

EXPORT ENHANCEMENT ACT OF 1986

MAY 6, 1986.—Ordered to be printed

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

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 4708]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs to whom was referred the bill (H.R. 4708) to amend the Export Administration Act of 1979, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

COMMITTEE ACTION

The Subcommittee on International Economic Policy and Trade held a number of hearings in preparation for the drafting and consideration of the Export Enhancement Act of 1986. In 1985, oversight hearings on the Export Administration Amendments Act were held October 10 (Department of Commerce), November 6 (Department of Defense), and November 20 (Alaskan oil exports), and, in 1986, on March 11 (foreign policy controls), April 10 (national security controls), April 15 (short supply controls), and April 17 (national security controls). 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 (H.R. 4389) on April 16, the International Trade Administration budget on March 19, export trading companies on April 22, and the Overseas Private Investment Corporation

and Trade and Development Program on April 17. Finally, the subcommittee received testimony from the Department of Commerce on the draft Export Enhancement Act of 1986 on April 22.

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).

On April 29, the Subcommittee on International Economic Policy and Trade held a markup session and, by voice vote, approved a draft bill, with amendments, for full committee action. On April 30, the full committee held a markup session on H.R. 4708 and ordered the measure reported, as amended, by voice vote. On May 1, 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 H.R. 4708, the Export Enhancement Act of 1986, is to strengthen the export promotion functions of the U.S. Government and to improve the country's competitive position in the global marketplace. Funds totalling \$40,935,000 are authorized to be appropriated for each of the fiscal years 1987 and 1988 to carry out export control activities. The bill also authorizes \$123,922,000 for each of the fiscal years 1987 and 1988 for export promotion programs. The bill provides an additional \$5 million of funding for the Trade and Development Program and authorizes increases in the direct lending and loan guarantee programs for the Overseas Private Investment Corporation. The bill further provides a statutory base for the U.S. and Foreign Commercial Service and provides the Commercial Service with new tools and added flexibility.

OVERVIEW

The Export Enhancement Act of 1986 (hereinafter referred to as "the bill") improves a number of export promotion programs, streamlines export controls, 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 edict of the Speaker and the Majority Leader of the House.

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, and to \$150 billion in 1985. No improvement is expected in 1986.

Even traditional areas of trade strength are in decline. The trade surplus in high-technology has fallen from \$26 billion in 1981 to just over \$3.6 billion in 1985. During the 1970's, America became the breadbasket 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 sur-

plus in agriculture dropped from \$25 billion in 1981 to \$7 billion in 1985.

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. The United States has now surpassed Brazil, whose external debt is just over \$100 billion, as the world's largest debtor nation. In fact, into the near future, the United States will borrow more in a single year than Brazil's current external debt. By the end of the decade, the U.S. debt will exceed \$500 billion. At some point, the country will have to repay that debt, and goods and services that could have been put to use at home will have to be sent abroad.

The trade deficit has had a marked, negative impact on manufacturing in the United States. Despite continued economic growth, industrial production has been flat for more than a year. Employment in the manufacturing sector has been particularly hard hit. Conservative estimates put trade-related job losses in manufacturing at the 2-million mark; other estimates range to 4 million and beyond. By the end of 1984, the country had regained only two-thirds of the manufacturing jobs lost during the recession of 1981-82. In 1985, there was further loss of jobs in the manufacturing sector.

The trade deficit has also harmed the longrun ability of the United States to compete in international markets. With the burden of an overvalued dollar, many export-related firms have had difficulty retained overseas markets. Firms whose ingenuity and steady productivity growth had assured them worldwide sales have been priced out of one market after another. Other firms have made investments off-shore to find some shelter from an uncompetitive currency. The overvalued dollar also allowed many foreign firms to establish a strong position in the American market. Foreign markets have been lost and America's 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.

EXPORT PROMOTION

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 in major U.S. posts around the world. 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.

Agricultural exports.—The bill takes a number of steps in response to the sharp decline in agricultural exports. The bill directs the Secretary of Agriculture to submit annually agriculture export plans that cover 1, 5, and 10-year periods. The Secretary is author-

ized to conduct research that will improve the competitiveness of U.S. agriculture, including monitoring the agricultural export strategies of our competitors.

To help open new markets, the Secretary of Agriculture is directed to make commodities owned by the Commodity Credit Corporation available to cooperator organizations for demonstration projects. The Food Security Act of 1985 established an Export Enhancement Program that provides a "bushel bonus" for U.S. exports. The Secretary of Agriculture has chosen to use that bonus only to counter subsidized grain sales in certain developing country markets. The bill directs the Secretary to consider using the "bushel bonus" for sales to longstanding customers of U.S. agricultural exports, who either have most-favored-nation status or a bilateral trade deficit with the United States.

Export trading companies.—The bill strengthens other export promotion tools. Export trading companies, of which the Foreign Affairs Committee was an early advocate, have faced several handicaps since the passage of the Export Trading Company Act of 1982. Slow growth abroad and the uncompetitive dollar have both hampered export growth and weakened the U.S. presence in a number of export markets. In addition, a number of regulatory provisions have acted as impediments to the formation and growth of export trading companies. The bill requires that the Department of Commerce prepare an annual report on the activities of the export trading companies and makes several changes in the regulatory restrictions governing the operation of bank-affiliated export trading companies.

Mixed credits.—The bill provides for the establishment of the \$300 million competitive tied aid fund requested by the executive branch. The fund can be used to support U.S. sales in the traditional markets of our trading partners as a means of persuading them to negotiate an end to predatory financing. It can also be used to help U.S. exporters match specific instances of subsidized financing. The fund is placed in the Treasury with control vested in the National Advisory Council on International Monetary and Financial Policies.

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 CONTROLS

In the Export Administration Amendments Act of 1985 (Public Law 99-64), Congress substantially revised the Export Administra-

tion Act of 1979, which provides broad authority for the executive branch to control exports for purposes of national security, foreign policy, and short domestic supply. Since enactment of the Export Administration Amendments Act on July 12, 1985, the Committee on Foreign Affairs has exercised close oversight on implementation of the provisions of the new act, conducting some twelve hearings and briefings on various aspects of national security, foreign policy, and short supply export control issues.

Of particular concern to the committee is the executive branch's implementation of the reforms contained in section 5 of the new act. Testimony from both private sector representatives and officials of executive branch agencies has revealed a disappointing lack of progress in implementing provisions of the new act in the months since enactment. Despite the clear congressional mandate for a narrowing of the scope of national security export controls so that the limited funds and personnel available for export control activities can be concentrated on exports of newer, more advanced technologies, the executive branch has done little to carry out congressional intent in removing unnecessary controls and reducing the size and scope of the control list.

Both in 1979 and again in 1985, Congress emphasized the importance of removing from the control list goods and technology that no longer contribute to the military potential of our adversaries. The committee considers the decontrol of lower technology items to be essential to the effective control of the most advanced technology and, therefore, essential to the protection of U.S. national security. In legislatively mandating reductions in the list on the basis of foreign availability, indexing, embedded microprocessors and other criteria, Congress expected the Executive branch to reduce significantly the size of the list. Such reduction of the control list, however, has not occurred. It is due in large part to the failure of the executive branch to carry out the provisions of the act, therefore, that the Committee is compelled to amend further the Export Administration Act and legislatively direct decontrol efforts.

To streamline the application of national security export controls, the Export Enhancement Act of 1986 makes several important changes in the Export Administration Act. First, the Secretary of Commerce is required to identify 40 percent of the goods on the control list which contribute least directly to the military potential of our adversaries, and to decontrol such goods over a 3-year period. The bill also provides for quarterly rather than annual review of the control list.

Second, the bill eliminates reexport controls for countries that cooperate with the United States in maintaining multilateral controls on exports to controlled countries. The bill further eliminates licensing requirements for the reexport of U.S. parts and components under certain *de minimus* levels. Such goods would, however, continue to be subject to initial licensing requirements.

Third, the bill eliminates licenses for low-technology exports to the Free World. The Export Administration Amendments Act of 1985 contained a similar provision eliminating licenses of such low-technology exports to countries participating in the Coordinating Committee on Multilateral Export Controls (COCOM), consisting of NATO and Japan, minus Iceland.

Fourth, the bill clarifies that the foreign availability provisions adopted in 1985 apply to uncontrolled goods in free world countries, as well as to goods available in controlled countries. In addition, the bill expands the foreign availability test to permit decontrol of goods on a country-by-country basis if that country controls such goods in a manner comparable to the United States.

Fifth, the bill provides for industry participation as part of the U.S. Delegation to COCOM, for purposes of list review sessions.

Finally, the bill authorizes \$5 million more for the administration of export controls than the executive branch request. Such additional funds will help ensure the continuation of a strong export control program that protects U.S. national security and improves the export licensing system.

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 by the bill 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 makes it U.S. policy 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 guaranties, which facilitate 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 insurance guaranties from the current operating ceiling of \$150 million to \$200 million. Although the insurance 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 insurance guaranties, the direct investment funds must be approved by the Appropriations Committees but have no impact on the Federal budget.

Trade and Development Program.—The Trade and Development Program funds feasibility studies for capital projects in developing countries. When U.S. firms are successful in securing a project, the Trade and Development Program is reimbursed for its study costs. On average, each dollar spent by the Trade and Development Program has generated \$50 in U.S. exports. The bill increases the funding for the Trade and Development Program from the \$18 million requested in the President's fiscal 1987 budget to \$25 million. (\$20 million is authorized for fiscal 1987 in the International Security and Development Cooperation Act of 1985.)

As a result of an executive order issued in 1981, the Trade and Development Program is an independent component of the International Development and Cooperation Agency (IDCA), an umbrella agency that coordinates U.S. foreign assistance programs, including those of the Agency for International Development. The committee has been impressed with the benefits of the resulting independence and flexibility for the Trade and Development Program. The bill gives a statutory base to the program's status within IDCA.

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 recommend ways in which countertrade might enhance U.S. development aid programs.

PROTECTION OF U.S. 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 1986, the committee has focused on the protection of intellectual property rights abroad and certain foreign trade practices of U.S. corporations.

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 United States 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.

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 trade practices.—In the mid-1970s, the country was faced with a series of scandals involving the overseas practices of U.S. corporations. Illicit payments had been used to obtain major overseas contracts, and, in some cases, to meddle in the domestic politics of a foreign nation. The corporations in question were convicted under a number of existing U.S. statutes, but the U.S. Congress believed that a more effective mechanism should be put in place to eliminate the use of large-scale bribes to obtain business. The Congress recognized that bribery was a practice that was often tolerated by many governments and used by some U.S. competitors, but which carried important implications for U.S. foreign policy.

After considerable deliberation and debate, the Congress enacted, in 1977, the Foreign Corrupt Practices Act (FCPA). The FCPA established standards for illicit behavior and accounting standards for reporting to the Securities and Exchange Commission. The FCPA also exempted a range of payments made to individuals in a clerical or ministerial post. The general thrust of the law was strictly to prohibit payments to secure contracts or make a sale while allowing so-called facilitating payments used to secure such actions as the timely unloading of cargo or issuance of a routine license.

In hearings before the committee, the language of the FCPA has been criticized as being inexact. Two particular standards have been the target of most criticism. First, corporate executives and corporate employees can be prosecuted if they have "reason to know" that a corporate agent was involved in the payment of bribes. Second, a number of witnesses contended that it was very difficult to define which persons held a "clerical or ministerial" position.

While difficult to measure, the FCPA is assumed to have deterred some improper behavior on the part of U.S. corporations overseas. There have not, however, been any successful prosecutions under the statute. The uncertainties of language have also had an economic impact. Although again hard to measure, the uncertainty about liability is calculated to have deterred American businesses, particularly small- and medium-sized firms new to exporting and investing overseas, from entering foreign markets.

In an effort to make the FCPA a more effective prosecutorial tool and to limit its potential negative economic effects, the bill makes two major changes in the statute. First, the bill eliminates "reason to know" as the basis for liability. Instead, it adopts two clearly-defined standards—"reckless" for civil liability and "knowledge," a

higher standard, for criminal liability. The definition for reckless is derived from the definition adopted by the model penal code. The definition for knowledge is spelled out in the bill. "Head in the sand" behavior will not allow a corporation or corporate officer to avoid criminal liability. If, on the other hand, a corporation has set up internal controls to avoid illicit payments or has otherwise acted to keep within the law, its "due diligence" can be used as a defense against both civil and criminal liability in cases where its employees have nonetheless engaged in bribery.

