EXPORT-IMPORT BANK ACT AMENDMENTS OF 1978

HEARINGS

BEFORE THE

SUBCOMMITTEE ON RESOURCE PROTECTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 3077

A BILL TO AMEND AND EXTEND THE EXPORT-IMPORT BANK ACT OF 1945, AND FOR OTHER PURPOSES

JUNE 20 AND JULY 11, 1978

SERIAL NO. 95-H67

Printed for the use of the Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE
31-565 WASHINGTON : 1978

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CONTENTS

OPENING STATEMENTS

LIST OF WITNESSES

JUNE 20, 1978 (p. 1)

JULY 11, 1978 (p. 197)

ADDITIONAL MATERIAL

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1978

TUESDAY, JUNE 20, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON RESOURCE PROTECTION,
Washington, D.C.

The subcommittee met at 9:35 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Kaneaster Hodges, Jr., presiding.

Present: Senators Hart, Hodges, McClure, and Wallop.

OPENING STATEMENT OF HON. KANEASTER HODGES, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator HODGES. The hearing will come to order.

I would like to welcome each of you to this morning's hearing by the Subcommittee on Resource Protection on S. 3077, a bill to extend and expand the authorization for the Export-Import Bank. The focus of this morning's hearing will be section 5 of the bill, which exempts from compliance with the National Environmental Policy Act of 1969, any of the Bank's activities which do not affect the United States.

Section 102(2)(C) of NEPA requires Federal agencies to prepare environmental impact statements for major activities which significantly affect the quality of the human environment. Virtually all agencies have been successful in integrating this mandate into their domestic programs. Far more uncertain, is how this environmental protection provision is to apply to Federal actions which take place overseas. It seems to be generally accepted that NEPA does apply to major Federal activities which significantly affect the environment of either the United States or the global commons, that is, outer space, the oceans, Antarctica, or other areas which are not under the jurisdiction of any nation. The question becomes much more complex, however, when the effects of an action are confined to one or more foreign countries.

While the bill before us addresses this question with respect to the Eximbank during these hearings, the subcommittee will also examine the broader policy issue of NEPA's application to the overseas activities of all Federal agencies. We will seek to develop a method for responding to two different, but not mutually exclusive, concerns.

First, is the desire to ensure that American policymakers are aware of how their activities affect the environment of foreign countries, and are willing to share the information with the country in which the action takes place.

Second, a desire to maintain a healthy and vigorous U.S. export trade, and to avoid the appearance of dictating U.S. environmental standards to foreign nations. I would hope that these considerations will be satisfied in whatever action the subcommittee ultimately takes on the Stevenson amendment.

Since the administration is still formulating a position on this issue, yesterday the Senate agreed to give the Committee on Environment and Public Works an additional 2 weeks during which to consider S. 3077. This will permit the subcommittee to schedule an additional day of hearings in early July in order to take testimony from Federal agency witnesses.

Let us now turn to our first witness, the Honorable Russell Train who is the president of the World Wildlife Fund, former chairman of the Council on Environmental Quality, and former Administrator of the Environmental Protection Agency. Mr. Train?

STATEMENT OF RUSSELL TRAIN, PRESIDENT, WORLD WILDLIFE FUND

Mr. TRAIN. Thank you, Mr. Chairman.

I delivered 25 copies of my statement up here yesterday. They don't seem to be around. I apologize. I never was able to get a statement up in advance when I was a Federal official. So, I can only apologize that they don't seem to be here.

Mr. Chairman, thank you for the opportunity to appear before you to testify on the question of the National Environmental Policy Act's (NEPA) application to U.S. Government activities abroad.

While you have asked for my views on this overall issue, I should note that a later witness, Mr. James Barnes of the Center for Law and Social Policy, will testify on behalf of the World Wildlife Fund, as well as other environmental organizations, on this issue with particular reference to the application of NEPA to the Export-Import Bank. I have read and approve his statement in detail and endorse it for your consideration.

Ten years ago, in the summer of 1968, I participated in the Joint House-Senate Colloquium that concluded with the first congressional exposition on a national policy for the environment and that served as the basis for the enactment of NEPA 1 year later. I stated then and remain convinced today that "A national policy which fails to recognize the global nature of the human environment would be shortsighted."

It should be a matter of pride that over the past 10 years the United States has exercised a strong leadership role in promoting international environmental cooperation.

As this committee is aware, I have had a close personal involvement with many of these efforts, including the Great Lakes Water Quality Agreement with Canada, the 1972 U.N. Conference on the Human Environment at Stockholm, the effort within the International Whaling Commission to impose a 10-year moratorium on all whaling, the ocean dumping convention, the endangered species convention, the World Heritage Trust Convention, conventions to control the discharge of vessel wastes and to regulate tanker design, a migratory waterfowl

treaty with the Soviet Union, ongoing environmental activities within the U.N. organization and NATO, and a wide variety of bilateral environmental agreements with other nations.

I mention all of this—and there is a good deal more—to make the point that in practically all of these important international efforts to safeguard the global environment, the United States has been the major moving force. There is absolutely no question but that the other nations of the world look to the leadership of the United States in this regard. There is also no question but that the example of U.S. environmental policy is enormously influential abroad.

It is even clearer today than it was 10 years ago that the most critical long-range environmental problems can only be dealt with effectively by cooperative efforts among the governments of the world. The Earth and life upon it are an interrelated system and the fundamental processes of life are worldwide in nature.

The United States, both in terms of its own long-term welfare and its responsibility as a major world power, can and must assume a leadership role to prevent needless environmental degradation. Fulfilling the mandate of NEPA through application of its broad principles and statutory requirements to all Federal agency activities which cause significant extraterritorial environmental impacts is an important initial step in that direction.

Important lessons have been learned over the last 10 years which strengthen this view. Experience has taught us that to base environmental policies and decisions wholly on historic political boundaries is to ignore reality. As stressed by President Carter in his environmental message last year:

> Environmental protection does not stop at national boundaries. In the past decade we and other nations have come to recognize the urgency of international efforts to protect our common environment.

Increased awareness of the worldwide character of environmental problems has led to the realization that we need far more environmental message last year.
ecological systems are too complex for the full implication and range of their environmental disturbance to be immediately or easily understood. It has become apparent that we cannot assume that environmental impacts will be confined only to local areas.

Many of the impacts of man's activities on the global environment have already become apparent. We know that the disposal of air- and water-borne toxic substances may have impacts over thousands of miles, that may last hundreds, if not thousands of years. Sulfate emissions in one country can cause acid rain in another with resulting adverse impacts on fisheries and vegetation.

Climactic impacts of rising atmospheric carbon dioxide levels from increased deforestation and fossil fuel combustion, may raise global temperature with dramatic environmental effects.

Emission of certain chemical compounds capable of reaching the stratosphere could cause a catalytic destruction of the ozone layer, Earth's vital shield from the Sun. Significant destruction of some of the world's most important biological systems—forests, croplands, and grasslands—has already occurred.

Of particular concern to the World Wildlife Fund is the accelerating rate of destruction of tropical forests throughout the world accompanied by the permanent loss of numerous species of potential benefit to mankind. The survival of mankind is ultimately dependent on the continued health of natural biological systems.

The application of NEPA to Federal actions abroad would lead to increased awareness and understanding of significant environmental impacts both on the part of U.S. agencies and of the lost country. In no way does the application of NEPA to Federal actions abroad involve imposing U.S. environmental standards on foreign countries. NEPA does not dictate decisions, nor does it impose specific environmental standards on anybody.

Rather, it simply provides a framework for rational and timely consideration of environmental factors as part of the decisionmaking process just as economic, engineering, and other factors are routinely considered.

Moreover, it would provide information on environmental impacts to the countries which would be affected by those impacts. Many such countries are poor and lack the resources or the expertise to assess environmental impacts on their own. In this respect, through NEPA, the United States is simply permitting other nations to know for themselves what we would wish to know for ourselves about environmental impacts.

I have not addressed the narrow question of whether NEPA applies to Federal activities beyond the borders of the United States for the simple reason that I consider it well settled by now that NEPA does so apply. There is nothing whatsoever in the statute or its legislative history that suggests a limitation to within U.S. borders.

The application of NEPA to Federal agency actions abroad is wholly consistent with the generally accepted doctrine of international law that each nation must strive to eliminate or mitigate the adverse environmental impacts outside its boundaries resulting from its own actions.

This doctrine was expressly incorporated in the 1972 Stockholm Declaration of Environmental Principles, which included the basic tenet that:

> States have the responsibility to insure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.

Mr. Chairman, I will close by saying I strongly oppose the amendment to S. 3077 which would specifically exempt the Export-Import Bank from the National Environmental Policy Act with respect to actions with significant environmental impacts outside of the United States.

I have heard no persuasive argument as to why Eximbank should be treated differently than any other Federal agency. AID is complying with NEPA with respect to its foreign activities and reports no unusual problems.

Even the World Bank, which is under no statutory duty to do so whatsoever, makes a regular practice of assessing the environmental and health implications of its activities. To exempt Eximbank would create a bad precedent and would run directly counter to the kind of

leadership which the United States has traditionally provided and should continue to provide in environmental matters.

If Congress provides a specific exemption of Eximbank from NEPA, it would be establishing an explicit policy that Eximbank should conduct its activities irrespective of the nature and degree of the environmental impact of those activities abroad. Congress would be declaring expressly that Eximbank need not consider environmental factors in its decisionmaking.

In my view, such a policy would be indefensible. If there is any basis for concern that the application of NEPA could create competitive disadvantages for U.S. businesses in commercial markets abroad—and this seems highly speculative to me, the answer lies in expediting the NEPA process, not in eliminating it.

The responsible course of action at this time is for Eximbank to comply with NEPA and to work closely with CEQ to resolve any special difficulties. The alternative of establishing as U.S. policy that the pursuit of U.S. commercial advantage abroad must take precedence over all other considerations and that specifically the environment "be damned" in this pursuit—so long as it is the environment of foreigners—seems totally unacceptable to me. I hope this committee will find it equally unacceptable.

On a broader note, it is increasingly important that development activities worldwide be part of a comprehensive strategy that gives careful consideration to long-term environmental factors. I would urge AID to undertake comprehensive environmental analyses for each country within which it supports development programs.

Increasing emphasis in development programs should be given to maintaining and strengthening the renewable resource base because it is on that base that the long-term well-being of peoples will depend. Growing human populations, increasing resource scarcities, and continued technological and economic development make it inevitable that greater attention worldwide be paid to environmental planning and assessment. It is important that Congress lend its support to U.S. leadership in this regard and not move us backward.

Thank you, Mr. Chairman.

Senator HODGES. Thank you very much.

There are several questions that I would like to address, if you would be willing to answer them.

First, I think you are in a unique position to comment on the effect of NEPA to the business sector. Do you feel that a modified NEPA process in the international arena will have a significant detrimental effect on the position of the U.S. export industry?

Mr. TRAIN. I see no reason why it should. I see no clear case made as to why it should.

As I say, I have heard this concern expressed, and I said in my statement I consider this speculative. I think if there were real reasons in terms of the potential, as I would understand it, the only reason I can see is the potential factor involved in compliance with NEPA.

I think it can be addressed in several ways. One, as other agencies have found, compliance with NEPA and the introduction of environmental assessment at the very beginning of the process and planning and activity can substantially and should substantially reduce the time involved in compliance.

Second, it seems to me that CEQ is in a position because of its regulatory responsibility with respect to the overall NEPA compliance of Federal agencies as provided by executive order, is in a position to work out with Eximbank any special procedures which may be necessary to alleviate real problems that may exist.

I am not saying they do, but if they do, it seems to me these can be resolved well short of a congressional act. I would remind the committee that there has been no experience concerning the application of NEPA to Eximbank because the bank has not complied and has refused to comply, to date.

So that, as I say, the concerns that have been expressed are at this time really entirely speculative.

Senator HODGES. You did indicate that a possible soluiton, assuming that there concerns were in some cases legitimate, would lie in expediting the NEPA process.

Do you have suggestions how that process might be expedited?

Mr. TRAIN. Senator, actually, I have been away from it for awhile. I don't know if I can put myself out as a continuing expert in the field.

I have long felt that the process should be expedited and that environmental statements should be more concise. And, in fact, more useful to policymakers than they have been typically in the past.

However, I believe that CEQ has really quite effectively addressed portions of that sort in the past year and has revised requirements quite substantially to meet those problems.

And as I recall going over those, they seemed like useful measures. But I have no specific suggestion to make. I am not really aware of the specific nature of the economic problems that Eximbank may be concerned about.

Senator HODGES. The major concerns expressed about the Council on Environmental Quality proposed regulations is that they will pervade as an attempt by the United States to force its environmental standards on foreign nations. They are also charges that delays in cost associated with the preparation of the EIS will cause foreign nations to take their business elsewhere, often to countries with little or no regard for the environment.

In those countries, the ultimate loser may not only be American business, but the environment itself. What is your view?

Mr. TRAIN. Taking the first point first, the charge that the application of NEPA to foreign activity would involve the imposition of U.S. standards on foreign countries, as I pointed out in my statement, this is totally incorrect. NEPA does not, in fact, impose environmental standards within the United States, where there is no question of its applicability.

The committee will recall, for example, just to use one rather major example, that in the preparation of the environmental impact statement to the Alaskan pipeline some years ago, the Department of Interior cataloged really quite a number of significant adverse environmental impacts that would arise with the construction of a pipeline. And the bottom line was that the Department intended to move ahead with the granting of a permit for construction of the pipeline.

There is no imposition of standards involved in the application of NEPA. It is a matter of examining a proposal and the identification

of potential adverse environmental impacts, the disclosure of these, and the identification of possible alternative courses of action. All of this is simply a matter of insuring rational consideration of environmental factors as part of decisionmaking and not in any way dictating that environmental factors must be the deciding factors. And in no way does such a process impose U.S. standards on a foreign nation. Indeed, I would think that—again, as I think I implied in my statement—that rather than imposing a standard on a foreign nation, it would simply involve disclosing to a foreign nation the potential environmental consequences of a given course of action. I can only see this as a benefit to the foreign nation.

Which leads me to the second portion of your question, would the application of NEPA lead to a loss of business to foreign competitors? I suppose it is conceivable that it could in some cases. I won't deny it totally as a possibility.

Again, it seems to me rather speculative and remote. What is being said is that giving a foreign country the benefit of knowing more about the long-term effect of an activity that it is about to commence within its borders would discourage it from undertaking such an activity with the United States and would lead it to look to some other supplier. I am not at all sure it wouldn't work just the other way. That, too, is perhaps speculative.

My own experience indicates to me that there is growing recognition among the undeveloped countries of the world or the developing countries—this is the area we are talking about primarily here—of the environmental implications of various development programs. They want to know what the best alternatives are. And I think there is an increasing acceptance of the fact that the responsible course of action is to try to understand the environmental impacts in advance.

I mentioned the World Bank policy. The World Bank, I take for granted, provides far more loans in far more areas of the world than does Eximbank. I am not aware at all that the process of environmental assessment undertaken by the World Bank, all of which is disclosed to the receiving country, has in any way discouraged those countries or raised antagonism with respect to the process undertaken by the World Bank; indeed, it has been welcomed in most places.

So, I don't believe there is any basis for the concern at all. Just the contrary. I would think, just to nail the point home further, that increasingly countries in which development programs are undertaken will raise serious questions about those countries who are providing loans or other forms of development assistance that do not consider environmental facts in that process.

Senator HODGES. Do you think the Stevenson amendment will be viewed in other parts of the world, particularly those countries affected, as a lessening of interest or desire to protect the environment in this country?

Mr. TRAIN. Yes. Very plainly, yes.

I think, first, it will have the effect here in the United States, which perhaps is more of a concern to me. The continuing effort to work with AID, for example, to have AID pursue a fully responsible course environmentally in terms of its foreign activities would really suffer as a result of that kind of an expression of congressional attitude.

But in terms of the foreign countries, in terms of the great variety of other multinational lending agencies that are involved, the various multinational banks and national banks around the world, all of whom we have been trying to persuade to build environmental factors into their planning and decisionmaking, I believe all of these would take this as a clear signal that we should really move the other way and ignore environmental factors.

Senator HODGES. Do you believe the Eximbank NEPA procedures should insulate institutions from lawsuits and money from the loss of a sale to the foreign competitor?

Mr. TRAIN. No; I don't see why that should be the case. I would hope there wouldn't be much litigation over the process.

I think that if the process is properly undertaken in the first instance and that there is real effort made to identify environmental impacts and alternatives, and then the fact is that Eximbank proceed with the particular loan, there really is no legitimate basis in most cases for litigation. Because as I indicated, the NEPA does not involve a mandate in support of the kind of action taken, but it does require a responsible compliance with NEPA.

As long as that is done, I don't see that that would involve any unnecessary litigation.

Senator HODGES. Do you think we are simply going to have an inevitable tension between short-term commercial concerns and long-range environmental concerns?

Mr. TRAIN. I guess that is a good way to put it, Senator. I think that is probably correct. I think there is increasing tension between these values not only in the United States but abroad at the present time.

So, I think this is simply the course that the world has embarked on. And I think the responsible course is to recognize there is such a tension in human affairs and that the way to address those tensions is to insure that the various factors in the equation are laid out so that rational choices can be made as matters of national policy. And I think that is all we can ask.

But I think if a particular activity of a Federal agency is insulated from that process, it will not lead to a responsible resolution of those tensions.

Senator HODGES. I am asking some general questions, but I think your testimony is toward general questions.

How would you answer the criticism that environmental concerns and environmental leadership of the United States has the luxury of a highly developed industrialized country, whereas less developed countries or undeveloped countries see us as perhaps trying to impose our standards to keep them underdeveloped? I am not sure that is a clear question.

Mr. TRAIN. It is a perfectly clear question, because I have been familiar with that concern over the years.

Senator HODGES. I read that as I find, for instance, parts of Africa saying we need to develop our country and this is not a large zoo to be held for visitors from America.

Mr. TRAIN. That is a concern, and in most cases I think it is not a legitimate concern. But I think it is one we have to be sensitive to. And I don't believe the United States should conduct its development

programs from sort of an elitist base insofar as its criteria are concerned.

But the matter of long-term benefits is really not an elitist matter. I think, as the closing paragraph in my statement tried to convey, that the long-term well-being of peoples around the world, particularly in the developing countries, is intimately tied to the continued health of the renewable resources base of those countries.

And I think that frequently short-term development goals, even though perhaps sought by the receiving country, can operate to the disadvantage of the long-term benefits of the people involved. That is not to say they shouldn't go ahead and do the first, if they wish. But I think it is appropriate to provide them with the information about those choices so that they can make an intelligent decision.

Senator HODGES. Thank you very much. Is there anything you would like to add to your statement?

Mr. TRAIN. I don't believe so.

Senator HODGES. Thank you very much.

Mr. TRAIN. Thank you, Senator.

Senator HODGES. We will have at this time a business panel. The Chamber of Commerce being represented by Dr. Jack Carlson; Calvin A. Miller, representing the National Association of Manufacturers; Richard L. Daley, representing the Associated General Contractors; and Marcus Rowden, Committee on International Nuclear Policy, representing the Atomic Industrial Forum.

Which of you would like to go first?

STATEMENTS OF JACK CARLSON, VICE PRESIDENT AND CHIEF ECONOMIST, U.S. CHAMBER OF COMMERCE; CALVIN A. MILLER, THE GLEASON WORKS, REPRESENTING NATIONAL ASSOCIATION OF MANUFACTURERS; RICHARD L. DALEY, DIRECTOR OF SAFETY AND ENVIRONMENTAL SERVICES, MORRISON-KNUDSON, BOISE, IDAHO, REPRESENTING ASSOCIATED GENERAL CONTRACTORS; MARCUS ROWDEN, COMMITTEE ON INTERNATIONAL NUCLEAR POLICY, REPRESENTING THE ATOMIC INDUSTRIAL FORUM

Mr. CARLSON. Senator Hodges, my name is Jack Carlson. I represent the Chamber of Commerce.

If it is all right with you, we will submit our statement and I will just make some comments.

Senator HODGES. Very fine. The statement will be entered in the record in its entirety. [See p. 60.]

Mr. CARLSON. Mr. Chairman, I should indicate when we did not have CEQ and helped coordinate the environmental policy during President Johnson's administration, I was part of that group that evaluated different provisions. I must say, my colleagues and I were advised to find out with the EIS requirement what happened to it. And according to the General Accounting Office, the fact is that it resulted in 31 months to complete the impact statement.

Having reviewed those and writing some of them, I must admit 55 percent of the information is not worth the wait and it becomes very much a delay problem. And it is the delay that causes problems for American business.

And you have to look at particular export items as opposed to projects. Remember, projects are smaller proportions of exports abroad than exports not related to huge projects. The bidding takes place in a matter of a week. And if you have a delay, under the ideal arrangements that the Council on Environmental Quality is talking about—maybe the delay is cut back from 6 to 12 months or down to 90 days—that delay could effectively impact upon our ability to sell goods abroad.

I wouldn't be a bit surprised to see the impact arranging as high as 25 percent for certain categories of goods we sell abroad. And I notice in the case of you own State of Arkansas, your own home State has about 7,600 of its people working in the export market area. And a 25-percent cutback would affect your State and a couple of thousand workers, as well as those affected in other States.

So the delay and the costs have a very big bearing. And anytime you have a mechanism like EIS in NEPA legislation which is subject to judicial challenges, you have a delay built in. And that is the serious threat to exports abroad and a threat to jobs in your home State as well as those of others on the committee.

If we decide to discourage exports so that our merchandise trade balance is in a very large deficit and doesn't seem to be improving, we are going to have further inflationary pressures on the economy. The devaluation and depreciation of the dollar is adding to prices people pay for imports. Any delay that causes exports to go down would be a proinflationary policy change through such mechanisms as the NEPA–EIS applying to the Export-Import Bank.

There is an argument—and I differ with the person who testified ahead of us—that if, in fact, we are effectively moved out of the debate process because of the need for study or a challenge of the adequacy of that study, other people pick up the business and many of them do not have as much environmental quality built into their export items. And it is conceivable you would have removed some of the competitive advantage that the Americans would have.

Many of us tried to make sure this didn't occur when we were in policy positions, and it has led to a large increase in paperwork requirements in business. And this is particularly true in medium-size and small businesses.

If we, in fact, add the paperwork of an EIS requirement in addition to the delays, I do think we are going to have an anti-small-business impact on the economy of those firms and now entering into exports, either directly, as one of my colleagues will talk about in terms of his own company, or indirectly as a supplier.

In contrast to my colleague that talked before us—Russell Train—I do think this is an element of environmental imperialism. It is much better for us to work on a cooperative basis with that country for goods sold in their country as opposed to using our legislative or judicial process to influence them. I would take note of his comments about the World Bank assessment process. I think that process is more akin to the process that the Congress passed in 1974, dealing with the Overseas Profit Investment Corporation.

And as stated in the report of the House International Relations Committee, the purpose of that amendment was—

* * * not intended to impose U.S. standards on a foreign country or to challenge the sovereign right of a developing nation to determine how it wishes to reconcile its interests in jobs and income with its interests—and that of the world at large—in a clean environment.

On the other hand, the committee intends that, where local environmental protection standards are lacking, OPIC should, consistent with the accomplishment of its overall purpose, encourage U.S. investors to take voluntary steps to lessen the potential adverse environmental effects of projects in which they have a controlling interest.

I think the spirit of what happened with the World Bank is more in tune.

We strongly recommend that Senator Stevenson's amendments to S. 3077 be accepted, and that the application of NEPA does not imply to the Export-Import Bank.

If in time there seems to be a truncated process not the EIS and NEPA process and we know it now is not subject to challenges, the Congress will have time to look into that. If the Stevenson amendment is not accepted, it will tend to be proinflation and certainly antismall business and impact on our dealings with exports abroad.

Senator HODGES. Thank you.

We will take all of the statements and then have some questions.

STATEMENT OF CALVIN MILLER

Mr. MILLER. Mr. Chairman and members of the subcommittee, I am Calvin Miller, assistant to the president of the Gleason Works.

My remarks here today, while reflecting the particular experiences of my company, are on behalf of the National Association of Manufacturers, a voluntary association of over 13,000 American companies which represent nearly 75 percent of our Nation's manufacturing output. In addition, NAM's membership employs approximately 15 million people.

I certainly appreciate the opportunity to comment today on S. 3077, a bill to extend and amend the U.S. Export-Import Bank Act of 1945. Of course, the reason we have convened here today is to consider one of the specific provisions of the bill which would prohibit application of NEPA to activities of the Export-Import Bank insofar as environmental considerations outside of the United States are concerned. I need not delve into either the legislative or legal history of this important question, as I am sure these aspects will be covered by others.

I would like, however, to bring to the attention of the committee the experience and judgment of a small company to demonstrate the effect this would have on our business and employees.

Unfortunately, Mr. Chairman, one gets the impression when discussing official U.S. export programs that the beneficiaries are few in number and large in size. To the contrary the major beneficiaries of programs such as that operated by Eximbank are the subcontractors and suppliers who for the most part are small businesses. The Gleason Works, for example, as a major machine tool builder, employs approximately 2,500 people in the Rochester, N.Y. area, and on an average, 60 percent of our annual sales are obtained from foreign markets, and we have numerous customers in over 47 countries.

