statements should be required
16 for all policies and regulations affecting exports, to de-
17 termine as accurately as possible the extent of damage
18 to our trading interests caused by them, and to weigh
19 these costs against foreign policy considerations;
20 (3) some of the problems addressed in the laws
21 and regulations demand an international approach and
22 appropriate international agreements should be initiated
23 and sought by the United States agencies responsible
24 for trade treaties and by the President; and

1 (4) business should be allowed to obtain promptly
2 and efficiently binding statements of interpretation and
3 applications.

4 **PART 2—BUSINESS ACCOUNTING AND FOREIGN**
5 **TRADE SIMPLIFICATION**

6 **SEC. 521. FINDINGS AND CONCLUSIONS.**

7 (a) FINDINGS.—The Congress finds that—
8 (1) the enactment of the Foreign Corrupt Prac-
9 tices Act of 1977 was a positive and significant step
10 toward the important objective of prohibiting bribery of
11 foreign government officials by United States compa-
12 nies in order to obtain, retain, or direct business;
13 (2) the unclear nature of the enforcement, and in-
14 terpretation of the Foreign Corrupt Practices Act of
15 1977 by United States agencies has caused unneces-
16 sary confusion among existing and potential exporters
17 as to the scope of legitimate overseas business activi-
18 ties;
19 (3) the accounting standards requirements of the
20 Foreign Corrupt Practices Act of 1977, which apply to
21 all issuers of securities regardless of size, market, or
22 the presence of international transactions, are unclear
23 and excessive and they have caused costly and unnec-
24 essary paperwork burdens;

1 (4) United States agencies responsible for enforce-
2 ment of the Foreign Corrupt Practices Act of 1977
3 have not sufficiently coordinated interpretation and en-
4 forcement practices with other agencies responsible for
5 international trade policy, export promotion, foreign
6 policy, international monetary policy, and other related
7 civil and criminal statutes; and
8 (5) it is in the best interests of all countries to
9 maintain responsible standards of corporate conduct in
10 foreign markets to preserve free and equitable trading
11 practices.
12 (b) CONCLUSIONS.—The Congress concludes that—
13 (1) the principal objectives of the Foreign Corrupt
14 Practices Act of 1977 are desirable, beneficial, and im-
15 portant to our Nation as well as to our relationships
16 with our trading partners, and these objectives should
17 remain the central intent of the Act;
18 (2) exporters should not be subject to unclear,
19 conflicting, and potentially damaging demands by di-
20 verse United States agencies responsible for enforce-
21 ment of the Foreign Corrupt Practices Act of 1977;
22 (3) the accounting standards requirements of the
23 Foreign Corrupt Practices Act of 1977 should be inte-
24 grated with concepts of materiality as they are under-
25 stood and interpreted in the context of generally ac-

1 cepted accounting principles, and accordingly, should
2 take into consideration the size and operations of issu-
3 ers of securities;

4 (4) general compliance and enforcement practices
5 associated with the Foreign Corrupt Practices Act of
6 1977 should be developed in accordance with consider-
7 ations underlying foreign policy relations, international
8 trade, export promotion, international monetary policy,
9 and other related civil and criminal statutes; and

10 (5) a solution to the problem of corrupt payments
11 by firms to obtain or retain business demands an inter-
12 national approach; accordingly, appropriate internation-
13 al agreements should be initiated and sought by the
14 United States agencies responsible for trade agree-
15 ments and by the President.

16 **SEC. 522. AMENDMENT OF SHORT TITLE.**

17 Section 101 of the Foreign Corrupt Practices Act of
18 1977 is amended to read as follows:

19 "SHORT TITLE

20 "SEC. 101. This title may be cited as the 'Business
21 Practices and Records Act'.".

22 **SEC. 523. ACCOUNTING STANDARDS.**

23 (a) Section 13(b)(2) of the Securities Exchange Act of
24 1934 is amended by striking out clauses (A) and (B) and
25 inserting in lieu thereof the following:

1 "(A) make and keep books, accounting records,
2 and accounts which reflect in reasonable detail the
3 transactions of the issuer (including the disposition of
4 assets) in all material respects so as (i) to permit prep-
5 aration of financial statements in conformity with gen-
6 erally accepted accounting principles or other criteria
7 applicable to such statements, and (ii) to maintain ac-
8 countability for assets; and
9 "(B) devise and maintain a system of internal ac-
10 counting controls sufficient to provide reasonable assur-
11 ances that in all material respects—
12 "(i) transactions are executed in accordance
13 with management's general or specific authoriza-
14 tion;
15 "(ii) transactions are recorded as necessary
16 (I) to permit preparation of financial statements in
17 conformity with generally accepted accounting
18 principles or any other criteria applicable to such
19 statements, and (II) to maintain accountability for
20 assets;
21 "(iii) access to assets is permitted only in ac-
22 cordance with management's general or specific
23 authorization; and
24 "(iv) the recorded accountability for assets is
25 compared with the existing assets at reasonable

1 intervals and appropriate action is taken with re-
2 spect to any differences.".
3 (b) Section 13(b) of the Securities Exchange Act of
4 1934 is amended by adding at the end thereof the following:
5 "(4) A person shall be liable in any action or proceeding
6 arising under paragraph (2) only for knowingly falsifying, or
7 causing to be falsified, any book, accounting record, or ac-
8 count described therein, or for knowingly failing to maintain
9 a system of internal accounting controls which is consistent
10 with the purposes of paragraph (2), or for knowingly attempt-
11 ing to circumvent wrongfully the internal accounting controls
12 established pursuant to such paragraph.
13 "(5) Where an issuer holds 50 per centum or less of the
14 equity capital of a domestic or foreign firm, the provisions of
15 paragraph (2) require only that the issuer proceed in good
16 faith to use its influence, to the extent reasonable under the
17 issuer's circumstances, including the relative degree of its
18 ownership over the domestic or foreign firm and under the
19 laws and practices governing the business operations of the
20 country in which such firm is located, to cause transactions
21 and dispositions of assets having a material effect as defined
22 in subparagraphs (A) and (B) of paragraph (2) on the issuer to
23 be carried out consistent with the purposes of such para-
24 graph. Such an issuer shall be conclusively presumed to have

1 complied with the provisions of paragraph (2) by demonstrat-
2 ing good faith efforts to use such influence.".

3 **SEC. 524. REPEALER; NEW BRIBERY PROVISION.**

4 (a) Section 30A of the Securities Exchange Act of 1934
5 is repealed.

6 (b) Section 104 of the Business Practices and Records
7 Act is amended to read as follows:

8 "FOREIGN PAYMENTS

9 "SEC. 104. (a) It shall be unlawful with respect to ac-
10 tivities in the interstate or foreign commerce of the United
11 States for any domestic concern, or any officer, director, em-
12 ployee, or shareholder thereof acting on behalf of such do-
13 mestic concern, corruptly to pay, give, offer, or promise, di-
14 rectly or indirectly, anything of value to any foreign official
15 for the purpose of—

16 "(1) influencing such foreign official to act or
17 make a decision in his official capacity, including a de-
18 cision to fail to perform his official functions, in viola-
19 tion of the recipient's legal duty as a public servant; or

20 "(2) inducing such foreign official to use his influ-
21 ence with a foreign government or instrumentality
22 thereof in violation of the recipient's legal duty as a
23 public servant;

1 in order to assist such domestic concern in obtaining or re-
2 taining business for or with, or directing business to, any
3 person.

4 "(b) A domestic concern violates subsection (a) by cir-
5 cumventing the proscriptions thereof where a payment, gift,
6 offer, or promise of anything of value by any person is made
7 corruptly to a foreign official in connection with activities
8 within and for any of the purposes set forth in subsection (a),
9 and where the domestic concern corruptly directs or author-
10 izes such payment, gift, offer, or promise.

11 "(c) Subsection (a) shall not apply to any facilitating or
12 expediting payment to a foreign official which is customary in
13 the country where made and the purpose of which is to facili-
14 tate or expedite performance by such foreign official of his
15 official duties.

16 "(d)(1)(A) Except as provided in subparagraph (B), any
17 domestic concern which violates subsection (a) shall, upon
18 conviction, be fined not more than $1,000,000.

19 "(B) Any individual who is a domestic concern and who
20 willfully violates subsection (a) shall, upon conviction, be
21 fined not more than $10,000, or imprisoned not more than 5
22 years, or both.

23 "(2) Any officer or director of a domestic concern, or
24 stockholder acting on behalf of such domestic concern, who
25 willfully violates subsection (a) shall, upon conviction, be

1 fined not more than $10,000, or imprisoned not more than 5
2 years, or both.
3 "(3) Whenever a domestic concern is found to have vio-
4 lated subsection (a) of this section, any employee of such do-
5 mestic concern who is a United States citizen, national, or
6 resident or is otherwise subject to the jurisdiction of the
7 United States (other than an officer, director, or stockholder
8 acting on behalf of such domestic concern), and who willfully
9 carried out the act or practice constituting such violation
10 shall, upon conviction, be fined not more than $10,000, or
11 imprisoned not more than 5 years, or both.
12 "(4) Whenever a fine is imposed under paragraph (2) or
13 (3) of this subsection upon any officer, director, employee, or
14 stockholder of a domestic concern, such fine shall not be paid,
15 directly or indirectly, by such domestic concern.
16 "(e)(1) When it appears to the Attorney General that
17 any domestic concern, or officer, director, employee, or
18 stockholder thereof, is engaged, or is about to engage, in any
19 act or practice constituting a violation of subsection (a) of this
20 section, the Attorney General may, in his discretion, bring a
21 civil action in an appropriate district court of the United
22 States to enjoin such act or practice, and upon a proper
23 showing, a permanent or temporary injunction or a tempo-
24 rary restraining order shall be granted without bond.

1 "(2) For the purpose of all civil investigations which, in
2 the opinion of the Attorney General, are necessary and
3 proper for the enforcement of this Act, the Attorney General
4 or any attorney or attorneys of the Department of Justice
5 designated by him are empowered to administer oaths and
6 affirmations, subpena witnesses, take evidence, and require
7 the production of any books, papers, or other documents
8 which the Attorney General deems relevant or material to
9 the inquiry. Such attendance of witnesses and the production
10 of such documentary evidence may be required from any
11 place in the United States, or any territory, possession or
12 commonwealth of the United States, at any designated place
13 of hearing.

14 "(3) In case of contumacy by, or refusal to obey a sub-
15 pena issued to, any person, the Attorney General may invoke
16 the aid of any court of the United States within the jurisdic-
17 tion of which such investigation or proceeding is carried on,
18 or where such person resides or carries on business, in re-
19 quiring the attendance and testimony of witnesses and the
20 production of books, papers, or other documents. Any such
21 court may issue an order requiring such person to appear
22 before the Attorney General or attorney designated by the
23 Attorney General, there to produce records, if so ordered, or
24 to give testimony touching the matter under investigation or
25 in question; and any failure to obey such order of the court

1 may be punished by such court as a civil contempt thereof.
2 All process in any such case may be served in the judicial
3 district whereof such person is an inhabitant or wherever he
4 may be found. To the extent that such rules may have appli-
5 cation and are not inconsistent with the provisions of this
6 chapter, the Federal Rules of Civil Procedure shall apply to
7 any investigation under this chapter.

8 "(f) As used in this section—

9 "(1) The term 'domestic concern' means (A) any
10 individual who is a citizen, national, or resident of the
11 United States; (B) any corporation, partnership, associ-
12 ation, joint-stock company, business trust, unincorpo-
13 rated organization, or sole proprietorship which has its
14 principal place of business in the United States, which
15 is organized under the laws of a State of the United
16 States or a territory, possession, or commonwealth of
17 the United States, or which has a class of securities
18 registered pursuant to section 12 of the Securities Ex-
19 change Act of 1934 or which is required to file reports
20 under section 15(d) of the Securities Exchange Act of
21 1934.

22 "(2) The term 'foreign official' means (A) any offi-
23 cer or employee of a foreign government or any de-
24 partment, agency, or instrumentality thereof, or any
25 person acting in an official capacity for or on behalf of

1 any such government or department, agency, or instru-
2 mentality; and (B) includes any foreign political party
3 or official thereof or any candidate for foreign political
4 office.".

5 **SEC. 525. DEFINITIONS.**

6 (a) Section 13(b) of the Securities Exchange Act of
7 1934 is amended by adding at the end thereof the
8 following:

9 "(6) For the purpose of this section, the terms
10 'reasonable detail' and 'reasonable assurances' mean
11 such level of detail and degree of assurance as would
12 satisfy prudent individuals in the conduct of their own
13 affairs, having in mind a comparison between benefits
14 to be obtained and costs to be incurred in obtaining
15 such benefits.

16 "(7) For the purpose of this section, the term
17 'material' is used in the same sense as in generally ac-
18 cepted accounting principles when those principles are
19 applied to the preparation and presentation of financial
20 statements of the issuer.".

21 (b) The Business Practices and Records Act is amended
22 by inserting after section 104 the following:

23 "(g) For the purpose of this Act, an offer, payment,
24 promise to pay, or authorization of the payment of any
25 money, or offer, gift, promise to give, or authorization of the

1 giving of anything of value does not include an item of value
2 that constitutes, or is intended as no more than, an item
3 given as a courtesy, a token of regard and esteem, or in
4 return for hospitality, and does not include marketing activi-
5 ties or expenses related to the demonstration or explanation
6 of products, or operations of a domestic concern, including
7 travel and lodging, if such marketing activities, demonstra-
8 tions, or explanations, or related expenses pertain to the
9 business presentation associated with the selling or purchas-
10 ing of goods or services.

11 "(h) Nothing in this Act prohibits any offer, payment,
12 promise to pay, or authorization of the payment of any
13 money, or offer, gift, promise to give, or authorization of the
14 giving of anything of value which is lawful under the laws
15 and regulations of the country, in which the foreign official,
16 who is the intended recipient serves or in which the foreign
17 political party or official thereof or foreign political candidate
18 who is the intended recipient principally operates.".

19 **SEC. 526. EXCLUSIVITY PROVISION FOR OVERSEAS BRIBERY.**

20 Section 104 of the Business Practices and Records Act
21 shall be the exclusive provision under the laws of the United
22 States authorizing a civil or criminal proceeding by the
23 United States against a domestic concern, or any officer, di-
24 rector, employee, or shareholder thereof acting on behalf of
25 such domestic concern, for making use of the mails or any

1 means or instrumentality of interstate commerce in the
2 manner and for the purposes proscribed by such section or for
3 actions of a domestic concern which are taken in furtherance
4 of such conduct.

5 **SEC. 527. AUTHORITY TO ISSUE GUIDELINES.**

6 Title I of the Business Practices and Records Act is
7 amended by adding at the end thereof the following:

8 "GUIDELINES AND GENERAL PROCEDURES FOR
9 COMPLIANCE

10 "SEC. 105. (a) Not later than 6 months after the date of
11 enactment of this section, an interagency task force with a
12 chairman designated by the President and to include the
13 United States Trade Representative, the Secretary of State,
14 the Secretary of Commerce, the Secretary of the Treasury,
15 and the Attorney General, after consultation with representa-
16 tives of the business community and the interested public
17 through public notice and comment and in public hearings,
18 shall determine to what extent the business community
19 would be assisted by further clarification of this Act and
20 shall, based on such determination and to the extent neces-
21 sary and appropriate, have the authority to issue—

22 "(1) guidelines describing specific types of conduct
23 associated with common types of export sales arrange-
24 ments and business contracts which such interagency

1 task force determines constitute compliance with the
2 provisions of section 104 of this Act; and
3 "(2) general precautionary procedures which issu-
4 ers or domestic concerns may use on a voluntary basis
5 to ensure compliance with this Act, and to create a re-
6 buttable presumption of compliance with this Act.
7 The guidelines and procedures referred to in the preceding
8 sentence shall be issued in accordance with sections 551
9 through 557 of title 5, United States Code.
10 "(b) The Attorney General, after consultation with
11 other Federal agencies and representatives from the business
12 community, shall establish a Business Practices and Records
13 Act Review Procedure for the purpose of providing responses
14 to specific inquiries concerning enforcement intentions under
15 this Act. The Attorney General shall issue opinions, within
16 30 days, in response to requests from domestic concerns, re-
17 garding compliance with the requirements of the provisions of
18 section 104 of this Act. An opinion that certain prospective
19 conduct does not involve a violation shall be final and binding
20 on all parties, subject to the discovery of new evidence.
21 When appropriate, and at reasonable intervals, the responses
22 derived from the review procedure will be reviewed by the
23 Attorney General to determine whether such compilation of
24 responses should be included in a new guideline pursuant to
25 subsection (a).

