AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

April 6, 1987.—Ordered to be printed

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

REPORT

Companion H.R. 3 which on January 5, 1987, was referred jointly to the
Committee on Ways and Means, Agriculture, Banking, Finance, and Urban Af
questions on Energy and Commerce, and Foreign Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs to whom was referred the
H.R. 3 to enhance the competitiveness of American industry,
other purposes, having considered the same, report favorably
on an amendment and recommend that the bill be passed.

The amendment is as follows:

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

TITLE III—EXPORT ENHANCEMENT

311. SHORT TITLE.

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

312. FINDINGS AND PURPOSES.

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

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

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

(3) World economic growth requires both a financial sys
tem that fosters and supports stable exchange rates and th
in developing trade between the United States and Carri-
bean nations. It sets forth congressional intent that changes in
laws by this bill to improve U.S. competitiveness should be
structured as diminishing the importance of the Caribbean
 Basin, altering the current duty-free trade system available
only to Caribbean nations, or imposing an addi-
tional barrier to U.S. trading partners. 

Section 347—Limitation on procurement in foreign assis-
tance

Section 347 amends section 604(d)(1) of the Foreign
Act of 1961 to prohibit the use of foreign assistance funds
procurement of goods and services from any advanced
or industrialized nation which is competitive in interna-
tional markets with U.S. producers, unless the U.S. goods and services
are competitive in the market where the goods and services
used.

The provision clarifies that foreign assistance funds will
be used to purchase goods or services for countries that compete
with the United States in international markets for sales of simil-
lar goods and services. The committee is particularly concerned
that aid not be used to enhance the com-
petitiveness of advanced industrialized countries, such as Eu-
rope, South Korea, and Taiwan, which may compete with the
United States in developing countries today. This exists when
AID finances the procurement of non-U.S. goods or services
in a developing nation from non-U.S. sources. This is
true in cases where such U.S. goods or services are not compet-
tive in the market where they will be used. Examples would in-
clude cases where such U.S. goods or services cannot be purchased from
foreign suppliers in a timely manner, or when surplus parts or repair
items are not available.

SUBTITLE D—PROTECTION OF UNITED STATES BUSINESS
ABROAD

Section 351—Protection of United States intellectual prop-
erty

Section 351 recognizes the importance of protecting
United States intellectual property, prompted by the losses sustained by
Inventors and their employees, as well as the costs of protecting such
property. Counterfeiting of U.S. copyrighted works causes an annual loss
of more than $1.3 billion to the copyright industry. Foreign
counterfeiting has resulted in the loss of more than $10 billion and losses
by U.S. companies. Substandard fraudulent goods can pose
security threats to consumers, and endanger the reputa-
tion of U.S. companies. Inadequate patent protection has
resulted in an annual loss of $200 million for one U.S. industry.

Paragraph (1) states that the Secretary of State,
States Trade Representative, and relevant U.S. of-
ficials should conduct bilateral talks with appropriate countries
to reduce instances of piracy and counterfeiting, obtain

existing international conventions which encompass intellectual
property issues, and gain support for inclusion of intellectual prop-
erty codes in future multilateral trade negotiations. Further, it
encourages the negotiation of an international convention to protect
intellectual property, since at present, none of the international conventions
addresses this important property.

Paragraph (2) urges the United States to seek to incorporate
mechanisms into international intellectual property policies. One of the
most important aspects of ensuring an intellectual property agreement under the
aegis of the General Agreement on Tariffs and Trade (GATT) is that the
GATT has a dispute settlement and enforcement procedures. The committee recom-
ments that the United States adopt civil remedies under domestic intellectual property
and trade laws among other remedies.

Paragraph (3) urges the United States to seek the involvement
of the U.S. business community in intellectual property negotiations.
The structure of advisory committees to help with past trade negoti-
ation efforts has been effective in informing U.S. negotiators. A similar mech-
ism should be employed to utilize the experience of the American
business community.

Paragraph (4) states that the Secretary of State, in consult-
ation with the United States Trade Representative, should urge
the World Intellectual Property Organization (WIPO) to assist with
the development of intellectual property codes in multilateral trade nego-
ations by providing its technical expertise. WIPO has demonstrated its
ability to establish international standards for copyrights, patents and trade marks. It is
important that the relationship between WIPO and MTN efforts will
be coordinated with the enforcement of WIPO standards and
GATT. Intellectual property codes would be included in MTN
agreements to ensure the establishment of a dispute settlement
mechanism for intellectual property issues.

Paragraph (5) encourages the President to use retaliatory mea-
sures against those countries unwilling to commit formally to improve-
ments in intellectual property protection. The 93rd Congress
authorized the President to use powerful tools in section 503 of Public Law 93-
52 to persuade countries which condone piracy or create other
barriers to trade to discontinue such practices.