In the past 10 years we have been involved as subcontractors for Eximbank-supported projects in Argentina, Spain, Yugoslavia, Turkey, Romania, Brazil, and Korea. This year the Gleason Works is producing equipment for export worth $6.3 million for Eximbank financed projects to be shipped from our Rochester plant. I need not take the time to impress upon you the importance to our employees as to the value of these particular projects.

Before I proceed into a discussion of what direct effects NEPA application to Eximbank would have on the ability of our company to compete in overseas markets, I would like to make a few brief remarks on what I see as the most prominent features of the issue.

It would first seem rather difficult to embark on an exercise that would reduce the effectiveness of the U.S. Export-Import Bank without giving due consideration to the critical state of our balance of trade. As Eximbank is one of the few remaining programs that facilitates exports, I don't think its operations should be circumscribed for reasons not related to its statutory role. I am sure we are all aware of the poor export performance turned in last year by the United States as manifested by a $27 billion trade deficit. However, maybe we are not as well aware of the fact that in the first 4 months of 1978 our trade account has deteriorated even further; and in particular, our traditional surplus in manufactured goods has given way to an ever-widening deficit. In the January–April period of this year our trade balance was running at an annualized deficit of more than $37.5 billion. Even more distressing is the fact that in the manufactured goods sector we are running a seasonally adjusted deficit of $13 billion—and this is a comparison to a $21 billion surplus in 1975. As we in the capital goods sector we see our export market shares further diminished, we can only despair at this worsening trade data. Our weakening trade performance should caution us against being nearsighted to the macroeffects of additional Eximbank restrictions which so readily translate into decreased U.S. competitiveness, high unemployment and added inflation.

At a time when the administration is seeking to formulate a coherent and consistant export policy it would appear to be counterproductive to further saddle the Eximbank with reporting requirements that are beyond their ability to fulfill. An already burdensome problem of the Eximbank is that of time delays in issuing preliminary commitments. Because of the competitive nature of international bidding, the prompt submission of a bid is of critical importance.

Proponents of the application of NEPA reporting requirements to major Eximbank transactions have suggested that time delays associated with filing environmental impact statements can somehow be streamlined or abbreviated to salvage some degree of competitiveness of U.S. exporters. I would suggest—as reflected by the continuous decline in our world market shares—that U.S. competitiveness overseas is on a thin edge and that it won't take many more such proposals to put us at a critical disadvantage.

One must, after all, seek to determine what ends U.S. environmental policy desires. If it is the intent of this country to preach to the developing world our own recently acquired belief in the sanctity of the environment, application of NEPA to Eximbank may in fact

be appropriate. But if our goal is to maximize cooperation in preventing a decline in the quality of the world environment, then I would urge a different course.

If one is concerned with the net effect on the global environment then we are deluding ourselves to think that because the United States declines participation that the project won't go forward and that unknown harm to the environment won't be inflicted.

Of course, the U.S. business has a clear responsibility to meet the local environment standards no matter where it is doing business. But we certainly can't succeed if it's the Germans or Japanese who are awarded the contracts. I would recommend that if indeed the concern of U.S. environmentalists is to develop a cooperative vigilance of our global environment, then it should upgrade consultations with those countries whose respect for the environment is something less than our own. I personally don't see how increasing unemployment in the Rochester area or anyplace in the Nation is an appropriate way to set an example, or to achieve environmental gains abroad.

Let me turn for just a moment to what effects such a determination would have on our ability at Gleason Works to successfully market our products overseas. As a manufacturer of machine tools, we find ourselves in the position of being a major supplier to foreign projects, which in total may produce a significant environmental impact that could not be directly attributed to any of our products. Yet we, just as well as the leader, or turnkey company, could be called to task for any aggregate effect to the environment; and we, just as well as the major companies involved would be required to assess our role in the aggregate environmental impact. I think it is fairly clear that the companies involved will ultimately bear some of the costs of the impact statements since it is we and not the agency and certainly not Eximbank who know the technology involved. What this cost would be could only be surmised at this point since CEQ has not been able to issue special requirements for foreign environmental impact statements.

However, on the unlikely assumption that we and other companies could still bid competitively while massing some substantial time delays, the cost probably will be substantial, based on experience with domestic environmental reporting requirements. One estimate indicates the cost range could go up to $90,000 per statement. From the financial perspective, the cash flow of our company would be hindered since it must be assumed that letters of credit would not be required until submission of the impact statement. And shipment delays would jeopardize our customer startup program which would undoubtedly erode our hard-earned relations. Such delays would be borne in mind the next time our customers would be planning to submit an order to us or the competitors. In some cases, it would be necessary to seek the assistance of our customers to meet the information requirements, thus further damaging our goodwill.

In short, I believe I can summarize by saying that the application of NEPA to the activities of the U.S. Export-Import Bank would effectively preclude the Gleason Works from participating in foreign projects. We, perhaps better than a larger, more diversified company, can calculate the immediate effects of such a decision. If such financ-

ing were not available to Gleason Works in 1978, it would mean a loss of $6.3 million in shipments and layoffs amounting to over 100 employees.

To underscore a previous point, our involvement in Eximbank projects certainly is not overwhelming relative to some standards, but yet we feel that we certainly reflect the secondary or ripple effect of such a policy decision so far as it relates to sales and employment levels of smaller business enterprises. While we don't mean to promote disregard for the world environment, we think that the present proposals being discussed will only hurt the parties involved—the U.S. companies, the U.S. workers, and the foreign environment.

Looking at it from our end, the only winner will be the foreign competitor who gets handed the business. It would seem to us to be preferable instead to attempt to inform the foreign governments without jeopardizing the ability of the United States. One would hope that the realities of today's competitive business climate can be reconciled. And I would certainly urgently stress that application of NEPA to the U.S. Eximbank is certainly not the solution.

Thank you very much.

Senator HODGES. The next statement, we will go in order.

STATEMENT OF MARCUS ROWDEN

Mr. ROWDEN. My name is Marcus A. Rowden. I am an attorney in private practice in Washington, and appear here today as a member of the Committee of International Nuclear Policy of the Atomic Industrial Forum.

From January 1975 to June 1977, I was a Commissioner, and then Chairman of the U.S. Nuclear Regulatory Commission, a position which is relevant in that during that period the Commission had occasion to consider the question of NEPA's application to nuclear exports.

I very much appreciate the opportunity, Mr. Chairman, to appear before you today and to contribute these views for your consideration of the scope of NEPA's application to Eximbank's own actions. I will be selective in my reading from the prepared statement which, of course, will be submitted for the record. [See p. 67.]

In addressing the question of extraterritorial application of NEPA, it is appropriate, I believe, to pose three questions:

First, would such an application of NEPA be wise from the standpoint of long-accepted principles governing relationships among nations in the international community and from that of sound policy?

Second, would extraterritorial application be workable as a practical matter and, if imposed by unilateral U.S. action, what would be the consequences?

Third, is there a better way to encourage appropriate consideration of environmental values in activities within the international community?

The AIF's primary interest, of course, relates to the answers to these questions as respects international nuclear commerce, although the underlying considerations obviously have broader implications.

As indicated in my earlier remarks, this is not my first encounter with these questions or with efforts to resolve them in a responsible

fashion. The extraterritorial applicability of NEPA to nuclear export transactions was considered and dealt with in an export licensing proceeding decided by the Nuclear Regulatory Commission in June of last year, and I have cited that decision in my prepared testimony.

The Nuclear Regulatory Commission then held—after considering the views of the Council on Environmental Quality and those of the Department of State, and applying its own analysis to the relevant considerations—that NEPA does not require the preparation of an environmental impact statement to assess the impacts of a proposed nuclear reactor export—in that case, to the Federal Republic of Germany—on territory within the sovereign jurisdiction of a foreign government.

Now, I am not going to burden the committee with an analysis of the legal considerations which the Commission examined. Suffice it to say, that from its analysis of the provisions and relevant legislative history of the statute, the Commission determined that there was no legal requirement that it prepare a NEPA statement to assess the impact of the U.S. export on the local environment of a foreign nation. Moreover, I think what is more pertinent from a policy standpoint, the Commission pointed to an array of weighty factors which argued strongly against giving NEPA such extraterritorial applications.

Of primary significance was the fundamental principle of international law, and of U.S. foreign policy, that nations have a basic right to conduct their internal affairs free from interference by other nations. Flowing from this, the Commission agreed with the State Department that any U.S. attempt to make assessments of environmental impacts within the territory of another country would have major, adverse political consequences.

Most, if not all, governments could be expected to take the position:

One: That decisions primarily affecting the national environment are matters of sovereign responsibility.

Two: That the degree and means of public participation in a nation's environmental decisionmaking process, involving a relationship between a government and its citizens, should not be influenced by the actions of other governments.

Three: That they, as national sovereigns, have full competence to make or obtain the analyses and judgments necessary to deal with domestic impacts within the framework of their political structures and social values.

The Commission also noted as a practical consideration that complete assessment of impacts of a proposed export on a recipient State would require the collection of detailed information on local conditions—including population patterns, ecology, meteorology, and the like—examination of a facility's design and site and numerous other assessments traditionally conducted by a recipient government. This information—difficult to collect in any event—could not be obtained without the full cooperation of a foreign state.

Finally, the Nuclear Regulatory Commission underscored a fundamental consideration. Whatever value judgments we may make with regard to an undertaking in our own country, it is not for a U.S. decisionmaker to make policy determinations for another sovereign nation on the social balance to be struck—in that case, the balance

between energy needs and environmental impacts—in connection with a proposed undertaking having impacts exclusively within that nation's borders.

Next, I think it is useful to look at the workability and consequences of extraterritorial application. Now, these consequences, apart from impairing our political relationships with other countries, cannot help but breed an antagonism which is hurtful to the international commerce of this country.

The underlying, somewhat patronizing, premise—that these nations require the guidance and assistance of the United States in making domestic assessments and social judgments which they have traditionally believed to be their own prerogative—is bound to give offense.

Moreover, application of NEPA to such transactions would add yet another time-consuming procedural hurdle to the export process. And, where public participation is a possible element of the export licensing process, as it can be in some cases for U.S. nuclear exports, further uncertainty may be added by the prospect of adversary contest in this country and subsequent judicial review of the adequacy of the environmental analysis.

Thus, predictability and reliability of supply, which are essential supports of a viable position in the international marketplace, would be undermined. Since we are competitors in that marketplace, even when extending credit terms—which are, after all, designed to promote U.S. commerce—this is a very relevant consideration striking a cost-benefit balance on the proper scope of NEPA's reach.

Turning to the practical aspects of the operation of the Export-Import Bank process, there are additional practical considerations which we believe are relevant. It is my understanding that the Bank's capacity to provide financing guarantees within a short period, generally less than 1 month, has been a significant factor in its usefulness to U.S. exporters.

Typically, the Bank's financing commitment is made a part of the U.S. exporter's bid package. These bids compete against those from the foreign manufacturers whose bid package, unlike those of the U.S. nuclear export manufacturers and fabricators, may contain a guarantee of nuclear export license issuance. The time between announcement and bid opening in a foreign nuclear project is often no more than 6 months.

Even if it had a staff experienced in drafting environmental impact statements, which it does not, the Bank could not reasonably be counted on to complete and circulate its statement and issue a financing commitment in time to have that commitment included in a U.S. exporter's bid package. Therefore, were NEPA to be applied to the Bank's activities, U.S. nuclear exporters would, as a practical matter, have to compete against foreign bidders while disadvantaged in the competition both by the absence of a guarantee of export license issuance and a binding commitment for financing.

Furthermore, even if the Bank were able to prepare an environmental impact statement in a timely fashion, the preparation of such statements is an expensive proposition. If the cost of such preparation were tacked on as a cost of financing—which would have to be the case in the absence of an appropriation of funds to cover such costs—it

would tend to defeat the very purpose of the Bank's existence, the providing of low-interest financing for purchasers of U.S. exports.

All of these factors carry special force in the area of nuclear exports, where recent legislation—the Nuclear Nonproliferation Act of 1978—has just put in place elaborate new procedures and criteria to govern the export from the United States of nuclear materials and facilities.

Imposition of yet added unilateral requirements by this country—with all of the accompanying procedural baggage—can only further impede constructive U.S. participation in international nuclear trade, with significant adverse impacts not only for American commerce but also for the nonproliferation influence which our industry's participation in that commerce affords the United States.

Is there a better way? First, it is clear that a departure from the present limits on NEPA's applicability is of such fundamental importance from the standpoint of its policy and practical implications that it should be undertaken only with the express authorization of the Congress.

There is, moreover, no need to pursue a course fraught with such adverse foreign relations and practical commercial consequences when other means—less dramatic, but sounder and surer—are available. Those means entail maximum use of voluntary cooperation.

Indeed, NEPA itself provides in section 102(2)(F) that, to the extent "appropriate" and "consistent with the foreign policy of the United States," Federal agencies are to encourage and support cooperation with other nations designed to anticipate and deal with environmental problems.

In the area of nuclear activities, the Nuclear Regulatory Commission, among other agencies, participates in and actively supports a number of international initiatives designed to advance cooperation in environmental, health, and safety matters.

There are both bilateral arrangements with individual nations—encompassing some 15 countries—and multilateral undertakings through the auspices of organizations such as the International Atomic Energy Agency, and the Nuclear Energy Agency and International Energy Agency of the OECD.

In 1976, for example, the IAEA sent nuclear plant safety missions to several countries, including Bangladesh, Turkey, Indonesia, Yugoslavia, and the Republic of Korea, to give assistance to local officials in making determinations regarding the siting and safety of proposed nuclear facilities.

The bilateral and multilateral arrangements are designed to afford practical assistance in developing and maintaining effective nuclear safety programs in the international community through exchanges of safety information and regulatory experience, training of personnel, provision of experts, and development of internationally accepted safety standards and codes.

Additionally, section 407 of the recently enacted Nuclear Non-Proliferation Act of 1978 directs the President to seek to provide, in future nuclear cooperative agreements, for cooperation between the parties in protecting the international environment from radioactive, chemical, or thermal contamination arising from peaceful nuclear activities.

Pursuit of such activities, and the voluntary cooperation resulting from them, provide the most sensible—and fruitful—means for dealing with shared environmental concerns in the international community. That is the course we ought to continue to follow.

I appreciate the opportunity afforded to present these views to the subcommittee and would be pleased to respond to any questions which the members have.

Senator HODGES. We will reserve the questions until all four have spoken.

STATEMENT OF RICHARD L. DALEY

Mr. DALEY. Mr. Chairman, members of the staff of the Subcommittee on Resource Protection, and ladies and gentlemen, I am Richard L. Daley of the Morrison-Knudsen Co. of Boise, Idaho, a member of the Associated General Contractors of America, M–K is presently working in 22 foreign countries and our annual international volume exceeds $270 million. AGC represents approximately 70 percent of all domestic construction and nearly half of that which is done by U.S. firms abroad.

I am accompanied here today by Mr. Robb Teer of the Nello L. Teer Co. of Durham, N.C., another AGC member firm active in international markets, and Mr. Frank Schneller and Mr. George Stockton, staff members of AGC's International Construction Division.

My associates and I come here today on behalf of AGC to convey the opposition of our membership to the proposed implementation of the National Environmental Policy Act or other similarly restrictive environmental legislation to the activities of government agencies affecting the environment in foreign nations.

AGC supports unequivocally the efforts of the world body, through the offices of the United Nations, to collectively approach the question of global environmental standards. Multilateral considerations of environmental impact serve to broaden the perspective and scope of the environmental objectives, while increasing the likelihood of responsible participation on the part of all nations.

Any international environmental policy which is the sole preoccupation of the U.S. Government and to which no other sovereign nations are a part is ill-conceived from a diplomatic standpoint, and is nothing more than a veiled form of interventionism.

AGC's opposition to the internationalization of NEPA stems from our sincere belief that its application, including the preparation of environmental impact statements to the activities of government agencies abroad, would constitute a major encumbrance to their respective operational procedures and efficiency. We believe that such action would adversely affect the continued participation of the U.S. construction industry in the international marketplace.

We concede that international NEPA compliance is perhaps less difficult for certain agencies than it is for others. However, we are compelled to address the aggregate practicality of this proposal.

The highly competitive international construction markets call for a partnership between government and contractors. If our partner is overburdened with NEPA compliance, we are fearful that our joint opportunties in these markets will suffer.

An addendum to this statement details the concerns of the industry with respect to this proposal. It outlines the competitive disadvantages, which are likely to accrue to the operations of U.S. contractors abroad as a result of NEPA compliance standards. They include problems in the timely availability of political risk insurance, loans, credits, and guarantees. We also foresee detrimental effects on international joint ventures and American participation in foreign government-financed projects.

In the interest of time, I will refrain from commenting on these elements of our testimony and do so in favor of presenting to this committee the comments and criticisms of this NEPA extension proposal forwarded by our partner in the international construction markets—the U.S. Government.

The Council on Environmental Quality circulated a memorandum dated January 11, 1978, which included a set of draft regulations to implement NEPA internationally. The memorandum from CEQ Chairman Charles Warren to the heads of agencies requests the comments and opinions of the various agencies on the draft regulations.

It is our belief that these intragovernmental comments constitute the clearest evaluation possible of the practicality of this proposal. NEPA compliance is the responsibility of government and we believe that it is incumbent upon this committee to defer any action on international NEPA compliance standards until the comments and opinions of government are given close scrutiny.

Mr. Chairman, I would like at this time to request that you enter into the record both the CEQ memorandum of January 11, 1978, as well as the responses of the Departments of the Treasury, the Army, Housing and Urban Development, Transportation, Labor, and the Nuclear Regulatory Commission. These responses were obtained by AGC freedom of information request of April 14, 1978.

The comments of these six agencies are generally unsupportive of the CEQ draft regulations, raising questions of jurisdiction, perceived inpracticality and adverse economic consequences. We feel that the comments of Labor Secretary Ray Marshall are of particular interest, in that they tend to reflect the identical concerns raised by industry groups on this issue. In his response to the CEQ memo of January 11, Secretary Marshall stated, and I quote:

> Additionally, I am particularly concerned about the effort to extend Environmental Impact Statement (EIS) requirements to activities affecting foreign environments.
>
> There is no question that foreign impact statements are sometimes valuable in decision making, but sweeping applications of these requirements to matters such as export-import credits and export licenses could have very serious consequences.
>
> At minimum, the likely effects will be lengthy delays and increased costs to exporters. Adverse diplomatic consequences may also result if our trading partners resent what would appear to be unilateral U.S. efforts to play global environmental policeman. This action seems particularly ill-advised at this time, in light of the somewhat precarious situation of our foreign trade. This issue is already before the courts. Why complicate things by issuing new regulations on the subject?

This is the end of the comments. Mr. Chairman, at this time my associates and I will be pleased to answer any questions. And we appreciate our opportunity to share our thoughts in this matter.

[Appendixes I and II to Mr. Daley's statement may be found beginning at p. 77.]

Senator HODGES. Thank you very much.

It is particularly pleasing to my ears to find that the Associated General Contractors are in general agreement with Secretary Marshall after 6 weeks of hearings with a total disagreement with almost everything between your group and Secretary Marshall. It is amazing that two groups can perceive the same thing in such a radically different fashion.

Perhaps—and I will address these generally to the panel. Do you have any idea of what percentage of U.S. exports would be considered major Federal actions which would then be subject to NEPA? Because, clearly, all Exim loans would not be.

Mr. CARLSON. I think that is one of the uncertainties that will have to be addressed. To the extent—if, in fact, one is participating with the Senate—part of a project is to what extent are we obligated to consider other countries' input into that project? So you have manageability and the uncertainty associated with the environmental impact statement.

Senator HODGES. So, when you raise the specter of losing 2,000 Arkansas jobs—which, of course, obviously isn't my intention—you really don't know whether it would or not?

Mr. CARLSON. I would dare say, I would take any bet with you or anybody else that jobs would be lost. That bet is an easy bet to take. The magnitude of the jobs lost is the uncertain element. When there is uncertainty, I think policy has an obligation to try to remove some of that uncertainty.

Senator HODGES. Can you cite specific examples of situations in which overseas activities or businesses you represent have been adversely affected because they were required to take environmental considerations into account?

Mr. CARLSON. Mr. Chairman, as I understand, this has not applied to the Export-Import Bank up until now.

Senator HODGES. What about other areas?

Mr. CARLSON. I did cite the experience of the World Bank, because Russell Train brought that up. But I know of no veto mechanism taking it to the courts in this country over World Bank project. So that similarity does not apply.

Mr. DALEY. In 1977, international construction ran about $15.8 billion. Much of this, or at least three-quarters of this, would depend on political risk insurance. So, about three-quarters could be considered exposed to such action.

Senator HODGES. Thank you.

We mentioned and discussed earlier—Mr. Train did—if it were applied, one of the things that perhaps should be done is to determine a way to expedite NEPA processes. Do any of you have any suggestions as to how that can be done, assuming from your standpoint the worst case, and that is the Stevenson amendment is defeated?

Mr. ROWDEN. Mr. Chairman, let me make the observation based on long years of experience in implementing the statute, that that is a goal which is easier to state than to achieve. NEPA has become such a highly proceduralized process with so many points of vulnerability in

the process and so many areas of uncertainty and, quite frankly, so many opportunities for second-guessing by the courts in the course of judicial review that the process of implementation almost becomes defensive since the stakes are so high.

This is an experience which has been prevalent not only in the area of nuclear activity but other domestic programs as well. I can assure you that those with whom we do business overseas—at least in the nuclear area—are very sensitive to the procedural morass and uncertainty that NEPA has created, and it would be a very difficult job to convince them that any extraterritorial application of NEPA, putting aside the political damage, could be fashioned in such a way as to be operable in a reasonably expedited fashion.

Furthermore, as I attempted to emphasize in my comments, the time frame in which the bid process is carried out is such—1 month or not much more—that the project time for preparing a NEPA impact statement, including obtaining the comments of even the interested Government agencies, would be very difficult to complete within that period.

Mr. CARLSON. Mr. Chairman, those of us who participated in the executive branch's dialog with the Congress when the EIS provision was put in the original law, no one in those deliberations thought that the EIS process would end up with a year's delay. The General Accounting Office says the average is 31 months.

It is true that the CEQ has tried to reduce that so that the delay can be up to 1 year, and those are proposed regulations. But, frankly speaking, I don't think their assessment will be any better than the assessment we had when the EIS provision was put into law.

Mr. MILLER. I would like to make an observation on the time delay. As a practical matter in working in overseas markets, quite often you run into a government policy whereby the foreign government has established the nationalization of a given poduct. They are importing tractors or farm implements or trucks or automobiles, and at that particular time their local employment is possibly underemployed and the government in the foreign country will look at the situation and say in a given time frame, and say x percentage of this product must be nationalized.

Working under those constraints, the manufacturers in those countries, in turn, elect to participate in turnkey operations to manufacture the tractor or truck utilizing their own natural resources and employing their people.

If you go through a process like this where the foreign businessman is working under his own government edict to nationalize a product, and in turn working worldwide for sources for machinery and types of technology, and there might be a 2½-year delay, I am sure the practical commercial viewpoint that businessman would obviously have to look for other sources for financing.

Mr. TEER. Mr. Chairman, my firm, which is a firm similar to the Morrison-Knudson Co., in North Carolina depends almost entirely on political risk insurance for our products in less developed countries. When we are looking at the world construction market, sometimes within periods of 3—and maybe even shorter periods of time—4 weeks in some cases, we decide to bid and must have political risk insurance.

If the EIS is required by the Eximbank and has not been prepared prior to that time, we would not be able to fit that particular project.

Senator HODGES. Are there any sales or loans in any categories that you feel should be required to file an environmental impact statement? Are you saying that you don't want them to apply at all to the Eximbank?

Mr. MILLER. I think we have all expressed—on a personal basis, certainly—a concern for the environment. And on a global basis, this has to be a cooperative venture. And there are many able people, certainly in the environmental field in the United States, certainly through a vehicle at the United Nations or other international agencies, to attempt to convey this technology and some of these concerns and safeguards to foreign governments so they, in turn, would be in a position to assess any major project they were considering.

Senator HODGES. I am not suggesting you are not concerned about the environment, because we all say we are. What I am asking is on the specific legislation, are there any kinds of sales through Eximbank that should be required, in your opinion to file, or are you simply saying regardless of what the loan is for, that none should be filed?

Mr. CARLSON. Mr. Chairman, I think there are other regulatory forums that do some of this. I think the nuclear area is involved in looking at the considerations as opposed to across-the-board mechanisms through the Export-Import Bank, and also the international mechanisms that are available.

Mr. ROWDEN. The answer to your question, Mr. Chairman, is yes. As far as nuclear transactions are concerned, I do not believe that the Eximbank process should entail an environmental impact statement preparation. And the fundamental reason is it simply won't work. In terms of the opportunities for considering these issues in other regulatory forums, to which Mr. Carlson referred, I would want to make it clear that the law, as interpreted by the Nuclear Regulatory Commission, would not lead to the application of NEPA in any extraterritorial context, with two exceptions:

One, impact on the so-called "global commons," areas of the world not subject to any one nation, such as oceans or the atmosphere.

Or, two, where the impact of the activity which is before that commission for regulatory consideration would in part be in the United States. In a nuclear powerplant, for example, if it were located in a foreign country near our border areas the Nuclear Regulatory Commission says, yes, they would look at the environmental impact in the United States. But beyond that, the principle of noninterference in the deliberations of another nation has been and should continue to be a consideration in the nuclear area and in other areas.

Mr. CARLSON. In the global comments, there are a lot of negotiations and it would be a mistake for us to make requirements where we are in a negotiating position.