1 "(c) Any document or other material provided to, re-
2 ceived by, or prepared in the Department of Justice, or any
3 other department or agency of the United States Govern-
4 ment, in connection with a request by a domestic concern for
5 a statement of present enforcement intentions under the
6 Business Practices and Records Act Review Procedure pur-
7 suant to subsection (b) of this section, or in connection with
8 any investigations conducted to enforce this Act, shall be
9 exempt from disclosure under section 552 of title 5, United
10 States Code, regardless of whether the Department responds
11 to such a request or the applicant withdraws such request
12 prior to receiving a response. If any request is withdrawn or
13 does not receive a response from the Justice Department,
14 any document or other material submitted in connection with
15 such request shall be returned to the requesting party, and
16 any other document or other material submitted to, received
17 by, or prepared by the Attorney General in consideration of
18 such request shall either be returned if the document or ma-
19 terial originated from a source outside the United States
20 Government or shall be destroyed. Within 60 days after the
21 withdrawal of a request or the communication of the decision
22 not to respond to the request, the Department of Justice
23 shall certify to the requesting party that any such document
24 or material has been returned to the requesting party or the
25 originating nongovernmental party or has been destroyed in

1 accordance with this section. The Attorney General shall
2 protect the privacy of each applicant, and all documents sup-
3 plied are for use by the Justice Department only. Without
4 the express written permission of the domestic concern which
5 furnished the document, the Department of Justice nor any
6 other department or agency of the United States, may use or
7 rely upon any document, or any information contained in any
8 document, only for the purpose of preparing a response to the
9 specific inquiry in support of which the document was pro-
10 vided under the Business Practices and Records Act Review
11 Procedure. The Review Procedure shall be developed and
12 instituted in accordance with sections 551 through 557 and
13 701 through 706 of title 5, United States Code.

14 "(d) The Attorney General shall make a special effort to
15 provide timely compliance guidance to potential exporters,
16 and smaller businesses, who as a practical matter are unable
17 to obtain specialized counsel on issues pertaining to this Act.
18 Such assistance shall be limited to requests for enforcement
19 intention disclosures provided for under this Act, and general
20 explanations of compliance responsibilities and of potential
21 liabilities under the Act.

22 "(e)(1) On September 1 of each year the Attorney Gen-
23 eral shall transmit to the Congress and make public a de-
24 tailed report on all actions which the Department of Justice
25 has taken pursuant to this Act, along with its views on prob-

1 lems associated with implementation, its plans for the next
2 fiscal year to further implement the Act, and recommenda-
3 tions for amendment.

4 "(2) On September 1 of each year the Chairman of the
5 Securities and Exchange Commission shall file with the Con-
6 gress a detailed report on all actions which the Commission
7 has taken pursuant to section 13(b) of the Securities Ex-
8 change Act, its views on problems associated with implemen-
9 tation, its plans for the next fiscal year to further implement
10 such section, and its recommendations for amendment.".

11 **SEC. 528. CONFORMING CHANGES IN INTERNAL REVENUE**
12 **CODE.**

13 Paragraph (1) of section 162(c) of the Internal Revenue
14 Code of 1954 is amended by striking out "the laws of the
15 United States if such laws were applicable to such payment
16 and to such official or employee" and inserting in lieu thereof
17 "the Business Practices and Records Act".

18 **SEC. 529. INTERNATIONAL AGREEMENTS.**

19 (a) It is the sense of the Congress that the President
20 should pursue the negotiation of bilateral and multilateral
21 agreements among the largest possible number of nations
22 which would establish standards of conduct for international
23 business practices and which would create a process by
24 which problems and conflicts associated with such practices

1 could be resolved, and to explore through negotiations an
2 international agreement for rates of commissions.
3 (b) It is the sense of the Congress that, within 1 year
4 after the date of enactment of this Act, the President shall
5 report to Congress on the progress of these negotiations, and
6 those steps which the administration and Congress should
7 consider taking in the event that the negotiations referred to
8 in subsection (a) do not successfully eliminate the competitive
9 disadvantage of United States business. Within 60 days of
10 receipt of the President's report, Congress shall begin a full
11 oversight review of the Business Practices and Records Act,
12 including its effectiveness in fulfilling its goals and purposes,
13 effects upon export promotion, United States competitive-
14 ness, foreign policy relations, small business considerations,
15 costs of compliance, and appropriateness of penalties and
16 those steps set out in the report to Congress as provided in
17 the preceding sentence.
18 (c) Not later than 6 months after the date of the enact-
19 ment of this Act, the President shall submit to the appropri-
20 ate committees of the Congress a report identifying and as-
21 sessing the legal and practical consequences of specific action
22 that the United States could take under existing law—
23 (1) to promote cooperation by other nations in in-
24 ternational efforts to prevent bribery of foreign officials,
25 candidates or parties in third countries; and

1 (2) to encourage persons or business enterprises
2 organized and operating in other nations to refrain
3 from engaging in bribery of foreign officials, candidates,
4 or parties in third countries to the commercial and
5 competitive disadvantage of the overseas operations of
6 United States industry.
7 This report shall also include recommendations for any new
8 legislation required to give the President authority to take
9 appropriate action to achieve such objectives. The report
10 shall contain an analysis of the potential effect on the inter-
11 ests of the United States including United States national
12 security of the corruption of foreign officials and political
13 leaders in connection with international business transactions
14 involving persons and business enterprises of other nations.
15 In addition, the report shall assess the current and future role
16 in curtailing such corruption of private initiatives such as the
17 Recommendations to Governments and Rules of Conduct To
18 Combat Extortion and Bribery developed by the Internation-
19 al Chamber of Commerce. The findings and recommendations
20 of this report shall be included on the agenda of the full over-
21 sight review of the Business Practices and Records Act to be
22 conducted under subsection (b).

1 **PART 3—EXPORT COMPETITIVENESS STATEMENTS;**
2 **PAPERWORK**

3 **SEC. 531. EXPORT COMPETITIVENESS STATEMENTS.**

4 (a) IN GENERAL.—Whenever an issuing authority takes
5 a significant action which, in the judgment of the issuing au-
6 thority, could affect adversely exports of United States goods
7 and services, or the international competitive position of the
8 United States and its exporters, he shall include in any docu-
9 ment embodying or giving effect to such action an export
10 competitiveness impact statement.

11 (b) DEFINITIONS.—For purposes of this section—

12 (1) SIGNIFICANT ACTION.—The term "significant
13 action" includes, but is not limited to—

14 (A) rulemaking (as defined in paragraph (5)
15 of section 551 of title 5, United States Code,

16 (B) promulgating regulations,

17 (C) developing and implementing programs,
18 and

19 (D) proclamations and orders issued by the
20 President.

21 (2) EXPORT COMPETITIVENESS IMPACT STATE-
22 MENT.—The term "export competitiveness statement"
23 means a written statement which includes, but is not
24 limited to, an analysis of—

1 (A) whether the significant action is a unilat-
2 eral action on the part of the United States or
3 part of a multilateral action by several countries,
4 (B) the estimated value of United States ex-
5 ports which will be affected by the action,
6 (C) the industries which will be affected by
7 the action,
8 (D) any efforts made by the issuing authority
9 to solicit the views of affected industries and of
10 the views of such industries,
11 (E) alternative plans of action and the rea-
12 sons for not choosing any such alternative plan,
13 and
14 (F) whether the effect, directly or indirectly,
15 of the action will be to give to foreign competi-
16 tors, including domestic affiliates of foreign com-
17 petitors, an advantage or right which would not
18 be enjoyed absent such action.
19 (3) ISSUING AUTHORITY.—The term "issuing au-
20 thority" means the President and the head of any de-
21 partment or agency of the executive branch of the
22 United States Government.
23 (c) NO RIGHT OF ACTION CREATED.—This section
24 does not confer any right of action on any person to stay the

1 development, preparation, issuance, or implementation of any
2 significant action.

3 **SEC. 532. REDUCTION OF EXPORT PAPERWORK.**

4 (a) FINDINGS.—The Congress finds that an average
5 export shipment requires as many as 46 different documents
6 and 360 copies and may cost as much as $375 for documen-
7 tation alone. Such voluminous paperwork requirements may
8 act as a deterrent to exports.

9 (b) PAPERWORK TO BE REDUCED.—It is the sense of
10 Congress that export paperwork must be reduced to encour-
11 age export sales. All agencies shall minimize the burden of
12 paperwork and reporting requirements to the greatest extent
13 feasible, with particular reference to small businesses and
14 new-to-market exporters, and reporting requirements shall be
15 designed with reference to the most recent information proc-
16 essing technology.

17 TITLE VI—EXPORT AWARENESS AND EXPORT
18 PROMOTION PROGRAMS

19 **PART 1—FINDINGS; CONCLUSIONS**

20 **SEC. 601. STATEMENT OF FINDINGS AND CONCLUSIONS.**

21 (a) FINDINGS.—The Congress finds that—

22 (1) development of a greater awareness of the
23 benefits of exports and programs for the promotion of
24 exports are critical elements in the improvement of our
25 export performance;

1 (2) there is a widespread lack of understanding of
2 the importance of trade and exports to the financial
3 and economic vitality of the United States;
4 (3) many United States firms are unaware or un-
5 interested in export sales opportunities, or lack the
6 marketing experience to successfully penetrate foreign
7 markets;
8 (4) the Federal Government is unable to carry the
9 whole burden of achieving expansion of exports;
10 (5) substantial long-term support from business,
11 labor, educational institutions, State and local govern-
12 ments, port authorities, banks, media, and other sectors
13 of the general public is required to develop and main-
14 tain effective education and trade promotion programs;
15 (6) services, including returns on overseas invest-
16 ments, are an increasingly important factor in the
17 United States trade balance; but the rate of growth of
18 service exports is below that of several of our industri-
19 alized competitors;
20 (7) only 10 percent of the United States firms ca-
21 pable of exporting are doing so, while over 90 percent
22 of exports are accounted for by relatively few
23 companies;
24 (8) total and per capita export promotion assist-
25 ance extended by the United States Government to ex-

1 porters is significantly below the average extended by
2 the governments of foreign industrialized nations;
3 (9) export trade intermediaries, such as trading
4 companies, can achieve economies of scale and acquire
5 expertise enabling them to export goods and services
6 profitably, at low per unit cost to producers;
7 (10) the United States lacks well-developed export
8 trade intermediaries to package export trade services
9 at reasonable prices (exporting services are fragmented
10 into a multitude of separate functions; companies at-
11 tempting to offer comprehensive export trade services
12 lack financial leverage to reach a significant portion of
13 potential United States exporters);
14 (11) the development of export trading companies
15 in the United States has been hampered by insular
16 business attitudes and by Government regulations; and
17 (12) if United States export trading companies are
18 to be successful in promoting United States exports
19 and in competing with foreign trading companies, they
20 must be able to draw on the resources, expertise, and
21 knowledge of the United States banking system, both
22 in the United States and abroad.
23 (b) CONCLUSIONS.—Congress concludes that—

1 (1) the emphasis on export promotion programs
2 should be on encouraging public-private sector
3 cooperation;
4 (2) because of its national and international scope,
5 the Federal Government can and should play a key
6 role in guiding other sectors to achieve common export
7 goals through continuation and establishment of broad-
8 based programs to educate the public on exporting and
9 to assist United States exporters to introduce and pro-
10 mote their products and services overseas;
11 (3) increased efforts must be made by the Federal
12 Government to enlist the assistance of private sector
13 organizations in assisting United States exporters, and
14 funding and other incentives must be made available in
15 such reasonable, effective, and efficient amounts to sus-
16 tain such activities;
17 (4) private organizations familiar with exporters,
18 such as chambers of commerce, American chambers of
19 commerce abroad, trade associations, and financial in-
20 stitutions should bear a larger share of the burden of
21 educating the public on the importance of export ex-
22 pansion and insuring that public concerns are well un-
23 derstood by United States Government officials admin-
24 istering export-related programs;

1 (5) all trade-related government agencies should
2 consult with appropriate segments of the private sector
3 on all economic policies and improve the liaison be-
4 tween government agencies and American business or-
5 ganizations and individual exporters;
6 (6) United States Government marketing assist-
7 ance programs should emphasize servicing individual
8 firms in preference to the use of resources for general-
9 ized information and assistance;
10 (7) service exports must be provided assistance
11 equivalent to the export of manufacturers, with new
12 assistance programs developed where service export-
13 ers' needs differ and can be properly identified;
14 (8) service exports should be encouraged by the
15 United States Government, and export policy should be
16 based on the principle of reciprocal export opportuni-
17 ties and treatment;
18 (9) support for export education programs should
19 be increased through Federal and non-Federal pro-
20 grams that are supplemented by related programs de-
21 signed to facilitate exporting, such as foreign language
22 training and translation and international financing;
23 (10) special assistance should be provided to new-
24 to-export firms, particularly smaller- or medium-sized

1 firms that may lack the resources to export on an indi-
2 vidual basis;
3 (11) financial assistance, through special loan and
4 guaranty programs, should be made available to ex-
5 porters; and
6 (12) financial support for export promotion pro-
7 grams should be given a higher budgetary and policy
8 priority to make financial assistance and incentive pro-
9 grams equivalent to those of our foreign industrial
10 competitors.

11 **PART 2—EXPORT TRADING COMPANIES**

12 **SEC. 621. SHORT TITLE.**

13 This title may be cited as the "Export Trading Compa-
14 ny Act of 1981".

15 **SEC. 622. FINDINGS.**

16 (a) The Congress finds and declares that—
17 (1) tens of thousands of American companies pro-
18 duce exportable goods or services but do not engage in
19 exporting;
20 (2) although the United States is the world's lead-
21 ing agricultural exporting nation, many farm products
22 are not marketed as widely and effectively abroad as
23 they could be through producer-owned export trading
24 companies;

1 (3) exporting requires extensive specialized knowl-
2 edge and skills and entails additional, unfamiliar risks
3 which present costs for which smaller producers cannot
4 realize economies of scale;
5 (4) export trade intermediaries, such as trading
6 companies, can achieve economies of scale and acquire
7 expertise enabling them to export goods and services
8 profitably, at low per unit cost to producers;
9 (5) the United States lacks well-developed export
10 trade intermediaries to package export trade services
11 at reasonable prices (exporting services are fragmented
12 into a multitude of separate functions; companies at-
13 tempting to offer comprehensive export trade services
14 lack financial leverage to reach a significant portion of
15 potential United States exporters);
16 (6) State and local government activities which
17 initiate, facilitate, or expand export of products and
18 services are an important and irreplaceable source for
19 expansion of total United States exports, as well as for
20 experimentation in the development of innovative
21 export programs keyed to local, State, and regional
22 economic needs;
23 (7) the development of export trading companies
24 in the United States has been hampered by insular
25 business attitudes and by Government regulations; and

1 (8) if United States export trading companies are
2 to be successful in promoting United States exports
3 and in competing with foreign trading companies, they
4 must be able to draw on the resources, expertise, and
5 knowledge of the United States banking system, both
6 in the United States and abroad.
7 (b) The purpose of this part is to increase United States
8 exports of products and services, particularly by small,
9 medium-size and minority concerns, by encouraging more ef-
10 ficient provision of export trade services to American produc-
11 ers and suppliers.
12 **SEC. 623. DEFINITIONS.**
13 (a) As used in this part—
14 (1) the term "export trade" means trade or com-
15 merce in goods produced in the United States or serv-
16 ices produced in the United States, and exported, or in
17 the course of being exported, from the United States to
18 any foreign nation;
19 (2) the term "goods produced in the United
20 States" means tangible property manufactured, pro-
21 duced, grown, or extracted in the United States, the
22 cost of the imported raw materials and components
23 thereof shall not exceed 50 percent of the sales price;
24 (3) the term "services produced in the United
25 States" includes, but is not limited to accounting,

1 amusement, architectural, automatic data processing,
2 business, communications, construction franchising and
3 licensing, consulting, engineering, financial, insurance,
4 legal, management, repair, tourism, training, and
5 transportation services, not less than 50 percent of the
6 sales or billings of which is provided by United States
7 citizens or is otherwise attributable to the United
8 States;

9 (4) the term "export trade services" includes, but
10 is not limited to, consulting, international market re-
11 search, advertising, marketing, insurance, product re-
12 search and design, legal assistance, transportation, in-
13 cluding trade documentation and freight forwarding,
14 communication and processing of foreign orders to and
15 for exporters and foreign purchasers, warehousing, for-
16 eign exchange, and financing, when provided in order
17 to facilitate the export of goods or services produced in
18 the United States;

19 (5) the term "export trading company" means a
20 company, whether operated for profit or as a nonprofit
21 organization, which does business under the laws of
22 the United States or any State and which is organized
23 and operated principally for the purposes of—

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

1 (B) facilitating the exportation of goods and
2 services produced in the United States by unaffil-
3 iated persons by providing one or more export
4 trade services;
5 (6) the term "United States" means the several
6 States of the United States, the District of Columbia,
7 the Commonwealth of Puerto Rico, the Virgin Islands,
8 American Samoa, Guam, the Commonwealth of the
9 Northern Mariana Islands, and the Trust Territory of
10 the Pacific Islands;
11 (7) the term "Secretary" means the Secretary of
12 Commerce; and
13 (8) the term "company" means any corporation,
14 partnership, association, or similar organization, wheth-
15 er operated for profit or as a nonprofit organization.
16 (b) The Secretary is authorized, by regulation, to further
17 define such terms consistent with this section.
18 **SEC. 624. FUNCTIONS OF THE SECRETARY OF COMMERCE.**
19 The Secretary shall promote and encourage the forma-
20 tion and operation of export trading companies by providing
21 information and advice to interested persons and by facilitat-
22 ing contact between producers of exportable goods and serv-
23 ices and firms offering export trade services.