Second, the bill alters the definition of so-called facilitating or grease payments. Rather than expressly permitting payments to individuals who hold clerical or ministerial posts, the bill allows corporations and individuals to defend themselves from prosecution by proving that the purpose of the payments was "routine," as defined in the bill. All these provisions are designed to provide an incentive for self-policing on the part of U.S. corporations, while ensuring the effective prosecution of bribery overseas, in keeping with broad United States foreign policy objectives.

Liability crisis.—The bill includes sense-of-the-Congress language expressing concern about the impact the escalating costs of liability insurance may have on the international competitiveness of U.S. business.

GENERAL 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.

Importation of publications.—The International Emergency Economic Powers Act 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, which is now 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.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title; table of contents

This section cites this act as the "Export Enhancement Act of 1986" and sets out the Table of Contents.

Section 2—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 2 also states the purposes of this bill, including restoring and broadening overseas markets for U.S. exports.

TITLE I—EXPORT PROMOTION

Section 101—United States and Foreign Commercial Service

Section 101(a) gives the United States and Foreign Commercial Service (the Service) a statutory base, and establishes the position of Director General, to be held by an Assistant Secretary of Commerce. This provision stipulates the Service shall conduct its operations in a manner consistent with U.S. foreign policy objectives and subject to section 207 of the Foreign Service Act of 1980.

The foreign component of the Service was established in 1980 by executive order as part of reorganization plan No. 3. 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 a stable future 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 a successful exporter.

This section reaffirms the authority and responsibilities of the U.S. Chief of Mission abroad. Although this legislation provides specific authority to the Secretary of Commerce with regard to the 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. At a time when the Congress is considering legislation to begin a major program to construct secure diplomatic facilities abroad and to consolidate the United States 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 101(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 and private nonprofit 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 101(c) establishes a headquarters 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 101(d) directs the Secretary of State to confer the title of Minister-Counselor upon the senior Commercial Officer serving at a commercially significant U.S. Mission, as designated by the Secretary of Commerce. Seven such officers already hold the rank of Minister-Counselor, but have not been granted the title. It also encourages the Secretary of State to designate Commercial Officers as Consuls General in those U.S. Consulates whose activities are primarily commercial. Conferring this title upon senior Commercial Service officers at certain key posts will facilitate their access to officials important to United States commercial interests. The Committee takes this action in response to the failure of the Secretary of State to utilize existing authority for such promotions, and because adequate commercial representation should be accomplished without further delay.

Section 101(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 nearly all of the critiques of the Service have dealt with its organization and structure. 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 as well as advisory bodies such as the President's Export Council.

Section 101(f) encourages the Secretary of Commerce to establish a system using State export promotion agencies to distribute information to areas in which no district offices 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.

Section 101(g) requires the Inspector General of the Commerce Department to perform periodic general audits of the Service, including evaluations of the domestic and foreign personnel placement and transfer policies. 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. 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 101(h) directs the Secretary of Commerce to report by January 1, 1987, to the Foreign Affairs Committee and the appropriate committee of the Senate, on the feasibility, the desirability, progress to date, present status, and 5-year outlook of the comprehensive integration of the functions and personnel of the foreign and 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 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 report shall include comment on the viability of an integrated U.S. Commercial Officer Corps; a presentation 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 101(i) sets forth definitions.

The committee notes that another important mechanism for export promotion is the foreign trade zone (FTZ), whose fuller utilization could increase United States exports and encourage American manufacturers to retain domestic operations. The present proposal by the United States Customs Service to impose fees in connection with foreign trade zone operations would, in the committee's view, run counter to fundamental purpose of foreign trade zones. The imposition of such a fee structure would offset the competitive cost advantage enjoyed by foreign trade zone operators, offset the operational advantages and benefits that accrue with respect to merchandise entries into FTZ's, demonstrably negate the tariff benefits afforded FTZ users, inhibit the creation of new and utilization of existing foreign trade zones, and lessen the competitive advantages of exports from such zones.

Section 102—Diplomatic missions

Section 102(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 103—Commercial service officers and development banks

Section 103 authorizes the Secretary of Commerce, in consultation with the Secretary of the Treasury, to appoint an officer of the Service to serve with the U.S. Executive Director to each of the four multilateral development banks in which the United States participates. The duty of each officer, whose appointment may be on a full-time or part-time basis, is to monitor the bank's procurement contracts and to assist United States firms with bidding opportunities on such contracts. The committee notes that one Commerce Department employee presently serves this function on a part-time basis with respect to the World Bank, and believes that similar monitoring of procurement by the other three development banks would enhance U.S. export opportunities. Several other advanced industrialized nations reap far greater benefits in terms of the banks' procurement of goods and services from their firms than warranted by their contributions to the banks, whereas procurement from American firms is not commensurate with the level of United States financial support for these institutions.

Section 104—Market Development Cooperation Program

Section 104 amends Title II of the Export Administration Amendments Act of 1985 to add a new Section 202, the Market Development Cooperator Program. The Secretary of Commerce is authorized to establish a Market Development Cooperation 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. This section provides that the Secretary may enter into contracts with nonprofit industry organizations, trade associations, and private industry firms or groups of firms in cases where none of these other entities represents that industry sector. Eligibility for the program may also extend to State governments or any agency thereof, including such as 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.

This program is modeled on the highly successful Market Development Cooperator Program established by the Foreign Agricultural Service 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 United States electronic 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 United States electronics industry in Japanese Government programs and to the media; provides United States 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 shaper 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. In authorizing nearly \$124 million for the Commerce Department's export promotion activities in fiscal year 1987 and 1988 pursuant to section 111 of this act, the committee expects that not less than \$1 million will be made available in each of these fiscal years for the program. Participation in the program by private sector entities should be accorded priority; participation by State trade departments and similar governmental entities should be listed to those markets where Federal Government participation is deemed to be crucial to the success of the program.

Section 105—Agricultural trade policy

This section recognizes the importance of agricultural exports to the economy of the United States and to American farmers in particular. To reverse the recent decline in U.S. agricultural exports and promote the expansion of new export opportunities, the committee supports the efforts of the Agricultural Trade and Export Policy Commission to develop further legislation initiatives in this area. Upon receipt of the Commission's final report, the committee will consider legislative proposals resulting from the Commission's recommendations. The committee recognizes that such legislation may be within the jurisdiction of other committees of the House and looks forward to working with those committees on such legislation.

Section 105(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 105(b) amends section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480) to clarify that United States wood and 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 111 (Private Enterprise Promotion) of the 1985 Food Security Act. The committee also notes that in accordance with the Foreign Agricultural Service Administrator's testimony before the Subcommittee on March 12, 1986, it expects that United States wood and wood products will be eligible for Commodity Credit Corporation intermediate credit (3-5 years) financing, including financing made available pursuant to section 1131 (Intermediate Export Credit) of the 1985 Food Security Act.

Section 105(c) requires the Secretary of Agriculture to prepare, and the President to submit 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. The Secretary shall include in the report specific agricultural trade goals, policies and programs to achieve such goals, and recommended levels of spending for international programs and activities of the Department of Agriculture to accomplish long-term strategies for growth in agricultural trade and exports. The report should also include any recommendations for changes in legislation governing the international programs of the Department of Agriculture necessary to meet the long-term goals proposed in the report.

To improve USDA's market development activities, section 105(d) directs the Secretary of Agriculture to make Commodity Credit Corporation-owned commodities available to cooperator organizations for market development demonstration projects. This subsection also directs the Secretary of Agriculture to assign agricultural trade officers to overseas posts that offer market potential but to which officers are not currently assigned, and to work with State departments of agriculture to station marketing specialists in States or regions as a part of the normal rotation of those officers between Washington, D.C. and overseas posts.

With respect to value-added products, this subsection requires the Secretary of Agriculture to establish within the Foreign Agricultural Service a division to promote such products not now covered by cooperator agreements.

Section 105(e) expresses the sense of Congress to reiterate the directive in section 1673 of the 1985 Food Security Act that the Office of Technology Assessment (OTA) shall conduct a study of grain standards. The OTA study should: (1) evaluate the competitive problems the United States faces in international grain markets which are attributable to U.S. grain standards and practices; (2) identify the extent to which quality standards and handling practices have contributed to the decline in U.S. grain exports; and (3) compare the grain quality standards and handling practices of the United States with its major competitors. This provision directs OTA to coordinate its study with other private sector and industry studies presently being conducted and to incorporate, to the maximum extent possible, the recommendations of such studies in its report to Congress.

In the past few years, the number of complaints from foreign purchasers concerning the quality of U.S. grain have increased. Most complaints have focused on the lack of uniform quality, and the high levels of dockage (foreign material or moisture) in grain they have purchased. Both producers and purchasers of U.S. grain believe that the current standards used by the Federal Government have not kept pace with those used by foreign competitors and are in need of revision.

Section 105(f) amends section 1127(b) of the 1985 Food Security Act to recognize the importance of maintaining and promoting good export trade relations and the need to expand the use of the USDA Export Enhancement Program. The provision directs the Secretary of Agriculture to consider for participation in this program countries which have traditionally been good customers of

U.S. agricultural exports and which have either most-favored-nation trade status or a trade deficit with the United States over a representative period of time.

Section 105(g) amends section 1224 of the Agricultural Trade and Export Policy Commission Act to extend the life of the Commission 30 additional days to the end of fiscal year 1986. The Commission was created by Congress in 1984 and consists of representatives from both the private sector and Congress. The final report from the Commission is due July 1, 1986, and under current law the Commission's authority will expire 60 days after its report is submitted to Congress. In view of the important trade legislation the Congress is considering, it is appropriate that the Commission's mandate be extended.

Section 106—Agricultural trade research and reports

Section 106(a) authorizes the appropriation to the Secretary of Agriculture of such sums as may be necessary to conduct research to enhance the long-term competitiveness of U.S. agricultural exports. Subsection (b) requires the Secretary of Agriculture to monitor foreign research and trade practices used to promote exports, and to report annually to Congress on the competitiveness of American agricultural exports, new research affecting competition, the level of subsidies by both the United States and foreign nations, and the marketing in nonmarket economies of U.S. agricultural commodities and their products.

Section 107—Export trading companies

Section 107(a) amends the Export Trading Company Act of 1982 to require an annual report by the Secretary of Commerce on certificates of review issued under Title III of the act. The first such report is to include a summary of all certificates of review issued since enactment of the Export Trading Company Act of 1982, including an analysis of the operating experiences of those certificate holders. In requiring such a report, the committee encourages greater Executive Branch attention to the disincentives and barriers experienced by export trading companies (ETCs), and seeks to improve congressional oversight of the actions taken by the executive branch in promoting export trading companies and administering provisions of the act. This reporting requirement does not alter the carefully crafted provisions in title III concerning confidentiality protections, but rather seeks to provide a general assessment of the start-up experiences of export trading companies, so as to evaluate better the effectiveness of the act in encouraging the formation of export trading companies.

Subsections (b) through (f) amend the Bank Holding Act of 1956 to address provisions concerning bank export trading companies. Subsection (b) amends the definition of an export trading company to permit a bank-affiliated ETC to export its own services or those of its affiliates. Subsection (c) revises the method of calculating of the 50 percent revenue test by providing that any transaction involving the sale of U.S. goods or services overseas should be considered an export, regardless of the method of payment. Under the provision, the timeframe for meeting the 50 percent revenue test is stretched out to 5 years, and revenues from third-party trade and

countertrade are counted on the export side of the ledger. Current Federal Reserve Board regulations treat countertrade and third-party trade as nonexport revenues.

Subsection (d) reiterates the exemption adopted by the conferees in 1982 of bank-affiliated export trading companies from the provisions of section 23A of the Federal Reserve Act. The conferees noted that the overall limitation of 10 percent of the consolidated capital and surplus of a bank holding company on extensions of credit to an affiliated export trading company would adequately protect affiliated banks from excessive risks, and that the exemption from the collateral requirement of existing law was necessary in view of the type of assets most ETCs would have. One week after enactment of the Export Trading Company Act of 1982, however, the Depository Institutions Act, reimposing collateral requirements, was signed into law.

Subsections (e) and (f) concern Federal Reserve Board regulations which limit a bank-affiliated debt-to-capital ratio and the amount of inventory an ETC can maintain. The provisions would prohibit the Federal Reserve Board from disapproving of a bank's proposed investment solely on the basis of an assets-to-equity ratio unless greater than 25:1, and prohibit the Federal Reserve Board from imposing by regulation a dollar limit on inventories, except on a case-by-case basis. Current regulations unduly restrict the opportunities available to bank-affiliated export trading companies.