Mr. DALEY. I don't think, Mr. Chairman, our remarks concerning the construction industry being supportive of governmental efforts, and recognizing the need for environmental protection through such agencies as the United Nations, should be taken too lightly. Because I think in most cases most of the American construction companies working overseas lead that country in what we think is a better condition as far as environmentally than before we entered.

Such things as our camp areas constructed in the foreign countries. Most are almost always constructed according to U.S. sanitary standards. And in many areas this is the first time the people in these countries have ever seen such a standard in a construction project or ever lived under such standards.

In most cases, when we leave the camps are taken over by the natives. Therefore, we are exporting environmental standards in some form or another by the mere fact that constructors are building in foreign countries.

And this is true throughout the construction industry. In a cooperative way, we are teaching protection of ecology in a lot of these foreign countries.

Mr. TEER. Mr. Chairman, I think the biggest issue is not with international environmental policy but the way to go about it. This is the whole problem.

And the way it is being assessed here and added to the Exim log would, we think, put a confused atmosphere in the world construction market.

Senator HODGES. A considerable number of the objections raised to the application of NEPA and in support of the Stevenson amendment—such things as the losing of jobs in this country—I think one of the statements which it would interfere with the internal affairs of the country. Congress has already seen fit to impose requirements on financing abroad, including human rights and antitrust laws and boycott legislation. Are these considerations different from and more difficult to incorporate in decisions than these? Because it appears to me that we are already imposing certain restrictions where you could apply the very same arguments you have made here to those things.

And I assume you are in opposition to those restrictions, also, on Exim imports?

Mr. DALEY. We don't feel restrictions alone add any incentive to protection of the environment. I think what we have to look for is cooperation. If we keep the companies from the countries, that will not prohibit construction from going on. I think probably we are putting a disincentive rather than an incentive when we put restrictions on American contractors operating overseas. The mere fact we are not operating overseas may add to the degradation of the ecology of that country rather than to build it.

And I think we have to look at not only what is restricted, but what is the constructive approach. I think we are all for the constructive approach being taken, not through such amendments as we are talking about, but through cooperative actions on a diplomatic level where all countries are bidding on the same type of project and all companies under the same constraints and same guidelines.

Mr. CARLSON. I think it is the policy, in effect, we have to hang things on a financing mechanism to achieve foreign policy objectives. And it would be interesting if we could sort out the different requirement of the financing mechanism that may have contributed to the merchandized trade deficit which has increased at the time the policies came into play on the financial community.

Senator HODGES. You are opposed to any restrictions?

Mr. CARLSON. I think you have to approach each one and make a judgment on that.

Senator HODGES. What about human rights?

Mr. CARLSON. Obviously, everybody supports human rights, but it is the interpretation and what kind of restrictions you place on it.

Senator HODGES. I would like to ask Mr. Miller, you noted in your testimony that the average time in 1976 for a commitment for credit was 40 days. On the average project financed by Eximbank, what is the average time from application to actual final commitment with such things as plane sales, petrochemical, energy plants, and so on?

Mr. MILLER. I don't have that information with me. I will have to submit that. I am representing a relatively small corporation.

Senator HODGES. I assume that the people at the National Association of manufacturers would be able to furnish that?

Mr. MILLER. Yes. We will attempt to get that data into the hearing record.

Senator HODGES. One final question, and I will turn it over to Senator Wallop.

You indicated, of course, the trade deficit which concerns everyone. But a great part of that, of course, is imported oil. I think you indicated in your testimony that we have had a surplus in 1975.

Is that the last year for which statistics are available? Is that an upward or downward course, taking out foreign oil?

Mr. MILLER. This is referring to the manufactured goods sector. And right now, from the Department of Commerce data, it is running a deficit of $13 billion on a seasonally adjusted basis. And that is in comparison with a $21 billion surplus for 1975.

[Mr. Miller supplied the following information:]

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., June 22, 1978.

Hon. KANEASTER HODGES,
U.S. Senate,
Washington, D.C.

DEAR MR. HODGES: In response to two questions raised during yesterday's hearing on S. 3077 regarding application of the National Environmental Policy Act to the activities of the U.S. Export-Import Bank, I would like to submit the following information.

You requested supporting data to back up our testimony that preliminary commitment delays on the part of Eximbank were already a significant competitive problem with foreign exporters so far as U.S. industry is concerned. The basis for our statement is an NAM survey on industry experience with the Eximbank. This study was written in 1977 and is based on a survey group representing annual sales of $140 billion and manufactured goods exports of almost $16 billion. This survey reflects the collective experience of a variety of industrial sectors including power generating, transportation, chemicals, agricultural equipment, food processing equipment and others. Fully 60 percent of the companies commented on delays incurred in seeking preliminary commitments from the Eximbank and pointed to the disadvantages that such delays convey to international bidding positions. I am enclosing a copy of our survey report; please refer to pages 13-14 for data on this subject.

In regard to your second request for additional data on our trade balance in manufactured goods, the following is Commerce Department data from the *International Economic Indicators*, March 1978.

Manufactured goods trade balance

(In billions of dollars)

1970	+3.8	1974	+9.3
1971	+0.4	1975	+21.0
1972	−3.5	1976	+13.8
1973	+0.6	1977	+4.8

As stated in our testimony the most recent Commerce data indicate that based on the first four months of 1978, we are now running an annualized deficit in manufactured goods of $13 billion. Thus, there has been a negative swing in our trade balance for manufactured goods over $34 billion dollars since 1975, if we annualize 1978 data. Further data on this subject are contained in a report just published by the NAM which I am also including for your information.[1]

NAM appreciated the opportunity to express our views on S. 3077 and should you desire any further information we are, of course, prepared to respond.

Sincerely,

LAWRENCE A. FOX,
Vice President.

Senator HODGES. Senator Wallop?

Senator WALLOP. Thank you, Mr. Chairman.

It seems to me that we are dealing with perhaps three separate questions. It strikes me that things like the human rights considerations and the Arab boycott considerations perhaps have a finer line surrounding the decision than do the requirements of NEPA. A more specific requirement and perhaps one that is much more easily checked through the ongoing process is of the State Department and the others involved in that.

Second, I guess one of the questions is whether there are other tools available to this country to achieve certain of the environmental goals and achievements it would like, such things as export licenses, nuclear materials, and others, things that we haven't talked about here, and whether or not this country should indulge itself in an export subsidy of environmental technology.

It seems one of the things we have done for ourselves is to create technology for most of the world in most areas. And perhaps one of the things that this country could do would be to subsidize the export of those kinds of techniques to various countries.

Third, it seems to me when talking about NEPA generally, whether it ought to have abroad the same kinds of criteria that it has domestically, I have to express a certain disappointment. I guess, in that the administration hasn't seen fit—the administration just can't seem to come to a conclusion to provide guidance for the Congress.

It seems to me if we are going to apply NEPA abroad, Congress ought to delineate more carefully the area and the arena in which it would apply. You know, our concern for artifacts in one country might not the the same for artifacts in another country. Perhaps that is not our obligation. I guess I am suggesting if you think there is a means by which NEPA could apply—any means by which we could make it more restrictive, plain, and apply to the physical environment rather than some of the other aspects of the Environmental Protection Act, as we apply it to ourselves in this country.

Woud any of you care to comment?

Mr. TEER. Senator, I will make a comment that it is my sincere opinion that in our type of work, in our type of industry, that since what we are selling is a service, you may come to us for our contract or services. You give me a set of plans and specifications which you want, maybe in a west African country or Guatemala.

Normally, what we do is provide that service based on a set of plans and specifications, and then we give that. You know, in a lot of

[1] The report referred to may be found at p. 128.

cases the government wants to put the project out and gives you a month to put them out. I do not see how NEPA can apply.

Senator WALLOP. Suppose you are working in some area such as the Sahara Desert or the Rain Forest or a vegetated area, and supposing you knew that there is not a point in there where there is an obligation and it is going to have a severe environmental impact. Do we just go build?

Mr. TEER. Senator, in the case of our firm, yes, we would make our clients aware. And I think we are socially responsible in that regard. To be honest with you, we have never had that come up.

Senator WALLOP. Can I ask, what kind of environmental considerations do you bring to a job overseas other than the toilets in your camps? Do you take the expertise that you developed here?

Mr. DALEY. We certainly do, Senator. In fact, on our projects within our own company, we have a large volume of safety manuals that require some things that are in OSHA.

And we have an environmental manual that applies to projects worldwide. We don't apply that environmental manual to just within the United States, it is applied worldwide, and in keeping within the limits of the project and protecting the vegetation wherever possible. And we have, also, consulting engineers. Most of the American companies that I know of are far in advance of the protection of the environment than the foreign country that they are working in. We bring expertise to countries that probably have never seen it before in a lot of these areas, and we are very much aware of it.

But we do think it must be attacked—as far as an overall regulation, it must be attacked through leadership and not by force. In other words, we must get leadership through the United Nations and the way we as contractors do it by teaching these people.

We could probably use some of the workers that we send abroad with AID to put on educational programs to educate these people. It does little good to build a fine building with excellent, outstanding sanitary conveniences when the people over there have never seen one before and don't know how to use them. And you have to go through an educational process to get them to use them.

Senator WALLOP. Is it your statement that there is no kind of environmental statement that would be valid for this country to require as an assessment?

Mr. DALEY. I would say that is true in the context we are talking about. I think where the environment has to be protected from rigid incentives has already been taken care of, such as the nuclear regulatory agencies, et cetera.

Senator WALLOP. I am not after duplicating anything. And I am straying a little bit from the point here. Perhaps my point is not clear as to whether NEPA should apply there.

Mr. DALEY. I think in a lot of areas we have to weigh what the alternatives are in those countries. It is very difficult for us to sit in the United States and say we shouldn't export this thing because it causes a degradation of the atmosphere. These people have the human element to think of.

It is difficult to go to India and say they can't use DDT when people are starving and people with malaria and a lack of mosquito

control. Those countries have to weigh the alternatives and weigh the alternative of protection of the human element. And I think we have to take this into consideration on anything we do on that level.

Senator WALLOP. Let me ask the other gentlemen at the table. I am really sort of off the Eximbank question right now. Is there a responsible area where this can be redefined and applied at any level in the activity of the United States abroad?

Mr. ROWDEN. May I make an observation which I believe is derived from some experience?

There is an easy tendency to conclude that simply by taking unilateral action you are making progress. Unfortunately, in the international community, in dealing with problems where you are, in effect, attempting to influence a course of action, if not direct a course of action in other countries, our experience has taught us that, while it is much slower, the better approach in the long run is that of bilateral understanding.

It is very easy to give way to an impulse to try and be helpful and say yes, there is this, that and the other thing we can do it on a unilateral basis. But as you asked the question, I tried to go through in my own mind the various obstacles to NEPA's application even in a more streamlined form and assess how they could be dealt with. Even if a NEPA statement could be prepared in a short time frame, even if you could exclude the uncertainties that resulted from public participation in that process, even if you could foreclose the very great uncertainty that results from judicial review, you would be left with a statement issued by some official U.S. Government authority which would purport to advise a foreign country on the judgment it ought to be making. And this is simply not the sort of position that is going to sit well with those who are our foreign trading partners.

Senator WALLOP. I have to disagree, because maybe I am thinking of something different. I am talking about perhaps making anything dependent upon the NEPA statement. But you mentioned the original purpose of this was to provide information for a decisionmaking process.

And I, you know, for the life of me can't understand why it would be impossible for us to supply information for a foreign country. You know, talking about is there some kind of circumstance where perhaps the export isn't dependent on the NEPA statement. But why shouldn't we provide that information if it is available?

Mr. ROWDEN. We should, and there are means for doing it. And that was the next sequence in my thought process.

The fact of the matter is that the sort of information that appplies to general safety problems is widely available in the United States, and more than that, is communicated under formal arrangements, working arrangements with agencies such as the Nuclear Regulatory Commission or the Department of Energy with foreign governments, to responsible agents within those governments for their use in making their evaluations.

This is also done in the international context through the auspices of the International Atomic Energy Agency, where we not only furnish information, but the Agency takes the information and resources

and translates that into specific aid—technical aid and information aid. So, the mechanisms are available.

Senator WALLOP. What do you feel about the idea of subsidizing U.S. environmental technology; for instance, scrubbers on powerplants?

Mr. MILLER. I think you have raised a very interesting point. Actually, indirectly, many foreign exports for many foreign countries are receiving an indirect subsidy. I know in our own particular case, the machine tools that we manufacture have to be in full compliance with OSHA. Right now the products that we are shipping, we don't change design because, obviously, it is too expensive. But the products we are shipping to Detroit are similar to the products being shipped right now to India.

I am sure the employer in India is not concerned about the decibel level of a machine, but concerned about a job. Indirectly, I think we are fulfilling our obligation and a subsidy would not be in order.

Mr. CARLSON. Also, some of our preferences should be given in financial institutions like the Small Business Administration to move environmental technology.

Senator WALLOP. It seems we ought to be able now to have a fairly aggressive campaign representing our expert capability as being established.

Mr. ROWDEN. There already is a form of subsidy, albeit indirect, that is underway in the nuclear area, in that most foreign nuclear programs were built on a technology of U.S. origin and on regulatory requirements established in the United States including safety knowledge from plant operations underway now.

In addition to that, we supply to other countries the results of safety research that is conducted in this country. As a matter of fact, several countries have joint programs underway in the United States and abroad.

So, the Congress, in effect, is appropriating money in the form of support.

Mr. TEER. The point you are raising where and if NEPA can be applied, we continue to say it is certainly valid. And I think we are all talking about how do we achieve this. But a point might be made that a lot of our work, a lot of our industry's work, has been with the State Department.

Now, AID, as I understand, has environmental regulations and criteria which at a point in their loan process they can include if they wanted to. They can share with those governments.

By the time our industry subsequently receives the bid or job or whatever, we would then comply. But back to the earlier point, we don't really have two sets of technology. Most of our supervisors are American. And American equipment, by the way, 40 percent of everything that goes into our foreign work is normally an U.S. made or U.S. source and origin.

But anyway, to make my point, when we go into a new area, we continue to carry on the siltation control criteria that we would here. It is just a matter of good housekeeping.

Senator WALLOP. It took you a long time to say that. I was trying to drag that out of you for some time.

Mr. TEER. We had the same procedures.

Senator WALLOP. I think the public doesn't know that. I think that is one of the things that your industry doesn't sometimes say, the things you actually do.

Mr. TEER. Our point is just the competitiveness. We can't be competitive if the NEPA is included in the situation. If presented to us in a set of bit documents, that is fine. It is done then. But for our industry to be competitive in the world market, we can't have a situation imposed on us 1 month before the bit date.

Senator HODGES. Thank you very much. I appreciate it.

Mr. DALEY. Furthermore, getting back to what you said a few minutes ago, we in our testimony explained in detail the problems we encounter. If the Congress wishes to further investigate what can be done, as you suggest in the construction industry, we would be most pleased to work with you and your staff in conjunction with AID or the World Bank or environmental offices in this regard.

We would be most happy to assist in any way we can.

Senator WALLOP. Thank you.

Senator HODGES. I have nothing further. Thank you very much.

Senator HODGES. We will now have an environmental panel. Mr. Jacob Scherr, from the Natural Resources Defense Council, and Mr. James N. Barnes, representing the Center for Law and Social Policy.

We will let both of you make your statements and we will ask questions.

STATEMENTS OF JAMES W. BARNES, CENTER FOR LAW AND SOCIAL POLICY AND S. JACOB SCHERR, NATURAL RESOURCES DEFENSE COUNCIL

Mr. BARNES. Thank you, Senator.

I am James Barnes, an attorney with the International Project of the Center for Law and Social Policy which is a public-interest firm located in Washington, D.C. I am testifying on behalf of 11 environmental groups concerned with the issue of the international application of the National Environmental Policy Act, and particularly to the activities of the Export-Import Bank.

This is an issue that the center has been working actively on for several years. We are familiar with the litigation that apparently prompted the Senate Banking Committee's recent amendment. In our view, exemption of the Eximbank or any Federal agency is both unnecessary and unwise. We believe that the Banking Committee's fears in this regard are largely unjustified. The environmental groups believe that all Federal agencies have an obligation to comply with NEPA if their actions in the United States or abroad may significantly affect the environment.

We believe that such requirements, furthermore, are both practically and politically in the best interests of the United States over the long term. We do not believe that the mere provision of the information and analysis called for under NEPA will lead to loss of exports or loss of jobs. In this connection, I notice that many of the prior witnesses seem to believe that an application of NEPA re-

quirements results in a go- or no-go situation once there are environmental applications identified.

As Mr. Train so correctly pointed out, that is not the process at all. The NEPA process provides information and analysis.

My prepared statement, which I will submit for the record, details some of the legal and policy reasons why we should think NEPA should apply. [See p. 174.] NEPA, in section 2, established a national policy to prevent or eliminate damage to the environment. Section 101(D) declares the Federal Government has a continuing responsibility to use all practical means to minimize environmental degradation, and places an obligation on all agencies—not some agencies—but all agencies to identify and develop methods and procedures in consultation with CEQ to assure that environmental values are given appropriate consideration.

Used properly, NEPA is a decisionmaking tool. It is a device to provide information. In order to implement the policies of NEPA, Congress has wisely required that all Federal agencies, for major Federal actions that significantly affect the quality of the human environment, prepare and circulate for comment in the decisionmaking process an environmental impact statement that analyzes the adverse environmental effects that cannot be avoided.

In section 102(E), Congress directs all Federal agencies to recognize the worldwide character of the environmental problems. The House Merchant Marine and Fisheries Subcommittee stated in a hearing held in 1971, when the issue was presented by the State Department, that global effects of environmental decisions are inevitably a part of the decisionmaking process and must be considered in that context.

The environmental groups believe there is a sound policy basis for applying NEPA to the proposed activities of our Federal agencies abroad. The United States has a special responsibility to protect the environment because we export many products and help build many projects that have enormous implications for the human global environment. The United States has an obligation, in our view, to insure awareness of the possible environmental impacts. We believe that the United States also should make every effort to minimize these impacts.

Without a legal requirement that these impacts be identified and explored, we insure blindness to the implications and impact of our actions. All agencies of our Federal Government should comply with the requirements of NEPA to insure that these environmental impacts are identified, understood, and evaluated before the actions are finally undertaken.

In the case of international activities, the environmental analysis is for the consideration of both agencies in this country and government agencies in the countries abroad. We believe that without the information this process reveals, decisions will be taken that will have harmful environmental consequences, and often without identifying alternatives that would have accomplished the desired result without such environmental consequences or dangers.

I would like to review briefly what the agency response has been to this issue in the last 8 years. Looking at it as an environmental attorney, I see that most Government agencies have promulgated regulations

regarding application of NEPA to activities in the United States and abroad. Most agencies have done this voluntarily. A few agencies—and I think particularly of AID—have drafted the regulations and begun to comply with NEPA in response to litigation. The Export-Import Bank, notably among major Federal agencies, has not chosen to adopt such regulations.

The environmental groups have acted responsibly in this area. We have not used litigation as a bludgeon, but sparingly in an attempt to bring the overseas actions of Federal agencies into compliance with NEPA. I think the history of our lawsuit with AID—which I will get to in a minute—and indeed, Senator, the present litigation with the Eximbank, demonstrates that we are not trying to tie up the activities of these agencies. We have not asked for injunctive relief, for example. We have not tried to restrict these agencies from engaging in activities while they develop a compliance posture.

We see this whole area as a process. And in our view, the process will become more sophisticated as all of us in the community have more experience with the international application of NEPA. But the problem is, to have the process start, the agency has to agree conceptually that some of its activities are susceptible to NEPA treatment.

That is the big first step that the Eximbank has refused to make. They have refused to put regulations forward, or to work with CEQ to develop a mechanism that takes into consideration their agency's particular requirements. And in this regard, I would like to stress again that NEPA does not call for any particularly dogmatic type of compliance, nor do the proposed CEQ regulations.

NEPA requires that agencies comply only to the extent possible.

For example, suppose there was a project that the Eximbank was involved in financing, and a NEPA statement would require the active assistance of a host government. If that host government tells the United States to forget it, they just want the project, in our view, that would be largely determinative of the responsibility of Eximbank in that situation. To the extent there is other data available, surely they would have to provide that. But the particular project under consideration would not be held hostage to some other government's agreement to cooperate with our Government.

The CEQ regulations in draft form have asked agencies to come forward and work out with CEQ a mechanism for compliance that takes into consideration the individual needs and requirements of each and every agency. In our judgment, that process has been working quite well with other agencies.

I would like to talk for a few minutes about the AID experience, because I think that is really perhaps the most analagous situation to the Ex-Im situation. AID has had a similar experience to that of the Eximbank, really, if you look at the complete history. Initially, AID resisted our efforts to have them comply with NEPA. That led in April 1975 to the lawsuit which the Center for Law and Social Policy filed on behalf of four environmental groups.

We focused then on the pesticide program. We argued the need for specific procedures for meeting the Agency's NEPA obligations in regard to exports, and challenged that specific program because AID had failed to file an impact statement. By December of that year, the

case was settled. AID recognized its responsibility to conduct its operations in a manner that mitigates or avoids any long-term deleterious environmental effects.

AID agreed to insure that environmental consequences of proposed AID-financed activities are identified and properly analyzed. AID agreed to promulgate environmental regulations to cover all aspects of capital, commodity and technical assistance programs. The agency agreed that its regulations would require every proposed new activity to be assesed at the earliest possible stage in order to identify whether there is a Federal action significantly affecting the environment.

AID agreed in the settlement to assess potential environmental effects of the project and to prepare written assessments in some cases.

What have been the results of AID's experience over the last 2½ years? I think it comes in two communications from the Administrator of AID setting forth that experience. In a letter last December to CEQ, Administrator Gilligan stated the experience was positive, that the environmental analyses conducted had been useful both to the United States and host countries. "Compliance with NEPA has not strained relations with any nations".

In a recent address, Mr. Gilligan characterized the lawsuit that led to this experience as one of good fortune for both AID and the future of developing nations.

Mr. Chairman, in our view, we believe it is essential to look at the facts carefully before taking the precipitous action of exempting any Federal agency from NEPA. Every agency has its own arguments for concluding that compliance with NEPA may cause undue administrative hardship.

I would like to briefly run down some of the things that Exim already does. Eximbank regularly carries out a detailed review before entering a transaction to determine whether a proposed project is economically, financially, and technically sound and whether it would adversely affect the economy of either the United States or the country receiving the support. On the technical side, it reviews such factors as the engineering, the proposed management plan, the technical qualifications for those responsibilities for implementation of the project, the ability of the host country to support the project, and the size of the project in relation to the needs of the host counrty.

There is no logical reason to single out the environment as an area where no similar review can be made. I stress again that application of the procedures in section 102 of NEPA with Eximbank activities does not require particular substantive results. It requires analysis, disclosure and consideration of the environmental impact and alternatives to agency actions. The provision of this analysis and information does not dictate the end result, but merely apprises the decisionmakers of environmental impacts.

As this committee knows, NEPA explicitly recognizes that agency implementation of its goals must be consistent with the other considerations of national policy. That is section 101(B) of NEPA. And those economic and other considerations may be determinative of any decisions made.

In conclusion, Mr. Chairman, we believe that the United States should continue to demonstrate its leadership in international affairs

on environmental matters by requiring that the Government be aware of the environmental impacts of its activities outside the United States. This is consistent with the President's environmental message given on May 23, 1977, which noted that environmental problems do not stop at national boundaries. The President instructed the State Department, AID, and other concerned Federal agencies to insure full consideration of the environmental soundness of projects under review for possible assistance. Eximbank should be covered by the policies inherent on the Presidential message.

The environmental groups urge this committee to do nothing to jeopardize these goals.

STATEMENT OF S. JACOB SCHERR

Mr. SCHERR. I am S. Jacob Scherr, an attorney with the Natural Resources Defense Council. NRDC is a national public-interest environmental organization, with a membership of approximately 35,000 persons in the United States and in several foreign countries. NRDC has for 5 years been actively concerned about the protection of the international environment. In 1974, a separate international project was established within NRDC. One of the objectives of this project is to monitor and participate in the development of U.S. Government policy decisions that have an effect on the global environment.

NRDC was a coplaintiff in a 1975 lawsuit against the U.S. Agency for International Development which sought in part to compel AID to adopt environmental assessment procedures pursuant to the National Environmental Policy Act of 1969. Since the settlement of that case, NRDC staff has followed closely AID's implementation of its procedures requiring environmental impact statements or environmental assesments on all its projects and activities. We have filed comments on proposed AID environmental regulations and the programmatic statement on its pest control program, and have consulted informally with AID on a number of the assessments which it has already completed. Through this and work with foreign environmental groups and international organizations, such as the United Nations Environment Programme, we have become familiar with environmental policies and practices of many other nations.

The missions of the two agencies are not dissimilar. There is a thin line between foreign aid and the promotion and subsidy of U.S. exports. Seventy-two percent of Eximbank loans and loan guarantees of fiscal year 1977 were for exports to the developing nations of Africa, Asia, and Latin America. What Eximbank and a portion of the business community are saying today in opposition to NEPA echoes AID's views 3 years ago. Then and now it is claimed that application of NEPA to activities of these Federal agencies would be an unwarranted intrusion upon the sovereignty of other countries and an overwhelming administrative burden. As discussed earlier in the hearing, this has not been the case with AID. We believe that the same would be true for the Eximbank.