1 **SEC. 625. OWNERSHIP OF EXPORT TRADING COMPANIES BY**
2 **BANKS, BANK HOLDING COMPANIES, AND IN-**
3 **TERNATIONAL BANKING CORPORATIONS.**

4 (a) For the purpose of this section—

5 (1) the term "banking organization" means any
6 State bank, national bank, Federal savings bank, bank-
7 ers' bank, bank holding company, Edge Act Corpora-
8 tion, or Agreement Corporation;

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

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

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

25 (5) the term "bankers' bank" means any bank in-
26 sured by the Federal Deposit Insurance Corporation if

1 the stock of such bank is owned exclusively by other
2 banks (except to the extent State law requires direc-
3 tors' qualifying shares) and if such bank is engaged ex-
4 clusively in providing banking services for other banks
5 and their officers, directors, or employees;

6 (6) the term "bank holding company" has the
7 same meaning as in the Bank Holding Company Act of
8 1956;

9 (7) the term "Edge Act Corporation" means a
10 corporation organized under section 25(a) of the Fed-
11 eral Reserve Act;

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

15 (9) the term "appropriate Federal banking
16 agency" means—

17 (A) the Comptroller of the Currency with re-
18 spect to a national bank or any District bank;

19 (B) the Board of Governors of the Federal
20 Reserve System with respect to a State member
21 bank, bank holding company, Edge Act Corpora-
22 tion, or Agreement Corporation;

23 (C) the Federal Deposit Insurance Corpora-
24 tion with respect to a State nonmember insured
25 bank except a District bank; and

1 (D) the Federal Home Loan Bank Board
2 with respect to a Federal savings bank.
3 In any situation where the banking organization hold-
4 ing or making an investment in an export trading com-
5 pany is a subsidiary of another banking organization
6 which is subject to the jurisdiction of another agency,
7 and some form of agency approval or notification is re-
8 quired, such approval or notification need only be ob-
9 tained from or made to, as the case may be, the appro-
10 priate Federal banking agency for the banking organi-
11 zation making or holding the investment in the export
12 trading company;
13 (10) the term "capital and surplus" means paid in
14 and unimpaired capital and surplus, and includes un-
15 divided profits;
16 (11) an "affiliate" of a banking organization or
17 export trading company is a person who controls, is
18 controlled by, or is under common control with such
19 banking organization or export trading company;
20 (12) the terms "control" and "subsidiary" shall
21 have the same meanings assigned to those terms in
22 section 2 of the Bank Holding Company Act of 1956,
23 and the terms "controlled" and "controlling" shall be
24 construed consistently with the term "control" as de-

1 fined in section 2 of the Bank Holding Company Act of
2 1956; and
3 (13) for the purposes of this section, the term
4 "export trading company" means a company which
5 does business under the laws of the United States or
6 any State and which is exclusively engaged in activi-
7 ties related to international trade, whether operated for
8 profit or as a nonprofit organization: *Provided, how-*
9 *ever,* That any such company must also either meet
10 the definition of export trading company in section
11 103(a)(5) of this Act, or be organized and operated
12 principally for the purpose of providing export trade
13 services, as defined in section 103(a)(4) of this Act:
14 *Provided further,* That nothing in this Act shall be
15 construed to permit any such company, for purposes of
16 this section, (A) to engage in the business of under-
17 writing, selling, or distributing securities, or (B) to
18 engage in manufacturing or agricultural production
19 activities.
20 (b)(1) Notwithstanding any prohibition, restriction, limi-
21 tation, condition, or requirement of any law applicable only
22 to banking organizations, a banking organization, subject to
23 the limitations of subsection (c) and the procedures of this
24 subsection, may invest directly and indirectly in the aggre-
25 gate, up to 5 percent of its consolidated capital and surplus

1 (25 percent in the case of an Edge Act Corporation or
2 Agreement Corporation not engaged in banking) in the
3 voting stock or other evidences of ownership of one or more
4 export trading companies. A banking organization may—

5 (A) invest up to an aggregate amount of
6 $10,000,000 in one or more export trading companies
7 without the prior approval of the appropriate Federal
8 banking agency, if such investment does not cause an
9 export trading company to become a subsidiary of the
10 investing banking organization; and

11 (B) make investments in excess of an aggregate
12 amount of $10,000,000 in one or more export trading
13 companies, or make any investment or take any other
14 action which causes an export trading company to
15 become a subsidiary of the investing banking organiza-
16 tion or which will cause more than 50 percent of the
17 voting stock of an export trading company to be owned
18 or controlled by banking organizations, only with the
19 prior approval of the appropriate Federal banking
20 agency.

21 Any banking organization which makes an investment under
22 authority of clause (A) of the preceding sentence shall
23 promptly notify the appropriate Federal banking agency of
24 such investment and shall file such reports on such invest-
25 ment as such agency may require. If, after receipt of any

1 such notification, the appropriate Federal banking agency de-
2 termines, after notice and opportunity for hearing, that the
3 export trading company is a subsidiary of the investing bank-
4 ing organization, it shall have authority to disapprove the
5 investment or impose conditions on such investment under
6 authority of subsection (d). In furtherance of such authority,
7 the appropriate Federal banking agency may require divesti-
8 ture of any voting stock or other evidences of ownership pre-
9 viously acquired, and may impose conditions necessary for
10 the termination of any controlling relationship.

11 (2) If a banking organization proposes to make any in-
12 vestment or engage in any activity included within the fol-
13 lowing two subparagraphs, it must give the appropriate Fed-
14 eral banking agency ninety days prior written notice before it
15 makes such investment or engages in such activity:

16 (A) any additional investment in an export trading
17 company subsidiary; or

18 (B) the engagement by any export trading
19 company subsidiary in any line of activity, including
20 specifically the taking of title to goods, wares, mer-
21 chandise, or commodities, if such activity was not dis-
22 closed in any prior application for approval.

23 During the notification period provided under this paragraph,
24 the appropriate Federal banking agency may, by written
25 notice, disapprove the proposed investment or activity or

1 impose conditions on such investment or activity under au-
2 thority of subsection (d). An additional investment or activity
3 covered by this paragraph may be made or engaged in, as the
4 case may be, prior to the expiration of the notification period
5 if the appropriate Federal banking agency issues written
6 notice of its intent not to disapprove.

7 (3) In the event of the failure of the appropriate Federal
8 banking agency to act on any application for approval under
9 paragraph (1)(B) of this subsection within a period of 120
10 days, which period begins on the date the application has
11 been accepted for processing by the appropriate Federal
12 banking agency, the application shall be deemed to have been
13 granted. In the event of the failure of the appropriate Federal
14 banking agency either to disapprove or to impose conditions
15 on any investment or activity subject to the prior notification
16 requirements of paragraph (2) of this subsection within the
17 60-day period provided therein, such period beginning on the
18 date the notification has been received by the appropriate
19 Federal banking agency, such investment or activity may be
20 made or engaged in, as the case may be, any time after the
21 expiration of such period.

22 (c) The following limitations apply to export trading
23 companies and the investments in such companies by banking
24 organizations:

1 (1) The name of any export trading company shall
2 not be similar in any respect to that of a banking orga-
3 nization that owns any of its voting stock or other evi-
4 dences of ownership.
5 (2) The total historical cost of the direct and indi-
6 rect investments by a banking organization in an
7 export trading company combined with extensions of
8 credit by the banking organization and its direct and
9 indirect subsidiaries to such export trading company
10 shall not exceed 10 percent of the banking organiza-
11 tion's capital and surplus.
12 (3) A banking organization that owns any voting
13 stock or other evidences of ownership of an export
14 trading company shall terminate its ownership of such
15 stock if the export trading company takes positions in
16 commodities or commodities contracts, in securities, or
17 in foreign exchange, other than as may be necessary in
18 the course of its business operations.
19 (4) No banking organization holding voting stock
20 or other evidences of ownership of any export trading
21 company may extend credit or cause any affiliate to
22 extend credit to any export trading company or to cus-
23 tomers of such company on terms more favorable than
24 those afforded similar borrowers in similar circum-
25 stances, and such extension of credit shall not involve

1 more than the normal risk of repayment or present
2 other unfavorable features.
3 (d)(1) In the case of every application under subsection
4 (b)(1)(B) of this section, the appropriate Federal banking
5 agency shall take into consideration the financial and man-
6 agerial resources, competitive situation, and future prospects
7 of the banking organization and export trading company con-
8 cerned, and the benefits of the proposal to United States
9 business, industrial, and agricultural concerns (with special
10 emphasis on small, medium-size and minority concerns) and
11 to improving United States competitiveness in world mar-
12 kets. The appropriate Federal banking agency may not ap-
13 prove any investment for which an application has been filed
14 under subsection (b)(1)(B) if it finds that the export benefits of
15 such proposal are outweighed in the public interest by any
16 adverse financial, managerial, competitive, or other banking
17 factors associated with the particular investment. Any disap-
18 proval order issued under this section must contain a state-
19 ment of the reasons for disapproval.
20 (2) In approving any application submitted under sub-
21 section (b)(1)(B), the appropriate Federal banking agency
22 may impose such conditions which, under the circumstances
23 of such case, it may deem necessary (A) to limit a banking
24 organization's financial exposure to an export trading com-
25 pany, or (B) to prevent possible conflicts of interest or unsafe

1 or unsound banking practices. With respect to the taking of
2 title to goods, wares, merchandise, or commodities by any
3 export trading company subsidiary of a banking organization,
4 the appropriate Federal banking agencies may, by order, reg-
5 ulation, or guidelines, establish standards designed to ensure
6 against any unsafe or unsound practices that could adversely
7 affect a controlling banking organization investor. In particu-
8 lar, the appropriate Federal banking agencies may establish
9 inventory-to-capital ratios, based on the capital of the export
10 trading company subsidiary, for those circumstances in which
11 the export trading company subsidiary may bear a market
12 risk on inventory held.

13 (3) In determining whether to impose any condition
14 under the preceding paragraph (2), or in imposing such condi-
15 tion, the appropriate Federal banking agency must give due
16 consideration to the size of the banking organization and
17 export trading company involved, the degree of investment
18 and other support to be provided by the banking organization
19 to the export trading company, and the identity, character,
20 and financial strength of any other investors in the export
21 trading company. The appropriate Federal banking agency
22 shall not impose any conditions or set standards for the
23 taking of title which unnecessarily disadvantage, restrict or
24 limit export trading companies in competing in world markets
25 or in achieving the purposes of section 102 of this Act. In

1 particular, in setting standards for the taking of title under
2 the preceding paragraph (2), the appropriate Federal banking
3 agencies shall give special weight to the need to take title in
4 certain kinds of trade transactions, such as international
5 barter transactions.

6 (4) Notwithstanding any other provision of this part, the
7 appropriate Federal banking agency may, whenever it has
8 reasonable cause to believe that the ownership or control of
9 any investment in an export trading company constitutes a
10 serious risk to the financial safety, soundness, or stability of
11 the banking organization and is inconsistent with sound bank-
12 ing principles or with the purposes of this Act or with the
13 Financial Institutions Supervisory Act of 1966, order the
14 banking organization, after due notice and opportunity for
15 hearing, to terminate (within 120 days or such longer period
16 as the Board may direct in unusual circumstances) its invest-
17 ment in the export trading company.

18 (5) On or before 2 years after enactment of this Act, the
19 appropriate Federal banking agencies shall jointly report to
20 the Committee on Banking, Housing, and Urban Affairs of
21 the Senate and the Committee on Banking, Finance and
22 Urban Affairs of the House of Representatives their recom-
23 mendations with respect to the implementation of this sec-
24 tion, their recommendations on any changes in United States
25 law to facilitate the financing of United States exports, espe-

1 cially by small, medium-size and minority business concerns,
2 and their recommendations on the effects of ownership of
3 United States banks by foreign banking organizations affili-
4 ated with trading companies doing business in the United
5 States.

6 (e) Any party aggrieved by an order of an appropriate
7 Federal banking agency under this section may obtain a
8 review of such order in the United States court of appeals
9 within any circuit wherein such organization has its principal
10 place of business, or in the court of appeals for the District of
11 Columbia Circuit, by filing a notice of appeal in such court
12 within 30 days from the date of such order, and simulta-
13 neously sending a copy of such notice by registered or certi-
14 fied mail to the appropriate Federal banking agency. The
15 appropriate Federal banking agency shall promptly certify
16 and file in such court the record upon which the order was
17 based. The court shall set aside any order found to be (A)
18 arbitrary, capricious, an abuse of discretion, or otherwise not
19 in accordance with law; (B) contrary to constitutional right,
20 power, privilege or immunity; or, (C) in excess of statutory
21 jurisdiction, authority, or limitations, or short of statutory
22 right; or (D) without observance of procedure required by
23 law. Except for violations of subsection (b)(3) of this section,
24 the court shall remand for further consideration by the appro-
25 priate Federal banking agency any order set aside solely for

1 procedural errors and may remand for further consideration
2 by the appropriate Federal banking agency any order set
3 aside for substantive errors. Upon remand, the appropriate
4 Federal banking agency shall have no more than 60 days
5 from date of issuance of the court's order to cure any proce-
6 dural error or reconsider its prior order. If the agency fails to
7 act within this period, the application or other matter subject
8 to review shall be deemed to have been granted as a matter
9 of law.

10 (f)(1) The appropriate Federal banking agencies are au-
11 thorized and empowered to issue such rules, regulations, and
12 orders, to require such reports, to delegate such functions,
13 and to conduct such examinations of subsidiary export trad-
14 ing companies, as each of them may deem necessary in order
15 to perform their respective duties and functions under this
16 section and to administer and carry out the provisions and
17 purposes of this section and prevent evasions thereof.

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

23 (g) Nothing in this legislation shall be construed to
24 permit a State chartered bank to invest in an export trading

1 company unless the State chartered bank is specifically per-
2 mitted to do so by State law.

3 **SEC. 626. INITIAL INVESTMENTS AND OPERATING EXPENSES.**

4 (a) The Economic Development Administration and the
5 Small Business Administration are directed, in their consider-
6 ation of applications by export trading companies for loans
7 and guarantees, and operating grants to nonprofit organiza-
8 tions, including applications to make new investments related
9 to the export of goods or services produced in the United
10 States and to meet operating expenses, to give special weight
11 to export-related benefits, including opening new markets for
12 United States goods and services abroad and encouraging the
13 involvement of small, medium-size, and minority businesses
14 or agricultural concerns in the export market.

15 (b) There are authorized to be appropriated as necessary
16 to meet the purposes of this section, $10,000,000 for each of
17 the fiscal years 1982, 1983, 1984, 1985, and 1986. Amounts
18 appropriated pursuant to the authority of this subsection shall
19 be in addition to amounts appropriated under the authority of
20 other Acts.

