

TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM
ACT OF 1987

APRIL 6, 1987.—Ordered to be printed

DEPARTMENT OF COMMERCE
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Mr. BONKER, from the Committee on Foreign Affairs,
submitted the following

REPORT

[To accompany H.R. 3 which on January 6, 1987, was referred jointly to the Committees on Ways and Means, Agriculture, Banking, Finance, and Urban Affairs, Education and Labor, Energy and Commerce, and Foreign Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs to whom was referred the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out title III and insert in lieu thereof the following:

TITLE III—EXPORT ENHANCEMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "Export Enhancement Act of 1987".

SEC. 302. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—*The Congress makes the following findings:*

(1) *While a free and open world trading system has contributed substantially to world growth and prosperity in the 20th century, current macroeconomic policies and trade imbalances seriously threaten that system.*

(2) *The world trading system cannot be sustained unless the United States and its trading partners implement balanced growth policies.*

(3) *World economic growth requires both a financial system which fosters and supports stable exchange rates and the co-*

ordination of macroeconomic policies among industrialized countries.

(4) The United States trade deficit in 1986 of \$169,800,000,000 threatens the long-term economic well-being of the United States.

(5) The unchecked bilateral trade imbalances between the United States and its trading partners could jeopardize the political, strategic, and economic relationships of the United States with other countries, relationships which are vital to world stability and peace.

(6) In order to provide more balanced and sustainable economic growth in the United States and abroad, the United States must lower its trade deficit by implementing macroeconomic and trade policies which facilitate and expand export opportunities.

(7) Since 1981, manufactured exports have stagnated and agricultural exports have fallen by almost 40 percent. The trade deficit has grown from \$40 billion to almost \$170 billion. Between 1981 and 1983 alone, the United States lost 2 million jobs, more than 1 million of which were in manufacturing.

(8) The significant decline in recent years in the volume and value of agricultural exports makes the development and implementation of an effective United States agricultural trade policy imperative.

(9) The indebtedness of third world countries not only poses risks for the United States financial system, but has affected jobs and exports as well. Exports to third world countries in 1985 were \$11 billion below the level of exports in 1981. Falling exports to third world countries have cost the United States hundreds of thousands of jobs.

(10) In spite of the continuing need to expand exports, current Federal Government export promotion and facilitation programs are not sufficient to meet the challenge of competition from other countries for world markets.

(11) United States and Foreign Commercial Service Officers are often accorded insufficient status abroad, and are frequently diverted from their primary duty of promoting United States exports in order to perform export licensing duties.

(12) The activities of the Overseas Private Investment Corporation and the Trade and Development Program serve important United States development assistance and international economic objectives.

(13) Inadequate protection of and enforcement procedures for United States intellectual property interests abroad have resulted in the counterfeiting of United States trademarks and the piracy of United States copyrights, patents, and mask works, acts which violate basic international principles of fair trade, cause trade distortions due to lost sales by countries whose companies have developed the counterfeited or pirated goods, pose health and safety threats to consumers, and have caused a loss of United States jobs.

(b) **PURPOSES.**—The purposes of this title are—

(1) to promote world growth as a means of improving the standard of living in the United States and abroad;

- (2) to broaden overseas markets for United States exports;
- (3) to emphasize the importance for United States exports of establishing a stable and competitive dollar;
- (4) to increase United States exports by—
 - (A) strengthening the United States and Foreign Commercial Services;
 - (B) streamlining export controls for national security purposes; and
 - (C) improving the operation of the United States mixed credit program; and
- (5) restoring the markets for United States exports in developing countries by—
 - (A) committing the United States to world growth;
 - (B) broadening the authority of the Overseas Private Investment Corporation to help increase economic activity in developing countries; and
 - (C) enhancing the resources of the Trade and Development Program.

Subtitle A—Export Promotion

SEC. 311. UNITED STATES AND FOREIGN COMMERCIAL SERVICE.

(a) ESTABLISHMENT.—

(1) **IN GENERAL.**—The Secretary of Commerce shall establish, within the International Trade Administration, the United States and Foreign Commercial Service. The Secretary shall, to the greatest extent practicable, transfer to the Commercial Service the functions of the United States and Foreign Commercial Services.

(2) **ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL.**—The head of the Commercial Service shall be the Assistant Secretary of Commerce and Director General of the Commercial Service, who shall be appointed by the President, by and with the advice and consent of the Senate.

(3) **COORDINATION WITH FOREIGN POLICY OBJECTIVES.**—The Secretary shall take the necessary steps to ensure that the activities of the Commercial Service are carried out in a manner consistent with United States foreign policy objectives, and the Secretary shall consult regularly with the Secretary of State in order to comply with this paragraph.

(4) **AUTHORITY OF CHIEF OF MISSION.**—All activities of the Commercial Service shall be subject to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(b) **STATEMENT OF PURPOSE.**—The purpose of the Commercial Service is to promote and protect United States business interests abroad. In pursuit of this purpose, the Commercial Service shall place primary emphasis on the promotion of exports of goods and services from the United States, particularly by small businesses and medium-sized businesses, by carrying out activities such as—

(1) identifying United States businesses with the potential to export goods and services and providing such businesses with advice and information on establishing export businesses;

(2) providing United States exporters with information on economic conditions, market opportunities, and the legal and regulatory environment within foreign countries;

(3) providing United States exporters with information and advice on the necessary adaptation of product design and marketing strategy to meet the differing cultural and technical requirements of foreign countries;

(4) providing United States exporters with actual leads and an introduction to contacts within foreign countries;

(5) assisting United States exporters in locating reliable sources of business services in foreign countries;

(6) assisting United States exporters in their dealings with foreign governments and enterprises owned by foreign governments; and

(7) assisting the coordination of the efforts of State and local agencies and private organizations which seek to promote United States business interests abroad so as to maximize their effectiveness and minimize the duplication of efforts.

(c) OFFICES.—

(1) *IN GENERAL.*—The Commercial Service shall consist of a headquarters office, district offices located in major United States cities, and foreign offices located in major foreign cities.

(2) *HEADQUARTERS.*—The headquarters of the Commercial Service shall provide such managerial, administrative, research, and other services as the Secretary considers necessary to carry out the purposes of the Commercial Service.

(3) *DISTRICT OFFICES.*—The Secretary shall establish district offices of the Commercial Service in any United States city in a region in which the Secretary determines that there is a need for Federal Government export assistance.

(4) *FOREIGN OFFICES.*—(A) The Secretary may, after consultation with the Secretary of State, establish foreign offices of the Commercial Service. These offices shall be located in foreign cities in regions in which the Secretary determines there are significant business opportunities for United States exporters.

(B) The Secretary may, in consultation with the Secretary of State, assign to the foreign offices Commercial Officers and such other personnel as the Secretary considers necessary. In employing Commercial Officers and such other personnel, the Secretary shall use the Foreign Service personnel system in accordance with the Foreign Service Act of 1980. The Secretary shall designate a Commercial Officer as head of each foreign office.

(C) Upon the request of the Secretary, the Secretary of State shall attach the Commercial Officers and other employees of each foreign office to the diplomatic mission of the United States in the country in which that foreign office is located, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

(D) For purposes of official representation, the senior Commercial Officer in each country shall be considered to be the senior commercial representative of the United States in that country, and the United States chief of mission in that country shall

accord that officer all privileges and responsibilities appropriate to the position of senior commercial representative of other countries.

(E) The Secretary of State is authorized, upon the request of the Secretary, to provide office space, equipment, facilities, and such other administrative and clerical services as may be required for the operation of the foreign offices. The Secretary is authorized to reimburse or advance funds to the Secretary of State for such services.

(F) The authority of the Secretary under this paragraph shall be subject to section 103 of the Diplomatic Security Act (22 U.S.C. 4802).

(d) **RANK OF COMMERCIAL OFFICERS IN FOREIGN MISSIONS.—**

(1) **MINISTER-COUNSELOR.**—Notwithstanding any other provision of law, upon the request of the Secretary, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad. The number of Commercial Service officers accorded such diplomatic title at any time may not exceed eight.

(2) **CONSUL GENERAL.**—In any United States consulate in which a vacancy occurs in the position of Consul General, the Secretary of State, in consultation with the Secretary, shall consider filling that vacancy with a Commercial Officer if the primary functions of the consulate are of a commercial nature and if there are significant business opportunities for United States exporters in the region in which the consulate is located.

(e) **REPORT BY THE PRESIDENT.**—Within 1 year after the date of the enactment of this Act, the President shall submit a report to the Congress containing an evaluation of existing export promotion services of the Department of Commerce, recommendations for improving those services, and proposals for new export promotion services.

(f) **INFORMATION DISSEMINATION.**—In order to carry out subsection (b)(7), to lessen the cost of distribution of information produced by the Commercial Service, and to make that information more readily available, the Secretary should establish a system for distributing that information in those areas where no district offices of the Commercial Service are located. Distributors of the information should be State export promotion agencies or private export and trade promotion associations. The distribution system should be consistent with cost recovery objectives of the Department of Commerce.

(g) **AUDITS.**—The Inspector General of the Department of Commerce shall perform periodic audits of the operations of the Commercial Service, but at least once every 3 years. The Inspector General shall report to the Congress the results of each such audit. In addition to an overview of the activities and effectiveness of Commercial Service operations, the audit shall include—

(1) an evaluation of the current placement of domestic personnel and recommendations for transferring personnel among district offices;

(2) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging business opportunities for United States exporters; and

(3) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and performance appraisal of personnel, the use of limited appointees, and the "time-in-class" system.

(h) **REPORT BY THE SECRETARY.**—Not later than January 1, 1988, the Secretary shall submit a report to the Committee on Foreign Affairs of the House of Representatives and the appropriate committee of the Senate on the feasibility and desirability, the progress to date, the present status, and the 5-year outlook, of the comprehensive integration of the functions and personnel of the foreign and domestic export promotion operations within the International Trade Administration of the Department of Commerce.

(i) **PAY OF ASSISTANT SECRETARY AND DIRECTOR GENERAL.**—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service."

(j) **DEFINITIONS.**—For purposes of this section—

(1) the term "Secretary" means the Secretary of Commerce;

(2) the term "Commercial Service" means the United States and Foreign Commercial Service;

(3) the term "United States exporter" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State; or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(4) the term "small business" means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632);

(5) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(6) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 312. DIPLOMATIC MISSIONS.

(a) **IN GENERAL.**—(1) The Secretary of State and the Secretary of Commerce shall periodically review the current number of personnel assigned to United States diplomatic missions outside the United States to determine whether an adequate number of such personnel are engaged in economic or commercial duties to assist United States exporters and businesses doing business outside the United States. Whenever the Secretary of State and the Secretary of Commerce determine such number to be insufficient, they shall take such steps as may be necessary to increase the number of such personnel by adjustment of resources and personnel and other appropriate measures.

(2) The Secretary of State and the Secretary of Commerce should extend the length of assignment required of personnel described in

paragraph (1) in order to ensure greater continuity in promoting United States exports.

(b) **REPORTS.**—Each chief of a United States diplomatic mission to a country which is an important United States trading partner and which has significant potential for United States export sales shall, not later than 1 year after the date of the enactment of this Act, and not later than the end of every 1-year period thereafter, prepare and transmit to the President and to the Congress a report describing—

(1) the strategy used by such mission to expand United States exports; and

(2) the efforts of such mission to assist United States industries in expanding export sales and in improving their market position relative to other foreign competitors.

SEC. 313. COMMERCIAL SERVICE OFFICERS AND DEVELOPMENT BANKS.

(a) **APPOINTMENT.**—The Secretary of Commerce, in consultation with the Secretary of the Treasury, shall appoint an officer of the United States and Foreign Commercial Service to serve, on a full-time or part-time basis, with each of the United States Executive Directors of the multilateral development banks in which the United States participates.

(b) **DUTIES OF OFFICERS.**—It shall be the duty of each officer appointed under subsection (a) to assist the United States Executive Director with respect to whom such officer is appointed—

(1) in promoting opportunities for exports of goods and services from the United States;

(2) in taking actions to assure that United States businesses are fully informed of bidding opportunities in countries receiving loans from the respective banks; and

(3) in taking actions to assure that United States businesses can focus on projects in which they have a particular interest or competitive advantage and to permit them to complete and have an equal opportunity in submitting timely and conforming bidding documents.

(c) **FUNCTIONS OF EXECUTIVE DIRECTORS.**—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to carry out the functions described in paragraphs (1) through (3) of subsection (b).

SEC. 314. MARKET DEVELOPMENT COOPERATOR PROGRAM AND TRADE SHOWS.

(a) **AUTHORITY.**—Title II of the Export Administration Amendments Act of 1985 (15 U.S.C. 4051 and following) is amended—

(1) by redesignating sections 202 and 203 as sections 204 and 205, respectively; and

(2) by inserting after section 201 the following:

“SEC. 202. MARKET DEVELOPMENT COOPERATOR PROGRAM.

“(a) **AUTHORITY TO ESTABLISH PROGRAM.**—In order to—

“(1) identify market opportunities,

“(2) introduce new products and processes,

“(3) eliminate trade and technical barriers, and

“(4) improve economic and trade relations between the United States and other countries,

the Secretary of Commerce is authorized to establish a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

“(b) IMPLEMENTATION OF THE PROGRAM.—The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

“(1) nonprofit industry organizations,

“(2) trade associations,

“(3) State departments of trade and their regional associations, including centers for international trade development, and

“(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

(in this section referred to as ‘cooperators’) to engage in activities in order to carry out the purposes set forth in paragraphs (1) through (4) of subsection (a). The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

“(c) COOPERATOR PARTNERSHIP PROGRAM.—(1)(A) As part of the program established under subsection (a), the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

“(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry out the purposes set forth in paragraphs (1) through (4) of subsection (a).

“(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law administered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)) and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

“(2) In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

“(3)(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual’s salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

“(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

“(d) BUDGET ACT.—Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

“SEC. 203. TRADE SHOWS.

“(a) AUTHORITY OF THE SECRETARY OF COMMERCE.—In order to facilitate exporting by United States businesses, the Secretary of Commerce shall provide assistance for trade shows in the United States which bring together representatives of United States businesses seeking to export goods or services produced in the United States and representatives of foreign companies or governments seeking to buy such goods or services from these United States businesses.

“(b) RECIPIENTS OF ASSISTANCE.—Assistance under subsection (a) may be provided to—

“(1) nonprofit industry organizations,

“(2) trade associations,

“(3) foreign trade zones, and

“(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

to provide the services necessary to operate trade shows described in subsection (a).

“(c) ASSISTANCE TO SMALL BUSINESSES.—In providing assistance under this section, the Secretary of Commerce shall, in consultation with the Administrator of the Small Business Administration, make special efforts to facilitate participation by small businesses and companies new to export.

“(d) USES OF ASSISTANCE.—Funds appropriated to carry out this section shall be used to—

“(1) identify potential participants for trade show organizers,

“(2) provide information on trade shows to potential participants,

“(3) supply language services for participants, and

“(4) provide information on trade shows to small businesses and companies new to export.

“(e) DEFINITIONS.—As used in this section—

“(1) the term ‘United States business’ means—

“(A) a United States citizen;

“(B) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth, territory, or possession of the United States); or

“(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B); and

“(2) the term ‘small business’ means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).”

(b) **DEFINITION OF EXPORT PROMOTION PROGRAM.**—Section 201(d) of the Export Administration Amendments Act of 1985 (15 U.S.C. 4051(d)) is amended—

- (1) in paragraph (3) by striking “and”;
- (2) in paragraph (4) by striking the period and inserting a semicolon; and
- (3) by adding at the end the following:
 - “(5) the Market Development Cooperator Program established under section 202; and
 - “(6) the assistance for trade shows which is authorized by section 203.”

(c) **AUTHORIZATION OF APPROPRIATIONS.**—Section 204 of the Export Administration Amendments Act of 1985 (as redesignated by subsection (a)(1) of this section) is amended to read as follows:

“SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated to the Department of Commerce to carry out export promotion programs—

- “(1) \$123,922,000 for the fiscal year 1987; and
- “(2) \$129,922,000 for the fiscal year 1988, of which \$6,000,000 shall be available only for the Market Development Cooperator Program established under section 202 and for the assistance for trade shows which is authorized by section 203.”

SEC. 315. ESTABLISHMENT OF UNITED STATES AND FOREIGN COMMERCIAL SERVICE PACIFIC RIM INITIATIVE.

(a) **ESTABLISHMENT OF PILOT PROGRAM.**—The Secretary of Commerce shall establish a pilot program in the United States and Foreign Commercial Service to encourage the export of United States goods and services to Japan, South Korea, and Taiwan. Such program shall provide that, in addition to any other duty, the United States and Foreign Commercial Service shall—

- (1) identify United States goods and services which are not being exported to the markets of Japan, South Korea, and Taiwan but which could be exported to these markets under competitive market conditions;
- (2) identify and notify United States persons who sell or provide such goods or services of potential opportunities identified under paragraph (1);
- (3) present a list of the goods and services identified under paragraph (1), together with a list of any impediments to the export of such goods and services, to authorities in Japan, South Korea, and Taiwan, as appropriate, with a view towards liberalizing markets to such goods and services;
- (4) develop semiannual goals for the number of goods and services to be identified under paragraph (1);
- (5) facilitate the entrance of United States persons identified and notified under paragraph (2) into such markets; and
- (6) monitor and evaluate the results of efforts to increase the sale of goods and services in such markets.

(b) **REPORTS TO CONGRESS.**—The Secretary of Commerce shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate semiannual reports on the progress of the program established under subsection (a). Such reports shall include—

- (1) the goods and services proposed for liberalization;
- (2) the results of any liberalization towards United States goods and services; and
- (3) to the extent practicable, the increase in United States commercial sales in the markets identified under subsection (a)(1).

(c) **DEFINITION.**—As used in this section, the term “United States person” means—

- (1) a United States citizen; or
- (2) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth, territory, or possession of the United States).

SEC. 316. COMMERCIAL PERSONNEL AT THE AMERICAN INSTITUTE OF TAIWAN.

Section 6 of the Taiwan Relations Act (22 U.S.C. 3305) is amended by adding at the end the following:

“(d) The Institute shall employ personnel to perform duties similar to that performed by personnel of the United States and Foreign Commercial Service. The number of individuals employed under this subsection shall be commensurate with the number of United States personnel of the Commercial Service who are permanently assigned to the United States diplomatic mission to South Korea.”

SEC. 317. PRINTING AT OVERSEAS LOCATIONS.

(a) **EXCEPTION TO PRINTING BY GOVERNMENT PRINTING OFFICE.**—Section 501 of title 44, United States Code, is amended by striking “All” and inserting “Except as otherwise expressly provided by law, all”.

(b) **PRINTING IN CONJUNCTION WITH EXPORT PROMOTION PROGRAMS.**—Section 201 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4051) is amended by adding at the end the following:

“(e) **PRINTING OUTSIDE THE UNITED STATES.**—(1) In carrying out any export promotion program, and consistent with other applicable law, the Secretary of Commerce may authorize—

“(A) the printing, distribution, and sale of documents outside the contiguous United States, if the Secretary finds that the implementation of such export promotion program would be more efficient; and

“(B) the acceptance of private notices and advertisements in connection with the printing and distribution of such documents.

“(2) Any fees received by the Secretary pursuant to paragraph (1) shall be deposited in a separate account or accounts which may be used to defray directly the costs incurred in conducting activities authorized by paragraph (1) or to repay or make advances to appropriations or other funds available for such activities.”

SEC. 318. AGRICULTURAL TRADE POLICY.

(a) **STATEMENT OF POLICY.**—It is the policy of the United States—

- (1) to provide, through all possible means, agricultural commodities and the products thereof for export at competitive prices, with full assurance of quality and reliability of supply;

(2) to support the principle of free trade and the promotion of fair trade in agricultural commodities and the products thereof;

(3) to support fully the negotiating objectives set forth in section 152(b) of this Act to eliminate or reduce substantially constraints to fair and open trade in agricultural commodities and the products thereof;

(4) to utilize fully statutory authority to counter aggressively unfair foreign trade practices and to use all other available means, including export restitution, export bonus programs, and, if necessary, restrictions on United States imports of foreign agricultural commodities and the products thereof, in order to encourage fair and more open trade; and

(5) to provide for increased representation of United States agricultural trade interests in the formulation of national fiscal and monetary policy affecting trade.

(b) AMENDMENTS TO P.L. 480.—

(1) **WOOD AND WOOD PRODUCTS.**—Section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1704(b)(1)) is amended in the first sentence by inserting “(including wood and wood products of the United States)” after “agricultural commodities”.

(2) **DEFINITION.**—Section 108(i) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1708(i)) is amended—

(A) in paragraph (1) by striking “and”;

(B) in paragraph (2) by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(3) the terms ‘private sector development activity’ and ‘private enterprise investment’ include the construction of low- and medium-income housing and shelter.”

(c) SHORT AND INTERMEDIATE EXPORT CREDIT.—

(1) **SHORT-TERM CREDIT.**—Section 1125(b) of the Food Security Act of 1985 (7 U.S.C. 1736t(b)) is amended by inserting “, including wood and processed wood products” after “agricultural commodities and the products thereof”.

(2) **INTERMEDIATE EXPORT CREDIT.**—Section 4(b)(1) of the Food for Peace Act of 1966 (7 U.S.C. 1707a(b)(1)) is amended in the second sentence by inserting before the period the following: “, except that, for purposes of this sentence, the term ‘agricultural commodities’ includes wood and processed wood products”.

(d) **MARKET DEVELOPMENT ACTIVITIES.**—In order to improve the market development activities of the United States Department of Agriculture, the following shall apply:

(1) In order to provide enhanced trade policy and international economic information, the Secretary of Agriculture is authorized to expand the number of agricultural counselors, attaches, assistant attaches, and other diplomatic representatives of the Department of Agriculture overseas. The Secretary of Agriculture shall, to the maximum extent possible, assign agricultural marketing specialists or agricultural trade officers in overseas posts that offer short- or long-term market potential for United States agricultural commodities or products thereof and that

are not served by an Agricultural Trade Office, agricultural trade officer, or agricultural marketing specialist.

(2) The Secretary of Agriculture shall assist departments of agriculture of the States in supporting the export efforts of private companies. Such assistance shall include the stationing of marketing specialists in States or regions as a part of the normal rotation of these specialists between Washington, D.C. and overseas locations.

(e) **RANK OF FOREIGN AGRICULTURAL SERVICE OFFICERS IN FOREIGN MISSIONS.**—Notwithstanding any other provision of law, the Secretary of State shall, upon the request of the Secretary of Agriculture, accord the diplomatic title of Minister-Counselor to the senior Foreign Agricultural Service Officer assigned to any United States mission abroad. The number of Foreign Agricultural Service officers accorded such diplomatic title at any time may not exceed eight.

SEC. 319. EXPORT ENHANCEMENT PROGRAM.

Section 1127(b) of the Food Security Act of 1985 (7 U.S.C. 1736v) is amended—

(1) by striking paragraph (2) and inserting the following:

“(2) shall, to the extent that agricultural commodities and products thereof are to be provided to foreign purchasers during any fiscal year, give priority to all interested foreign purchasers who—

“(A) have traditionally purchased United States agricultural commodities and the products thereof; and

“(B) continue or begin to purchase such commodities and the products thereof on an annual basis in quantities equal to or greater than the level of purchases in a previous representative period;”.

(2) by striking “and” at the end of paragraph (4);

(3) by striking the period at the end of paragraph (5) and inserting “; and”; and

(4) by adding at the end the following:

“(6) shall report to the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives and the Committee on Agriculture, Forestry, and Nutrition of the Senate every 30 days a current list of countries provided agricultural commodities and products under the program established by this section and a justification for participation in such program.”.

SEC. 320. COMMODITIES FOR COOPERATOR ORGANIZATIONS.

The Secretary of Agriculture is authorized to make available to cooperator organizations commodities owned by the Commodity Credit Corporation, which shall be used by such cooperators in projects designed to expand markets for United States agricultural commodities and products.

SEC. 321. LONG-TERM AGRICULTURAL TRADE STRATEGY REPORTS.

(a) **PREPARATION; MATTERS TO BE INCLUDED.**—(1) The Secretary of Agriculture shall prepare annually, and the President shall submit together with the budget for each fiscal year, a Long Term Agricultural Trade Strategy Report establishing recommended

policy and spending goals for United States agricultural trade and exports for 1-year, 5-year, and 10-year periods, beginning on October 1 of such fiscal year. Each such report shall include the following:

(A) Findings with respect to trends in the comparative position of the United States and other nations in the export of agricultural commodities and products, organized by major commodity group and including a comparative analysis of the cost of production of such commodities and products.

(B) Findings with respect to new developments in research conducted by other nations that may affect the competitiveness of United States agricultural commodities and products.

(C) Findings and recommendations with respect to the marketing in nonmarket economies of United States agricultural commodities and products.

(D) As appropriate, the agricultural trade goals for each agricultural commodity and value-added product produced in the United States for the period in question, expressed in both physical volume and monetary value.

(E) Recommended Federal policy and programs to achieve the agricultural trade goals.

(F) Recommended levels of Federal spending on international programs and activities of the Department of Agriculture to meet the agricultural trade goals.

(G) Recommended levels of Federal spending on programs and activities of agencies other than the Department of Agriculture to meet the agricultural trade goals.

(H) Recommended long-term strategies for growth in agricultural trade and exports—

(i) taking into account United States competitiveness, trade negotiations, and international monetary and exchange rate policies; and

(ii) including specific recommendations with respect to export enhancement programs (including credit programs and export payment-in-kind programs), market development activities, and foreign agricultural and economic development assistance activities needed to implement such strategies.

(2) Provisions of each Long Term Agricultural Trade Strategy Report that relate to recommended levels of spending on international activities of the Department of Agriculture for the upcoming fiscal year shall be treated as the President's annual budget submission to Congress for such programs for such fiscal year, and shall be submitted in addition to the budget request for other programs of the Department of Agriculture for such fiscal year.

(3) The President shall include in each Long Term Agricultural Trade Strategy Report recommendations for such changes in legislation governing international programs of the Department of Agriculture as are required to meet the long term goals established in the Report.

(b) IDENTIFICATION OF CHANGES THAT MAY AFFECT PREVIOUS REPORTS.—The President, in each succeeding annual Long Term Agricultural Trade Strategy Report after the first such report, shall identify any such recommendations that might modify the long term policy contained in any previous such report.

SEC. 322. ESTABLISHMENT OF AN OFFICE TO MONITOR TRADE PRACTICES.

(a) **ESTABLISHMENT WITHIN THE DEPARTMENT OF AGRICULTURE.**—The Secretary of Agriculture shall establish an office within the Department of Agriculture to carry out the duties described in subsection (b) under the direction of the Under Secretary for Trade.

(b) **DUTIES.**—The office established under subsection (a) shall—

(1) continuously monitor and study trade practices carried out by other nations to promote the export of agricultural commodities and products; and

(2) submit quarterly reports of its findings to the Secretary of Agriculture.

(c) **REPORTING BY THE SECRETARY.**—(1) Within 15 days after receiving a report under subsection (b), the Secretary of Agriculture shall submit such report to the committees listed in paragraph (2), together with the Secretary's findings and recommendations with respect to the level of subsidies provided by other nations and the United States to promote the export of agricultural commodities and products.

(2) Items described under paragraph (1) shall be submitted to—

(A) the Committee on Agriculture, Nutrition, and Forestry, the Committee on Foreign Relations, and the Committee on Finance of the Senate; and

(B) the Committee on Agriculture, the Committee on Foreign Affairs, and the Committee on Ways and Means of the House of Representatives.

SEC. 323. FINDINGS AND SENSE OF CONGRESS WITH RESPECT TO THE EUROPEAN COMMUNITY.

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

(1) the European Community has proposed to establish a tariff on the importation of vegetable and marine fats and oils; and

(2) the imposition of such a tariff would have a negative impact on United States exports of oil seeds and products and would be inconsistent with the European Community's obligations under the General Agreement on Tariffs and Trade.

(b) **SENSE OF CONGRESS.**—It is the sense of the Congress that—

(1) the President should firmly oppose actions by the European Community to establish a tariff on the importation of vegetable and marine fats and oils; and

(2) the President should take strong and immediate countermeasures should such a tariff be implemented.

SEC. 324. EXPORT-IMPORT BANK.

(a) **FINDINGS.**—The Congress makes the following findings:

(1) The actual level of support provided by the Export-Import Bank to United States exporters has decreased significantly since 1980, including a reduction from \$5,400,000,000 in direct loans in fiscal year 1981 to \$577,400,000 in direct loans in fiscal year 1986.

(2) The value of nonagricultural United States exports supported by the Export-Import Bank, in relation to all such exports, has also declined consistently during the last 5 years, from approximately 13 percent in 1980 to approximately 5 percent in 1986.

(3) *The level of official financing provided by the governments of other industrialized countries to their exporters is typically from 25 to 40 percent of the nonagricultural exports from those countries.*

(4) *The programs of the Export-Import Bank, especially the direct loan program, enable United States exporters to compete in world markets on the basis of quality, price, and service, and are often crucial to the success of export endeavors. Export-Import Bank programs are particularly important for high technology products and large scale projects that are very capital intensive or that require longer terms.*

(b) *STATEMENT OF POLICY.—It is the sense of the Congress that the availability of adequate and flexible financing provided by the United States Government for United States exports contributes to the maintenance and expansion of United States exports and at the same time can serve to reverse the trend toward overseas production.*

SEC. 325. COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES.

The Secretary of State shall, not later than January 31 of each year, prepare and transmit to the Committee on Foreign Affairs and the Committee on Ways and Means of the House of Representatives, and to the Committee on Foreign Relations and the Committee on Finance of the Senate, a detailed report regarding the economic policy and trade practices of each country with which the United States has an economic or trade relationship. The Secretary may direct the appropriate officers of the Department of State who are serving overseas, in consultation with appropriate officers or employees of other departments and agencies of the United States, including the Department of Agriculture and the Department of Commerce, to coordinate the preparation of such information in a country as is necessary to prepare the report under this section. The report shall identify and describe, with respect to each country—

(1) *the macroeconomic policies of the country and their impact on the overall growth in demand for United States exports;*

(2) *the impact of macroeconomic and other policies on the exchange rate of the country and the resulting impact on price competitiveness of United States exports;*

(3) *any change in structural policies (including tax incentives, regulations governing financial institutions, production standards, and patterns of industrial ownership) that may affect the country's growth rate and its demand for United States exports;*

(4) *the management of the country's external debt and its implications for trade with the United States;*

(5) *acts, policies, and practices that constitute significant barriers to United States exports or foreign direct investment in that country by United States persons, as identified under section 181(a)(1) of the Trade Act of 1974 (19 U.S.C. 2241(a)(1));*

(6) *acts, policies, and practices that provide direct or indirect government support for exports from that country;*

(7) *the extent to which the country's laws and enforcement of those laws afford adequate protection to United States intellec-*

tual property, including patents, trademarks, copyrights, and mask works; and

(8) the country's laws and enforcement of those laws with respect to internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974), the conditions of worker rights in any sector which produces goods and in which United States capital is invested, the extent of such investment, and the extent to which the goods produced under these conditions are imported into the United States.

SEC. 326. EXPORT PROMOTION DATA SYSTEM.

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

(1) accurate, timely, and properly organized data and other information are essential for the promotion of international trade;

(2) the Federal Government is an appropriate institution for reporting needed data and other information it collects in its promotion of international trade;

(3) States have greatly expanded their programs to promote international trade and have become an integral part of the trade expansion effort of the United States; and

(4) as part of the Federal-State partnership, the Federal Government and State governments should share with each other and the private sector, in an open and timely manner, data and other information they collect relating to international trade.

(b) **EXPORT PROMOTION DATA SYSTEM.**—

(1) **DEFINITIONS.**—For purposes of this subsection—

(A) the term “Secretary” means the Secretary of Commerce;

(B) the term “Department” means the Department of Commerce; and

(C) the term “System” means the export promotion data system developed under paragraph (2).

(2) **PURPOSES OF THE SYSTEM.**—The Secretary shall develop and maintain an export promotion data system which—

(A) is intended to promote and protect United States business interests abroad;

(B) includes information on those foreign industrial sectors and markets which are perceived to be of the greatest interest to United States exporters, including private export associations and groups, and to State agencies that promote exports;

(C) includes such information as is collected through—

(i) the trade promotion and facilitation activities of the International Trade Administration of the Department; and

(ii) the activities of other Federal Government agencies, State agencies, and private entities;

(D) organizes information into the form which is most useful to United States exporters, including private export associations and groups, and to State agencies that promote exports;

(E) provides for the confidentiality of proprietary business information; and

(F) consistent with other provisions of law, disseminates, upon request and for a reasonable fee, information in the System in a timely manner to United States exporters, including private export associations and groups, and to State agencies that promote exports.

(3) **COOPERATION WITH OTHER FEDERAL AGENCIES.**—The Secretary shall determine which Federal Government agencies described in paragraph (2)(C)(ii) generate information which should be included in the System. The President shall direct those agencies to provide the System with access to such information. These agencies shall, in the case of information stored electronically, provide the System with the necessary interfacing between their respective data processing systems.

(4) **DESIGN OF THE SYSTEM.**—The System shall be designed to use the most effective means to monitor, organize, and disseminate in a timely manner, information on—

(A) United States exports of goods and services by State of origin, port of departure, and importing country;

(B) United States imports of goods and services by country of origin;

(C) specific business opportunities and contacts in foreign countries;

(D) characteristics of specific industrial sectors within foreign countries with high export potential, such as—

(i) size of the market;

(ii) distribution of products;

(iii) competition;

(iv) significant applicable laws, regulations, specifications, and standards;

(v) appropriate government officials; and

(vi) trade associations and other contact points; and

(E) foreign countries generally, such as—

(i) general economic conditions;

(ii) common business practices;

(iii) significant tariff and trade barriers; and

(iv) other significant laws and regulations regarding imports and licensing.

(5) **DELIVERY.**—(A) The Secretary shall devise a procedure for disseminating the information in the System that—

(i) provides useful information to the maximum number of users;

(ii) allows the System to recover a reasonable portion of its operating costs; and

(iii) minimizes competition between the Department and private sector information dissemination services.

(B) In establishing the procedure under subparagraph (A), the Secretary shall consider methods of disseminating information in the System which include—

(i) providing direct or indirect on-line access to all or part of the System's data banks; and

(ii) contracting with private sector information dissemination services to provide on-line access to all or part of the information in the System.