The incorporation of NEPA procedures into the decisionmaking process of Eximbank has been characterized as forcing U.S. environ-

mental concerns upon other nations, particularly developing countries which view environmental protection as a luxury only the rich, industrialized countries can afford. In fact, since the U.N. Conference on the Human Environment at Stockholm in 1972, developing nations have begun to recognize the severity of their own environmental problems. The natural resources of many such countries have come under severe pressures. Expanding populations, together with rapidly growing demands for food, energy, and shelter, are taxing land, soil, forests, water, and wildlife throughout the developing world. The deterioration of the natural resource base in a number of poorer countries undermines their capacity to meet the basic needs of their people and to achieve sustainable development.

My colleague, Mr. Barnes, has addressed many of the legal and policy issues raised in the current debate over the application of NEPA to U.S. Government activities carried on or having an impact outside the United States. I would like to focus upon the center of the controversy; that is, the continuing refusal of the Export-Import Bank of the United States to develop any procedures under NEPA for evaluating and considering the environmental impacts of its activities. This led to the filing of a lawsuit by NRDC and National Audubon Society against the Eximbank on January 14, 1977.

At the outset, I would like to emphasize that during the course of the litigation, the plaintiffs have recognized that the Eximbank must remain able to perform effectively its export-financing mission and that the NEPA procedures established by the Eximbank must take this into account. Plaintiffs have not tried to enjoin any of its activities. In July 1977, plaintiff's counsel initiated a meeting with Eximbank Chairman John Moore to discuss possible grounds for a settlement. Our position at that meeting and in subsequent negotiations with the Justice Department since Sepember 1977 is that a settlement should be modeled on the one reached with AID in 1975. We believe that if the bank, as has AID, is willing to commit itself to comply with NEPA and to issue appropriate regulations, the precise form of its compliance can be worked out with the Council on Environmental Quality in a spirit of goodwill.

Their environmental programs are not limited to the rural areas. The rapid, often uncontrolled growth of cities and industry in many developing countries is resulting in serious pollution of air and water.

At the time of the Stockholm Conference, only three African nations had environmental ministries or high-level commissions. Today, only three do not. Among the nations in Latin America and Asia which have established environmental agencies are Colombia, Brazil, Costa Rica, Indonesia, Thailand, and the Philippines.

The use of environmental assessments as a tool in development planning is gaining wider acceptance. Developing countries are learning that the failure to assess environmental effects of proposed actions can lead to significant economic cost and sometimes human suffering. Perhaps the best known example is the Aswan Dam, which was hurriedly planned and constructed by the Soviet Union. The dam has led to a sharp increase in the incidence of a debilitating parasitic disease along the Upper Nile. At its sixth session in Nairobi this May, the UNEP Governing Council adopted a resolution sponsored by

Third World nations calling upon all governments to assist "in devising means for assessing the environmental impact of development activities so as to insure that these activities are environmentally sound." While a number of developing countries including Ghana and Malaysia, now requiring environmental impact studies for new industrial and other projects, many still lack adequate technical and analytical skills to carry out their own assessments.

The same concerns apply to products and technology imported from developed countries. In another resolution, the UNEP Governing Council, consisting of 58 nations, appealed to nations to prevent the export of chemical products which are prohibited or restricted in the exporting country until data about health and environmental risks, including detailed use instructions in mutually agreed languages, have been provided to designated authorities in recipient countries, so as to permit them to make a fully informed decision on the importation and utilization of the products. An expert group convened in 1976 by the U.N. Commission on Transnational Corporations identified possible damage to the environment and environmental protection measures as matters on which multinational companies should report to host country governments. Rather than impinging on others sovereignty, compliance with NEPA's disclosure requirements would appear instead to satisfy the environmental concerns and informational needs of developing country governments.

At this point, we cannot detail how the Eximbank might comply with NEPA by incorporating environmental reviews into its decision-making processes. We have been unable to obtain extensive information on the precise nature and timing of its operations. However, based on published materials, there is good reason to believe that conducting environmental reviews would be compatible with Eximbank's mission and present procedures. Indeed, NEPA dovetails well with the Bank's loan application process and may enhance the Bank's promotion of U.S. exports.

Some fear that the requirement of enironmental analyses would delay Eximbank decisions, thereby injuring the Bank's ability to compete with other nations' export institutions. First, it is by no means clear that such a requirement would necessarily enlarge the present time for processing of loans by Eximbank, which apparently varies widely from case to case. As an example, Eximbank took over 18 months to approve a loan and loan guarantee for the export of a nuclear powerplant to the Philippines. There would have been ample time in that case to prepare an environmental analysis. There is no general rule for estimating how long it takes to complete an environmental impact statement. It depends on the complexity of the project, whether other similar environmental analyses have been done in the past, whether the loan applicant has access to the relevant data, and what kind of resources the agency is willing to commit. Perhaps full compliance with NEPA would be inappropriate for those types of transactions which must be routinely processed very quickly. We would expect that Eximbank would shed more light on these matters during the course of the hearing.

A number of Eximbank financing decisions will not be a "major Federal action significantly affecting the quality of the human envi-

ronment" and, therefore, will be exempt from NEPA's procedural requirements, such as a loan for the export of electronic data processing equipment. It appears further that generic analyses would suffice for a major portion of Eximbank's lending operations. In fiscal year 1977, one-third of Eximbank's loans were for commercial transportation equipment, including 16 loans for jet aircraft and 7 loans for diesel locomotives or subway cars. A generic review of the transactions might consist primarily of data on noise and emissions of pollutants and on risks to user health and safety. It would include data on alternative means to reduce or eliminate these impacts, including the purchase of pollution-control devices. The information required for the review most likely could be supplied entirely by U.S. manufacturers. A third category of Bank transactions involves construction, manufacturing, and power generation equipment. Where the equipment is not destined for use or installation in an identified project, the same sort of analysis might be appropriate.

A more extensive review would be required where the transaction involves an industrial, agricultural, mining, or other such projects, particularly where U.S. exporters are involved in project planning and execution. Environmental analyses of proposed loans for such projects as chemical plants or steel mills would require the collection of site-specific environmental impact data, carried out in cooperation with the foreign government.

I will address the particular problem of nuclear power exports in a moment. First, I would like to describe how the present Eximbank approval process for individual loans might include environmental reviews modeled upon AID's environmental procedures.

The consideration of a loan by Eximbank begins with the submission of an application by a foreign purchaser or U.S. exporter. The information requested at this stage is quite general, but includes engineering and marketing data demonstrating the economic and technical feasibility of the project or product transaction. In order to carry out a brief initial environmental examination, the Bank would require additional basic information regarding the environmental impacts of the proposed project.

The Eximbank then issues a preliminary commitment which is a statement of intent to consider Bank participation in the proposed transaction pending further investigation. Along with a preliminary commitment, a threshold decision could be taken as to whether the proposed action may have a significant impact on the human environment and, if so, what type of environmental review would be required. After the preliminary commitment, the loan application is sent to a case officer, who usually with the assistance of an economist and engineer, prepares a detailed loan memorandum, upon which the Eximbank Board of Directors makes its decision on approval of the loan.

Assuming a positive threshold decision, either an environmental impact statement or assessment would be prepared. The choice of a statement or an assessment might depend on the geographical location of the impacts. Following AID's procedures and CEQ's proposals, an assessment might be appropriate where impacts are limited to one or more foreign nations or where considerations of commercial con-

fidentiality and competitiveness should limit full public disclosure and opportunity for comment. The statement of assessment would be included in the loan memorandum sent to the Eximbank Board of Directors for approval.

One benefit of undertaking environmental evaluations of Eximbank loans is to assure that the proposed project is ecologically feasible. A judgment the Bank now makes about technical or economic feasibility should take into account the capability of natural systems to support the proposed project. For example, a major British-financed plan was initiated in the late 1940's to produce groundnuts on 3 million acres of savannah lands in east Africa. The scheme was begun hastily without adequate ecological studies. There were unanticipated, severe environmental problems, including soil infertility and erosion. By 1951, the multimillion dollar project had failed. Similarly, Eximbank would want to consider carefully supporting the construction of a dam which would silt up quickly due to destruction of forests upstream or the building of a chemical plant in an area where the supply of clean water for industry is already insufficient.

Environmental reviews by Eximbank also may be a device to boost U.S. exports. By identifying measures which might be taken to avoid adverse effects, an assessment could provide an incentive to the foreign purchaser to obtain additional air and water pollution control devices or consulting services from U.S. businessmen. The potential for the market is excellent. Based on data from 19 countries, the Department of Commerce predicts that in 1978 U.S. manufacturers will capture about $200 million of some $11 billion in sales of air and water purification pollution control equipment. Substantial and expanding markets can be found in Central and South America. The Bank should not dismiss lightly the opportunity to aid exports by the U.S. pollution control industries.

Much attention has been given in recent months to the proposed export of a 600-megawatts electrical Westinghouse nuclear powerplant to the Philippines. Involving a $277 million Eximbank loan—the Bank's largest loan ever—the Bagac nuclear powerplant has been a matter of controversy both here and in the Philippines. Serious questions have been raised regarding the propriety of commissions paid by Westinghouse to secure the sale, the appropriateness of nuclear power for the Philippines, the safety of site, the adequacy of the reactor design, the arrangements for disposal of spent fuel, and the capability of the Filipino AEC to adequately oversee the plant's construction and operation.

I raise the Filipino reactor case here to make two points. First: The decision of the Eximbank to loan money for the purchase of the reactor was but one of a series of Federal agency decisions in a program of United States-Filipino nuclear cooperation. Two: Many of the current problems with the Philippines plant might have been avoided if the executive branch had undertaken assessments pursuant to NEPA of the proposed Filipino nuclear power program starting as early as the negotiations for the agreement of cooperation.

On table I of my prepared statement, I have outlined the various Federal agency actions culminating in the licensing of the export of a nuclear reactor. The time frame is based roughly on that for United

States-Filipino nuclear power cooperation and should be applicable to future U.S. nuclear power exports. The nature of environmental assessments which should be undertaken at each stage are indicated. Areas other than proliferation risks which should be assessed for each cooperative program include the need for power, alternative energy sources, alternative plantsites, waste disposal plans, reactor design, operator training, and regulatory capabilities. Spread over the course of 7 to 10 years, they would pose no particular administrative burden for the concerned Federal agencies, including the Eximbank. It might be appropriate to designate the State Department, which is involved at every stage, to coordinate the contributions to these assessments by the various agencies with relevant expertise.

More importantly, the proposed scheme would provide the basis for a clear, consistent policy of U.S. Government assistance with health, safety, and environmental matters to nations purchasing U.S. nuclear powerplants. The Government's present arrangements in this area remain piecemeal and inadequate to assure that U.S.-supplied plants be constructed and operated safely and without undue harm to the environment.

The proposed assessments should be carried out in close cooperation with the importing government. This is consistent with the Nuclear Non-Proliferation Act of 1978, Public Law 95–242. Section 2(d) of the act, 22 U.S.C. 3201(d), states:

> It is the policy of the United States—to cooperate with foreign nations in identifying and adopting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with the economic and material resources of those nations and environmental protection.

Section 407 of the act, 42 U.S.C. 2153e, further directs the President

> to endeavor to provide in any agreement entered into pursuant to Section 123 of the 1954 Act for cooperation between parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

In order for the policies of NEPA and the Non-Proliferation Act to be fulfilled, it is necessary that all agencies involved—including the Eximbank—develop a coherent plan for conducting environmental analyses of U.S. programs of nuclear cooperation.

In the controversy over the application of NEPA to activities having impacts outside the United States, the substantive purpose of the act has been ignored. Congress intended that an environmental dimension be added to Federal Government decisions, which were to be no longer the sole province of the engineer and the cost analyst. Section 102(2)c of NEPA was added to force Federal decisionmakers to consider the analyses and recommendations of the natural and social scientist, and of concerned members of the public.

We now have over 7 years of experience with NEPA. The CEQ has undertaken to reform and streamline the environmental impact statement process at home. Its approach to resolving the issue of NEPA's application abroad is basically sound. It preserves the fundamental thrust of NEPA while reorganizing the real difficulties of preparing full environmental statements on Federal actions having an impact overseas. It is our hope that this hearing will help to clarify

and overcome the remaining obstacles to an agreement among Eximbank, CEQ, and the other Federal agencies. I thank you for this opportunity to testify and would be delighted to answer any questions that you might have.

[The table referred to in Mr. Scheer's testimony follows:]

TABLE I.—PROPOSED ASSESSMENTS FOR U.S. PROGRAMS OF NUCLEAR COOPERATION

Year	Federal action	Agencies	Proposed assessment (other than proliferation risks)	Present arrangements
0 to 3	Negotiations leading to an agreement for cooperation.	State, DOE, NRC	Need for power alternative energy sources.	IAEA feasibility and market studies. State Department energy assessment program.
3 to 8	Enrichment contract	DOE, State, NRC, Defense.	Alternative plant sites, waste disposal.	IAEA review informal NRC assistance.
	Selection of U.S. supplier.	State, Eximbank	Reactor design operator training.	Informal NRC assistance.
6 to 9	Financing commitment.	Eximbank, State, DOE, NRC.	Plant design and site	Exim review of technical economic feasibility.
7 to 10	NRC export licensing	NRC, State, DOE	Operational regulatory, and physical security capabilities.	Informal NRC assistance.

Senator WALLOP [presiding]. Thank you. The Chair has gone to vote.

I will begin by saying that I really can't for the life of me see the similarities between the apples called AID and the crate of oranges called Eximbank. In one case you have a country basically looking for a source of funding that probably doesn't exist anywhere else in the world, and you have an agency of the U.S. Government assisting the exports of this country. And they are quite different in the way they are organized and thrown together. Don't you agree with that?

Mr. BARNES. Our point is they are in a spectrum of Federal agencies that have had to determine how they comply with NEPA for activities abroad. The AID experience is the most analagous. There are many differences, but there are differences among all agencies. All agencies are different.

That is why we think the mechanism proposed under the CEQ draft regulations is sound. CEQ proposed to sit down and work with each agency to develop particular implementation procedures that will achieve the basic purposes of NEPA and not harm the fundamental character or purpose of the agency.

Senator WALLOP. They are quite different, and the purposes for which they are organized are totally different. And the thing that troubles me, can you tell me how many agencies that are active internationally that have actually promulgated regulations that have been accepted by CEQ?

Mr. BARNES. In the past, CEQ didn't have the power to accept or reject regulations. In the past, CEQ had guidelines. Each agency had its own regulations.

I could submit all of the different regulations the various agencies have promulgated.

Senator WALLOP. But the plain fact is, CEQ is not happy with any of them.

Mr. BARNES. I wouldn't say that. The President gave the CEQ authority to streamline the process in the recent Executive order. Part of that overall process is to streamline the EIS requirement involved and come to grips with the particular issue of the application of NEPA abroad and how each agency would carry out its responsibilities. There are extremes. One extreme is the Export-Import Bank, which says it doesn't think any of its actions should be viewed under NEPA requirements. And other agencies, like AID, which under the settlement agreement that we worked out 3 years ago, have developed a comprehensive mechanism for complying with NEPA in that situation.

Senator WALLOP. I agree. I don't quarrel with that. I don't even quarrel with the benefits derived, but it is so different from what it is trying to do.

Mr. BARNES. Senator, I guess what we suggest here is when the Export-Import Bank comes forth with the kind of decisions it has to make, that is an appropriate point in time for all to sit down and review how we can obtain NEPA compliance in light of those facts. Those facts have never been presented.

Senator WALLOP. How many agencies are more alined with Eximbank's posture than AID's posture?

Mr. BARNES. I don't know that.

In our suit in 1973 against then the Atomic Energy Commission, at a certain point in time the AEC and State Department recognized they did have an obligation to put out NEPA regs to at least identify what actions might affect the environment. The State Department has such regulations.

There is a dispute now, as I understand, in the State Department as to how far to extend those requirements, whether to extend them to a single country.

Mr. SCHERR. I would agree that the focus of Eximbank's and AID's missions are somewhat different. But the point I was trying to make was they both have a profound impact on development in developing countries. In fact, one of the reasons that developing countries come to Eximbank for financing is because of the difficulties these countries have in acquiring loans through commercial channels.

It seems that the greatest concern regarding NEPA's application to Eximbank's activities involves possible delay in the issuance of the Bank's preliminary commitment for a loan arrangement. As I point out in my statement, these commitments take between a week and a few months to obtain. The preparation of a brief initial environmental review at this stage would not interfere at all with the Bank's operation.

Senator WALLOP. Do you think you can comfortably say that?

Mr. SCHERR. Yes. At this early point in the loan process, the Eximbank has a small amount of economic and technical information about the proposed transaction. The preliminary commitment means only that the Bank will consider providing the loan after further investigation. This investigation apparently involves the preparation of an extensive loan memorandum by a case officer in the Bank, with the assistance of an economist and an engineer.

What we are suggesting is that during the process of preparation of this loan memorandum, which sometimes takes up to over 1 year,

that an environmental impact statement or environmental assessment could be prepared very easily without delaying at all Eximbank's decisionmaking process.

Mr. BARNES. We haven't had Eximbank come forward with procedures to identify for the benefit of all of us which actions it takes. I think this is the first step. We are all sort of in the dark here without that kind of information.

And I think environmentalists are really as realistic as anybody else if the facts are presented. Right now, we do not have the facts. Nobody really knows exactly which actions might be major Federal actions that have an effect on the environment, either by category or by reference to specific exports. We do not have the facts right now.

Senator WALLOP. The thing that troubles me—I am not quarreling with where you are trying to go—but the subject is Eximbank.

In your statement you said, "In order for the policies of NEPA and the Non-Proliferation Act to be fulfilled, it is necessary that all agencies involved—including the Eximbank—develop a coherent plan for conducting environmental analyses of U.S. programs of nuclear cooperation."

Why shouldn't there be one agency that develops a coherent plan, and why shouldn't that just be presented to Eximbank at the time of loan application?

Mr. SCHERR. I would agree that Eximbank definitely should not take the lead in this area. As I pointed in table I of my written statement, a number of these analyses should be undertaken prior to the time a financing commitment is sought from the Eximbank. At that stage, there should be an analysis of the plan design and the particular site. But I would hope that the Eximbank would rely upon the Nuclear Regulatory Commission and the Department of Energy.

Senator WALLOP. Wouldn't that be the best place to have an environmental statement?

Mr. SCHERR. As I suggested in my statement, I believe a number of agencies would be involved, including Eximbank and perhaps the State Department, which is involved in every single step of these programs of nuclear cooperation from the initial negotiation of the agreements for cooperation through the export licensing procedure. The State Department would be the agency to coordinate the necessary assessments.

Senator WALLOP. That would be my feeling.

Mr. SCHERR. I would like to point out that Eximbank does have engineers on its staff, and they say at the present time they do look at the technical feasibility of proposed nuclear powerplants.

Senator WALLOP. Should they be in the posture of second-guessing other environmental assessments that you have made?

Mr. SCHERR. I think they should review those assessments.

Senator WALLOP. I don't see that that puts us in a posture in the world where we can compete. And if West Germany decides to build it for them and subsidizes the export, which they do to a great extent, it seems to me we lose on both sides. Why should Eximbank second-guess?

Mr. SCHERR. As I pointed out earlier, a number of the proposed assessments should be carried out, such as those involving the reactor

design and alternative sites, before the nuclear exporter even approaches the Bank.

Another point to bear in mind is that nuclear export loans take over 1 year to process. In the case of the Philippines, it took almost 18 months. We feel that is more than adequate time to review an existing environmental analysis or even carry out a whole impact statement, if necessary.

Senator WALLOP. Are you satisfied with the capability and requirements that the regulatory commission has?

Mr. SCHERR. No; the Nuclear Regulatory Commission has said it will not examine environmental, health, and safety matters regarding export of nuclear reactors.

Senator WALLOP. It is required to.

Mr. SCHERR No; it is generally not required to do so under the Atomic Energy Act, as amended.

Senator WALLOP. They would be in a far better position to do it than the financing mechanism.

Mr. SCHERR. I think that there is a problem with waiting to do these analyses until the proposed export gets to the NRC. This is the last stage in a program of nuclear cooperation, which sometimes takes 10 years to complete.

Sentor WALLOP. I would again say, I don't really disagree with where you are trying to go, except in this instance I think it is the wrong place. It seems to me that is the one area in which we could streamline. I don't see why four agencies should be in competition with each other.

Mr. BARNES. That is the problem. In our view, there is not enough analysis.

Senator WALLOP. Wouldn't the best thing be to make the analysis in the right place?

Mr. BARNES. We have not proposed adding new analyses. We are proposing these Federal agencies identify those actions that might have a major impact on the environment and make some provision for analyzing those problems and alternatives thereto.

There are concepts that are obviously applicable in each situation and each area is different. The nuclear area is not like the pesticide area, for example.

Senator WALLOP. Once you apply this thing, it is always subject to challenge as to whether or not that is a major Federal action. Always subject, and it has been consistently challenged.

Mr. BARNES. Speaking as an attorney who was a participant in a number of those cases, frankly, we don't have the resources to run around the country filing suits willy-nilly. We file very few lawsuits.

Senator WALLOP. Wouldn't it be better to have one agency to oversee and you could focus on?

Mr. BARNES. We certainly have not been banging on AID's door hastling them about every statement that they file and every assessment. We have been working with AID to achieve a common goal. That is what the environmental community wants to do with all of the agencies. We don't have the resources to sue them every day.

Senator WALLOP. Again, I would just say, that it is too bad the CEQ didn't see fit to come up here, or the administration or some spokesman. It is difficult for us.

Sentor HODGES. I just have a few questions.

I do think one of the things that is going to be of considerable assistance is when the administration does make itself available. We are trying to put them all in one sack, and I suspect there is going to be a lot of kicking around in that sack. But at least we can quiz them as to the extent of the impact of what you propose ought to be done and what the Stevenson amendment would prohibit.

CEQ says only 10 percent of the loans would be affected. If that is correct and 10 percent is probably going to be major loans, it was said the cost would be expensive, and NEPA statements would make them less competitive in the world market. Do you have an idea what the average cost of a NEPA statement is?

Mr. BARNES. What one sees in the literature is a wide range of opinions stated as to the cost of a NEPA statement. I think the statement can be made that depending on the size of the project, the statement can be very expensive. But I would say in this regard that CEQ has proposed some new standards for the EIS that we think are very sound and designed to cut the size of the statement down to make them decisionmaking tools and to make them analytical documents that are not filled up with factual garbage and irrelevant material.

We think as that process unfolds that in all cases the cost of complying with NEPA in terms of the statements will be much reduced over what the experience has been in the past.

I was one of the counsels in the *Alaska Pipeline* case and forced to go through that statement. It was about 27 volumes. Again, that was a very big project.

I think it is impossible to identify a precise number. I think that is a meaningless figure. It depends on a number of factors and not just the size of the project, but whether a similar project has been analyzed in the past, or if there are experts available to the agency or the manufacturer, or if there is cooperation. All of these factors can be very determinative as to the total cost.

Senator HODGES. Part of the problem I have is we simply don't know what the loans supply to.

Mr. BARNES. In terms of cost to the exporter, I frankly don't share the view of some of the people who spoke earlier that it would drive them out of business. It seems to me what is probably required is for the Eximbank to receive a modest amount of additional funds to hire the appropriate people. We are talking about a relatively discreet number of additional positions. And those people would have the primary burden of preparing these statements.

Obviously, the manufacturer is going to have information they are going to bring forward to the agency involved. And in many cases they may be asked to draft environmental assessments or analyses to attach with their application. But if I could venture a guess, I can't see how it would drive anybody out of business.

Senator HODGES. The principal concern of some of the U.S. exporters is the Eximbank's exposure to lawsuits on the grounds that comparable procedures or abbreviated procedures do not comply with NEPA generally. Should Exim NEPA procedures insulate that institution from lawsuits that would mean the loss of a sale to a foreign competitor?

Mr. BARNES. Mr. Train dealt with that earlier. He said "No." I share that view. I think if we have an agency committed—as part of the overall Federal Government position—to compliance with NEPA, an agency that works in a spirit of compromise and goodwill to comply, those requirements can be dovetailed with the agency's own individual needs. There wouldn't be a need for litigation.

As I said earlier, look at the environmental community's record in the last 7 years in that regard. We have filed only a few lawsuits. I couldn't promise that there would be a case involving the adequacy of an impact statement. But to insulate an entire agency's actions on that kind of speculative basis, to me, is an unsound way to proceed.

Mr. SCHERR. I would like to add that one of the serious sources of delay resulting from NEPA litigation, assuming that some would be involved in the export area, would come from the court issuing an injunction. This, I think, would be very unlikely in these cases where the court must balance the equities involved.

Mr. BARNES. Courts have a lot of experience in balancing equities. I share Mr. Scherr's view here. I don't think that there is any basis on which to conclude that the courts would uphold or enter injunctions that would significantly delay export activity unless there was a sound basis for it. And to insulate the activity and actions of an agency from that kind of court consideration, I think would be improper.

Senator HODGES. There appeared to be general agreement that NEPA applies to Federal activity abroad which affects the United States. Could you give some specific examples of major Federal activities taking place entirely in a foreign country for which you believe an environmental impact statement or some other environmental analysis should be prepared?

Mr. BARNES. We would be glad to submit a representative sample of those kinds of activities.

Senator HODGES. Would it also be possible that once we get specific information about the sorts of loans and sales that CEQ and perhaps others feel would come within the parameters of NEPA, to look at those and see which of those——

Mr. BARNES. We would be most happy to submit our views on that information, as well.