21 **SEC. 627. GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE**
22 **AND INVENTORY.**

23 The Export-Import Bank of the United States is author-
24 ized and directed to establish a program to provide guaran-
25 tees for loans extended by financial institutions or other pri-

1 vate creditors to export trading companies as defined in sec-
2 tion 103(5) of this Act, or to other exporters, when such
3 loans are secured by export accounts receivable or inven-
4 tories of exportable goods, and when in the judgment of the
5 Board of Directors—

6 (1) the private credit market is not providing ade-
7 quate financing to enable otherwise creditworthy
8 export trading companies or exporters to consummate
9 export transactions; and

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

12 The Board of Directors shall attempt to insure that a major
13 share of any loan guarantees ultimately serves to promote
14 exports from small, medium-size, and minority businesses or
15 agricultural concerns. Guarantees provided under the author-
16 ity of this section shall be subject to limitations contained in
17 annual appropriations Acts.

18 **PART 3—SMALL BUSINESS ACT AMENDMENTS**

19 **SEC. 631. SMALL BUSINESS EXPORT FINANCING ASSISTANCE.**

20 (a) EXPORT FINANCING ASSISTANCE.—Section 7(a) of
21 the Small Business Act is amended by inserting "to finance
22 export assistance," before "to finance plant construction,".

23 (b) MAXIMUM AMOUNT OF LOAN.—Section 7(a)(4) of
24 the Small Business Act is amended by adding at the end
25 thereof the following new sentence: "In the case of any de-

1 ferred participation loan or extension or revolving line of
2 credit made under this subsection for export purposes, the
3 total amount outstanding and committed (by participation or
4 otherwise) to the borrower from the revolving fund estab-
5 lished by section 4(c)(1)(B) of this Act shall not exceed
6 $750,000.".

7 **PART 4—JOINT EXPORT MARKETING ASSISTANCE**

8 **SEC. 641. ESTABLISHMENT OF PROGRAM.**

9 (a) IN GENERAL.—The Secretary of Commerce (herein-
10 after referred to as the "Secretary") shall establish a pro-
11 gram in accordance with the provisions of this part to pro-
12 mote export marketing activities for domestic industry.

13 (b) COOPERATIVE AGREEMENTS.—The Secretary may
14 enter into cooperative agreements with industrial corpora-
15 tions or groups of noncompeting corporations with limited ex-
16 perience in exporting to develop foreign markets for their
17 products which would require a minimum 2-year effort upon
18 the approval of a proposal from such corporation or group of
19 corporations in accordance with section 642.

20 (c) RESEARCH.—Upon entering an agreement pursuant
21 to subsection (b) the Secretary shall direct specific market
22 research for the products involved in foreign markets—

23 (1) to measure the opportunity for particular ele-
24 ments of the product field;

1 (2) to determine advantageous methods of pursu-
2 ing opportunities; and
3 (3) to indicate the potential term of activity and
4 the prospects for success.

5 **SEC. 642. MARKETING PROPOSALS.**

6 (a) SUBMISSION OF PROPOSAL.—On the basis of the
7 research under section 651, interested industrial corporations
8 or groups of noncompeting corporations may prepare and
9 submit a proposal incorporating specific marketing actions, a
10 timetable for such actions and such other relevant informa-
11 tion as the Secretary may require to the Secretary for
12 approval.

13 (b) REVIEW OF SUBMISSIONS.—Proposals submitted
14 under subsection (a) shall be reviewed by the Secretary and
15 the Small Business Administration and any Federal agency
16 involved in the product to be marketed.

17 **SEC. 643. FINANCIAL AGREEMENT.**

18 (a) MARKETING AGREEMENTS.—The Secretary of
19 Commerce, after approving a proposal submitted under sec-
20 tion 642, may enter into an agreement with the entity which
21 submitted such proposal to share the cost of such marketing
22 for a period not to exceed 3 years.

23 (b) MAXIMUM FEDERAL SHARE.—The Federal share
24 of participation in such agreement shall not exceed 50 per-
25 cent of the reasonable costs of such program.

1 (c) REPAYMENT REQUIREMENT.—Any agreement en-
2 tered into under this section shall require that the entity en-
3 tering into the agreement shall repay the Federal share over
4 a 5-year period beginning at the expiration of the Federal
5 participation.

6 **SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to carry out the
8 provisions of this part such sums as may be necessary.

9 **PART 5—EXPORT OF SERVICES**

10 **SEC. 651. EXPORT OF SERVICES.**

11 (a) IN GENERAL.—Within 6 months after the enact-
12 ment of this Act, each United States Government agency and
13 the representatives of the United States Government to any
14 international organization shall (1) identify and analyze all
15 programs which could significantly affect the export or use of
16 United States firms' services; (2) make available to United
17 States firms which are engaged or interested in the export of
18 services from the United States such information and main-
19 tain current information about such programs; (3) establish
20 within the agency, or, in the case of international organiza-
21 tions, make the United States representatives responsible for,
22 programs to publicize export-related programs for services
23 and establish a liaison to the private sector to receive com-
24 ments regarding the development and administration of such
25 programs; and (4) undertake to modify, where feasible and

1 consistent with the laws of the United States, those programs
2 which have been determined to have a negative effect or
3 whose administration or design have an adverse effect on the
4 export of services of the United States.

5 (b) SECRETARY OF COMMERCE.—The Secretary of
6 Commerce and the Department of Commerce shall have lead
7 responsibility within the United States Government for co-
8 ordinating the programs authorized by this section and for
9 any other service-sector export promotion program except as
10 otherwise specified by law.

11 (c) DISC STUDY.—The Department of the Treasury
12 shall study and report to the Congress within 6 months after
13 the enactment of this Act the feasibility of extending DISC
14 treatment to the export of services and the reasons why serv-
15 ice industries should not receive tax treatment equivalent to
16 the manufacturing sector.

17 TITLE VII—AGRICULTURAL EXPORTS

18 **SEC. 701. STATEMENT OF FINDINGS AND CONCLUSIONS.**

19 (a) FINDINGS.—The Congress finds that—

20 (1) agricultural exports are vital to current and
21 future United States trade health;

22 (2) agricultural exports have been a major positive
23 factor in the United States balance of trade, exceeding
24 the value of agricultural imports for nearly 20 years; in
25 1979 agricultural exports provided a surplus of

1 $16,000,000,000 and an estimated $20,000,000,000
2 surplus in 1980;
3 (3) a large volume of agricultural exports is essen-
4 tial to United States agriculture—
5 (A) exports are now responsible for 15 per-
6 cent of the jobs in farming and 20 percent of
7 gross farm sales;
8 (B) production from one-third of the harvest-
9 ed acres in the United States is exported; and
10 (C) growers of rice, cotton, citrus fruits, and
11 tobacco are particularly dependent on foreign
12 markets for their livelihood;
13 (4) in 1979 the $32,000,000,000 of agricultural
14 exports provided employment for about 1,600,000
15 workers and generated $63,000,000,000 of total eco-
16 nomic activity;
17 (5) the percentage share of total exports ac-
18 counted for by agricultural exports is high, 19 percent,
19 but there are signs that growth of the agricultural
20 product share is slowing; and
21 (6) as much as two-thirds of United States agri-
22 cultural exports are subject to some trade restriction
23 abroad.
24 (b) CONCLUSIONS.—The Congress concludes that—

1 (1) it is critical to our export efforts and to our
2 economic strength in general to insure that United
3 States agriculture can continue to maintain or improve
4 its position in world trade;
5 (2) the executive branch must continue its efforts
6 to implement the Multilateral Trade Agreement of
7 1979 and to urge further removal of tariff and nontariff
8 barriers abroad on United States agricultural products;
9 (3) adequate funds must be made available so that
10 the Department of Agriculture can continue to carry
11 out and expand its successful foreign market develop-
12 ment programs, particularly in Western Europe and
13 Japan, but also in new market areas of Southeast
14 Asia, the Middle East, Africa, Eastern Europe and
15 China;
16 (4) the Agricultural Trade Act of 1978 should be
17 fully and aggressively implemented, particularly with
18 regard to our overseas marketing activities;
19 (5) United States agricultural representatives
20 overseas should hold the same rank and importance as
21 our other commercial and economic representatives
22 making clear the significance the United States atta-
23 ches to agricultural exports;
24 (6) the United States Government should pursue
25 policies that guarantee a dependable supply of food and

1 fiber at reasonable prices, and should only resort to
2 embargoes on export of agricultural products when our
3 foreign policy objectives can be achieved in no other
4 way;
5 (7) adequate and competitive financing for agricul-
6 tural exports must be made available through the Com-
7 modity Credit Corporation credit program and the
8 United States Export-Import Bank as required;
9 (8) efforts must be made to insure adequate avail-
10 ability of grain supplies, protection against wide price
11 fluctuations and fair prices for United States grain
12 farmers; and
13 (9) farm cooperatives must be encouraged to
14 expand their export activities by permitting them a
15 more direct role in export financing arrangements and
16 developing joint marketing ventures.

17 **PART 1—COMMODITY CREDIT CORPORATION**
18 **FINANCING FOR CERTAIN SALES**

19 **SEC. 711. FINANCING FOR SHORT-TERM EXPORT CREDIT**
20 **SALES OF AGRICULTURAL COMMODITIES.**

21 The Commodity Credit Corporation Charter Act (15
22 U.S.C. 714–714p) is amended by adding at the end thereof
23 the following new section:
24 "SEC. 20. AGRICULTURAL EXPORT CREDIT REVOLV-
25 ING FUND.—(a) There is established in the Treasury a re-

1 volving fund to be known as the Agricultural Export Credit
2 Revolving Fund, which shall be available without fiscal year
3 limitation, for (1) use in carrying out the provisions of section
4 5(f) of this Act, and (2) making loans for the construction or
5 acquisition of facilities in foreign countries to improve the
6 capacity of such countries for handling, marketing, process-
7 ing, storing, or distributing agricultural commodities pro-
8 duced in and exported from the United States.

9 "(b) All sums received by the Corporation from the liq-
10 uidation of loans made to carry out the purposes described in
11 section 5(f) shall be added to and become a part of such fund
12 together with funds appropriated to such fund.

13 "(c) There is authorized to be appropriated to the Agri-
14 cultural Export Credit Revolving Fund the sum of
15 $2,000,000,000 during each of the fiscal years beginning
16 October 1, 1981, October 1, 1982, and October 1, 1983.

17 "(d) The Secretary shall submit an annual report to the
18 Congress not later than December 1 of each year with re-
19 spect to the export credit sales program carried out by the
20 Corporation in the last fiscal year. Such report shall include
21 the names of the countries extended credit under such pro-
22 gram, the total amount of such credit in the case of each such
23 country in such fiscal year, and a discussion and evaluation of
24 the marketing development activities of the Corporation
25 under this Act during such fiscal year. The first such report

1 shall be submitted to the Congress not later than December
2 1, 1982.

3 "(e) The revolving fund created by this section is abol-
4 ished effective October 1, 1984, and all unobligated money in
5 such fund on September 30, 1984, shall be transferred to and
6 become a part of the miscellaneous receipts account of the
7 Treasury.".

8 **PART 2—EXPORT-IMPORT BANK CREDITS**

9 **SEC. 721. EXPORT-IMPORT BANK CREDITS FOR AGRICUL-**
10 **TURAL COMMODITIES.**

11 Section 2 of the Export-Import Bank Act of 1945 is
12 amended by adding at the end thereof the following:

13 "(d)(1) Subject to paragraph (2), for each fiscal year be-
14 ginning after September 30, 1981, the ratio that the amount
15 of credit which the Bank extends and in which it participates
16 to finance the export of agricultural commodities bears to the
17 total amount of credit which the Bank extends or in which it
18 participates shall not be less than the ratio that the dollar
19 value of exports of agricultural commodities during the imme-
20 diately preceding fiscal year bears to the dollar value of all
21 exports during such preceding fiscal year, except that if a
22 significant dollar amount of any agricultural or nonagricul-
23 tural item was embargoed in any such year, the immediately
24 preceding fiscal year in which no such embargo occurred
25 shall be used for purposes of this paragraph.

1 "(2) Paragraph (1) does not apply to any fiscal year
2 with respect to which—
3 "(A) the Bank determines and reports to the Con-
4 gress that the demand for credit to finance exports of
5 agricultural commodities is insufficient to equal or
6 exceed the ratio which would be required; or
7 "(B) the Secretary of Agriculture determines that
8 the level of exports of agricultural commodities is or
9 will be adequate without credit which the Bank ex-
10 tends or in which it participates.".

11 TITLE VIII—INTERNATIONAL AGREEMENTS

12 **SEC. 801. FINDINGS AND CONCLUSIONS.**

13 (a) FINDINGS.—The Congress finds that—
14 (1) there is a high degree of interdependence
15 among world economies today which makes it neces-
16 sary to consider the international effects of national
17 economic policies and actions,
18 (2) multilateral negotiations and agreements are
19 preferable to unilateral action as a solution to many
20 United States trade problems,
21 (3) United States international economic policy
22 has been treated as a tool of national security and for-
23 eign policy objectives rather than a major objective in
24 its own right and has consequently not been in the best
25 interests of United States economic growth,

1 (4) multinational trade agreements and codes
2 reached so far have not achieved adequate removal of
3 artificial barriers to United States products abroad, and
4 (5) the international negotiating strength of the
5 United States has been hindered by its deteriorating in-
6 ternational trade balance.
7 (b) CONCLUSIONS.—The Congress concludes that—
8 (1) international economic policy, particularly
9 trade policy, must be given highest priority among
10 United States national objectives,
11 (2) the United States must change the focus of its
12 international economic policies from helping other
13 countries achieve economic growth to helping ourselves
14 develop a stronger economy through increased exports,
15 (3) the time has come to stop thinking only of the
16 world reponsibilities of the United States and start de-
17 manding its rights as an international trader through
18 international negotiations and agreements,
19 (4) trade should no longer be viewed as the only
20 foreign policy weapon of the United States to the detri-
21 ment of exports, and
22 (5) the United States must continue to seek solu-
23 tions to its international trade problems through nego-
24 tiations on such key areas as tariffs, nontariff barriers,

1 financing codes, foreign business practices, antitrust
2 applications, and international treatment of services.

3 **SEC. 802. MULTILATERAL TRADE AGREEMENT OF 1979 AND**
4 **FOLLOWUP.**

5 (a) IN GENERAL.—It is the sense of Congress that—
6 (1) the agreements on tariff provisions and codes
7 on nontariff barriers reached in the multilateral trade
8 agreement of 1979 be strongly implemented and imme-
9 diate action taken against violating nations, and
10 (2) the 1979 Multilateral Trade Agreement,
11 though an important step forward, did not achieve ade-
12 quate removal of foreign tariff and nontariff barriers to
13 United States products and services and the executive
14 branch must continue its efforts to secure a freer world
15 trading environment through multilateral negotiations.
16 (b) STANDBY PROGRAM FOR AGRICULTURAL COM-
17 MODITIES.—
18 (1) IN GENERAL.—In order to encourage the im-
19 plementation of international agreements concerning
20 agricultural commodities, the Secretary of Agriculture
21 is authorized and directed to formulate a special export
22 subsidy program for agricultural commodities. Such
23 program shall be designed to neutralize the effects of
24 export subsidy programs instituted by foreign countries
25 or instrumentalities to encourage exports of their agri-

1 cultural commodities to foreign markets other than the
2 United States.

3 (2) IMPLEMENTATION AFTER PRESIDENTIAL DE-
4 TERMINATION.—The Secretary shall implement the
5 special export subsidy program formulated under sub-
6 section (a) of this section only when the President—

7 (A) makes a determination under section 301
8 of the Trade Act of 1974 (19 U.S.C. 2411) that
9 action by the United States is appropriate to
10 obtain the elimination of an act, policy, or prac-
11 tice of a foreign country or instrumentality that
12 results in—

13 (i) substantial displacement of United
14 States exports of agricultural commodities to
15 foreign markets, or

16 (ii) prices for such commodities materi-
17 ally below prices of other suppliers of the
18 same commodity to the same market, and

19 (B) determines that such act, policy, or prac-
20 tice of the foreign country or instrumentality con-
21 cerned involves the use of an export subsidy pro-
22 gram to encourage exports of agricultural com-
23 modities to foreign markets other than the United
24 States.

1 (3) ROLE OF COMMODITY CREDIT CORPORA-
2 TION.—In carrying out the special subsidy program
3 pursuant to the provisions of subsections (a) and (b) of
4 this section, the Secretary of Agriculture is authorized
5 to utilize the funds and facilities of the Commodity
6 Credit Corporation.