(C) *The Secretary may establish a schedule of fees for users or distributors of the information in the System. Such fees shall be consistent with fees charged for similar services in the private sector.*

(D) *Within 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a plan for the delivery procedure required by subparagraph (A).*

(6) **EXCLUSIONS FROM THE SYSTEM.**—*The System shall not include any information—*

(A) *which is collected in connection with any investigation; or*

(B) *the disclosure of which is prohibited by any provision of law.*

(7) **CONSULTATIONS.**—*The Secretary shall consult with representatives of the private sector, including export associations and groups, and with State agencies that promote exports, regarding the ongoing development of the System.*

(8) **IMPLEMENTATION.**—*The Secretary shall, upon the submission under paragraph (5)(D) of the plan for the delivery procedure required by paragraph (5)(A), begin operation of the portions of the System described in paragraph (2)(C)(i). Within 1 year after the date of the enactment of this Act, the Secretary shall begin operation of the portion of the System described in paragraph (2)(C)(ii).*

(9) **REPORTS TO CONGRESS.**—*The Secretary shall report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, within 1 year after the date of the enactment of this Act, on the implementation of this section. Such report shall include comments on the implementation of the System which are provided by the private sector, including export associations and groups, and by State agencies that promote exports.*

SEC. 327. PRESHPMENT INSPECTION REGULATION PROGRAM.

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

(1) *preshipment inspection of goods can help facilitate trade by expediting customs clearance in the country of destination;*

(2) *there have been substantial complaints with respect to preshipment inspection, specifically regarding delays in shipment, increases in the cost of export transactions, price inspection, and request for confidential business information;*

(3) *preshipment inspection authority is currently unregulated and, if abused, can constitute an unreasonable restraint on trade;*

(4) *preshipment inspections of the financial terms of export transactions should not be employed in such a manner as to impose inappropriate controls on international prices;*

(5) *preshipment inspection requirements as imposed by importing countries should not be applied in such a manner as to discriminate against and burden or restrain United States trade;*

(6) capital flight from developing countries is a significant contributor to their external debt burden, which is posing a serious threat to their economic stability and preventing a return to economic growth and development;

(7) preshipment inspection can facilitate trade by minimizing opportunities for capital flight, fraud, tax evasion, and inappropriate price discrimination by preventing fraudulent and abusive overinvoicing and underinvoicing; and

(8) the interests of all parties concerned would be enhanced by competition among preshipment companies.

(b) **PURPOSE.**—It is the purpose of this section to establish a regulatory program to ensure that preshipment inspection companies fulfill a useful role in facilitating trade, and to prevent activities which are inconsistent with the operation of free and open markets within the United States.

(c) **POLICY.**—It shall be the policy of the United States to ensure that preshipment inspection requirements are a useful means of facilitating trade, and are not used as an instrument to restrict international commerce and business.

(d) **DEFINITIONS.**—For purposes of this section—

(1) the term “preshipment inspection activity” means any activity which is carried out in the United States on behalf of a governmental entity of a foreign country and which involves, as a governmentally imposed condition on the importing of goods into that foreign country or of receipt of payment for those goods from that foreign country—

(A) a physical inspection of those goods before the goods leave the United States;

(B) an inspection of the export value of the goods, including the financial terms of the export transaction; or

(C) any inspections of those goods which are normally carried out by the customs officials of the importing country;

(2) the term “inspection company” means any person that conducts preshipment inspection activities for compensation; and

(3) the term “Secretary” means the Secretary of Commerce.

(e) **CERTIFICATION OF PRESHIPMENT INSPECTION COMPANIES.**—(1) A person may carry out preshipment inspection activities only if—

(A) the person is an inspection company holding a valid certification issued by the Secretary under this section; and

(B) the preshipment inspection activities are permitted under subsection (f).

(2) An inspection company may apply to the Secretary for a certification under this section. Such application shall be in such form and contain such information as the Secretary may specify by regulation.

(3) The Secretary shall issue or deny certification within 90 days after receipt of each application by an inspection company under paragraph (2), and such certification, if granted, shall be valid for such period of time as the Secretary shall specify.

(4) The Secretary shall establish the appropriate criteria for issuing a certification under this section.

(5) *Each application for certification by an inspection company shall contain the following information, which shall be made available for public inspection at the Department of Commerce:*

(A) *The name of the inspection company, the names of its officers, owners, and affiliates, and the addresses of the company headquarters and all of its offices in the United States.*

(B) *A description of any other businesses of the company and its affiliates, other than preshipment inspection activities.*

(C) *The purpose of the company's proposed activities.*

(D) *The foreign governmental entities for which the company is to act as an agent.*

(E) *The activities which the company will undertake on behalf of any such foreign governmental entity.*

(F) *A description of controls the company intends to implement in order to ensure the protection of proprietary information.*

(G) *Copies of each statute, decree, or other regulation under the authority of which the company is conducting its activities within the United States.*

(H) *Any other information which the Secretary determines would be useful in monitoring the activities of the inspection company.*

(6) *Any inspection company to which a certification is issued under this section shall thereafter provide to the Secretary any additional information necessary to ensure the accuracy of the information submitted under paragraph (5).*

(f) **ALLOWABLE PRESHIPMENT INSPECTION ACTIVITIES.**—*An inspection company issued a certification under this section may conduct the following preshipment inspection activities:*

(1) *Classification and valuation for customs purposes.*

(2) *Inspections for quantity and quality of goods.*

(3) *Inspection for health, safety, technical, and other standards as determined by the Secretary.*

(4) *Inspection of the value and financial terms of an export transaction for purposes of preventing customs fraud, capital flight, tax evasions, and unreasonable price discrimination.*

(5) *Other activities as determined by the Secretary.*

(g) **ACTIVITIES NOT PERMITTED.**—*An inspection company issued a certification under this section may not do the following:*

(1) *Engage in preshipment activities that would be discriminatory against and burdensome on, or restrictive of, United States commerce.*

(2) *Provide to importing countries price information supplied by exporters on specific export transactions, other than information that is required or customarily provided for letters of credit or other forms of payment, or for customs, import licensing, or foreign exchange control purposes. Prices for goods exported from the United States may not be compared to prices for goods exported from other countries of supply except for internationally quoted commodities.*

(3) *Perform quantity and quality inspections in a manner that is more extensive or intrusive than inspections performed in accordance with customary international inspection standards.*

(4) Carry out any activity which the Secretary determines to be inconsistent with the purposes of this section and which the Secretary determines would place an unreasonable burden on United States exporters.

(h) REGULATIONS.—(1) The Secretary shall prescribe such regulations as are necessary to carry out this section. Such regulations shall provide that—

(A) the preshipment activities of inspection companies shall not unreasonably interfere with the conduct of international business;

(B) preshipment inspection activities shall be conducted, and appropriate documentation shall be issued, in a timely and convenient manner so as to avoid any substantial delays to United States exporters;

(C) United States exporters subject to preshipment inspection activities as a condition of exporting goods shall be furnished with all information and instructions necessary to ensure compliance with the laws of the importing country that are administered by the inspection company, including a statement of the exporter's rights and of prohibited practices; and

(D) in the event that an inspection company decides that goods subject to preshipment inspection activities are not in compliance with the laws of the importing country, the inspection company shall provide a written explanation of the basis for noncompliance, and shall arrange with the United States exporter involved for a timely reinspection in order to ensure minimal delays to the exporter.

(2) Regulations under this subsection shall be issued and take effect not later than 6 months after the date of the enactment of this Act.

(i) CIVIL PENALTIES.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty of not more than \$10,000 for each knowing violation of this section or any regulation or order issued under this section.

(2) The Secretary may suspend or revoke the certification of an inspection company that engages in a course of conduct in persistent violation of this section or any regulation or order issued under this section.

(3) Any sanction imposed under this subsection may be imposed only after notice and an opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(4) The Secretary may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation.

(j) APPEALS.—(1) The Secretary shall establish appropriate procedures for any United States exporter to appeal to the Secretary any determination by an inspection company that would prevent a United States exporter from making a shipment or receiving payment for a shipment, or to file a complaint concerning the conduct of an inspection company. Such procedures shall provide an opportunity for both the inspection company and the exporter to present views, and shall protect the confidentiality of all parties.

(2) When appropriate in connection with an appeal under paragraph (1), the Secretary shall attempt to resolve the differences between the exporter and the inspection company involved.

(k) **MULTILATERAL AND BILATERAL CONSULTATIONS.**—(1) The President shall instruct the United States representatives to all relevant multilateral international economic fora, to promote the United States policy on preshipment inspection activities, as set forth in this section.

(2) The President shall promote the United States policy on preshipment inspection activities where appropriate in any bilateral consultation with a United States trading partner.

SEC. 328. REPORT ON EXPORT TRADING COMPANIES.

The Export Trading Company Act of 1982 (15 U.S.C. 4001 et seq.) is amended by inserting after section 104 the following new section:

“SEC. 105. REPORT ON EXPORT TRADING COMPANIES.

“Not later than one year after the date of the enactment of this section and annually thereafter, the Secretary of Commerce shall submit a report to the Congress on the activities of the Department of Commerce to promote and encourage the formation of export trade associations and export trading companies. The report shall include a survey of the activities of export management companies and export trade associations, as well as an analysis of the operating experiences of those export trading companies established pursuant to this Act. The report shall not contain any information subject to the protections from disclosure provided in this Act.”

Subtitle B—Export Controls

SEC. 331. OIL EXPORTS.

(a) **TO NONCONTIGUOUS COUNTRIES.**—Section 7(d)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(d)(1)) (hereafter in this subtitle referred to as “the Act”) is amended to read as follows: “(1) No domestically produced crude oil may be exported from the United States, subject to paragraph (2) of this subsection. The prohibition contained in the preceding sentence shall not apply to—

“(A) crude oil which is exported to an adjacent foreign country to be refined and consumed in that country in exchange for the same quantity of crude oil being exported from that country to the United States; except that, with respect to domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States, or

“(B) crude oil which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States.”

(b) **EXPORTS OF PRODUCTS OF EXPORT REFINERIES.**—Section 7(d) of the Act (50 U.S.C. App. 2406(d)) is amended by adding at the end the following:

"(5)(A) The provisions of paragraphs (1) through (4) of this subsection shall apply to the export of any refined petroleum product, or partially refined petroleum product, which is produced by an export refinery to the same extent as the provisions of paragraphs (1) through (4) of this subsection apply to the export of domestically produced crude oil.

"(B) For purposes of this paragraph—

"(i) the term 'refined petroleum product' means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil;

"(ii) the term 'partially refined petroleum product' means a mixture of hydrocarbons which existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, and which has been processed through a crude oil distillation tower, including topped crude oil and other unfinished oils, but excluding any refined petroleum product; and

"(iii) the term 'export refinery' means, with respect to a proposed export, any crude oil refinery within the continental United States or Alaska which, were it to make the proposed export, would have exported more than 33 percent of all refined petroleum products and partially refined petroleum products produced by that refinery—

"(I) during the 1-year period ending on the day of such proposed export, in the case of a refinery that has been in commercial operation for 1 year or more, or

"(II) during the period in which it has been in commercial operation, in the case of a refinery that has been in commercial operation for less than 1 year.

"(C) Within 180 days after the date of the enactment of this paragraph, the Secretary shall issue such regulations as may be necessary to carry out this paragraph."

(c) TECHNICAL AMENDMENT.—Section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354) is amended by striking "1969" each place it appears and inserting "1979".

SEC. 332. NATIONAL SECURITY CONTROLS.

(a) MULTIPLE LICENSE AUTHORITY.—Section 4(a)(2) of the Act (50 U.S.C. App. 2403(a)(2)) is amended—

(1) in subparagraph (A) by striking the period at the end of the first sentence and inserting " except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China."; and

(2) in subparagraph (B) in the first sentence by inserting "(except the People's Republic of China)" after "controlled countries".

(b) DOMESTIC SALES TO COMMERCIAL ENTITIES OF CONTROLLED COUNTRIES.—Section 5(a)(1) of the Act (50 U.S.C. App. 2404(a)(1)) is amended by inserting after the second sentence the following: "For purposes of the preceding sentence, the term 'affiliates' includes both governmental entities and commercial entities that are controlled in fact by controlled countries."

(c) AUTHORITY FOR REEXPORTS.—Section 5(a) of the Act (50 U.S.C. App. 2404(a)) is amended by adding at the end the following:

“(4) No authority or permission to reexport any goods or technology subject to the jurisdiction of the United States may be required under this section—

“(A) to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, except that the Secretary may require authority or permission to reexport—

“(i) such goods or technology to such end users as the Secretary may specify by regulation, and

“(ii) such specific extraordinarily sophisticated goods or technology as the Secretary may specify by regulation, or

“(B) from any country when the goods or technology to be re-exported are incorporated in other goods and do not constitute more than 25 percent of the value of the goods in which they are incorporated.”

(d) EXPORTS TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(1) Section 5(b) of the Act (50 U.S.C. App. 2404(b)) is amended by striking paragraph (2) and inserting the following:

“(2) No authority or permission to export may be required under this section for the export to any country other than a controlled country of any goods or technology which, if exported to the People’s Republic of China on March 1, 1987, would require only notification of the participating governments of the group known as the Coordinating Committee, except that the Secretary may require authority or permission to export goods or technology described in this paragraph—

“(A) to such end users as the Secretary may specify by regulation; or

“(B) to any country which poses significant risks of diversion, as specified by the Secretary.

“(3)(A) Except as provided in subparagraph (B), no authority or permission to export may be required under this section for the export of goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section.

“(B)(i) The Secretary may require authority or permission to export to a country referred to in subparagraph (A) such specific extraordinarily sophisticated goods or technology as the Secretary may specify by regulation.

“(ii) The Secretary may require authority or permission to export goods or technology, which are otherwise eligible for export under subparagraph (A), to such end users as the Secretary may specify by regulation.

“(iii) The Secretary may require authority or permission to export goods or technology to a country referred to in subparagraph (A) if the Secretary, in consultation with the Secretary of State, determines that such country is engaging in a pattern and practice of noncompliance with the Coordinating Committee agreement or other applicable agreement.

"(4) The Secretary may require any person exporting any goods or technology under the provisions of paragraph (2) or (3) to notify the Department of Commerce of those exports."

(2) The amendment made by paragraph (1) shall take effect 6 months after the date of the enactment of this Act.

(e) LIST REVIEWS; REGULATIONS.—

(1) CONTROL LIST.—(A) Section 5(c)(2) of the Act (50 U.S.C. App. 2404(c)(2)) is amended by striking the last sentence and inserting the following: "If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may refer the matter to the President for resolution within 20 days after the Secretary's determination. The Secretary of Defense shall notify the Secretary of any such referral. The President shall notify the Secretary of his determination with respect to the inclusion of such items on the list not later than 20 days after such referral. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list."

(B) Section 5(c)(3) of the Act is amended to read as follows:

"(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list."

(2) LIST OF MILITARILY CRITICAL TECHNOLOGIES.—Section 5(d)(5) of the Act (50 U.S.C. App. 2404(d)(5)) is amended in the first sentence by striking "at least annually" and inserting "on an ongoing basis".

(3) TECHNICAL ADVISORY COMMITTEES.—(A) Section 5(c) of the Act is amended by adding at the end the following:

"(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. If such recommendations are submitted, such technical advisory committee shall be formally represented in that portion of the process involved in making such changes which relates to its recommendations. The Secretary shall consider the recommendations of the technical advisory committee and shall report to the committee the disposition of its recommendations and the reasons why they were accepted, modified, or rejected."

(B) Section 5(h)(2) of the Act is amended—

(i) by redesignating clause (E) as clause (F); and

(ii) by striking clause (D) and inserting the following:

"(D) revisions of the control list, including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and"

(C) Section 15(b) of the Act (50 U.S.C. App. 2414(b)) is amended in the third sentence—

(i) by striking "and such other" and inserting "such other"; and

(ii) by inserting after "appropriate" the following: ", and the appropriate technical advisory committee".

(f) CONTROL LIST REDUCTION.—

(1) REDUCTIONS BY THE SECRETARY.—Section 5(c) of the Act (50 U.S.C. App. 2404(c)) (as amended by subsection (e) of this section) is further amended by adding at the end the following:

"(5)(A) The Secretary, in consultation with the Secretary of Defense, shall, on the basis of subsections (f), (g), and (m) of this section, identify those goods and technology subject to export controls under this section which are no longer significant to the military potential of any controlled country. On the basis of the goods and technology so identified, the Secretary should seek, to the maximum extent feasible, to reduce by approximately 40 percent (taking into account those goods and technology described in subparagraph (B)), within 3 years after the date of the enactment of this paragraph, the number of all goods and technology subject to export controls under this section as of such date of enactment.

"(B) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

"(i) All goods or technology which, if exported to controlled countries on March 1, 1987, would require only notification of the participating governments of the Coordinating Committee.

"(ii) All medical instruments and equipment, subject to the exception set forth in subsection (m) of this section.

In addition, those goods should no longer be subject to export controls under this section which are so widely available to the general public in retail outlets that the export controls on those goods are rendered ineffective in achieving their purpose.

"(C) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph."

(2) **ELIMINATION OF UNILATERAL CONTROLS.**—Section 5(c) of the Act (as amended by paragraph (1) of this subsection) is further amended by adding at the end the following:

“(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except for controls on those goods or technology—

“(i) for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section and is in effect, or

“(ii) with respect to which the President is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology.

“(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed—

“(i) in the case of goods or technology described in clause (i) of subparagraph (A), for periods of not more than 6 months each, and

“(ii) in the case of goods or technology described in clause (ii) of subparagraph (A), for 1 period of not more than 6 months, if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.”.

(g) **REVIEW OF GOODS AND TECHNOLOGY ELIGIBLE FOR DISTRIBUTION LICENSE.**—Section 5(e)(4) of the Act (50 U.S.C. 2404(e)(4)) is amended—

(1) by inserting “(A)” after “(4)”; and

(2) by adding at the end the following:

“(B) In any case in which the Secretary receives a request which—

“(i) is to revise the qualification requirements or minimum thresholds with respect to the eligibility of goods for export or reexport under a distribution license, and

“(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section, the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods to countries to which exports are controlled under this section from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.”.

(h) **TRADE SHOWS.**—Section 5(e) of the Act (50 U.S.C. App. 2404(e)) is amended by adding at the end the following:

“(6) CERTAIN EXPORTS FOR TRADE SHOWS.—Upon application, the Secretary shall issue a license for the export to the People’s Republic of China of any good subject to export controls under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show if—

“(A) the United States exporter retains title to and control of the good during the entire period in which the good is in the People’s Republic of China; and

“(B) the exporter removes the good from the People’s Republic of China no later than at the conclusion of the trade show.”.

(i) FOREIGN AVAILABILITY.—

(1) FOREIGN AVAILABILITY DETERMINATIONS.—Section 5(f)(3) of Act (50 U.S.C. App. 2404(f)(3)) is amended by inserting after the second sentence the following:

“In a case in which an allegation is received from an export license applicant, the Secretary shall, within 30 days after receipt of the allegation, publish notice of such receipt in the Federal Register. Within 120 days after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary’s determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Within 60 days following such submission, the Secretary shall respond in writing to the applicant and publish in the Federal Register, that—

“(A) the foreign availability does exist and—

“(i) the requirement of a validated license has been removed,

“(ii) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

“(iii) the foreign availability determination has been submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 120 days after the determination of foreign availability is made; or

“(B) the foreign availability does not exist.

In any case in which the publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made and, except in the case of foreign availability described in subparagraph (A)(ii) or (B), in no case may a license for such export be required after the end of the 8-month period beginning on the date on which the allegation is received.”.

(2) AVAILABILITY IN PARTICULAR COUNTRIES.—Section 5(f)(4) of the Act (50 U.S.C. 2404(f)(4)) is amended by adding at the end the following: “In any case in which an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technolo-

gy, then the Secretary may not, after such agreement is reached, require a validated license for the export of such goods or technology to that country.”

(3) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—Section 5(f) of the Act is amended—

(A) by striking paragraph (7);

(B) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(C) by inserting after paragraph (4) the following:

“(5)(A) The Secretary shall review, on a continuing basis, the availability to countries, other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary finds that any such goods or technology from foreign sources are of similar quality and are available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

“(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

“(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary’s own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

“(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.”

(4) SHARING OF INFORMATION ON FOREIGN AVAILABILITY.—

Section 5(f)(7) of the Act (as redesignated by paragraph (3)(B) of this subsection) is amended to read as follows:

“(7) Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign

availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability direct access to any laboratory or other facility within such department or agency for the purpose of collecting such information.”

(5) **GOODS OR TECHNOLOGY AFFECTED BY DETERMINATIONS.**—

Section 5(f) of the Act (as amended by paragraph (3)(B) of this subsection) is amended by adding at the end the following:

“(3) In any case in which Secretary may not, pursuant to paragraph (1), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.”

(6) **TECHNICAL ADVISORY COMMITTEE DETERMINATIONS.**—Section 5(h)(6) of the Act (50 U.S.C. App. 2404(h)(6)) is amended by adding at the end the following: “In any case in which an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, then the Secretary may not, after such agreement is reached, require a validated license for the export of such goods or technology to that country.”

(7) **TECHNICAL AMENDMENT.**—Section 14(a)(8) of the Act (50 U.S.C. 2413(a)(8)) is amended by striking “5(f)(5)” and inserting “5(f)(6)”.

(j) **DEFINITION OF AVAILABILITY.**—Section 5 of the Act (50 U.S.C. App. 2404) is amended by adding at the end the following:

“(r) **AVAILABILITY DEFINED.**—For purposes of subsections (d), (f), and (h) of this section, the term ‘available in fact to controlled countries’ includes production or availability of any goods or technology in any country—

“(1) from which the goods or technology is not restricted for export to any controlled country; or

“(2) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of paragraph (2), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multi-lateral national security export controls shall not, in and of itself, constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.”

(k) **ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.**—Section 18(b) of the Act (50 U.S.C. App. 2417(b)) is amended—

(1) in paragraph (1)—

(A) by striking “for each of the fiscal years 1987 and 1988” and inserting “for the fiscal year 1987”;

(B) by striking “for each such year” each place it appears; and

(C) by striking “and” after the semicolon;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

"(2) \$38,935,000 for the fiscal year 1988, of which \$12,746,000 shall be available only for enforcement, \$5,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and \$21,189,000 shall be available for all other activities under this Act; and".

(1) **NEGOTIATIONS WITH CoCOM.**—

(1) **NEGOTIATING OBJECTIVES.**—Section 5(i) of the Act (50 U.S.C. App. 2404(i)) is amended—

(A) by striking "The President" and inserting "Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President"; and

(B) by adding at the end the following:

"(10) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.

"(11) Agreement to expand the categories and levels of goods and technology that are eligible for export to the People's Republic of China, to the extent consistent with the national security interests of the United States and the other participating governments."

(2) **INDUSTRY REPRESENTATIVE TO COCOM.**—(A) Section 5(i) of the Act is amended by adding at the end the following:

"For purposes of reviews of the list referred to in paragraph (1), the President shall include as advisors to the United States delegation to the Coordinating Committee representatives of industry who are knowledgeable with respect to the items being reviewed."

(B) **EFFECTIVE DATE.**—(i) Subject to clause (ii), the amendment made by subparagraph (A) shall take effect 3 months after the date of the enactment of this Act.

(ii) The amendment made by subparagraph (A) shall not take effect if the President, before the end of the 3-month period referred to in clause (i), certifies to the Congress that the United States has obtained the agreement of all the governments participating in the Coordinating Committee to exclude industry representatives from negotiations of the Coordinating Committee.

(m) **GOODS CONTAINING MICROPROCESSORS OR CERTAIN OTHER PARTS OR COMPONENTS.**—Section 5(m) of the Act (50 U.S.C. 2404(m)) is amended to read as follows:

"(m) **GOODS CONTAINING CERTAIN PARTS AND COMPONENTS.**—Export controls may not be imposed under this section on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

"(1) are essential to the functioning of the good, and

“(2) are customarily included in sales of the good, unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.”.

(n) REVIEW OF LICENSES.—Section 10(g) of the Act (50 U.S.C. App. 2409(g)) is amended—

(1) in paragraphs (1) and (2) by striking “country to which exports are controlled for national security purposes” and inserting “controlled country”;

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking “particular country” and inserting “controlled country involved”; and

(ii) by striking “any other country;” and inserting “any other controlled country; or”;

(B) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B);

(C) by inserting after the third sentence the following:

“At the same time that the Secretary of Defense submits any recommendation to the President under subparagraph (A), the Secretary of Defense shall notify the Secretary of such recommendation.”; and

(D) by adding at the end the following: “If the Secretary of Defense does not, within the time period specified in this paragraph, make a recommendation specified in subparagraph (A) or (B) or a notification to the Secretary of a recommendation under subparagraph (A), then the Secretary shall approve or disapprove the proposed export without such recommendation.”; and

(3) by striking paragraph (4) and inserting the following:

“(4) Except as provided in this subsection, no request to export goods or technology pursuant to this Act may be required to be referred to the Secretary of Defense.”.

SEC. 333. EXPORT LICENSE FEES.

Section 4 of the Act (50 U.S.C. App. 2403) is amended by adding at the end the following:

“(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.”.

SEC. 334. VIOLATIONS.

Section 11(h) of the Act (50 U.S.C. App. 2410(h)) is amended—

(1) in the first sentence—

(A) by inserting “(1)” before “No”; and

(B) by inserting after “violation of” the following: “this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act,”; and

(2) by adding at the end the following:

“(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, or control, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and after notice and an opportunity for a hearing.”.

SEC. 335. ENFORCEMENT.

Section 12(a)(2)(B) of the Act (50 U.S.C. App. 2411(a)(2)(B)) is amended by adding at the end the following: "The Customs Service may not seize or detain for more than 10 days any shipment of goods or technology which the Secretary has determined is eligible for export under a general license under section 4(a)(3)."

SEC. 336. ISSUANCE OF TEMPORARY DENIAL ORDERS.

Section 13(d)(1) of the Act (50 U.S.C. App. 2412(d)(1)) is amended in the second sentence by striking "60" each place it appears and inserting "180".

SEC. 337. WESTERN REGIONAL OFFICE.

(a) **ESTABLISHMENT AND FUNCTIONS.**—Section 15 of the Act (50 U.S.C. App. 2414) is amended by adding at the end the following:

"(d) **WESTERN REGIONAL OFFICE.**—(1) The Secretary shall establish and maintain a western regional office which shall have the following authority and shall perform the following functions:

"(A) To issue validated licenses under section 4(a)(1) for the export of goods from the United States, the export of which—

"(i) is controlled under this Act only for national security purposes;

"(ii) is not subject to referral to any other department or agency pursuant to section 10(d); and

"(iii) is not subject to any multilateral review process to which section 10(h) applies.

"(B) To render written advisory opinions with respect to proposed exports of goods or technology from the United States in such cases as may be prescribed by the Secretary.

"(C) To provide assistance to United States exporters and prospective United States exporters in complying with this Act and the regulations issued under this Act, including maintaining, for sale or distribution, an adequate supply of all standard application forms, supporting documents, and copies of the regulations issued by the Secretary.

"(D) To promptly forward to the Department of Commerce any application for a validated export license which does not meet the requirements set forth in subparagraph (A) but which otherwise appears to be complete and capable of processing. In any such case, the western regional office shall issue an application number to the applicant.

"(2) In addition to amounts authorized by section 18, there are authorized to be appropriated to the Department of Commerce to carry out the purposes of this subsection such sums as may be necessary for the fiscal year 1988."

(b) **ANNUAL REPORT.**—Section 14 of the Act (50 U.S.C. App. 2413) is amended by adding at the end the following:

"(f) **REPORT ON WESTERN REGIONAL OFFICE.**—The Secretary shall include in each annual report a detailed description and analysis of the activities of the western regional office established pursuant to section 15(d), including—

"(1) a listing of the number of applications for validated export licenses filed with the western regional office in each month and the disposition of those licenses; and

“(2) a description in reasonable detail of activities conducted under section 15(d)(1)(C).”.

SEC. 338. MONITORING OF WOOD EXPORTS.

The Secretary of Commerce shall, for a period of 2 years beginning on the date of the enactment of this Act, monitor exports of processed and unprocessed wood to all countries of the Pacific Rim. The Secretary shall include the results of such monitoring in monthly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. The Secretary shall transmit such reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Finance, and Urban Affairs of the Senate.

SEC. 339. EXPORT ADMINISTRATION REFORM COMMISSION.

(a) **ESTABLISHMENT.**—The President shall, not later than 60 days after the date of the enactment of this Act, appoint an Export Administration Reform Commission (hereafter in this section referred to as the “Commission”).

(b) **DUTIES OF THE COMMISSION.**—The Commission shall—

(1) examine the adequacy of the current export administration system in safeguarding United States national security while maintaining United States international economic competitiveness and Western technological preeminence;

(2) determine the best means of minimizing the disruption of United States trading interests while preventing Western technology from enhancing the development of Soviet military capabilities;

(3) identify those goods and technologies which are likely to make crucial differences in military capabilities, and identify which of those goods and technologies the Soviet Union already possesses;

(4) establish criteria by which to judge the feasibility of export controls and apply such criteria to the commodity control list in order to eliminate ineffective controls;

(5) devise appropriate and effective alternative means of controlling exports;

(6) recommend improvements for a more efficient domestic and international export licensing system;

(7) develop proposals to improve United States and multilateral assessments of foreign availability of goods and technology subject to export controls;

(8) review the effectiveness of the Congress in overseeing export administration; and

(9) develop a feasible strategy for regulating the transfer of technical data.

The Commission shall hold public hearings in order to receive comments and recommendations on the options developed under paragraphs (1) through (9).

(c) **MEMBERSHIP.**—The Commission shall be composed of 24 members who shall be appointed as follows from among individuals in private life who by virtue of their experience and expertise are knowledgeable in relevant scientific, business, or legal matters and who, at the time of their appointment, are not elected or appointed

officers or employees in the executive, legislative, or judicial branch of the Government:

(1) 12 individuals appointed by the President.

(2) 3 individuals appointed by the Speaker of the House of Representatives, and 3 individuals appointed by the minority leader of the House of Representatives.

(3) 3 individuals appointed by the majority leader of the Senate, and 3 individuals appointed by the minority leader of the Senate.

(d) **REPORTS AND TERMINATION.**—(1) The Commission shall prepare and submit to the President and the Congress, not later than 1 year after the Commission is appointed, a report which contains a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or regulatory reforms as it considers appropriate.

(2) The Commission shall terminate upon the submission of its report under paragraph (1).

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 340. FINDINGS AND DECLARATION OF POLICY.

(a) **FINDINGS.**—The Congress makes the following findings:

(1) The use of unilateral export controls undermines the effectiveness of the multilateral export control system and undermines the competitiveness of United States industries.

(2) Unilateral reexport controls impede progress toward a cooperative and unified system of controls among the allies of the United States and decrease United States industrial competitiveness.

(3) An adequate national security export control system requires constant monitoring and periodic modification as conditions warrant to maintain the proper balance between the promotion of national economic vitality and the protection of military security.

(4) A harmonized multilateral export control system requires the cooperation of countries participating in the Coordinating Committee and other countries in order to control technology flowing to countries of the Soviet Bloc while simultaneously reducing impediments to East-West trade.

(5) The ineffective implementation of current foreign availability provisions places United States industries at a competitive disadvantage.

(6) Inherent in maintaining national security is the need for a strong industrial base in the United States.

(b) **DECLARATION OF POLICY.**—It is the policy of the United States—

(1) in maintaining export controls, to keep clearly separate national security and foreign policy export controls;

(2) to respect the sovereignty and rights of allies and friendly countries, and to rely on their cooperative efforts and commitments whenever possible;

(3) to maintain export control lists that are technically sound, narrowly focused, and coordinated multilaterally; and

(4) to adequately balance the need to maintain United States technological strength, economic vigor, and allied unity.

(c) AMENDMENTS TO THE ACT.—Section 3 of the Act (50 U.S.C. App. 2402) is amended—

(1) in paragraph (1) by inserting after “export control policy” the following: “, to minimize delays and unnecessary regulatory burdens in administering export controls,”; and

(2) in paragraph (2) by inserting after “economy of the United States” the following: “(including the impact on the competitiveness and the long-term health of the industrial base of the United States)”.

Subtitle C—Debt, Development, and World Growth

SEC. 341. INTERNATIONAL NEGOTIATIONS.

(a) MULTILATERAL NEGOTIATIONS.—The President and the Secretary of the Treasury shall take the necessary steps to continue ongoing negotiations with West Germany, the United Kingdom, France, and Japan, as well as to initiate negotiations with other countries through appropriate multilateral organizations, including the Organization for Economic Cooperation and Development, the United Nations, and the International Monetary Fund, in order to—

(1) coordinate macroeconomic policies of the major industrial countries so as to promote stable exchange rates and growth patterns;

(2) achieve expansionist economic policies and agreements which have the specific purpose of increasing the size of the market for exports from the United States and developing countries;

(3) promote growth-oriented economic policies in both developed and developing countries;

(4) encourage both developed and developing countries to base growth on a balance of foreign and domestic demand and to discourage excessive reliance by those countries on exports for growth; and

(5) advise the trading partners of the United States that the United States is prepared to retaliate against countries, in an equivalent manner, in cases involving unfair trade practices.

(b) INTERNATIONAL ECONOMIC OR TRADE DISCUSSIONS.—

(1) DECLARATION OF THE UNITED STATES OBJECTIVE.—The Congress hereby declares that a key objective of the United States in its participation in economic summits and international meetings on economics or trade is to obtain the agreement of the participants in any such summit or meeting to adopt growth-oriented national economic policies and to take such actions as may be necessary to increase the size of the market for exports from the United States and developing countries.

(2) EXECUTIVE ACTIONS.—The President and the Secretaries of the Treasury and State shall seek to place discussions with respect to the objective described in paragraph (1) on the agenda

of any economic summit or international economic meeting to which the United States is a party and shall report to the Congress on any success they may have had in achieving such agreement at any such meeting.

SEC. 342. TRADE LIBERALIZATION IN DEVELOPING COUNTRIES.

(a) **SENSE OF CONGRESS.**—It is the sense of the Congress that increases in the development of, and the achievement of prosperity for, developing countries and the recovery of the economic strength of the United States and the other industrialized countries can only be assured if world trade is expanded and market access for all countries is increased.

(b) **DECLARATION OF POLICY.**—The Congress declares it to be the policy of the United States that any foreign assistance provided by the United States to developing countries shall be consistent with and supportive of long-term trade liberalization in those countries.

SEC. 343. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) **REAFFIRMATION OF SUPPORT FOR OPIC.**—The Congress reaffirms its support for the Overseas Private Investment Corporation as a United States Government agency serving important development assistance goals. In order to enhance the Corporation's ability to meet these goals, the Overseas Private Investment Corporation should increase its loan guaranty and direct investment programs.

(b) **INCREASE IN GUARANTIES AND DIRECT INVESTMENTS.**—

(1) **LOAN GUARANTIES.**—Section 235(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)) is amended—

(A) in paragraph (2) by striking “\$750,000,000” and inserting “\$1,000,000,000”;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

“(5) Subject to paragraphs (2), (3), and (4), the Corporation shall issue guaranties under section 234(b) having an aggregate contingent liability with respect to principal of not less than \$200,000,000 in each fiscal year, to the extent that there are eligible projects which meet the Corporation's criteria for such guaranties.”.