Senator HODGES. Thank you very much.

We will recess the hearing until a later time.

[Whereupon, at 12:40 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[The bill, S. 3077, statements, and other material supplied by today's witnesses follow:]

95TH CONGRESS
2D SESSION

S. 3077

[Report No. 95-844]

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 24), 1978

Mr. STEVENSON, from the Committee on Banking, Housing, and Urban Affairs, reported the following bill; which was read twice and ordered to be placed on the calendar

MAY 23 (legislative day, MAY 17), 1978

Referred to the Committee on Environment and Public Works by unanimous consent, to be reported not later than July 7, 1978

JUNE 19 (legislative day, MAY 17), 1978

Ordered that the Committee on Environment and Public Works have until July 24, 1978 to report

A BILL

To amend and extend the Export-Import Bank Act of 1945, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Export-Import Bank Act Amendments of 1978".

PRENOTIFICATION

SEC. 2. Section 2(b)(3) of the Export-Import Bank Act of 1945 is amended—

(1) by striking out "No" in the first sentence and inserting in lieu thereof "Except as provided by the fourth sentence of this paragraph, no";

31-565 O - 78 - 4

(2) by striking out "$60,000,000" in the first sentence and inserting in lieu thereof "$100,000,000"; and

(3) by adding at the end thereof the following: "If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least 10 days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the 25-day period referred to in the first sentence of this paragraph or upon the termination of a 35-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.".

FRACTIONAL CHARGES

SEC. 3. Section 2(c)(1) of the Export-Import Bank Act of 1945 is amended by striking out "$20,000,000,000" and inserting in lieu thereof "$25,000,000,000".

COUNTRY ELIGIBILITY

SEC. 4. (a) Section 2(b)(1)(B) of the Export-Import Bank Act of 1945 is amended by inserting a period after "and employment in the United States" and striking out the remainder of the paragraph.

(b) Section 2(b)(2) of such Act is repealed.

(c) Section 2(b)(5) of such Act is amended by striking out the last sentence thereof.

(d) Paragraphs (3) through (7) of section 2(b) of such Act are redesignated as paragraphs (2) through (6), respectively.

(e) Section 2 of such Act is amended by adding at the end thereof the following:

"(d)(1) The Bank in the exercise of its functions shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with the purchase or lease of any product or service by any foreign country, including any agency or national thereof, unless such country is on the effective list of eligible countries referred to in paragraph (2). No foreign country may be included in the list of eligible countries referred to in paragraph (2) unless the President determines that inclusion of such foreign country in the list is in the national interest. The President shall make a separate national interest determination with respect to each foreign country included on the list referred to in paragraph (2), and, in making such determination, shall take into account the country's relationship to the United States, its relationship to countries friendly and hostile to the United States, its internal stability and creditworthiness, and its policies and actions with respect to peaceful settlement of international and internal disputes,

nuclear proliferation, environmental protection, human rights, including the right to emigrate, and such other factors as he deems appropriate.

"(2) Within 60 days after the date of enactment of this subsection, the President shall transmit to the House of Representatives and to the Senate a list of countries which he has determined, in accordance with paragraph (1), to be eligible for participation in the Bank's programs under this Act. Notwithstanding any other provision of law, and except as otherwise provided in paragraph (8) for the Union of Soviet Socialist Republics, such list shall be the exclusive method for determining eligibility for participation in the Bank's programs under this Act and shall be effective for a period of 3 years beginning on the day on which it is deemed effective under the procedures set forth in paragraph (5). At least 60 days prior to the expiration of any such list, the President shall transmit to the House of Representatives and to the Senate a new list of countries determined, in accordance with paragraph (1), to be eligible for participation in the Bank's programs under this Act.

"(3) The President may at any time issue an Executive order (A) removing any country from the list referred to in paragraph (2), or (B) terminating the effectiveness of any such list, if, in light of the factors set forth in the third sentence of paragraph (1), he determines such action

to be in the national interest. Any such Executive order, together with a report setting forth the reasons therefor, shall be promptly transmitted to the House of Representatives and to the Senate.

"(4) The President may, at any time, add one or more countries to the list referred to in paragraph (2) if he makes a determination in accordance with paragraph (1) and transmits a report setting forth such determination, together with the reasons therefor, to the House of Representatives and to the Senate.

"(5) Any list referred to in paragraph (2) and any determination referred to in paragraph (4) shall become effective after the close of the 60-day period beginning on the day on which the list referred to in paragraph (2) or the report referred to in paragraph (4), whichever is the case, is delivered to the House of Representatives and to the Senate, unless during such 60-day period the two Houses adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution disapproving any such list referred to in paragraph (2), or any such determination referred to in paragraph (4), whichever is the case, under the procedures set forth in subsection (e).

"(6) Notwithstanding any other provision of this subsection, the President may disapprove any guarantee, insurance, extension of credit, or participation in an extension

of credit by the Bank prior to approval by the Bank if, in light of the factors set forth in the third sentence of paragraph (1), he finds that such transaction would not be in the national interest.

"(7) Notwithstanding any other provision of this subsection, (A) until the first list of eligible countries referred to in paragraph (2) has become effective, the Bank may guarantee, insure, or extend credit, or participate in an extension of credit with respect to any foreign country, including any agency or national thereof, to the extent such country was eligible to participate in the Bank's programs on the date of enactment of this subsection, and (B) if, at any time, a list referred to in paragraph (2) has expired and no new list has yet become effective, the Bank, during any such period, may guarantee, insure, or extend credit, or participate in an extension of credit with respect to any foreign country, including any agency or national thereof, included on the most recently expired list, except as the President, in light of the factors set forth in the third sentence of paragraph (1), may otherwise direct in the national interest.

"(8) Notwithstanding any other provision of this subsection, the procedures established in this section for determining a country's eligibility for participation in the Bank's programs under this Act shall not waive or supersede in any way the provisions of either section 402 or 409 of the Trade

Act of 1974 (88 Stat. 1978) as they apply in determining the eligibility of the Union of Soviet Socialist Republics for participation in the Bank's programs under this Act.

"(9) At the time the list referred to in paragraph (2) is submitted to the House of Representatives and the Senate, the President shall publish in the Federal Register a list of the countries he has determined, based on the factors set forth in the third sentence of paragraph (1), to be ineligible for inclusion in the list referred to in paragraph (2), specifying in the case of each such country the reason for such determination. The President may amend the list of ineligible countries from time to time, as he deems appropriate.

"(e) CONGRESSIONAL PROCEDURES.—

"(1) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by the Congress—

"(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in subsection (d) (5) and supersedes other rules only to the extent that it is inconsistent therewith; and

"(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"(2) DEFINITIONS.—For purposes of this subsection, the term 'resolution' means only—

"(A) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress does not approve the list of countries eligible for participation in the Export-Import Bank's programs submitted by the President on .', with the blank space being filled with the appropriate date; or

"(B) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress does not approve the determination of the President submitted on , with respect to .', with the first blank space being filled with the appropriate date and the second blank space being filled with the name of the country involved.

"(3) DISCHARGE OF COMMITTEES.—

"(A) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter.

"(B) A motion to discharge under subparagraph (A) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(4) FLOOR CONSIDERATION IN THE HOUSE.—

"(A) A motion in the House of Representatives

to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

"(C) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

"(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

"(E) Except to the extent specifically provided in the preceding provisions of this subsection,

consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

"(5) FLOOR CONSIDERATION IN THE SENATE.—

"(A) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(C) Debate in the Sénate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either

of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(D) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

"(6) SPECIAL RULE FOR CONCURRENT RESOLUTIONS.—In the case of a resolution described in paragraph (2), if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

"(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

"(B) the vote on final passage shall be on the resolution of the other House.

"(7) SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.—

"(A) Whenever, pursuant to subsection (d) a report is required to be transmitted to the Congress, copies of such report shall be delivered to both Houses of Congress on the same day and shall

be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

"(B) For the purpose of subsection (d), the 60-day period referred to in such subsection shall be computed by excluding the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die.".

ENVIRONMENTAL IMPACT

SEC. 5. Section 2 of the Export-Import Bank Act of 1945 (as amended by section 4) is amended by adding at the end thereof the following:

"(f) Except as otherwise provided by law enacted after the date of enactment of this subsection, no rule, regulation, or interpretation pursuant to the National Environmental Policy Act of 1969 applies to an activity of the Bank which does not have an environmental impact within the United States.".

AUTHORIZATION

SEC. 6. Section 7(a) of the Export-Import Bank Act of 1945 is amended by striking out "$25,000,000,000" and inserting in lieu thereof "$40,000,000,000".

EXTENSION OF AUTHORITY

SEC. 7. Section 8 of the Export-Import Bank Act of 1945 is amended by striking out "September 30, 1978" and inserting in lieu thereof "September 30, 1983".

ENERGY POLICY

SEC. 8. (a) Section 2(b)(1) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following:

"(C) Consistent with the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and section 119 of the Foreign Assistance Act of 1961, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.".

(b) Section 9(b) of such Act is amended by adding at the end thereof the following: "In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and

section 119 of the Foreign Assistance Act of 1961, as required by section 2(b)(1)(C) of this Act.".

EXPORT CREDIT COMPETITION

SEC. 9. (a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations.

STATEMENT
on
APPLICATION OF NEPA TO EXIMBANK
before the
SUBCOMMITTEE ON RESOURCE PROTECTION
of the
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Jack Carlson
June 20, 1978

I am Jack Carlson, Vice President and Chief Economist of the Chamber of Commerce of the United States on whose behalf I am appearing today.

The National Chamber appreciates the opportunity to comment on the extraterritorial extension of the National Environmental Policy Act (NEPA). The Chamber's membership--now consisting of over 70,000 business firms, large and small, over 2600 chambers of commerce in the United States and overseas, and 1200 trade and professional associations--is deeply concerned with this issue.

At a time when a maximum effort on U.S. export performance is a clear matter of national priority, the business community is increasingly concerned over the proliferation of regulatory and other measures, which, however well-intentioned, have the effect of inhibiting American exports. In testimony before other Congressional Committees and regulatory agencies, the Chamber consistently has identified areas in which the U.S. international economic interests are jeopardized by such measures--and proposed the appropriate corrective actions. Examples would include the anti-boycott provisions of the Export Administration Act Amendments of 1977, and the efforts to repeal Section 911 of the Internal Revenue Code and the Domestic International Sales Corporation

(DISC) provisions, and the proposal to tax currently the foreign earnings of subsidiaries of American firms before they are paid to U.S. shareholders as dividends.

In this statement we will summarize the major considerations behind our contention that the National Environmental Policy Act should not be applied to the activities of Export-Import Bank.

1. Responsibility of Congress to rule on application of NEPA.

Clearly, aspects of overseas projects that could have serious adverse environmental effects either in a regional or in a global context, should be avoided.

However, United States' efforts to impose its environmental standards on other countries would raise important foreign policy considerations that appear to be far beyond the intent of Congress in enacting NEPA. Congressional reference to this question, in the provisions of the Act, is in terms of "cooperation" and "support", not in terms of procedural requirements.

In dealing with international environmental problems, government agencies were, in effect, directed to adopt a diplomatic and cooperative approach with other countries--an approach that is consistent with Congress's responsibility to resolve through legislation any doubt or controversies that may develop with the Act. Certainly, there is no shortage of international consultative machinery through which the necessary cooperative effort could be facilitated.

It has been pointed out, in the debate over the extension of NEPA to Eximbank operations, that in 1974 Congress saw fit to enact separate statutes setting out the environmental responsibilities of the Overseas Private Investment Corporation (OPIC).

As stated in the Report of the House International Relations Committee, the purpose of the amendment was "not intended to impose U.S. standards on a foreign country or to challenge the sovereign right of a developing nation to determine how it wishes to reconcile its interests in jobs and income with its interests--and that of the world at large--in a clean environment. On the other hand, the committee intends that, where local environmental protection standards are lacking, OPIC should, consistent with the accomplishment of its overall purpose, encourage U.S. investors to take voluntary steps to lessen the potential adverse environmental effects of projects in which they have a controlling interest."

OPIC operations typically include a much deeper involvement in foreign development projects than Eximbank, which only provides credits and guarantees for U.S. exports. Here it can be concluded that Congressional intent respecting environmental guidelines for Eximbank would be, at least, along similarly voluntary and cooperative lines--and would, in that event, require specific statutory authority.

2. Federal agencies in disagreement over extraterritorial application of NEPA.

The effort by the Council on Environmental Quality (CEQ) and other groups to extend NEPA abroad has not gained wide support among the appropriate federal agencies. While properly agreeing that environmental considerations should be promoted in the conduct of international business, the general reaction among agencies has been to reject the proposals on grounds of practicality and foreign policy as well as legality.

In itself, the existence of such widespread disagreement within the federal government demonstrates the need for the most careful consideration of the CEQ proposal.

3. Practical effects of applying NEPA to Eximbank Operations.

In addition to the political considerations implicit in possible transgressions of national sovereignty, the proposed application of NEPA to the Eximbank raises some urgent practical problems. Chief among them is the general effect that NEPA regulations would have in terms of the time necessary to process specific Environmental Impact Statements (EIS). It is a fundamental fact of competitive bidding in international markets that speed in providing financing can be vital. Consequently, a major emphasis in Eximbank's efforts to improve its performance in recent years has been on reducing the response time on credit and guarantee applications. This also applies to the "preliminary commitment" process whereby an exporter can include "promised" Eximbank financing terms in his bid for a foreign order.

Eximbank's average response time for preliminary commitments for direct loans is now 40 days while less than three weeks is necessary to process the typical guarantee or insurance transactions.

Given the record to date of the time taken to prepare even routine environmental impact statements under NEPA it is difficult to accept assurances from CEQ that the record with Eximbank would be different. In fact, the time necessary to prepare an environmental impact statement for a foreign project would probably take longer than is the case for a domestic project--the needed facts, by definition, being more difficult to obtain.

The likelihood of delays in the Eximbank financing process caused by the preparation of environmental impact studies conflicts with the Bank's statutory mandate to provide U.S. exporters with competitive financing support. This reinforces the need for clear Congressional guidelines to ensure that the Bank's prime function is not eroded by the application of new regulations.

A further consideration in evaluating the adverse impact of NEPA regulations on Eximbank performance is the financial cost of environmental impact statements. For the type of Eximbank transaction that would require an EIS, typical expenses would run into the tens and hundreds of thousands of dollars. This would increase significantly the Bank's operating costs thereby reducing its competitive position vis-a-vis foreign export credit agencies.

As it is, considering the time and cost implications of possible Eximbank-NEPA requirements, the interest of foreign buyers in U.S. goods and services is more likely to be reduced than enhanced.

Eximbank is already unique among the government export credit agencies of our competitors in being saddled by statutory obligations to consider scarce materials, human rights, domestic employment effects and even the size of projects in regard to the extension of direct credits. Nevertheless, over the past five years, Eximbank has, on the average, assisted over $11 billion in exports per year. According to Bureau of Labor statistics data, this volume of exports represents conservatively some 440,000 jobs throughout the American economy.

However, despite this strong performance, the Eximbank's programs do not compare favorably with those available from our foreign competitors.

In 1976, the official export credit agencies in Japan authorized nearly 5 times the dollar volume of Eximbank authorizations; France about 3 times as much; Germany and the U.K. each 1 1/2 times Eximbank. Of the six major export financing countries, the U.S. supported the smallest proportion of its total exports that year--8%, compared with 49% for Japan and 40% for France. Although the terms of the financing are now often close to those of our competitors, many Eximbank users continue to be disappointed with the overall competitiveness of the Bank's programs given the greater flexibility enjoyed by other government's export finance agencies.

In view of this situation, it is difficult to arrive at any other conclusion but that the addition of NEPA requirements to the Bank's operations would reduce further the competitiveness of U.S. exporters. Above all, in addition to the adverse impact it would have on U.S. exports, there is nothing in the proposed NEPA process that would assure a cleaner environment in other countries.

To summarize, the application of NEPA to the Eximbank should be avoided both for practical, export-related considerations as well as for considerations of legality and the intent of Congress.

The National Chamber urges the subcommittee to adopt Senator Stevenson's amendments to S. 3077 (to extend and amend the Export-Import Bank Act) that would prevent the application

of NEPA to activities of the Eximbank. This amendment would provide Congress with the time to study all aspects of this complex issue prior to developing legislation in which environmental guidelines for the Bank would be clearly and realistically specified.

STATEMENT OF MARCUS A. ROWDEN
BEFORE THE
SUBCOMMITTEE ON RESOURCE PROTECTION,
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
JUNE 20, 1978

My name is Marcus A. Rowden, and I am a partner in the law firm of Fried, Frank, Harris, Shriver and Kampelman, in Washington, D.C. From January 1975 to June 1977, I was a Commissioner, and then Chairman of the U.S. Nuclear Regulatory Commission. I appear today as a member of the Committee on International Nuclear Policy of the Atomic Industrial Forum. The Forum is an international management association interested in the peaceful uses of nuclear energy. Its membership is comprised of over 600 domestic and foreign organizations, including electric utilities, manufacturers, architect-engineers, consulting firms, mining and milling companies, nuclear fuel service companies, financial institutions, labor organizations, universities, legal firms and others. The AIF provides a forum for its members to discuss current policy as well as technical issues and a mechanism for communicating resulting views to member organizations and to government decision-makers.

I appreciate the opportunity to appear before you today concerning S.3077, the Export-Import Bank Act Amendments of 1978. The Subcommittee's particular interest at this hearing is the proposed amendment to Section 2 of the Export-Import

Bank Act of 1945. This amendment, in substance, would preclude the application of the National Environmental Policy Act of 1969 (NEPA) to any activity of the Bank which does not have an environmental impact within the U.S., except as otherwise provided by legislation that might subsequently be enacted.

In addressing the question of extraterritorial application of NEPA, it is appropriate, I believe to pose three questions:

1. Would such an application of NEPA be wise from the standpoint of long accepted principles governing relationships among nations in the international community and from that of sound policy?

2. Would extraterritorial application be workable as a practical matter and, if imposed by unilateral U.S. action, what would be the consequences?

3. Is there a better way to encourage appropriate consideration of environmental values in activities within the international community?

The AIF's primary interest, of course, relates to the answers to these questions as respects international nuclear commerce, although the underlying considerations obviously have broader implications.

A. Relevant Legal and Policy Factors

This is not my first encounter with these questions or with efforts to resolve them in a responsible fashion. The extraterritorial applicability of NEPA to nuclear export transactions was formally considered and dealt with in an export licensing proceeding decided by the Nuclear Regulatory Commission in June of last year. (In the matter of Babcock and Wilcox, Docket No. 50-571, June 27, 1977; 5 NRC 1332). The NRC then held -- after considering the views of the Council on Environmental Quality and those of the Department of State, and applying its own analysis to the relevant considerations -- that NEPA does not require the preparation of an environmental impact statement to assess the impacts of a proposed nuclear reactor export (in that case, to the Federal Republic of Germany) on territory within the sovereign jurisdiction of a foreign government. The soundness of that interpretation of the law was supported, in the Commission's view, by an evaluation of pertinent policy considerations. The Commission's analysis and conclusions are, I believe, instructive for present purposes.

From its examination of the text of NEPA, the relevant legislative history and prior judicial decisions, the Commission determined that there was no legal requirement that it prepare a NEPA statement to assess the impact of a U.S. export on the local environment of a foreign nation. Moreover, from a

policy standpoint, the Commission pointed to an array of weighty factors which argued strongly against giving NEPA such extraterritorial applications.

Of primary significance, was the fundamental principle of international law, and of U.S. foreign policy, that nations have a basic right to conduct their internal affairs free from interference by other nations. Flowing from this, the Commission agreed with the State Department that any U.S. attempt to make assessments of environmental impacts within the territory of another country would have major, adverse political consequences. Most, if not all, governments could be expected to take the position:

1) that decisions primarily affecting the national environment are matters of sovereign responsibility;
2) that the degree and means of public participation in a nation's environmental decision-making process, involving a relationship between a government and its citizens, should not be influenced by the actions of other governments; and
3) that they, as national sovereigns, have full competence to make or obtain the analyses and judgments necessary to deal with domestic impacts within the framework of their political structures and social values.

Also noted was the practical consideration that complete assessment of impacts of a proposed export on a recipient state would require the collection of detailed information on local conditions (including population patterns, ecology, meteorology, and the like), examination of a facility's design and site and numerous other assessments traditionally conducted by a recipient government. This information (difficult to collect in any event) could not be obtained without the full cooperation of a foreign state.

Finally, the Commission underscored a fundamental consideration. Whatever value judgments we may make with regard to undertakings in our own country, it is not for a U.S. decision-maker to make policy determinations for another sovereign nation on the social balance to be struck (in that case, the balance between energy needs and environmental impacts) in connection with a proposed undertaking having impacts exclusively within that nation's borders.

B. The Workability and Consequences of Extraterritorial Application

As I have already indicated, it is the view of those responsible for the foreign policy of the United States that any attempt by this country to make assessments of environmental impacts within the territory of another nation would have major, adverse political consequences. These consequences, apart from impairing our political relationships with other countries,

cannot help but breed an antagonism which is hurtful to the international commerce of this country.

The underlying, somewhat patronizing, premise -- that these nations require the guidance and assistance of the United States in making domestic assessments and social judgments which they have traditionally believed to be their own prerogative -- is bound to give offense. (In the case to which I referred, the Department of State formally advised the NRC that the country in question "would not favor any efforts by the United States to superimpose a further environmental review on [its] internal nuclear reactor licensing process".)

Moreover, application of NEPA to such transactions would add yet another time-consuming procedural hurdle to the export process. And, where public participation is a possible element of the export licensing process -- as it can be in some cases for U.S. nuclear exports -- further uncertainty may be added by the prospect of adversary contest in this country and subsequent judicial review of the adequacy of the environmental analysis. Thus, predictability and reliability of supply -- which are essential supports of a viable position in the international marketplace -- would be undermined. Since we are competitors in that marketplace, even when extending credit terms (which are, after all, designed to promote U.S. commerce), this is a very relevant consideration in striking a cost-benefit balance on the proper scope of NEPA's reach.

There are, moreover, additional practical considerations as respects the role of the Export-Import Bank. It is my understanding that the Bank's capacity to provide financing guarantees within a short period, generally less than one month, has been a significant factor in its usefulness to U.S. exporters. Typically, the Bank's financing commitment is made a part of the U.S. exporter's bid package. These bids compete against those from foreign manufacturers whose bid package (unlike those of U.S. nuclear export manufacturers and fabricators) may contain a guarantee of nuclear export license issuance. The time between announcement and bid opening in a foreign nuclear project is often no more than six months. Even if it had a staff experienced in drafting environmental impact statements (which it does not), the Bank could not reasonably be counted on to complete and circulate its statement and issue a financing commitment in time to have that commitment included in a U.S. exporter's bid package. Therefore, were NEPA to be applied to the Bank's activities, U.S. nuclear exporters would, as a practical matter, have to compete against foreign bidders while disadvantaged in the competition both by the absence of a guarantee of export license issuance and a binding commitment for financing. Furthermore, even if the Bank were able to prepare an environmental impact statement in a timely fashion, the preparation of such statements is an expensive proposition. If the cost of such preparation were tacked on as a cost of financing -- which

would have to be the case in the absence of an appropriation of funds to cover such costs -- it would tend to defeat the very purpose of the Bank's existence, the providing of low-interest financing for purchasers of U.S. exports.

All of these factors carry special force in the area of nuclear exports, where recent legislation -- the Nuclear Non-Proliferation Act of 1978 -- has just put in place elaborate new procedures and criteria to govern the export from the United States of nuclear materials and facilities. Imposition of yet added unilateral requirements by this country -- with all of the accompanying procedural baggage -- can only further impede constructive U.S. participation in international nuclear trade, with significant adverse impacts not only for American commerce but also for the non-proliferation influence which our industry's participation in that commerce affords the United States.

C. Is There a Better Way?

Clearly, a departure from the present limits on NEPA's applicability is of such fundamental importance from the standpoint of its policy and practical implications that it should be undertaken only with the express authorization of the Congress.

There is, moreover, no need to pursue a course fraught with such adverse foreign relations and practical commercial consequences when other means -- less dramatic, but sounder and surer --

are available. Those means entail maximum use of voluntary cooperation. NEPA itself provides in Section 102(2)(F) that, to the extent "appropriate" and "consistent with the foreign policy of the United States", Federal agencies are to encourage and support cooperation with other nations designed to anticipate and deal with environmental problems.

In the area of nuclear activities, the Nuclear Regulatory Commission, among other agencies, participates in and actively supports a number of international initiatives designed to advance cooperation in environmental, health and safety matters. There are both bilateral arrangements with individual nations (encompassing some 15 countries) and multilateral undertakings through the auspices of organizations such as the International Atomic Energy Agency, and the Nuclear Energy Agency and International Energy Agency of the OECD. In 1976, for example, the IAEA sent nuclear plant safety missions to several countries, including Bangladesh, Turkey, Indonesia, Yugoslavia, and the Republic of Korea, to give assistance to local officials in making determinations regarding the siting and safety of proposed nuclear facilities.