In adopting these provisions, the committee seeks to address interpretations by the Federal Reserve Board which the Committee believes have been overly restrictive and have had a discouraging effect on the formation of bank-affiliated export trading companies. The Committee has relied on information received in its own hearings in 1984 and April of this year on this issue, as well as the recent hearing and GAO report requested by the Committee on Government Operations on implementation of the Export Trading Company Act of 1982. While it is understandable that the Federal Reserve Board would approach the banking industry's participation in trade conservatively in order to protect banks and depositors from unsafe and unsound practices, the Committee believes that this concern has precipitated overly restrictive policies which impede the meaningful and effective participation by bank holding companies in the financing and development of export trading companies. The growing U.S. trade deficit and declining competitive position of American exports, therefore, necessitates a reconsideration of the Export Trading Company Act and a clarification of the bank involvement in promoting U.S. exports.

Section 108—Competitive tied aid fund

Section 108(a) amends the Export-Import Bank Act of 1945 to add a new section 15 creating a \$300 million Competitive Tied Aid Fund in the Department of the Treasury. The fund is to be used to counter predatory foreign mixed credit competition in both an offensive and defensive manner, and to strengthen United States leverage in Organization for Economic Cooperation and Development (OECD) negotiations to end abuse of foreign tied aid credits. The National Advisory Council on International Monetary and Financial Policies (NAC), chaired by a representative of the Treasury De-

partment, is directed to establish policy and procedural guidelines for the tied aid credit program created pursuant to this section and the Trade and Development Enhancement Act of 1983. The NAC is also required to approve by majority vote any use of the fund. A quarterly report by the Treasury Secretary to the Congress is required on activities carried out pursuant to this section. Termination of the authorities under this section and the 1983 Trade and Development Enhancement Act is linked to a certification by the Treasury Secretary to Congress that a majority of the NAC has determined that the United States has reached agreement with other OECD nations ending abuse of tied aid credits and that those governments are honoring the agreement. Section 106(b) amends the 1983 Trade and Development Enhancement Act to make conforming amendments, and to eliminate the limitation on use of Commodity Import Program funds for defensive tied aid credits.

The committee approved *in toto* the provisions contained in section 106 when it favorably reported H.R. 3667, as amended, the Competitive Tied Aid Fund Act, on February 4, 1986 (see House Report 99-457, Part 2). The committee believes strongly that in order to bring maximum leverage to bear on certain OECD countries to end abusive mixed credit financing, it is imperative that the fund be used in both an offensive manner (to target recalcitrant governments) and a defensive manner (to assist American firms facing foreign predatory financing). Requiring a majority NAC vote in approving any expenditures from the fund allows important input from the seven agencies which participate in the NAC, and assures the most judicious use of the funds. Finally, the committee underlines its serious concern about the strength of the administration's commitment to using all available means to bring an end to this aid- and trade-distorting practice as evidenced by its exceptional use of the waiver authority under Section 614 of the Foreign Assistance Act to reprogram for other purposes \$50 million earmarked in fiscal year 1986 to combat tied aid credits.

Section 109—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 \$1.5 billion in fiscal year 1985. The value of nonagricultural exports supported by the Bank, in relation to all such exports, has declined consistently during the last 5 years, from about 13 percent in 1980 to approximately 7 percent in 1985.

Section 110—Country reports on economic policy and trade practices

Section 110 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 United States 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 United States' 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. Recent legislative action relating to the Generalized System of Preferences and the Overseas Private Investment Corporation has 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 required here will complement this change in section 301.

Section 111—Authorization of appropriations

Section 111 amends title II of the Export Administration Amendments Act of 1985 to authorize the Administration's request for appropriation of \$123,922,000 for each of the fiscal years 1987 and 1988 for the export promotion activities of the Department of Commerce. In authorizing such amounts, the committee stresses the need for aggressive export promotion efforts to counter the increasing trade deficit, and for innovative methods to encourage U.S. exports. The committee believes section 104 of this bill, the Market Development Cooperator Program, is such a productive approach, and reiterates its strong support and expectation that not less than \$1 million will be made available in each fiscal year for this program.

TITLE II—EXPORT CONTROLS

Section 201—Oil exports to noncontiguous countries

This section amends Section 7(d) of the Export Administration Act of 1979 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. 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 Export Ad-

ministration Act. Only the Export Administration Act gives Congress specific authority to approve 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.

Except for exchanges with Canada, which are permitted to continue under this provision, the United States has exported no crude oil for the last several years. The committee remains concerned, however, that the administration may continue to promote exports to noncontiguous nations in a manner contrary to the national interest and without Congressional review as to whether specific national security, consumer benefit, and other criteria have been met. The administration, for example, has proposed exporting Cook Inlet crude oil as being in the national interest, claiming that limited exports (5,000-6,000 barrels per day) would have economic, commercial, foreign policy, and national security benefits. Testimony before the Subcommittee on International Economic Policy and Trade on November 20, 1985, demonstrated that replacement crude would have to be imported from distant foreign countries, refiner costs and consumer prices would rise, the overall U.S. trade deficit would worsen, and the national defense and security would be adversely affected. The committee strongly believes that the proposed amendment to the Export Administration Act will greatly enhance congressional review of U.S. crude oil exports and assure that such exports benefit broad U.S. national interests.

Section 202—National security controls

Section 202 of the bill amends sections 4 and 5 of the Export Administration Act of 1979, as amended (hereafter referred to in this section as "the Act") concerning general provisions (types of licenses) and national security export controls.

(a) Distribution licenses for exports to the People's Republic of China

Subsection (a) amends section 4(a) of the act to exempt the People's Republic of China from the prohibition on the use of distribution licenses for exports to controlled countries. Because China is still 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, authorizing multiple exports of goods to approved users, is currently precluded.

In removing the statutory prohibition on the use of a distribution license for exports to China, the committee reiterates its strong support for the use of licenses authorizing multiple exports, and encourages the Executive branch to utilize bulk licenses with respect to 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 the Coordinating Committee on Multilateral Export Controls (COCOM) to streamline the processing of applications and ease export restrictions applicable to China. 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 to

review applications for the most significant goods and technology. The committee understands that the use of a distribution or other bulk license with respect to China would require consultation with COCOM members, and urges the Executive branch to pursue such discussions. The committee continues to favor further easing of export restrictions applicable to China as relations progress.

(b) Reexport controls

Subsection (b) amends section 5(a) of the act to eliminate the U.S. licensing requirement for reexport of goods to or from countries participating with the United States in COCOM and other countries maintaining comparable controls pursuant to section 5(k) of the act. The provision also eliminates reexport requirements for U.S. parts and components falling under certain *de minimus* limits.

Licensing of reexports among our allies who participate with the United States in multilateral controls is a duplicative paper exercise, since the United States has the opportunity at COCOM to veto any proposed reexport of a COCOM-controlled good or technology. U.S. reexport controls continue to offend and irritate U.S. allies, aggravating ongoing resistance to the extraterritorial application of U.S. laws. In insisting on reexport controls which are largely unenforceable, the United States undermines its credibility and harms the cooperation and effectiveness within COCOM which the United States seeks to promote. The committee notes the most recent expression of concern among U.S. allies on this issue in a February 1986 resolution of the European Parliament stating that "products listed by COCOM and of U.S. origin should not require an additional reexport license if they are reexported from COCOM countries under COCOM rules". While eliminating the authority for the executive branch to require a reexport license for COCOM or cooperating countries, this provision does enable the Secretary to require a license for the reexport of U.S. goods for particular end-users specified by the Secretary in regulation, thereby ensuring continued discretion to control reexports to known diverters of controlled items.

The committee also notes with concern the increasing tendency of foreign manufacturers to establish non-U.S. sources of goods and technology in order to avoid delays and costs of present and future U.S. export controls. Such efforts to "de-Americanize" foreign products result in the elimination of U.S. firms from the world market for parts and components, and makes it difficult for U.S. exporters to recover lost sales and market shares. Eliminating the requirement of prior authorization in certain situations before a foreign manufacturer may export products that incorporate U.S.-origin parts and components, if their aggregate value in a foreign product is less than 20 percent or \$10,000, recognizes the need for a distinction between inconsequential parts and major items. The committee is aware that the Executive branch has under consideration similar proposals to eliminate reexport authorization for parts and components and supports and encourages such initiatives.

(c) Exports of low-technology items

Subsection (c) amends section 5(b) of the act to eliminate U.S. licensing requirements for exports to noncontrolled countries of

goods with performance characteristics so low that the goods may be exported to controlled countries simply upon notification to COCOM (items specified in the Administrative Exception Notes (AENs) of the Control List).

The Export Administration Amendments Act of 1985 eliminated licensing requirements for low-technology exports to COCOM countries, resulting in the establishment of a new general licence (G-COM) for such exports. Executive branch officials estimate that the G-COM procedure has resulted in a 10-15 percent reduction in license applications, without any negative impact on U.S. national security. In extending this policy to all free world destinations, the committee again strongly endorses the decontrol of low-level goods and technology to all countries since such goods are readily available to the Soviet bloc through legal means. Licensing of these low-technology goods therefore is an unwarranted and time consuming impediment to U.S. exporters and a drain on U.S. Government resources for control of militarily significant items. The committee expects, therefore, that the elimination of all such low technology goods from the Control List will facilitate meeting the requirements of subsection (e) of section 202 of the bill, without an adverse effect on U.S. national security.

(d) Periodic review of the control list

Subsection (d) amends section 5(c) of the act to require quarterly reviews of portions of the Control List, with the entire list being reviewed at least once a year. This subsection also requires that the Secretary of Defense review the Militarily Critical Technologies List on an ongoing basis.

(e) Reduction of the control list

Subsection (e) further amends section 5(c) to require the Secretary of Commerce, in consultation with the Secretary of Defense, to identify approximately 40 percent of the goods on the Control List which contribute least directly to the military potential of any controlled country, and to submit to Congress and COCOM a list of such items. Such goods are to be removed from the Control List over a three year period, unless Congress acts to maintain controls on any particular items.

Some 200 broad categories of goods and technology, including technical data, which encompass 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 shrink. 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 is extremely hesitant to remove any item from the List, even in light of technological advances among potential adversaries. In 1979, Congress mandated the Department of Defense to identify those technologies which are most critical to superior military capability, so that Commerce could decontrol less critical products. This effort to streamline our controls has not yet succeeded, due to the fact that the Militarily Critical Technologies List catalogs every modern industrial process. Congress also man-

dated indexing—a procedure to raise the technical parameters of controlled items as technology advances—which has yet to be implemented. In 1985, Congress mandated reductions of the list on the basis of foreign availability, low technology (as defined by agreement between the United States and our COCOM partners), embedded microprocessors, and other criteria. In light of executive branch failure to implement each of these specific categories for removal from the list, and the failure of the effort to focus on the most militarily critical technologies, the committee is compelled to mandate identifying a specific percentage of the list, based on the criterion of contributing least directly to military potential, for eventual removal, while leaving the identification of the items to Executive branch discretion. Only in this manner can the U.S. Government reconcile the need to protect national security and to permit nonstrategic exports to take place. As the Committee noted in 1979 and as is still the case, less than one percent of the approximately 120,000 export applications for Free World destinations are 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 believe strongly that fewer controls, efficiently administered, will be more effective in protecting U.S. national security and economic competitiveness. Narrowing the size and scope of not only the U.S. but also the COCOM list, to goods which are truly militarily significant, will aid the U.S. in gaining greater cooperation from our allies. The most frequent complaint of COCOM members is that the U.S. continually seeks to control more without removing items from the list. Decontrol efforts would be welcomed by our COCOM allies and lead to more effective control of the most sensitive goods and technology.

In requiring the Secretary of Commerce to identify the goods proposed for decontrol by the seven-digit schedule B number of the Statistical Classification of Domestic and Foreign Commodities Exported by the U.S. (as maintained by the Census Bureau), the Committee intends to create greater Executive Branch accountability as to the goods which are controlled for national security purposes. Identification of the goods by the Schedule B number (which appears on the Shippers Export Declaration) ensures that the executive branch has identified the prescribed amount of goods for decontrol (approximately forty percent). Following submission of the list to Congress and to COCOM one year after enactment, the first 10 percent shall be removed from the Control List within 90 days. An additional 10 percent shall be removed the following year, with the remainder, constituting approximately 20 percent, being removed from the list in the third year.