(2) **DIRECT INVESTMENT.**—Section 235(b) of the Foreign Assistance Act of 1961 is amended—

(A) by striking the comma after “Act of 1981” and inserting a period; and

(B) by striking “and the Corporation shall use” and all that follows through “funding” and inserting the following:

“The Corporation shall make loans under section 234(c) in an aggregate amount of not less than \$25,000,000 in each fiscal year, to the extent that there are eligible projects which meet the Corporation's criteria for such loans”.

(c) **INCREASE IN STAFF.**—In order to enable the Overseas Private Investment Corporation to carry out the provisions of subsections (a) and (b) of section 235 of the Foreign Assistance Act of 1961 in a manner which is consistent with title IV of chapter 2 of part I of that Act, beginning with the fiscal year 1988, the Corporation's administrative budget and full-time equivalent employee levels shall be not less than 110 percent of the levels at which the Corporation operated in the fiscal year 1984.

SEC. 344. TRADE AND DEVELOPMENT PROGRAM.

(a) **REAFFIRMATION OF SUPPORT FOR TRADE AND DEVELOPMENT PROGRAM.**—The Congress reaffirms its support for the Trade and Development Program, and believes that the Program's ability to support high priority development projects in developing countries would be enhanced by an increase in the funds authorized for the Program as well as by a clarification of the Program's status as a separate component of the International Development Cooperation Agency.

(b) **AUTHORIZATION AND USES OF FUNDS; ESTABLISHMENT AS SEPARATE AGENCY.**—

(1) **ADDITIONAL USES OF FUNDS.**—Section 661(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2421(a)) is amended by inserting after the first sentence the following: "Funds under this section may be used to provide support for project planning, development, management, and procurement for both bilateral and multilateral projects, including training activities undertaken in connection with a project, for the purpose of promoting the use of United States exports in such projects."

(2) **ESTABLISHMENT AS A SEPARATE AGENCY.**—Section 661 of that Act is amended—

(A) by redesignating subsection (b) as subsection (c); and
(B) by inserting after subsection (a) the following:

"(b)(1) The purposes of this section shall be carried out by the Trade and Development Program, which shall be a separate component agency of the International Development Cooperation Agency. The Trade and Development Program shall not be an agency within the Agency for International Development or any other component agency of the International Development Cooperation Agency.

"(2) There shall be at the head of the Trade and Development Program a Director. Any individual appointed as the Director on or after January 1, 1989, shall be appointed by the President, by and with the advice and consent of the Senate.

"(3) The Trade and Development Program should serve as the primary Federal agency to provide information to persons in the private sector concerning trade development and export promotion related to bilateral development projects. The Trade and Development Program shall cooperate with the Office of International Major Projects of the Department of Commerce in providing information to persons in the private sector concerning trade development and export promotion related to multilateral development projects. Other Federal departments and agencies shall cooperate with the Trade and Development Program in order for the Program to more effectively provide informational services in accordance with this paragraph.

"(4) The Director of the Trade and Development Program shall, not later than December 31 of each year, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the activities of the Trade and Development Program in the preceding fiscal year."

(3) **FUNDING LEVELS.**—In addition to funds otherwise available to the President for purposes of section 661 of the Foreign Assistance Act of 1961—

(A) not less than \$10,000,000 for fiscal year 1988 shall be made available for such purposes from amounts available to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 for such fiscal year; and

(B) not less than \$11,000,000 for fiscal year 1989 shall be made available for such purposes from amounts available to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 for such fiscal year.

(c) AUTHORITIES UNDER THE TRADE DEVELOPMENT AND ENHANCEMENT ACT OF 1983.—

(1) TRANSFER OF FUNCTIONS FROM AID TO TDP.—(A) Section 644 of the Trade and Development Enhancement Act of 1983 (12 U.S.C. 635q) is amended—

(i) in subsection (a)(2) by striking “Agency for International Development” and inserting “Trade and Development Program”;

(ii) in subsection (a)(3)(A)—

(I) by striking “offered by the Agency for International Development” and inserting “made available under section 645(d) of this Act”; and

(II) by striking “Agency for International Development” and inserting “Trade and Development Program”; and

(iii) in subsection (d)—

(I) by striking “offered by the Agency for International Development” and inserting “made available under section 645(d) of this Act”; and

(II) by striking “subsections (c) and (d) of section 645” and inserting “section 645(c)”.

(B) Section 645 of that Act (12 U.S.C. 635r) is amended—

(i) in the section heading by striking “IN THE AGENCY FOR INTERNATIONAL DEVELOPMENT” and inserting “ADMINISTERED BY THE TRADE AND DEVELOPMENT PROGRAM”;

(ii) in subsection (a)—

(I) by striking “Administrator of the Agency for International Development shall establish within the Agency” and inserting “Director of the Trade and Development Program shall carry out”;

(II) in paragraph (1) by striking “offered by the Agency for International Development” and inserting “made available under subsection (d)”;

(III) in paragraph (1) by striking “Agency for International Development” and inserting “Trade and Development Program”;

(IV) in paragraph (2) by striking “offered by the Agency for International Development” and inserting “made available under subsection (d)”;

(V) in paragraph (2) by striking “Agency for International Development” and inserting “Trade and Development Program”;

(iii) in subsection (c)—

(I) in paragraph (1) by striking “of the agency for International Development”; and

(II) in paragraph (2) by striking "Administrator of the Agency for International Development" and inserting "Director of the Trade and Development Program"; and

(iv) by amending subsection (d) to read as follows:

"(d) Funds available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961, as agreed upon by the Secretary of State, the Administrator of the Agency for International Development, and the Director of the Trade and Development Program, may be used to carry out this section and section 644 (as provided in that section). Such funds may be used to finance a tied aid credit activity in any country eligible for tied aid credits under this Act."

(2) FUNCTIONS OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES.—Section 646 of the Trade and Development Enhancement Act of 1983 (12 U.S.C. 635s) is amended—

(A) in subsection (a)(2) by striking "without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies" and inserting "unless a majority of the members of the National Advisory Council on International Monetary and Financial Policies approve the financing"; and

(B) by adding at the end the following:

"(b) The Trade and Development Program shall be represented at any meetings of the National Advisory Council on International Monetary and Financial Policies for discussion of tied aid credit matters, and the representative of the Trade and Development Program at any such meeting shall have the right to vote on any decisions of the Advisory Council relating to tied aid credit matters."

(d) ADMINISTRATIVE PROVISIONS.—

(1) PAY OF DIRECTOR OF TDP.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Director, Trade and Development Program."

(2) TRANSITION PROVISIONS.—(A) The Administrator of the Agency for International Development shall transfer to the Director of the Trade and Development Program all records, contracts, applications, and any other documents or information in connection with the functions transferred by virtue of the amendments made by subsection (c)(1).

(B) All determinations, regulations, and contracts—

(i) which have been issued, made, granted, or allowed to become effective by the President, the Agency for International Development, or by a court of competent jurisdiction, in the performance of the functions transferred by virtue of the amendments made by subsection (c)(1), and

(ii) which are in effect at the time this section takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Director of the Trade and Development Program, or other authorized official, by a court of competent jurisdiction, or by operation of law.

(C)(i) The amendments made by subsection (c)(1) shall not affect any proceedings, including notices of proposed rulemak-

ing, or any application for any financial assistance, which is pending on the effective date of this section before the Agency for International Development in the exercise of functions transferred by virtue of the amendments made by subsection (c)(1). Such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued.

(ii) Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Director of the Trade and Development Program or other authorized official, by a court of competent jurisdiction, or by operation of law.

(iii) Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(iv) The Director of the Trade and Development Program is authorized to issue regulations providing for the orderly transfer of proceedings continued under this subparagraph to the Trade and Development Program.

(D) With respect to any function transferred by virtue of the amendments made by subsection (c)(1) and exercised on or after the effective date of this section, reference in any other Federal law to the Agency for International Development or any officer shall be deemed to refer to the Trade and Development Program or other official to which such function is so transferred.

(3) **EFFECTIVE DATE.**—This section and the amendments made by this section take effect on October 1, 1987.

SEC. 345. COUNTERTRADE.

(a) **FINDING.**—The Congress finds that developing countries are relying increasingly on countertrade as a means of sustaining imports as well as foreign markets in the short term, and as a means of developing new export industries and exploiting under developed natural resources in the long term.

(b) **ESTABLISHMENT OF INTERAGENCY GROUP.**—The President shall establish an interagency group on countertrade, to be composed of such Government departments and agencies as the President considers appropriate. The Secretary of Commerce shall be the chairman of the interagency group. The interagency group shall review United States policy on countertrade and shall make recommendations to the President and the Congress on the use of countertrade as a mechanism for enhancing bilateral United States foreign economic assistance programs and on expanding the information available on countertrade, including information on export opportunities.

(c) **LIST OF COUNTRIES RELATING TO COUNTERTRADE.**—The Secretary of Commerce shall establish and maintain a list, by country, of the laws, policies, and regulations of each country relating to countertrade, and of any particular goods or services that have been designated by such country for countertrade transactions.

SEC. 346. CARIBBEAN BASIN INITIATIVE.

It is the sense of the Congress that this Act should preserve the integrity of the Caribbean Basin Economic Recovery Act. To the extent that the Congress imposes changes that are intended to improve the competitive environment for American industries and workers, it is the intent of the Congress that such changes should not adversely affect the unilateral duty-free trade system available to the beneficiary countries designated under that Act. In addition, because of the small number of articles of countries of the Caribbean Basin that are currently entering the United States market, it is the intent of the Congress that changes in the trade laws of the United States should not in any way impose an additional burden on the ability of those articles of such designated beneficiary countries to compete with exports from major United States trading partners. It is in the economic and security interests of the United States to maintain this commitment to the countries of the Western Hemisphere as contained in the Caribbean Basin Economic Recovery Act.

SEC. 347. LIMITATION ON PROCUREMENT IN FOREIGN ASSISTANCE PROGRAMS.

Section 604(g)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2354(g)(1)) is amended to read as follows:

"(g)(1) Notwithstanding subsection (a), none of the funds authorized to be appropriated or made available for obligation or expenditure under this Act may be made available for the procurement of goods and services from any advanced developing or industrialized country which has attained a competitive capability in international markets for such goods or services, unless United States goods and services are not competitive in the market where the goods and services are to be used. The restriction contained in this paragraph shall not apply to the use of funds under section 636(a)(3) of this Act."

Subtitle D—Protection of United States Business Interests Abroad

SEC. 351. PROTECTION OF UNITED STATES INTELLECTUAL PROPERTY.

It is the sense of the Congress that—

(1) the Secretary of State, the United States Trade Representative, and the relevant United States Ambassadors should engage in immediate discussions with the appropriate countries to reduce instances of piracy of copyrights, patents, and mask works and counterfeiting of trademarks, to obtain adherence to existing international conventions for the protection of copyrights, patents, and trademarks, to work toward the development of an international convention for mask works, to gain the participation and support of those countries in the development of international intellectual property codes in future multilateral trade negotiations, and to achieve the objectives described in this paragraph without creating barriers to legitimate trade;

(2) the United States should seek to incorporate in international intellectual property codes the following enforcement mechanisms:

(A) civil remedies under domestic intellectual property laws;

(B) civil remedies under domestic trade laws; and

(C) other appropriate consultation and dispute settlement procedures;

(3) the United States should seek the involvement of the United States business community in intellectual property negotiations;

(4) the Secretary of State should urge international technical organizations, such as the World Intellectual Property Organization, to provide expertise and cooperate fully in developing effective standards, in the General Agreement on Tariffs and Trade, for the international protection of intellectual property rights;

(5) the President should take immediate and forceful action against those countries which are not prepared to commit formally to immediate improvements in their protection of United States intellectual property; and

(6) development assistance programs administered by the Agency for International Development, especially the reimbursable development program, should, in cooperation with the Copyright Office and the Patent and Trademark Office, include technical training for officials responsible for the protection of patents, copyrights, trademarks, and mask works in those countries that receive such development assistance.

SEC. 352. FOREIGN CORRUPT PRACTICES ACT AMENDMENTS.

(a) **PROHIBITED TRADE PRACTICES BY ISSUERS.**—Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) is amended to read as follows:

“PROHIBITED FOREIGN TRADE PRACTICES BY ISSUERS

“SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

“(1) any foreign official for purposes of—

“(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

“(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the

procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

"(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

"(b)(1) It shall be a defense to actions under subsection (a) that—

"(A) the payment was made for the purpose of expending or securing the performance of a routine governmental action by a foreign official; or

"(B) the payment, gift, offer, or promise of anything of value that was made, was expressly permitted under a law or regulation of the government of the country involved.

"(2) For purposes of paragraph (1)(A), the term 'routine governmental action' means an action which is ordinarily and commonly performed by a foreign official and includes—

"(A) processing governmental papers, such as visas and work orders;

"(B) loading and unloading cargoes; and

"(C) scheduling inspections associated with contract performance,

and actions of a similar nature. 'Routine governmental action' does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

“(c) An issuer may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

“(1) such issuer has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

“(2) the officer and employee of the issuer with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such issuer shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2).

“(d) Not later than one year after the date of the enactment of the Export Enhancement Act of 1987, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

“(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department’s present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

“(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department’s present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

“(e)(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department’s present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department’s present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section,

there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

"(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

"(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

"(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

"(f) For purposes of this section—

"(1) the term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

"(2) a person meets the 'knowing' standard for purposes of subsection (a)(3) if—

"(A) that person is aware or substantially certain, or

"(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official

thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

"(3) a person meets the 'recklessly disregarding' standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

"(4) the term 'substantial risk' means a risk that is of such a nature and degree that to disregard it constitutes a substantial deviation from the standard of care that a reasonable person would exercise in such a situation."

(b) VIOLATIONS.—Section 32(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended to read as follows:

"(c)(1)(A) Any issuer that—

"(i) violates section 30A(a)(1) or (2); or

"(ii) violates section 30A(a)(3) and meets the 'knowing' standards of that section (as defined by section 30A(f)(2)),

shall be fined not more than \$2,000,000.

"(B) Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

"(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who—

"(i) willfully violates section 30A(a)(1) or (2); or

"(ii) willfully violates section 30A(a)(3) and meets the 'knowing' standard of that section,

shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who—

"(i) willfully violates section 30A(a)(1) or (2); or

"(ii) willfully violates section 30A(a)(3) and meets the 'knowing' standard of that section,

shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

"(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer."

(c) PROHIBITED TRADE PRACTICES BY DOMESTIC CONCERNS.—Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) is amended to read as follows:

"PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

"SEC. 104. (a) PROHIBITION.—It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, em-

ployee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

“(1) any foreign official for purposes of—

“(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

“(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

“(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

“(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his official functions; or

“(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

“(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

“(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

“(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

“(b) DEFENSES.—(1) It shall be a defense to actions under subsection (a) that—

“(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

“(B) the payment, gift, offer, or promise of anything of value that was made was expressly permitted under any law or regulation of the government of the country involved.

“(2) For purposes of paragraph (1)(A), the term ‘routine governmental action’ means an action which is ordinarily and commonly performed by a foreign official and includes—

“(A) processing governmental papers, such as visas and work orders;

“(B) loading and unloading cargoes; and

“(C) scheduling inspections associated with contract performance,

and actions of a similar nature. ‘Routine governmental action’ does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

“(c) **DUE DILIGENCE.**—A domestic concern which is not an individual may not be held vicariously liable, either civilly or criminal-ly, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

“(1) such domestic concern has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

“(2) the officer and employee of the domestic concern with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such domestic concern shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2). The first sentence of this subsection shall be considered an affirmative defense to actions under subsection (a).

“(d) **GUIDELINES BY THE ATTORNEY GENERAL.**—Not later than 6 months after the date of the enactment of the Export Enhancement Act of 1987, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

“(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department’s present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

“(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to

the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

“(e) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

“(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

“(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

“(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present en-

forcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

"(f) VIOLATIONS.—(1)(A) Any domestic concern that—

"(i) violates subsection (a) (1) or (2); or

"(ii) violates subsection (a)(3) and meets the 'knowing' standards of that subsection (as defined by subsection (h)(4)), shall be fined not more than \$2,000,000.

"(B) Any domestic concern that violates subsection (a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

"(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who—

"(i) willfully violates subsection (a) (1) or (2); or

"(ii) willfully violates subsection (a)(3) and meets the 'knowing' standard of that subsection, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who—

"(i) willfully violates subsection (a) (1) or (2); or

"(ii) willfully violates subsection (a)(3) and meets the 'knowing' standard of that section, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

"(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

"(g) INJUNCTIONS.—Whenever it appears to the Attorney General that any domestic concern or officer, director, employee, agent, or stockholder thereof is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a), the Attorney General may bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

"(h) DEFINITIONS.—As used in this section—

"(1) the term 'domestic concern' means—

"(A) any individual who is a citizen, national, or resident of the United States; and

“(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States;

“(2) the term ‘foreign official’ means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

“(3) the term ‘interstate commerce’ means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

“(A) a telephone or other interstate means of communication, or

“(B) any other interstate instrumentality;

“(4) a person meets the ‘knowing’ standard for purposes of subsection (a)(3) if—

“(A) that person is aware or substantially certain, or

“(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

“(5) a person meets the ‘recklessly disregarding’ standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

“(6) the term ‘substantial risk’ means a risk that is of such a nature and degree that to disregard it constitutes a substantial deviation from the standard of care that a reasonable person would exercise in such a situation.”

(d) INTERNATIONAL AGREEMENT.—

(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the largest possible number of countries, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act, the President shall submit to the Congress a report on—

(i) the progress of the negotiations referred to in paragraph (1),

(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate the competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

(B) The President shall include in the report submitted under subparagraph (A)—

(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

(iii) an assessment of the current and future role of private initiatives in curtailing such acts.

Subtitle E—Miscellaneous Provisions

SEC. 361. TRADING WITH THE ENEMY ACT.

(a) **TERMINATION OF OFFICE OF ALIEN PROPERTY.**—(1) The Trading with the Enemy Act is amended by striking subsections (b) through (e) of section 39 (50 U.S.C. App. 39) and inserting the following new subsection:

“(b) The Attorney General shall cover into the Treasury, to the credit of miscellaneous receipts, all sums from property vested in or transferred to the Attorney General under this Act—

“(1) which the Attorney General receives after the date of the enactment of the Export Enhancement Act of 1987, or

“(2) which the Attorney General received before that date and which, as of that date, the Attorney General had not covered into the Treasury for deposit in the War Claims Fund, other than any such sums which the Attorney General determines in his or her discretion are the subject matter of any judicial action or proceeding.”

(2) Subsection (f) of such section is amended—

(A) by striking “(f)” and inserting “(c)”; and

(B) by striking “through (d)” and inserting “and (b)”.

(b) **REMOVAL OF REPORTING REQUIREMENT.**—Section 6 of such Act (50 U.S.C. App. 6) is amended in the next to the last sentence by striking “: Provided further,” and all that follows through the end of the section and inserting a period.

SEC. 362. LIMITATION ON EXERCISE OF EMERGENCY AUTHORITIES.

(a) **TRADING WITH THE ENEMY ACT.**—Section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) is amended by adding at the end the following new paragraph:

“(4) The authority granted to the President in this subsection does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.”

(b) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)) is amended—

(1) in paragraph (1) by striking “or” after the semicolon;

(2) in paragraph (2) by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.”

SEC. 363. RELATIONS WITH MEXICO.

(a) FINDINGS.—The Congress finds that—

(1) Mexico and the continued stability of its governing structure are of vital importance to the national interests of the United States;

(2) while the economic, cultural, and historical ties between Mexico and the United States are both varied and strong, foreign relations between the governments of these countries continue to be carried out on an ad hoc basis and in a crisis-to-crisis context;

(3) legislative and administrative policies often have unintended adverse or contradictory results in the two countries;

(4) there are a large number of bilateral issues now confronting the two countries which transcend normal diplomatic processes; and

(5) in order to improve relations with Mexico, the United States Government must take actions, conducted in the spirit of mutual respect and cooperation, which prioritize its foreign and economic policies toward Mexico.

(b) UNITED STATES-MEXICO INTERAGENCY COMMISSION.—(1)(A) The President shall establish an interagency group to be known as the “United States-Mexico Bilateral Commission” (hereafter in this subsection referred to as the “Commission”).

(B) Membership on the Commission shall be composed of the Secretary of State, the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, and the United States Trade Representative.

(C) The Chairman of the Commission shall be the Secretary of State (or a delegate of the Secretary).

(D)(i) *The members of the Commission shall (not later than 3 months after the date of the enactment of this Act) execute a written memorandum of understanding which includes the goal of the Commission. The goal of the Commission shall be—*

(I) to serve as a formal mechanism by which economic relations between the United States and Mexico are conducted in a comprehensive manner which allows input from any concerned agency of the United States; and

(II) to provide a channel of communication between the Government of the United States and the Government of Mexico pertaining to economic relations.

(ii) Not later than 6 months after the execution of the memorandum of understanding, each member of the Commission shall present to the Commission a review of all United States-Mexico issues which affect that member's agency. Each presentation shall include an assessment of, as well as recommendations for, action by that member.

(2) Not later than 12 months after the date of the enactment of this Act and every 12 months thereafter, the Chairman of the Commission shall report to the Congress on the activities of the Commission. Each such report shall include the specific projects, issues, and agency actions taken to achieve the goal of the Commission which occurred in the 12-month period preceding the submission of the report as well as proposed projects, issues, and agency actions.

(3) The Commission shall endeavor to meet semiannually with representatives of Mexico in order to carry out the goal of the Commission.

(c) BILATERAL SUMMIT ON ECONOMIC RELATIONS.—(1) It is the sense of the Congress that, consistent with the goal of strengthening political and commercial relations between the United States and Mexico, a bilateral summit on economic relations, as they pertain to trade and commerce, between these two countries should be held. The objectives of the summit should include—

(A) a discussion of the question of Mexico as a contracting party to the General Agreement on Tariffs and Trade;

(B) a discussion of the pending graduation from the Generalized System of Preferences of those Mexican products currently covered under such System;

(C) the promotion of direct investment in Mexico by United States businesses;

(D) the resolution of problems related to United States fishing rights within the territorial waters of Mexico;

(E) a discussion of the possibility of eventually establishing a free-trade zone along both sides of the United States-Mexico border;

(F) promotion of the development of industry along the United States-Mexico border regions in order to encourage increased employment opportunities;

(G) a discussion of the policies related to the development of the petroleum industry and alternative energy sources in the United States and Mexico;

(H) a discussion of the issues related to pollution arising from sources within the United States or Mexico which affects the

other country, including water pollution, air pollution, soil pollution, and sewage treatment;

(I) a discussion on the development and coordination of border crossings between the United States and Mexico;

(J) a review and evaluation of all joint research and development projects currently being conducted between the United States and Mexico at both private and public levels, including projects in the areas of business, health, technology, and public policy;

(K) a discussion of mutual problems and concerns that confront both the United States and Mexico in the development of a comprehensive national policy regarding immigration;

(L) a discussion of mutual problems and concerns that confront both the United States and Mexico on the issues of external debt and foreign investment;

(M) the resolution of problems related to the trucking and transportation of products between the United States and Mexico, including a discussion of the construction of international bridges as a means to help alleviate these trucking and transportation problems; and

(N) the resolution of problems related to the trucking and transportation of products between the United States and Central American countries through Mexican territory, including a discussion to encourage the Government of Mexico to accede to existing international custom conventions on international in-transit shipments.

Discussions under subparagraph (N) may be conducted in concert with the nations of the region where the transiting shipments described in that subparagraph originate, including discussions with respect to the institution of appropriate and cooperative steps to make sealed-truck, no-inspection transit administratively acceptable to the Government of Mexico and other transited countries.

(2) The President is urged to enter into negotiations with representatives of the Government of Mexico for the purpose of commencing talks between the United States and Mexico in order to achieve the objectives described in paragraph (1).

SEC. 364. BUDGET ACT.

Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.

COMMITTEE ACTION

In the 100th Congress, the Subcommittee on International Economic Policy and Trade considered the following bills relating to issues within its jurisdiction: H.R. 3, introduced on January 6, 1987, by Mr. Gephardt; H.R. 922, introduced on February 3 by Mr. Dorgan; H.R. 1141, introduced on February 19 by Mr. AuCoin and Mr. Frenzel; H.R. 1155, introduced on February 19 by Mr. Michel; H.R. 1236, introduced on February 25 by Mr. Burton; H.R. 1306 and H.R. 1308, introduced on February 26 by Mr. Pease; H.R. 1407, introduced on March 4 by Mr. Mica; H.R. 1416, introduced on March 4 by Mr. Wolpe and Mr. McKinney; H.R. 1425, introduced

on March 5 by Mr. Gephardt; H.R. 1431, introduced on March 5 by Mr. Bonker; H.R. 1493, introduced on March 10 by Mr. Armev; H.R. 1494, introduced on March 10 by Mr. Bonker; H.R. 1529, introduced on March 10 by Mr. Thomas; H.R. 1565, introduced on March 11 by Mr. Wise; H.R. 1587, introduced on March 12 by Mr. DeFazio; and H.R. 1634, introduced on March 17 by Mr. AuCoin.

The subcommittee held a number of hearings in preparation for the drafting and consideration of the Export Enhancement Act of 1987. Many of the provisions of the bill were carried over from the Export Enhancement Act of 1986, which passed the House on May 22, 1986 as part of the Omnibus Trade and International Economic Policy Reform Act (H.R. 4800), and as such subcommittee relied on hearings held in 1985 and 1986. In 1985, oversight hearings on the Export Administration Act were held October 10 (Department of Commerce), November 6 (Department of Defense), and November 20 (Alaskan oil exports). In 1986, hearings were held on March 11 (foreign policy controls), April 10 (national security controls), April 15 (short supply controls), April 17 (national security controls), and October 2 (foreign availability). Export promotion hearings were held on March 12 (Department of Agriculture) and March 18 (Department of Commerce). The subcommittee also held hearings on the Foreign Trade Practices Act on April 16, the International Trade Administration budget on March 19, export trading companies on April 22, the Overseas Private Investment Corporation and the Trade and Development Program on April 17, the draft Export Enhancement Act of 1986 on April 22, intellectual property protection on July 31, and the Agency for International Development's Bureau for Private Enterprise on September 10.

Additionally, the Committee on Foreign Affairs favorably reported H.R. 3166, reauthorizing the Overseas Private Investment Corporation, on September 23, 1985 (see House Report 99-285). On February 7, 1986, the committee approved H.R. 3667, with amendments, creating a fund for U.S. mixed credit financing (see House Report 99-457, part II). Following markup of the Export Enhancement Act of 1986 in the subcommittee on April 29, 1986, the committee approved the bill on April 30, 1986 (see House Report 99-580, part I).

In 1987, the Subcommittee on International Economic Policy and Trade held hearings on national security export controls on February 3, March 11 and 12; and on export promotion on March 5 (export financing) and March 10 (Departments of Commerce and Agriculture). The committee heard from Commerce Secretary Malcolm Baldrige on February 26 on the subject of trade legislation. On March 18, the subcommittee met in open markup session and, by voice vote, approved a draft bill, with amendments, for full committee action. On March 24, the full committee considered in open markup session the amended provisions (titles III, VI, and VII) of H.R. 3, and ordered the measure reported, as amended, by voice vote. On March 25, the full committee agreed to further consider the bill for amendment, and subsequently ordered the measure reported, with further amendment, by voice vote.

PURPOSE

The principal purpose of the Export Enhancement Act of 1987 is to improve the export promotion functions of the U.S. Government, to strengthen and streamline the current export control system, and to improve the country's competitive position in the global marketplace. The bill raises the authorization level of \$123,922,000 for export promotion activities in title II of the Export Administration Amendments Act of 1985 by \$6 million, earmarked for the new Market Development Cooperator Program and for domestic trade shows. The bill also provides an additional \$3 million for the foreign availability program of the Office of Export Administration in the Department of Commerce. The bill provides an additional \$10 million in fiscal year 1988 and an additional \$11 million in fiscal year 1989 in funding for the Trade and Development Program, to be taken from funds requested for the private enterprise revolving fund within the Agency for International Development. Increases in the direct lending and loan guarantee programs for the Overseas Private Investment Corporation are also authorized. The bill further provides a statutory base for the U.S. and Foreign Commercial Service and provides the Foreign Commercial Service with new tools and added flexibility.

OVERVIEW

The Export Enhancement Act of 1987 (hereafter referred to as "the bill") improves a number of export promotion programs, streamlines the export control system, and, in other ways, strengthens America's competitive position. The Foreign Affairs Committee is one of several committees charged with the responsibility of drafting a comprehensive trade and competitiveness bill, under the aegis of the Speaker of the House.

A NEW CHALLENGE FOR AMERICA

During the last decade, the world economy has undergone substantial transformation. Not only have Europe and Japan emerged as major players in international economic competition, but a number of newly industrialized countries in East Asia and Latin America have also begun to compete in world markets in everything from electronics to engines.

The strengths of our foreign competitors have been brought home with a vengeance over the last 5 years, as one American industry after another has felt their impact either at home or abroad. In examining America's competitive challenge, the emphasis often has been on short-term policies or longer-term failures in education and manufacturing technology. A number of longstanding international trends are also at work—the growth of global financial markets, the spread of the multinational corporation, and slowing growth in Europe and Japan. Three have had a particularly strong impact on U.S. export performance and potential.

The Rapid Spread of Technology.—As part of post-World War II recovery efforts, Europe and Japan sought to acquire existing American technology, and by and large, American companies were only too willing to sell. Sales of on-the-shelf technology added to

profits and, at times, helped fund additional research. The American Government also encouraged technology transfer. The rest of the world received an enormous bargain. In terms of the cost of developing new technology, Europe and Japan bought American technology for just cents on the dollar.

At the same time, Europe and Japan were making the right investments to make the most of available technology. Both emphasized the importance of general and technical education, and both saw that an educated populace made rapid absorption of new technology possible. Today, a number of the newly industrialized countries are following a similar path—emphasizing technical education as a way of putting existing technology within the reach of their industries.

Several other factors facilitated the rapid spread of technology. The multinational corporation brought with it new technology and the know-how to put it to work. Advances in global education, the spread of English as the world technical language, the sharp drop in travel costs, and the emergence of worldwide markets all made a contribution.

In the mid-1960's, economists described industrial growth in terms of a product cycle. The invention and initial manufacturing of a product took place in an industrialized country such as the United States or France. As the manufacturing process became more routine, the need for relatively skilled labor became less important and manufacturing would move to a less developed country. New opportunities and new jobs in the United States were expected to flow from an endless cornucopia of inventions, each with its own product cycle.

The American economy no longer seems to work that way. Increasingly, products are invented elsewhere. At times, U.S. inventions are put into initial production overseas. One generation of products gives way to another more rapidly than before. The easy assumption of technological superiority can no longer be taken for granted.

The Emergence of the New Mercantilism.—In the last decade, American companies have begun to feel the effects of a new kind of mercantilism. Individual countries have used a wide range of policies to speed the growth of a particular sector or a favored industry. Their goal is not to pile up gold in the manner of 16th century France, but to develop industries that are viewed as being critical for their future growth or international influence.

The United States has not adopted this approach. Instead, the United States has been the worldwide champion of open markets and free enterprise. Since the end of World War II, the United States has taken the lead in constructing a set of international rules designed to keep markets open to world trade. In Germany and Japan, the United States worked to break the interlocking monopolies of the pre-war era. Moreover, U.S. foreign assistance has often been targeted to the building of institutions that let governments rely more heavily on prices and markets.

America continues to pursue market-based policies, emphasizing that government plays a major role in setting overall economic policy and regulating domestic and international markets, but that decisions on production, research, wages, investments, sale of tech-

nology, and long-term industrial strategy should be left to private companies.

Many countries take another approach. France and Japan are the leading examples of industrial countries that relied on extensive government guidance and intervention. Even in free-market Germany, government spending and government policy play a far greater role than they do in the United States.

The Japanese model of economic growth has attracted particular attention for two reasons. First, the Japanese economy has grown rapidly throughout the post-World War II era. The Japanese moved from the production of inexpensive consumer goods to the frontiers of high technology in a span of 40 years. They are now challenging American preeminence in one field after another. Second, the Japanese have adopted a very different approach to growth. They have ignored the rules that Americans thought were crucial to economic success—antitrust laws to keep markets competitive at home, free trade to make the most of domestic resources, and relatively little government guidance.

In the traditional concept of the international economy, countries specialized in what they did best relative to the international competition. What they did best usually depended on factors that were largely beyond government control—coal deposits, rich soil, good climate, a unique location, or a relatively size of their population. The modern world is different. Trade among industrial countries increasingly depends on the results of government investments in education, training, and research, or on government policies toward growth and exchange rates. Individual industries, or sometimes whole sectors, are singled out for favorable treatment.

The combination of closed markets, targeted investments, and long-term investments is being emulated by countries in Asia, Europe, and Latin America. This approach views the country as the unit of competition rather than the individual firm.

Competition among countries need not be bad. If the new mercantilism leads to greater investments in education, research, development, and training, the whole world will benefit. But the challenge to the United States is unmistakable. Even the largest American firm cannot hold their own against a Japanese conglomerate backed by the Japanese Government, the French industrial strategy, or a consortium of European governments.

In practice, American industry seldom faces a challenge from only one country. The textile and steel industries have faced ever growing pressure as one country after another has acquired its own production capacity. Now the challenge has moved on to the high technology industries. Japan is in the lead, but a host of others have joined the race.

America's Eroding Technological Lead.—The unquestioned technological dominance of the United States has disappeared. In one high technology field after another, American firms face stiff competition from Japan, Europe, and increasingly, the newly industrialized countries. Handicaps that meant little a few years ago now weigh heavily on American companies. Generally closed markets meant little when the United States had the best computer or the only microprocessor. Higher costs of capital could be offset by a technological edge. When that edge starts to erode, however, these

costs can be critical. When a product is indeed markedly better, a country can have the luxury of letting the world beat a path to its door. Sales can be made on favorable terms; financing at market rates. A large technological edge gives a country leverage in everything from foreign policy to establishing multilateral export controls on shipments to the Soviet bloc.

The erosion of technological leadership should force a change in the way the United States approaches the international economy. Trade rules matter in a way that they didn't even 5 or 10 years ago. The practice of governments targeting particular industries is now a threat to the economic future of high technology America. Our own export control system has become a burden. According to a recent study by the National Academy of Sciences (NAS) export controls now apply to 40 percent of all U.S. manufactured exports. The NAS study put the costs of the system at \$9 billion in lost export sales and almost 200,000 jobs. Virtually all of these losses were concentrated in the high tech sector.

We can no longer depend on half-hearted approaches to export competition or inadequate export financing. We can no longer rely on an export control system that fails to take account of the technological strides taken in other countries. *The critical challenge for controls on U.S. exports is the widespread availability of comparable products in other countries.*

In setting long-term American policy, we must look at these long-term trends as well as short-term macroeconomic policies. International competition and international markets can no longer be an afterthought of American policy. To meet the growing challenge of foreign competition we need sharp changes in our policies and a revolution in our thinking.