The bilateral and multilateral arrangements are designed to afford practical assistance in developing and maintaining effective nuclear safety programs in the international community through exchanges of safety information and regulatory experience, training of personnel, provision of experts, and development of

internationally accepted safety standards and codes. Additionally, Section 407 of the recently-enacted Nuclear Non-Proliferation Act of 1978 directs the President to seek to provide, in future nuclear cooperative agreements, for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

Pursuit of such initiatives, and the voluntary cooperation resulting from them, provide the most sensible -- and fruitful -- means for dealing with shared environmental concerns in the international community. That is the course we ought to continue to follow.

I appreciate the opportunity afforded to present these views to the Subcommittee and would be pleased to respond to any questions which the members have.

APPENDICES TO THE TESTIMONY OF THE ASSOCIATED GENERAL CONTRACTORS

APPENDIX I

COMPETITIVE PROBLEMS TO THE U.S. CONSTRUCTION INDUSTRY RESULTANT FROM INTERNATIONAL APPLICATION OF NEPA

The attached comments outline the adverse competitive effects which are likely to accrue to the U.S. construction industry as a result of the international application of NEPA. We will illustrate these problems by the hypothetical application of such standards to the typical forms of contractor and U.S. government agency interaction. It is the firm belief of AGC that environmental impact considerations, such as those prescribed under the National Environmental Policy Act, have not been carried out up to this point by those agencies of government with which contractors conducting foreign work normally maintain a relationship. Further, AGC rejects any interpretation which makes the assertion that:

> International NEPA compliance standards have always applied to the actions of government agencies abroad and have, up to this point in time, not been considered a problem, and therefore no problems are likely to result from any new enforcement regulations.

This is an irresponsible and illogical evaluation. The fact that particular agencies of government have conducted in-house self-administrated environmental assessments on foreign projects, without experiencing any undue adverse effects, in no way supports the contention that a similar experience will result from the application of NEPA to the same activities. Such an interpretation is akin to the fallacious assumption which states: one glass of wine is not harmful, therefore, no ill effects will result in the consumption of an entire gallon of wine.

The public review procedures outlined in Section 1500.9 of the act, and the judicial review of the alternative actions taken by administrators, for example, constitute major omissions from any international environmental assessment procedures presently carried out by agencies of government.

Efforts to hurriedly tailor NEPA standards to the international sector are most assuredly going to be challenged in the courts by environmental groups on interpretive grounds. This would result in the foreign activities of government and U.S. business interests being held hostage to case law. It is our opinion that the issue at hand embodies a volital set of potentially adverse consequences for not only the U.S. construction industry, but the U.S. public interest as well. Considerations of applying NEPA restrictions to international trade are, in fact, paradoxical, in light of the increased awareness on the part of the Carter Administration and the public concerning the need to define new policies which will serve to increase our nation's exports and retire our huge trade deficits. Our present undesirable trade posture would more readily support a moratorium on international NEPA application, rather than its sweeping application and enforcement.

I. POLITICAL RISK INSURANCE

U.S. contractors working abroad can look to no source other than the Export-Import Bank for competitively priced political risk insurance (formerly offered by the Overseas Private Investment Corporation (OPIC), now being transferred to Eximbank as of July 1, 1978), to protect their investment during their tenure in a foreign country. Revolutions and insurrection occur with some degree of frequency in the developing world, and oftentimes result in the nationalization of a contractor's in-country assets. Contractors are able to obtain coverage from Eximbank for damage to, or loss of, their equipment and camp facilities, which result from acts of war or insurrection. Further, Eximbank insurance protects the U.S. contractor from the non-payment of arbitral awards by a foreign government or the refusal of same to arbitrate. In cases where a contractor is working for a private owner, coverage is provided against a breakdown of the dispute-resolving mechanism due to host country government interference. There is also additional protection provided against local currency inconvertability, in cases where a contractor is not allowed to convert his receipts to U.S. currency. Lloyds of London offers similar coverage in the private insurance market at higher premium costs, and does not write war coverage.

Contractors utilize political risk insurance as a competitive bidding tool. If a contractor can cover the risks to his assets, plant, equipment and camp facilities in bidding a particular job at a recognized premium rate, his bid is lower than one in which he is forced to self-insure his assets by including a significant percentage of replacement

costs in his bid, to protect against their loss.

EXAMPLE: $200 million project
($20 million asset risk to contractor)

BID CONTINGENCY FOR POLITICAL RISK

1.	Utilizing Eximbank political risk insurance @ 1.5% premium rate	$ 300,000
2.	Lloyds of London (no war risk) @ approx. 10%	$2,000,000
3.	Self insurance @ approx. 50%	$10,000,000

FINAL BIDS

1. $200,300,000
2. $202,000,000
3. $210,000,000

Contractors have utilized such insurance in the preparation of bids for over 500 construction projects, with an aggergate contract volume of approximately $10 billion. A project award to a U.S. contractor results in approximately 40% of total contract volume being expended within the United States for goods and services. Construction activity abroad supports U.S. jobs and improves our balance of payments deficit. The contractors of Europe and Asia are eligible for the same type of insurance from their governments, and if U.S. contractors are to compete effectively, Eximbank coverage must continue to be made available in a timely manner.

It is the opinion of the construction industry that, if Eximbank is required to prepare Environmental Impact Statements (EIS) on each individual project before it will issue a letter of intent to a contractor for insurance, the insurance will be rendered worthless. A contractor must be assured of Eximbank coverage within a period of two to three weeks if he is to respond effectively to construction opportunities around the world. If Eximbank is forced to engage in a lengthy EIS process (which averages 25-30 months), the project in question will have already been awarded. It is likely that, if U.S. contractors are forced to bid the project without the benefit of the insurance, their bids will not be competitive with those of the European and Asian firms utilizing such insurance.

II. CREDITS AND GUARANTEES

A large percentage of international tenders are only partially funded at the time of notification to bid. An award to a contractor involves the allocation of the additional funding required to finance the project. For example, the construction of a "dam and powerhouse" require the purchase of significant amounts of costly capital equipment, such as hydro-turbine generators. The foreign government owner expects the contractors bidding the work to facilitate competitive terms of purchase for such equipment. A U.S. contractor, for example, may select Westinghouse as the supplier for the generators for the project. Together, they would seek a letter of commitment from Eximbank to either grant a credit (loan) to the foreign government owner to finance the purchase of the generators, or a guarantee of payment to a commercial bank willing to finance the purchase. Contractors of Europe and Asia utilize

their respective export credit agencies in much the same way and "credit competitiveness" is oftentimes the key element of a successful bid.

Notices to tender rarely exceed 90 days and the U.S. contractor and Westinghouse would reasonably be expected to approach Eximbank approximately half way through the process. However, this initial contact may be delayed substantially if the contractor failed to receive the first notification to bid. If the Eximbank is forced to conduct an environmental impact statement before issuing the letter of commitment, the delay will undoubtedly jeopordize the bidding position of the U.S. contractor, in that he will be unable to go forward with his bid in a timely manner. It is important to note that the preparation of a bid for a project abroad is a costly procedure, and those costs are only recoverable if an award is obtained.

III. PROJECTS FINANCED BY FOREIGN GOVERNMENTS OR INTERNATIONAL FINANCIAL INSTITUTIONS

In many cases, particularly in the Middle East, the foreign owner will undertake the financing of a construction project from internal sources. U.S. contractors bidding such work will oftentimes determine that a political risk insurance coverage from Eximbank is necessary, in order to competitively bid the project. If the Bank were able to determine in a timely manner that a project is not consistent with its set of international NEPA compliance standards and refused to issue the insurance, the U.S. contractor's decision to bid the work will either be discouraged or his bid will be rendered uncompetitive. (It is again important to recognize that the bidding process to this point has

already cost the contractor a substantial amount of money). The project in question, however, will be carried out by the foreign government owner regardless of the environmental considerations and non-participation by the U.S. government.

It is doubtful that a project being financed by an international financial institution, such as the World Bank, would be halted or redesigned due to the preparation of an EIS by the U.S. Treasury. The U.S. does not hold the majority subscription in the World Bank, and it is doubtful that the environmental objections of the United States would halt the funding of a particular project.

U.S. giveaway programs such as AID grants for construction projects are perhaps the only incidence wherein the preparation of an EIS by an agency of government would be an efficient and cost effective exercise. Recipients of AID grants would be compelled to await and adhere to the findings of an EIS. However, owners of internally financed projects, or projects funded by international financial institutions, would undoubtedly proceed over any environmental objections raised by an agency of the U.S. government.

IV. INTERNATIONAL JOINT VENTURES

In the bidding of large civil works or industrial projects, U.S. contractors, for competitive reasons, enter into joint venture relationships with European or Asian contractors. Such combinations are contractual

agreements, to which the parties are legally bound. If a U.S. contractor is unable to obtain political risk insurance, or an Eximbank credit or guarantee for a project because of environmental objections raised by the Bank, it is quite possible that he may be unable, or unwilling, to proceed with his bid. The U.S. contractor may then be in breech of contract with his joint venture partner and may be sued for damages. U.S. contractors will, in the last case, be identified as very undesirable joint venture partners.

V. SHIFTING OF THE ENVIRONMENTAL RESPONSIBILITY TO THE CONTRACTOR

One possible suggestion might be that the contractor be required, during the process of his bid preparation, to prepare an EIS for the benefit of the government agency through which he is dealing. This suggestion is not acceptable to the construction industry, in that it raises serious questions of conflict of interest. Further, it would increase the contractor's overall liability concerning future environmental effects of the completed project. Moreover, performance bonding would be virtually unavailable to U.S. contractors if their liability extended to future environmental effects of their projects. The U.S. construction industry is not equipped or prepared to shoulder any environmental responsibility legislated to U.S. government agencies and rejects any such notions as unwarranted and unworkable.

VI. INTERNATIONAL BUSINESS DEVELOPMENT ACTIVITIES OF THE DEPARTMENTS OF STATE AND COMMERCE

Oftentimes, U.S. contractors become aware of construction opportunities in foreign countries through the commercial offices of U.S. embassies and the Major Projects Division of the U.S. Department of Commerce. If the Departments of State and Commerce are required to prepare an EIS on proposed projects before making public announcements, it is likely that the bidding process for such projects will have already been completed. EARLY NOTIFICATION OF A PROJECT IS ESSENTIAL TO THE PREPARATION OF A COMPETITIVE BID.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040
LAURENCE F. ROONEY, *President* PAUL N. HOWARD, JR., *Senior Vice President* IVAL R. CIANCHETTE, *Vice President*
JOSEPH A. SETA, *Treasurer* JAMES M. SPROUSE, *Executive Vice President*

APPENDIX II

GOVERNMENT AGENCY COMMENTS

REGARDING

THE INTERNATIONAL APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

June 20, 1978

April 12, 1978

Freedom of Information Officer
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

The Associated General Contractors of America hereby requests the Nuclear Regulatory Commission's response to the Council on Environmental Quality's memorandum dated January 11, 1978, which pertains to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

Sincerely,

Geo. E. Stockton
Assistant Director
International Construction
Division

GES:pp

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MAY 8 1978

Mr. George E. Stockton
The Associated General Contractors
of America
1957 E Street, N.W.
Washington, D.C. 20006

IN RESPONSE REFER
TO FOIA-78-99

Dear Mr. Stockton:

This is in response to your letter dated April 12, 1978, in which you requested, pursuant to the Freedom of Information Act, a copy of the NRC response to the Council on Environmental Quality's (CEQ) January 11, 1978 memorandum pertaining to the application of the National Environmental Policy Act (NEPA) to agency activities affecting the environment in foreign nations and the global commons. Your letter was received by the Office of Administration on April 17, 1978.

The NRC has not formally responded to the CEQ's January 11 memorandum. However, Commissioner Kennedy wished to present his own views on the issue and originated a separate response to the CEQ. The documents regarding his views are listed on the attachment and are enclosed.

Sincerely,

J. M. Felton, Director
Division of Rules & Records
Office of Administration

Enclosures: As stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
COMMISSIONER

March 2, 1978

The Honorable Charles H. Warren
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Chairman:

I appreciate this opportunity to comment on the regulations proposed by the Council on Environmental Quality with respect to NEPA's application to "agency activities affecting the environment in foreign nations and the global commons." The Nuclear Regulatory Commission takes its NEPA responsibilities extremely seriously, and is fully committed to fulfilling legal obligations mandated by NEPA. Accordingly, the Commission has recognized the obligation that environmental impact statements be prepared for major actions outside U.S. territory which have significant impacts on the U.S. and/or global environment.

I do not believe, however, that NEPA mandates consideration of the impacts of such activities on the environment of foreign nations. Nor can regulations for the implementation of NEPA require what NEPA does not itself require. To place agencies of the United States in the position of judging -- in accordance with the laws and policies of this country -- the acceptability of the environmental impacts on another country of a project sought by it would be contrary to sound law and policy. As the Supreme Court said in United States v. Belmont:

> (O)ur Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens. 301 U.S. 324, 332 (1937).

With respect to the claim that Congress, in passing NEPA, intended the evaluation of foreign impacts, the Supreme Court's observation in Johnson v. Eisentrager is apposite:

> Such extraterritorial application of organic law would have been so significant an innovation in the practice of governments that, if intended or apprehended, it could scarcely have failed to excite contemporary comment. Not one word can be cited. 339 U.S. 763, 784 (1950).

The Nuclear Regulatory Commission considered the extraterritorial reach of NEPA in a decision issued in June, 1977. In the Matter of Babcock and Wilcox (Burgeraktion), 5 NRC 1332. In that case, which arose from an export licensing proceeding for shipment of a nuclear reactor to the Federal Republic of Germany, the petitioners asserted that NEPA required the Commission to assess site-specific impacts on the German environment resulting from the reactor's operation.

In concluding that NEPA did not require preparation of an environmental impact statement to consider the site specific impacts of the reactor export on territory within the sovereign jurisdiction of a foreign government, the Commission carefully considered the terms and the legislative history of the statute. The Commission found nothing in the statute itself or its legislative history to suggest that Section 102(2)(c) of NEPA was intended to apply to impacts within a foreign country. It observed that the only section which dealt explicitly with the question of international application is Section 102(2)(f), which is characterized as "revealingly limited in scope:"

> (t)o the fullest extent possible ... (2) all agencies of the Federal government shall ... (F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment. (Emphasis supplied.) 5 NRC 1332, 1338

The Commission considered the references to the "human environment" elsewhere in the statute and legislative history, and concluded that they reflected

> a global or worldwide outlook, one concerned for the global commons for which the United States shares responsibility with all other nations, not an intent to become involved in matters primarily or exclusively of interest only to a particular foreign sovereign. 5 NRC 1332, 1339.

The Commission's decision -- both what it did and did not resolve -- and its rationale were aptly summarized by Commissioner Gilinsky, writing in concurrence:

> (T)oday's ruling rejects Petitioner's contentions pertaining to assessment of site-specific environmental impacts within the Federal Republic of Germany as lying outside the scope of our responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. Section 4321 et seq. On the *other* hand, however, it recognizes that NEPA does prescribe consideration of the non-U.S. impacts of nuclear export licensing decisions insofar as these may affect the global environment.
>
> Our view as to the breadth of our responsibilities under NEPA in the present context is based predominantly on NEPA's language and legislative history, interpreted in light of general principles of international law, the practical difficulties of preparing impact statements on foreign sites, and the advice received from the Department of State on this question. I believe this record as to NEPA's international reach reveals that the statute manifests both a concern for the foreign environmental consequences of United States actions and a comparable sensitivity to intruding on the prerogatives of foreign nations.
>
> * * *
>
> I believe we have implicitly recognized that NEPA's prescription regarding assessment of global impacts is a flexible one whose precise contours may vary significantly depending on the circumstances in which it is applied.
>
> If one accepts that NEPA mandates a flexible approach to the assessment of non-U.S. impacts, the Darien Gap and Alaska Pipeline cases do not necessarily conflict with the result reached here .... (a)lthough owing to judicial silence one can only speculate as to the courts' reasoning in these cases.
>
> * * *

> What the Commission has not decided today ... (is) precisely what matters must be considered in examining the "global" impacts of U.S. nuclear exports once site-specific impacts within foreign countries have been excluded. 5 NRC 1332 at 1354-56.

I believe that the considerations of law and policy described in Burgeraktion remain valid, and accordingly do not concur in the proposed regulations insofar as they would require the assessment of site-specific foreign impacts.1/

At the same time that I oppose adoption of any reference in CEQ's proposed regulations to preparation of environmental assessments for impacts occurring in the territory of foreign nations, I offer the following additional comments on specific provisions of the draft. I note that the proposed regulations include several factors (such as problems of international relations and commercial considerations) which would allow flexibility in the degree of detail of foreign environmental statements, and in whether and for what period such statements would be subject to public comment. However, the regulations fail to recognize that these factors might also argue forcefully against preparation of any EIS. I believe that the option of not preparing a statement is an essential feature of any regulations speaking to the issue of NEPA's foreign reach.

1/ The Burgeraktion opinion and concurrence discuss the Wilderness Society and Sierra Club cases which CEQ in its Memorandum to Heads of Agencies of January 19, 1978, cites in support of its view of NEPA's international application. The Commission drew different conclusions from those cases. See 5 NRC 1332 at 1341-3, 1355. The two other court cases cited in that memorandum were settled by agreement of the parties. The courts in those cases did not address the question of NEPA's extraterritorial reach and therefore, they establish no legal precedent on the issue. With respect to AID's experience, also cited in the January 19 memo, it is significant that AID determined in 1976 that it would prepare "analyses" of its programs conducted abroad, not Section 102(2)(C) impact statements, reviewable as such in the courts.

The regulations also provide that agency implementing procedures must "ensure consideration in foreign environmental statements of ... activities which are unlawful or strictly regulated in the United States in order to protect public health or safety." This provision fails to reflect that a strictly regulated activity in the United States -- such as the operation of nuclear power plants -- may also be strictly regulated in the recipient nation, in accordance with that nation's laws, policies, and national priorities.

Finally, I would note that these provisions need to be considered in the context of the complete package of proposed NEPA regulations circulated on December 12, 1977. In my letter of February 7, 1978, I forwarded views of NRC's General Counsel in which I concurred as to those regulations. Those comments identified several problems, the most significant of which are:

1. Since several provisions in the regulations, as drafted, would have a major effect on the substance of agency decisionmaking, such provisions would appear to exceed CEQ's mandate from the President to develop "procedural" regulations.

2. There are strong legal and policy arguments that the regulations would not bind an independent regulatory agency, such as the Nuclear Regulatory Commission.

3. The regulations would appear to overturn much NEPA case law, as developed by the Supreme Court and other federal courts, and thus have the potential to cause extensive litigation and consequent delay, as the courts are called upon to assess the legality and meaning of the new requirements.

I reiterate my view that the undesirable effects of the proposed regulations on NEPA's international application would be greatly compounded if the broader package of NEPA regulations were adopted in the form in which they were originally circulated.

Sincerely,

Richard T. Kennedy
Commissioner

31-565 O - 78 - 7

cc: Chairman Hendrie
Commissioner Gilinsky
Commissioner Bradford
J. Nelson, OGC
K. Pedersen, OPE
S. Chilk, SECY
L. Gossick, EDO
H. Shapar, ELD

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
COMMISSIONER

April 28, 1978

The Honorable Charles H. Warren
Chairman
Council on Environmental Quality
Executive Office of the President
722 Jackson Place, NW
Washington, D.C. 20006

Dear Mr. Chairman:

On February 7, 1978, I forwarded to you detailed comments prepared by the Office of the General Counsel for the Nuclear Regulatory Commission in which I concurred together with a short statement of my own views pertaining to Council on Environmental Quality's draft regulations entitled, "Draft Regulations To Implement The National Environmental Policy Act."

Though I received no acknowledgement of their receipt, I had no reason to believe that the comments were not received and found by the Council to be of some value. As the NRC is or could be directly and significantly affected by the Council's draft regulations, I thought it important that you have at least some viewpoint from this agency on both the policy and technical level as to the draft regulations even though my colleagues and I had not yet been able to reach a concensus view. I hoped that these views might be helpful to you and to your staff in what I understood would be an important effort at further improvement of the draft.

Returning only today from a short trip out of Washington, I learned that a second draft in fact was prepared by the CEQ. You can imagine my consternation in noting that despite my earlier effort to be of help to you, the NRC and its staff, and indeed even my own office, were omitted (inadvertantly I am sure) from the distribution list seeking comments on the second draft.

In these unfortunate circumstances, we have been unable to provide the sort of advice and counsel in this interagency effort which we were certain you would seek and would welcome. Delayed though they may be, you can be sure that I will be registering my thoughts with you as promptly as the busy schedule here will permit, even though I will be starting the effort with a two-week handicap.

Warm regards.

Sincerely,

Richard T. Kennedy
Commissioner

cc: The Honorable Gus Speth, CEQ
Nicholas Yost, Esq., General Counsel

April 14, 1978

Freedom of Information Officer
Corps of Engineers
ATTN: DAEN-CCU
Department of the Army
Washington, D.C. 20314

Dear Sir:

The Associated General Contractors of America hereby requests the U.S. Army Corps of Engineer's response to the Council on Environmental Quality's memorandum dated January 11, 1978, which pertains to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

Sincerely,

Geo. E. Stockton
Assistant Director
International Construction
Division

GES:pp

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:
DAEN-CCH

28 April 1978

Mr. George E. Stockton
Assistant Director
The Associated General Contractors
of America
1957 E Street, N. W.
Washington, D. C. 20006

Dear Mr. Stockton:

This is in response to your Freedom of Information Act request of 14 April 1978, in which you requested the U. S. Army Corps of Engineers' response to "the Council on Environmental Quality's (CEQ) memorandum" dated January 11, 1978, pertaining to the application of the National Environmental Policy Act (NEPA) to activities affecting the environment in foreign nations and the global commons.

CEQ directed the Acting Assistant Secretary of the Army (Civil Works) to provide comments on Draft Revised CEQ Guidelines implementing NEPA. Two sections of these proposed guidelines deal with the overseas jurisdiction of NEPA. The Corps of Engineers was not requested to furnish comments to CEQ and did not do so.

Therefore, I suggest you forward your Freedom of Information Act request directly to: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, D. C. 20310.

Sincerely,

WILLIAM N. HEDEMAN, JR.
Counsel for Environmental Programs

1 Incl (quad)
As stated

(50). Section 1508.13 - Change the second sentence as follows: "The human environment is not confined to the geographical borders of the United States and includes United States territories and possessions." CEQ has taken the position in the past that NEPA is applicable worldwide and that formal environmental impact statements (together with the attendant procedural requirments) are required for major Federal actions significantly affecting the quality of the human environment outside the United States, its territories or possessions. As a matter of statutory construction, it is our view that formal environmental impact statements (EISs) are only required where there is a significant impact on the quality of the human environment in the United States, and its territories and possessions. The changes to Section 1508.13 and to Section 1508.16 are designed to be consistent with this view.

✓51. Section 1508.16.

a. Delete the first sentence and insert the following:" Major Federal action includes an action the effects of which may be major and which are subject to Federal control and responsibility. Multinational actions, such as NATO, where the United States agency involved does not have decision making authority are not Federal actions for the purpose of the National Environmental Policy Act. For major Federal actions significantly affecting the quality of the human environment outside the United States, its territories and possessions, agencies are encouraged to fulfill NEPA goals to the extent practicable and consistent with United States foreign and military relations." The NATO exception is currently contained in OSD regulations and should be retained. See the discussion on Section 1508.13 above.

April 11, 1978

Freedom of Information Officer
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Sir:

The Associated General Contractors of America hereby requests the Department of Transportation's response to the Council On Environmental Quality's memorandum dated January 11, 1978, which pertains to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

Sincerely,

Geo. E. Stockton
Assistant Director
International Construction
Division

GES:pp

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 21 1978

Mr. George E. Stockton
Assistant Director
International Construction Division
The Associated General Contractors of America
1957 E Street, N.W.
Washington, D.C. 20006

Dear Mr. Stockton:

The enclosed records are furnished in response to your request of April 11, 1978, invoking the Freedom of Information Act. You requested the Department's response to the Council on Environmental Quality's memorandum pertaining to the international application of the National Environmental Protection Act.

Sincerely,

Robert A. Holland

Robert A. Holland
Deputy Director
Office of Public and Consumer Affairs

Enclosures

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590
2/9/78

Honorable Charles H. Warren
Chairman
Council on Environmental Quality
722 Jackson Place, N. W.
Washington, D. C. 20006

Dear Mr. Warren:

This is in reply to your requests dated January 11 and January 19, 1978, for our comments on the application of the National Environmental Policy Act to federal activities abroad. The proposal would extend the proposed regulations for the preparation of environmental impact statements (EISs) to programs and projects outside the territorial limits of the United States or its possessions. The suggested regulatory language has been reviewed by the concerned operating administrations of this Department.

There are relatively few activities of the Department of Transportation to which the proposed regulation would apply. We have, however, been subjected to litigation involving this question, and thus have some expertise on it. We are concerned that the extension of all EIS requirements to foreign actions will pose special problems that cannot easily be dealt with, and we suggest that CEQ develop separate procedures for such actions. Our detailed comments are enclosed.

We appreciate the opportunity to review and comment on the proposed regulation.

Sincerely,

Original signed by

Brock Adams

Enclosure

Enclosure

Comments of Department of Transportation
on Proposed CEQ Regulation Provisions Affecting
Federal Activities Abroad

1. We have no objection to requiring full compliance with the National Environmental Policy Act (NEPA) for those categories of actions identified in proposed section 1506.13(a). It would, however, be helpful if the term "global commons" were clearly defined.