The committee establishes the following principles to guide the executive branch in achieving an overall 40 percent reduction of the Control List:

- As was mentioned in the discussion of subsection (c) above, removal from the list of all low technology items constitutes one readily achievable means of decontrolling a significant portion of goods on the Control List. Such low technology goods are available to controlled countries through legal means; continued requirements for validated licenses serve no national secu-

rity purpose of denying the Soviet bloc such technology, and only further delay and impede U.S. exporters.

-Subsections (f) and (g) of this section clarify and further expand the definition of foreign availability in section 5 of the Export Administration Act. Based on the current statutory mandate to decontrol goods which no longer contribute to the military capability of potential adversaries, and the new criteria in subsection (f) of this bill, the Committee expects that more rigorous application of foreign availability standards will result in the removal of items from the Control List.

-Subsection (e) of this section specifically includes among the goods to be decontrolled all medical equipment and instruments. Many of these items are commercial equipment which contain embedded microprocessors or utilize electronic computers. Under the mandate in the 1985 Act, goods containing embedded microprocessors were to be decontrolled, yet in many cases controls continue. 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.

-Unilateral U.S. national security controls must not be imposed or continued without clear evidence that such controls are necessary to prevent a significant threat to the United States or prevent the transfer of truly strategic goods to the Soviet bloc. The committee notes that the Export Administration Annual Report for fiscal year 1984 indicates that 29 entries on the Commodity Control List continue to be controlled unilaterally, and that no decontrol actions took place during that reporting period. The Commerce Department should immediately initiate a review of all unilateral national security controls to justify continuation or delete such controls.

-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—micro-wave ovens, video equipment such as decoders, and even children's toys. It is the committee's belief that the export sale of these items in no way endangers national security, and the inclusion of such items on the control lists damages the national economy. Controls on commonly used commercial equipment that has minimal direct military application unduly hampers the export of U.S. goods and technology, and adversely affects the economic health of the United States.

(f) Foreign availability

Subsection (f) of the bill amends section 5(f) of the Export Administration Act to expand existing provisions concerning foreign availability. Under this section, if availability of a particular good or technology exists in any noncontrolled country and that country agrees to control the good or technology in a manner comparable to the United States, the goods or technology is decontrolled to that particular country. The decontrol is effective after that country has demonstrated for one year the effectiveness and comparability of

its control system, and shall continue for as long as that country maintains such controls. Such decontrol is initiated by agreements negotiated by the Secretary of State or when the Secretary of Commerce determines that goods and technology are available in that country. In addition, the provision specifies a timetable for executive branch action upon allegations of foreign availability from U.S. exporters.

The provision also addresses an inconsistency regarding the treatment of the People's Republic of China for purposes of foreign availability. As noted in section 202(a) above, for purposes of the act, the People's Republic of China is still a controlled country. In effect, provisions of the current act mandating decontrol of goods which are available to controlled countries might require that U.S. policy toward the PRC apply to all Soviet bloc countries. This is not the intent of the committee. The provision eliminates this potential problem by permitting the United States to export goods to the PRC without such availability constituting grounds to require decontrol to the Soviet bloc.

(g) Definition of available in fact

Subsection (g) clarifies Congressional intent by defining "available in fact to controlled countries" to include availability in Western countries in which there are no restrictions on exports to the Soviet bloc, or in which those restrictions are ineffective.

The committee is concerned with the interpretation contained in executive branch regulations which inappropriately restrict the ability of exporters to submit allegations of foreign availability. Availability of goods in a Western country, including a Cocom country, if uncontrolled for export to the Soviet bloc or if such controls are determined by the Secretary of Commerce to be ineffective, constitutes foreign availability, and should be considered as such for the purpose of decontrol or negotiations. The committee intends the clarification of congressional intent to result in significant increases in the decontrol of goods based on foreign availability.

The committee notes several other aspects of the foreign availability program which are of concern. While recognizing the contributions of the foreign availability program in considering new controls and in preparing for Cocom list review, the committee is disturbed by the lack of progress on decontrol efforts. Whether it be internal commerce problems, including lack of resources, or inter-agency difficulties in obtaining timely support from the Department of Defense, the fact remains that not one item has been decontrolled on the basis of foreign availability. In addition, the executive branch has ignored congressional intent regarding time deadlines for consideration of foreign availability assessments. Deadlines are contained in the act for foreign availability certifications by the Technical Advisory Committees and for license applications, pursuant to deadlines set forth in section 10. Commerce Department regulations, however, preclude foreign availability assessments in connection with license applications unless the application has been denied. Subsection (f)(2) of section 202 corrects this problem by imposing time deadlines for all foreign availability allegations. The committee also intends, for purposes of the national

security override, that the 18-month period for negotiations commence at the end of the 90-day or 30-day foreign availability analysis. Any additional time for publication of the results of the analysis constitutes part of the 18-month negotiating period.

The committee notes provisions of the Export Administration Amendments Act of 1985 which require the Department of Commerce to consult with the Department of Defense and other executive agencies during the conduct of foreign availability studies. The committee reiterates, however, that the Commerce Department's actions on foreign availability determinations are not based on concurrence with any other department or agency, but on consolidation. The Department of Commerce has the clear authority and responsibility to proceed unilaterally with decontrol actions if other agencies fail to substantiate their recommendations with reliable evidence of factors which might repudiate the information in a foreign availability claim.

(h) Industry participation at Cocom

Subsection (h) amends section 5(i) of the act to require the President to include as part of the U.S. delegation to Cocom, for the purposes of reviewing the Control List, representatives of U.S. industry.

The committee believes that inclusion of knowledgeable industry representatives as part of the U.S. delegation will benefit U.S. participation in Cocom by improving the quality of technical assessments. U.S. Government personnel are not and cannot be knowledgeable about the complex technical parameters of each controlled item. For this reason, other Cocom members have effectively utilized industry experts, with no apparent adverse consequences. Appointment of industry representatives would be required for list review only, alleviating conflict-of-interest concerns which might be associated with review of exception cases. The committee expects that industry participation at Cocom will reduce the incidence of confusing and overly restrictive regulations, which unnecessarily impede U.S. exporters.

Section 203—Enforcement

Section 203 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 ten days, goods or technology which the Secretary of Commerce has determined are eligible for export under a general license.

The committee is concerned about recent 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 legitimate 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 Export Administration 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 Commodity Control list. While other agencies may be consulted for advice concerning appropriate classifications, final authority rests with the Secretary of Commerce.

Section 204—Authorization of appropriations

Section 204(a) amends section 18(b) of the Export Administration Act of 1979, as amended, to authorize appropriations to the Department of Commerce in each of the fiscal years 1987 and 1988 of \$40,935,000, of which in each year \$12,746,000 shall be available only for enforcement, \$2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of the act, and \$26,189,000 shall be available for all other activities under the act. This section also authorizes such additional amounts as may be necessary for personnel expenses authorized by law, and other nondiscretionary costs. Section 204(b) amends section 12(a)(6) of the Export Administration Act of 1979 to authorize appropriations of \$14 million in each of the fiscal years 1987 and 1988 for the export enforcement activities of the U.S. Customs Service. The level of appropriations authorized by section 204(b) is the amount requested by the administration.

The committee notes that the authorization of \$40,935,000 to carry out the functions of the Export Administration Act of 1979, as amended, exceeds the executive branch's request by \$5 million for each fiscal year, and specifically continues the congressional earmark for foreign availability assessments (the executive branch did not make a request for foreign availability). The committee believes that such additional funds, and the foreign availability earmark, are warranted to carry out the provisions of the Export Administration Amendments Act of 1985, particularly in light of increased responsibilities conferred by section 202 of this act.

Section 205—GAO report

Section 205 of the bill requires a report by the Comptroller General of the United States on the activities of the Department of Defense pursuant to the Presidential directive of January 4, 1985, regarding the review of export license applications for exports to Free World destinations. This report is to be submitted to Congress not later than 6 months after enactment of the bill.

The committee reaffirms its strong belief that the statutory role of the Secretary of Defense in implementing national security export controls is limited to review of license applications for proposed exports to controlled countries only. Despite this consistent interpretation, the President in January 1985, provided for Defense Department review of license applications to specified countries of specified categories of goods, subject to continuing oversight by the National Security Council. Since the directive took effect in February 1985, the Subcommittee on International Economic Policy and Trade has conducted close oversight of the issue. Testimony from agency representatives indicates that of the thousands of applications reviewed by the Defense Department which exceed 11,000 on only one occasion has the Defense Department identified information that has led to the denial of a license that otherwise would

have been approved. At the same time, however, the additional time required for such Defense review has delayed shipments by U.S. exporters on an average of about 2 weeks.

The GAO study required by this section is intended to examine in detail the activities of the Department of Defense in the area of West-West trade. In particular, the study should focus on whether Defense Department activities provide information about the diversion of U.S. technology to controlled countries that would not otherwise be available to the Commerce Department or other appropriate agency. The study should also examine the costs to U.S. exporters of such delays, and any national security benefit due to Defense Department involvement. The committee intends that GAO will make a special effort to consult with U.S. exporters, as well as their legal and trade association representatives, who have had license applications reviewed by the Department of Defense. The GAO should also consult with officials of the agencies involved in administering the act and the Presidential Directive, including Commerce, Defense, State, Treasury, and the National Security Council. The study should not be limited solely to Defense Department review of export license applications, but should also examine Defense Department activities in the regulatory process, including policymaking, enforcement, Control List review, foreign availability determinations, and the extent to which the activities are consistent with other provisions of the Act. The committee expects close consultation with GAO throughout the process.

TITLE III—DEBT, DEVELOPMENT, AND WORLD GROWTH

Section 301—International negotiations

Section 301(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, and Japan, 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 an equivalent manner against any unfair foreign trade practice.

Section 301(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-directed economic policies and on increasing markets for U.S. developing country exports.

Section 302—Trade liberalization in developing countries

Section 302(a) expresses the sense of the Congress that the achievement of development in Third World nations and recovery of economic strength in industrialized nations can only be reached through expansion of world trade. Section 302(b) declares that all U.S. foreign assistance shall be consistent with and supportive of long-term trade liberalization in recipient countries.

Section 303—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 OPIC's finance program funding, and authorizes an increase in civil service staff to support an expanded finance program. Section 235(a) of the Foreign Assistance Act 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 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."

Section 304—Trade and Development Program

This section reaffirms congressional support for the Trade and Development Program (TDP), amends Section 661 of the Foreign Assistance Act to authorize an increase in TDP funding from the present \$20 million to \$25 million in fiscal year 1987, and codifies TDP's present status as an independent component agency of the International Development Cooperation Agency (IDCA). TDP assistance during the crucial planning stages of major capital development projects often produces a significant multiplier effect: on the average, every dollar of TDP financing generates about \$50 in business and exports for United States firms. In agreeing to the proposed increase in TDP funding and codification of TDP's independent status within IDCA, the committee recognizes TDP's effectiveness in utilizing foreign aid to achieve expanded trade between the United States and developing nations.

Section 305—Countertrade

Section 305 directs the President to establish an interagency group on countertrade, chaired by the Secretary of Commerce, to review U.S. policy on countertrade and make recommendations to the President and Congress on the use of countertrade to enhance United States 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 United States review its policy on countertrade. Current administration policy actively discourages nonmilitary countertrade, which can place U.S. exporters at a significant disadvantage vis-a-vis our major industrialized trading competitors,

and jeopardize long-term market opportunities, particularly in Central and Latin America. 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 sec. 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 also 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.

TITLE IV—PROTECTION OF U.S. BUSINESS INTERESTS ABROAD

Section 401—Protection of U.S. Intellectual Property

Section 401 recognizes the importance of protecting U.S. intellectual property, prompted by the losses sustained by U.S. industrial 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.

Subsection (a)(1) directs the Secretary of State, the United States Trade Representative, and relevant U.S. Ambassadors to 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.

Subsection (a)(2) directs the Secretary of State, in consultation with the United States Trade Representative, to encourage 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.

Subsection (a)(3) 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.

Subsection (a)(4) 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 402—Foreign trade practices

Section 402(a) amends the Securities and Exchange Act of 1954, as amended by 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. Prohibited payments include those for the purpose of influencing acts or decisions of foreign officials in order to assist corporations 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 penalties. Corporations or individuals which act with "reckless disregard" of a substantial risk that third parties would bribe or attempt bribery would be subject 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. Therefore, 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 defend itself from prosecution by 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, or 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 responses to specific inquiries relating to compliance within thirty days after receiving a request.