7 (4) AGRICULTURAL COMMODITY DEFINED.—For
8 purposes of this section, the term "agricultural com-
9 modity" means any agricultural commodity produced in
10 the United States.

11 **SEC. 803. INTERNATIONAL FINANCING CODE.**

12 (a) NEGOTIATIONS.—It is the sense of the Congress
13 that the President should enter into negotiations with other
14 countries for the purpose of obtaining an international agree-
15 ment under which United States exporters and foreign ex-
16 porters will be placed in substantially equal competitive posi-
17 tions with respect to official export financing.

18 (b) REPORT.—The President shall transmit to the Con-
19 gress a report not later than January 1, 1982, concerning
20 steps taken toward the negotiation of such an international
21 export finance agreement.

22 **SEC. 804. INTERNATIONAL CODE OF BUSINESS CONDUCT.**

23 (a) FINDINGS.—The Congress finds that—

1 (1) American companies competing in domestic
2 and foreign markets are increasingly losing sales and
3 market shares to their foreign competitors;
4 (2) this deterioration in the international market-
5 ing position of American business jeopardizes the eco-
6 nomic health of the United States, threatens to in-
7 crease unemployment, and has aggravated inflationary
8 pressures by diminishing the international value of the
9 dollar;
10 (3) one of the significant factors causing deteriora-
11 tion in this international marketing position is the fact
12 that United States businessmen are prohibited by the
13 Business Practices and Records Act from engaging in
14 certain practices that are pursued by our trading com-
15 petitors;
16 (4) it is in the best interests of all industrial coun-
17 tries to maintain responsible standards of corporate
18 conduct in foreign markets; and
19 (5) the Congressional Joint Economic Committee
20 unanimously recommended in its 1980 Annual Report
21 that the answer to this problem is not a relaxation of
22 standards of American business in foreign and domestic
23 trade, but an insistence upon the elimination of corrupt
24 practices by foreign nationals and, consequently, that
25 the President should initiate an effort to encourage ad-

1 herence to the principles contained in the Foreign Cor-
2 rupt Practices Act by our competitors and customers
3 abroad, utilizing international forums and other appro-
4 priate multilateral channels.

5 (b) CONCLUSIONS.—It is the sense of the Congress
6 that—

7 (1) the President shall utilize appropriate interna-
8 tional fora to urge the development and adoption of an
9 International Code of Business Conduct,

10 (2) the President should pursue the negotiation of
11 bilateral and multilateral agreements among the largest
12 possible number of industrialized and developing coun-
13 tries which would establish standards of ethical and
14 equitable conduct of international business and which
15 would establish the mechanisms to resolve the diplo-
16 matic, commercial, and legal problems associated with
17 such practices, and

18 (3) on January 2, 1982, the President shall report
19 back to the Congress as to the progress on these
20 negotiations.

21 (c) JOINT ECONOMIC COMMITTEE RECOMMENDA-
22 TIONS.—Within 60 days of receipt of the President's report,
23 the Joint Economic Committee shall report to the Congress
24 its recommendations as to how best to proceed with negotia-
25 tions toward an international code of business conduct or how

1 otherwise to rectify the current competitive imbalance which
2 adversely affects United States exports of goods and services.

3 **SEC. 805. INTERNATIONAL CODE ON RECIPROCITY ON EN-**
4 **FORCEMENT OF ANTITRUST.**

5 It is the sense of the Congress that—
6 (1) the executive branch seek an international
7 agreement that achieves multinational harmonization of
8 antitrust laws for the purpose of overriding the imposi-
9 tion of conflicting judicial and regulatory requirements
10 on the separate components of multinational enterprise,
11 (2) all nations be urged to adopt uniform antitrust
12 policies, and
13 (3) that a permanent international body open to
14 all countries under the aegis of the OECD be estab-
15 lished to resolve jurisdictional conflicts in antitrust
16 matters.

17 **SEC. 806. MULTILATERAL CODE ON FAIR TRADE IN SERVICES.**

18 It is the sense of Congress that the United States should
19 undertake to obtain a multilateral code for the treatment of
20 international trade in services, including investment. Further-
21 more, it is the sense of Congress that until such an interna-
22 tional code is agreed to the principles of fairness and equity
23 should apply to such trade in services, including reciprocity
24 of treatment and mutual, equivalent benefits.

TITLE IX—GOVERNMENT SUPPORT OF EXPORT GOALS

PART 1—FINDINGS AND CONCLUSIONS

SEC. 901. STATEMENT OF FINDINGS AND CONCLUSIONS.

(a) FINDINGS.—The Congress finds that—

(1) many United States Government organizations not directly associated with international trade activities and policies, have an impact on United States exports,

(2) those organizations are not sufficiently aware of the importance of exports to United States national goals, and, therefore, are not making decisions and taking actions that will assist our export efforts, and

(3) other successful trading nations have placed high priority on export expansion and can rely on consistent support for that goal from all arms of government.

(b) CONCLUSIONS.—The Congress concludes that—

(1) to achieve our goal of export expansion, all of the available resources of the United States Government must be used to assist and promote the export of United States goods and services except where contrary to the national security or national economic interests, and

1 (2) in addition to the United States Trade Repre-
2 sentative; the United States Department of Com-
3 merce's International Trade Administration, the De-
4 partment of Agriculture's Foreign Agricultural Service,
5 and the Department of State, which have specific
6 export promotion functions, all other departments,
7 agencies, and organizations (including, but not limited
8 to, the Office of Management and Budget, the Justice
9 Department, the Overseas Private Investment Corpo-
10 ration, the International Development and Cooperation
11 Agency, the Department of Education, the Department
12 of Energy, the Small Business Administration, the
13 Treasury Department, and the Congress) will consider
14 the impact on exports of their policies, decisions, and
15 programs and where possible and appropriate, take
16 positive steps to help export expansion goals.

17 **PART 2—OVERSEAS PRIVATE INVESTMENT**
18 **CORPORATION AMENDMENTS**

19 **SEC. 921. SHORT TITLE.**

20 This part may be cited as the "Overseas Private Invest-
21 ment Corporation Act of 1981".

22 **Subpart A—Overseas Private Investment Corporation**

23 **SEC. 925. PURPOSE AND POLICY.**

24 (a) ESTABLISHMENT AS INDEPENDENT AGENCY.—The
25 Overseas Private Investment Corporation (the "Corpora-

1 tion") created by the Foreign Assistance Act of 1969 is
2 hereby established as an independent agency of the United
3 States of America. The Corporation shall serve the national
4 interest by mobilizing and facilitating the participation of
5 United States private capital and skills in less developed
6 friendly countries and areas in order to increase United
7 States trade with, and contribute to the economic and social
8 development of, such countries and areas.

9 (b) FUNCTIONS.—In carrying out its purpose, the Cor-
10 poration, utilizing broad criteria, shall undertake—

11 (1) to conduct financing, insurance, and reinsur-
12 ance operations on a self-sustaining basis, taking into
13 account in its financing operations the economic and fi-
14 nancial soundness of projects;

15 (2) to utilize private credit and investment institu-
16 tions and the Corporation's guaranty authority as the
17 principal means of mobilizing capital investment funds;

18 (3) to broaden private participation and revolve its
19 funds through selling its direct investments to private
20 investors whenever it can appropriately do so on satis-
21 factory terms;

22 (4) to conduct its insurance operations with due
23 regard to principles of risk management including ef-
24 forts to share its insurance risks and reinsurance risks;

1 (5) to the maximum degree possible consistent
2 with its purposes—
3 (A) to give preferential consideration in its
4 investment insurance, reinsurance, and guaranty
5 activities to investment projects sponsored by or
6 involving United States small business; and
7 (B) to increase the proportion of projects
8 sponsored by or significantly involving United
9 States small business to at least 30 percent of all
10 projects insured, reinsured, or guaranteed by the
11 Corporation;
12 (6) to consider in the conduct of its operations the
13 extent to which less-developed country governments
14 are receptive to private enterprise, domestic and for-
15 eign, and their willingness and ability to maintain con-
16 ditions which enable private enterprise to make its full
17 contribution to the development process;
18 (7) to foster private initiative and competition and
19 discourage monopolistic practices;
20 (8) to further to the greatest degree possible, in a
21 manner consistent with its goals, the balance-of-pay-
22 ments and employment objectives of the United States;
23 (9) to conduct its activities in consonance with the
24 international trade, investment, financial, development,
25 and foreign policies of the United States Government;

1 (10) to advise and assist, within its field of compe-
2 tence, interested agencies of the United States and
3 other organizations, both public and private, national
4 and international, with respect to projects and pro-
5 grams relating to the development of private enterprise
6 in less-developed countries and areas;

7 (11)(A) to decline to issue any contract of insur-
8 ance or reinsurance, or any guaranty, or to enter into
9 any agreement to provide financing for an eligible in-
10 vestor's proposed investment if the Corporation deter-
11 mines that such investment is likely to cause such in-
12 vestor (or the sponsor of an investment project in
13 which such investor is involved) significantly to reduce
14 the number of his employees in the United States be-
15 cause he is replacing his United States production with
16 production from such investment which involves sub-
17 stantially the same product for substantially the same
18 market as his United States production; and (B) to
19 monitor conformance with the representations of the
20 investor on which the Corporation relied in making the
21 determination required by clause (1);

22 (12) to decline to issue any contract of insurance
23 or reinsurance, or any guaranty, or to enter into any
24 agreement to provide financing for an eligible inves-
25 tor's proposed investment if the Corporation deter-

1 mines that such investment is likely to cause a signifi-
2 cant reduction in the number of employees in the
3 United States; and

4 (13) to the maximum extent practicable, to give
5 preferential consideration in the Corporation's oper-
6 ations to investment projects in the less developed
7 friendly countries and areas which have per capita in-
8 comes of $580 or less in 1977 dollars.

9 **SEC. 926. CAPITAL OF CORPORATION.**

10 The capital of the Corporation shall consist of
11 $50,000,000 of which $40,000,000 has been made available
12 and paid in through the appropriation process and
13 $10,000,000 has been made available through a transfer
14 from the Corporation's earned income. The Corporation may
15 increase its capital from time to time by transfers from its
16 earned income. Capital paid into the Corporation shall be
17 evidenced by an equivalent amount of capital stock issued to
18 the Secretary of the Treasury.

19 **SEC. 927. ORGANIZATION AND MANAGEMENT.**

20 (a) STRUCTURE OF THE CORPORATION.—The Corpo-
21 ration shall have a Board of Directors, a President, an Ex-
22 ecutive Vice President, and such other officers and staff as
23 the Board of Directors may determine.

24 (b) BOARD OF DIRECTORS.—All powers of the Corpo-
25 ration shall vest in and be exercised by or under the authority

1 of its Board of Directors (the "Board") which shall consist of
2 13 Directors, including the Chairman. The United States
3 Trade Representative shall be the Chairman of the Board, ex
4 officio. The Director of the United States International De-
5 velopment Cooperation Agency shall be the Vice Chairman
6 of the Board, ex officio. Seven Directors (other than the
7 President of the Corporation, appointed pursuant to subsec-
8 tion (c) who shall also serve as a Director) shall be appointed
9 by the President of the United States, by and with the advice
10 and consent of the Senate, and shall not be officials or em-
11 ployees of the Government of the United States. At least 1 of
12 the 7 Directors appointed under the preceding sentence shall
13 be experienced in small business, one in organized labor, one
14 in cooperatives, and one in international trade. Each such
15 Director shall be appointed for a term of no more than 3
16 years. The terms of no more than 3 such Directors shall
17 expire in any one year. Such Directors shall serve until their
18 successors are appointed and qualified and may be reap-
19 pointed. The other Directors shall be officials of the Govern-
20 ment of the United States, designated by and serving at the
21 pleasure of the President of the United States. All Directors
22 who are not officers of the Corporation or officials of the
23 Government of the United States shall be compensated at a
24 rate equivalent to that of level IV of the Executive Schedule
25 (5 U.S.C. 5315) when actually engaged in the business of the

1 Corporation and may be paid per diem in lieu of subsistence
2 at the applicable rate prescribed in the standardized Govern-
3 ment travel regulations, as amended, from time to time,
4 while away from their homes or usual places of business.
5 (c) PRESIDENT OF THE CORPORATION.—The Presi-
6 dent of the Corporation shall be appointed by the President of
7 the United States, by and with the advice and consent of the
8 Senate, and shall serve at the pleasure of the President. In
9 making such appointment, the President shall take into ac-
10 count private business experience of the appointee. The
11 President of the Corporation shall be its Chief Executive Of-
12 ficer and responsible for the operations and management of
13 the Corporation, subject to bylaws and policies established by
14 the Board.
15 (d) OFFICERS AND STAFF.—The Executive Vice Presi-
16 dent of the Corporation shall be appointed by the President of
17 the United States, by and with the advice and consent of the
18 Senate, and shall serve at the pleasure of the President.
19 Other officers, attorneys, employees, and agents shall be se-
20 lected and appointed by the Corporation, and shall be vested
21 with such powers and duties as the Corporation may deter-
22 mine. Of such persons employed by the Corporation, not to
23 exceed 25 may be appointed, compensated, or removed with-
24 out regard to the civil service laws and regulations. Under
25 such regulations as the President of the United States may

1 prescribe, officers and employees of the United States Gov-
2 ernment who are appointed to any of the above positions may
3 be entitled, upon removal from such position, except for
4 cause, to reinstatement to the position occupied at the time of
5 appointment or to a position of comparable grade and salary.
6 Such positions shall be in addition to those otherwise author-
7 ized by law, including those authorized by section 5108 of
8 title 5, United States Code.

9 (e) EXPERTS, CONSULTANTS, AND RETIRED OFFI-
10 CERS.—Experts and consultants or organizations thereof
11 may, as authorized by section 3109 of title 5, United States
12 Code, be employed for the performance of functions under
13 this part, and individuals so employed may be compensated
14 at rates not in excess of the daily equivalent of the highest
15 rate which may be paid to an employee under the General
16 Schedule established by section 5332 of title 5, United States
17 Code, and while away from their homes or regular places of
18 business, they may be paid actual travel expenses and per
19 diem in lieu of subsistence at the applicable rate prescribed in
20 the standardized Government travel regulations. Such con-
21 tracts may be renewed from time to time without limitation.
22 Service of an individual as an expert or consultant under this
23 subsection shall not be considered as employment or holding
24 of office or position bringing such individual within the provi-
25 sions of section 3323(a) of title 5, United States Code.

1 **SEC. 928. INVESTMENT INSURANCE AND OTHER PROGRAMS.**

2 (a) The Corporation is hereby authorized to do the
3 following:

4 (1) INVESTMENT INSURANCE.—

5 (A) To issue insurance, upon such terms and
6 conditions as the Corporation may determine, to
7 eligible investors assuring protection in whole or
8 in part against any or all of the following risks
9 with respect to projects which the Corporation
10 has approved—

11 (i) inability to convert into United
12 States dollars other currencies, or credits in
13 such currencies, received from or in respect
14 of the project;

15 (ii) loss due to expropriation or confisca-
16 tion by action of a foreign government; and

17 (iii) loss due to war, revolution, insur-
18 rection, or civil strife.

19 (B) Recognizing that major private invest-
20 ments in less developed friendly countries or areas
21 are often made by enterprises in which there is
22 multinational participation, including significant
23 United States private participation, the Corpora-
24 tion may make arrangements with foreign govern-
25 ments (including agencies, instrumentalities, or
26 political subdivisions thereof) or with multilateral

1 organizations and institutions for sharing liabilities
2 assumed under investment insurance for such in-
3 vestments and may in connection therewith issue
4 insurance to investors not otherwise eligible here-
5 under, except that liabilities assumed by the Cor-
6 poration under the authority of this subsection
7 shall be consistent with the purposes of this title
8 and that the maximum share of liabilities so as-
9 sumed shall not exceed the proportionate partici-
10 pation by eligible investors in the total project
11 financing.

12 (C) Not more than 10 percent of the maxi-
13 mum contingent liability of investment insurance
14 which the Corporation is authorized to issue
15 under this subsection shall be issued to a single
16 investor.