Paragraph (6) encourages the Agency for International Devel-
opment (AID) to include in its development programs technical train-
ing in enforcement of copyright, patent, trademark, and related law
in recipient countries. AID is to consult with the Patent and
Trademark Office and Copyright Office of the Department of Com-
merce in its efforts to provide such technical training.

Section 352—Foreign business practices

Section 352 amends section 30A of the Securities and Exchange Act of 1934 (15 U.S.C. 78dd-1) and
make standards of corrupt behavior in current law and to
clarify requirements for the definition of illegal payments by issuers and domestic
corporations. Prohibited payments include those for the purpose of
influencing acts or decisions of foreign officials in order to assist cor-

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 "knowledge" standard of culpability in the present statute was replaced by a split standard. Under the new standard, corporations or individuals with "knowledge" of bribes or attempted bribes by third parties (for example, their agents) are subject to criminal and civil penalties. Corporations or individuals which act with "reckless disregard" of a substantial risk that third parties would bribe or attempt bribery would be subject only to civil penalties.

For purposes of this provision, the definition of "obtaining business" shall not be limited to the renewal of contracts or other business, but shall include the completion of existing contracts and the carrying out of existing business. Payments for the procurement of legislative, judicial, regulatory, or other actions in seeking more favorable treatment from a foreign government which have a bearing on the completion of contracts or the carrying out of existing business would be prohibited by the act. For example, a payment to a foreign official for the purpose of obtaining favorable tax treatment would be prohibited. The prohibition does not include payments made for purposes other than obtaining or retaining business, which may be prosecuted at the discretion of the foreign government.

A company may not be held vicariously liable if it can show that it had established procedures to prevent employees from making bribes and that its supervisory employees had used "due diligence" to prevent employees or third parties from making bribes.

A corporation or individual may raise as a simple defense to prosecution under the Act a showing that a payment was made "for the purpose of expediting or securing the performance of a routine governmental action," or where such payment was "expressly permitted" by the laws or regulations of the foreign country. A "routine governmental action" includes processing papers (including visas and work orders), loading and unloading cargoes, and scheduling inspections associated with contract performance. A routine governmental action does not include any decision on whether to award new business or continue existing business, including legislative, judicial, regulatory or other action in seeking more favorable treatment by a foreign government. The reference to a "simple" defense means that an affirmative defense is not required for purposes of fulfilling the conditions of this subsection.

As in current law, enforcement responsibility rests with the Department of Justice and the Securities and Exchange Commission. Guidelines for compliance may be issued by the Attorney General, after consultation with the SEC, the Secretary of Commerce, the United States Trade Representative, the Secretary of State and the Secretary of the Treasury, and after obtaining the views of the business community and others through public notice and comment in public hearings. The Attorney General shall establish procedures, after consultation with appropriate agencies, to provide responses to specific inquiries relating to compliance within 30 days after receiving a request.

SUBTITLE E

Section 361—Trading With the Enemy Act

Section 361 provides for the termination of the administration of alien enemy property activities by eliminating subsection (b) through (e) of section 39 of the Trading With the Enemy Act, and directs the Attorney General to place in the miscellaneous receipts account of the Treasury all sums from property vested in or transferred to him under that act. This section also repeals an unnecessary reporting requirement in section 36 of that act. The committee notes that all litigation and adjudication of World War II claims under this law has ended. The committee acted favorably on similar legislation proposed by the Justice Department in 1977 and 1980, but that no action has been taken in the Senate.

Section 362—Limitation on exercise of emergency authorities

Section 362 amends section 5(b) of the Trading with the Enemy Act and section 203(a) of the International Emergency Economic Powers Act to clarify that the authority granted to the President by these sections does not include the authority to regulate imports from and exports to any country of informational materials, which are not otherwise under National Security exports controls under section 5 of the Export Administration Act of 1979 or are not subject to the prohibitions contained in chapter 37 of title 15, United States Code.

These sections amend the Trading With the Enemy Act and the International Emergency Economic Powers Act to exempt from regulation or prohibition, directly or indirectly, "the importation from any country, or exportation to any country, commercial or otherwise, of publications, films, posters, phonograph records, phonographs, microfilms, microfiche, tapes, or other information materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which acts are not prohibited by chapter 37 or title 13, United States Code." These provisions codify current practice under the International Emergency Economic Powers Act, as in the recent embargo of trade with Nicaragua and Libya, of exempting informational materials and publications from import restrictions. The committee notes that the American Bar Association House of Delegates approved, in February 1985, the principle that no prohibitions should apply to imports to the United States of ideas and information if their publication is protected by the First Amendment. That principle applies with equal force to the exportation of ideas and information from this country to the rest of the world. Accordingly, these sections also exempt informational materials and publications from the export restrictions that may be imposed under these acts.