The Secretary of Commerce is directed to conduct a review of the impact of these amendments on the export activities of U.S. businesses in the countries of principal trading importance to the United States.

Section 402(b) amends section 32(c) of the Securities and Exchange Act of 1934, establishing penalties for violations under new Section 30A(a)(1) or (2), to provide for fines of up to \$2 million for issuers, and \$20,000 and/or 5 years in prison for individuals.

Section 402(c) amends section 104 of the Foreign Corrupt Practices Act of 1977 to establish prohibitions on trade practices by domestic concerns which are identical to those for issuers.

Section 402(d) expresses the sense of the Congress that the President should pursue the negotiation of an international antibribery agreement.

Section 403—Liability crisis for U.S. businesses

Section 403 sets forth a series of findings regarding the negative impact of the current product liability crisis on U.S. competitiveness as well as on U.S. technological leadership, and expresses the sense of the Congress about the need for urgent reform of liability laws in order to maintain U.S. competitiveness in world markets.

TITLE V—MISCELLANEOUS PROVISIONS

Section 501—Trading with the Enemy Act

Section 501(a) and (b) 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 the Act. This provision also repeals an unnecessary reporting requirement in section 6 of the act. The committee notes that all litigation and adjudication of World War II claims under this law has ended, and points out that it has 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 501(c) amends section 5(b) of the act to codify current practice with respect to the Nicaragua and Libya embargoes under the International Emergency Economic Powers Act of exempting from import restrictions and from import licensing requirements under the Trading with the Enemy Act the importation to the U.S. of information materials and publications, such as books, magazines, newspapers, films, photographs, microfilm, phonograph records, tape recordings, and posters. The committee intends and expects the executive branch will continue to allow for such exemptions under the International Emergency Economic Powers Act. The committee notes 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.

Section 502—Budget Act

Section 502 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 bill, the total budget authority required to carry out the provisions of H.R. 4708 will be \$485 million for fiscal year 1987 and \$182 million for fiscal year 1988. 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.

INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 4708 will have no identifiable inflationary impact. In fact, as the purpose of H.R. 4708 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

H.R. 4708 is the result of extensive hearings and oversight activity, 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); national security, foreign policy and short supply export controls and the implementation of the Export Administration Amendments Act of 1985; Overseas Private Investment Corporation; Trade and Development Program; and functioning of the Foreign Corrupt Practices Act and the agricultural export and trade provisions of the Food Security Act of 1985. The committee has also considered a Government Operations Committee report on "The Role of the Overseas Private Investment Corporation (22nd Report; November 5, 1985), and two studies by the General Accounting Office: "Implementation of the Export Trading Company Act of 1982" (GAO/NSIAD-86-42, February 1986), and "Export Promotion: Activities of the Commerce Department's District Offices" (GAO/NSIAD-86-43, February 1986).

Budget authority

The enactment of H.R. 4708 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

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill No.: H.R. 4708.
2. Bill title: Export Enhancement Act of 1986.
3. Bill status: As ordered reported by the House Committee on Foreign Affairs on April 30, 1986.
4. Bill purpose: Title I authorizes the appropriation of funds for export promotion. Section 108 authorizes the appropriation of \$300 million for fiscal year 1987 for a Competitive Tied Aid Fund to be administered by the Secretary of Treasury. Section 111 authorizes the appropriation of \$123.9 million for each of the fiscal years 1987 and 1988 for export promotion in the Department of Commerce. Title II amends provisions in the Export Administration Act of 1979 concerning export controls. Section 204 authorizes the appropriation of \$40.9 million for each of the fiscal years 1987 and 1988 for export administration activities in the Department of Commerce. The bill stipulates that \$12.7 million of this authorization each year would be available only for enforcement activities and \$2

million each year for so called foreign availability assessments. The bill also authorizes such sums as may be necessary for fiscal years 1987 and 1988 for adjustments in salary, pay, retirement, and other employee benefits and nondiscretionary costs authorized by law. Section 204 also authorizes the appropriation of \$14 million for fiscal years 1987 and 1988 for the United States Customs Service to enforce the Export Administration Act.

Title III addresses the problems of debt, development, and world growth. Section 303 authorizes the Overseas Private Investment Corporation (OPIC) to issue at least \$200 million in guaranteed loans and \$25 million in direct loans each fiscal year. Section 304 establishes the Trade and Development Program as a separate agency and increases its authorization from \$20 million to \$25 million in fiscal year 1987.

Title IV recommends protecting United States business interests abroad by improving enforcement of intellectual property rights and changing product liability laws. It also amends the Export Administration Act to include bribery prohibitions.

Title V terminates the Office of Alien Property and transfers the remaining assets to the Treasury.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	485	182	0	0	0
Estimated direct loans.....	11	10	10	9	8
Estimated guaranteed loans.....	58	52	0	0	0
Estimated outlays.....	150	226	120	59	26

Costs for this bill fall within budget functions 150, 370, 750, and 920.

Basis for estimate.—This estimate assumes enactment of this legislation by September 30, 1986 and subsequent appropriation of the authorized amounts.

Title I.—The authorization amounts are stated in the bill. Outlays for Competitive Tied Aid Fund are based on the mix of regular and medium term financing in the President's request. Outlays for the Department of Commerce reflect historic spending patterns for these programs. (See table below.)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization level:					
Competitive tied aid fund (150)	300	0	0	0	0
Department of Commerce (370)	124	124	0	0	0
Total authorization.....	424	124	0	0	0
Estimated outlays.....	103	168	101	52	24

Title II.—The authorization amounts for the Department of Commerce and the United States Customs Service are stated in the bill. Outlays reflect historical spending patterns for these programs. The estimated costs for pay increases reflect the CBO baseline assumptions for such increases: 5.8 percent in 1987 and 5.9 percent in 1988, effective in January of each year. (See table below.)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level:					
Department of Commerce (370)	41	41	0	0	0
U.S. Customs Service (750)	14	14	0	0	0
Estimated pay allowances(920)	1	3	0	0	0
Total authorization	56	58	0	0	0
Estimated outlays	43	53	14	4	0

Title III.—This estimate assumes the credit authority for OPIC will be provided in subsequent appropriations acts. Presently the Foreign Assistance Act of 1961 gives OPIC open-ended authorization to issue direct and guaranteed loans as long as there are adequate reserves and the maximum contingent liability is not exceeded. Since there are no existing specific annual authorization levels, CBO has estimated the effects of the bill against the loan levels in baseline. OPIC's authority to guarantee loans expires on September 30, 1988. The authorization amount for the Trade and Development Program is stated in the bill. Outlays are estimated using historical spending patterns for these programs. (See table below.)

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Overseas Private Investment Corporation:					
Authorized direct loans	25	25	25	25	25
Baseline	14	15	15	16	17
Net authorization	11	10	10	9	8
Authorized guaranteed loans	200	200			
Baseline	142	148			
Net authorization	58	52			
Trade and Development Program:					
Authorization level	25				
Existing authorization	20				
Net Authorization	5				
Estimated outlays	4	5	5	3	2

Costs for this title fall within budget function 150.

Title IV.—Section 402 amends the Export Administration Act to include prohibitions against bribery of foreign officials. Civil and criminal fines for violations of this provision (\$2,000,000 and \$20,000, respectively) would be double those existing for violation of

the Foreign Corrupt Practices Act, which currently prohibits this conduct. This section also directs the Secretary of Commerce to issue guidelines for compliance and to establish procedures to respond to requests for opinions as to whether prospective conduct would violate these prohibitions. The Secretary is also responsible for enforcement of this section and is authorized to seek injunctions to prevent violations. CBO is unable to estimate the budgetary impact of these increased fines due to the lack of information concerning fines collected under the current statute and the uncertain impact of these changes on violations and prosecutions.

CBO expects that the other provisions of the bill would have no cost impact. Enacting these provisions would not significantly increase the workload of the affected agencies.

6. Financing mechanism.—Funding for this legislation would be provided in advance by appropriation acts. Such funding decisions would be discretionary.

Section 303 authorizes OPIC to issue \$200 million in guaranteed loans and \$25 million in direct loans each year; these minimum limits are effective only to the extent or in such amounts as are provided in appropriation acts. According to the administration, the present value of the subsidy conveyed by OPIC in fiscal year 1985 was 13.6 percent for financial guarantees and 3.0 percent for direct loans. Using these percentages, the credit authority would provide the following subsidies.

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated direct loans.....	1	1	1	1	1
Estimated guaranteed loans.....	27	27	0	0	0

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous cost estimate: None.

A previous cost estimate for the Competitive Tied Aid Fund, H.R. 3667, was prepared on February 6, 1986.

10. Estimate prepared by: Lisa R. Brown, Theresa Gullo, and Marjorie Miller.

11. Estimate approved by: C. G. Nuckols, (James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REQUIRED

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):

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[.]; and

(5) the Market Development Cooperator Program established under section 202.

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) MARKET DEVELOPMENT COOPERATOR PROGRAM.—The Secretary of Commerce is authorized to enter 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) 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. [202.] 203. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated [\$113,273,000 for each of the fiscal years 1985 and 1986] *\$123,922,000 for each of the fiscal years 1987 and 1988* the Department of Commerce to carry out export promotion programs.

SEC. [203.] 204. 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 agricultural 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.

* * * * *

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.

* * * * *

SECTION 1127 OF THE FOOD SECURITY ACT OF 1985

DEVELOPMENT AND EXPANSION OF MARKETS FOR UNITED STATES AGRICULTURAL COMMODITIES

SEC. 127. (a) * * * *

* * * * *

(b) In carrying out the program established by this section, the Secretary of Agriculture—

(1) shall take such action as may be necessary to ensure that the program provides equal treatment to domestic and foreign purchasers and users of United States agricultural commodities and the products thereof in any case in which the importation of a manufactured product made, in whole or in part,

from a commodity or the product thereof made available for export under this section would place domestic users of the commodity or the product thereof at a competitive disadvantage;

[(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, consider for participation all interested foreign purchasers, giving priority to those who—

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

(B) 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; and

(C) who have either—

(i) non-discriminatory treatment (most-favored-nation treatment); or

(ii) a negative trade balance with the United States.

* * * * *

SECTION 1224 OF THE AGRICULTURAL TRADE AND EXPORT POLICY COMMISSION ACT

“TERMINATION

SEC. 1224. The Commission shall terminate [sixty] ninety days after the transmission of its final report to the President and Congress.

EXPORT TRADING COMPANY ACT OF 1982

* * * * *

SEC. 105. REPORT ON EXPORT TRADING COMPANIES.

Not later than one year after the date of the enactment of the Export Enhancement Act of 1986 and annually thereafter, the Secretary of Commerce shall submit a report on certificates of review issued under title III during the preceding year. The Secretary shall submit each report to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The first such report shall include a summary of all the certificates

issued after October 8, 1982, and shall provide an analysis of the operating experiences of those certificate holders.

* * * * *

SECTION 4 OF THE BANK HOLDING COMPANY ACT OF 1956

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

* * * * *

(c) The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) * * *

* * * * *

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

* * * * *

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts or interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank holding company fails to furnish the information required under clause (iii).

The Board may not disapprove a proposed investment solely on the basis of the proposed assets to equity ratio of an export trading company unless the proposed annual average ratio is greater than 25 to 1.

(v) The Board may not impose, by regulation, a dollar limit on the amount of goods which export trading companies may maintain in inventory; except that the Board may impose, by order, a dollar limit on the amount of goods which a particular export trading company may maintain in inventory after such company has been operating for a reasonable period of time if, under the particular facts and circumstances, it finds that such limit is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.

[(v)] *(vi)* Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

[(vi)] *(vii)* A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

* * * * *

(F) For purposes of this paragraph—

(i) the term “export trading company” means a company which does business under the law of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States by *that company, its affiliates, or unaffiliated persons*, or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(ii) the term “export trade services” includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, a communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States:

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; **[and]**

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act **[.]**;

(v) *an export trading company shall be treated as organized and operated principally for the purposes described in clause (i) if that company derives more than one-half of its revenues in each consecutive five-year period from—*

(I) the export of goods or services produced in the United States by that company, its affiliates, or unaffiliated persons, or

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

(vi) for the purpose of clause (v), revenues from third party trade, and the value of goods and services taken back by the export trading company as part of a countertrade transaction, shall be treated as export revenues.