17 (2) INVESTMENT GUARANTIES.—To issue to eli-
18 gible investors guaranties of loans and other invest-
19 ments made by such investors assuring against loss due
20 to such risks and upon such terms and conditions as
21 the Corporation may determine, but such guaranties on
22 other than loan investments shall not exceed 75 per-
23 cent of such investment, and except for loan invest-
24 ments for credit unions made by eligible credit unions
25 or credit union associations, the aggregate amount of

1 investment (exclusive of interest and earnings) so guar-
2 anteed with respect to any project shall not exceed, at
3 the time of issuance of any such guaranty, 75 percent
4 of the total investment committed to any such project
5 as determined by the Corporation, which determination
6 shall be conclusive for purposes of the Corporation's
7 authority to issue any such guaranty, but not more
8 than 10 percent of the maximum contingent liability of
9 investment guaranties which the Corporation is author-
10 ized to issue as set forth in section 929(a)(2) shall be
11 issued to a single investor.

12 (3) DIRECT INVESTMENT.—To make loans in
13 United States dollars repayable in dollars or loans in
14 foreign currencies (including, without regard to section
15 1415 of the Supplemental Appropriation Act, 1953,
16 such foreign currencies which the Secretary of the
17 Treasury may determine to be excess to the normal re-
18 quirements of the United States and the Director of
19 the Bureau of the Budget may allocate) to firms pri-
20 vately owned or of mixed private and public ownership
21 upon such terms and conditions as the Corporation
22 may determine. The Corporation may not purchase or
23 invest in any stock in any other corporation, except
24 that it may (A) accept as evidence of indebtedness debt
25 securities convertible to stock, but such debt securities

1 shall not be converted to stock while held by the Cor-
2 poration, and (B) acquire stock through the enforce-
3 ment of any lien or pledge or otherwise to satisfy a
4 previously contracted indebtedness which would other-
5 wise be in default, or as the result of any payment
6 under any contract of insurance or guaranty. The Cor-
7 poration shall dispose of any stock it may so acquire as
8 soon as reasonably feasible under the circumstances
9 then pertaining. Loans may be made under this subsec-
10 tion only for projects that are sponsored by or signifi-
11 cantly involve United States small business or
12 cooperatives.

13 (4) INVESTMENT ENCOURAGEMENT.—To initiate
14 and support through financial participation, incentive
15 grant, or otherwise, and on such terms and conditions
16 as the Corporation may determine, the identification,
17 assessment, surveying, and promotion of private invest-
18 ment opportunities, utilizing wherever feasible and ef-
19 fective the facilities of private investors, except that—

20 (A) the Corporation shall not finance any
21 survey to ascertain the existence, location, extent,
22 or quality of, or to determine the feasibility of un-
23 dertaking operations for the extraction of oil or
24 gas; and

1 (B) expenditures financed by the Corporation
2 during any fiscal year on surveys to ascertain the
3 existence, location, extent, or quality of, or to de-
4 termine the feasibility of undertaking operations
5 for the extraction of nonfuel minerals may not
6 exceed $200,000.

7 (5) SPECIAL ACTIVITIES.—To administer and
8 manage special projects and programs, including pro-
9 grams of financial and advisory support which provide
10 private technical, professional, or managerial assistance
11 in the development of human resources, skills, technol-
12 ogy, capital savings, and intermediate financial and in-
13 vestment institutions and cooperatives. The funds for
14 these projects and programs may, with the Corpora-
15 tion's concurrence, be transferred to it for such pur-
16 poses from other sources, public or private.

17 (6) OTHER INSURANCE FUNCTIONS.—

18 (A) To make and carry out contracts of in-
19 surance or reinsurance, or agreements to associate
20 or share risks, with insurance companies, financial
21 institutions, any other persons, or groups thereof,
22 and employing the same where appropriate, as its
23 agent, or acting as their agent, in the issuance
24 and servicing of insurance, the adjustment of
25 claims, the exercise of subrogation rights, the

1 ceding and accepting of reinsurance, and in any
2 other matter incident to an insurance business;
3 except that (i) such agreements and contracts
4 shall be consistent with the purposes of the Cor-
5 poration set forth in section 925 of this Act and
6 shall be on equitable terms and (ii) the Corpora-
7 tion shall not make or carry out any association
8 or risk-sharing agreement for the direct under-
9 writing of insurance by the Corporation with
10 others, other than on an individual basis where
11 such direct underwriting facilitates the purposes of
12 the Corporation as set forth in section 925 of this
13 Act.
14 (B) To enter into pooling or other risk-shar-
15 ing agreements with other national or multina-
16 tional insurance or financing agencies as groups of
17 such agencies.
18 (C) To hold an ownership interest in any as-
19 sociation or other entity established for the pur-
20 poses of sharing risks under investment insurance.
21 (D) To issue, upon such terms and conditions
22 as it may determine, reinsurance of liabilities as-
23 sumed by other insurers or groups thereof in re-
24 spect of risks referred to in paragraph (1)(A).

1 (b) The authority granted by subparagraph (C) may be
2 exercised notwithstanding the prohibition under paragraph
3 (3) against the Corporation purchasing or investing in any
4 stock in any other corporation. The amount of reinsurance of
5 liabilities under this part which the Corporation may issue
6 shall not in the aggregate exceed at any one time an amount
7 equal to the amount authorized for the maximum contingent
8 liability outstanding at any one time under section 929(a)(1).
9 All reinsurance issued by the Corporation under this subsec-
10 tion shall require that the reinsured party retain for his own
11 account specified portions of liability, whether first loss or
12 otherwise.

13 **SEC. 929. ISSUING AUTHORITY, DIRECT INVESTMENT FUND**
14 **AND RESERVES.**

15 (a)(1) LIABILITY UNDER SECTION 928(a).—The maxi-
16 mum contingent liability outstanding at any one time pursu-
17 ant to insurance issued under section 928(a) shall not exceed
18 $10,000,000,000.

19 (2) LIABILITY UNDER SECTION 928(b).—The maxi-
20 mum contingent liability outstanding at any one time pursu-
21 ant to guaranties issued under section 928(b) shall not exceed
22 in the aggregate $1,000,000,000.

23 (3) LIMITATION.—The Corporation shall not make any
24 commitment to issue any investment guaranty that would
25 result in a fractional reserve less than 25 percent of the

1 maximum contingent liability then outstanding against guar-
2 anties issued or commitments made pursuant to section
3 928(b) or similar predecessor guaranty authority.

4 (4) LIMITATION BY CONGRESS.—The Congress, in con-
5 sidering the budget programs transmitted by the President
6 for the Corporation, pursuant to section 104 of the Govern-
7 ment Corporation Control Act, as amended, may limit the
8 obligations and contingent liabilities to be undertaken under
9 section 928 (a) and (b) as well as the use of funds for operat-
10 ing and administrative expenses.

11 (5) CONTINUATION OF AUTHORITY.—The authority of
12 section 928 (a) and (b) shall continue until September 30,
13 1985.

14 (b) REVOLVING FUND.—There shall be established a re-
15 volving fund, known as the Direct Investment Fund, to be
16 held by the Corporation. Such fund shall consist initially of
17 amounts made available under section 926, shall be available
18 for the purposes authorized under section 926(c), shall be
19 charged with realized losses and credited with realized gains
20 and shall be credited with such additional sums as may be
21 transferred to it under the provisions of section 930.

22 (c) INSURANCE AND GUARANTY FUND.—There shall
23 be established in the Treasury of the United States an insur-
24 ance and guaranty fund, which shall have separate accounts
25 to be known as the Insurance Reserve and the Guaranty

1 Reserve, which reserves shall be available for discharge of
2 liabilities, as provided in section 929(d), until such time as all
3 such liabilities have been discharged or have expired or until
4 all such reserves have been expended in accordance with the
5 provisions of this section. Such fund shall be funded by: (1)
6 the funds heretofore transferred to the Corporation out of
7 funds available to discharge liabilities under predecessor
8 guaranty authority or made available to the Corporation
9 under predecessor guaranty authority, and (2) such sums as
10 shall be appropriated pursuant to section 929(e) for such pur-
11 poses. The allocation of such funds to each such reserve shall
12 be determined by the Board after consultation with the Sec-
13 retary of the Treasury. Additional amounts may thereafter be
14 transferred to such reserves pursuant to section 930.

15 (d) PAYMENTS.—Any payment made to discharge li-
16 abilities under investment insurance or reinsurance issued
17 under section 928 or under similar predecessor guaranty au-
18 thority shall be paid first out of the insurance reserve, as long
19 as such reserve remains available, and thereafter out of funds
20 made available pursuant to section 929(e). Any payments
21 made to discharge liabilities under guaranties issued under
22 section 928(b) or under similar predecessor guaranty author-
23 ity shall be paid first out of the guaranty reserve as long as
24 such reserve remains available, and thereafter out of funds
25 made available pursuant to section 929(e).

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There are
2 authorized to be appropriated to the Corporation, to remain
3 available until expended, such amounts as may be necessary
4 from time to time to replenish or increase the insurance and
5 guaranty fund, to discharge the liabilities under insurance,
6 reinsurance, or guaranties issued by the Corporation or
7 issued under predecessor guaranty authority, or to discharge
8 obligations of the Corporation purchased by the Secretary of
9 the Treasury pursuant to this subsection. However, no ap-
10 propriations shall be made to augment the insurance reserve
11 until the amount of funds in the insurance reserve is less than
12 $25,000,000. Any appropriations to augment the insurance
13 reserve shall then only be made either pursuant to specific
14 authorization enacted after the date of enactment of this Act,
15 or to satisfy the full faith and credit provision of section 931.
16 In order to discharge liabilities under investment insurance,
17 reinsurance or guaranties, the Corporation is authorized to
18 issue from time to time for purchase by the Secretary of the
19 Treasury its notes, debentures, bonds, or other obligations;
20 but the aggregate amount of such obligations outstanding at
21 any one time shall not exceed $250,000,000. Any such obli-
22 gation shall be repaid to the Treasury within 2 years after
23 the date of issue of such obligation. Any such obligation shall
24 bear interest at a rate determined by the Secretary of the
25 Treasury, taking into consideration the current average

1 market yield on outstanding marketable obligations of the
2 United States of comparable maturities during the month
3 preceding the issuance of any obligation authorized by this
4 subsection. The Secretary of the Treasury shall purchase any
5 obligation of the Corporation issued under this subsection,
6 and for such purchase he may use as a public debt transac-
7 tion the proceeds of the sale of any securities issued under
8 the Second Liberty Bond Act after the date of enactment of
9 this Act. The purpose for which securities may be issued
10 under such Bond Act shall include any such purchase.

11 **SEC. 930. INCOME AND REVENUES.**

12 In order to carry out the purposes of the Corporation,
13 all revenues and income transferred to or earned by the Cor-
14 poration, from whatever source derived, shall be held by the
15 Corporation and shall be available to carry out its purposes,
16 including without limitation—

17 (1) payment of all expenses of the Corporation, in-
18 cluding investment promotion expenses;

19 (2) transfers and additions to the insurance or
20 guaranty reserves, the direct investment fund estab-
21 lished pursuant to section 929, the capital of the Cor-
22 poration, and such other funds or reserves as the Cor-
23 poration may establish, at such time and in such
24 amounts as the Board may determine; and

1 (3) payment of dividends, on capital stock, which
2 shall consist of and be paid from net earnings of the
3 Corporation after payments, transfers, and additions
4 under paragraphs (1) and (2).

5 **SEC. 931. GENERAL PROVISIONS RELATING TO INSURANCE**
6 **AND GUARANTY PROGRAM.**

7 (a) IN GENERAL.—Insurance, guaranties, and reinsur-
8 ance issued under this Act shall cover investment made in
9 connection with projects in any less developed friendly coun-
10 try or area with the government to which the President of
11 the United States has agreed to institute a program for insur-
12 ance, guaranties, or reinsurance. The Corporation shall de-
13 termine that suitable arrangements exist for protecting the
14 interest of the Corporation in connection with any insurance,
15 guaranty, or reinsurance issued under this Act, including ar-
16 rangements concerning ownership, use, and disposition of the
17 currency, credits, assets, or investments on account of which
18 payment under such insurance, guaranty, or reinsurance is to
19 be made, and right, title, claim, or cause of action existing in
20 connection therewith.

21 (b) CERTAIN PREEXISTING OBLIGATIONS.—All guar-
22 anties issued prior to July 1, 1956, all guaranties issued
23 under sections 202(b) and 413(b) of the Mutual Security Act
24 of 1954, all guaranties heretofore issued pursuant to prior
25 guaranty authorities repealed by the Foreign Assistance Act

1 of 1969, all insurance, reinsurance, and guaranties issued
2 pursuant to title IV of the Foreign Assistance Act of 1961,
3 and this Act shall constitute obligations, in accordance with
4 the terms of such insurance, reinsurance, or guaranties, of
5 the United States of America and the full faith and credit of
6 the United States of America is hereby pledged for the full
7 payment and performance of such obligations.

8 (c) FEES.—Fees shall be charged for insurance, guaran-
9 ty, and reinsurance coverage in amounts to be determined by
10 the Corporation. In the event fees charged for investment
11 insurance, guaranties, or reinsurance are reduced, fees to be
12 paid under existing contracts for the same type of insurance,
13 guaranties, or reinsurance and for similar guaranties issued
14 under predecessor guaranty authority may be reduced.

15 (d) LIMITATION ON PERIOD.—No insurance, guaranty,
16 or reinsurance of any equity investment shall extend beyond
17 20 years from the date of issuance.

18 (e) LIMITATION ON COMPENSATION.—Compensation
19 for insurance, reinsurance, or guaranties issued under this
20 Act shall not exceed the dollar value, as of the date of the
21 investment, of the investment made in the project with the
22 approval of the Corporation plus interest, earnings or profits
23 actually accrued on said investment to the extent provided by
24 such insurance, reinsurance, or guaranty, except that the
25 Corporation may provide (1) that appropriate adjustments in

1 the insured dollar value be made to reflect the replacement
2 cost of project assets, and (2) that compensation for loss
3 under insurance of equity investment shall be equal to the net
4 book value attributable to such equity investment on the date
5 of loss. The Corporation shall limit the amount of direct in-
6 surance and reinsurance issued by it under section 104 so
7 that risk of loss as to at least 10 percent of the total invest-
8 ment of the insured and its affiliates in the project is borne by
9 the insured and such affiliates, except that limitation shall not
10 apply to direct insurance or reinsurance of (1) investments by
11 small businesses or (2) loans by banks or other financial insti-
12 tutions to unrelated parties.

13 (f) FRAUD, ETC.—No payment may be made under any
14 guaranty, insurance, or reinsurance issued pursuant to this
15 Act for any loss arising out of fraud or misrepresentation for
16 which the party seeking payment is responsible.

17 (g) FOREIGN INVESTMENT INSURANCE.—Insurance,
18 guaranties, or reinsurance of a loan or equity investment of
19 an eligible investor in a foreign bank, finance company, or
20 other credit institution shall extend only to such loan or
21 equity investment and not to any individual loan or equity
22 investment made by such foreign bank, finance company, or
23 other credit institution.

24 (h) PAYMENT OF CLAIMS.—Claims arising as a result
25 of insurance, reinsurance or guaranty operations under this

1 part or under predecessor guaranty authority may be settled,
2 and disputes arising as a result thereof may be arbitrated
3 with the consent of the parties, on such terms and conditions
4 as the Corporation may determine. Payment made pursuant
5 to any such settlement, or as a result of an arbitration award,
6 shall be final and conclusive notwithstanding any other provi-
7 sion of law.

8 (i) CONTRACTS PRESUMED TO COMPLY.—Each guar-
9 anty contract executed by such officer or officers as may be
10 designated by the Board shall be conclusively presumed to be
11 issued in compliance with the requirements of this part.

12 (j) LIMITATIONS ON PAYMENTS.—

13 (1) No payment may be made under any insur-
14 ance or reinsurance which is issued under this part on
15 or after the date of enactment of this Act for any loss
16 occurring with respect to a project, if the preponderant
17 cause of such loss was an act by the investor seeking
18 payment under this part, by a person possessing major-
19 ity ownership and control of the investor at the time of
20 the act, or by any agent of such investor or controlling
21 person, and a court of the United States has entered a
22 final judgment that such act constituted a violation
23 under the Business Practices and Records Act.

24 (2) The Corporation shall adopt regulations set-
25 ting forth appropriate conditions under which any

1 person convicted under the Business Practices and Re-
2 cords Act for an offense related to a project insured or
3 otherwise supported by the Corporation shall be sus-
4 pended, for a period of not more than 5 years, from
5 eligibility to receive any insurance, reinsurance, guar-
6 anty loan, or other financial support authorized by this
7 Act.