THE IMPORTANCE OF EXPORTS

In England, it used to be said that one had to ". . . export or die". America faces a subtler, more complicated challenge. America must export to prosper, to retain her position of economic leadership, and to move from one generation of technology to the next. To meet those obligations at home and commitments abroad, America must export.

Jobs.—Exports translate into jobs and economic opportunity. More than 2.6 million Americans depend on manufactured exports for employment. Roughly one in three acres is still planted for the export market. When the debt crisis dried up markets in Latin America, the United States lost billions of dollars in exports and hundreds of thousands of jobs.

Global Scale.—Increasingly, industries, particularly in the field of high technology must depend on competing in worldwide markets to make the most of their inventions. Exports allow these companies to achieve the full economies of production. Export sales bring the extra margin of profit that funds future research for the next generation of technology.

The Benefits of Research.—Innovation and invention have been a big part of the success of American agriculture and industry. In many cases, the research for a pest resistant plant or a new semiconductor spills over to strengthen other industries. Often these

are the same farms and factories that need global markets to prosper. Keeping them healthy and at home helps America make the most of its investments in research and specialized education.

Strategic Industries.—High-tech industries form a critical part of America's defense industrial base. The United States and its allies depend on a technological lead to help offset the Warsaw Pact's superiority in conventional forces. In more and more cases, innovations are occurring first in civilian industry and are subsequently applied to military hardware. That shift in the development of new products makes the health of high-tech, export dependent industries all the more important.

Our allies and other industrial powers will continue to push the frontiers of world technology forward. Their inventions strengthen the alliance and enrich the world. But the United States cannot be indifferent to who makes a breakthrough or where it is made. If the United States falls behind in certain keystone technologies, the ability of the United States to provide worldwide leadership will be reduced. At some point, America would shift from a position of industrial strength to industrial dependence. In that sense, America's ability to compete in global markets is critical to long-term national security.

The Discipline of International Markets.—The focus on international markets is a constant discipline that forces a country to make the most of its resources. Industry needs the best in equipment. A country can no longer afford to leave large numbers of citizens ill-prepared for a modern economy. The emphasis on exports will force the country to do more with what it has and to think harder about the future.

TRIAL BY TRADE: THE RECENT PAST

The U.S. trade deficit has grown rapidly over the past 5 years. From a level of roughly \$40 billion in 1981 and 1982, the deficit jumped to \$69 billion in 1983, to \$123 billion in 1984, to \$150 billion in 1985, and to a record \$170 billion in 1986. Some improvement has been predicted for 1987, but it has yet to be evidenced.

Even traditional areas of trade strength are in decline. The trade balance in high technology has fallen from a \$26 billion surplus in 1981 to \$2.6 billion deficit in 1987—the first high-tech trade deficit since data have been kept. During the 1970's, America became the bread-basket for the world, but the overvalued dollar and other factors have combined to weaken substantially the international position of American agriculture. As a result, the U.S. trade surplus in agriculture dropped from \$25 billion in 1981 to just \$3.5 billion in 1986.

The escalating trade deficits can no longer be offset by U.S. earnings on its overseas investments or the sale of internationally traded services. As the country's current account moved into the red, the country started down the path toward external debt. In 1981, the United States was the world's largest creditor nation. Four years later, the United States became a debtor for the first time since World War I. In 1986, the United States passed Brazil to become the world's largest debtor. By the end of 1986, America's external debt had reached \$260 billion. On into the future, the

United States will borrow more in a single year than Brazil's entire external debt. The IMF predicts that by the end of the decade the U.S. external debt will be in the range of \$800 billion. Some estimates put it higher still. At some point, the country will have to repay that debt. Goods and services that could have been put to use at home will have to be sent abroad.

The trade deficit has harmed the long-run ability of the United States to compete in international markets. With the burden of an overvalued dollar, many export-related firms have had difficulty retaining overseas markets. Firms whose ingenuity and steady productivity growth had assured them worldwide sales have been prices out of one market after another. Other firms have made investments offshore to find some shelter from an uncompetitive currency. The overvalued dollar has also allowed many foreign firms to establish a strong position in the American market. Foreign markets have been lost and many domestic industries have been seriously weakened.

In responding to the edict of the Speaker, the Foreign Affairs Committee has exercised its jurisdictional responsibilities in reviewing and recommending changes in U.S. international economic and export policies.

SUMMARY

EXPORT PROMOTION

U.S. and Foreign Commercial Service.—The Export Enhancement Act proposes a number of improvements in the export promotion area. The U.S. and Foreign Commercial Service is provided a statutory base. Established in 1980 by an executive order, the Commercial Service has officers at more than 125 posts in 66 countries, which account for more than 90 percent of U.S. exports. The Commercial Service is also given authority to establish a cooperator program. Modeled on the successful cooperator program of the Foreign Agricultural Service, the Commercial Service is now explicitly authorized to work together with private businesses, and state and local governments, to open new overseas markets for U.S. products. The Commercial Service is also directed to undertake a Pacific Rim Initiative aimed at opening Japanese, Korean, and Taiwanese markets to U.S. exports.

Further Integration of Domestic and Foreign Commercial Services.—The U.S. and Foreign Commercial Service is directed to undertake a study of the feasibility of further integrating the personnel and resources of the domestic field operation, International Trade Administration headquarters, and foreign field operations. The Committee is interested in reviewing the case for a U.S. commercial officer corps and examining options for enhancing motivation and effectiveness among Federal export promotion professionals.

Agricultural Exports.—The bill takes a number of steps in response to the sharp decline in agricultural exports, including directing the Secretary to conduct research that will improve the competitiveness of U.S. agriculture and monitoring the agricultural export strategies of our competitors.

Country Reports.—Several provisions in the bill require the gathering and dissemination of export intelligence. The bill requires the Secretary of State to prepare a comprehensive annual report on the economic policy and trade practices of each country with which the United States has an economic or trade relationship. The report will gather into one volume information on a wide variety of policies that can affect export markets—shifts in fiscal or monetary policies, exchange rate management, the growth in external debt, changes in the regulation of industry, the existence of trade barriers, the use of export subsidies, and the recognition of worker rights. The report is meant to be comprehensive and comprehensible to policymakers and businesspersons who must deal in the world market.

Export Promotion Data System.—The Secretary of Commerce is mandated to establish an information gathering and dissemination system to assist U.S. exporters in gaining access to information generated by the Federal Government and other sources.

Preshipment Inspection Regulation Program.—The bill establishes within the Department of Commerce a program that would certify and regulate the activities of companies that perform inspections of U.S. exports on behalf of foreign governments.

Report on Export Trading Companies.—The bill requires the Secretary of Commerce to submit an annual report to Congress on export trading companies, as well as on the Department's efforts to promote such companies and associations.

EXPORT CONTROLS

In the Export Administration Amendments Act of 1985 (Public Law 99-64), Congress substantially revised the Export Administration Act of 1979, which provides broad authority for the executive branch to control exports for purposes of national security, foreign policy, and domestic short supply. Since enactment of the Export Administration Amendments Act on July 12, 1985, the Committee on Foreign Affairs has exercised close oversight of the implementation of the provisions of the new act, conducting numerous hearings and briefings on various aspects of U.S. export control policy.

As a result of detailed oversight, the House Committee on Foreign Affairs proposed a number of additional amendments to the Export Administration Act in the omnibus trade bill in 1986. These amendments were incorporated in H.R. 4800, the Trade and International Economic Policy Reform Act of 1986, which passed the House but was not considered by the Senate.

Of particular concern to the committee in 1986 was the executive branch's limited implementation of the reforms adopted in 1979 and 1985 concerning national security export controls. Despite the clear congressional mandate for a narrowing of the scope of national security controls so that limited funds and personnel can be concentrated on exports of highly critical items, the executive branch had failed to carry out congressional intent in removing unnecessary controls and reducing the size and scope of the control list. It was due in large part to the executive branch's failure to implement the provisions of the act that compelled the committee to propose further amendments legislatively directing decontrol efforts.

In 1987 the need for a refocusing of the export control system is even greater. Essential to the effective control of the most advanced Western technologies and, therefore essential to the protection of U.S. national security, is the decontrol of low technology items. Growing concerns have been voiced over the past year about the impact of excessive national security export controls on America's competitive position generally, and on the U.S. high-tech industrial base specifically. In January 1987, the National Academy of Sciences released "Balancing the National Interest: U.S. National Security Export Controls and Global Economic Competition", a comprehensive study of America's export control system. The panel, which consisted of distinguished former national security officials such as Melvin Laird, B. R. Inman, and the chairman Lew Allen, found that the current complex and confusing system attempts to control too much, fails to come to terms with the erosion of America's technological edge, and is often stalled by bureaucratic disagreements. The panel's finding that "U.S. national security controls are not generally perceived as rational, credible, and predictable by many of the nations and commercial interests whose active participation is required for an effective system" is a disturbing assessment in terms of both U.S. military security and America's economic vitality.

Over the past year, there has also been a growing realization within the executive branch of the importance of economic vitality as a vital component of military security, and the need for export control reform. A number of proposed changes in the Export Administration Act were contained in H.R. 1155, the executive branch's 1987 proposed trade bill. In addition, the Commerce Department has initiated several regulatory changes that would reduce some of the current administrative burdens on U.S. exporters. The committee is pleased that the executive branch's initiatives parallel some of those contained in the Trade and International Economic Policy Reform Act of 1986. In crafting its legislation for 1987, the committee took careful note of the executive branch's proposals.

To strengthen and streamline the application of national security controls, the Export Enhancement Act of 1987 proposes several important changes in the Export Administration Act.

List Reduction.—The Secretary of Commerce should seek to reduce the present control list by approximately 40 percent. As partial steps to meeting the 40 percent goal, certain categories of items are specified for removal from the list: low-technology goods that do not require the approval of the Coordinating Committee for Multilateral Export Controls (COCOM) for shipment to controlled countries; medical instruments and equipment; and unilaterally-controlled goods. Such reduction in the size and scope of the control list will allow limited government resources to focus on truly critical items, thereby enhancing U.S. security interests.

Licensing Requirements.—Licensing of low technology exports to Western destinations constitutes approximately two-thirds of the 120,000 export license applications processed each year. Such applications are routinely approved but only after weeks and months of delay. In continuing to require individual licenses for these low-level, widely-available products to noncontrolled countries, limited

U.S. Government resources are diverted from the review of highly critical items. Consistent with Congress' repeated direction to the executive branch to focus controls on truly strategic items, the bill eliminates licensing requirements on low technology exports to the Free World, and on exports of goods to COCOM countries. The committee believes such a restructuring of the licensing system will improve the effectiveness of export controls in protecting national security, enable greater cooperation from Western countries in controlling strategic items, and reduce burdensome licensing requirements on U.S. exporters.

Reexport Controls.—As a further reduction in unnecessary licensing requirements on exports to U.S. allies, the bill eliminates the requirement for reexport licenses among COCOM countries. In addition, no reexport license would be required for U.S. parts and components incorporated in a foreign-made product, if they constituted less than 25 percent of the value of the final good.

Foreign Availability.—Widespread foreign availability of technology and sophisticated products is a central fact of the world economy. In 1979, the Congress took the commonsense position that if a particular product is widely available outside the United States and not subject to export controls, then the United States has two choices: it can persuade the other country or countries to control the product or it can eliminate its own controls. Despite the clear intent of Congress, the existing foreign availability provisions have had virtually no impact on the size or scope of the control list.

To make foreign availability a more effective component of the export control program, the committee has proposed a number of changes to existing law. First, from the day of filing to final removal of a good from the COCOM International Control List, the executive branch will have a maximum of 8 months to complete its work. The bill leaves unaffected the current provision for 6 months of negotiations (with up to a 12-month extension) to persuade the country or countries that are the source of foreign availability to establish controls.

Second, the executive branch has narrowly interpreted foreign availability to require proof that a good is already located in the Soviet bloc. The bill clarifies that uncontrolled or ineffectively-controlled availability in Free World countries also constitutes foreign availability under the law.

Third, the committee applies the concept of foreign availability to expedite licensing of U.S. goods to Free World countries. Under current law, foreign availability is intended to result in the removal of items from the U.S. and COCOM lists of controlled goods. The committee bill would require expedited licensing of products found to be widely available in Free World countries, while at the same time the exporter can also pursue a decontrol action. In addition, where the executive branch has negotiated controls on a product with a particular country, the American exporter would no longer need a license to export that product to that particular country.

Review of Licenses.—The bill clarifies the responsibilities of the various departments in the export control process, reaffirming the primacy of the Department of Commerce in export control matters. The Department of Defense's role in reviewing licenses for exports

to controlled countries is reaffirmed, and a mechanism for the timely resolution of licensing disputes is specified.

Negotiations with COCOM.—The bill enumerates several negotiating objectives for the United States to pursue in COCOM. The bill also requires the President to include representatives of U.S. industry with relevant expertise as advisors to the U.S. delegation to COCOM for the purposes of list review.

Export Administration Reform Commission.—The President is required to appoint a commission to examine the current export control system and to report its recommendations for a more effective and efficient system.

Numerous other export control provisions are included in the bill to: streamline U.S. licensing procedures; liberalize trade with the People's Republic of China consistent with national security interests; enhance enforcement capabilities; prohibit the imposition of fees for export license applications; and strengthen industry participation in the formulation of export control policy.

DEBT, DEVELOPMENT AND WORLD GROWTH

In the industrial world, slow growth has contributed significantly to existing tensions within the international trading system. It has also had a depressing effect on U.S. exports and has been an important cause of record U.S. trade deficits. In much of the developing world, the burden of external debt continues to cast a cloud over future growth and the further development of struggling democracies.

International Negotiations.—The bill requires the President, the Secretary of State, and the Secretary of the Treasury to pursue negotiations to coordinate macroeconomic policies and promote growth in developed as well as developing countries. They are also directed to discourage developing countries from an excessive reliance on exports for growth.

Trade Liberalization in Developing Countries.—The bill includes sense of the Congress language linking future growth and development to expanding world trade and increased market access for all countries. The bill also establishes that foreign assistance should help support long-term trade liberalization in the developing world.

Overseas Private Investment Corporation.—The bill includes several provisions to improve the economic performance of debt-burdened countries. The Overseas Private Investment Corporation provides political risk insurance and loan guarantees, which facilitates U.S. investments and help increase the flow of capital to the developing world. Unlike loans, direct investments do not add to yearly interest and principal payments of debt-burdened countries. The bill raises OPIC's annual level for issuance of investment guarantees from the current operating ceiling of \$150 million to \$200 million, and lifts the cap on overall investment guarantee contingent liability from \$750 million to \$1 billion. Although the annual ceiling must be approved by the Appropriations Committees, it has no impact on the Federal budget.

OPIC also administers a small direct investment facility to assist private sector growth in the developing world. The investment fund is financed from OPIC's earnings. The bill increases the funds

available for direct investment financing from the fiscal 1986 level of \$15 million to \$25 million. Like the investment guarantees, the operating level of the direct investment fund must be approved by the Appropriations Committees but has no impact on the Federal deficit.

Trade and Development Program.—The Trade and Development Program funds feasibility studies for capital projects in developing countries. A recent independent audit of the program found that since 1980, TDP's obligation of \$75 million for feasibility studies has generated actual exports of \$605 million and estimated future exports of nearly \$7 billion. The bill provides for a major reorganization of the Trade and Development Program (TDP), establishing it as an independent component agency within the International Development Cooperation Agency, and consolidating within TDP trade-related aid programs. The scope of TDP's activities is expanded to include support for training and management and the Program is designated the lead Federal agency for information on export opportunities related to bilateral development projects. TDP assumes responsibility from the agency for International Development (AID) for administering and implementing the mixed credits program created by the 1983 Trade and Development Enhancement Act, including authority to participate fully in National Advisory Council meetings on mixed credits and authority to draw upon economic support funds to finance tied aid credits when the Director of TDP, the Secretary of State and the AID Administrator agree.

Countertrade.—U.S. policy has long discouraged commercial countertrade or barter. But faced with the pressures to make international debt payments and for other reasons, developing countries have increasingly turned to countertrade to meet some of their import needs. The committee believes a thorough review of this policy is warranted by the debt crisis and recurring reports that major U.S. competitors are effectively using countertrade to improve their position in developing country markets. The bill establishes an interagency group, chaired by the Secretary of Commerce, whose purpose is to monitor foreign nations' countertrade policies and practices and to recommend ways in which countertrade might enhance U.S. development aid programs.

PROTECTION OF UNITED STATES BUSINESS INTERESTS ABROAD

House Rule X, clause 1, charges the Foreign Affairs Committee with jurisdictional responsibility to protect U.S. business interests abroad. In exercising that responsibility as part of the Export Enhancement Act of 1987, the committee has focused on the protection of intellectual property rights abroad.

Intellectual Property.—The United States continues to be a leader in the generation of new ideas and new designs—intellectual property that is generally protected through copyrights and patents. Many countries, however, provide little or no protection for U.S. intellectual property rights. As a result, there is widespread piracy of U.S. products. Billions of dollars in potential licensing fees are at stake. Many more billions of dollars in potential sales are lost to counterfeited products.

The bill contains sense of the Congress language urging the Secretary of State, the U.S. Trade Representative, and U.S. Ambassadors to make the protection of intellectual property rights a priority in bilateral and multilateral talks. Where countries are unwilling to improve their protection of intellectual property rights, the President should take immediate action. In addition, the United States is urged to incorporate enforcement mechanisms in international intellectual property codes including civil remedies under domestic intellectual property and trade laws.

The bill makes clear the importance of setting international standards for the protection of intellectual property rights. The Secretary of State is encouraged to foster cooperation between international technical organizations, such as the World Intellectual Property Organization and the General Agreement on Tariffs and Trade, to help develop effective standards.

The bill also urges the Agency for International Development to provide training for developing country officials responsible for the protection of copyrights, patents, and trademarks, through its development assistance programs. Other parts of the U.S. Government have considerable expertise in protecting intellectual property rights—particularly the office of Copyrights and the Patent and Trademark Office. In developing its training programs, the Agency for International Development should cooperate with these offices.

Foreign Business Practices.—The bill amends section 30A of the Securities and Exchange Act of 1934 and makes parallel changes in section 104 of the Foreign Corrupt Practices Act of 1977 to modify standards of culpability in current law and to clarify the definition of illegal payments by issuers and domestic concerns.

The “reason to know” provision is replaced with a split standard of culpability. In addition to willful bribes, “knowledge” of bribes is a criminal offense punishable by up to \$2 million for corporations and \$100,000 for individuals. “Reckless disregard” of a substantial risk that a third party will make a bribe is punishable as a civil offense, with a possible fine of up to \$10,000.

Under existing law, facilitating payments can only be made to individuals whose jobs are clerical or ministerial in nature. The bill permits payments for routine purposes and focuses on the purpose for the payment rather than the individual involved.

The President is to pursue negotiation of an international agreement on illegal payments and to report to Congress on the results within 1 year following enactment of the law.

MISCELLANEOUS PROVISIONS

Office of Alien Property.—In the course of World War II, the United States seized property that belonged to our adversaries. The Office of Alien Property was established to administer and eventually, to dispose of the property. The work of the Office has been essentially completed. To effect budgetary savings, the bill amends the Trading With the Enemy Act to eliminate the office. It also directs the Attorney General to transfer the assets of the office to the U.S. Treasury.

Limitation on Exercise of Emergency Authorities.—The international Emergency Economic Powers Act, enacted in 1977, grants

the President the authority to impose an economic embargo on a country in times of national emergency. Previously, the President relied on the Trading With the Enemy Act for such authorities, but since 1977 that Act has been restricted to wartime use. In imposing embargoes on both Nicaragua and Libya, the executive branch exempted from the embargoes the importation into the United States of informational material such as books, records, and films. The bill applies an identical policy to all existing and future embargoes under the Trading With the Enemy Act and the International Emergency Economic Powers Act.

Relations with Mexico.—The President is directed to establish an interagency group, comprised of the Secretaries of State, Commerce, and Treasury, the Attorney General, and the U.S. Trade Representative, to coordinate United States-Mexican economic relations.

The bill also includes a sense of the Congress resolution that a bilateral economic summit should take place between the Governments of the United States and Mexico.

SECTION-BY-SECTION ANALYSIS

Section 301—Short title

This section cites this title as the “Export Enhancement Act of 1987.”

Section 302—Findings and purposes

This section sets forth a series of congressional findings related to the U.S. trade deficit, U.S. trade policy, and the importance of expanding U.S. exports through improved Federal programs and other means. Section 302 also states the purposes of this title, including restoring and broadening overseas markets for U.S. exports.

SUBTITLE A—EXPORT PROMOTION

Section 311—United States and foreign commercial service

Section 311(a) gives the United States and Foreign Commercial Service (the “Service”) a statutory basis, and establishes the position of Director General, to be held by an Assistant Secretary of Commerce. This provision stipulates the Service shall conduct its operation in a manner consistent with U.S. foreign policy objectives and subject to section 207 of the Foreign Service Act of 1980, and subject to section 103 of the Diplomatic Security Act.

The foreign component of the Service was established in 1980 by executive order as part of Reorganization Plan Number Three. Under this plan, Foreign Service officers who were performing primarily commercial functions at the time were transferred to the Department of Commerce. In 1982, an internal reorganization at the Commerce Department combined the management of domestic and foreign operations. Thus, as it is currently constituted, the Service is a creation of the executive branch, its only statutory authority being the authorization to use the Foreign Service personnel system. Without a legislative mandate, the Service could be eliminated or drastically altered at any time without congressional

consent. The Service plays a vital role in promoting U.S. exports, and should enjoy the full benefit of a statutory base. It should be emphasized that, in establishing the Service statutorily, the committee is not creating a new agency, but is ensuring its stable for a highly valued agency already in existence.

In providing this statutory base, the committee reaffirms its support for Federal Government export promotion programs. While there is general recognition of the benefits to be derived from increased U.S. exports, there is less appreciation of the practical difficulties faced by small- and medium-sized firms in establishing international business. Government export promotion programs are unique in their ability to assist firms in developing the specialized knowledge and skills required to become successful exporters.

This section reaffirms the authority and responsibilities of the United States Chief of Mission abroad. Although this legislation provides specific authority to the Secretary of Commerce with regard to the U.S. and Foreign Commercial Service, it is important to note that it is the principal officer at each U.S. mission who is ultimately responsible for the direction, coordination, and supervision of all Government employees at the post and in that country, other than those under the command of a U.S. area military commander. U.S. Government employees overseas are, in turn, directed to comply with the directives of the chief of mission.

The need to emphasize the "country team" approach (with the principal officer as head of a single mission encompassing a variety of Government agencies and functions) has been highlighted in recent years by increased budget consciousness and the need to respond to the growing threat of terrorism abroad. As the individual who oversees the operation of all Government programs in a country, the Ambassador is in a unique position to evaluate the special staffing needs at a particular post and to make such recommendations to the Secretary of State.

As the Secretary of State's representative abroad, the Chief of Mission is responsible for the direction and management of the Government's civilian overseas security program. The Congress last year approved legislation authorizing a major program to construct secure diplomatic facilities abroad and to consolidate the U.S. presence overseas in secure facilities, it is vital that the Secretary evaluate and determine overall U.S. Government personnel levels abroad, as well as the location of U.S. Government overseas offices in terms of need, cost, and ability to provide protection.

While recognizing the central role of the Chief of Mission, the committee does not intend to place any restrictions on the ability of Commercial Officers to communicate directly with the Director General of the Commercial Service. In facilitating business transactions, timely reporting of information is crucial, and communications between overseas offices and the headquarters of the Service should be as open as possible.

Section 311(b) states the purpose of the Service is to promote and protect U.S. business interests abroad. In pursuit of this goal, the Service shall emphasize the promotion of United States goods and services exports, and assist other agencies whose purposes are similar.

The executive order that established the Service did not specify the purpose of the Service. One result is that overseas officers have often been treated as general adjuncts of both the Commerce and State Departments. Some have been required to perform duties normally assigned to State Department economic officers, such as export control enforcement. This provision clarifies the role of the Service, making its primary mandate the promotion of U.S. exports. Commercial officers may continue to perform other duties as the needs of the mission dictate, but the officers' primary duties remain those set out in this section.

In view of the more active role State and local government agencies, export management companies, and private non-profit organizations are playing in export promotion and of the budgetary constraints the Service is likely to face in the foreseeable future, the Service should continue to concentrate on those activities for which it is uniquely qualified as a Federal agency.

Section 311(c) establishes a headquarter office, district offices, and foreign offices of the Service; provides for cooperation between the Commerce and State Departments in establishing the foreign offices; and directs that the senior Commercial Officer in each mission shall be considered the senior commercial representative in that country.

By granting Commercial Officers a clear mandate and status, the committee seeks to remove any ambiguity about the role of the Commercial Officers in U.S. missions, but without impinging on the rights of the Ambassador to direct the personnel in the mission.

This section is constructed with the understanding that privileges and immunities are granted to all U.S. personnel at diplomatic missions abroad under the rules of the Vienna Convention on Privileges and Immunities. It is not the intent of this section that Commercial Officers be granted privileges and immunities beyond those to which their responsibilities would normally entitle them under the Convention. This section is intended to ensure that Commercial Officers are accorded equal treatment in the granting of privileges and immunities, consistent with their role and function in the U.S. mission.

Section 311(d) directs the Secretary of State, upon request of the Secretary of Commerce, to confer the title of Minister-Counselor upon not more than eight senior Foreign Commercial Service Officers. It is anticipated the Minister-Counselor title will be conferred on the senior officers in the following nations: Canada, Federal Republic of Germany, France, Italy, Japan, Mexico, People's Republic of China, and the United Kingdom. Conferring the Minister-Counselor title upon senior Commercial Service Officers at certain key posts will facilitate their access to officials important to U.S. commercial interests. It also encourages the Secretary of State to designate Commercial Officers as Consuls General in those U.S. Consulates whose activities are primarily commercial.

Section 311(e) directs the President within 1 year after enactment to submit to Congress a report evaluating current Commerce Department export promotion services and recommending improvements and additions in these services. In its oversight of the Service, the committee has noted that many of the critiques of the Serv-

ice have dealt with its organization, structure, or personnel system. Little has been done to evaluate the appropriateness or effectiveness of the actual services. It is expected that in preparing this report, the President will draw on the expertise of all Federal agencies, such advisory bodies as the President's Export Council, State and local governments, and interested persons in the private sector.

Section 311(f) encourages the Secretary of Commerce to establish a system using State export promotion agencies or private export and trade promotion companies and groups to distribute information produced by the Service to areas in which no district offices of the Service are located. State export promotion agencies (known as "multiplier organizations") can tie into Commerce Department data bases, but cannot necessarily sell the products available from the Service. There are a number of areas in the country for which the nearest district office is several hundred miles away, or in another state. While it is not practical to locate district offices in all regions of the country, all regions should have easy access to the full range of market information and opportunities. It is expected that costs and services would not vary significantly between State agencies and district offices, or other mechanisms which the Secretary may choose to utilize.

Section 311(g) requires the Inspector General of the Commerce Department to perform not less than once every 3 years general audits of the Service. Among other subjects, the audits are to evaluate the domestic and foreign personnel placement and transfer policies, and the personnel system and its management. The Service has done an admirable job of reorganization in the past few years. Because of its relative newness, however, regular internal oversight is necessary to ensure that the Service is making the best use of its limited resources. The committee expects the audits will review the concerns raised by the Committee on Government Operations and the GAO regarding the personnel system and its management. Overseas audits are quite costly, and the Inspector General's office is encouraged to perform these audits in conjunction with other business it may have in foreign countries.

Section 311(h) directs the Secretary of Commerce to report by January 1, 1988, to the Foreign Affairs Committee and the appropriate committee of the Senate, on the feasibility, desirability, progress to date, present status, and 5-year outlook of the comprehensive integration of the functions and personnel of the foreign and the domestic export promotion operations of the Department of Commerce's International Trade Administration. The committee believes that the effectiveness and utility of the Service in promoting U.S. exports and in protecting U.S. business interests abroad would be enhanced by a rotation of domestic and foreign field personnel. While one objective of Commerce district offices is to provide continuity in service to the local community, in the Committee's view, the end-users of the Department of Commerce's export promotion services would benefit from more frequent rotation in tours among Foreign Commercial Service officers, senior district office trade specialists, and senior trade specialists from International Trade Administration headquarters.

The committee expects the report to include comments on the viability of an integrated U.S. Commercial Officer Corps; a discussion of the integration options available to the Department, including an evaluation of the costs and benefits of each option; an assessment of integration approaches taken by the more effective foreign commercial services of U.S. competitors; and a sampling of views on integration from the business community, including members of the District Export Councils.

Section 311(i) provides for the salary of the Assistant Secretary and Director General of the Service.

Section 311(j) sets forth definitions. It should be emphasized that the purpose of the United States and Foreign Commercial Services (US&FCS) is to assist U.S. individuals and firms presently engaged in exporting as well as to encourage other individuals and firms to enter export trade.

The committee notes that another important mechanism for export promotion is the foreign trade zone (FTZ), whose fuller utilization could increase U.S. exports and encourage American manufacturers to retain domestic operations.

Section 312—Diplomatic missions

Section 312(a) directs the Secretaries of Commerce and State to review periodically the adequacy of the number of personnel assigned to U.S. diplomatic missions who are engaged in economic or commercial duties, and to take the steps necessary to increase the number of personnel whenever the number is deemed insufficient.

Subsection (b) requires each chief of mission in a country which is an important U.S. trading partner and which has the potential for significant U.S. export opportunities to report annually to the President and to Congress on the mission's strategy for expanding U.S. exports and its efforts to assist American businesses in broadening export sales and competing in the market relative to other foreign competitors.

Section 313—Commercial service officers and development banks

Section 313(a) authorizes the Secretary of Commerce, in consultation with the Secretary of Treasury, to appoint a U.S. and Foreign Commercial Service officer to serve on a full- or part-time basis with the United States Executive Director to each of the four multilateral development banks in which the United States participates.

Subsection (b) provides that such officers are to assist the U.S. Executive Directors of the respective banks in promoting U.S. exports for projects supported by the banks, assuring U.S. businesses are fully informed of bidding opportunities resulting from projects supported by the banks, and assisting U.S. businesses with such bidding opportunities. Subsection (c) clarifies that these are functions of the Executive Directors.

A 1986 report by the Chamber of Commerce found that the four multilateral development banks in which the U.S. participates annually finance about \$15 billion in procurement, but that only 1-3 percent of American manufacturing exporters actively compete for procurement resulting from projects supported by the banks. Although U.S. firms sold about \$7 billion to developing nations

through development bank procurement programs during the last 5 years, other nations like Japan and West Germany have aggressively sought such procurement and receive a proportionately larger share of procurement than U.S. firms compared to their contributions to the banks. The assignment of Commercial Service officers to monitor procurement and assist U.S. businesses in competing for bids will improve the awareness of such export opportunities and is expected to lead to more successful competition by U.S. firms. The committee intends that the Commercial Service officers assigned to the U.S. missions to the banks will cooperate fully with the Trade and Development Program in pursuing feasibility study opportunities offered by projects supported by the banks.

Section 314—Market development cooperator program and trade shows

Section 314 amends Title II of the Export Administration Amendments Act of 1985 to add a new Section 202, the Market Development Cooperator Program, and a new Section 203, Trade Shows. The Secretary of Commerce is authorized under subsection (a) of new section 202 to establish a Market Development Cooperator Program to identify market opportunities; introduce new products and processes; eliminate trade and technical barriers; and improve economic and trade relations between the United States and other nations. The bill provides that the Secretary may enter into contracts with nonprofit industry organizations, trade associations, private industry firms or groups of firms in cases where none of these other entities represents that industry sector, and State government departments of trade. Eligibility for the program may also extend to institutions for higher education which have established international trade development centers. Costs of activities under such contracts shall be shared equitably among the Commerce Department, the cooperator involved, and, whenever appropriate, foreign businesses. The Commerce Department is directed to support direct costs while the cooperator is directed to support indirect costs.

As part of the Market Development Cooperator Program, the Secretary is directed to establish a partnership program with cooperators. Under this subprogram, a cooperator may detail skilled market research analysts knowledgeable in computer data bases to United States and Foreign Commercial Service posts for a period of 1 to 2 years. The private sector would assume the salary and living expenses of such individuals; the Commerce Department would fund their transportation and housing.

The Cooperator Program is modeled on the highly successful Market Development Cooperator Program established by the Foreign Agricultural Service (FAS) in the late 1950's to develop overseas commercial market opportunities for American agricultural exports. FAS presently contributes about \$40 million annually to support more than 50 cooperators. The Commerce Department and the American Electronics Association currently have a grant/cooperative agreement which supports a Japan (Tokyo) office for the U.S. electronics industry. Served by a small American and Japanese staff, the Japan office provides market information to United States electronics companies on both sides of the Pacific; represents

the U.S. electronics industry in Japanese Government programs and to the media; provides U.S. industry input to U.S. Government officials in bilateral trade discussions; assists in representing U.S. industry interests in technical standard setting; and offers a variety of information services.

The committee views this type of program as an extremely productive use of scarce resources: it is very cost-effective; it offers a sharper focus on long-term export market development than do such activities as trade fairs; and it serves as a mechanism for improving government-industry relations. The success of the FAS Cooperator Program and of the Commerce Department-AEA Japan office pilot program could, in the committee's view, be replicated by other American industry sectors where Federal Government support could prove to be a deciding factor in opening new markets. Participation in the program by private sector entities should be accorded priority; participation by State trade departments and similar governmental entities should be limited to those markets where Federal Government participation is deemed to be crucial to the success of the program.

It is the committee's expectation that the private sector partnership program will broaden the potential benefits to all participants in the Cooperator Program. While the Commercial Information Management System (CIMS) has great promise, it will only be as effective as the market information fed into its data base. During this period of government-wide budgetary constraints, the US&FCS would receive a professional market research analyst at a fraction of the cost of hiring new government personnel, and the cooperator donating the analyst would acquire invaluable contacts and expertise in the foreign market to which its employee is detailed. The analyst would benefit from career enhancement from the contacts made and the experience gained from the overseas assignment. The analyst's value to any employer would rise commensurately.

New Section 203 of the Export Administration Amendments Act of 1985 (as added by Section 314(a) of the bill) also directs the Secretary of Commerce to provide support for trade shows in the United States which bring together American firms with foreign companies and governments seeking to buy U.S. goods and services. The Secretary should emphasize participation by small businesses and companies new-to-export in such trade shows so that they would be introduced to and familiarized with export opportunities. Particular emphasis should be given to companies which might not have the capability to attend trade shows overseas. The Committee seeks to promote the efforts of domestic organizations at the local level, such as trade associations, foreign trade zones and other private firms, to stimulate American exports. At the present time the Commerce Department supports only a few domestic trade shows each year. The committee believes the Department of Commerce should expand the number of domestic shows it assists as well as increase its technical, organizational, and operational assistance for such trade shows.