* * * * *

SECTION 23A OF THE FEDERAL RESERVE ACT

SEC. 23A. (a) RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES.— * * *

* * * * *

(d) EXEMPTIONS.—The provisions of this section, except paragraph (a)(4), shall not be applicable to—

(1) * * *

* * * * *

(6) purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in subsection (a)(3), purchasing loans on a nonrecourse basis from affiliated banks; **[and]**

(7) purchasing from an affiliate a loan or extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse **[.]**; *and*

(8) transactions with an affiliate which is an export trading company, as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1965.

* * * * *

EXPORT—IMPORT BANK ACT OF 1945

* * * * *

SEC. 15. COMPETITIVE TIED AID FUND.

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

(1) *tied and partially untied aid credits offered by other countries are being used in a predacious manner to distort competitive markets and undercut American exporters;*

(2) *the predacious use of tied and partially untied aid credits undermines export credit discipline under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development; and*

(3) *the establishment of a temporary Competitive Tied Aid Fund in the Treasury of the United States which, in addition to providing financing to United States exporters to combat the predacious use of tied and partially untied aid credits by other countries, can be used to target the export markets of countries which exploit or abuse tied or partially untied aid credits for commercial purposes and which impede progress in negotiating greater discipline over the use of such credits, will facilitate negotiations to eliminate the use of such credits for commercial purposes and will thereby help protect American exporters from unfair and predacious official export competition.*

(b) **COMPETITIVE TIED AID FUND.**—

(1) **ESTABLISHMENT BY SECRETARY OF THE TREASURY.**—*In order to provide a means for inducing other countries to pursue negotiations on a comprehensive arrangement to restrict the use of tied aid and partially untied aid credits for commercial purposes, the Secretary of the Treasury shall establish a fund in the Treasury of the United States to be known as the “Competitive Tied Aid Fund”, consisting of such amounts as may be appropriated to the Fund.*

(2) **USES OF THE FUND.**—*Amounts in the Fund may be used—*

(A) *to make available to United States exporters financing which is competitive with the advantageous financing provided to their competitors from countries engaging in predacious official export financing through the use of tied or partially untied aid credits; and*

(B) *to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country—*

(i) *which engages in predacious official export financing through the use of tied or partially untied aid credits; and*

(ii) *which impedes negotiations to eliminate the use of such credits for commercial purposes.*

(3) **ADDITIONAL REQUIREMENTS.**—*In carrying out this section, the Secretary—*

(A) *should avoid using the total amount in the Fund to provide financing for only 1 or 2 export projects;*

(B) *should seek to use amounts in the Fund to make financing available only for United States exports that would be reasonably competitive in the absence of the predatory export financing practices of the other country; and*

(C) *shall ensure that amounts in the Fund are used only to assist exportation by persons described in paragraph (1), (2), or (3) of section 238(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2198(c)).*

(4) **FUNCTIONS OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES.**—

(A) **APPROVAL OF FINANCING.**—*Amounts in the Fund may be used only with the approval of a majority of the members of the National Advisory Council on International Monetary and Financial Policies.*

(B) **DUTIES.**—*It shall be the duty of the National Advisory Council to—*

(i) *establish policy and procedure guidelines for the development, implementation, and coordination of the programs carried out pursuant to this section and pursuant to the Trade and Development Enhancement Act of 1983;*

(ii) *oversee the operation of those programs;*

(iii) *recommend improvements in the manner in which those programs are carried out;*

(iv) *encourage private financial institutions to participate in those programs; and*

(v) *develop a system, incorporating both public and private sources of information, for monitoring the use of tied and partially untied aid credits by foreign governments.*

(C) **SPECIFIC REQUIREMENTS.**—*In connection with the establishment of policy and procedure guidelines pursuant to subparagraph (B)(i), the National Advisory Council shall—*

(i) *recommend procedures which would assure that if an application is submitted to the Export-Import Bank for assistance under subsection (b)(2)(A) of this section or under the Trade and Development Enhancement Act of 1983, the application can be processed and the assistance made available within 30 calendar days after the application is submitted;*

(ii) *establish a policy with regard to—*

(I) *the degree to which proof is required, in order to receive assistance under subsection (b)(2)(A) of this section or under the Trade and Development Enhancement Act of 1983, that a foreign offer of a tied or partially untied aid credit has been made or (on the basis of past practice or a course of dealing) can reasonably be expected; and*

(II) *the time at which and the manner in which evidence of such offer shall be submitted;*

(iii) devise a method for determining the number of American jobs which will be created or retained through assistance from the Fund, and give such factor consideration in making assistance available; and

(iv) describe the method of publicizing the availability of financing under this section and under the Trade and Development Enhancement Act of 1983, and the terms and conditions under which such assistance is available to both large and small exporters.

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

(1) **TIED AID AND PARTIALLY UNTIED AID CREDIT.**—The terms “tied aid credit” and “partially untied aid credit” mean any official credit which has a grant element greater than zero percent, as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development, and which is, in fact or in effect, tied to—

(A) the procurement of goods or services from the donor country, in the case of tied aid credit; or

(B) the procurement of goods or services from a restricted number of countries, in the case of partially untied aid credit.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(3) **FUND.**—The term “Fund” means the Competitive Tied Aid Fund established pursuant to subsection (b)(1).

(4) **NATIONAL ADVISORY COUNCIL.**—The term “National Advisory Council” means the National Advisory Council on International Monetary and Financial Policies.

(d) **REPORT TO CONGRESS.**—The Secretary shall transmit to the Congress, on a quarterly basis, a report setting forth the activities carried out under this section. Each such report shall include—

(1) information on applications used by the Secretary for making assistance available under subsection (b)(2);

(2) information on the disposition of such applications;

(3) an identification of the foreign governments whose behavior the Secretary is trying to influence by the use of such assistance, and an explanation of why the assistance involved is deemed likely to influence that behavior;

(4) evidence that clearly demonstrates that assistance under subsection (b)(2) has been used for the purposes of this section;

(5) information on any progress that has been made in negotiations on agreements within the Organization for Economic Cooperation and Development to limit the use of tied aid credits and partially untied aid credits;

(6) information on the extent to which tied aid credits and partially untied aid credits are being used at the time of such report by major trading countries within such Organization, the terms of any such credits, and the market sectors with respect to which such credits are being used; and

(7) information on the extent to which assistance under this section has been effective—

(A) in discouraging the use of tied aid credits and partially untied aid credits for commercial purposes by other countries; and

(B) in helping to protect United States exporters from unfair and predacious official export competition.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Fund for the fiscal year beginning on October 1, 1986, \$300,000,000. Such sums shall remain available until expended.

(f) **EXPORT-IMPORT BANK.**—

(1) **IMMEDIATE IMPLEMENTATION.**—Until such time as the funds authorized to be appropriated under subsection (e) become available for expenditure, the Bank shall make aggressive use of the Bank's authority to offer tied aid credits, in accordance with any recommendation of the Secretary of the Treasury as to how such credits could most effectively and efficiently promote the purposes of this section.

(2) **SUBSEQUENT REIMBURSEMENT.**—The Bank shall be reimbursed for the cost of any tied aid credits the Bank authorizes pursuant to this subsection from the appropriated funds authorized by this section, when such funds become available.

(g) **TERMINATION OF MIXED CREDIT PROGRAMS.**—The authorities contained in this section and in the Trade and Development Enhancement Act of 1983 shall cease to be effective upon a certification by the Secretary of the Treasury to the Congress that a majority of the members of the National Advisory Council have determined that—

(1) the United States has reached an agreement with the governments of the other member countries of the Organization for Economic Cooperation and Development which ends abuse of tied and partially untied aid credits in pursuit of national commercial benefits; and

(2) those governments are honoring the terms of that agreement.

TRADE AND DEVELOPMENT ENHANCEMENT ACT OF 1983

* * * * *

ESTABLISHMENT OF A TIED AID CREDIT PROGRAM IN THE AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 645. (a)

* * * * *

(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.

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.*

* * * * *

EXPORT ADMINISTRATION ACT OF 1979

* * * * *

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 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's 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.

* * * * *

NATIONAL SECURITY CONTROLS

SEC. 5. (a) AUTHORITY.—(1) * * *

* * * * *

(b) *No authority or permission to reexport any goods subject to the jurisdiction of the United States may be required—*

(A) *to or from any country which maintains export controls on such goods 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 a license for the reexport of such goods to such end users as the Secretary may specify by regulation, or

(B) from any country when the goods to be reexported are incorporated in other goods and—

(i) do not exceed \$10,000 in value, and

(ii) do not constitute more than 20 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 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 is at such a level of performance characteristics that the export of the goods or technology, were it made pursuant to the agreement of the group known as the Coordinating Committee, would require only notification of participating governments of the Committee. The Secretary may require any person exporting any such goods or technology to a country other than a controlled country to notify the Department of Commerce of those exports.

(c) CONTROL LIST.—(1) * * *

* * * * *

(3) The Secretary shall [review] *conduct partial reviews* of the list established pursuant to this subsection at least once each [year] *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 [annual] *quarterly* review, the Secretary shall publish notice of that [annual] review in the Federal Register. The Secretary shall provide an opportunity during [such] *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. 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] *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.*

(4) The Secretary, in consultation with the Secretary of Defense, shall, on the basis of subsections (b)(2), (f), (g), and (m) of this section, and on the basis of such other criteria and procedures as the

Secretary, in consultation with the Secretary of Defense, considers appropriate, identify those goods subject to export controls under this section which contribute least directly to the military potential of any controlled country and which in the aggregate constitute approximately 40 percent of all goods subject to export controls under this section. The goods so identified shall include all medical instruments and equipment, and goods so widely available to the general public in retail outlets that the export controls on those goods are rendered ineffective in achieving their purpose. The number of goods subject to export controls under this section shall be determined on the basis of Schedule B of the Statistical Classification of Domestic and Foreign Commodities Exported by the United States (as issued by the Bureau of the Census). The Secretary shall submit to the Congress and to the Coordinating Committee, within 1 year after the date of the enactment of this subsection, a list of the goods identified under the first sentence (by the Schedule B number referred to in the third sentence), together with the total number of goods subject to export controls under this section. Notwithstanding any other provision of this Act, of the total number of goods subject to export controls under this section (as submitted under the preceding sentence)—

(A) 10 percent of such goods, as identified by the Secretary at the time the list is submitted, shall, 90 days after the date of submission of the list, no longer be subject to export controls under this section and shall, at the end of that 90-day period, be removed from the control list;

(B) an additional 10 percent of such goods, as identified by the Secretary at the time the list is submitted, shall, 1 year after the end of the 90-day period referred to in subparagraph (A), no longer be subject to export controls under this section and shall, at the end of that 1-year period, be removed from the control list; and

(C) an additional number of such goods, constituting approximately 20 percent of such goods shall, 2 years after the end of the 90-day period referred to in subparagraph (A), no longer be subject to export controls under this section and shall, at the end of that 2-year period, be removed from the control list, except to the extent a law is enacted retaining export controls on any goods referred to in subparagraph (A), (B), or (C), as the case may be.

(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 tech-

nology 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.

* * * * *

(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, *including sources within any such country and*, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to **[controlled countries]** *a country to which exports are controlled under this section* from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology *to that country* during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

* * * * *

(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 Secretary 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 respond in writing to the applicant, and publish in the Federal Register, within 30 days after receipt of the allegation, that—*

(A) the foreign availability does exist and the requirement of a validated license has been removed or the applicable steps are being taken under paragraph (4) or (5);

(B) the foreign availability may exist but further examination of the issue is necessary in order to make a determination; or

(C) the foreign availability does not exist.

In the case in which subparagraph (B) applies, the Secretary shall, within 6 months after the initial response and publication, respond in writing to the applicant and publish in the Federal Register, that—

(i) the foreign availability does exist and the requirement of a validated license has been removed or the applicable steps are being taken under paragraph (4) or (5); or

(ii) the foreign availability does not exist.

In any case in which the publication is not made within that 6-month period, the Secretary may not require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. 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 with respect to controlled countries (other than the People's Republic of China) 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 countries to prevent such foreign availability.

(5) In any case in which export controls on goods or technology are maintained under this section with respect to the People's Republic of China or any other country other than a controlled country notwithstanding foreign availability to that country, on account of a determination of the President that the absence of the controls would prove detrimental to the national security of the United States, the Secretary of State shall actively pursue negotiations under subsection (k) with the government of the country involved. One goal of such negotiations shall be to secure the cooperation of

that country in imposing and enforcing export controls, comparable to those imposed under this section, on the export of the goods or technology with respect to which there is foreign availability to that country. If an agreement is reached pursuant to such negotiations and the Secretary of State determines, 1 year after the country involved has maintained such export controls, that such controls are comparable to those imposed under this section, Secretary may not, while that determination is effective, require a validated license for the export of the goods or technology involved to that country.