8 **SEC. 932. DEFINITIONS.**

9 As used in this part—

10 (1) the term "investment" includes any contribu-
11 tion or commitment of funds, commodities, capital
12 goods, equipment, services, patents, processes, or tech-
13 niques, in the form of (A) a loan or loans to an ap-
14 proved project, (B) the purchase of a share of owner-
15 ship in any such project, (C) participation in royalties,
16 earnings, or profits of any such project, and (D) the
17 furnishing of commodities, capital goods, equipment or
18 services pursuant to a lease or other contract;

19 (2) the term "expropriation" includes, but is not
20 limited to, any abrogation, repudiation, or impairment
21 by a foreign government of its own contract with an
22 investor with respect to a project, where such abroga-
23 tion, repudiation, or impairment is not caused by the
24 investor's own fault or misconduct, and materially ad-
25 versely affects the continued operation of the project;

1 (3) the term "eligible investor" means: (A) United
2 States citizens; (B) corporations, partnerships, or other
3 associations including nonprofit associations, created
4 under the laws of the United States or any State or
5 territory thereof in which the United States citizens
6 have a significant interest; and (C) foreign corpora-
7 tions, partnerships, or other associations majority con-
8 trol of which is held by such United States citizens,
9 corporations, partnerships, or other associations, how-
10 ever, in the case of any loan investment a final deter-
11 mination of eligibility may be made at the time the in-
12 surance or guaranty is issued; in all other cases, the
13 investor must be eligible at the time a claim arises as
14 well as the time the insurance or guaranty is issued;
15 and
16 (4) the term "predecessor guaranty authority"
17 means prior guaranty authorities (other than housing
18 guaranty authorities) repealed by this part, the Foreign
19 Assistance Act of 1969, sections 202(b) and 413(b) of
20 the Mutual Security Act of 1954, and section 111(b)(3)
21 of the Economic Cooperation Act of 1948, as amended
22 (exclusive of authority relating to informational media
23 guaranties).

1 SEC. 933. GENERAL PROVISIONS AND POWERS.

2 (a) PRINCIPAL OFFICE.—The Corporation shall have
3 its principal office in the District of Columbia and shall be
4 deemed, for purposes of venue in civil actions, to be resident
5 thereof.

6 (b) PREDECESSOR PROGRAMS.—The Corporation shall
7 retain all obligations, assets, and related rights and responsi-
8 bilities arising out of, or related to, predecessor programs and
9 authorities similar to those provided for in section 928 (a),
10 (b), and (d).

11 (c) GOVERNMENT CORPORATION CONTROL ACT.—The
12 Corporation shall be subject to the applicable provisions of
13 the Government Corporation Control Act, except as other-
14 wise provided in this Act.

15 (d) GENERAL AUTHORITY.—To carry out the purposes
16 of this Act, the Corporation is authorized to adopt and use a
17 corporate seal, which shall be judicially noticed; to sue and
18 be sued in its corporate name; to adopt, amend, and repeal
19 bylaws governing the conduct of its business and the per-
20 formance of the powers and duties granted to or imposed
21 upon it by law; to acquire, hold, or dispose of, upon such
22 terms and conditions as the Corporation may determine, any
23 property, real, personal, or mixed, tangible or intangible, or
24 any interest therein; to invest funds derived from fees and
25 other revenues in obligations of the United States and to use
26 the proceeds therefrom, including earnings and profits, as it

1 shall deem appropriate; to indemnify directors, officers, em-
2 ployees, and agents of the Corporation for liabilities and ex-
3 penses incurred in connection with their Corporation activi-
4 ties; to require bonds of officers, employees, and agents and
5 pay the premiums therefor; notwithstanding any other provi-
6 sion of law, to represent itself or to contract for representa-
7 tion in all legal and arbitral proceedings; to purchase, dis-
8 count, rediscount, sell, and negotiate, with or without its en-
9 dorsement or guaranty, and guarantee notes, participation
10 certificates, and other evidence of indebtedness (provided that
11 the Corporation shall not issue its own securities, except par-
12 ticipation certificates for the purpose of carrying out section
13 925(c) or participation certificates as evidence of indebted-
14 ness held by the Corporation in connection with settlement of
15 claims under section 931(h)); to make and carry out such
16 contracts and agreements as are necessary and advisable in
17 the conduct of its business; to exercise the priority of the
18 Government of the United States in collecting debts from
19 bankrupt, insolvent, or decedents' estates; to determine the
20 character of and the necessity for its obligations and expendi-
21 tures, and the manner in which they shall be incurred, al-
22 lowed, and paid, subject to provisions of law specifically ap-
23 plicable to Government corporations; to collect or compro-
24 mise any obligations assigned to or held by the Corporation
25 including any legal or equitable rights accruing to the Corpo-

1 ration; and to take such actions as may be necessary or ap-
2 propriate to carry out the powers herein or hereafter specifi-
3 cally conferred upon it.

4 (e) USE OF FUNDS.—Funds made available for the pur-
5 pose of this part may be used for printing and binding without
6 regard to the provisions of any other law, and for expendi-
7 tures outside the United States for the procurement of sup-
8 plies and services without regard to such laws and regula-
9 tions governing the obligation and expenditure of funds of the
10 United States Government as may be necessary to accom-
11 plish the purposes of this part.

12 (f) APPLICATION OF OTHER LAWS.—No provision of
13 any other law shall prohibit the operation of the programs
14 authorized by this part in any less developed country if the
15 President of the United States has determined that their op-
16 eration is important to the national interest.

17 (g) ENVIRONMENTAL IMPLICATIONS.—The Corpora-
18 tion shall develop and implement specific criteria intended to
19 minimize the potential environmental implications of projects
20 undertaken by investors abroad in accordance with any of the
21 programs authorized by this part.

22 (h) TRADE PROFILE.—The Corporation shall prepare
23 and maintain for each investment project it insures, finances,
24 or reinsures, a profile consisting of data appropriate to meas-

1 ure the expected trade and developmental effects of such
2 project.

3 (i) HUMAN RIGHTS, ETC.—The Corporation shall take
4 into account in the conduct of its programs in a country, in
5 consultation with the Secretary of State, all available infor-
6 mation about observance of and respect for human rights and
7 fundamental freedoms in such country and the effect the op-
8 eration of such programs will have on human rights and fun-
9 damental freedoms in such country. The Corporation shall
10 not provide any insurance, reinsurance, guaranty, or loan for
11 any project in a country when the Secretary of State has
12 made a determination under section 116 of the Foreign As-
13 sistance Act that the government of such country engages in
14 a consistent pattern of gross violations of internationally rec-
15 ognized human rights unless such a project will directly bene-
16 fit the needs of the needy people in such a country or the
17 national security interest of the United States.

18 (j) APPLICATION OF 18 U.S.C. 955.—The provisions of
19 section 955 of title 18 of the United States Code shall not
20 apply to prevent any person, including any individual, part-
21 nership, corporation, or association, from acting for, or par-
22 ticipating in, any operation or transaction arising under this
23 part, or from acquiring any obligation issued in connection
24 with any operation or transaction arising under this part.

1 (k) OVERRIDE OF RENEGOTIATION ACT.—Whenever
2 the President of the United States determines it to be in fur-
3 therance of the purposes of this part, the functions authorized
4 under this part may be performed without regard to such
5 provisions of law (other than the Renegotiation Act of 1951,
6 (50 U.S.C. App. 1211 et seq.)), regulating the making, per-
7 formance, amendment, or modification of contracts and the
8 expenditure of funds of the United States Government as the
9 President may specify.

10 (l) CONTRACTS, ETC.—The Corporation may make and
11 perform agreements and contracts with, or enter other trans-
12 actions with, any individual, corporation, or other body of
13 persons, government or government agency, whether within
14 or without the United States and international organizations
15 in furtherance of the purposes and within the limitations of
16 this part.

17 (m) CARRYOVER OF FUNDS.—Except as otherwise pro-
18 vided in this part, funds shall be available to carry out the
19 provisions of this part as authorized and appropriated each
20 fiscal year. Provisions of this Act authorizing the appropri-
21 ation of funds shall be construed to authorize the granting in
22 any appropriation Act of authority to enter into contracts
23 within the amounts so authorized to be appropriated, creating
24 obligations in advance of appropriations.

1 (n) FOREIGN CURRENCIES.—Foreign currencies re-
2 ceived by the Corporation as a result of its operations may be
3 transferred to the Secretary of the Treasury for sale to agen-
4 cies of the United States Government for payment of their
5 obligations outside the United States, and the United States
6 dollars received as reimbursement shall be returned to the
7 Corporation. Foreign currencies so received which are in
8 excess of the requirements of the United States Government
9 in payment of its obligations outside the United States shall
10 be available for the authorized purposes of this part.

11 (o) GIFTS, BEQUESTS, ETC.—The Corporation may
12 accept and use in furtherance of the purposes of this part,
13 money, funds, property, and services of any kind made avail-
14 able by gift, devise, bequest, grant, or otherwise for such
15 purpose.

16 **SEC. 934. SMALL BUSINESS DEVELOPMENT.**

17 The Corporation shall undertake, in cooperation with
18 appropriate departments, agencies, and instrumentalities of
19 the United States as well as private entities and others, to
20 broaden the participation of United States small business, co-
21 operatives, and other small United States investors in the
22 development of small private enterprise in less developed
23 friendly countries or areas. The Corporation shall allocate up
24 to 50 percent of its annual net income, after making suitable
25 provision for transfers and additions to reserves, to assist and

1 facilitate the development of projects consistent with the pro-
2 visions of this section. Such funds may be expended, notwith-
3 standing the requirements of section 925(a), on such terms
4 and conditions as the Corporation may determine, through
5 loans, grants, or other programs authorized by section 928.

6 **SEC. 935. REPORTS TO THE CONGRESS.**

7 After the end of each fiscal year, the Corporation shall
8 submit to the Congress a complete and detailed report of its
9 operations during such fiscal year. Such report shall
10 include—

11 (1) an assessment, based upon the profiles re-
12 quired by section 933(h), of the trade and development
13 impact and benefits of the projects with respect to
14 which such profiles are prepared, and of the extent to
15 which the operations of the Corporation complement or
16 are compatible with the trade and development policies
17 of the United States; and

18 (2) a description of any project for which the
19 Corporation—

20 (A) refused to provide any insurance, reinsur-
21 ance, guaranty, financing, or other financial sup-
22 port, on account of gross violations of human
23 rights referred to in section 933(i); or

24 (B) notwithstanding such violations, provided
25 such insurance, reinsurance, guaranty, financing,

1 or financial support, on the basis of a determina-
2 tion (i) that the project will directly benefit the
3 needy people in the country in which the project
4 is located, or (ii) that the national security interest
5 so requires.

6 **Subpart B—Amendment of Foreign Assistance Act of 1961**

7 **SEC. 941. CONFORMING AMENDMENTS.**

8 The Foreign Assistance Act of 1961 is hereby amended
9 as follows:

10 (1) Section 222 is amended by deleting the paren-
11 thetical language in line three of subsection (a) thereof
12 and inserting: "(as defined in section 108(c) of the
13 Overseas Private Investment Corporation Act)".

14 (2) Section 222A is amended by deleting subsec-
15 tions (f) and (g) thereof.

16 (3) Section 610 is amended by deleting the follow-
17 ing language in subsection (a) thereof: "(except funds
18 made available pursuant to title IV of chapter 2 of part
19 I)".

20 (4) Section 620 is amended by deleting subsection
21 (l) thereof.

22 (5) Section 636 is amended by deleting the follow-
23 ing language in subsection (f) thereof: "or by the Cor-
24 poration established under title IV of chapter 2 of part
25 I with respect to loan activities which it carries out

1 under the provisions of the Agricultural Trade Devel-
2 opment and Assistance Act of 1954, as amended".
3 (6) Title IV of chapter 2 of part I of the Foreign
4 Assistance Act of 1961 is repealed.

5 **SEC. 942. TRANSITION PROVISIONS.**

6 (a) CONTINUATION OF OPIC FUNCTIONS AND AU-
7 THORITY.—The amendments made by this part shall not be
8 construed to effect a termination of any statutory authority
9 for the Overseas Private Investment Corporation, except to
10 the extent that such amendments provide for a change in the
11 statutory authority for the Corporation as it existed on the
12 day before the date of enactment of this Act. The status of
13 any employee, equipment, funds, or authority for credits,
14 loans, or guarantees by the Corporation on the day before the
15 date of enactment of this Act shall not be affected by the
16 amendments made by this part except to the extent that the
17 statutory authority for the Corporation, as amended by this
18 part, is different from that of the Corporation on the day
19 before such date.

20 (b) SAVINGS PROVISIONS.—

21 (1) All orders, determinations, rules, regulations,
22 permits, grants, contracts, certificates, licenses, and
23 privileges—

24 (A) which have been issued, made, granted,
25 or allowed to become effective by the Corporation

1 or by a court of competent jurisdiction in the per-
2 formance of functions which are carried out under
3 the amendments made by this Act, and
4 (B) which are in effect at the time this part
5 takes effect,
6 shall continue in effect according to their terms until
7 modified, terminated, superseded, set aside, or revoked
8 in accordance with the law by the Corporation, by a
9 court of competent jurisdiction, or by operation of law.
10 (2) The amendments made by this part shall not
11 affect any proceedings, including notices of proposed
12 rulemaking, or any application for any license, permit,
13 certificate, or financial assistance pending on the effec-
14 tive date of this Act before the Corporation; but such
15 proceedings and applications, to the extent that they
16 relate to functions for which the authority is reenacted,
17 shall be continued. Orders shall be issued in such pro-
18 ceedings, appeals shall be taken therefrom, and pay-
19 ments shall be made pursuant to such orders, as if this
20 part had not been enacted; and orders issued in any
21 such proceedings shall continue in effect until modified,
22 terminated, superseded, or revoked by the Corporation,
23 by a court of competent jurisdiction, or by operation of
24 law. Nothing in this paragraph shall be deemed to pro-
25 hibit the discontinuance or modification of any such

1 proceeding under the same terms and conditions and to
2 the same extent that such proceeding could have been
3 discontinued or modified if this part had not been
4 enacted.

5 (3) The provisions of this part shall not affect
6 suits commenced prior to the effective date of this part,
7 and, in all such suits, proceedings shall be had, appeals
8 taken, and judgments rendered in the same manner
9 and effect as if this part had not been enacted.

10 (4) No suit, action, or other proceeding com-
11 menced by or against any officer in the official capacity
12 of such individual as an officer of the Corporation shall
13 abate by reason of the enactment of this part. No
14 cause of action by or against the Corporation, or by or
15 against any officer thereof in the official capacity of
16 such officer, shall abate by reason of the enactment of
17 this part.

18 (c) TECHNICAL AND CONFORMING CHANGES.—The
19 President of the Overseas Private Investment Corporation
20 shall, within 90 days after the date of enactment of this Act,
21 submit to the Committee on Foreign Relations of the Senate
22 and the Committee on Foreign Affairs of the House of Rep-
23 resentatives, a draft of any technical or conforming changes
24 in the Foreign Assistance Act of 1961, and any other statute
25 of the United States, which are necessary to reflect the

1 changes in the substantive provisions of law, and cross-refer-
2 ences to provisions made by this part.

3 **PART 3—ROLE OF ALL UNITED STATES AGENCIES**
4 **IN EXPORT EXPANSION**

5 **SEC. 951. EXPORT POTENTIAL TO BE CONSIDERED.**

6 When considering which projects or other activities to
7 include in United States foreign aid programs around the
8 world, the potential for United States exports in the short,
9 medium, and long run shall be a primary decisionmaking
10 factor.

11 **SEC. 952. OFFICE OF MANAGEMENT AND BUDGET.**

12 Budget allocated to export-related activities should re-
13 flect the new high priority assigned to export expansion.
14 Office of Management and Budget should do everything in its
15 power to assure that adequate budget allocations are made
16 available to carry out the programs prescribed in this Act and
17 others considered necessary by export policymakers. Budget
18 cuts should be called for only when the reviews of export
19 expansion programs called for in section 913 indicate such a
20 need. Personnel assigned to examine and determine budget
21 levels for export-related programs should have adequate
22 knowledge and training in the international trade field to un-
23 derstand what is required to achieve export policy objectives.

1 **SEC. 953. ROLE OF THE JUSTICE DEPARTMENT.**

2 In interpreting and implementing laws that affect
3 international trade and business practices, the Department of
4 Justice should do what it can to facilitate procedures for ex-
5 porters. In cases of vagueness in the laws, interpretations
6 should favor export interests unless clearly against the na-
7 tional interest.