Section 314(b) contains conforming amendments. Subsection (c) authorizes an increase of \$6 million in fiscal year 1988 funds for export promotion programs under title II of the Export Administration Amendments Act of 1985. The \$6 million increase is to be used

only for the Market Development Cooperator Program and for trade shows. Moreover, the committee intends that not less than \$4 million will be used by the Department for implementing the Cooperator Program.

Section 315—Establishment of US&FCS Pacific rim initiative

Section 315(a) directs the Secretary of Commerce to establish a pilot program in the United States and Foreign Commercial Service to encourage the export of U.S. goods and services to Japan, South Korea and Taiwan. Under the pilot program the Commercial Service is to present to the appropriate authorities in Japan, the Republic of Korea, and Taiwan lists of U.S. goods and services which are not being exported to those markets but which could likely be exported under competitive market conditions. The US&FCS would derive the lists by identifying U.S. firms providing such goods and services and notifying them of the corresponding export opportunities. The Secretary of Commerce would set semi-annual goals for the number of products and services to be included in these lists and would report semiannually to the Committees on Foreign Affairs and Foreign Relations on the goals and results.

In 1986, the United States had a combined trade deficit of over \$80 billion with Japan, Korea, and Taiwan. Each of these governments professes a desire to increase the sale of American products in its markets; however each has expressed frustration that when steps are taken to open markets, foreign rather than American firms benefit. American businessmen face a more difficult and unfamiliar climate in these markets than in Europe or Canada. The special characteristics of these three economies tend to create an important disincentive to exporters relative to other countries at a time when a major U.S. export drive in this region must materialize if the world's trade imbalances are to adjust smoothly. Given the importance of reducing these bilateral imbalances and the high degree of government involvement in these economies, the committee is of the view that the U.S. Government itself should play a more active role in promoting exports.

In effect, the U.S. Government should learn from their export strategies by actively seeking to develop the Far East export potential of American firms. By presenting foreign governments with a list of products and services sold by such companies that could likely be exported under competitive market conditions, the US&FCS could provide concrete evidence to foreign governments of the way in which import liberalization could reduce trade imbalances and frictions with the United States.

Section 316—Commercial personnel at the American Institute of Taiwan

This section amends section 6 of the Taiwan Relations Act to direct the American Institute of Taiwan to employ personnel to perform duties similar to those performed by Commercial Service officers. The number of individuals so employed is to be commensurate with the number of Commercial Service officers permanently assigned to the U.S. diplomatic mission to South Korea.

In 1986, Taiwan ran a bilateral trade surplus with the United States of more than \$15 billion. With a per capita GNP of over

\$3,000 and foreign reserves of over \$45 billion, Taiwan should be a focus of Federal export promotion efforts. However, relative to other posts of comparable commercial importance, the American Institute of Taiwan is significantly understaffed with commercial personnel. The American Institute of Taiwan has only three personnel performing commercial duties. The U.S. Embassy in South Korea, by comparison, has six. In adopting the language in Section 316, the committee is expressing its desire to have resources for commercial representation in Taiwan increased to a level comparable to that found in diplomatic missions in countries of similar commercial significance to the United States.

Section 317—Printing at overseas locations

Section 317(a) codifies current practice of the Commercial Service operating under a waiver of the Government Printing Office requirement that GPO print all documents to be distributed abroad. Such documents as brochures and newsletters are typically prepared in connection with trade promotion events. The committee believes it would be more efficient not to require printing in the United States and then shipment of the documents to the site of the trade event overseas.

Section 317(b) authorizes the Secretary of Commerce to accept advertisements in its overseas publications and to retain the proceeds for use in additional publishing activities. The Commercial Service presently has the authority to accept advertising and to use the proceeds for programmatic purposes. By permitting the Commercial Service to retain the proceeds, the Committee intends that the Commercial Service will expand and upgrade its promotional publishing activities. The Committee expects that the fees generated by document sales will be used only for further export promotion document activities and will not be diverted to any other purpose.

Section 318—Agricultural trade policy

This section recognizes the importance of agricultural exports to the economy of the United States and to American farmers in particular. Subsection (a) reiterates the U.S. agricultural trade policy declaration set forth in section 1121 of the Food Security Act of 1985, including a commitment to free and fair global trade in agricultural commodities and their products.

Section 318(b) amends section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480) to clarify that U.S. wood and processed wood products are eligible for use in development projects funded through Public Law 480-generated local currency. This provision also amends section 108(i) of Public Law 480 to clarify that the construction of low- and medium-income housing and shelter should be considered as a private sector development activity and private enterprise investment for purposes of carrying out activities pursuant to section 1111 (Private Enterprise Promotion) of the 1985 Food Security Act.

Subsection (c) directs that wood and processed wood products shall be eligible for the Commodity Credit Corporation's short- and intermediate-term export credit guarantee programs (known as GSM 102 and GSM 103) administered by the Foreign Agricultural

Service. The committee intends that the term "wood and processed wood products" includes such items as logs, lumber (such as boards, timbers, millwork, moulding, flooring, and siding), veneer, panel products (such as plywood, particleboard and fiberboard), utility/telephone poles, other poles and posts, railroad ties, wood pulp, matchsticks and toothpicks. The Foreign Agricultural Service Administrator testified before the Subcommittee on International Economic Policy and Trade on March 10, 1987, that wood and processed wood products must be designated specifically in statute for eligibility in the GSM 102 and 103 programs in order to resolve uncertainty about making such export credit guarantee programs available for wood and processed wood products. The committee notes that the current suspension of GSM 102 and 103 programs for wood and processed wood products has cost U.S. forest products exporters at least \$30 million in lost exports.

Subsection (d) authorizes the Secretary of Agriculture to expand the number of agricultural officers overseas as well as the number of posts to which such officers are assigned, and to assist State government departments of agriculture in supporting the export efforts of private companies.

Subsection (e) directs the Secretary of State to grant, upon the request of the Secretary of Agriculture, the diplomatic title of Minister-Counselor to the senior Foreign Agricultural Service officer assigned to any U.S. mission abroad, provided that the number of officers holding this title shall not exceed eight at any one time. This section assures that the number of Foreign Agricultural Service officers designated to hold the title Minister-Counselor is comparable to the number of Foreign Commercial Service officers designated to hold this title. The committee reiterates that this title is often necessary for Foreign Agricultural Service officers to gain access to appropriate levels of government in host countries.

Section 319—Export enhancement program

This provision amends section 1127(b) of the Food Security Act of 1985 to direct the Secretary of Agriculture to give priority in the use of the Export Enhancement Program to all interested foreign purchasers who have traditionally purchased U.S. agricultural commodities and products and who continue or begin to purchase such commodities and products on an annual basis in quantities equal to or greater than the level of purchases in a previous representative period. The Secretary is also required to report every 30 days to the Committees on Foreign Affairs and Agriculture of the House of Representatives and the Committee on Agriculture of the Senate a current list of countries participating in the program

Section 320—Commodities for cooperators

Section 320 authorizes the Secretary of Agriculture to make available to market development cooperator organizations commodities owned by the Commodity Credit Corporation for the purpose of expanding overseas markets for U.S. agricultural commodities and products.

Section 321—Long-term agricultural trade strategy reports

This section requires the Secretary of Agriculture to prepare, and the President to submit to Congress with the budget each year, an annual strategy report establishing recommended policy and spending goals for U.S. agricultural trade and exports for 1-, 5-, and 10-year periods.

Section 322—Establishment of an office to monitor trade practices

Subsection (a) requires the Secretary of Agriculture to establish an office within the Department of Agriculture to monitor and study foreign nations' agricultural export promotion programs. Subsection (b) directs the office to submit to the Secretary quarterly reports on its findings. Subsection (c) directs the Secretary to submit to the Committees on Foreign Affairs, Agriculture, and Ways and Means of the House and the Committees on Agriculture, Nutrition and Forestry, Foreign Relations, and Finance of the Senate findings and recommendations on the level of subsidies provided by other nations and the United States to promote agricultural exports. The Secretary's report is to be transmitted 15 days after receipt of the report from the office.

Section 323—Findings and sense of the Congress with respect to the European Community

This section expresses the sense of the Congress in opposition to the European Community's proposed tax on imported vegetable and marine fats and oils. The provision finds that such tariff would contravene the Community's obligations under the General Agreement on Tariffs and Trade and would significantly damage U.S. exporters. The section directs the President to oppose firmly the proposed tax and to take strong and immediate countermeasures should such a tax be implemented.

The European Community proposed on February 16, 1987, a consumption tax on fats and oils. On the surface this action may not appear to be an import tax, but it would in fact indirectly serve as an import tariff. The tax would effectively double the price of seed oils, such as soybean oil, in the European Community, and the revenues generated, estimated at some \$2.3 billion, would go toward large subsidies for European oilseed producers.

The U.S. exports roughly \$2.4 billion in soybeans to the European Community annually. The European Community is the United States largest export market for soybeans, comprising nearly one-half of all U.S. soybean exports. In addition to constituting a breach of the European Community commitment to a zero duty on oilseeds and meals, the proposed tax would have a serious, negative impact on U.S. exports to the Community.

Section 324—Export-Import Bank

This section reaffirms the importance the Congress attaches to the availability of adequate and flexible export financing through the Export-Import Bank. Pursuant to its special oversight jurisdiction over the Export-Import Bank, the committee is concerned that the actual level of support provided by the Bank to U.S. exporters has decreased significantly since 1980, including a reduction from

\$5.4 billion in direct loans in fiscal year 1981 to about \$577 million in fiscal year 1986. The value of nonagricultural exports supported by the Bank, in relation to all such U.S. exports, has declined consistently during the last 5 years, from about 13 percent in 1980 to approximately 5 percent in 1986.

Section 325—Country reports on economic policy and trade practices

Section 325 directs the Secretary of State to prepare and transmit annually to the Committees on Foreign Affairs and Ways and Means of the House and their counterpart committees in the Senate a detailed report regarding the economic policy and trade practices of each country with which the United States has an economic or trade relationship. The Secretary is authorized to direct the economic officers in U.S. foreign missions to coordinate the preparation of required information in the country. The report shall identify and describe a variety of domestic economic and trade policies and practices in each country affecting U.S. trade, including management of external debt, unfair trade practices, protection of intellectual property, and the status of respect for internationally recognized worker rights.

The committee recognizes that there are a number of reports on various aspects of the U.S. trade relationships with other nations required under present law. Modeled on the State Department's annual country reports on human rights practices, the report requested here is intended to provide a single, comprehensive and comparative analysis, on a country-by-country basis. The State Department is uniquely qualified to serve as the lead agency in preparing the report in view of the in-country expertise available from mission economic officers.

In requiring the report to address the status of internationally recognized worker rights, the committee notes the relationship in certain cases between violations of basic labor rights and U.S. trade patterns. Legislative action over the past several years relating to the Generalized System of Preferences and the Overseas Private Investment Corporation had conditioned eligibility for these programs on a country's progress in extending such rights to its workers. The Ways and Means Committee has also recently agreed to legislation making the absence in a country of respect for internationally recognized worker rights actionable under section 301 of the Trade Act of 1974. The information obtained in the country reports will complement this change in section 301.

Section 326—Export promotion data system

Section 326(a) sets forth findings about the importance to export promotion of accurate, timely, and properly organized information and other data. Subsection (b) describes the purpose of the system in promoting and protecting U.S. business interests abroad. This subsection also provides for cooperation among various Federal agencies in gathering information and requires the system to be designed so as to use the most effective means of monitoring, organizing, and disseminating information. The subsection describes the type of information to be collected and disseminated, and directs the Secretary to establish a procedure for delivering the information that allows the recovery of a reasonable portion of the operat-

ing costs and minimizes competition between the Department and private sector information dissemination services. The Secretary is authorized to establish a schedule of user fees consistent with fees charged in the private sector for similar services, and is required to submit to the Committee on Foreign Affairs of the House and the Committee on Foreign Relations of the Senate 180 days after enactment a plan for the information delivery procedure. In developing the system, the Secretary is directed to consult with representatives of the private sector, including export associations and groups, as well as with State export promotion agencies. Not later than one year after enactment, the portion of the data system involving information available through the Department of Commerce International Trade Administration is to begin operation. Finally, the Secretary is required to report to the Committee on Foreign Affairs of the House and the Committee on Foreign Relations of the Senate on implementation of the entire system. The report is to include comments from the private sector and state agencies.

This section is intended primarily to give a statutory base to the Commercial Information Management System (CIMS) currently under development by the Commerce Department. The committee notes that the Department has taken a considerable amount of time to implement CIMS, and urges the Department to bring it online as soon as possible. The bill gives the Secretary explicit authority to obtain useful information from other Federal agencies, so that information developed by agencies not oriented towards this type of exporter assistance will be incorporated into the system.

The committee believes that if the system is to be successful, it will have to be at least as useful as commercially available data bases. At the same time, it should not compete directly with such services. On the contrary, the Federal Government should be helping to foster the development of such services available in the private sector exporting infrastructure. Therefore, the Secretary should make every effort to cooperate with private sector data and information services in the development of the delivery system. The fees charged should be at a level so as not to undercut comparable services available in the private sector. It is the committee's intent that the Department make available, within its present budget, sufficient resources to assure the system is maintained and updated.

Section 327—Preshipment inspection regulation program

Subsection (a) sets forth the committee's findings that the premise behind preshipment inspections is basically sound, and that such programs can facilitate trade by smoothing transactions and ensuring that illegal transactions do not crowd out legal ones. However, there have been substantial complaints with respect to preshipment inspection, specifically regarding delays in shipment, increases in the cost of export transactions, price inspections, and requests for confidential business information. If left unregulated, such programs have the potential for constituting an unreasonable restraint on trade, and standards must be established to ensure that this does not occur. While preshipment inspection requirements are not a new phenomenon, their rapid spread in recent

years, in part as a response to the debt crisis, necessitates more diligent oversight.

The committee emphasizes that, in keeping with its concern over the impact of foreign indebtedness on the economic and political stability of developing countries, it supports the use of inspection companies to detect fraudulent transactions which result in capital flight and the unnecessary loss of scarce hard currency. Both in order to ensure a high quality of service and to maintain the integrity of the inspection service industry, a healthy level of competition should be encouraged among inspection companies.

Subsection (b) establishes that the purpose of the section is to ensure that inspection companies fulfill a useful role in international trade, and to prevent activities inconsistent with the operation of free and open markets in the United States.

Subsection (c) establishes as U.S. policy that preshipment inspection requirements are a useful means of facilitating trade but must not be used to restrict international commerce.

Subsection (d) sets forth definitions, including a definition of preshipment inspection activities.

Subsection (e) establishes a mandatory certification program within the Department of Commerce for preshipment inspection companies. The subsection provides a list of information to be submitted with an application for certification and allows the Secretary to establish criteria for the issuance of a certification.

The issuance of a certification to a company rests with the discretion of the Secretary of Commerce. The committee is aware of the potential power wielded by inspection companies, as well as the public trust they hold, and feels that the U.S. Government should appropriately regulate their activities.

There are various aspects of preshipment inspection which must be considered by the Secretary in reviewing an application for certification. One is possible conflicts of interest. A conflict of interest could arise if an inspection company is affiliated with other businesses. Clearly, the types of information to which inspection companies have access would be of immense value to a wide range of enterprises. Conflict of interest could also arise should an affiliated company itself be subject to preshipment inspection, or from an inspection company's representation of one country prejudicing its objectivity in other dealings with that country. In stating such concerns, the committee is in no way casting aspersions at any company, or suggesting that these problems now exist, but rather is highlighting areas which the Secretary should consider.

In considering an application for certification, the Secretary should take into account the qualifications of the applicant to perform inspections of quality and technical specifications. The granting of and scope of certification obviously should comport with an applicant's qualifications, which could be satisfactorily enhanced by the retention of qualified consultants as necessary.

The certification process is intended to introduce a measure of transparency into preshipment inspection. In addition, the intent behind it resembles that of the Foreign Agents Registration Act, and generally should serve the same purpose.

Subsection (f) sets forth a list of activities which certified inspection companies may undertake in order to achieve the objectives for which they are retained by foreign governments.

The permitted activities are:

1. Classification and valuation for customs purposes;
2. Inspections for quantity and quality of goods;
3. Inspections for health, safety, technical and other standards as determined by the Secretary;
4. Inspection of the value and financial terms of an export transaction for purposes of preventing customs fraud, capital flight, tax evasion, and unreasonable price discrimination; and
5. Other activities as determined by the Secretary.

This subsection grants the Secretary maximum flexibility in establishing the parameters within which inspection companies may operate. In establishing these parameters, the Secretary must strike an appropriate balance between the interests of developing countries in maintaining reasonable hard currency reserves and the imperative of maintaining free and open competition in world markets. It would be inappropriate for the Secretary to allow unnecessary restrictions on commerce in light of the continued U.S. effort to keep world commerce as open as possible.

Inspection of goods for quality and quantity should be undertaken so as to minimize delays in the export process. Considering that a physical inspection generally occurs aslo at the port of entry, inspection companies should avoid excessive physical inspections where possible. To the extent feasible and desirable, physical inspections should be conducted prior to the final packing of an export for shipment so as to avoid any unnecessary delay and expense to the exporter.

The committee's major concern is the use of inspection companies to inspect prices, both for customs valuation purposes and to limit fraud, tax evasion, capital flight, and unreasonable price discrimination. In no other aspect of preshipment inspection is there such potential for interference with normal business practices and procedures, and more need for guidelines and oversight.

The language in subsection (f)(4), concerning price inspections, has been left deliberately broad, with the Secretary left to define the limits of this activity. In establishing these parameters, the Secretary must strike an appropriate balance between the interests of developing countries in maintaining reasonable hard currency reserves and the imperative of maintaining free and open competition in world markets. It would be inappropriate for the Secretary to allow unnecessary restrictions on commerce in light of the continued U.S. effort to keep world commerce as open a possible.

Price inspection is at the heart of the preshipment inspection process, as it is necessary to achieve the goal of reduced fraud and capital flight. However, price inspection raises a number of concerns about interference in the marketplace, the unilateral establishment of international price standards, and the extraterritorial reach of domestic laws.

Price inspection basically involves the determination of whether or not the price being charged for a good or a transaction service falls within a range of acceptable prices for that good or service. It is important to distinguish among the various objectives of price in-

spections. The principal objective is to prevent various types of fraud which lead to capital flight or tax evasion. Over- and under-invoicing of traded goods, and the payment of unearned "commissions," are common techniques for achieving such illegal aims, and price inspections can be used to uncover or deter such practices. Such price inspection essentially is no different than the normal activities of a customs service. Over- and under-invoicing includes invoicing which is used to disguise attempts to transfer capital in violation of applicable currency controls, to avoid customs requirements, and to otherwise undermine attempts of countries to curb capital flight.

Another objective of price inspections is to uncover price discrimination. Although no international standard for price discrimination now exists, the committee recognizes that the importing country has the right to regulate its own imports, and that, in the interests of practicality, this regulation may occur in the country of export.

The committee recognizes the extreme difficulty of identifying price discrimination. Exporters vary their prices widely, as market conditions and costs of completing a transaction change. In very fungible commodities such as grains or raw materials, a fair market price can be found in a newspaper. Turnkey plants or custom-built pieces of machinery, however, do not lend themselves to determinations of "fair" prices. In highly competitive service industries such as customs brokering and freight forwarding, fees are closely tied to what the market will bear and vary widely based on the services performed, and it may be impossible to arrive at a pricing standard. Pricing standards are further complicated by such intangible factors as brand loyalty and reputation.

The committee, therefore, expects that the Secretary will exercise caution in defining specific standards for "unreasonable" price discrimination, and that this area will be handled in part through the appeals process. In general terms, price discrimination refers to the charging of a different price by a seller to different buyers, with no economic justification. A price discrimination standard must not be employed so as to impose any type of general price parity, nor to prevent an exporter from changing prices in response to changing market conditions or to additional costs involved in serving different markets.

In performing price checks, inspection companies will need certain information to verify the validity of information contained in the transaction documents. Generally, manufacturing and cost information should not be requested, and requests for additional information should be kept to a minimum. The Secretary may establish guidelines for the types of additional information that may be requested. All information of a business confidential nature must be protected, and must not be used for any other purpose. In the matter of confidentiality, the Secretary is urged to consider the methods employed for protecting confidential information in the regulation of customs brokers and freight forwarders.

Subsection (g) defines activities which preshipment inspection companies may not undertake, and conduct in which they may not engage in the course of their activities. Such companies may not:

(1) engage in preshipment inspection activities that would be discriminatory against and burdensome on, or restrictive of, U.S. commerce;

(2) provide to importing countries price information supplied by exporters on specific export transactions, other than information that is required or customarily provided for transaction of payment documentation;

(3) compare price for goods exported from the United States to prices for goods exported from other countries of supply, except for internationally quoted commodities;

(4) perform quantity and quality inspections in a manner that is more extensive or intrusive than inspections performed in accordance with customary international inspection standards;

(5) carry out any activity which the Secretary determines to be inconsistent with the purposes of this section and which the Secretary determines would place an unreasonable burden on U.S. exporters.

The committee recognizes that any additional requirement, such as preshipment inspections, that is placed on an exporter will entail some additional effort and expense. The statement that preshipment inspection activities may not be "discriminatory against and burdensome on, or restrictive of United States commerce" is meant to address burdens which may arise as a result of the extension of activities beyond those allowed under this section. The committee is concerned that, if inspection requirements spread, countries may impose new requirements which may be inconsistent with U.S. policy.

Subsection (g)(2) is intended to prevent the use of preshipment inspections as a method of "comparison shopping." Given the size of the data base that inspection companies develop, these companies would be in a position to alter the functioning of the market by advising purchasers of the pricing of goods worldwide. Purchasers are free, and even encouraged, to seek advice on where to get the best price on a good, but under no circumstances should preshipment inspection companies be providing such advice.

In response to concerns that price inspections might be used to discriminate against U.S. exporters, subsection (g)(2) prohibits comparisons between U.S. products and the products of other countries.

Subsection (h) provides authority for the Secretary of Commerce to issue regulations to carry out the section, and provides guidelines for those regulations.

In drafting regulations and standards for the conduct of preshipment inspection activities, the Secretary should comply with section 553 of title 5, United States Code (the Administrative Procedure Act), allowing a suitable period of time for public comment. The Secretary should utilize all available information, including that obtained in investigations conducted by the International Trade Commission, the U.S. Trade Representative's Office, the Customs Service, and other agencies and private organizations.

Among the comments and complaints regarding preshipment inspection, there is considerable concern over the additional costs and delays which can arise as a result of preshipment inspection requirements. While inspections will require some additional time

and effort on the part of the exporter, it is the intent of this legislation to minimize the impact of preshipment inspection requirements on the exporting process. In considering the timeliness of inspections, the Secretary should consult with exporters and inspection companies to determine ways to ensure that inspection procedures can be integrated with the other procedures involved in an international business transaction and can be carried out as promptly as possible. Requirements on timeliness should apply not only to the original inspection, but also to subsequent reinspections.

The provisions of subsection (h)(1) (C) and (D) are intended to keep the inspection process transparent and understandable. Inspection companies must make every reasonable effort to provide exporters with the information and guidance they need to comply with inspection requirements. Furthermore, inspection companies must be prepared to discuss fully any determination of noncompliance by the exporter with the laws of the importing country.

The countries employing inspection companies must realize that any company conducting business within the United States is subject to the U.S. law, and that the existence of a contract with a foreign government does not guarantee the right of a company to carry out the terms of that contract within the United States.

In establishing regulations the Secretary should consider the applicability of the basic GATT agreement and the various agreements entered into under the GATT umbrella, including the Customs Valuation Code and the Agreement on Technical Barriers to Trade (known as the Standards Code).

Subsection (i) authorizes the Secretary to impose civil penalties of up to \$10,000 for knowing violations of preshipment inspection regulations, and to suspend or revoke certification for persistent violations.

These penalties are not intended to harass inspection companies, or to make them accountable for each inadvertent misstep. The committee recognizes that any organization handling large volumes of paperwork will make mistakes. The penalties are intended to hold inspection companies accountable for violations of the trust placed in them, and any abuse of the authority which they hold. Substantial and repeated delays, or unwarranted intrusions into private business dealings as have been reported in recent complaints, or any purposeful violation of this section, are simply not acceptable and would be cause for the imposition of penalties.

Subsection (j) requires the Secretary to establish a process to appeal decisions of inspection companies and file complaints concerning their activities.

The Secretary is given broad latitude in establishing this process, in order that he may use resources available in the Department. The crucial feature of this process is that in most cases it be simple, informal, and prompt. If an informal, nonbinding appeals process is to be effective, it must be capable of solving the majority of disputes quickly. The Secretary should monitor the mechanisms closely.

Subsection (k) requires the President to promote the U.S. policy on preshipment inspection in all relevant bilateral and multilateral forums.

Since, for the most part, inspection companies are simply carrying out the laws of the importing country, fully achieving the purposes of this section may require changes in those domestic laws.

This is especially true with regard to the application of GATT principles on valuation and standards. While many of the countries employing inspection companies do not subscribe to these codes, they have become widely accepted international standards and the United States should further their acceptance as part of its efforts to promote a multilateral trading system.

It is therefore anticipated that the relevant U.S. agencies will continue to pursue issues relating to preshipment inspection programs, especially in the bilateral discussions initiated in 1986.

Section 328—Report on export trading companies

Section 328 amends title I of the Export Trading Company Act of 1982 to require an annual report by the Secretary of Commerce on export trading companies, export management companies, and export trade associations, as well as on the Department's efforts to promote such companies and associations.

It is the intent of the committee that the Commerce Department promote the growth and development of the trading company community as a means to increase the export of U.S.-produced goods and services. This report should contain a summary of the promotional activities undertaken by the Department.

The trading company community comprises a diverse universe of organizations that extends far beyond the export trading activities established pursuant to the Export Trading Company Act. Its precise numbers are not known, and a useful profile of its members does not exist. The Commerce Department should, therefore, undertake a survey of this community to identify the number of organizations involved and construct a meaningful profile of their variety and methods of operation, and the industry sectors they serve. This information should be updated annually.

The reporting requirement on ETC operating experiences seeks to provide a general assessment of and aggregate information on the startup and operating experiences of export trading companies established pursuant to the act. This requirement does not alter the carefully crafted provisions of the act concerning confidentiality protections.

SUBTITLE B—EXPORT CONTROLS

Section 331—Oil exports

This section amends section 7(d) of the Export Administration Act of 1979 (hereinafter referred to as "the act" in the analysis of this subtitle) to extend existing conditions on exports of crude oil transported by the Trans-Alaska Pipeline to any crude oil exports from the United States to noncontiguous countries as well as to petroleum product exports from any refinery that during a 1-year period (or the period of commercial operations, whichever is shorter) exports more than 33 percent of its refined and partially refined petroleum products.

Five separate statutes currently place conditions on exports of crude oil from the United States to noncontiguous nations; each of

these statutes permits exports subject to certain Presidential findings and provided such exports are in accord with the provisions of the act of 1979. The act permits such exports only if the Congress approves a Presidential recommendation in favor of exports. This provision would bring consistency to the various statutory conditions and procedures governing U.S. crude oil exports, and strengthen the congressional role in reviewing Presidential determinations on proposed exports of both crude oil and certain refined and partially refined petroleum product exports to assure they serve the national interest.

The purpose of the provision is also to close a loophole in section 7(d) of the act. By converting Alaska North Slope (ANS) crude oil into a refined or partially refined product, a refinery proposed to be built in Alaska could avoid the restrictions in section 7(d) of the act. To eliminate this loophole, the bill provides that exports of refined and partially refined products by an "export refinery" will be treated just like proposed exports of crude oil under section 7(d). Such exports are prohibited unless the President makes the findings required by section 7(d) and the Congress by joint resolution agrees to the proposed exports.

The bill defines "export refinery" as one that is located in the Continental United States or Alaska and that during the 1-year period or period of commercial operations, whichever is shorter, ending with a proposed export, exports more than 33 percent of its output annually. The Secretary of Commerce is authorized to issue regulations to ensure that no such refinery exports more than 33 percent of its output unless the President specifically recommends and the Congress approves such exports pursuant to the provisions of section 7(d).

The bill also deletes from section 7(d)(1) of the act the explicit reference to the so-called "75 percent" test set forth in section 7(d)(2). The statute nonetheless would require the Commerce Department to determine that a proposed swap of crude oil with a contiguous country will result in lower prices for consumers of petroleum products in the United States through convenience or increased efficiency of transportation. The provision does not modify the 75-percent test or its continued applicability in instances other than a swap with a contiguous country. It is the committee's intent that prior to recommending exports of any domestically produced crude oil (or of any products produced by an export refinery) to noncontiguous nations, the President must demonstrate that such exports will result in reduced refinery acquisition costs and that at least 75 percent of these savings will be passed on to consumers.

In limiting the applicability of the 75-percent test, the committee contemplates the following type of transaction under the statute: An Alaskan oil producer delivers a maximum of 50,000 barrels per day of North Slope crude to a refinery in Vancouver, British Columbia. In exchange, that refiner gives the Alaskan oil producer Canadian crude on a barrel-for-barrel equivalent basis delivered to the Midwest. The transportation savings from such a swap are anticipated to amount to 25-75 cents per barrel. As a result, the committee presumes that a portion of these transportation savings should result in lower product prices to Midwest consumers. The committee intends that the standard used in determining whether

a company meets the test in section 7(d)(1) of the act with respect to ANS crude will be the same standard as that used in reviewing other nonoil export licenses.

The committee does not intend for this type of transaction to be used to create a new loophole in the statute. The committee will monitor transactions undertaken pursuant to the statute, as amended, and, if necessary, recommend further revisions in the law during consideration of the Export Administration Act reauthorization in the future.

Section 332—National security controls

Section 332 of the bill amends sections 4, 5, 10, 15, and 18 of the Export Administration Act of 1979, as amended (hereafter referred to in this section as “the act”) concerning general provisions (types of licenses), national security export controls, procedures for processing export license applications, and authorization of appropriations.

(a) Multiple license authority

Subsection (a) amends section 4(a) of the act to exempt the People’s Republic of China from the prohibition on the use of licenses authorizing multiple exports to controlled countries. Because China is listed in section 620(f) of the Foreign Assistance Act of 1961, upon which the list of countries subject to national security export controls is based, issuance of a distribution license or a comprehensive operations license (authorizing multiple exports of goods and technology to approved users) is currently precluded.

In removing the statutory prohibition on the use of distribution and comprehensive operations licenses for exports to China, the committee reiterates its support for the use of licenses authorizing multiple exports, and encourages the Secretary of Commerce to extend the use of such licenses to appropriate consignees in China. Due to the large volume of license applications for exports to the People’s Republic of China, procedures have been initiated both in the United States and in Coordinating Committee on Multilateral Export Controls (CoCom) to streamline the processing of license applications and ease export restrictions applicable to China. The committee strongly supports these efforts to increase trade with China, consistent with national security interests, and has so indicated in other provisions in this section. Elimination of transaction-by-transaction review for each export to the People’s Republic of China would reduce the licensing burden on U.S. exporters and the government, allowing more time for review of applications for the most significant goods and technology. The committee urges the executive branch to consult with CoCom members at the earliest opportunity to accomplish this objective.

(b) Domestic sales to commercial entities of controlled countries

Subsection (b) amends section 5(a) of the act which authorizes controls on sales within the United States to embassies and affiliates of controlled countries to specify that “affiliates” include commercial entities controlled in fact by controlled countries. This provision, requested by the executive branch, clarifies that “affiliates”

include commercial enterprises in the United States which are owned or controlled by governments of controlled countries.

(c) Reexport controls

Subsection (c) amends section 5(a) of the act to eliminate U.S. licensing requirements for the reexport of goods and technology to CoCom countries or other countries maintaining comparable controls pursuant to section 5(k) of the act, subject to certain exceptions. The provision also eliminates reexport requirements on U.S. parts and components incorporated in foreign-made products if the value of the U.S. components is 25 percent or less of the value of the product.

The United States maintains controls over the reexport of U.S.-origin products and technology, foreign-produced products incorporation U.S. parts and components, and the foreign-produced direct products of U.S. technology. These unilateral licensing requirements constitute extraterritorial restrictions that offend and irritate U.S. allies, and run counter to accepted principles of international law and national sovereignty. Further, and perhaps as a consequence of the extraterritorial nature of U.S. reexport controls, compliance with and enforcement of such requirements are limited. In insisting on these ineffective reexport controls, the United States undermines its credibility and impede progress toward a cooperative and unified system of controls among allies. The recent study by the National Academy of Sciences revealed the "increasingly corrosive effect on relations with the NATO allies" of reexport controls.

In eliminating the authority for the executive branch to require a license for the reexport of goods or technology among CoCom or cooperating countries, the committee reiterates its strong belief that unilateral U.S. reexport restrictions are ineffective and damaging to the multilateral control process. While executive branch authority to require reexport licenses is retained for specified end-users suspected of diversion, for an extremely narrow range of the most sophisticated goods such as supercomputers, or for countries outside of CoCom, the committee urges the executive branch to pursue negotiations with CoCom allies to achieve a common multilateral approach to reexports to third countries. Failure to achieve such consensus results in a competitive disadvantage for U.S. firms without the desired national security benefits of more effective controls.

The committee also notes with concern the increasing tendency of foreign manufactures to establish non-U.S. sources of goods and technology in order to avoid the costs and difficulties of U.S. reexport requirements. Considerable evidence has been presented regarding attempts to "de-Americanize" foreign products of U.S. parts. The effect of this effort to avoid U.S. reexport controls is the elimination of American firms from the world market for parts and components, resulting in not only lost sales but a weakening of America's high-technology industrial base. The committee believes a worldwide de minimus level of 25 percent is the least amount necessary to address the current disincentives for use of U.S.-origin parts and components in foreign products.

(d) Exports to countries other than controlled countries

Subsection (d) amends section 5(b) of the act to restrict the use of national security control authority to require licenses for certain exports to noncontrolled countries, and for exports to countries participating in CoCom or agreements pursuant to section 5(k) of the act.

The new paragraph (2) in section 5(b) would expand the current provision in the act that eliminates licensing requirements for exports of low-technology goods (defined as those items specified in the Administrative Exception Notes (AEN) of the control list) to CoCom countries in two ways; expand the countries eligible for such treatment from CoCom to all noncontrolled destinations, and increase the technical threshold of goods and technology not requiring a license from the AEN level of the PRC green line (defined as those items which may be exported to the People's Republic of China without prior CoCom approval) as of March 1, 1987. Under this provision, goods that may be exported to China with only notification of CoCom countries may be exported without a license to Free world destinations. The provision does permit notification to the Department of Commerce that the export has taken place, and permits the Secretary of Commerce (hereafter in the analysis of this subtitle as "the Secretary") to require licenses to specific end-users suspected of diverting goods or technology, or countries posing significant risks of diversion to controlled countries, as published in regulations. This provision is effective 6 months after enactment to allow adequate time for consultations with CoCom allies, and for promulgation of regulations.