Section 363—Relations with Mexico

This section was adopted by voice vote in 1986, during House floor consideration of H.R. 4800 (the Trade and International Ex-
nomic Policy Reform Act of 1986). It includes findings on the importance of United States-Mexican relations, the current inadequate and ad hoc nature of United States policymaking regarding Mexico, and the need for improving our government's approach to issues involving Mexico. Section 365 also creates an interagency group, the United States-Mexico Interagency Commission, and calls for the convening of a United States-Mexico bilateral summit.

Mexico is of great strategic importance to the United States, both politically and geographically, and is our third largest trading partner. The alliance between the United States and Mexico is substantially economic in nature, yet our trade and diplomatic relations with this neighbor are often taken for granted or are handled in a fractured manner. The interagency group, to be established by the President, is to include the Secretary of State, the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, and the United States Trade Representative, and is to be chaired by the Secretary of State. The purpose of the Commission is to coordinate United States policy toward Mexico and to allow for greater deliberation and input from the various government agencies. The Commission also is meant to serve as an official channel of communication between the United States Government and the Government of Mexico in order to raise issues of bilateral concern, particularly in the area of trade and economic matters, to a higher level of discussion. The bill requires that the Commission report to Congress on an annual basis on its actions, and urges that the Commission meet semiannually with Mexican representatives.

Section 363 includes a sense of the Congress that a bilateral economic summit be held and outlines the potential activities to be considered. These items include: Mexico's relationship to the General Agreement on Tariffs and Trade; Mexico's graduation from the Generalized System of Preferences; U.S. direct investment in Mexico; U.S. fishing rights in Mexican waters; the potential for a U.S.-Mexico free trade agreement; as well as greater coordination in the areas of immigration, pollution, research and development, debt and foreign investment, and trucking and transportation.

Section 364—budget act

Section 364 provides that any new spending authority pursuant to this act shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriations acts.

**REQUIRED REPORTS SECTION**

**COST ESTIMATE**

The committee estimates that, assuming the full appropriation of the amounts authorized in this title, the total budget authority required to carry out the provisions of this title will be $34 million for fiscal year 1987. The fiscal year allocation of the total cost is set forth in the Congressional Budget Office estimate below. The committee agrees with the projected cost estimate of the Congressional Budget Office.

This bill would authorize new spending, above the normal operating level of the programs covered and funds not otherwise available, of $9 million in fiscal year 1988 and of $6 million in fiscal year 1989.

**INFLATIONARY IMPACT STATEMENT**

Enactment of title III will have no identifiable inflationary impact. In fact, as the purpose this title is to promote U.S. exports, the enactment of this legislation should lead to a healthier, more prosperous U.S. economy.

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

(a) Oversight findings and recommendations

Title III is the result of extensive hearings and oversight in 1986 and 1987, particularly by the Subcommittee on International Economic Policy and Trade, but also by other subcommittees, and by the full committee. The oversight activities have included various briefings and study missions by both members and staff of the committee. The hearings and other activities by the Subcommittee on International Economic Policy and Trade have covered the following:

- General U.S. trade policy; operations of the U.S. and Foreign Commercial Service; export trading companies; mixed credits (including reporting T.R. 2667, as amended, in 1986); national security, foreign policy and short supply export controls and the implementation of the Export Administration Amendments Act of 1986;
- the Overseas Private Investment Corporation; the Trade and Development Program; the Foreign Corrupt Practices Act; and the agricultural export and trade provisions of the Food Security Act of 1985. The committee has also considered government operations.

Committee reports on "Federal Government Export Promotion Activities: Oversight of Foreign Commercial Service (95th Report; April 11, 1984) and on "The Role of the Overseas Private Investment Corporation" (22nd Report; November 5, 1985), and several studies by the General Accounting Office: (GAO/NSIAID--86-42; February 1986) "Export Promotion: Activities of the Commerce Department's District Offices" (GAO/NSIAID--86-43, February 1986);

"Foreign Aid: Potential for Diversion of Economic Support Funds to Unauthorized Use" (GAO/NSIAID--87-70); "Foreign Assistance: How the Funds Are Spent" (GAO/NSIAID--86-73); "Assessment of Commerce Department's Foreign Policy Report to Congress" (GAO/NSIAID--86-172); "Commerce-Defense Review of Applications to Certain Free World Nations" (GAO/NSIAID--86-169); "Assessment of Commerce Report on Extending Controls for South Africa" (GAO/NSIAID--86-73) and confidential report entitled, "Export Controls Need Strengthening But Some Licensing May Be Unnecessary" (GAO/O-NSIAID--86-10). Last, the committee considered the National Academy of Sciences' report, "Balancing the National Interest: U.S. National Security Export Controls and Global Economic Competition."

(b) Budget authority

The enactment of these provisions will create no new budget authority, credit authority or spending authority.