[(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)](7) 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)](8) *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.*

* * * * *

(h) TECHNICAL ADVISORY COMMITTEES.—(1) * * *

* * * * *

(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] *a country to which exports are controlled under this section, from sources outside the United States, including sources within any such country and including countries which participate with the United States in multilateral export controls, in suf-*

ficient 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 *to the country involved*, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, **[or]** *in a case in which foreign availability exists to controlled countries (other than the People's Republic of China),*

(C) *negotiations in accordance with subsection (f)(5) are being conducted in the case of foreign availability to the People's Republic of China or any other country other than a controlled country, or*

[(C)] (D) 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.

(i) **MULTILATERAL EXPORT 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.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement on more effective procedures for enforcing the export controls agreed to by the members of the Committee.

(4) Agreement to enhance full compliance by all parties with the export controls imposed by agreement of the Committee through the establishment of appropriate mechanisms.

(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for the Committee, and improve the structure and function of the Secretariat of the Committee by upgrading professional staff, translation services, data base maintenance, communications, and facilities.

(6) Agreement to coordinate the systems of export control documents used by the participating governments in order to verify effectively the movement of goods or technology subject to controls by the Committee from the country of any such government to any other place.

(7) Agreement to establish uniform, adequate criminal and civil penalties to deter more effectively diversions of items controlled for export by agreement of the Committee.

(8) Agreement to increase on-site inspections by national enforcement authorities of the participating governments to ensure that end users who have imported items controlled for export by agreement of the Committee are using such items for the stated end uses, and that such items are, in fact, under the control of those end users.

(9) Agreement to strengthen the Committee so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all participants.

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

* * * * *

(r) AVAILABILITY DEFINED.—For purposes of subsections (d), (f), and (h) of this section, the term "available in fact to controlled countries" includes 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 of Commerce to be ineffective.

SHORT SUPPLY CONTROLS

SEC. 7. (a)

* * *

* * * * *

(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 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 as described in paragraph (2)(A)(ii) of this subsection, 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.

* * * * *

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 are eligible for export under a general license under section 4(a)(3).*

* * * * *

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than **[\$12,000,000 in the fiscal year 1985 and not more than \$14,000,000 in the fiscal year 1986.]** *\$14,000,000 in the fiscal year 1987 and \$14,000,000 in the fiscal year 1988.*

* * * * *

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);]** *5(f)(6);*

* * * * *

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) \$24,600,000 for the fiscal year 1985, of which \$8,712,000 shall be available only for enforcement, \$1,851,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and \$14,037,000 shall be available for all other activities under this Act;

[(2) \$29,382,000 for the fiscal year 1986, of which \$9,243,000 shall be available only for enforcement, \$2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and \$18,139,000 shall be available for all other activities under this Act; and

[(3) such additional amounts for each of the fiscal years 1985 and 1986 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.]

(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1) \$40,935,000 for the fiscal year 1987, of which \$12,746,000 shall be available only for enforcement, \$2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and \$26,189,000 shall be available for all other activities under this Act;

(2) \$40,935,000 for the fiscal year 1988, of which \$12,746,000 shall be available only for enforcement, \$2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and \$26,189,000 shall be available for all other activities under this Act; and

(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.

* * * * *

FOREIGN ASSISTANCE ACT OF 1961

* * * * *

PART I

* * * * *

CHAPTER 2—OTHER PROGRAMS

* * * * *

TITLE IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

* * * * *

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.

* * * * *

(5) Subject to paragraphs (2), (3), and (4), the Corporation shall issue at least \$200,000,000 in guaranties under section 234(b) 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 in amounts of not less than \$25,000,000 under section 234(c) 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.*

* * * * *

PART III

* * * * *

CHAPTER 3—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 661. TRADE AND DEVELOPMENT PROGRAM.—(a) * * *

(b) 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.

[(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]** \$25,000,000 for the fiscal year 1987.

* * * * *

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 of 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 foreign official, 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.

[(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. 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) PROHIBITION.—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 any officer, director, or employee of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means of instrumentality of interstate commerce, corruptly to offer, pay, promise to pay, or authorize the payment of any money, or to offer, give, promise to give, or authorize the giving of anything of value to—

(A) any foreign official for purposes of—

(i) influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit any act in violation of his legal duty as a foreign official; or

(ii) 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; or

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

(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or inducing such party, official, or candidate to do or omit any act in viola-

tion of its or his legal duty as such a political party, official, or candidate; or

(ii) 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.

(2) It shall be unlawful for any issuer described in paragraph (1), or any officer, director, or employee 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, with knowledge that a third party will offer, pay, promise, or give anything of value—

(A) to any foreign official for any purpose set forth in paragraph (1)(A); or

(B) to any foreign political party of official thereof or any candidate for foreign political office for any purposes set forth in paragraph (1)(B),

(3) It shall be unlawful for any issuer described in paragraph (1), or any officer, director, or employee of such issuer or stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce, with reckless disregard that a third party will offer, pay, promise, or give anything of value—

(A) to any foreign official for any purpose set forth in paragraph (1)(A); or

(B) to any foreign political party of official thereof or any candidate for foreign political office for any purpose set forth in paragraph (1)(B),

in furtherance of such offer, payment, promise, or gift. Any issuer who violates this paragraph shall be subject to a civil penalty of \$10,000 imposed by the Commission.

(4)(A) for purposes of paragraph (2), a person has “knowledge” if—

(i) that person is aware or substantially certain, or

(ii) 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 paragraph (1)(A) or (1)(B).

(B) For purposes of paragraph (3), a person’s state of mind is “reckless” 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 paragraph (1)(A) or (1)(B), but disregards that risk. A substantial risk means a risk that is of such a nature and degree that to disregard it constitutes a substan-

tial deviation from the standard of care that a reasonable person would exercise in such a situation.

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

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

(B) a 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.

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

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

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

(2) the officer and employee of the issuer with supervisory responsibility for the conduct of the employee used due diligence to prevent the commission of the offense by that employee. 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). The first sentence of this subsection shall be considered an affirmative defense to actions under subsection (a).

(d) *GUIDELINES FOR COMPLIANCE.*—Not later than 6 months after the date of the enactment of the Export Enhancement Act of 1986, 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 representatives of the business community and other interested persons through public notice and comment and in public hearings, shall determine to what extent 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 the Attorney General determines constitute compliance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to ensure compliance with the preceding pro-

visions of this section, and to create a rebuttable presumption of compliance with such provisions.

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 with representatives from the business community, shall establish a procedure to provide responses to specific inquiries by issuers concerning compliance with the preceding provisions of this section. The Attorney General shall, within 30 days after receiving a request which relates to compliance with the preceding provisions of this section and which is made in accordance with that procedure, issue an opinion in response to that request. An opinion of the Attorney General that certain prospective conduct does not violate the preceding provisions of this section shall be final and binding on all parties, subject to the discovery of new evidence with respect to the conduct. 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) concerning compliance with the preceding provisions of this section, shall be exempt from disclosure under section 552 of title 5, United States Code, regardless of whether the Department of Justice responds to such a request or the issuer withdraws such request before receiving a response. The Attorney General shall protect the privacy of each such issuer, and shall adopt rules assuring that information submitted in connection with such a request will be kept confidential and will not be used for any purpose that would unnecessarily discourage use of the procedure established under paragraph (1).

(3) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning compliance with the preceding provisions of this section to potential exporters and small businesses which 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 compliance and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) **DEFINITIONS.**—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, and any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

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) Any issuer who violates section 30A(a)(1) or (2) shall be fined not more than \$2,000,000.

(2) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 30A(a)(1) or (2) shall be fined not more than \$20,000, or imprisoned not more than 5 years, or both.

(3) Whenever an issuer is found to have violated section 30A(a)(1) or (2), any employee 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 acting on behalf of such United States person), and who willfully carried out the act or practice constituting the violation shall be fined not more than \$20,000, or imprisoned not more than 5 years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) upon any officer, director, employee, 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 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.

[(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 do-

mestic 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 law of a State of the United States or 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 (A) a telephone or other interstate means of communication, or (B) any other interstate instrumentality.]

PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

SEC. 104. (a) PROHIBITION.—(1) 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, or employee 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 to offer, pay, promise to pay, or authorize the payment of any money, or to offer, give, promise to give, or authorize the giving of anything of value to—

(A) any foreign official for purposes of—

(i) influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit any act in violation of his legal duty as a foreign official; or

(ii) 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; or

(B) any foreign political party or official thereof or any candidate for foreign political office for purpose of—

(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or inducing such party, official, or candidate to do or omit any act in violation of its or his legal duty as such a political party, official, or candidate; or

(ii) 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.

(2) It shall be unlawful for any domestic concern described in paragraph (1), or any officer, director, or employee 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, with knowledge that a third party will offer, pay, promise, or give anything of value—

(A) to any foreign official for any purpose set forth in paragraph (1)(A); or

(B) to any foreign political party or official thereof or any candidate for foreign political office for any purpose set forth in paragraph (1)(B), in furtherance of such offer, payment, promise, or gift.

(3) It shall be unlawful for any domestic concern described in paragraph (1), or any officer, director, or employee 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, with reckless disregard that a third party will offer, pay, promise, or give anything of value—

(A) to any foreign official for any purpose set forth in paragraph (1)(A); or

(B) to any foreign political party or official thereof or any candidate for foreign political office for any purpose set forth in paragraph (1)(B),

in furtherance of such offer, payment, promise, or gift. Any domestic concern that violates this paragraph shall be subject to a civil penalty of \$10,000 imposed by the Attorney General.

(4)(A) For purposes of paragraph (2), a person has "knowledge" if—

(i) that person is aware or substantially certain, or

(ii) 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 paragraph (1)(A) or (1)(B).

(B) For purposes of paragraph (3), a person's state of mind is "reckless" 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 paragraph (1)(A) or (1)(B), but disregards that risk. A 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) DEFENSES.—(1) It shall be a simple defense to actions under subsection (a) that—

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

(B) a 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.

"Routine governmental action" does not include any decision by a foreign official on the question of whether, or on what terms, to award new business to or to continue business with a particular party, or 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, who is not an officer or director, if—

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

(2) the officer and employee of the domestic concern with supervisory responsibility for the conduct of the employee used due

diligence to prevent the commission of the offense by that employee.

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 FOR COMPLIANCE.—Not later than 6 months after the date of the enactment of the Export Enhancement Act of 1986, 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 representatives of the business community and other interested persons through public notice and comment and in public hearings, shall determine to what extent 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 the Attorney General determines constitute compliance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to ensure compliance with the preceding provisions of this section, and to create a rebuttable presumption of compliance with such provisions.

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 with representatives from the business community, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning compliance with the preceding provisions of this section. That Attorney General shall, within 30 days after receiving a request which relates to compliance with the preceding provisions of this section and which is made in accordance with that procedure, issue an opinion in response to that request. An opinion of the Attorney General that certain prospective conduct does not violate the preceding provisions of this section shall be final and binding on all parties, subject to the discovery of new evidence with respect to the conduct. 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 United States person under the procedure established under paragraph (1) concerning compliance with the preceding provisions of this section, shall be exempt from disclosure under section 552 of

title 5, United States Code, regardless of whether the Department of Justice responds to such a request or the domestic concern withdraws such request before receiving a response. The Attorney General shall protect the privacy of each such domestic concern, and shall adopt rules assuring that information submitted in connection with such a request will be kept confidential and will not be used for any purpose that would unnecessarily discourage use of the procedure established under paragraph (1).

(3) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning compliance with the preceding provisions of this section to potential exporters and small businesses which 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 compliance and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) VIOLATIONS.—(1)(A) Except as provided in subparagraph (B), any domestic concern that violates subsection (a)(1) or (2) shall be fined not more than \$2,000,000.

(B) Any individual who is a domestic concern and who willfully violates subsection (a)(1) or (2) shall be fined not more than \$20,000, or imprisoned not more than 5 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)(1) or (2) shall be fined not more than \$20,000, or imprisoned not more than 5 years, or both.

(3) Whenever a domestic concern is found to have violated subsection (a)(1) or (2), any employee 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 United States person), and who willfully carried out the act or practice constituting the violation shall be fined not more than \$20,000, or imprisoned not more than 5 years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) upon any officer, director, employee, 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, 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; and

(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.