In establishing the PRC green line as the technological level below which licenses are not required to Free world destinations, the committee has chosen a benchmark level of widely available technology which it does not intend to be a permanent demarcation. Rather, the committee directs elimination of licenses at this level with the expectation that the executive branch will continually update the goods and technology eligible for such treatment. Additionally, the committee does not intend to limit such treatment to only those 30 control list categories that contain China notes. One of the difficulties of the current structure of the control list is the lack of consistent, identifiable technical thresholds (such as AEN, PRC green line, and distribution license) in each of the control list categories. Such inconsistencies complicate the administrative and licensing process, and discouraging compliance. The committee therefore urges the Secretary to establish consistent technological levels within each control list category. Finally, utilizing the technological threshold of the PRC green line is not intended necessarily to tie Free world licensing policy to CoCom treatment of the People's Republic of China; by designating the PRC green line as of March 1, 1987, the bill explicitly delinks policy toward the People's Republic of China from licensing requirements to the Free world.

The bill also adds a new paragraph (3) to section 5(b) of the act to eliminate licensing requirements to countries which participate with the United States in national security controls (CoCom or 5(k) countries). The provision does permit notification to the Depart-

ment of Commerce that an export has taken place, and permits the Secretary of Commerce that an export has taken place, and permits the Secretary to require licenses in three cases: (1) Exports to specific end-users suspected of diversion; (2) export of an extremely narrow range of the most sophisticated goods or technology such as supercomputers; and (3) exports to countries which the Secretary, in consultation with the Secretary of State, finds in noncompliance with CoCom or 5(k) agreements. This provision is also effective 6 months after enactment to allow adequate time for consultation with CoCom allies, and for promulgation or regulations.

Licensing of exports to our allies participating with the United States in the multilateral control process (CoCom) constitutes approximately one-third of the applications processed each year; yet less than 1 percent of these licenses is denied. Since the United States has the opportunity at CoCom to veto any proposed export of a CoCom-controlled good to controlled countries, the committee finds licensing of these exports to our allies to be a duplicative paper exercise. In eliminating licenses for exports to CoCom, with certain exceptions providing adequate safeguards, the committee seeks to streamline the licensing systems and strengthen the multilateral control process.

(e) List reviews

Subsection (e) amends section 5(c) of the act to provide timetables for resolution of disputes between the Departments of Commerce and Defense on inclusion of items on the control list, and to require quarterly reviews of portions of the list, with the entire list being reviewed at least once a year. This subsection also amends section 5(d) of the act to require ongoing review of the Militarily Critical Technologies List. Subsection (e) directs the Secretary to consult the appropriate technical advisory committees (TAC's) on revisions to the control list, and to respond to the TAC's on the disposition of recommendations for list revision. In addition, this subsection amends section 15 of the act to require the Secretary to submit regulations to the TAC's.

In the past, revisions to the control list have been based primarily on the outcome of the ongoing CoCom list review process. This process, however, has not resulted in a consistent across-the-board review of the U.S. control list to eliminate low-level items that are no longer militarily strategic from the list. It is the committee's intent in adopting these provisions that the Department of Commerce, the primary licensing authority, conduct a systematic review of the entire control list, with appropriate input by the business community and other interested agencies, on at least an annual basis. The results of such reviews shall constitute the basis for U.S. proposals for CoCom list reviews.

The committee also reaffirms the role and responsibility of the Secretary of Commerce in establishing and maintaining the control list, with the Secretary of Defense having an explicit role in recommending goods and technology for inclusion on the list. In the event the agencies disagree on items to be added to the list, a mechanism for resolution of disputes within 20 days is specified. Failure to resolve the dispute in the timeframes provided is deemed to constitute concurrence with the Secretary of Com-

merce's recommendation, on which the Secretary shall then act. As amended, subsection (c)(3) reaffirms the authority to revise or remove items from the control list of the Secretary of Commerce, who has primary responsibility for decontrol determinations such as foreign availability and list reduction. Concurrence or approval of other agencies is not required for the Secretary to remove items from the control list.

An important element of the list review process which has not functioned adequately concerns the role of the technical advisory committees in the formation of list review proposals. Established pursuant to section 5(h) of the act to advise and assist the executive branch on technical matters, TAC's have repeatedly submitted recommendations for proposed additions, revisions, or deletions of the control list which have been largely disregarded or ignored in the interagency review process establishing U.S. positions for CoCom negotiations. The committee therefore has mandated consultations with the appropriate TAC's, provided for TAC participation in the interagency list review process, and required that regulations be submitted to the TAC's. The committee intends that such consultation will promote better government-industry cooperation and result in a more effective and comprehensible control system.

(f) Control list reduction

Subsection (e) further amends section 5(c) of the act to require the Secretary, in consultation with the Secretary of Defense, to identify approximately 40 percent of the goods on the control list which are no longer significant to the military potential of any controlled country, and to seek to remove such items from the list to the maximum extent feasible. Goods which are to be removed from the control list within 6 months after enactment are low-level goods and technology (AEN items), medical instruments and equipment, and goods unilaterally controlled by the United States.

Over 200 broad categories of goods and technology encompassing hundreds of thousands of products are currently subject to validated license requirements under the act. Despite repeated congressional efforts to reduce the list gradually and selectively, the list continues to expand rather than contract. In theory, each item on the control list was placed there because the export of the item could make a significant contribution to the military capability of a potential adversary. Unfortunately, the executive branch has been extremely hesitant to remove items from the list, even in light of technological advances. As noted by the National Academy of Sciences panel there is a "lack of any effective mechanism for weeding out from the control list those products and technologies that have ceased to be strategic or that have become so widely available that control for all practical purposes is impossible."

As the committee noted in 1979 and as is still the case, less than 1 percent of the approximately 120,000 annual export applications for Free world destinations is denied. Such figures are an alarming indication that the export licensing system is more a paper exercise than an instrument of control. The committee continues to emphasize that fewer controls, efficiently administered, will be more effective in protecting U.S. national security and economic competitiveness. Narrowing the size and scope of the control list to goods

which are truly militarily critical will also facilitate greater cooperation from U.S. allies in enforcing export controls.

Given the executive branch's failure to implement existing statutory provisions for removal of items from the list, the committee is compelled to mandate identifying a specific percentage of the list as a target for reduction, based on the criterion of no longer significant to the military potential of controlled countries. In addition to the current statutory criteria, the committee directs the following specific actions to achieve the target 40-percent reduction:

- Removal of low-technology items from the control list.*—One readily achievable means of decontrolling a significant portion of goods on the control list is to remove those low-technology items for which CoCom requires only notification for export to East bloc destinations. Such low-technology goods are routinely approved by the United States for export to controlled countries; continuation of licensing requirements serves no national security purpose of denying the Soviet bloc such technology, and only further delays and impedes U.S. exporters. In recognition of U.S. commitments to the multilateral CoCom process, the committee has provided for a 6-month period in which to complete negotiations within CoCom to achieve multilateral decontrol of these items.
- Removal of medical instruments and equipment from the control list.*—Among the goods to be decontrolled are all medical equipment and instruments, unless the functional characteristics of the good as a whole would make a significant contribution to the military potential of a controlled country. The committee notes the historical problems associated with more stringent U.S. interpretations of the CoCom agreement concerning medical equipment incorporating or embedding computers. Such interpretations have resulted in unilateral restrictions on U.S. exporters on medical items with little or no risk of diversion to military uses. The committee reiterates that goods are to be controlled on the basis of essential functionality, and not on whether they contain or utilize electronic computers. Medical equipment and instruments, with a clear commercial use pattern and whose military applications are incidental, shall be removed from the control list.
- Removal of goods unilaterally controlled by the United States.*—According to the 1985 Export Administration Annual Report, 28 entries on the control list remain unilaterally controlled for national security reasons. Many of these controls, which the United States has been unable to convince CoCom partners to adopt, have been maintained over a period of years through bureaucratic inertia. Because an effective control system depends on multilateral cooperation, the bill eliminates all unilateral U.S. national security controls within 6 months after enactment, or 6 months after imposition, unless the Executive branch is engaged in efforts to negotiate multilateral control, or the goods are unique to the United States (no foreign availability) and warrant control for limited periods of time. The committee believes that such timeframes are adequate to retain temporary controls until a consensus can be achieved within CoCom. Failure to achieve multilateral control, howev-

er, shall result in the elimination of controls. The committee expects the Commerce Department to immediately initiate a review of all unilateral national security controls in order to begin negotiations for multilateral control or decontrol such items.

Finally, the committee notes that inclusion on the list has sometimes prevented the export of items commonly available in retail trade, such as consumer electronic products—microwave ovens, video equipment such as decoders, musical instruments, and even children's toys. It is the committee's belief that the export of these items in no way endangers national security. Controls on commonly used, widely available commercial equipment that has minimal direct military application unduly hampers the export of U.S. goods and technology, thereby adversely affecting the economic vitality and competitiveness of U.S. industries.

(g) Review of goods and technology eligible for distribution license

Subsection (g) of the bill amends section 5(e) of the act to provide for review, upon request, of goods and technology eligible for export under a distribution license. The Secretary shall respond within 120 days after a request is filed by an exporter, industry group, or technical advisory committee for revision of the requirements for export under a distribution license.

It is estimated that as much as two-thirds of U.S. goods requiring validated licenses are exported under the provisions of a license authorizing multiple exports, principally the distribution license. No procedure, however, currently exists for a review of the categories and levels of technology eligible for export under a distribution license, and no such comprehensive review has taken place in more than 10 years. As a result, U.S. firms have been placed at a disadvantage as technology advances and the Government has had to contend with an increasing amount of individual license applications. This provision establishes a mechanism for exporters to petition the Department of Commerce for review of items eligible for export by a distribution license.

(h) Trade shows

Subsection (h) further amends section 5(e) of the act to require the Secretary to issue export licenses for the purpose of temporary demonstration at trade shows in the People's Republic of China regardless of the technical specifications of the goods, if the exporter retains title to the goods and removes the goods from the People's Republic of China at the conclusion of the trade show.

Currently U.S. exporters are prohibited from displaying at trade shows in the People's Republic of China goods that cannot be licensed for sale. Since other CoCom countries do not have comparable restrictions, U.S. exporters are placed at a competitive disadvantage—non-U.S. suppliers are able to display their most advanced products to potential Chinese customers, thereby demonstrating their long-term commitment to advanced product development, while American exporters are forced to compete with older products. As specified in the provision, adequate safeguards exist to ensure that the U.S. exporter retains title and control of the goods

while in China, removes the goods at the conclusion of the trade show, and follows all applicable procedures for sale of the products to Chinese end-users. The committee would further encourage the executive branch to expand existing general license procedures for temporary exports (GTE) to the People's Republic of China.

(i) Foreign Availability

Subsection (i) of the bill amends section 5(f) of the act to clarify and expand existing procedures for recognizing and responding to availability abroad of goods subject to export controls by the United States. The bill establishes specific timeframes for executive branch consideration of foreign availability assessments; eliminates licenses for export of a good to a country which agrees to control the good in a manner comparable to the United States; provides a mechanism for expedited licensing of goods determined to be available in Western countries; requires agencies to share information concerning foreign availability; and eliminates controls on less sophisticated goods after a determination of foreign availability has been made.

The establishment of timetables for executive branch consideration of foreign availability assessments is in response to the limited effectiveness of current regulatory procedures. While recognizing the contributions of the Office of Foreign Availability in considering new controls and in preparing for CoCom list review, the committee is disturbed by the lack of progress on decontrol efforts. In the 8 years since foreign availability has been an operative provision of the act, only one item has been decontrolled on the basis of foreign availability. Timeframes, suggested by the executive branch and endorsed by the General Accounting Office and National Academy of Sciences report, are designed to remedy the ineffectiveness and interminable delays of the current regulatory process. This provision sets a maximum of 8 months in which to make foreign availability assessments, which the Committee believes is adequate for a thorough consideration of such matters while still creating pressure for expeditious action.

Given the explicit recognition of the need to consult CoCom on decontrol of multilateral controlled items, the committee intends the Department of State to consult members of CoCom to establish a procedure for foreign availability decontrol actions. The committee also reaffirms that Commerce Department actions on foreign availability determinations are not based on approval or concurrence of any other agency; the Department of Commerce has the clear authority and responsibility to proceed with decontrol actions.

Paragraph (4) of subsection (i) clarifies existing law concerning information sharing among U.S. Government agencies for the purpose of foreign availability data gathering and assessments. All agencies, including intelligence agencies and contractors with departments, are required to share information with the Office of Foreign Availability, and permit direct access to all information sources in U.S. Government laboratories and facilities. The committee is concerned by the current practice of the Department of Defense to limit access of Commerce personnel to appropriate technical personnel in the Defense Department and related organiza-

tions. Such an information filter is contrary to the letter timely foreign availability assessments.

The committee also adopted in paragraph (3) a modified version of the executive branch proposal to expedite licenses for U.S. goods if similar items are found to be available in Free world countries. Upon receipt of an allegation of foreign availability from an exporter, a technical advisory committee, or his own initiative, the Secretary shall determine within 30 days if similar goods or technology are available without effective restriction from countries other than controlled countries. Once such a determination has been made, license applications by U.S. exporters will automatically become valid within 20 days (unless the Secretary denies the application or notifies the applicant that an additional 15 days is needed for review). While providing a mechanism for expediting the processing of license applications to Free world destinations, this provision is in no way inconsistent or contradictory with other provisions of section 5(f) requiring decontrol of goods. Rather, the bill relaxes the standard of availability in Free world countries for the purpose of expeditiously obtaining a license, and strengthens the more lengthy process for decontrolling an item which an exporter can pursue concurrently.

In adopting these changes to the foreign availability provisions of the act, the committee reiterates its strong intent that a viable, effective foreign availability program result in a reduction of unnecessary and ineffective controls. Because of difficulties encountered in the past, the committee urges close and regular consultation with the Congress on implementation of these provisions.

(j) Definition of Availability

Subsection (j) clarifies congressional intent by defining "available in fact to controlled countries" to include production or availability in Western countries in which there are no restrictions on exports of such goods to controlled countries, or in which those restrictions are ineffective.

The committee is dissatisfied with the interpretation contained in executive branch regulations which inappropriately restricts the ability of exporters to submit allegations of foreign availability. Availability of a good in any Western country, including CoCom countries, if uncontrolled for export to the Soviet bloc or if such controls are determined by the Secretary to be ineffective, constitutes foreign availability under the act. Contrary to existing regulations, availability (which includes the ability to produce such items) in Western countries without restrictions on export to controlled countries is foreign availability. The committee intends this clarification to result in a significant increase in the number of foreign availability submissions.

(k) Additional authorization of appropriations

Subsection (k) amends section 18(b) of the act (as amended in 1986) to authorize additional appropriations of \$3 million to the Office of Foreign Availability in fiscal year 1988.

The committee expects that full implementation of the provisions of subsections (i) and (j) of this bill will result in significant decontrol and more expeditious licensing of goods on the basis of foreign

availability. To carry out the mandate contained in the act and this bill, an additional \$3 million is authorized to the Department of Commerce for the sole purpose of foreign availability determinations.

(l) Negotiations with CoCom

Subsection (l) amends section 5(i) of the act to add the following new objectives for negotiations at CoCom: Enhance cooperation among CoCom governments in implementing agreements with non-CoCom countries, remove items from the control list where controls no longer meet common strategic objectives, and expand categories and levels of goods and technology eligible for export to the People's Republic of China. The provision also contains a statement that unilateral controls are ineffective and that uniform enforcement enhances the effectiveness of multilateral controls.

In addition, for purposes of list review, this subsection requires the President to include industry representatives as advisors to the U.S. delegation to CoCom, unless the United States is successful within 3 months after enactment of this bill, in gaining agreement of other CoCom members to exclude industry representatives from CoCom deliberations.

The committee believes that inclusion of knowledgeable industry representatives as advisers to the U.S. delegation to CoCom will serve to improve the quality of technical assessments, thereby reducing the incidence of confusing and overly restrictive regulations which unnecessarily impede U.S. exporters.

(m) Goods containing microprocessors or certain other parts or components

Subsection (m) clarifies section 5(m) of the act to require that goods are controlled on the basis of overall functional characteristics, and not solely on the basis of component parts.

The Export Administration Amendments Act of 1985 added a new subsection to section 5 of the act to provide that goods containing embedded microprocessors may be controlled because the function of the good would make a significant contribution to the military capability of a potential adversary, but not solely because the good contained a microprocessor. The intent of Congress was to de-control a broad class of scientific and medical instruments when the overall function of the good did not merit control. Technological advances, however, and a narrow administrative interpretation of "embedded" have limited the effectiveness of this provision in carrying out congressional intent. The committee bill would update section 5(m) of the act by providing that controls may not be imposed on goods which contain controlled parts, unless the function of the good itself is such that it would make a significant contribution to the military potential of a controlled country.

(n) Review of licenses

Subsection (n) amends section 10(g) of the act to clarify Defense Department review of exports to controlled countries, and provide a mechanism for resolution of licensing disputes within specified timeframes.

In amending section 10(g) of the act, the committee reaffirms its strong belief that the statutory role of the Secretary of Defense in reviewing export licenses is limited to license applications for proposed exports to controlled countries only (defined in section 5(b) of the act as those countries listed in 620(f) of the Foreign Assistance Act of 1961). Such interpretation is confirmed in prior legislative history, and reaffirmed by the failure of the conference committee on the Export Administration Amendments Act of 1985 to expand the Defense Department's review authority. Despite this consistent legislative interpretation, the President in January 1985 provided for Defense Department review of license applications to specified Free world countries of specified categories of goods. Since the directive took effect in February 1985, the Committee on Foreign Affairs has conducted close oversight of the issue.

Of primary concern to the committee is the effect of Defense Department review of Free world licenses on the export licensing process. Testimony before the Subcommittee on International Economic Policy and Trade has revealed only one instance in more than 2 years and 30,000 license applications that the Defense Department has provided any information which was otherwise unavailable to the Department of Commerce. In fact, in 1986 Commerce denied 46 cases because the consignee was an unsuitable recipient of national security controlled goods for which the Defense Department had recommended approval or approval with conditions. Defense Department figures confirm the small number of contested cases at one-tenth of 1 percent. The General Accounting Office commented in its September 1986 report on the duplication of Defense review of such cases, stating "a high level of consistency between Defense and Commerce licensing actions raises the question of whether Defense review of individual free world license applications should be continued in its present form."

The committee did find, however, that such review lengthened the amount of time required to process license applications. The average number of days to process Free world cases subject to Defense review was 35 days in 1986, compared with 17 days for cases not reviewed by the Defense Department. In early 1987, the time for Defense-reviewed cases had increased to 43 days. Furthermore, the Defense Department has persisted in imposing conditions on license applications beyond the scope of their review mandate for diversion to controlled countries only, requiring time-consuming negotiations which have added to the overall case-processing times. It is also important to note that the average processing times for the three countries deleted from the directive list improved by 15, 14, and 12 days.

Problems associated with an expanding Defense Department role, which dominates licensing policy often to the exclusion of other legitimate views, has been noted by the National Academy of Sciences panel. In addressing the lack of balance in interagency policy deliberations, the panel stated, "By law, the interagency process for deciding export control issues for dual-use commodities and technologies centers in the Department of Commerce; recently, however, the Department of Defense has dominated the national security aspects of the procedure." The panel recommended, "It should now be the goal * * * to reduce the DoD role in detailed

license review as parallel steps are taken within the Department of Commerce to strengthen its capability to implement national security export control licensing procedures.”

The committee considered amendments to eliminate the Defense Department's statutory authority to review licenses to controlled countries, making their role advisory to DoC, and to retain the language in existing law. Ultimately, the committee agreed that clarification of section 10(g) of the law reaffirming Defense review of exports to controlled countries only was necessary. It is the committee's belief, therefore, that not only is Defense review of Free world licenses contrary to congressional intent, but such review has been counterproductive to the implementation of an effective and balanced export control policy.

The committee also included provisions to provide a mechanism to resolve in a timely manner interagency disagreements on licensing matters. Failure of the Secretary of Defense or the President to act within the specified timetables shall be deemed as concurrence with the Secretary of Commerce's recommendation, upon which the Secretary shall act.

Section 333—Export license fees

Section 333 of the bill amends section 4 of the Export Administration Act to prohibit the executive branch from imposing fees in connection with the submission or processing of an export license application.

The provision is in response to a proposal contained in the Department of Commerce's 1988 budget submission to impose a user fee for processing export license applications. The committee strongly opposes licensing fees and has included this provision to preclude such executive branch action.

Section 334—Violations

Section 334 amends section 11(h) of the act, at the request of the executive branch, to authorize the Secretary to bar person convicted of violating the Export Administration Act or the International Emergency Economic Powers Act from applying for or using any export license for a period of up to 10 years. Additionally, this section clarifies that parties related through affiliation, ownership, or control to any person convicted of violations of the law in section 11(h) may also be denied export privileges after the Secretary establishes the required relationship between the convicted person and other party and the party has received notice and an opportunity for a hearing.

Section 335—Enforcement

Section 335 of the bill amends section 12(a) of the Export Administration Act of 1979, as amended, to prohibit the Customs Service from seizing or detaining for more than 10 days goods or technology which the Secretary has determined are eligible for export under a general license.

The committee is concerned about reports of the Customs Service detaining shipments which the Commerce Department has determined do not require a validated export license. Such unwarranted detentions do not serve U.S. interests, but instead obstruct legiti-

mate exports. This clarification of Customs' authority permits the Customs Service to devote its resources to appropriate enforcement of export restrictions on controlled goods and technology.

The committee is also disturbed by the apparent disregard by the Customs Service and the Department of Defense of the authority of the Department of Commerce to classify goods and technology subject to the control list. Under the act, the Department of Commerce is the principal licensing authority, and as such is clearly charged with the responsibility for commodity classifications and interpretations of the control list. While other agencies may be consulted for advice concerning appropriate classifications, final authority rests with the Secretary.

Section 336—Issuance of temporary denial orders

Section 336 amends section 13(d) of the Export Administration Act to extend the effective period for temporary denial orders from 60 to 180 days.

Current law provides that temporary denial orders can be issued for no more than 60 days, unless renewed for additional 60-day periods. Such time periods have proven inadequate to allow for completion of investigations, particularly when the suspected violation occurs overseas. Of six temporary denial orders issued since enactment of the Export Administration Amendments Act of 1985, one was renewed four times, one was renewed three times, and three were renewed for one additional 60-day period. Parties subject to temporary denial orders will continue to be able to appeal to an administrative law judge at any time.

The committee did not act upon the executive branch's request to change the current standard of "imminent violation" to one of where necessary "to facilitate enforcement of the act" for issuance of temporary denial orders due to a lack of specific information regarding difficulties with the current standard. The committee will, however, further review the need for such a change and consider the request at a future date.

Section 337—Western regional office

Section 337 amends section 15 of the act to require the Secretary to establish a Western regional office with authority to issue validated licenses for certain exports, and to provide assistance to U.S. exporters.

In reviewing export license applications, the regional office may issue licenses for exports which are not subject to (1) referral to any other department or agency other than the Department of Commerce, or (2) multilateral review. The office shall also be responsible for rendering written advisory opinions with respect to exports of goods or technology from the United States. Further, it shall provide assistance to U.S. exporters in complying with requirements of the act, and provide application forms, supporting documents, and copies of the regulations promulgated by the Secretary.

The Western regional office is required to forward expeditiously to the Department of Commerce any application for a validated export license which is subject to review by other departments or agencies, or multilateral review, and to give such application a

number. The Secretary shall also provide as part of the annual report a detailed description and analysis of the operations of the office, including an accounting of the number of applications processed and the disposition of those applications.

The necessity for creating a licensing office in the Western United States is due to the large volume of export activity conducted out of West Coast ports. The Department of Commerce estimates that 40 percent of all validated export license applications originate in California. Currently, there are no licensing officers outside of the Office of Export Administration in Washington, D.C. who are either trained or authorized to provide definitive advice or to perform any licensing function on behalf of the Department of Commerce. Western States' businesses, therefore, up to three times removed from Washington, D.C., are disadvantaged in receiving and providing necessary information to comply with export regulations issued by the Department.

Section 338—Monitoring of wood exports

This section requires the Secretary of Commerce to monitor, for a period of not less than 2 years from the date of enactment, exports of processed and unprocessed forest products to all nations of the Pacific Rim. The Secretary is to report the results of such monitoring on a monthly basis to the Committee on Foreign Affairs of the House and Committee on Banking of the Senate. The monitoring is to include, for each item and for each country, actual and anticipated exports (in terms of both volume and dollar value), the destination by country, and the domestic and worldwide price, supply, and demand. The committee does not intend for the monitoring provision to result in additional recordkeeping or reporting burdens on U.S. manufacturers or shippers, nor the release of any proprietary data.

It is the committee's intent that the Secretary follow the procedures for monitoring set forth in section 7(b) of the Export Administration Act of 1979, as amended, in carrying out this provision. The committee expects that in addition to unprocessed wood such as logs and cants, the processed forest products to be monitored will include lumber (boards, timber, millwork, moulding, flooring, and siding), veneer, panel products (plywood, particleboard, and fiberboard), utility/telephone poles, other poles and posts, railroad ties, shakes and shingles, wood chips, paper, pulp and pulp products. The provision will enable the committee and the Congress to monitor whether the nations of the Pacific Rim are establishing a balance between imports of processed versus unprocessed wood, and whether these nations are implementing commitments to lower and eliminate tariff and nontariff barriers to imports of U.S. processed and unprocessed forest products. Because exports are one of a number of factors (including U.S. housing starts and other U.S. demand forces, timber harvest levels established for the National Forests, and agreements affecting wood products shipments from Canada and other nations) which affect timber supply and demand, the monitoring provision will help the committee and the Congress to determine whether sufficient raw materials are available from public and private lands to meet domestic mill needs.

Section 339—Export Administration Reform Commission

This section directs the President to create, not later than 60 days after enactment of this bill, an Export Administration Reform Commission, to examine the current export control system and report on recommendations and reforms for a more effective, efficient system. Membership on the Commission is to be comprised of 24 individuals knowledgeable in relevant scientific, business, or legal matters, 12 of whom are appointed by the President and 12 by the Congress.

One of the most difficult yet fundamental export control issues concerns the definition of what is militarily significant. The current export control system is based on controlling items which could enhance the military capability of adversaries, yet nowhere in statute or regulation is there a definition of what constitutes those militarily critical goods and technologies whose acquisition could enable the Soviet Union to overcome its deficiencies, or whose control is practicable for the period necessary to maintain a U.S. qualitative advantage. There is no well-defined criteria within the U.S. Government, let alone on a multilateral basis within COCOM, to determine whether a good or technology will significantly enhance Soviet military capability.

The purpose of the Export Administration Reform Commission is to empanel a group of technical experts to derive a consensus as to what constitutes strategic/critical goods and technology, and then apply such criteria to the control list. Only with such agreement can effective decontrol and a significant reduction of the control list occur.

The committee notes the highly successful efforts of such commissions as the President's Commission on Strategic Forces, the President's Blue-Ribbon Commission on Defense Management, and the President's Commission on Industrial Competitiveness, in addressing complex matters and recommending practical solution. It has been more than 10 years since the Bucy Commission (Report of the Defense Science Board Task Force on Export of U.S. Technology) examined the premises—technical, strategic, and practical—upon which the export control system is based, yet the fundamental nature of modern technology has changed dramatically. The National Academy of Sciences report, "Balancing the National Interest: U.S. National Security Export Controls and Global Economic Competition" and other studies have noted problems of the current system. The committee intends that the establishment of the Export Administration Reform Commission will assist policymakers in identifying solutions to these matters, and provide the basis for altering the export control system to be more effective in protecting U.S. and Western military security and economic vitality.

Section 340—Findings and declaration of policy

This section sets forth a series of congressional findings and policy statements concerning national security export controls, many of which are based on the findings and recommendations of the National Academy of Sciences report. The provision also amends section 3 of the act to emphasize the importance of minimizing unnecessary regulatory burdens on exporters, and consider

the impact of export controls on the long-term health of the U.S. industrial base.

SUBTITLE C—DEBT, DEVELOPMENT, AND WORLD GROWTH

Section 341—International negotiations

Section 341(a) directs the President, the Secretary of State, and the Secretary of the Treasury to take the necessary steps to continue negotiations with West Germany, the United Kingdom, France, Japan, Canada, and Italy, as well as to initiate negotiations with other nations through appropriate international fora, on coordination of macroeconomic policies and the promotion of growth-oriented economic policies. This provision also calls for the notification of our trading partners that the United States is prepared to retaliate in like manner against any unfair foreign trade practice.

Section 341(b) declares that a key objective of U.S. participation in international economic and trade meetings and in economic summits is to obtain agreement on the adoption of growth-oriented economic policies and on increasing markets for U.S. and developing country exports.

Section 342—Trade liberalization in developing countries

Section 342(a) expresses the sense of the Congress that the achievement of development in Third World nations and recovery of economic strength in industrialized nations and recovery of economic strength in industrialized nations can only be reached through expansion of world trade. Section 342(b) declares that all U.S. foreign assistance shall be consistent with and supportive of long-term trade liberalization in recipient countries.

Section 343—Overseas Private Investment Corporation

This section reaffirms congressional support for the work of the Overseas Private Investment Corporation (OPIC) in serving important development assistance objectives, authorizes an increase in the maximum contingent liability for insurance issued by OPIC, authorizes an increase in OPIC's investment guarantee and direct investment fund programs, and authorizes an increase in civil service staff and budgetary resources to 10 percent above the fiscal year 1984 levels to support an expanded finance and investment guarantee program. Section 235(a) of the Foreign Assistance Act of 1961 is amended to authorize the Corporation to issue at least \$200 million in loan guaranties under section 234(b) in each fiscal year. The Corporation's direct investment program under section 235(b) of the Foreign Assistance Act is authorized at not less than \$25 million in each fiscal year for purposes of supporting eligible projects under section 234(c) of the act.

OPIC is entirely self-sustaining so that the proposed authorization, budgetary, and staff increases will have no practical budgetary impact. The Corporation presently utilizes its entire finance authority, and the recommended increases should enable OPIC to satisfy greater demand. A November 1985, Government Operations Committee oversight report found:

OPIC is prevented from utilizing most of the \$38.2 million in unused authority in the direct loan program because

OMB requested and the Congress agreed to an appropriations ceiling that caps annual OPIC direct loans at \$15 million, in spite of significant growth in this program from loan repayments.

In order to ensure that OPIC will fulfill the mandates contained in section 231 of the Foreign Assistance Act of 1961, as amended, to give preferential consideration to small business, to projects in the least developed nations, and to other considerations, the committee believes OPIC should maintain adequate personnel and administrative budget levels. The committee intends the additional personnel and budget resources to be used to identify, process, and assist projects involving small business investors and projects in least developed nations, which often require more staff time and resources than other projects.

Section 344—Trade and development program

Subsection (a) of 344 reaffirms congressional support for the Trade and Development Program (TDP). Subsection (b) amends section 661 of the Foreign Assistance Act of 1961 to expand the scope of activities TDP may support to include training and management and codifies TDP's present status as an independent component agency of the International Development Cooperation Agency (IDCA). This subsection directs that on or after January 1989, the TDP Director should be appointed by the President, with the advice and consent of the Senate, and provides for TDP to serve as the lead Federal agency in providing information to persons in the private sector on trade development and export promotion related to bilateral development projects. Subsection (b) also requires TDP to submit an annual report on its activities to the House Foreign Affairs Committee and the Senate Foreign Relations Committee. In addition to the \$20 million executive branch authorization request for each of fiscal years 1988 and 1989, the bill provides that not less than \$10 million in fiscal year 1988 and not less than \$11 million in fiscal year 1989 shall be made available to TDP, to be taken from funds requested by the executive branch to be deposited in the Private Enterprise Revolving Fund administered by the Agency for International Development (AID) pursuant to section 108 of the Foreign Assistance Act, as amended.

Subsection (c) transfers to TDP from AID the authority for administering and implementing the Tied Aid Credits Program established by the Trade and Development Enhancement Act of 1983. The subsection provides that TDP shall serve as a voting member of the National Advisory Council (NAC) on international monetary and financial policies for any NAC discussion and decision on matters involving tied aid credits. The current statutory requirement for unanimous NAC consent on decisions involving tied aid credits is replaced by a simple majority vote requirement. The bill also authorizes the Director of TDP, with the agreement of the Secretary of State and the AID Administrator, to use economic support funds to finance tied aid credits in any country eligible for tied aid credits under the 1983 Trade and Development Enhancement Act.

Subsection (d) provides the pay of the TDP Director shall be equivalent to that of an Under Secretary, and contains transitional

provisions relating to the transfer of functions in the tied aid credit program.

The committee believes that the consolidation of aid-related trade activities within an independent, expanded Trade and Development Program will enhance the trade promotion opportunities generated by the U.S. foreign assistance program, and reinforce the Agency for International Development's focus on meeting the basic human needs of developing nations. The committee is concerned that the proliferation of AID priorities has caused the Agency overall to give scant attention to the potential for U.S. exports related to bilateral development aid programs and projects. Although the committee does not view trade and aid as mutually exclusive, the consolidation of trade matters within a single, independent program will assure that this area receives the attention it deserves.

The committee strongly supported the creation of TDP 7 years ago. The program is based on the simple concept that support for project planning and feasibility studies enables U.S. firms to get in on the ground floor of development projects and places our businesses in an enhanced position to win follow-on construction, equipment supply, and management contracts. TDP has built an impressive record in its few years of existence. A recent audit shows that since 1980, TDP's total \$75 million expenditure on feasibility studies has generated \$605 million in actual exports, with nearly \$7 billion more in follow-on sales anticipated in the next 5-20 years. TDP's average annual obligation of \$10 million has produced an average annual return of \$86 million in U.S. exports. The committee believes that expanding the scope of TDP's activities to include post-feasibility support and granting TDP responsibility for the aid-portion of the tied aid credits program will significantly boost U.S. export opportunities related to foreign aid.

The committee expects that TDP's export orientation will inject a new, positive attitude into the U.S. tied aid credits program. The program, which was established in 1983 by the Congress with the support of the committee, has languished under AID's stewardship; the Agency has consistently taken a negative attitude toward the tied-aid credits program, and in practice has proven extremely reluctant to support any U.S. tied-aid credits. With its sensitivity to trade opportunities that may accompany development projects, TDP should provide a revitalized, aggressive stance in supporting U.S. exporters facing this predatory financing practice by our foreign competitors.