8 **SEC. 954. SMALL BUSINESS ADMINISTRATION.**

9 Small businesses often require special assistance to
10 enter the export market. The Small Business Administration
11 can play a key role in advising small business, augmenting
12 programs of the International Trade Administration. In addi-
13 tion to the new programs called for in this Act, the staff of
14 the Small Business Administration should be generally aware
15 of the benefits of export to small business development and
16 should use every opportunity to provide information and as-
17 sistance to potential exporters.

18 **SEC. 955. DEPARTMENT OF ENERGY.**

19 In making policy decision on coal, nuclear power fuels
20 and other energy matters, the impact on the ability of the
21 United States to export in a reliable manner should be a key
22 consideration.

23 **SEC. 956. THE CONGRESS.**

24 Each committee of the Congress shall include in their
25 reports of bills and resolutions a section on the effect, if any,
26 of the bill or resolution on the international competitiveness

1 of the United States, including, but not limited to, exports,
2 productivity, research, testing, and development, financing,
3 disincentives or restraints, and additional production, manu-
4 facturing or distribution costs.

5 **PART 4—NATIONAL EXPORT COUNCIL**

6 **SEC. 961. ESTABLISHMENT AND MEMBERSHIP.**

7 (a) IN GENERAL.—There is hereby created a National
8 Export Council (hereinafter referred to as "the Council")
9 which shall be composed of the following members:

10 (1)(A) the Secretary of State;

11 (B) the Secretary of the Treasury;

12 (C) the Secretary of Agriculture;

13 (D) the Secretary of Commerce;

14 (E) the Secretary of Labor;

15 (F) the United States Trade Representative;

16 (G) the President and Chairman of the Export-
17 Import Bank of the United States; and

18 (H) the Administrator of the Small Business
19 Administration;

20 (2) 3 Members of the United States Senate, desig-
21 nated by the President of the Senate and 3 Members of
22 the United States House of Representatives designated
23 by the Speaker of the House;

24 (3) 3 Governors of States or territories, designat-
25 ed by the President; and

1 (4) no more than 18 private citizens representing
2 business and industry, agriculture, international bank-
3 ing, and labor to be appointed by the President, includ-
4 ing at least 5 small business persons who are actively
5 involved in export trade.

6 (b) CHAIRMAN.—The President shall appoint a Chair-
7 man of the Council from among its private citizen members
8 who shall preside over the meetings of the Council.

9 (c) EXECUTIVE DIRECTOR.—The Secretary of Com-
10 merce, with the concurrence of the Chairman, shall appoint
11 an Executive Director.

12 **SEC. 962. FUNCTIONS.**

13 (a) IN GENERAL.—The Council shall serve as a na-
14 tional advisory body on matters relating to United States
15 export trade. In carrying out such functions, the Council
16 shall—

17 (1) survey and evaluate the export promotion and
18 development activities of the communities represented
19 by the membership;

20 (2) identify and examine specific problems which
21 business, industrial, and agricultural practices may
22 cause for export trade;

23 (3) examine the needs of business, industry, and
24 agriculture to expand their efforts; and

1 (4) recommend specific legislative and administra-
2 tive solutions to these problems and needs.
3 (b) LIAISON; EXPORT EXPANSION ENCOURAGE-
4 MENT.—The Council shall—
5 (1) act as liaison among the communities repre-
6 sented by its membership and may provide a forum for
7 those communities on current and emerging problems
8 and issues in the field of export promotion and develop-
9 ment, and
10 (2) encourage the business, industrial, and agricul-
11 tural communities to enter new foreign markets and to
12 expand existing export programs.
13 (c) ADVICE ON FEDERAL MATTERS.—The Council
14 shall provide advice on Federal plans and actions that affect
15 export promotion and development policies which have an
16 impact on those communities represented by its membership.
17 (d) EXECUTIVE AND OTHER COMMITTEES.—The
18 Council shall establish an executive committee and such
19 other subordinate committees it considers necessary for the
20 performance of its functions including, but not limited to,
21 committees on export administration, export expansion and
22 domestic disincentives, small business and export promotion,
23 the General Agreement on Tariffs and Trade and the Multi-
24 lateral Trade Negotiations, and Agriculture and East-West
25 Trade. The chairman and members of the executive and sub-

1 ordinate committees shall be designated by the Chairman of
2 the Council from among the membership of the Council.

3 **SEC. 963. ADMINISTRATIVE PROVISIONS.**

4 (a) IN GENERAL.—The Secretary of Commerce shall
5 provide the Council, including its executive and subordinate
6 committees, with administrative and staff services, support
7 and facilities as may be necessary for the effective perform-
8 ance of its functions.

9 (b) COMPENSATION.—Each member of the Council, in-
10 cluding its executive and subordinate committees, who is not
11 otherwise paid a salary by the Federal Government, shall
12 receive no compensation from the United States by virtue of
13 their service on the Council, but all members may receive the
14 transportation and travel expenses, including per diem in lieu
15 of subsistence, authorized by law.

16 (c) APPLICATION OF FEDERAL ADVISORY COMMITTEE
17 ACT.—The functions of the President under the Federal Ad-
18 visory Committee Act (5 U.S.C. App. I) except that of re-
19 porting annually to the Congress, which are applicable to the
20 Council shall be performed by the Secretary of Commerce.

21 **SEC. 964. ANNUAL REPORT.**

22 The Council shall transmit to the President and the
23 Congress, not later than March 31 of each year, a full report
24 on its activities, and the activities of its subordinate
25 committees.

1 **SEC. 965. AUTHORIZATIONS.**

2 There are authorized to be appropriated such sums as
3 may be necessary to carry out this title.

4 **PART 5—COMMERCE DEPARTMENT**

5 **SEC. 971. COMMERCIAL OFFICERS OVERSEAS.**

6 In order to develop, maintain, and expand international
7 markets for the products and services of the United States; to
8 insure the promotion and protection of United States trade
9 and commercial services abroad for United States trade and
10 commercial interests around the world; to provide trade and
11 commercial services abroad for United States firms and busi-
12 nesses and trade and commercial organizations; and to secure
13 trade and commercial information useful for the expansion of
14 exports of United States products and services, the Secretary
15 of Commerce (hereinafter referred to in this part as the "Sec-
16 retary") is authorized to appoint such commercial ministers,
17 commercial counselors, and commercial attachés, who shall
18 be employees of the Department of Commerce (and who shall
19 report to the Under Secretary for International Trade), as
20 the Secretary determines to be necessary to carry out the
21 purposes of this title and to assign such commercial minis-
22 ters, commercial counselors, and commercial attachés to
23 service abroad.

24 **SEC. 972. TRAINING OF COMMERCIAL OFFICERS.**

25 Upon appointment, commercial officers shall participate
26 in training sessions designed by the Secretary, in cooperation

1 with the Department of State, the Foreign Service Institute,
2 and other Federal agencies, to study export and import pro-
3 grams and to examine the needs of United States businesses
4 for export information and assistance. As part of this training
5 program the Secretary shall assign each officer to a field
6 office of the Department to work in conjunction with the De-
7 partment's field personnel responsible for implementation of
8 export programs.

9 **SEC. 973. RANK AND PRIVILEGES.**

10 Commercial ministers, commercial counselors, and com-
11 mercial attachés assigned to posts abroad shall be accorded
12 the same rank and privileges as those of other ministers,
13 counselors, or attachés in the United States embassies and
14 consulates.

15 **SEC. 974. RELATIONSHIP TO DIPLOMATIC MISSION.**

16 Upon the request of the Secretary, the Secretary of
17 State shall regularly and officially attach the commercial
18 ministers, commercial counselors, and commercial attachés
19 appointed and assigned hereunder to the diplomatic mission
20 of the United States in the country in which such commercial
21 ministers, commercial counselors, or commercial attachés or
22 other personnel are to be assigned by the Secretary, and
23 shall obtain for them diplomatic privileges and immunities
24 equivalent to those enjoyed by Foreign Service personnel of
25 comparable rank and salary.

1 **SEC. 975. FUNCTIONS AND DUTIES.**

2 Commercial ministers, commercial counselors, and com-
3 mercial attachés appointed and assigned abroad by the Secre-
4 tary under the title, and other personnel employed under
5 their direction, in furtherance of the purposes set forth in
6 section 971 and in accordance with regulations prescribed by
7 the Secretary, shall have the following functions and duties:

8 (1) trade and commercial services, including, but
9 not limited to—

10 (A) protection and promotion of United
11 States trade and commercial interests and invest-
12 ments, including industrial property rights, within
13 their districts;

14 (B) current market oriented assistance to
15 United States firms and businesses visiting or op-
16 erating within their districts;

17 (C) appointments and introductions for
18 United States business persons visiting within
19 their districts;

20 (D) assistance in pursuing trade
21 opportunities;

22 (E) assistance, when appropriate, in the
23 adjustment of trade and commercial disputes in-
24 volving United States firms or commercial and fi-
25 nancial interest; and

1 (F) assistance to other United States Gov-
2 ernment agencies or State agencies, and to firms
3 and businesses with respect to trade missions,
4 trade fairs, and other international trade and com-
5 mercial exhibitions;
6 (2) export promotion, including, but not limited
7 to—
8 (A) the promotion of United States exports
9 and commercial interests in their districts;
10 (B) the creation, within the scope of their
11 duties and as appropriate, of a demand for United
12 States products and services in such districts; and
13 (C) the promotion of tourism in the United
14 States by residents of the districts to which they
15 are assigned;
16 (3) semiannual reports to the Secretary including,
17 but not limited to, the following information:
18 (A) market conditions, commercial develop-
19 ments, and the economic climate within their dis-
20 tricts, emphasizing changes between reports;
21 (B) implementation of and compliance with
22 the provisions of multilateral and bilateral trade
23 agreements with the United States by the govern-
24 ment, agencies, or instrumentalities of the country
25 to which they are assigned;

1 (C) specific industry and commodity
2 conditions;
3 (D) foreign law and business practices affect-
4 ing United States trade and commercial interests;
5 and
6 (E) trade opportunities on an industry basis;
7 (4) maintain and make available current data on
8 the commercial standing and capacity of foreign firms
9 within their districts; and
10 (5) such other functions and duties as the Secre-
11 tary determines to be necessary and proper for achiev-
12 ing the purposes of this title.

13 **SEC. 976. ASSIGNMENT TO UNITED STATES.**

14 Any officer or employee appointed and assigned to a
15 post abroad pursuant to this part may, in the discretion of the
16 Secretary, be assigned for duty in the continental United
17 States without regard to the civil service laws (and without
18 reduction in grade if an appropriate position at the employ-
19 ee's grade is not available in any agency of the Department
20 of Commerce) for a period of not more than 3 years.

21 **SEC. 977. OFFICE SPACE, EQUIPMENT, AND ADMINISTRATIVE**
22 **AND CLERICAL PERSONNEL.**

23 The Secretary of State, upon request of the Secretary,
24 shall provide office space, equipment, facilities, and such
25 other administrative and clerical services as may be required

1 for the performance of the functions and duties of the com-
2 mercial ministers, commercial counselors, and commercial at-
3 tachés appointed and assigned abroad under this part, and
4 other personnel employed under their direction, appropriate
5 to Foreign Service officers or other personnel of the same
6 rank and salary. The Secretary is authorized to reimburse or
7 advance funds to the Secretary of State for such services.
8 The Secretary is authorized, in accordance with applicable
9 law and regulations prescribed by the Secretary, to employ
10 locally such United States nationals or other personnel, as
11 the Secretary deems necessary to further the purpose set
12 forth in section 971 of this part or to the exercise and carry-
13 ing out of the functions and duties of the commercial minis-
14 ters, commercial counselors, and commercial attachés and
15 other personnel appointed and assigned abroad under this
16 part.

17 **SEC. 978. AGENCY, SERVICES, PERSONNEL, AND FACILITIES.**

18 Upon the request of the Secretary, each Federal agency
19 may make its services, personnel, and facilities available to
20 the commercial ministers, commercial counselors, and com-
21 mercial attachés appointed and assigned to a post abroad
22 under this part in the performance of their functions and
23 duties. The Secretary is authorized to reimburse or advance
24 funds to any such agency for services, personnel, and facili-
25 ties so made available.

1 **SEC. 979. PERFORMANCE OF FUNCTIONS IN FOREIGN LOCAL-**
2 **ITIES.**

3 Each commercial minister, commercial counselor, or
4 commercial attaché appointed and assigned under this part to
5 a United States diplomatic mission abroad, may carry out the
6 functions and duties authorized hereunder in such other na-
7 tions as the Secretary, in consultation with the Secretary of
8 State, may determine to be necessary and proper in order to
9 carry out the purposes of this part.

10 **SEC. 980. REPORTS AND DISPATCHES—AVAILABILITY TO**
11 **INTERESTED GOVERNMENT AGENCIES.**

12 The reports and dispatches prepared by the commercial
13 ministers, commercial counselors, or commercial attachés ap-
14 pointed and assigned abroad under this title shall be made
15 available to the Department of State, the Small Business
16 Administration, and to other interested agencies of the
17 Government.

18 **SEC. 981. REPRESENTATIVE ALLOWANCES.**

19 Any commercial minister, commercial counselor, or
20 commercial attaché appointed and assigned by the Secretary
21 to a post abroad under this part, under regulations prescribed
22 by the Secretary, may be authorized to receive a representa-
23 tion allowance in an amount to be determined by
24 considering—

1 (1) the extent to which such commercial minister,
2 commercial counselor, or commercial attaché can effec-
3 tively use funds to further the purposes of this part;
4 (2) travel and entertainment expenses customary
5 in the private trade for persons of comparable rank and
6 salary; and
7 (3) the customs and practices in the nation to
8 which he or she is assigned.

9 **SEC. 982. ALLOWANCES AND BENEFITS.**

10 The Secretary may, under such rules and regulations as
11 may be prescribed by the President or his designee, provide
12 to the commercial ministers, commercial counselors, and
13 commercial attachés appointed and assigned under this part,
14 allowances and benefits similar to those provided by title IX
15 of the Foreign Service Act of 1946. Leaves of absence for
16 commercial ministers, commercial counselors, and commer-
17 cial attachés appointed and assigned under this part shall be
18 on the same basis as is provided for Foreign Service of the
19 United States by the Annual and Sick Leave Act of 1951.

20 **SEC. 983. ADVANCE PAYMENT FOR RENT AND OTHER SERV-**
21 **ICES: FUNDS FOR COURTESIES TO FOREIGN**
22 **REPRESENTATIVES.**

23 In any foreign country where customs or practices re-
24 quire payment in advance for rent or other service, such pay-
25 ment may be authorized by the Secretary in accordance with

1 regulations prescribed by the Secretary, upon consultation
2 with the Secretary of State. Funds available for the purposes
3 of this part may be used for extending courtesies to repre-
4 sentatives of foreign countries, when so provided in appropri-
5 ation or other law.

6 **PART 6—REVIEW OF UNITED STATES EXPORT**
7 **PROGRAMS**

8 **SEC. 991. REVIEW.**

9 (a) REPORT BY COMPTROLLER GENERAL.—Within 12
10 months after the enactment of this Act, the Comptroller Gen-
11 eral of the United States shall (1) report to the Congress of
12 the United States on his analysis of the organization of inter-
13 national trading and financing programs of the United States;
14 (2) compare and analyze the structure and effectiveness of
15 foreign export promotion programs; (3) evaluate the trade ac-
16 tivities of the International Trade Administration of the De-
17 partment of Commerce, Export-Import Bank, Overseas Pri-
18 vate Investment Corporation, and trade analysis capability of
19 the Office of Management and Budget, Department of the
20 Treasury, and Department of State; and (4) make such rec-
21 ommendations as he deems feasible for the establishment or
22 reorganization of new export promotion agencies or the adop-
23 tion of new programs.

24 (b) ASSISTANCE.—In carrying out his functions under
25 section 904(a), the Comptroller General shall have such co-

1 operation and support services from the Library of Congress
2 and the Congressional Research Service as required.
3 (c) PERIODIC REVIEW.—It is the sense of Congress
4 that the appropriate committees of Congress shall review the
5 trade organization of the United States Government on a
6 regular and periodic basis and evaluate the performance and
7 effectiveness of such organization and, if appropriate, recom-
8 mend the reorganization of such functions to increase the ex-
9 ports and international competitiveness of United States
10 firms.

○