2. We suggest that CEQ consider completely separating the question of "Foreign Environmental Statements" (sections 1506.13(b) and 1508.__) from the overall regulation on EIS processing. A separate regulation should specify those procedures which must be followed for foreign actions and permit flexibility in applying all other procedures. For example, a provision should be added to section 1508(b)(1) to allow for very limited distribution of EISs if an action does not affect the United States or its territories.

Other portions of the CEQ regulations make clear that the NEPA process imposes significant procedural and substantive constraints on federal actions, including the conditioning of approval on certain minimization measures, extensive commenting periods, and full public disclosure, which pose special problems that cannot be easily dealt with on foreign projects. The CEQ proposal will effectively require agencies and the courts to integrate proposed sections 1506.13(b) and 1508 into the remaining portions of the proposed CEQ regulations. This would place agencies in the position of having to either comply fully with the regulations or justify any actions taken which represent less than full compliance with all of proposed Part 1500, a task which could be as onerous as full compliance.

3. As a less satisfactory alternative, a list of those sections of the proposed CEQ regulations which are not applicable to foreign environmental statements should be included in section 1506.13(b). For example, we do not believe that section 1504 would be appropriate for actions in foreign countries.

4. The regulation should recognize different categories of actions with potential international impacts, and permit processing appropriate for the respective categories -- i.e., (a) treaties and agreements, (b) regulations, (c) site specific projects carried out by U.S. agencies, and (d) site specific projects carried out by or cooperatively with foreign governments.

April 11, 1978

Freedom of Information Officer
U.S. Department of the Treasury
15th & Pennsylvania Avenues, N.W.
Washington, D.C. 20220

Dear Sir:

The Associated General Contractors of America hereby requests the Department of Treasury's response to the Council on Environmental Quality's memorandum dated January 11, 1978, which pertains to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

Sincerely,

Geo. E. Stockton
Assistant Director
International Construction
Division

GES:pp

OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

April 17, 1978

Re: 78-04-16

Dear Mr. Stockton:

This is to inform you that the date of receipt, in accordance with 31 Code of Federal Regulations 1.5(e) of the Freedom of Information request submitted by you is April 17, 1978.

A response to your request will be dispatched by April 26, 1978, unless such limit is extended as provided in 31 CFR 1.5(g) or 1.5(i) (40 Federal Register 7439), February 20, 1975.

Further inquiries concerning this request should be directed as follow:

Freedom of Information Request, OS
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

and should make reference to the number indicated above.

Sincerely yours,

Floyd Sandlin

Floyd Sandlin
Acting Disclosure Officer

Mr. George E. Stockton
The Associated General Contractors of America
1957 E. Street, N.W.
Washington, D.C. 20006

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 26, 1978

Dear Mr. Stockton:

This is in response to your request of the Freedom of Information Officer for the Department of Treasury's response to the Council on Environmental Quality's memorandum dated January 11, 1978. The Treasury Department has not responded to such a memorandum.

With regard to Treasury's views on the applicability of the National Environmental Policy Act to agencies' activities affecting the environment in foreign nations and the global commons, this Department has commented. We have enclosed a copy of Treasury's comments concerning draft regulations on the implementation of the National Environmental Policy Act dated February 10, 1978. No additional comments on the extraterritorial application of NEPA have been sent to the Council on Environmental Quality.

Sincerely,

James M Wright

James M. Wright
Acting Assistant Director
(Environmental Programs)
Office of Administrative Programs

Mr. George E. Stockton
The Associated General Contractors
of America
1957 E Street, N.W.
Washington, D.C. 20006

Enclosure

cc: Mr. Sandlin

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

Dear Mr. Warren:

The enclosed comments are in response to your letter of December 12, 1977, to Secretary Blumenthal concerning draft regulations on the implementation of the National Environmental Policy Act (NEPA). Treasury will be commenting separately on the extraterritorial application of NEPA.

Any questions on the enclosed comments may be addressed to Mr. Robert Fredlund, Director of Administrative Programs at 566-2881 or to his Assistant Director (Environmental Programs), Mr. Anthony DiSilvestre at 376-0289. We appreciate the opportunity to review and comment on the draft regulations.

Sincerely,

(sgd) William J. Beckham, Jr.

William J. Beckham, Jr.
Assistant Secretary
(Administration)

Mr. Charles Warren, Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20008

Enclosure

cc: Mr. Haber
Mr. Munk

GENERAL COMMENTS

Our general comments concern the substantive nature of these regulations and their failure to achieve the objectives of reducing paperwork and reducing delay.

Executive Order 11991, May 24, 1977, specifically authorizes CEQ to issue regulations implementing the procedural provisions of NEPA. The parameters of that mandate are clear: "to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives." As such it is incumbent upon CEQ to avoid writing regulations which have a substantive effect on NEPA and to carefully draft its implementing regulations so that procedures themselves do not take on the aura of substance. This is particularly important in preventing NEPA plaintiffs from having an additional cause of action under the regulations, i.e. for failure to comply with the regulations.

It is the opinion of the Department that CEQ's regulations should not address themselves to the extraterritorial reach of NEPA. This Department is addressing itself to that question separately. Moreover, because the question of extraterritorial application of NEPA has not yet been resolved, the draft regulations should state specifically that they are not intended to apply with respect to agency actions whose sole environmental impact is in a foreign country or in the global commons.

Although we have identified some specific examples of drafting problems, it is suggested that the draft regulations be reviewed for the purpose of eliminating all language which is substantive in nature.

Reducing paperwork is a stated objective of these regulations yet numerous sections create additional paperwork such as the treatment of alternatives, use of cost benefit analysis, content of environmental assessments, public notice, and referrals to the Council on Environmental Quality. If excessive paperwork was a problem under the previous guidelines, it will be more of a problem unless these regulations are modified.

Reducing delay is another stated objective of the proposed regulation and yet numerous additional requirements, not contained in the present CEQ guidelines are called for:

in the proposed regulations. Scoping meetings, pre-decision referrals and documentation of agency decision making would lengthen the EIS process.

One further general comment concerns this Department's Office of the Comptroller of the Currency (although there may well be other agencies within the Executive branch which will be faced with the same kind of problem). Specifically, the requirement for preparing environmental assessments at Sections 1501.3 and 1506.5, taken with the definition of environmental assessments at Section 1508.9 may place an onerous burden on the Office of the Comptroller of the Currency because of its licensing activities in connection with national banks. The requirement that an agency prepare all environmental documents might present an extraordinarily heavy burden for Federal agencies that license thousands of actions rather than perform them directly.

We would urge that the Comptroller's decisions on the application for licenses form a "categorical exclusion" within the meaning of Section 1508.4.

The regulations should be modified to allow the determination to prepare environmental assessments to be based on information supplied by the applicants and verified by the agency. In effect the environmental assessment would be written by the applicant, and, as applicable, be incorporated into the agency's finding of no significance. This process appears to satisfy the letter and spirit of the National Environmental Policy Act of 1969 and presents a reasonable alternative to the higher level of Federal involvement required in the proposed regulations.

31-565 O - 78 - 8

SPECIFIC COMMENTS

Part 1500: It is difficult to understand why six sections and over four pages are required to define the proposed policy and mandate of the regulations. Section 1501.1 of the part dealing with NEPA and agency planning goes over much of the same ground. For a better and clearer understanding of the regulations, it is believed that the part which deals with the terminology and definitions used in the regulations should immediately follow if not be included within the purpose and policy portion of the regulations.

Sec. 1500.1, Paragraph 1: "and advance the goals of the Act" is substantive in nature. The purpose of the regulations is to tell agencies how to procedurally comply with NEPA, not how to advance the goals of NEPA.

Sec. 1500.2(a): Delete "and in these regulations". NEPA sets forth the policies to be carried out, the regulations should only state how to carry them out. In the alternative the word "policies" may be changed to read "procedures".

Sec. 1500.2(f): Delete "Use all practicable means", and "essential". It is not for the regulations to state the means, or to add value judgements to the means, to carry out the Act. The agencies may use whatever means they deem necessary, in a manner set forth by the regulations. Therefore, begin the section with "Consistent" and insert the word "seek" after "policy".

Sec. 1500.3: Delete the last sentence as substantive and unnecessary.

Sec. 1500.6: Delete the last sentence as a substantive definition.

Sec. 1501.4(b): The requirement to inform the public of the preparation of an environmental assessment is unnecessary. If significant adverse environmental impacts are revealed then the public should be given notice in accordance with the environmental impact statement procedures.

Sec. 1501.5(e): Delete from "file an appeal..." and insert "may ask the Council to determine which agency should be the lead agency.

Sec. 1501.6(a)(4): The requirement of this section that each cooperating agency shall "make available staff support

at the lead agency's request to enhance the latter's interdisciplinary capability" is a good proposal. However, the realities of the situation are that providing staff support is not always possible. Funding by the lead agency to reimburse cooperating agencies is even more unrealistic. Many environmental offices charged with preparation of EIS's are underfunded and therefore not capable of this reimbursement.

Sec. 1502.4(c)(1): Delete "an ocean" as an unnecessary and inappropriate reference to the unsettled question of extra-territorial reach. The words "area" and "region" adequately cover the possibilities.

Sec. 1502.9(a): The sentence beginning "If a draft is so inadequate..." is uncertain in that it does not state who determines whether a draft is adequate. It should be made clear that the agency itself makes the determination.

Sec. 1502.14(c): The requirement to include reasonable alternatives not within the jurisdiction of the lead agency is unreasonable because such an alternative may not be exacting enough to be covered, and may present many problems regarding accuracy in assessing an alternative.

Sec. 1502.14(e): This provision is objectionable in that it states an implicit assumption that a decision maker will choose the environmentally most preferable alternative unless there are compelling reasons for another alternative (See comments on section 1505.2).

Sec. 1502.19 provides: This section states that "Agencies shall circulate the entire draft and final environmental impact statements except as provided in Section 1503.5(b)." However, the regulations do not contain a Section 1503.5(b).

Sec. 1502.23: We see no need to include cost benefit analysis in the Environmental Impact Statement (EIS). The major objectives of an EIS are to focus on the project's impact upon environmental quality and not the cost of alternatives vs. fulfillment of project objectives. The EIS is only one of many inputs offwhether or what manner to proceed with a program or project.

Sec. 1502.25: Reword "To the maximum extent possible", to read "To the extent they apply", in order to shift emphasis and remove substantive implications.

Sec. 1503.2: If our understanding of the section is correct, it appears that if a cooperating Federal agency writes, or assists in writing an environmental impact statement it must nonetheless comment on its own statement with a "no comment" unless it feels that its own statement is inadequate. That seems pointless.

Sec. 1504.3: There appears to be some overlapping in Section 1504.3 procedure for referrals and response. It is not clear whether the advice referred to Subsection (a)(1) is the same as the letter referred in Subsection (c)(1). Also the provision for an additional public hearing in subsection (e) is needlessly time consuming.

Sec. 1505.2: This section is objectionable in that it effectively requires an agency to justify its decision-making process, and impliedly opens an agency decision to review if the alternative chosen is other than the one found least environmentally harmful, and its reasons for doing so were deemed insufficient "considerations of national policy." NEPA and the EIS process require only that agencies consider the environmental consequences of proposed agency actions and alternatives to such proposed actions. It neither requires agencies to choose any particular alternative, nor causes them to state their reasons for reaching a particular decision. The weight to be given environmental factors, among others, in reaching a particular decision is a matter for each agency in its discretion to determine, provided, of course that it does take environmental factors into consideration prior to making its decision.

Sec. 1506.6(c): The provision for a categorical waiver of the (b)(5) exemption, available to Federal agencies under the Freedom of Information Act, should be seriously reconsidered. Currently, that exemption cannot be exercised unless an agency can satisfy itself that demonstrable harm will result if the information is released. Nevertheless, it is not reasonable to presuppose that a situation will never arise when (b)(5) may in good faith be imposed. Furthermore, to categorically waive this exemption may have

a chilling effect on the ability to receive direct, articulate, and meaningful comments on purposed Federal actions. There is simply no reason to create this kind of a problem.

Sec. 1507.1: The phrase "to the fullest extent possible" should be substantively defined by the courts and not by regulation.

Sec. 1507.3(b)(2): Requiring agencies to specify criteria for and identification of those typical classes of actions may be an impossible requirement when many agencies have miscellaneous types of action not lending themselves to formal criteria.

Sec. 1508.8 Last Paragraph: It is unclear what "ecosystems" and "economic" mean, and to what extent they relate to environmental impact statements.

Sec. 1508.9(b): We see no need for environmental assessments to include alternatives. If a proposed action is found to have no significant impact upon the environment as revealed by an assessment, it is not necessary to review alternatives? Limiting the page length of environmental assessments to several pages only places unreasonable constraints upon agencies. In effect what is being said is that if a particular action cannot be covered in a few pages then an impact statement is required.

Sec. 1508.13: The last sentence should be deleted as an inappropriate reference to the unanswered question of extraterritoriality.

Sec. 1508.15: The section is unclear as to treaties. Is the President required to make an impact statement before negotiating a treaty or presenting it to the Senate for ratification? The former appears to limit a President's foreign policy functions and prerogatives, while the latter appears to put the Senate in the position of considering environmental alternatives when a choice has already been made and presented to it as a final matter. It is therefore suggested that the Department of State be specifically requested to comment on the sentence beginning "Proposals for legislation includes..."

Sec. 1508.16: The meaning of the word "major" in the second line is unclear in that the word is defined by using it in its own definition. In addition, delete the phrase, "if otherwise required" at the end of the section as unnecessary.

Sec. 1508.16(a): It is unclear from this section whether "continuing activities" require constant reassessments and continuing statements.

Sec. 1508.16(b)(1): The inclusion of "treaties and international conventions or agreements" is inappropriate for the reason stated above in the comments on section 1508.15. This issue should also be submitted to the Department of State for its comments.

Sec. 1508.24(a): Delete the word "global" because of the unanswered extraterritorial question involved.

EDITORIAL COMMENTS

Sec. 1500.4: One section which requires considerable editing is Section 1500.4 and the use of references.

Section 1500.4 Reducing Paperwork reads in pertinent part as follows:

> "(a) Reducing the length of environmental statements (section 1502.2(d)), by means such as setting appropriate page limits (section 1501.7(b)(1)".

The short sentence includes two internal references to other sections.

Section 1502.2(d) reads:

> "(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies."

This reference does not appear to be relevant or useful in better understanding 1500.4(a).

The second reference is to Section 1501.7(b)(1) which reads:

> "(b) At the scoping meeting the lead agency may:
>
> (1) Set page limits on environmental documents (sec. 1502.6)."

This reference is also of dubious use since 1501.7(b)(1) is merely a resting point before heading on to 1502.6 - which is not a relevant section in itself. In addition Sec. 1502.6 is a typographical error. The reference in 1501.7(b) should read Section 1502.7.

Section 1502.7 does speak to specific page limits. It reads:

> "The text of final environmental impact statements (e.g. subsections (d) through (g) of sec. 1502.10) shall normally not exceed 150 pages and 300 pages (with the same exclusions) for proposals of unusual scope or complexity."

It is questioned whether the parenthetical statement "(with the same exclusions)" is relevant.

Section 1501.7 "Scoping" reads in pertinent part as follows:

> "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues. This process shall be termed scoping. After an agency decides to prepare an environmental impact statement the agency shall hold an early scoping meeting or meetings, which may be integrated with any other early planning meeting the agency has."
>
> "(a) At the scoping meeting the lead agency shall:"

The first paragraph is unclear, redundant and written backwards. Also, specifically labelling the process "scoping" is useless - the section title does that. The provision should be rewritten as follows:

1501.7 Scoping

After an agency determines that an environmental impact statement is to be prepared, it shall hold a meeting or meetings to identify, and narrow, the scope of the issues which need to be addressed in the statement.

March 24, 1978

Freedom of Information Officer
Department of Housing and
Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

Dear Sir:

The Associated General Contractors of America hereby requests HUD's response to the Council on Environmental Quality's memorandum dated January 11, 1978, which pertains to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

Sincerely,

Geo. E. Stockton
Assistant Director
International Construction
Division

GES:pp

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

April 5, 1978

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

IN REPLY REFER TO:

Mr. George E. Stockton
Assistant Director
The Associated General
Contractors of America
1957 E Street, N.W.
Washington, D.C. 20006

Dear Mr. Stockton:

Enclosed is the response to your recent letter requesting HUD's response to the Council on Environmental Quality's memorandum dated January 11, 1978, pertaining to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

If I can be of further assistance to you, please let me know.

Sincerely,

Richard H. Broun
Director, Office of
Environmental Quality

Enclosure

March 1, 1978

Honorable Charles Warren
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D. C. 20006

Dear Mr Chairman:

This letter is in response to your request for this Department's comments on the Council's draft provisions for the application of the National Environmental Policy Act to federal agencies' activities affecting the environment of foreign nations and the global commons. As you know, HUD participates in both multilateral and bilateral international activities involving environmental concerns. While the desirability of ensuring that U.S. actions do not have an adverse effect on the environment of foreign countries is clear, the present draft seems to us to create more problems than it solves. Its treatment is partial or lacking in some cases and overly detailed in others. Procedural matters are included under terminology and there are references to other sections of the draft regulations that are contradictory or do not apply. Most importantly there is no reference at all to Section 102(2)(f) of NEPA, which provides a much more valid and constructive basis for the proposed regulations than the proposed statement (1508.13) that the human environment is not confined to the geographical borders of the United States.

In sum, we do not believe that the provisions as stated are workable or that they provide sufficient basis for the formulation of regulations by individual federal agencies that will be consistent with the intent of NEPA. To transfer 102(2)(c) in toto or in a version that eliminates one of its major objectives -- public disclosure -- seems to us to make a mockery of this section, and we wonder if it will not have undesirable repercussions on domestic application of this section of the Act. On the other hand, we see no reason why the procedures called for in 102(2)(c) cannot be adapted to the international situation if the approach is based on 102(2)(f). We suggest that the Council define the types of agency activities it believes should be covered by NEPA and determine if these cannot satisfactorily be covered by regulations drawn up on the basis of 102(2)(f).

In the hope that our comments on the individual sections of the draft will be useful, we are including the following:

1. Section 1508.13 Human Environment: We assume that what is meant here is the natural and man-made environment and strongly recommend that you substitute "man-made" for "physical". The last sentence should be deleted and included in a preamble if used at all.

2. Section 1506.13 Application of NEPA to Significant Environmental Effects Not Confined to the United States: This section and its title are confusing. Since it deals with compliance, we suggest that it be moved to Section 1507, which already deals with compliance within the United States (1507.1) and that its title be changed to Compliance with Respect to Significant Environmental Effects Outside the United States. Assuming that you wish to include the Commonwealths, we suggest that you change (a)(1) to, "The United States, its possessions, and its trust territories."

With respect to (a)(2), the recent incident of the discovery of the debris of the Soviet satellite in Canada suggest that the stratosphere should be included here.

(b) our comments here are covered in our general comments.

3. Section 1508 Foreign Environmental Statement. Since this is not a statement by foreign counties, we suggest you change the title to Statement of Foreign Environmental Impact or something similar. We do not understand the invitation to agencies to develop criteria by which the agency can determine that a foreign EIS will not be subject to public comment. Will there be classified foreign EIS's? CEQ should clarify the purpose of this clause or else drop it.

The rest of this section contains a mixture of definitions which properly belong under 1508 and procedures which do not. On the whole the approach is negative rather than positive.

Please let us know if we can be of further help to you and the Council.

Sincerely,

/s/Robert C. Embry, Jr.

Robert C. Embry, Jr.

April 11, 1978

Freedom of Information Officer
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

Dear Sir:

The Associated General Contractors of America hereby requests the Department of Labor's response to the Council on Environmental Quality's memorandum dated January 11, 1978, which pertains to the application of the National Environmental Protection Act to agency activities affecting the environment in foreign nations and the global commons.

Sincerely,

Geo. E. Stockton
Assistant Director
International Construction Division

GES:pp

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF INFORMATION, PUBLICATIONS AND REPORTS · WASHINGTON, D.C. 20210

APR 19 1978

Mr. George E. Stockton
Assistant Director
International Construction Division
The Associated General Contractors
of America
1957 E Street, N.W.
Washington, D.C. 20006

Dear Mr. Stockton:

This is to acknowledge receipt of your request dated April 11, 1978, for U.S. Department of Labor records under the Freedom of Information Act. The records you requested are not in the custody of this office. Therefore, I am forwarding your request for action to:

Mr. Roland G. Droitsch, Director
Office of Macroeconomics and
Economic Policy Review
Room S-2312, NDOL
U.S. Department of Labor
Washington, D.C. 20210

The 10-day response period specified by the Freedom of Information Act will start when your request is received by the office named above. A delay of five days may be expected before the letter is received by that office.

Sincerely,

John W. Leslie
Director

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

April 25, 1978

Mr. George E. Stockton
Assistant Director
The Associated General
Contractors of America
1957 E Street, N.W.
Washington, D.C. 20006

Dear Mr. Stockton:

As requested in your letter of April 11, enclosed please find the Department of Labor's response to the Council on Environmental Quality's invitation for comments on its draft regulations to implement the National Environmental Policy Act.

The enclosed letter addresses the proposed regulations in their entirety. Specific comments on the sections pertaining to foreign environmental impacts can be found on page four.

We hope that this information will be of assistance to you.

Sincerely,

Roland G. Droitsch
Director, Office of Macroeconomics
and Economic Policy Review

Enclosures

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

FEB 9 1976

Mr. Charles Warren
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Warren:

I am writing in response to your invitation for comments on the Council on Environmental Quality's draft regulations to implement the National Environmental Policy Act (NEPA).

I strongly support the Council's stated objectives of improving the usefulness of Environmental Impact Statements (EIS) while reducing needless paperwork and delay. However, I have serious reservations about the ability of these regulations, as written, to help further these goals. Instead, they seem to create new and burdensome procedures, expand the number and scope of statements prepared, and open the door to a maze of time-consuming court challenges on procedural grounds.

I am particularly concerned about the general economic impact of a proposal which may lengthen the delays involved in the already cumbersome regulatory process. I am also concerned about the regulations' potential impact on Labor Department agencies such as the Occupational Safety and Health Administration (OSHA). By superimposing a highly burdensome procedure on an already complex rulemaking process, the regulations may present serious problems for OSHA's efforts to improve the workplace environment.

Of course, the draft regulations do contain many highly commendable general principles whose serious implementation would do much to improve the present EIS situation. The draft stresses that the purpose of an impact statement is to aid in decisionmaking, not merely to amass data. It urges that statements be analytic, rather than encyclopedic, and

that they be concise, discussing issues only in proportion to their importance, and focusing on alternatives and their probable impacts. The use of categorical exclusions is encouraged, as is the combination of environmental documents with others. All of these most definitely represent steps in the proper direction. Unfortunately, it is doubtful that the regulations proposed will do much to help achieve these principles. Indeed, I believe that they would be counter-productive.

First, the decision to issue such detailed, specific material in the form of regulations will raise serious difficulties for our Department and others as we attempt to comply with various statutory responsibilities. By choosing to issue detailed regulations, the Council would appear to be creating a private right to sue on the basis of procedural technicalities and interpretations. There is already a tendency to use the EIS process as a delaying tactic by persons who object to a federal action on grounds only marginally related to environmental considerations. The choice to issue detailed procedural guidance in the form of binding regulations is an invitation for a flood of costly and time-consuming court actions which will do little to resolve substantive environmental questions. Technical departures from the Council's proposed rules should not provide an independent basis for wide ranging challenges of otherwise appropriate actions which have no substantial environmental impacts.

Beyond this general objection, I also have reservations about the specific content of the draft. The proposed regulations provide little help to an agency trying to decide whether to prepare a statement at all, and even less assistance to someone trying to separate significant issues from others. Definitions of key terms such as "major federal actions" and "significant" are hopelessly vague and obscure. Explanations of the key concept "environmental effects" are so broad as to mandate a major expansion of the scope and size of impact statements. The draft tells us that these effects include ecological, economic, social and health effects whether direct, indirect or cumulative (the latter referring to "incremental impacts when added to past, present, or foreseeable future actions"). On the one hand, this effort to spell out the scope of NEPA in vague terms adds little to increasing the understanding of the act. On the other hand, efforts to spell out these definitions with greater precision would simply invite court challenge. A superior approach would be to reference the statutory language in the regulations and spell out the definitions more thoroughly in "advisory guidelines."

The draft regulations also set up burdensome new administrative procedures. An example is the new requirement for "scoping meetings." Unquestionably, it is important that an agency collect advice before proceeding with an environmental study. However, it is not at all clear that a public meeting is always the best vehicle for accomplishing this, and the scoping process could turn into a major legal roadblock if agreement by all parties is not reached. For example, is the requirement to be interpreted to allow any interested party to litigate if inadvertently not invited? Given the complexity of some Labor Department rulemaking proceedings, I can envision some of our scoping meetings generating massive public records.

The draft requires new documents such as the "record of decision," in addition to those already mandated by the Administrative Procedures Act. Additional public notice requirements are also established, such as notification that an environmental assessment is being prepared (the purpose of this notice is unknown). Additional public notices imply additional public comment periods -- another roadblock to agency efforts at timely rulemaking.

Lead agencies are granted new and sweeping authority to require "cooperating agencies" to assume responsibility for developing information and preparing analyses. Agencies already have a responsibility to cooperate wherever possible, but these mandatory requirements invite abuse and pose serious problems for agencies with limited personnel resources.