The committee designates TDP to serve as the principal Federal agency to provide information to the private sector about trade development and export promotion opportunities related to bilateral development projects. The committee intends that TDP concentrate its efforts on programs and projects supported by the Agency for International Development, and that, with respect to multilateral development projects, TDP cooperate with the Commerce Department's Office of International Major Projects. The committee views one of TDP's strengths as being its expertise in leveraging opportunities for American exports of goods and services from bilateral development projects; the strength of the Commerce Department's export promotion efforts lies in cultivating and promoting commercial (rather than development aid-related) export opportu-

nities. The committee expects that these two agencies will work together closely in promoting American exports in their respective areas of expertise, and that other Federal agencies will cooperate with TDP in its new role of providing informational services.

Section 345—Countertrade

Section 345 directs the President to establish an interagency group on countertrade, chaired by the Secretary of Commerce:

- (1) to review United States policy on countertrade;
- (2) to establish and maintain a list, by country, of the laws, policies, and regulations relating to countertrade of each nation, and of any particular goods or services that have been designated by such country for countertrade transactions; and
- (3) to make recommendations to the President and Congress on the use of countertrade to enhance U.S. bilateral development assistance programs and on expanding the current information base on countertrade, including export opportunities.

As debt-burdened developing nations turn increasingly to countertrade as a means of preserving hard currency and developing new markets for their products, it is imperative that the U.S. review its policy on countertrade. Current executive branch policy actively discourages nonmilitary countertrade, which can place American exporters at a significant disadvantage vis-a-vis our major industrialized trading competitors and jeopardize long-term market opportunities. Moreover, a 1984 Commerce Department study found that countertrade is not reported separately by the U.S. Customs Service or by the Census Bureau. The lack of such information could pose problems for the Internal Revenue Service because of unreported income and for the Customs Service because import values may result in assessment of insufficient duties.

In introducing the reporting requirement, the committee is responding to growing concerns (as evidenced by section 6 of the Defense Production Act Amendments of 1984) that offsets and other compensation practices are helping to create additional and stronger overseas competition for U.S. companies. Increasingly, offset arrangements are required by foreign buyers as a condition of sale. These arrangements help U.S. competitors to preserve foreign exchange, target development of selected industrial sectors, and enhance the capability of domestic industries through technology transfer. Since they often involve the purchase of unrelated products, they may be unnecessarily diverting competitive products into our domestic market.

The question arises as to whether such offsets currently or prospectively have a serious adverse effect on U.S. competitiveness, employment, and trade. It is virtually impossible to determine the potential implications and consequences of offset agreements, as there is no comprehensive data base on which to make an evaluation of the domestic impact of these practices. The committee believes these practices should be monitored closely to assess their effect on our competitive position.

Section 346—Caribbean Basin Initiative

This section affirms the sense of the Congress about continuing to recognize the importance of the Caribbean Basin Initiative ((B))

in developing trade between the United States and Caribbean nations. It sets forth congressional intent that changes in U.S. trade laws by this bill to improve U.S. competitiveness should not be construed as diminishing the importance of the Caribbean Basin Initiative, altering the current duty-free trade system available to designated beneficiaries of the CBI, or imposing an additional burden on Caribbean nations' ability to compete with exports from other U.S. trading partners.

Section 347—Limitation on procurement in foreign assistance programs

Section 347 amends section 604(g)(1) of the Foreign Assistance Act of 1961 to prohibit the use of foreign assistance funds for the procurement of goods and services from any advanced developing or industrialized nation which is competitive in international markets with U.S. producers, unless the U.S. goods and services are not competitive in the market where the goods and services are to be used.

The provision clarifies that foreign assistance funds obligated for projects entered into after enactment of this bill may not be used to purchase goods or services for countries that compete with the United States in international markets for sales of comparable goods and services. The committee is particularly concerned that foreign assistance funds not be used to enhance the competitive advantage of emerging industrialized countries, such as Brazil, Singapore, South Korea, and Taiwan, which may compete directly with the United States in developing country markets. This section prohibits AID from financing the procurement of or procuring goods or services in a developing nation from non-U.S. sources except in cases where such U.S. goods or services are not competitive in the market where they will be used. Examples would include when such U.S. goods or services cannot be purchased from U.S. sources in a timely manner, or when spare parts or repair facilities for U.S. goods and services are not available.

SUBTITLE D—PROTECTION OF UNITED STATES BUSINESS INTERESTS
ABROAD

Section 351—Protection of United States intellectual property

Section 351 recognizes the importance of protecting U.S. intellectual property, prompted by the losses sustained by U.S. industries and their employees, as well as the consuming public. Ineffective protection of U.S. copyrighted works causes an annual loss of more than \$1.3 billion to the copyright industry. Foreign product counterfeiting has resulted in the loss of more than 130,000 U.S. jobs, and between \$6 billion and \$8 billion in domestic and export sales by U.S. firms. Substandard fraudulent goods can pose health and safety threats to consumers, and endanger the reputations of legitimate U.S. companies. Inadequate patent protection has resulted in an annual loss of \$200 million for one U.S. industry alone.

Paragraph (1) states that the Secretary of State, the United States Trade Representative, and relevant U.S. Ambassadors should conduct bilateral talks with appropriate countries in order to reduce instances of piracy and counterfeiting, obtain adherence

to existing international conventions which encompass intellectual property issues, and gain support for inclusion of intellectual property codes in future multilateral trade negotiations. Further, it encourages the negotiation of an international convention to protect mask works, since at present, none of the international conventions covers this important new intellectual property.

Paragraph (2) urges the United States to seek to incorporate enforcement mechanisms into international intellectual property codes. One of the important aspects of securing an intellectual property agreement under the aegis of the General Agreement on Tariffs and Trade (GATT) is that the GATT has a dispute settlement and enforcement procedures. The committee recommends protecting U.S. intellectual property rights by adopting civil remedies under domestic intellectual property and trade laws among other remedies.

Paragraph (3) urges the United States to seek the involvement of the U.S. business community in intellectual property negotiations. The structure of advisory committees to help with past trade negotiations has helped to inform U.S. negotiators. A similar mechanism should be employed to utilize the experience of the American business community.

Paragraph (4) states that the Secretary of State, in consultation with the United States Trade Representative, should urge the World Intellectual Property Organization (WIPO) to assist with the development of intellectual property codes in multilateral trade negotiations by providing its technical expertise in standard setting. WIPO has demonstrated its deliberative role in establishing international standards for copyrights, patents and trademarks. It is intended that the relationship between WIPO and MTN efforts will parallel that of the International Organization for Standardization and GATT. Intellectual property codes would be included in MTN efforts to ensure the establishment of a dispute settlement mechanism for intellectual property issues.

Paragraph (5) encourages the President to use retaliatory measures against those countries unwilling to commit formally to improvements in intellectual property protection. The 98th Congress gave the President powerful tools in section 503 of Public Law 98-573 to persuade countries which condone piracy or create other trade barriers to discontinue such practices.

Paragraph (6) encourages the Agency for International Development (AID) to include in its development programs technical training in enforcement for officials of patent, copyright and trademark offices in recipient countries. AID is to consult with the Patent and Trademark Office and Copyright Office of the Department of Commerce in its effort to provide such technical training.

Section 352—Foreign business practices

Section 352 amends section 30A of the Securities and Exchange Act of 1934 (15 U.S.C. 78dd-1) and makes parallel amendments to section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) to modify standards of culpability in current law and to clarify the definition of illegal payments by issuers and domestic concerns. Prohibited payments include those for the purpose of influencing acts or decisions of foreign officials in order to assist cor-

porations and individuals "in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory or other action in seeking more favorable treatment by a foreign government."

Willful bribes to foreign officials are prohibited, as in current law. The "reason to know" standard of culpability in the present statute was replaced by a split standard. Under the new standard, corporations or individuals with "knowledge" of bribes or attempted bribes by third parties (for example, their agents) are subject to criminal and civil penalties. Corporations or individuals which act with "reckless disregard" of a substantial risk that third parties would bribe or attempt bribery would be subject only to civil penalties.

For purposes of this provision, the definition of "retaining business" shall not be limited to the renewal of contracts or other business, but shall include the completion of existing contracts and the carrying out of existing business. Payments for the procurement of legislative, judicial, regulatory or other actions in seeking more favorable treatment from a foreign government which have a bearing on the completion of contracts or the carrying out of existing business would be prohibited by the act. For example, a payment to a foreign official for the purpose of obtaining favorable tax treatment would be prohibited. The prohibition does not include payments made for purposes other than obtaining or retaining business, which may be prosecuted at the discretion of the foreign government.

A company may not be held vicariously liable if it can show that it had established procedures to prevent its employees from making bribes and that its supervisory employees had used "due diligence" to prevent employees or third parties from making bribes.

A corporation or individual may raise as a simple defense to prosecution under the Act a showing that a payment was made "for the purpose of expediting or securing the performance of a routine governmental action," or where that payment was "expressly permitted" by the laws or regulations of the foreign country. A "routine governmental action" includes processing papers (including visas and work orders), loading and unloading cargoes, and scheduling inspections associated with contract performance. A routine governmental action does not include any decision on whether to award new business or continue existing business, including legislative, judicial, regulatory or other action in seeking more favorable treatment by a foreign government. The reference to a "simple" defense means that an affirmative defense is not required for purposes of fulfilling the conditions of this subsection.

As in current law, enforcement responsibility rests with the Department of Justice and the Securities and Exchange Commission. Guidelines for compliance may be issued by the Attorney General, after consultation with the SEC, the Secretary of Commerce, the United States Trade Representative, the Secretary of State and the Secretary of the Treasury, and after obtaining the views of the business community and others through public notice and comment in public hearings. The Attorney General shall establish procedures, after consultation with appropriate agencies, to provide re-

sponses to specific inquiries relating to compliance within 30 days after receiving a request.

SUBTITLE E

Section 361—Trading With the Enemy Act

Section 361 provides for the termination of the administration of alien enemy property activities by eliminating subsections (b) through (e) of section 39 of the Trading With the Enemy Act, and directs the Attorney General to place in the miscellaneous receipts account of the Treasury all sums from property vested in or transferred to him under that act. This section also repeals an unnecessary reporting requirement in section 6 of that act. The committee notes that all litigation and adjudication of World War II claims under this law has ended. The committee acted favorably on similar legislation proposed by the Justice Department in 1977 and 1980, but that no action has been taken in the Senate.

Section 362—Limitation on exercise of emergency authorities

Section 362 amends section 5(b) of the Trading with the Enemy Act and section 203(b) of the International Emergency Economic Powers Act to clarify that the authority granted to the President by these sections does not include the authority to regulate imports from and exports to any country of informational materials, which are not otherwise under National Security export controls under section 5 of the Export Administration Act of 1979 or are not the subject of the prohibitions contained in chapter 37 of title 18, United States Code.

These sections amend the Trading With the Enemy Act and the International Emergency Economic Powers Act to exempt from regulation or prohibition, directly or indirectly, "the importation from any country, or exportation to any country, commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other information materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which acts are not prohibited by chapter 37 or title 18, United States Code." These provisions codify current practice under the International Emergency Economic Powers Act, as in the recent embargoes of trade with Nicaragua and Libya, of exempting information materials and publications from import restrictions. The committee notes that the American Bar Association House of Delegates approved, in February 1985, the principle that no prohibitions should exist on imports to the United States of ideas and information if their circulation is protected by the First Amendment. That principle applies with equal force to the exportation of ideas and information from this country to the rest of the world. Accordingly, these sections also exempt informational materials and publications from the export restrictions that may be imposed under these acts.

Section 363—Relations with Mexico

This section was adopted by voice vote in 1986, during House floor consideration of H.R. 4800 (the Trade and International Eco-

conomic Policy Reform Act of 1986). It includes findings on the importance of United States-Mexican relations, the current inadequate and ad hoc nature of United States policymaking regarding Mexico, and the need for improving our government's approach to issues involving Mexico. Section 363 also creates an interagency group, the United States-Mexico Interagency Commission, and calls for the convening of a United States-Mexico bilateral summit.

Mexico is of great strategic importance to the United States, both politically and geographically, and is our third largest trading partner. The alliance between the United States and Mexico is substantially economic in nature, yet our trade and diplomatic relations with this neighbor are often taken for granted or are handled in a fractured manner. The interagency group, to be established by the President, is to include the Secretary of State, the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, and the United States Trade Representative, and is to be chaired by the Secretary of State. The purpose of the Commission is to coordinate United States policy toward Mexico and to allow for greater deliberation and input from the various government agencies. The Commission also is meant to serve as an official channel of communication between the United States Government and the Government of Mexico in order to raise issues of bilateral concern, particularly in the area of trade and economic matters, to a higher level of discussion. The bill requires that the Commission report to Congress on an annual basis on its actions, and urges that the Commission meet semiannually with Mexican representatives.

Section 363 includes a sense of the Congress that a bilateral economic summit be held and outlines potential areas to be considered. These items include: Mexico's relationship to the General Agreement on Tariffs and Trade; Mexico's graduation from the Generalized System of Preferences; U.S. direct investment in Mexico; U.S. fishing rights in Mexican waters; the potential for a U.S.-Mexico free trade agreement; as well as greater coordination in the areas of immigration, pollution, research and development, debt and foreign investment, and trucking and transportation.

Section 364—budget act

Section 364 provides that any new spending authority pursuant to this act shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriations acts.

REQUIRED REPORTS SECTION

COST ESTIMATE

The committee estimates that, assuming the full appropriation of the amounts authorized in this title, the total budget authority required to carry out the provisions of this title will be \$133 million for fiscal year 1987. The fiscal year allocation of the total cost is set forth in the Congressional Budget Office estimate below. The committee agrees with the projected cost estimate of the Congressional Budget Office.

This bill would authorize new spending, above the normal operating level of the programs covered and funds not otherwise avail-

able, of \$9 million in fiscal year 1988 and of \$6 million in fiscal year 1989.

INFLATIONARY IMPACT STATEMENT

Enactment of title III will have no identifiable inflationary impact. In fact, as the purpose this title is to promote U.S. exports, the enactment of this legislation should lead to a healthier, more prosperous U.S. economy.

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

(a) Oversight findings and recommendations

Title III is the result of extensive hearings and oversight in 1986 and 1987, particularly by the Subcommittee on International Economic Policy and Trade, but also by other subcommittees, and by the full committee. The oversight activities have included various briefings and study missions by both members and staff of the committee. The hearings and other activities by the Subcommittee on International Economic Policy and Trade have covered the following: General U.S. trade policy; operations of the U.S. and Foreign Commercial Service; export trading companies; mixed credits (including reporting H.R. 3667, as amended, in 1986); national security, foreign policy and short supply export controls and the implementation of the Export Administration Amendments Act of 1985; the Overseas Private Investment Corporation; the Trade and Development Program; the Foreign Corrupt Practices Act; and, the agricultural export and trade provisions of the Food Security Act of 1985. The committee has also considered Government Operations Committee reports on "Federal Government Export Promotion Activities: Oversight of Foreign Commercial Service" (36th Report; April 11, 1984) and on "The Role of the Overseas Private Investment Corporation" (22nd Report; November 5, 1985), and several studies by the General Accounting Officer: (GAO/NSIAD-86-42, February 1986); "Export Promotion: Activities of the Commerce Department's District Offices" (GAO/NSAID-86-43, February 1986); "Foreign Aid: Potential for Diversion of Economic Support Funds to Unauthorized Use" (GAO/NSAID-87-70); "Foreign Assistance: How the Funds Are Spent" (GAO/NSAID-86-73); "Assessment of Commerce Department's Foreign Policy Report to Congress" (GAO/NSAID-86-172); "Commerce-Defense Review of Applications to Certain Free World Nations" (GAO/NSAID-86-169); "Assessment of Commerce Report on Extending Controls for South Africa" (GAO/NSAID-87-3); and confidential report entitled, "Export Controls Need Strengthening But Some Licensing May Be Unnecessary" (GAO/C-NSAID-86-10). Last, the committee considered the report of the National Academy of Sciences' report, "Balancing the National Interest: U.S. National Security Export Controls and Global Economic Competition."

(b) Budget authority

The enactment of these provisions will create no new budget authority, credit authority or spending authority.

(c) Committee on Government Operations summary

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

(d) Congressional Budget Office cost estimate

APRIL 6, 1987.

1. Bill No.: Title III of H.R. 3.
2. Bill title: Export Enhancement Act of 1987.
3. Bill status: As ordered reported by the House Committee on Foreign Affairs on March 24, 1987.
4. Bill purpose:

Subtitle A—Export Promotion.—The Secretary of Commerce is directed to establish within the International Trade Administration of the Department of Commerce the United States and Foreign Commercial Service, to appoint a Commercial Service officer to serve with the Executive Director of each of the multilateral development banks in which the United States participates, and to take a number of other actions to promote U.S. exports. Section 314(c) authorizes the appropriation of \$123.9 million in fiscal year 1987 and \$129.9 in fiscal year 1988, for the export promotion and control activities of the International Trade Administration (ITA).

The Secretary of Agriculture is required to prepare an annual report on long-term agricultural trade strategy, establish an office to monitor other countries' agricultural trade practices and prepare quarterly reports on its findings, and increase the number of Foreign Agricultural Service officers stationed overseas. The Food Security Act of 1985 is amended to require a monthly report on the export enhancement program and to give priority to customers who have traditionally purchased U.S. agricultural products. Section 318(b) amends the Public Law 480 and short and intermediate export credit programs to provide subsidized credits for the export of wood and wood products.

Subtitle B—Export Controls.—Subtitle B increases the 1988 authorization for the ITA's export control program and establishes certain procedures for the Secretary of Commerce to monitor and control exports affecting national security. It would also establish an Export Administration Reform Commission, which would make its report to the Congress within 1 year.

Subtitle C—Debt, Development, and World Growth.—Section 343 increases the Overseas Private Investment Corporation's maximum outstanding contingent liability for guaranteed loans by \$250 million, sets minimum annual guaranteed loan commitments at \$200 million and direct loan commitments at \$25 million, and requires an increase in personnel to 110 percent of fiscal year 1984 full-time equivalents.

Section 344 establishes the Trade and Development Program as a separate agency, expands its responsibilities regarding tied aid credits, and authorizes the transfer of \$10 million in fiscal year 1988 and \$11 million in fiscal year 1989 from the bilateral development program to fund its programs.

Subtitle D—Protection of U.S. Business Interest Abroad.—Subtitle D amends the Foreign Corrupt Practices Act and the Trading with the Enemy Act.

Subtitle E—Miscellaneous Provisions.—Section 361 terminates the Office of Alien Property and directs the Attorney General to cover into miscellaneous receipts future sums collected under the Trading with the Enemy Acts. Section 363 creates an interagency commission on relations with Mexico and requires an annual report to Congress on its activities.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Specific authorizations—ITA:					
Authorization level.....	133				
Estimated outlays.....	94	27	12		
Other provisions:					
Estimated authorization level.....	7	6	6	6	6
Estimated outlays.....	10	9	9	7	7

Basis for estimate:

Subtitle A—Export Promotion.—The bill authorizes appropriation of \$123.9 million in fiscal year 1987 and \$129.9 million in 1988 for export promotion activities of the ITA. Assuming appropriation of the authorized amount for 1988, we estimate the resulting outlays would be \$92 million in 1988, \$26 million in 1989, and \$12 million in 1990. Subtitle A includes a number of other provisions that could result in costs if the bill were enacted. Section 313 requires that one officer of the United States and Foreign Commercial Service be appointed to serve with the U.S. Executive Director of each of the multilateral development banks in which the U.S. participates. This provision would result in a cost of approximately \$200,000 annually if these positions were new rather than re-assigned. Approximately \$1 million per year would be incurred in establishing the Pacific Rim Initiative, a pilot program to increase exports of U.S. goods and services to Japan, South Korea, and Taiwan. Section 327, which requires the Secretary of Commerce to establish a preshipment inspection regulation program to certify such inspection companies, is estimated to cost \$4 million annually to implement. Additionally, the enhancement to the export promotion data system specified in section 326 would cost \$100,000 annually, but some or all of these costs could be recovered through fees.

Subtitle A also requires a number of reports apart from the programs mentioned above. The President is required to evaluate the export promotion services of the Department of Commerce within 1 year of the bill's enactment and the Secretary of Commerce is required to prepare an annual report on export trading companies, and a report on the integration of the foreign and domestic export promotion operations in ITA by January 1, 1988. While none of these reports may entail significant costs by itself, taken together they could cost up to \$500,000 in the first year after enactment and lesser amounts thereafter.

The bill would also create several new Agriculture Department offices to assist U.S. farmers and businessmen seeking relief from unfair trade practices and for other purposes, and would require the department to conduct certain studies. CBO estimates that these provisions would cost about \$500,000 per year beginning in fiscal year 1987, assuming appropriation of the necessary funds.

Other provisions of the subtitle are not expected to result in a significant cost to the government.

Subtitle B—Export Controls.—Section 332(k) increases the fiscal year 1988 authorization for the export control program in ITA from \$35,935,000 to \$38,935,000. Outlays from the additional \$3 million authorized for 1988 are estimated to be \$2.1 million in 1988, \$0.6 million in 1989, and \$0.3 million in 1990.

The bill would also establish the Export Administration Reform Commission, whose members would be appointed 2 months after enactment of the bill. The commission, required to report to the Congress within one year on the current system of controlling U.S. exports, would expire upon submission of its report. The bill authorizes such sums as may be necessary for the commission. Based on the experience of similar temporary study commissions, CBO estimates that the commission would cost about \$1 million in fiscal year 1988.

Subtitle C—Debt, Development, and World Growth.—Section 343(b) requires that OPIC issue at least \$200 million in guaranteed loans and \$25 million in direct loans per fiscal year. This places a floor on the existing open-ended authorizations. New credit authority is limited by amounts provided in advance in appropriations acts. The level of credit authority required by this section approximates the CBO 1988 baseline levels and is not expected to significantly change outlays when compared with baseline levels.

This section also requires the Corporation to increase its staff to 110 percent of the level employed in fiscal year 1984. This would require an increase in staff of approximately 24 full-time equivalents over baseline and is estimated to increase outlays by approximately \$2 million per year.

The Trade and Development Program is to be financed by the transfer of \$10 million in fiscal year 1988 and \$11 million in fiscal year 1989 from economic development assistance funds appropriated under the authority of Foreign Assistance Act of 1961.

Subtitle D—Protection of United States Business Interest Abroad and Subtitle E—Miscellaneous Provisions.—The provisions of these subtitles are not expected to result in any significant costs to the federal government.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO cost estimate: None.

9. Estimate prepared by: Joseph C. Whitehill, Carol Cohen, Andy Morton, and Michael Sieverts.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECTION 5314 OF TITLE 5, UNITED STATES CODE

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * *

*Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.
Director, Trade and Development Program.*

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985

* * * * *

TITLE II—EXPORT PROMOTION PROGRAMS

SEC. 201. REQUIREMENT OF PRIOR AUTHORIZATION.

(a) * * *

* * * * *

(d) **EXPORT PROMOTION PROGRAM DEFINED.**—For purposes of this title, the term “export promotion program” means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) * * *

* * * * *

(3) the exhibition of United States goods in other countries; **[and]**

(4) the operations of the United States and Foreign Commercial Service, or any successor agency **[.]**;

(5) *the Market Development Cooperator Program established under section 202; and*

(6) *the assistance for trade shows which is authorized by section 203.*

(e) **PRINTING OUTSIDE THE UNITED STATES.**—(1) *In carrying out any export promotion program, and consistent with other applicable law, the Secretary of Commerce may authorize—*

(A) *the printing, distribution, and sale of documents outside the contiguous United States, if the Secretary finds that the implementation of such export promotion program would be more efficient; and*

(B) the acceptance of private notices and advertisements in connection with the printing and distribution of such documents.

(2) Any fees received by the Secretary pursuant to paragraph (1) shall be deposited in a separate account or accounts which may be used to defray directly the costs incurred in conducting activities authorized by paragraph (1) or to repay or make advances to appropriations or other funds available for such activities.

SEC. 202. MARKET DEVELOPMENT COOPERATOR PROGRAM.

(a) **AUTHORITY TO ESTABLISH PROGRAM.**—In order to—

- (1) identify market opportunities,
- (2) introduce new products and processes,
- (3) eliminate trade and technical barriers, and
- (4) improve economic and trade relations between the United States and other countries,

the Secretary of Commerce is authorized to establish a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

(b) **IMPLEMENTATION OF THE PROGRAM.**—The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

- (1) nonprofit industry organizations,
- (2) trade associations,
- (3) State departments of trade and their regional associations, including centers for international trade development, and
- (4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

(in this section referred to as “cooperators”) to engage in activities in order to carry out the purposes set forth in paragraphs (1) through (4) of subsection (a). The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

(c) **COOPERATOR PARTNERSHIP PROGRAM.**—(1)(A) As part of the program established under subsection (a), the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry out the purposes set forth in paragraphs (1) through (4) of subsection (a).

(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law adminis-

tered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)) and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

(2) In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

(3)(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual's salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

(d) BUDGET ACT.—Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

SEC. 203. TRADE SHOWS.

(a) AUTHORITY OF THE SECRETARY OF COMMERCE.—In order to facilitate exporting by United States businesses, the Secretary of Commerce shall provide assistance for trade shows in the United States which bring together representatives of United States businesses seeking to export goods or services produced in the United States and representatives of foreign companies or governments seeking to buy such goods or services from these United States businesses.

(b) RECIPIENTS OF ASSISTANCE.—Assistance under subsection (a) may be provided to—

(1) nonprofit industry organizations,

(2) trade associations,

(3) foreign trade zones, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

to provide the services necessary to operate trade shows described in subsection (a).

(c) ASSISTANCE TO SMALL BUSINESSES.—In providing assistance under this section, the Secretary of Commerce shall, in consultation with the Administrator of the Small Business Administration, make special efforts to facilitate participation by small businesses and companies new to export.

(d) USES OF ASSISTANCE.—Funds appropriated to carry out this section shall be used to—

(1) identify potential participants for trade show organizers,

(2) provide information on trade shows to potential participants,

(3) supply language services for participants, and

(4) provide information on trade shows to small businesses and companies new to export.

(e) DEFINITIONS.—As used in this section—

(1) the term "United States business" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth, territory, or possession of the United States); or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B); and

(2) the term "small business" means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. [202.] 204. AUTHORIZATION OF APPROPRIATIONS.

[There is authorized to be appropriated \$113,273,000 for each of the fiscal years 1985 and 1986 to the Department of Commerce to carry out export promotion programs.]

There is authorized to be appropriated to the Department of Commerce to carry out export promotion programs—

(1) \$123,922,000 for the fiscal year 1987; and

(2) \$129,922,000 for the fiscal year 1988, of which \$6,000,000 shall be available only for the Market Development Cooperator Program established under section 202 and for the assistance for trade shows which is authorized by section 203.

SEC. [203.] 205. BARTER ARRANGEMENTS.

(a) **REPORT ON STATUS OF FEDERAL BARTER PROGRAMS.**—The Secretary of Agriculture and the Secretary of Energy shall, not later than 90 days after the date of the enactment of this Act, submit to the Congress a report on the status of Federal programs relating to the barter or exchange of commodities owned by the Commodity Credit Corporation for materials and products produced in foreign countries. Such report shall include details of any changes necessary in existing law to allow the Department of Agriculture and, in the case of petroleum resources, the Department of Energy, to implement fully any barter program.

(b) **AUTHORITIES OF THE PRESIDENT.**—The President is authorized—

(1) to barter stocks of agriculture commodities acquired by the Government for petroleum and petroleum products, and for other materials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur; and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) **OTHER PROVISIONS OF LAW NOT AFFECTED.**—In the case of any petroleum, petroleum products, or other materials vital to the national interest, which are acquired under subsection (b), nothing in this section shall be construed to render inapplicable the provisions of any law then in effect which apply to the storage, distribution, or use of such petroleum, petroleum products, or other materials vital to the national interest.

(d) **CONVENTIONAL MARKETS NOT TO BE DISPLACED BY BARTERS.**—The President shall take steps to ensure that, in making any barter described in subsection (a) or (b)(1) or any purchase authorized by subsection (b)(2), existing export markets for agricultural commodities operating on conventional business terms are safeguarded from displacement by the barter described in subsection (a), (b)(1), or (b)(2), as the case may be. In addition, the President shall ensure that any such barter is consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(e) **REPORT TO THE CONGRESS.**—The Secretary of Energy shall report to the Congress on the effect on energy security and on domestic energy supplies of any action taken under this section which results in the acquisition by the Government of petroleum or petroleum products. Such report shall be submitted to the Congress not later than 90 days after such acquisition.

* * * * *

SECTION 6 OF THE TAIWAN RELATIONS ACT

—THE AMERICAN INSTITUTE OF TAIWAN

SEC. 6. (a) * * *

* * * * *

(d) The institute shall employ personnel to perform duties similar to that performed by personnel of the United States and Foreign Commercial Service. The number of individuals employed under this subsection shall be commensurate with the number of United States personnel of the Commercial Service who are permanently assigned to the United States diplomatic mission to South Korea.

SECTION 501 OF TITLE 44, UNITED STATES CODE

§ 501. Government printing, binding, and blank-book work to be done at Government Printing Office

[All] *Except as otherwise expressly provided by law, all printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office, except—*

(1) classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere; and

(2) printing in field printing plants operated by an executive department, independent office or establishment, and the procurement of printing by an executive department, independent office or establishment from allotments for contract field printing, if approved by the Joint Committee on Printing.

Printing or binding may be done at the Government Printing Office only when authorized by law.

AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954

* * * * *

TITLE I

* * * * *

SEC. 104. Notwithstanding any other provision of law, the President may use or enter into agreements with foreign countries or international organizations to use the foreign currencies, including principal and interest from loan repayments, which accrue in connection with sales for foreign currencies under agreements for such sales entered into prior to January 1, 1972 for one or more of the following purposes:

(a) For payment of United States obligations (including obligations entered into pursuant to other legislation);

(b) For carrying out programs of United States Government agencies to—

(1) help develop new markets for United States agricultural commodities (*including wood and wood products of the United States*) on a mutually benefiting basis. From sale proceeds and loan repayments under this title not less than the equivalent of 5 per centum of the total sales made each year under this title shall be set aside in the amounts and kinds of foreign currencies specified by the Secretary of Agriculture and made available in advance for use as provided by this paragraph over such period of years as the Secretary of Agriculture determines will most effectively carry out the purpose of this paragraph: *Provided*, That the Secretary of Agriculture may release such amounts of the foreign currencies so set aside as he determines cannot be effectively used for agricultural market development purposes under this section, except that no release shall be made until the expiration of thirty days following the date on which notice of such proposed release is transmitted by the President to the Senate Committee on Agriculture and Forestry and the Senate Committee on Foreign Relations and to the House Committee on Agriculture and the House Committee on International Relations, if transmitted while Congress is in session, or sixty days following the date of transmittal if transmitted while Congress is not in session. Provision shall be made in sale and loan agreements for the convertibility of such amount of the proceeds thereof (not less than 2 per centum) as the Secretary of Agriculture determines to be needed to carry out the purpose of this paragraph in those countries which are or offer reasonable potential of becoming dollar markets for United States agricultural commodities. Such sums shall be converted into the types and kinds of foreign currencies as the Secretary deems necessary to carry out the provisions of this paragraph and such sums shall be deposited to a special Treasury account and shall not be made available or expended except for carrying out the provisions of this paragraph. Notwithstanding any other provision of law, if sufficient foreign currencies for carrying out the purpose of this paragraph in such countries are not otherwise available, the Secretary of Agriculture is authorized and directed to enter

into agreements with such countries for the sale of agricultural commodities in such amounts as the Secretary of Agriculture determines to be adequate and for the use of the proceeds to carry out the purpose of this paragraph. In carrying out agricultural market development activities, nonprofit agricultural trade organizations shall be utilized to the maximum extent practicable. The purpose of this paragraph shall include such representation of agricultural industries as may be required during the course of discussions on trade programs relating either to individual commodities or groups of commodities;

* * * * *

SEC. 108. (a) * * *

* * * * *

(i) As used in this section and in section 106(b)(4)—

(1) the term “developing country” means a country that is eligible to participate in a sales agreement entered into under this title; [and]

(2) the term “financial intermediary” means a bank, financial institution, cooperative, nonprofit voluntary agency, or other organization or entity, as determined by the President, that has the capability of making and servicing a loan in accordance with this section [.] ; and

(3) The terms “private sector development activity” and “private enterprise investment” include the construction of low- and medium-income housing and shelter.

* * * * *

FOOD SECURITY ACT OF 1985

* * * * *

TITLE XI—TRADE

* * * * *

Subtitle B—Maintenance and Development of Export Markets

* * * * *

SHORT-TERM EXPORT CREDIT

SEC. 1125. (a) * * *

(b) Effective for the fiscal year ending September 30, 1986 and each fiscal year thereafter through the fiscal year ending September 30, 1990, the Commodity Credit Corporation shall make available not less than \$5,000,000,000 in credit guarantees under its export credit guarantee program for short-term credit extended to finance the export sales of United States agricultural commodities and the products thereof, *including wood and processed wood products.*

* * * * *

DEVELOPMENT AND EXPANSION OF MARKETS FOR UNITED STATES
AGRICULTURAL COMMODITIES

SEC. 1127. (a) * * *

(b) In carrying out the program established by this section, the Secretary of Agriculture—

(1) * * *

[(2) shall, to the extent that agricultural commodities and the products thereof are to be provided to foreign purchasers during any fiscal year, consider for participation all interested foreign purchasers, giving priority to those who have traditionally purchased United States agricultural commodities and the products thereof and who continue to purchase such commodities and the products thereof on an annual basis in quantities greater than the level of purchases in a previous representative period;]

(2) shall, to the extent that agricultural commodities and products thereof are to be provided to foreign purchasers during any fiscal year, given priority to all interested foreign purchasers who—

(A) have traditionally purchased United States agricultural commodities and the products thereof; and

(B) continue or begin to purchase such commodities and the products thereof on an annual basis in quantities equal to or greater than the level of purchases in a previous representative period;

* * * * *

(4) shall take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities or the products thereof the export of which is assisted under this section; [and]

(5) may provide to a United States exporter, user, processor, or foreign purchaser, under the program, agricultural commodities of a kind different than the agricultural commodity involved in the transaction for which assistance under this section is being provided[.]; and

(6) shall report to the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives and the Committee on Agriculture, Forestry, and Nutrition of the Senate every 30 days a current list of countries provided agricultural commodities and products under the program established by this section and a justification for participation in such program.

* * * * *

SECTION 4 OF THE FOOD FOR PEACE ACT OF 1966

SEC. 4. (a) * * *

(b)(1) Export sale of agricultural commodities out of Commodity Credit Corporation and private stocks on credit terms in excess of three years, but not more than ten years, may be financed by the

Commodity Credit Corporation. In addition, the Corporation may guarantee the repayment of loans made to finance such sales, *except that, for purposes of this sentence, the term "agricultural commodities" includes wood and processed products.*

* * * * *

EXPORT TRADING COMPANY ACT OF 1982

* * * * *

TITLE I—GENERAL PROVISIONS

* * * * *

SEC. 105. REPORT ON EXPORT TRADING COMPANIES.