TRADING WITH THE ENEMY ACT

SEC. 5. (a) * * *

(b)(1) * * *

* * * * *

(4) *The authority granted to the President in this subsection does not include the authority to regulate or prohibit directly or indirectly the importation (commercial or otherwise) of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials from any country.*

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, 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 the 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. Immediately upon the enactment of this sentence, the Attorney General shall 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, the sum of \$500,000 to make payments authorized under section 32(h) of this Act.

[(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.]

[(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.

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

(1) which he receives after the date of the enactment of the Export Enhancement Act of 1986, or

(2) which he received before that date and which, as of that date, he 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 discretion are the subject matter of any judicial action or proceeding.

* * * * *

ADDITIONAL VIEWS OF HON. DOUG BEREUTER

Among the provisions of the Foreign Affairs Trade Subcommittee—authored Export Enhancement Act of 1986 are a number of amendments I offered that will enhance prospects for an improvement in the American competitive position in the agricultural export market.

What has been lacking has been a clear statement of agricultural trade policy, as well as a definite “game plan,” the fixing of clear lines of responsibility for implementation and oversight of agricultural export programs, and a set of export enhancement programs uncluttered with limitations, bureaucratic inhibitions and other proscriptions on the competitive export worldwide of U.S. agricultural products.

My amendments to Title I of this bill, adopted en bloc with the full support of Chairman Bonker and members on both sides of the aisle, establish the urgency of Foreign Affairs Committee emphasis on the issue of agriculture exports and U.S. Agricultural Trade policy.

This subject has been somewhat neglected by the Committee during previous congressional sessions, so I am particularly pleased that the Chairman and members saw fit to incorporate the several amendments I offered to the agriculture export promotion and trade policy sections of this bill.

It is important to be cognizant of the differences in trade legislation that promote trade and U.S. exports and those which protect selected interests at the expense of others. Solutions for one interest group should not create unnecessary hardships for another. Agriculture, one of the most important contributors to our nation's trade balance, has been unfairly hurt in the past by certain trade actions of Congress—not to mention the mix of macroeconomic policies pursued by several successive Administrations.

DISSENTING VIEWS OF HON. WILLIAM S. BROOMFIELD, HON. BENJAMIN A. GILMAN, HON. ROBERT J. LAGOMAR-SINO, HON. TOBY ROTH, HON. HENRY J. HYDE, HON. GERALD B.H. SOLOMON, HON. MARK D. SILJANDER, HON. CONNIE MACK, AND HON. DAN BURTON

While H.R. 4708, the Export Enhancement Act of 1986, contains important provisions to improve U.S. export promotion and the international competitiveness of American business, U.S. national security interests are compromised by Title 2 provisions pertaining to U.S. export controls.

The provisions pertaining to national security export controls in H.R. 4708, if enacted *in toto* would serve to increase the sale and diversion of high-technology to the Soviet bloc.

Further, it is our view that amendments to the Export Administration Amendments Act of 1985 are premature and unnecessary at this juncture given that less than ten months have passed since the President signed into law on July 12, 1985 comprehensive export control reforms. That legislation contained more than 50 revisions or additions to the Export Administration Act of 1979.

Multiple licenses for China.—Section 202(a) would amend section 4(a)(2)(A) of the Export Administration Act to allow for multiple licenses to the People's Republic of China (PRC). The Minority feels that this provision is redundant and could unnecessarily interfere and undercut the U.S. Government negotiating position at the Coordinating Committee (COCOM).

The USG has already met the multiple license objective by negotiating liberalized procedures with our COCOM allies for shipments to the PRC in 1985. For example, COCOM members can now ship low-level computers in bulk quantities to the PRC. Any additional changes to the controls applied to the PRC would require COCOM approval. The Minority understands that the USG is continuing to negotiate this year further modifications to the PRC controls in COCOM. If this provision were to become law, the U.S. Government would likely be viewed by COCOM members as abruptly changing U.S. law for pecuniary gain and without regard for the collective security of U.S. allies.

Eliminating re-export licenses.—Section 202(b) would eliminate all re-export license requirements for shipments of U.S. goods and technologies to destinations within COCOM countries or countries with whom the United States has comparable agreements (section 5 (K) countries). The Secretary may require re-export licenses to end-users specified by regulation. Further, the provision would eliminate all re-export controls for U.S. goods and technology component parts valued under \$10,000 destined for any country, including controlled countries.

Re-export controls allow for tracking of products as they proceed through international commerce. This paper trail enables the U.S.

Government and our COCOM allies to determine cooperatively when products may have been diverted. Essential evidence has been provided in the past by the tracking of U.S. re-exports within COCOM countries. If this provision were adopted, the Minority feels the prosecution for violation of U.S. law would be hamstrung.

Further, COCOM countries do not at this time have the same resources or political will to enforce export controls as does the United States. For example, while the U.S. Government imposes heavy fines and prison terms as a deterrent for violations of export control laws, other COCOM members may merely consider similar violations as misdemeanors only. The adoption of this provision would prematurely eliminate the leverage of U.S. law which is an incentive for COCOM members to continue with the harmonization process.

This provision also would allow any company located in any country to re-export any American goods or technology incorporated into other products to any country destination without prior authorization from the U.S. Government if the U.S. goods or technology is valued at less than \$10,000 and does not constitute more than 20 percent of the total value of the final product. The Minority feels this provision jeopardizes U.S. national security interests since there is no reference whatsoever to the military criticality of the U.S. component product.

Further, without the ability to track re-exports by requiring prior authorization from the U.S. Government, the Minority does not believe that the U.S. Government can prudently rely on COCOM allies to assist in the enforcement of U.S. foreign policy controls.

Control list.—Section 202(e) requires a 40 percent reduction of items on the Control List within three years, by means of a specified fixed formula. The Control List identifies those U.S. goods and technology that are controlled for national security purposes. The Secretary of Commerce is directed, in consultation with DOD, to identify within one year 40 percent of the presently controlled items as those “which contribute least directly to the military potential of any controlled country.”

This provision introduces a new concept to justify the decontrol of products from the Control List. Under this provision, decontrolled items are to be those which contribute “least directly” to the military potential of controlled countries. The “least directly” standard is in direct conflict with the “significant contribution” standard contained in section 3 (2)(A) of the Export Administration Act. Under that section, “It is the policy of the United States to use export controls . . . to restrict the export of goods and technology which 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.” The effect of this provision, therefore is to decontrol forty percent of items on the Control List which make the “least direct” but still “significant contribution” to the military potential of Warsaw Pact countries. This would put the U.S. Government in the position of supplying items to the Soviet bloc which make a known “significant contribution” to its military potential.

The provision also mandates that the 40 percent of decontrolled items would include all medical instruments and equipment, regardless of military criticality. For example, array processors used in CAT scans would be decontrolled despite the fact that they are used for nuclear weapons design, intelligence analysis, antisubmarine warfare, including the detection of quiet U.S. and allied submarines, and detection of stealth aircraft.

The fixed formula for reducing the number of items controlled for national security purposes would operate as follows: The Secretary of Commerce is given the lead authority to identify within one year 40 percent of the Control List as least militarily critical. Ninety days after that list is submitted to Congress and to COCOM, 25% of the identified list is automatically decontrolled. One year later, another 25% of the identified list is automatically decontrolled. And in the following year, the remaining 50% of the identified list is decontrolled. This fixed formula, therefore would automatically decontrol 40% of U.S. goods and technology, now deemed to be militarily critical, within 3 years.

The Minority supports the aim of obtaining a more efficient system for control list maintenance. The issue is not, however, how many items are controlled at any particular fixed point in time, but rather whether maintenance of the list is done in a manner which efficiently removes obsolete technology in a timely fashion. Obviously, the U.S. Government will always need to add to the Control List as new technologies and products are invented that are clearly not in U.S. interests to be sold to the Soviet bloc. A fixed formula cannot anticipate how many items ought to be added or how many items become obsolete technology in any given year.

It should also be noted that if this provision is enacted, the U.S. Government will be required to identify items for decontrol based on Schedule B of the Statistical Classification of Domestic and Foreign Commodities Exported by the United States. Schedule B is a list of several thousand seven-digit commodity codes which do not match up with the Control List entries. It is not uncommon for a Schedule B category to include equipment controlled by several different Control List entries. It is not uncommon for a Schedule B category to include equipment controlled by several different Control List entries and vice versa. In addition, a single Schedule B entry can include equipment of widely varying performance and strategic concern. Finally, each exporter classifies his own exports according to Schedule B, with a corresponding lack of consistency. The Minority believes that administration of the provision will be unworkable and could lead to significant legal challenges and abuses.

Decontrol of multilaterally-controlled items would require the approval of our COCOM partners. Under COCOM procedures, the U.S. Government must provide a rationale as to why items are no longer strategic in order to justify their decontrol. In the opinion of the Minority, this strategic justification cannot be provided. Undoubtedly COCOM members will claim that the U.S. Government is seeking a 40 percent decontrol merely to obtain commercial advantage in contravention of the maintenance of our collective security. Thus, the implementation of this provision could do grave

damage to the leadership of the United States among our allied partners.

In the Export Administration Amendments Act of 1985, the Secretary of Commerce is directed to review the Control List on an annual basis and to make necessary revisions. It establishes a process for publicizing the list review in the Federal Register and affords an opportunity for the business community to participate. Furthermore, the Secretary of Defense is now required by law to establish a procedure for reviewing the militarily critical technologies list (MCTL) at least annually to remove obsolete technology.

Industry-DoD Technical Working Groups (TWGs) began in April of this year a review of unilaterally controlled items to determine whether the items should be included on the MCTL. If the TWGs determine that an item is not militarily critical, then it will not be included on the MCTL and will be a candidate for decontrol from the Control List. For those items that the TWGs determine should be included on the MCTL, interagency Technical Task Groups (TTG) will determine whether it should be a candidate for multilateral negotiations in COCOM.

Both the TWG and TTG technical reviews are expected to be completed by June 30, 1986.

Industry representative to COCOM.—Section 202(h) would amend Section 5(i) of the Export Administration Act by requiring the inclusion of private representatives from American industry on the U.S. Government delegations negotiating the review of the COCOM International Control List. The Minority feel this would be an inappropriate and unprecedented interference into the Department of State's management of multilateral negotiations. COCOM negotiations are classified political discussions to agree to the level of technology at which the multilateral embargo against the Warsaw Pact will be in effect. It is not appropriate, therefore for private U.S. citizens to be a party to highly sensitive diplomatic negotiations which form one of the political cornerstones of the collective security systems with our allies.

Customs Service.—Section 203 would amend Section 12(a)(2)(B) to prohibit the Customs Service from detaining or seizing for more than ten days any item or technology which the Secretary of Commerce determines is exportable under a general license. Many items transferred under general license are often subject to Commodity Jurisdiction or other administrative processes to determine whether they are properly licensable under the Munitions List or the Control List.

The Minority understands, for example, the U.S. Government reviewed within the last month whether certain tactical field radios exportable under general license should be entered on the Munitions List to prevent them from being shipped to the Government of Iran. While these field radios are currently not being used by the U.S. military, they are widely used by militaries throughout the Third World. These military radios, which have over 760,000 frequencies, were actually en route to the Iranian Ministry of Defense in November of 1985 when they were intercepted by the U.S. Customs Service in cooperation with the Customs Service of a close and valued ally. The Minority feels the U.S. Government must an-

ticipate that these radios would be used by the many terrorists sponsored by Iran throughout the Middle East.

If the ten day limit of this amendment had been law, the State Department, with the assistance of the Commerce and Defense Departments would not have had the time to determine under Commodity Jurisdiction procedures whether the radios should be allowed to be shipped to Iran as general license items.

This is not the only example of the need for the Customs Service to detain questionable items being shipped to adversaries of the United States. Within the past two years, the same Customs Service detention and subsequent interagency review procedures were performed on many items, some of which are classified. Typical of these items and technologies detained were chemicals used in the production of nerve gas (destined for Iraq), military radios (to Libya), and carbon-carbon technology used in the production of ballistic missile nose cones and stealth aircraft (to the Soviet Union).

WILLIAM S. BROOMFIELD.

BENJAMIN A. GILMAN.

ROBERT J. LAGOMARSINO.

TOBY ROTH.

HENRY J. HYDE.

GERALD B.H. SOLOMON

MARK D. SILJANDER.

CONNIE MACK.

DAN BURTON.

○