Not later than one year after the date of the enactment of this section and annually thereafter, the Secretary of Commerce shall submit a report to the Congress on the activities of the Department of Commerce to promote and encourage the formation of export trade associations and export trading companies. The report shall include a survey of the activities of export management companies and export trade associations, as well as an analysis of the operating experiences of those export trading companies established pursuant to this Act. The report shall not contain any information subject to the protections from disclosure provided in this Act.

* * * * *

EXPORT ADMINISTRATION ACT OF 1979

* * * * *

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy, *to minimize delays and unnecessary regulatory burdens in administering export controls*, and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States (*including the impact on the competitiveness and the long-term health of the industrial base of the United States*) and only to the extent necessary—

(A) * * *

* * * * *

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions

of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, *except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China.* The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (*except the People's Republic of China*), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.

NATIONAL SECURITY CONTROLS

SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. *For purposes of the preceding sentence, the term "affiliates" includes both governmental entities and commercial entities that are controlled in fact by controlled countries.* The authority, contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

* * * * *

(4) No authority or permission to reexport any goods or technology subject to the jurisdiction of the United States may be required under this section—

(A) to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, except that the Secretary may require authority or permission to reexport—

(i) such goods or technology to such end users as the Secretary may specify by regulation, and

(ii) such specific extraordinarily sophisticated goods or technology as the Secretary may specify by regulation, or

(B) from any country when the goods or technology to be reexported are incorporated in other goods and do not constitute more than 25 percent of the value of the goods in which they are incorporated.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—(1) * * *

[(2) No authority or permission to export may be required under this section before goods or technology are exported in the case of exports to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the participating governments of the Coordinating Committee, if the goods or technology is at such a level of performance characteristics that the export of the goods or technology to controlled countries requires only notification of the participating governments of the Coordinating Committee.]

(2) No authority or permission to export may be required under this section for the export to any country other than a controlled country of any goods or technology which, if exported to the People's Republic of China on March 1, 1987, would require only notification of the participating governments of the group known as the Coordi-

nating Committee, except that the Secretary may require authority or permission to export goods or technology described in this paragraph—

(A) to such end users as the Secretary may specify by regulation; or

(B) to any country which poses significant risks of diversion, as specified by the Secretary.

(3)(A) Except as provided in subparagraph (B), no authority or permission to export may be required under this section for the export of goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section.

(B)(i) The Secretary may require authority or permission to export to a country referred to in subparagraph (A) such specific extraordinarily sophisticated goods or technology as the Secretary may specify by regulation.

(ii) The Secretary may require authority or permission to export goods or technology, which are otherwise eligible for export under subparagraph (A), to such end users as the Secretary may specify by regulation.

(iii) The Secretary may require authority or permission to export goods or technology to a country referred to in subparagraph (A) if the Secretary, in consultation with the Secretary of State, determines that such country is engaging in a pattern and practice of noncompliance with the Coordinating Committee agreement or other applicable agreement.

(4) The Secretary may require any person exporting any goods or technology under the provisions of paragraph (2) or (3) to notify the Department of Commerce of those exports.

(c) CONTROL LIST.—(1) * * *

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. [If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.] If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may refer the matter to the President for resolution within 20 days after the Secretary's determination. The Secretary of Defense shall notify the Secretary of any such referral. The President shall notify the Secretary of his determination with respect to the inclusion of such items on the list not later than 20 days after such referral. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

[(3) The Secretary shall review the list established pursuant to this subsection at least once each year in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of

this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each annual review, the Secretary shall publish notice of that annual review in the Federal Register. The Secretary shall provide an opportunity during such review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall further assess, as part of such review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section.]

(3) *The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.*

(4) *The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. If such recommendations are submitted, such technical advisory committee shall be formally represented in that portion of the process involved in making such changes which relates to its recommendations. The Secretary shall consider the recommendations of the technical advisory committee and shall report to the committee the disposition of its recommendations and the reasons why they were accepted, modified, or rejected.*

(5)(A) *The Secretary, in consultation with the Secretary of Defense, shall, on the basis of subsections (f), (g), and (m) of this section, identify those goods and technology subject to export controls under this section which are no longer significant to the military potential of any controlled country. On the basis of the goods and technology*

so identified, the Secretary should seek, to the maximum extent feasible, to reduce by approximately 40 percent (taking into account those goods and technology described in subparagraph (B)), within 3 years after the date of the enactment of this paragraph, the number of all goods and technology subject to export controls under this section as of such date of enactment.

(B) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

(i) All goods or technology which, if exported to controlled countries on March 1, 1987, would require only notification of the participating governments of the Coordinating Committee.

(ii) All medical instruments and equipment, subject to the exception set forth in subsection (m) of this section.

In addition, those goods should no longer be subject to export controls under this section which are so widely available to the general public in retail outlets that the export controls on those goods are rendered ineffective in achieving their purpose.

(C) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.

(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except for controls on those goods or technology—

(i) for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section and is in effect, or

(ii) with respect to which the President is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology.

(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed—

(i) in the case of goods or technology described in clause (i) of subparagraph (A), for periods of not more than 6 months each, and

(ii) in the case of goods or technology described in clause (ii) of subparagraph (A), for 1 period of not more than 6 months, if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) * * *

* * * * *

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies [at least annually] on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of

paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

(e) EXPORT LICENSES.—(1) * * *

* * * * *

(4)(A) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

(B) *In any case in which the Secretary receives a request which—*

(i) is to revise the qualification requirements or minimum thresholds with respect to the eligibility of goods for export or reexport under a distribution license, and

(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods to countries to which exports are controlled under this section from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

* * * * *

(6) **CERTAIN EXPORTS FOR TRADE SHOWS.**—*Upon application, the Secretary shall issue a license for the export to the People's Republic of China of any good subject to export controls under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show if—*

(A) the United States exporter retains title to and control of the good during the entire period in which the good is in the People's Republic of China; and

(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

(f) FOREIGN AVAILABILITY.—(1) * * *

* * * * *

(3) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secre-

tary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. *In a case in which an allegation is received from an export license applicant, the Secretary shall, within 30 days after receipt of the allegation, publish notice of such receipt in the Federal Register. Within 120 days after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Within 60 days following such submission, the Secretary shall respond in writing to the applicant and publish in the Federal Register, that—*

(A) *the foreign availability does exist and—*

(i) *the requirement of a validated license has been removed,*

(ii) *the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or*

(iii) *the foreign availability determination has been submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 120 days after the determination of foreign availability is made; or*

(B) *the foreign availability does not exist.*

In any case in which the publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made and, except in the case of foreign availability described in subparagraph (A)(ii) or (B), in no case may a license for such export be required after the end of the 8-month period beginning on the date on which the allegation is received. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this paragraph, 'evidence' may include such items as foreign manufacturers' catalogues, brochures, or operation or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

(4) *In any case in which export controls are maintained under this section notwithstanding foreign availability on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of*

eliminating such availability. If, within 6 months after the President's determination, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability. *In any case in which an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, then the Secretary may not, after such agreement is reached, require a validated license for the export of such goods or technology to that country.*

(5)(A) The Secretary shall review, on a continuing basis, the availability to countries, other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary finds that any such goods or technology from foreign sources are of similar quality and are available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to

be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

[(5)] *(6) The Secretary shall establish in the Department of Commerce an Office of Foreign Availability which, in the fiscal year 1985, shall be under the direction of the Assistant Secretary of Commerce for Trade Administration, and, in the fiscal year 1986 and thereafter, shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during the 6-month period, including information on the training of personnel, the use of computers, and the use of Foreign Commercial Service officers. Such information shall also include a description of representative determinations made under this Act during the 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.*

[(6) *Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.]*

[(7) *The Secretary shall issue regulations with respect to determinations of foreign availability under this Act not later than 6 months after the date of the enactment of the Export Administration Amendments Act of 1985.]*

(7) Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability direct access to any laboratory or other facility within such department or agency for the purpose of collecting such information.

(8) In any case in which Secretary may not, pursuant to paragraph (1), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes

that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

* * * * *

(h) TECHNICAL ADVISORY COMMITTEES.—(1) * * *

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, [(D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls, and] (D) revisions of the control list, including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and [(E)] (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

* * * * *

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. *In any case in which an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, then the Secretary may not, after such agreement is reached, require a validated license for the export of such goods or technology to that country.*

(i) MULTILATERAL EXPORT CONTROLS.—**[The President]** *Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the “Committee”) with a view toward accomplishing the following objectives:*

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

* * * * *

(10) *Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.*

(11) *Agreement to expand the categories and levels of goods and technology that are eligible for export to the People’s Republic of China, to the extent consistent with the national security interests of the United States and the other participating governments. For purposes of reviews of the list referred to in paragraph (1), the President shall include an advisor to the United States delegation to the Coordinating Committee representatives of industry who are knowledgeable with respect to the items being reviewed.*

* * * * *

[(m) GOODS CONTAINING MICROPROCESSORS.—Export controls may not be imposed under this section on a good solely on the basis that the good contains an embedded microprocessor, if such microprocessor cannot be used or altered to perform functions other than those it performs in the good in which it is embedded. An export control may be imposed under this section on a good containing an embedded microprocessor referred to in the preceding sentence only on the basis that the functions of the good itself are such that the good, if exported, would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States.]

(m) *GOODS CONTAINING CERTAIN PARTS AND COMPONENTS.*—Exports controls may not be imposed under this section of a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

(1) are essential to the functioning of the good, and

(2) are customarily included in sales of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

* * * * *

(r) *AVAILABILITY DEFINED.*—For purposes of subsections (d), (f), and (h) of this section, the term “available in fact to controlled countries” includes production or availability of any goods or technology in any country—

(1) from which the goods or technology is not restricted for export to any controlled country; or

(2) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of paragraph (2), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not, in and of itself, constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

* * * * *

SHORT SUPPLY CONTROLS

SEC. 7. (a) *AUTHORITY.*—* * *

* * * * *

(d) *DOMESTICALLY PRODUCED CRUDE OIL.*—[(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United

States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.] (1) No domestically produced crude oil may be exported from the United States, subject to paragraph (2) of this subsection. The prohibition contained in the preceding sentence shall not apply to—

(A) crude oil which is exported to an adjacent foreign country to be refined and consumed in that country in exchange for the same quantity of crude oil being exported from that country to the United States; except that, with respect to domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States, or

(B) crude oil which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States.

* * * * *

(5)(A) The provisions of paragraphs (1) through (4) of this subsection shall apply to the export of any refined petroleum product, or partially refined petroleum product, which is produced by an export refinery to the same extent as the provisions of paragraphs (1) through (4) of this subsection apply to the export of domestically produced crude oil.

(B) For purposes of this paragraph—

(i) the term “refined petroleum product” means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil;

(ii) the term “partially refined petroleum product” means a mixture of hydrocarbons which existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, and which has been processed through a crude oil distillation tower, including topped crude oil and other unfinished oils, but excluding any refined petroleum product; and

(iii) the term “export refinery” means, with respect to a proposed export, any crude oil refinery within the continental United States or Alaska which, were it to make the proposed export, would have exported more than 33 percent of all refined petroleum products and partially refined petroleum products produced by that refinery—

(I) during the 1-year period ending on the day of such proposed export, in the case of a refinery that has been in commercial operation for 1 year or more, or

(II) during the period in which it has been in commercial operation, in the case of a refinery that has been in commercial operation for less than 1 years.

(C) Within 180 days after the date of the enactment of this paragraph, the Secretary shall issue such regulations as may be necessary to carry out this paragraph.

* * * * *

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

SEC. 10. (a) * * *

* * * * *

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any [country to which exports are controlled for national security purposes] *controlled country* and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be received by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any [country to which exports are controlled for national security purposes] *controlled country* of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the [particular country] *controlled country involved* if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or [any other country;] *any other controlled country; or*

[(B) notify the Secretary that he would recommend approval subject to specified conditions; or]

[(C)] (B) recommend to the Secretary that the export of goods or technology be approved.

At the same time that the Secretary of Defense submits any recommendation to the President under subparagraph (A), the Secretary of Defense shall notify the Secretary of such recommendation. If the

President notifies the Secretary, with 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. *If the Secretary of Defense does not, within the time period specified in this paragraph, make a recommendation specified in subparagraph (A) or (B) or a notification to the Secretary of a recommendation under subparagraph (A), then the Secretary shall approve or disapprove the proposed export without such recommendation.*

* * * * *

[(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.]

(4) Except as provided in this subsection, no request to export goods or technology pursuant to this Act may be required to be referred to the Secretary of Defense.

VIOLATIONS

SEC. 11. (a) * * *

* * * * *

(h) **PRIOR CONVICTIONS.**—(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act, section 793, 794, or 798 of title 18, United States Code, section 4(b) on the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, or control, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and after notice and an opportunity for a hearing.

ENFORCEMENT

SEC. 12. (a) **GENERAL AUTHORITY.**—(1) * * *

(2)(A) * * *

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is

being, or is about to be exported from the United States in violation of this Act.

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

(iv) Make arrests without warrant for any violation of this Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. *The Customs Service may not seize or detain for more than 10 days any shipment of goods or technology which the Secretary has determined is eligible for export under a general license under section 4(a)(3).*

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 13. (a) * * *

* * * * *

(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a “temporary denial order”) to a person. A temporary denial order may be effective no longer than [60] 180 days unless renewed in writing by the Secretary for additional [60] 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

* * * * *

ANNUAL REPORT

SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) * * *

* * * * *

(8) actions taken in compliance with section 5(f) [(5)](6);

* * * * *

(f) *REPORT ON WESTERN REGIONAL OFFICE.*—The Secretary shall include in each annual report a detailed description and analysis of the activities of the western regional office established pursuant to section 15(d), including—

- (1) a listing of the number of applications for validated export licenses filed with the western regional office in each month and the disposition of those licenses; and
- (2) a description in reasonable detail of activities conducted under section 15(d)(1)(C).

ADMINISTRATIVE AND REGULATORY AUTHORITY

SEC. 15. (a) * * *

* * * * *

(b) *ISSUANCE OF REGULATIONS.*—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or (8)(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section 4(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, [and] such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

* * * * *

(d) *WESTERN REGIONAL OFFICE.*—(1) The Secretary shall establish and maintain a western regional office which shall have the following authority and shall perform the following functions:

(A) To issue validated licenses under section 4(a)(1) for the export of goods from the United States, the export of which—

(i) is controlled under this Act only for national security purposes;

(ii) is not subject to referral to any other department or agency pursuant to section 10(d); and

(iii) is not subject to any multilateral review process to which section 10(h) applies.

(B) To render written advisory opinions with respect to proposed exports of goods or technology from the United States in such cases as may be prescribed by the Secretary.

(C) To provide assistance to United States exporters and prospective United States exporters in complying with this Act and the regulations issued under this Act, including maintaining, for sale or distribution, an adequate supply of all standard application forms, supporting documents, and copies of the regulations issued by the Secretary.

(D) To promptly forward to the Department of Commerce any application for a validated export license which does not meet the requirements set forth in subparagraph (A) but which otherwise appears to be complete and capable of processing. In any

such case, the western regional office shall issue an application number to the applicant.

(2) In addition to amounts authorized by section 18, there are authorized to be appropriated to the Department of Commerce to carry out the purposes of this subsection such sums as may be necessary for the fiscal year 1988.

* * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. (a) * * *

* * * * *

(b) **AUTHORIZATION.**—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1) \$35,935,000 **[for each of the fiscal years 1987 and 1988]** for the fiscal year 1987, of which \$12,746,000 shall be available **[for each such year]** only for enforcement, \$2,000,000 shall be available **[for each such year]** only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and \$21,189,000 shall be available **[for each such year]** for all other activities under this Act; **[and]**

(2) \$38,935,000 for the fiscal year 1988, of which \$12,746,000 shall be available only for enforcement, \$5,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and \$21,189,000 shall be available for all other activities under this Act; and

[(2)] (3) such additional amounts for each of the fiscal years 1987 and 1988 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

SECTION 28 OF THE OUTER CONTINENTAL SHELF LANDS ACT

SEC. 28. **LIMITATION ON EXPORT.**—(a) Except as provided in subsection (d) of this section, any oil or gas produced from the Outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of **[1969]** 1979 (50 App. U.S.C. 2401 et seq.).

(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of **[1969]** 1979, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of **[1969]** 1979.

(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the

President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

FOREIGN ASSISTANCE ACT OF 1961

* * * * *

SEC. 235. ISSUING AUTHORITY, DIRECT INVESTMENT FUND AND RESERVES.—(a)(1) The maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a) shall not exceed \$7,500,000,000.

(2) The maximum contingent liability outstanding at any one time pursuant to guaranties issued under section 234(b) shall not exceed in the aggregate ~~[\$750,000,000]~~ \$1,000,000,000: Commitments to guarantee loans are authorized for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

* * * * *

(5) Subject to paragraphs (2), (3), and (4), the Corporation shall issue guaranties under section 234(b) having an aggregate contingent liability with respect to principal of not less than \$200,000,000 in each fiscal year, to the extent that there are eligible projects which meet the Corporation's criteria for such guaranties.

[(5)] (6) The authority of section 234 (a) and (b) shall continue until September 30, 1988.

(b) There shall be established a revolving fund, known as the Direct Investment Fund, to be held by the Corporation. Such fund shall consist initially of amounts made available under section 232, shall be available for the purposes authorized under section 234(c), shall be charged with realized losses and credited with realized gains and shall be credited with such additional sums as may be transferred to it under the provisions of section 236. The Corporation shall transfer to the Fund in the fiscal year 1982, and in each fiscal year thereafter—

(1) at least 10 per centum of the net income of the Corporation for the preceding fiscal year, and

(2) all amounts received by the Corporation during the preceding fiscal year as repayment of principal and interest on loans made under section 234(c), to the extent such amounts have not been expended or obligated before the effective date of the Overseas Private Investment Corporation Amendments Act of 1981 [.]

[and the Corporation shall use the funds so transferred to make loans under section 234(c) to the extent that there are eligible projects which meet the Corporation's criteria for funding.] *The Corporation shall make loans under section 234(c) in an aggregate*

amount of not less than \$25,000,000 in each fiscal year, to the extent that there are eligible projects which meet the Corporation's criteria for such loans: Provided, however, That loans from the Direct Investment Fund are authorized for any fiscal year only to the extent or in such amounts as provided in advance in appropriation Acts.

* * * * *
 SEC. 604. PROCUREMENT.—(a) * * *
 * * * * *

[(g)(1) None of the funds authorized to be appropriated or made available for obligation or expenditure under this Act may be made available for the procurement of construction or engineering services from advanced developing countries, eligible under the Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services.]

(g)(1) Notwithstanding subsection (a), none of the funds authorized to be appropriated or made available for obligation or expenditures under this Act may be made available for the procurement of goods and services from any advanced developing or industrialized country which has attained a competitive capability in international markets for such goods or services, unless United States goods and services are not competitive in the market where the goods and services are to be used. The restriction contained in this paragraph shall not apply to the use of funds under section 636(a)(3) of this Act.

* * * * *
 SEC. 661. TRADE AND DEVELOPMENT PROGRAM.—(a) The President is authorized to work with friendly countries, especially those in which the United States development programs have been concluded or those not receiving assistance under part I of this Act, in (1) facilitating open and fair access to natural resources of interest to the United States and (2) stimulation of reimbursable aid programs consistent with part I of this Act. *Funds under this section may be used to provide support for project planning, development, management, and procurement for both bilateral and multilateral projects, including training activities undertaken in connection with a project, for the purpose of promoting the use of United States exports in such projects.* Any funds used for purposes of this section may be used notwithstanding any other provision of this Act.

(b)(1) The purposes of this section shall be carried out by the Trade and Development Program, which shall be a separate component agency of the International Development Cooperation Agency. The Trade and Development Program shall not be an agency within the Agency for International Development or any other component agency of the International Development Cooperation Agency.

(2) There shall be at the head of the Trade and Development Program a Director. Any individual appointed as the Director on or after January 1989, shall be appointed by the President, by and with the advice and consent of the Senate.

(3) The Trade and Development Program should serve as the primary Federal agency to provide information to persons in the private sector concerning trade development and export promotion re-

lated to bilateral development projects. The Trade and Development Program shall cooperate with the Office of International Major Projects of the Department of Commerce in providing information to persons in the private sector concerning trade development and export promotion related to multilateral, development projects. Other Federal departments and agencies shall cooperate with the Trade and Development Program in order for the Program to more effectively provided informational services in accordance with this paragraph.

(4) The Director of the Trade and Development Program shall, not later than December 31 of each year, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the activities of the Trade and Development Program in the preceding fiscal year.

[(b)] (c) There are authorized to be appropriated to the President for purposes of this section, in addition to funds otherwise available for such purposes, \$20,000,000 for the fiscal year 1986 and \$20,000,000 for the fiscal year 1987.

TRADE AND DEVELOPMENT ENHANCEMENT ACT OF 1983

* * * * *

ESTABLISHMENT OF A TIED AID CREDIT PROGRAM IN THE UNITED STATES EXPORT-IMPORT BANK

SEC. 644. (a)(1) The Chairman of the Export-Import Bank of the United States shall establish, within the Export-Import Bank of the United States, a program of tied aid credits for United States exports.

(2) The program shall be carried out in cooperation with the [Agency for International Development] *Trade and Development Program* and with private financial institutions or entities, as appropriate.

(3) The program may include—

(A) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank of the United States with concessional financing or grants [offered by the Agency for International Development] *made available under section 645(d) of this Act*, by methods including the blending of the financing of, or parallel financing by, the Bank and the [Agency for International Development] *Trade and Development Program*: and

* * * * *

(d) Concessional financing or grants [offered by the Agency for International Development] *made available under section 645(d) of this Act* for the purposes of the mixed financing program established under this section shall be made available in accordance with the provisions of [subsections (c) and (d) of section 645] *section 645(c) of this Act*.

ESTABLISHMENT OF A TIED AID CREDIT PROGRAM [IN THE AGENCY FOR INTERNATIONAL DEVELOPMENT] ADMINISTERED BY THE TRADE AND DEVELOPMENT PROGRAM

SEC. 645. (a) The [Administrator of the Agency for International Development shall establish within the Agency] *Director of the Trade and Development Program* shall carry out a program of tied aid credits for United States exports. The program shall be carried out in cooperation with the Export-Import Bank of the United States and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Bank with concessional financing or grants [offered by the Agency for International Development] *made available under subsection (d)*, by methods including the blending of the financing of, or parallel financing by, the Bank and the [Agency for International Development] *Trade and Development Program*; and

(2) the combination of concessional financing or grants [offered by the Agency for International Development] *made available under subsection (d)* with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the [Agency for International Development] *Trade and Development Program* and private institutions or entities.

* * * * *

(c)(1) Funds [of the agency for International Development] which are used to carry out a tied aid credit program authorized by subsections (a) and (b) shall be offered only to finance United States exports which can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries, and shall be consistent with the economic, security, and political criteria used to establish country allocations of Economic Support Funds.

(2) The [Administrator of the Agency for International Development] *Director of the Trade and Development Program* is authorized to establish a fund, as necessary, for carrying out a tied aid credit financing program as described in this section.

[(d) The Administrator of the Agency for International Development may draw on Economic Support Funds allocated for Commodity Import Programs to finance a tied aid credit activity.]

(d) Funds available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961, as agreed upon by the Secretary of State, the Administrator of the Agency for International Development, and the Director of the Trade and Development Program, may be used to carry out this section and section 644 (as provided in that section). Such funds may be used to finance a tied aid credit activity in any country eligible for tied aid credits under this Act.

IMPLEMENTATION

SEC. 646. (a)(1) The National Advisory Council on International Monetary and Financial Policies shall coordinate the implementation of the tied aid credit programs authorized by sections 644 and 645.

(2) No financing may be approved under the tied aid credit programs authorized by section 644 or section 645 [without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies] *unless a majority of the members of the National Advisory Council on International Monetary and Financial Policies approve the financing.*

(b) The Trade and Development Program shall be represented at any meetings of the National Advisory Council on International Monetary and Financial Policies for discussion of tied aid credit matters, and the representative of the Trade and Development Program at any such meeting shall have the right to vote on any decisions of the Advisory Council relating to tied aid credit matters.

* * * * *

SECURITIES EXCHANGE ACT OF 1934

* * * * *

[FOREIGN CORRUPT PRACTICES BY ISSUERS

[SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

[(1) any foreign official for purposes of—

[(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

[(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

[(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

[(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

[(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

[(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any for-

eign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

[(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

[(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

[(b) As used in this section, the term “foreign official” means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency or instrumentality thereof whose duties are essentially ministerial or clerical.]

PROHIBITED FOREIGN TRADE PRACTICES BY ISSUERS

SEC. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

(3) any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(b)(1) It shall be a defense to actions under subsection (a) that—

(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

(B) the payment, gift, offer, or promise of anything of value that was made, was expressly permitted under a law or regulation of the government of the country involved.

(2) For purposes of paragraph (1)(A), the term “routine governmental action” means an action which is ordinarily and commonly performed by a foreign official and includes—

(A) processing governmental papers, such as visas and work orders;

(B) loading and unloading cargoes; and

(C) scheduling inspections associated with contract performance,

and actions of a similar nature. “Routine governmental action” does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(c) An issuer may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

(1) such issuer has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

(2) the officer and employee of the issuer with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such issuer shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2).

(d) Not later than one year after the date of the enactment of the Export Enhancement Act of 1987, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e)(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the con-

duct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) For purposes of this section—

(1) the term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

(2) a person meets the "knowing" standard for purposes of subsection (a)(3) if—

(A) that person is aware or substantially certain, or

(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

(3) a person meets the "recklessly disregarding" standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

(4) the term "substantial risk" means a risk that is of such a nature and degree that to disregard it constitutes a substantial

deviation from the standard of care that a reasonable person would exercise in such a situation.

* * * * *

PENALTIES

SEC. 32. (a) * * *

* * * * *

[(c)(1) Any issuer which violates section 30A(a) of this title shall, upon conviction, be fined not more than \$1,000,000.

[(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 30A(a) of this title shall upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

[(3) Whenever an issuer is found to have violated section 30A(a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

[(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.]

(c)(1)(A) Any issuer that—

(i) violates section 30A(a) (1) or (2); or

(ii) violates section 30A(a)(3) and meets the ‘knowing’ standards of that section (as defined by section 30A(f)(2)),

shall be fined not more than \$2,000,000.

(B) Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who—

(i) willfully violates section 30A(a) (1) or (2); or

(ii) willfully violates section 30A(a)(3) and meets the “knowing” standard of that section,

shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who—

(i) willfully violates section 30A(a) (1) or (2); or

(ii) willfully violates section 30A(a)(3) and meets the “knowing” standard of that section,

shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a)

shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

* * * * *

SECTION 104 OF THE FOREIGN CORRUPT PRACTICES ACT OF 1977

【FOREIGN CORRUPT PRACTICES BY DOMESTIC CONCERNS

【SEC. 104. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

【(1) any foreign official for purposes of—

【(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

【(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

【(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

【(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

【(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

【(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

【(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

【(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a for-

eign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

[(b)(1)(A) Except as provided in subparagraph (B), any domestic concern which violates subsection (a) shall, upon conviction, be fined not more than \$1,000,000.

[(B) Any individual who is a domestic concern and who willfully violates subsection (a) shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

[(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

[(3) Whenever a domestic concern is found to have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

[(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern.

[(c) Whenever it appears to the Attorney General that any domestic concern, or officer, director, employee, agent, or stockholder thereof, is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

[(d) As used in this section:

[(1) The term "domestic concern" means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

[(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

[(3) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communications, or (B) any other interstate instrumentality.]

PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

SEC. 104. (a) PROHIBITION.—*It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—*

(1) *any foreign official for purposes of—*

(A) *influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or*

(B) *inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government;*

(2) *any foreign political party or official thereof or any candidate for foreign political office for purposes of—*

(A) *influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform his official functions; or*

(B) *inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,*

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government; or

(3) *any person, while knowing or recklessly disregarding that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—*

(A) *influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or*

(B) *inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign gov-*

ernment or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(b) **DEFENSES.**—(1) It shall be a defense to actions under subsection (a) that—

(A) the payment was made for the purpose of expediting or securing the performance of a routine governmental action by a foreign official; or

(B) the payment, gift, offer, or promise of anything of value that was made was expressly permitted under any law or regulation of the government of the country involved.

(2) For purposes of paragraph (1)(A), the term “routine governmental action” means an action which is ordinarily and commonly performed by a foreign official and includes—

(A) processing governmental papers, such as visas and work orders;

(B) loading and unloading cargoes; and

(C) scheduling inspections associated with contract performance,

and actions of a similar nature. “Routine governmental action” does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, including the procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment by a foreign government.

(c) **DUE DILIGENCE.**—A domestic concern which is not an individual may not be held vicariously liable, either civilly or criminally, for a violation of subsection (a) by its employee or agent, who is not an officer or director, if—

(1) such domestic concern has established procedures which can reasonably be expected to prevent and detect, insofar as practicable, any such violation by such employee or agent, and

(2) the officer and employee of the domestic concern with supervisory responsibility for the conduct of the employee or agent used due diligence to prevent the commission of the offense by that employee or agent.

Such domestic concern shall have the burden of proving by a preponderance of the evidence that it meets the requirements set forth in paragraphs (1) and (2). The first sentence of this subsection shall be considered an affirmative defense to actions under subsection (a).

(d) **GUIDELINES BY THE ATTORNEY GENERAL.**—Not later than 6 months after the date of the enactment of the Export Enhancement Act of 1987, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may,

based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, made in accordance with that procedure, issue an opinion in response to that request. The opinion of the Attorney General shall state whether or not certain specified prospective conduct would, for purposes of the Department's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption of compliance may be rebutted by a preponderance of the evidence. In considering the presumption of compliance for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not be made publicly available, re-

ardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) VIOLATIONS.—(1)(A) Any domestic concern that—

(i) violates subsection (a) (1) or (2); or

(ii) violates subsection (a)(3) and meets the “knowing” standards of that subsection (as defined by subsection (h)(4)), shall be fined not more than \$2,000,000.

(B) Any domestic concern that violates subsection (a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who—

(i) willfully violates subsection (a) (1) or (2); or

(ii) willfully violates subsection (a)(3) and meets the “knowing” standard of that subsection, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who—

(i) willfully violates subsection (a) (1) or (2); or

(ii) willfully violates subsection (a)(3) and meets the “knowing” standard of that section, shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(g) INJUNCTIONS.—Whenever it appears to the Attorney General that any domestic concern or officer, director, employee, agent, or stockholder thereof is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a), the Attorney Gen-

eral may bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

(h) DEFINITIONS.—As used in this section—

(1) the term “domestic concern” means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States;

(2) the term “foreign official” means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;

(3) the term “interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality;

(4) a person meets the “knowing” standard for purposes of subsection (a)(3) if—

(A) that person is aware or substantially certain, or

(B) that person is aware of a high probability, which he or she consciously disregards in order to avoid awareness or substantial certainty, and does not have an actual belief to the contrary,

that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3);

(5) a person meets the “recklessly disregarding” standard of subsection (a)(3) if that person is aware of a substantial risk that a third party will offer, pay, promise, or give anything of value to a foreign official, foreign political party or official thereof, or candidate for political office for purposes prohibited by subsection (a)(3), but disregards that risk; and

(6) the term “substantial risk” means a risk that is of such a nature and degree that to disregard it constitutes a substantial deviation from the standard of care that a reasonable person would exercise in such a situation.

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TRADING WITH THE ENEMY ACT

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SEC. 5. (b)(1) * * *

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(4) The authority granted to the President in this subsection does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.

* * * * *

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed \$5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law [*Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of *April* of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof] .

* * * * *

SEC. 39. (a) No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of section 32, 40, 41, 42, or 43 of this Act or of the Philippine Property Act of 1946.

[(b) The Attorney General is authorized and directed, immediately upon the enactment of this subsection, to cover into the Treasury of the United States, for deposit into the War Claims Fund from property vested in or transferred to him under this Act,

such sums, not to exceed \$75,000,000 in the aggregate, as may be necessary to satisfy unpaid awards heretofore or hereafter made under the War Claims Act of 1948. There is hereby authorized to be appropriated to the Attorney General such sums as may be necessary to replace the sums deposited by him pursuant to the foregoing sentence.

[(c) The Attorney General is authorized and directed, immediately upon the enactment of this subsection, to cover into the Treasury of the United States, for deposit into the War Claims Fund, from property vested in or transferred to him under this Act, such sums, not to exceed \$3,750,000 in the aggregate, as may be necessary to satisfy unpaid awards heretofore or hereafter made under the War Claims Act of 1948, as amended. There is hereby authorized to be appropriated to the Attorney General such sums as may be necessary to replace the sums deposited by him pursuant to this subsection.]

[(d) The Attorney General is authorized and directed to cover into the Treasury from time to time for deposit in the War Claims Fund such sums from property vested in him or transferred to him under this Act as he shall determine in his discretion not to be required to fulfill obligations imposed under this Act or any other provision of law, and not to be the subject matter of any judicial action or proceeding. There shall be deducted from each such deposit 5 per centum thereof for expenses incurred by the Foreign Claims Settlement Commission and by the Treasury Department in the administration of title II of the War Claims Act of 1948. Such deductions shall be made before any payment is made pursuant to such title. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.]

[(e) Notwithstanding any of the provisions of subsections (a) through (d) of this section, the Attorney General is hereby authorized to transfer the three paintings vested under Vesting Order Numbered 8107, dated January 28, 1947, to the Federal Republic of Germany, to be held in trust for eventual transfer to the Weimar Museum, Weimar, State of Thuringia, Germany, in accord with the terms of an agreement to be made between the United States and the Federal Republic of Germany.]

(b) The Attorney General shall cover into the Treasury, to the credit of miscellaneous receipts, all sums from property vested in or transferred to the Attorney General under this Act—

(1) which the Attorney General receives after the date of the enactment of the Export Enhancement Act of 1987, or

(2) which the Attorney General received before that date and which, as of that date, the Attorney General had not covered into the Treasury for deposit in the War Claims Fund, other than any such sums which the Attorney General determines in his or her discretion are the subject matter of any judicial action or proceeding.

[(f) (c) Notwithstanding any of the provisions of subsections (a) through (d)] and (b) of this section, the Attorney General is authorized to pay from property vested in or transferred to the Attorney General under this Act, the sum of \$20,000 as an ex gratia payment to the Government of Switzerland in accordance with the

terms of the agreement entered into by that Government and the Government of the United States on March 12, 1980.

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SECTION 203 OF THE INTERNATIONAL EMERGENCY ECONOMIC POWERS
ACT

GRANTS OF AUTHORITIES

SEC. 203. (a)(1) * * *

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(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; [or]

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency, declared under section 202 of this title, (B) or in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances [.] ; or

(3) *the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.*

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