The various provisions specifying at what stage in the decisionmaking process an EIS must be prepared are confusing, and the definition of exactly what constitutes a "proposal" is highly ambigious. A literal interpretation of the regulations would appear to require environmental statements at the very earliest stages of the development of a proposal. Further complications are introduced by the apparent requirement that the EIS process begin as soon as internal discussions are started about possible new policies or regulatory actions.

The draft requires agencies to obtain a waiver of EIS requirements from the Council before taking emergency actions. Congress has granted authority to the Labor Department and other agencies to act swiftly in emergency situations to protect the public health and safety. Since it is generally impossible to complete a full environmental review under these conditions, this provision would effectively transfer to CEQ the authority to determine whether an emergency action is needed. This is unacceptable and also apparently in conflict with existing court interpretations.

In summary, the likely effect of these regulations will be to enlarge the scope of actions which require an impact statement, increase the complexity of these statements, and lengthen the time needed for their preparation and review and create the possibility of additional legal challenge over technical issues having little or any relationship to the environment. Given government's natural caution and desire to minimize legal complications, it seems highly unlikely that these regulations will lead to any streamlining of the NEPA process. I would question whether these draft regulations are consistent with the President's current efforts to minimize the the regulatory burden as outlined in the proposed Executive Order for Improving Government Regulations (42 FR 59740).

Additionally, I am particularly concerned about the effort to extend EIS requirements to activities affecting foreign environments. There is no question that foreign impact statements are sometimes valuable in decisionmaking, but sweeping applications of these requirements to matters such as export-import credits and export licenses could have very serious consequences. At minimum the likely effects will be lengthy delays and increased costs to exporters. Adverse diplomatic consequences may also result if our trading partners resent what would appear to be unilateral U.S. efforts to play global environmental policeman. This action seems particularly ill-advised at this time, in light of the somewhat precarious situation of our foreign trade. This issue is already before the courts. Why complicate things further by issuing new regulations on the subject?

Finally, I am enclosing specific comments prepared by the Associate Solicitor for Occupational Safety and Health as an example of the specific problems the draft regulations present to an operating regulatory agency. I specifically call to your attention the first suggestion on page 3.

In closing, I would suggest the Council's interpretations of NEPA be issued in the form of highly condensed regulations accompanied by "guidelines" which would provide more specific advice in the implementation of the regulations. The Council will have every opportunity to make its views known as to whether or not individual agency implementing regulations are in conformity with its interpretations. The guidelines should set forth general principles about the contents of EIS and their role in the planning process.

Thank you for the opportunity to make my views known on this important subject. I would appreciate being kept informed of the progress of these proposed regulations. The Labor Department would be pleased to be involved in any future discussions of this issue.

Sincerely

Ray Donovan /ly

Secretary of Labor

Enclosure

International Economic Policy

Special Report

NAM EXPORT CREDIT SURVEY REPORT

December 28, 1977

INTERNATIONAL ECONOMIC AFFAIRS DEPARTMENT

NATIONAL ASSOCIATION OF MANUFACTURERS, 1776 F Street, N.W., Washington, D.C. 20006

Executive Summary

1. In 1976, U.S. exports totaled about $115 billion or about 7 percent of U.S. GNP. In terms of goods production, roughly 24 percent of all manufactured and farm goods produced in the U.S. were exported. The NAM survey group represents total annual sales of $140 billion, and manufactured goods exports of almost $16 billion.

2. U.S. export growth, and the phenomenal growth in total world trade, highlight the increased importance of adequate, dependable and competitive export credit facilities. In particular, the role of capital goods exports in the overall U.S. trade performance underscores the necessity for official financing to supplement commercial banks where necessary.

3. In the period covered by the NAM survey (1972-1976) the U.S. Export-Import Bank lost ground in its competitive position vis-a-vis foreign export credit facilities. This development may be attributable to (a) fiscal policy restraints imposed by the U.S. Government, and (b) substantially enhanced export promotion efforts by the governments of major competitors.

4. Fifty-seven percent of the NAM survey respondents reported lost export sales due to inadequate financing. These lost sales totaled $3.2 billion for the survey group, in 1976 or 25 percent of total annual export sales of $15.8 billion. The employment effect associated with $3.2 billion in lost sales amounts to 112,000 lost jobs, according to estimates based on data developed by the Bureau of Labor Statistics.

5. As one element of Eximbank's lost competitiveness, authorizations to the survey group fell 8 percent from 1973 to 1976 while exports grew 178 percent between 1972 and 1976. Because Eximbank's authorization levels failed to keep pace with the needs of U.S. exporters, U.S. industry was further disadvantaged relative to foreign competitors.

6. Interest rates and maturities were cited by many companies as major factors in Eximbank's lack of competitiveness; however, a greater number saw the disparate nature of competing export credit systems as the prime cause of Exim's uncompetitiveness. Many also referred to Eximbank's lack of commitment to a forceful policy of export promotion. Many examples of lost export business were cited with supporting data as to the specific cause.

7. International efforts to harmonize national export credit facilities were not judged to be notably successful by the survey participants. While many considered harmonization to be a viable objective, they also thought it to be unrealizable in the short term given the fundamental differences among national export credit facilities, commercial banking systems, as well as foreign government export subsidy policies.

8. Finally the Eximbank was ranked, in terms of overall performance, below the export credit systems of France, Japan, the U.K., Germany and Canada respectively. Not a single company rated the U.S. export credit system as better than that of major competitor countries.

NAM Export Credit Survey Report

NAM's International Committee at its meeting in Washington on November 17, 1976, directed that work be undertaken to help assure that adequate export financing facilities are available to U.S. industry to meet growing international competition for export markets. Pursuant to this end, a Task Force on Export Credit was established within the International Trade Subcommittee with the objective of determining whether the Export-Import Bank in particular, and the U.S. export credit system in general, are currently meeting U.S. industry's needs, and if not, how to do so.

More specifically, this survey was prompted by several factors, chief among which was a recognition of the role played by exports - and capital goods exports in particular - in the growth of the national economy. The importance of exports in this regard is highlighted by both the phenomenal growth in world trade and the five-fold increase in the cost of energy. Indeed, the latter has contributed substantially to a trade deficit of approximately $27 billion for 1977.

In 1976, U.S. exports totaled about $115 billion or about 7 percent of U.S. GNP. In terms of goods production, roughly 24 percent of all manufactured and farm goods produced in the U.S. were exported. Additionally, based on 1976 export figures, 3.5 million jobs in the U.S. are dependent on exports. These figures demonstrate the vital relationship between exports and U.S. economic growth.

The NAM is interested in clearly defining the role of U.S. exports of capital goods in the overall growth in the economy. As the accompanying tables indicate (see Appendix) U.S. capital goods exports grew 250 percent between 1970 and 1975; however, both Japanese and German capital goods ex-

ports rose at a faster rate. These figures not only highlight the pivotal role of capital goods exports in the total U.S. trade performance, but also illuminate the increasingly competitive environment within which U.S. goods must be traded.

These factors, of course, bear upon the performance of the U.S. Export-Import Bank since the main function of the Bank is to supplement the commercial banking system in financing big ticket export items (i.e. capital goods) which require financing terms which are often beyond the capabilities of commercial banks. Within this increasingly competitive international environment, Eximbank has been subject in recent years to constraints imposed by the U.S. Government for general fiscal policy reasons. Thus, it is within the context of all these factors that the NAM undertook this survey in order to permit U.S. companies to comment individually on their ability to finance exports in relation to their foreign competitors, as well as the consequences for the U.S. economy as a whole.

The NAM member companies comprising the survey universe were a broad cross-section of large and small manufacturing firms numbering approximately 600. No attempt was made to identify those companies which had utilized the Bank in the past year; and thus, a large initial distribution of the questionnaire was necessary. Of the 600 questionnaires distributed, 218 were returned, or 36 percent. Of the 218 returned, 181 reported an insufficient use of the Bank and thus were excluded from the aggregate data. Thirty-seven companies remained whose participation in Eximbank's programs was substantial enough to enable a thorough analysis of their interaction with Eximbank over the past five years.

As the figures below indicate, these 37 companies represent total sales of $143 billion and exports of $15.8 billion. Additionally, it should be

noted that the survey group's Exim participation is approximately 25 percent of Exim's total authorizations for 1976. Of course, these 37 companies buy components and services from a large number of American companies whose sales thus to a degree depend on adequate and competitive export credit financing.

All companies responding to the survey were assured of anonymity. In the presentation of case examples, companies are only referred to generically i.e. a general product category. The following is a product breakdown of the survey respondents.

Industrial Sector Breakdown[a]/

Sector	No. of respondents	Amt. of Exim participation in most recent year ($ millions)
Power generating systems & apparatus (nuclear & fossil)	3	848.0
Transportation equipment	4	322.0
Aero-Space	6	525.3
Construction equipment	3	282.0
Food processing equipment	1	29.0
Machinery & machine tools	7	74.4
Construction	1	27.0
Agricultural equipment	3	6.8
Petroleum extraction & processing equipment	2	44.0
Chemicals	3	12.4
Information systems	2	14.4
Environmental systems	1	0.9
Consumer goods	1	8.0
	37	2,167.million

[a]/The above sectoral breakdown only reflects the major lines of business for the survey group and thus the figures are only approximate.

It should be pointed out that the industry sector breakdown is only pertinent for the NAM survey universe and hence the chart does not conform precisely to the actual sector shares of Exim authorizations for Fiscal Year 1976.** Since manufacturing companies constitute the NAM membership core, it is to be expected that data from the survey particularly reflect the interests and experience of the manufacturing sector of U.S. industry.

Additional Respondent Data

	Sales (millions)	Sales minus for. affiliates (millions)	Total Exports (millions)
Power generating systems & apparatus (nuclear & fossil)	18,565	NA	2,683
Transportation equipment	51,616	43,548	1,568
Construction equipment	11,755	5,152	2,194
Food processing equipment	2,183	2,183	935
Aero-Space	16,471	NA	4,324
Machinery & machine tools	6,835	5,406	685
Construction	1,801	1,326	940
Agricultural equipment	10,065	7,225	1,130
Petroleum extraction & processing equipment	3,326	NA	583
Chemicals	12,188	5,890	756
Information systems	5,514	3,080	290
Environmental systems	438	357	22
Consumer goods	2,650	750	274
	143,407	74,917	15,844*

*represents 13.7 percent of U.S. exports in 1976

**Actual sector shares of Eximbank authorizations during FY 1976 were as follows: Electric power, 21 percent; Transportation, 19 percent; Construction, 16 percent; Manufacturing, 9 percent; Mining and refining, 8 percent; Agricultural, 7 percent; Communications, 5 percent.

DIMENSIONS OF THE PROBLEM

Lost Export Sales

Export sales can be lost for a number of reasons, and thus it may be difficult to impute loss of business to one reason alone. This survey made a determined effort to elicit case examples in which either Exim support was not forthcoming, the terms provided were not competitive with terms available to foreign manufacturers, or the terms would not meet the customer's requirements. Companies were urged not to estimate lost sales in the aggregate but to include the locale, date, product or service involved, foreign competitors and terms of foreign financing, if any, and the precise element(s) of the Exim package which the firm felt resulted in the lost contract.

Eximbank itself in a recent survey of U.S. companies with export sales of $8.2 billion found $900 million in lost sales.[a/] Obviously, if total U.S. exports were used as the basis for this calculation, the result would be well in excess of the Exim survey figure.

The NAM data suggest that the Exim survey significantly understates the magnitude of the problem. The NAM survey respondents reported a total of $3.2 billion in lost exports or 25 percent of their total exports. Fifty-seven percent of the survey respondents reported lost sales attributable to inadequate financing and 67 percent of those were able to quote specific terms of the transactions actually provided by the foreign export credit agencies.

The following transactions represent a cross-section of those lost export sales cited in the questionnaire. Although names have been omitted for obvious reasons, the cases are recent. It can be assumed that the bid was presented in the most recent fiscal year for which the company has year-end statistics.

[a/] The Eximbank survey covers a period of nine months from July 1976 to March 1977. Thus, on an annual basis, total lost sales conceded by Eximbank would amount to $1.2 billion from the companies surveyed.

Case Examples

1. A heavy capital goods manufacturer reported a potential sale of a cement plant to the Costa Rican government. The bid was awarded to a Spanish firm which was able to offer credit terms of ten years with three years grace on both principal and interest. The company felt its bid was uncompetitive because Eximbank had offered terms of ten years with three years grace on the principal only. In addition, the general conditions (i.e. information required) were too stringent for the customer and Exim's total participation was insufficient in terms of total dollars.

2. An electrical power generator manufacturer reported a bid on two power systems to Venezuela valued at approximately $55 million. The sale was eventually won by a Japanese manufacturer who was able to provide a four year grace period with repayment over ten years. Interest rates were fixed at 7 1/2 percent. Financing of 100 percent of local cost was also made available. The terms and conditions of Eximbank's offer were: 10 percent cash payment and 90 percent in 20 semi-annual installments with the first installment due six months after completion of the plant. Exim would make a direct loan for 45 percent of the U.S. costs to be repaid from the last 10 installments. Interest rates were 8 percent fixed and the commitment fee was 1/2 percent per annum. Other lenders made direct loans for 45 percent of U.S. costs to be repaid from the first 10 installments. Exim guaranteed 50 percent of the commercial bank's position for a fee of 1 percent per annum and a commitment fee of 1/8 percent per annum - to which must

be added the cost of commercial bank participation.

3. A major capital goods exporter reported two recent cases in which a complete absence of Exim support translated into more than $30 million in lost sales. In one instance Exim refused to become involved in a sale of a conveyor belt system to Pakistan. The $28 million order was lost to a French competitor who was offering half of the loan at 10 years at a rate of 1 7/8 percent over LIBOR (London Interbank Offer Rate) and the balance on 25 year terms.

4. A $3.1 million order of heavy cranes for the Soviet Union was lost to a Japanese competitor. Terms provided by Japan's Eximbank were five years in ten semi-annual installments at an interest rate of 5 1/4 percent p.a. Further, the down payment of 15 percent was financed by a Japanese bank. No Exim support was forthcoming and the best financing available to the U.S. firm was found in Europe at 9 1/2 percent.

5. An electrical goods manufacturer replied that in several instances substantial export sales had been lost due to uncompetitive Exim financing. In one instance on a transport control system to Brazil with a total of $35 million of U.S. content, Eximbank offered credit terms of a 10 percent cash down payment, 40 percent in direct credit and 30 percent with an Exim guarantee. Exim's interest rate was 9 1/4 percent per annum over 9 1/2 years coupled with a guarantee fee of 1 percent. Ultimately the sale was lost to a French consortium which was able to offer an 85 percent direct credit with a 15 percent cash down payment at 7 1/2 percent per annum

interest over 10 years.

6. In another instance, a telecommunications system sale to Iran with U.S. content of $25 million was lost to a Belgian competitor.

Exim terms were a 10 percent cash down payment and a 40 percent direct credit at 8 1/2 per annum over five years. In this case, Exim's terms were competitive with neither a German nor a Belgian firm both of which were able to provide more attractive financing. The German firm, which offered a 90 percent direct credit at 8 percent interest over five years, was beaten out by the Belgian firm which provided a 90 percent direct credit at 7 1/2 percent interest over eight years.

7. In most of the cases presented thus far, export sales have been lost because a) Eximbank's terms were not competitive with the export financing available to other suppliers or b) because no support was forthcoming from Eximbank what-so-ever. However, equally responsible for lost export sales are instances in which Exim's terms do not attempt to meet the stated requirements of the foreign buyer.

Frequently, the customer is inclined to buy from a U.S. manufacturer, but insists on terms which would ease his financing burden but which Eximbank will not approve, although there is no special commercial or political risk.

One capital goods manufacturer failed to close a $3 million sale to a financially sound customer in Brazil because Eximbank would not agree to a seven year repayment period. The customer's ultimate decision was to forego the purchase entirely.

Another supplier similarly lost three $750,000 sales in Mexico, Venezuela and Colombia because the customers wanted to extend repayment beyond five years, which is Eximbank's maximum maturity for all transactions between $200,000 and $5 million.

Additionally, a large construction equipment firm reported an instance in which a $1.6 million sale of motorgraders to the Costa Rican Government was lost for this reason. Costa Rica wanted five year terms with an annual repayment schedule. U.S. commercial banks had already expressed their concern about the political risks of the transaction. Eximbank responded that it would not participate on the basis of five annual repayments. Subsequently, the Costa Rican Government successfully found alternative financing in the U.K. over six years with one year's grace and five annual payments. The interest rate was 9.5 percent p.a.

8. The same company reported another incidence in which an $11 million order for compressors was lost to a French firm in the absence of any Eximbank proposal. The flexibility of the French terms speaks for itself. Eighty-five percent financing was offered in two tranches resulting in 9 to 9 1/2 year exposure. Tranche one was last delivery date plus 30 months but not later than October 1980. Tranche two was last date of delivery but not later than April 1981. The interest rate was 7.25 percent p.a. In addition, up to 13 percent of non-French content was allowed.

Employment Loss

Companies were asked to estimate to the best of their ability, any employ-

ment lost in their U.S. facilities as a result of lost export business due to an inability to meet foreign export credit terms and conditions available to their competitors. Of the total number of respondents, 55 percent reported that in the past year they had experienced an employment loss for the above reason. Of those companies reporting such losses, nearly all were able to quantify the employment effect. In the aggregate, 21,694 jobs were estimated to be lost by these companies. This aggregate figure is a highly conservative finding since many companies cited the difficulty of extrapolating an employment impact from an estimated lost export sales figure. Using a Bureau of Labor Statistics (BLS) estimate of 35,000 jobs related to each billion dollars worth of exports in 1975, the total NAM survey employment loss would have been 112,000 jobs given $3.2 billion in reported lost export sales. Using a less conservative Treasury Department estimate of 58,500 jobs per billion worth of exports the NAM survey employment loss would amount to more than 187,000 jobs.

A large high-technology manufacturer wrote as follows:

> The net employment gain at our plants and those of our suppliers (most of which are small businesses) would have amounted to at least 560 man-years of work (400 ours, 160 others) had we not lost $16 million in export sales due to inadequate financing.
>
> If you extrapolate the total effect on domestic employment of such lost export sales, it amounts to 280,000 man years annually. (This is based on a rate of 35,000 jobs per billion in lost exports which, in its 1976 semi-annual competitiveness report, Eximbank estimated to be $8 billion a year for the nation as a whole.)

Contingent Export Effort

In an attempt to follow up an earlier question with an assessment of a

hypothetical export performance, companies were asked if they would undertake an increased export effort if they were assured of export credit facilities comparable to those of their major competitors. More than 78 percent of the survey respondents answered affirmatively. Most reported that while a company's export potential is a highly judgmental determination, it would nevertheless be fair to assume that exports of certain product lines would be greatly assisted by more competitive export credit facilities.

A typical reference of a major capital goods exporter is the following:

> Although we have an extensive international sales network, we would undoubtedly bid more projects and invest in broadened non-project sales efforts if competitive or better assured financing were available. In particular, we would seek out those large projects which Exim financing constraints now make very marginal at best. And, we would give more attention to opportunities in the $500,000 to $5,000,000 (range) which Exim does not presently consider [under its direct lending program] as well as to short-term lines of direct credit which the Bank does not offer.

Foreign Export Sourcing

Respondents clearly preferred to export from the U.S. if possible. However, exactly 50 percent of the companies responding indicated that because of inadequate financing they had been forced to supply goods from a foreign subsidiary in the past year. The major factors which caused these companies to source these exports overseas can be summarized into six points:

a) Eastern bloc Exim financing is unavailable for long periods of time.

b) Exim financing for some countries is unpredictable or

not available at all, e.g. Turkey, South Africa, Algeria, Chile, Korea and Egypt.

c) Often the foreign interest rate is fixed and/or lower than the estimated blended Exim/commercial bank rate.

d) Nearly always, Eximbank's requirements for a commitment are more stringent than their competitors' as to information required.

e) Often, foreign competitors are able to cut short commitment time delays by using buyer credit lines, or "baskets," to support specific sales.

f) Repayment terms for medium-sized transactions ($500,000 to $5 million) are frequently of longer duration when shipping from a foreign source.

The growing tendency for U.S. capital goods exporters to utilize this procedure to supply and finance from a foreign source as a "last resort mechanism" to win a sale, perhaps better than any other factor, indicates the degree to which the Eximbank fails to bridge the gap between the needs of U.S. capital goods exporters and the capabilities of the U.S. commercial banking system.

Evidence of how such decisions eventuate was provided by a paper machinery manufacturer who described several sales which had to be sourced abroad due to a lack of Exim support. Regarding the sale of a $38 million newsprint mill to Argentina the company wrote:

> In 1975 we applied for a preliminary commitment from Eximbank to accompany our proposal to this customer. At that time we were advised by Eximbank...that in view of the present conditions in Argentina, they could not provide financing assistance. As a consequence of this refusal we have directed this inquiry to our British

subsidiary who has now received preliminary approval from ECGD to participate in the financing of this project.

Regarding a $12 million sale to Chile, the company wrote:

For the past three years, this company has requested numerous quotations for paper machinery from us with extended financing arrangements. Repeated requests for assistance from Eximbank in the form of (a) project loan has been unsuccessful. Again, we have been obliged to divert this possible sale to our (Canadian) foreign affiliate who now feels that EDC (Export Development Corp.) will be inclined to propose a financing arrangement in order to secure this business for Canadian industry. Our Brazilian competition has actively solicited this business with concessionary financing..."

Administration

Regarding the administration of Exim programs, companies were asked if the procedures involved in Exim services in any way restricted their ability to fully utilize Exim/FCIA programs. In response, there were no evaluations of "outstanding," only 15 percent of the respondents termed Exim administration as "good," 48 percent characterized it as "adequate" and 37 percent thought it to be "unsatisfactory."

Nearly all commented at some point on the extensive delays incurred in obtaining preliminary commitments from the Bank. Part of this delay, which some companies noted often precluded a timely bid, is caused by requirements for supporting technical, financial and commercial information. The experience of a large chemical company was as follows:

> ...the burdensome requirements for information for review may make a project not worth the effort. For example, the presentation of facts available to us including feasibility studies by our own engineers, should be the basis of determination by Eximbank of whether the project is attractive enough for the company to go further, without submission of outside feasibility studies and other costly demands made by Eximbank at the original presentation.

Other issues raised in the question of Exim administration are noted below.

- PCs (preliminary commitments) are only valid for a very short period of time
- Companies need to develop firm private financing before seeking reasonable intent of Exim involvement
- PC delays require bids to be submitted on a "subject to EXIM/FCIA approval" basis thus putting U.S. companies at an acute disadvantage.
- Insurance programs of FCIA were characterized as involving delays and additional problems as a result of a separation of authority between New York and Washington.

Fully 60 percent of all respondents commented on the delays incurred in seeking a commitment from Exim and nearly all spoke of the difficulty of negotiating a contract without firm Exim support when the competition can produce government supported financing on short notice.

MULTILATERAL ASPECTS

Competitiveness

The question of competitiveness is one that is central to the NAM survey. According to the Export-Import Bank Act of 1945, the Bank is required to "provide guarantees, insurance and extensions of credit at rates and on terms and other conditions which are competitive with the Government supported rates and terms and other conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters." Eximbank's statutory mandate to offer "competitive" terms is complicated by the policy and tradition of the Bank to be self-sustaining and to make a profit. The end result of these conflicting mandates has been a credit facility whose priorities vacillate between providing U.S. exporters with competitive credit terms and other fiscal policy or budgetary objectives, including paying an adequate dividend to the U.S. Treasury. Concerns over the Bank's financial condition in the past two years have accentuated the Bank's role as a "lender of last resort," and thus the problem of how adequately the Bank is able to compete forcefully with foreign credit agencies is again of prime importance.

In the questionnaire, companies were asked how well Eximbank was able to meet the government-supported financing available to foreign exporters. Further, they were asked to comment on instances in which Exim departed from its standard lending policies so as to meet the specific terms of a competitor. No respondent reported Eximbank's performance to be "outstanding." Only 5 percent of the respondents could describe Eximbank's programs as "good" and 48 percent termed them only adequately competitive. The remainder, i.e. almost one half of the survey group, characterized Exim as "unsatisfactory" when tested against the competitive performance of foreign credit institutions.

One company reported, "The major thrust of our experience is that the Bank is insufficiently competitive for reasons of (1) slow response, (2) the limited nature of its commitment to support any national export policy, (3) its lack of programs comparable to those of counterpart institutions, and (4) its generally higher interest rates and charges."

Another company concurred by saying "Eximbank is still not competitive with France and Japan on interest rates. Often on terms it reacts too late. U.S. exporters are not able to get clearance on bid dates much of the time."

Quite clearly, a company's assessment of Eximbank's competitiveness rests most directly upon that company's attempts to market its product abroad with Exim support. At an earlier point in the questionnaire, companies were given the opportunity to document such export efforts which, in their minds, reflected the Bank's relative competitiveness. At this point in the questionnaire however, companies were only asked to give a general rating to the Bank on this issue. Interestingly, of those who provided additional comments most referred not, as expected, to credit terms, but rather to a lack of commitment of the Bank to an aggressive export policy. This lack of commitment was often defined in terms such as "unresponsive" "rigid" and "patronizing." In short, the survey group seemed to feel that it is imperative for the U.S. Export-Import Bank to have a more firm and clearer recognition of its role and responsibilities.

Concessional Financing

The issue of mixed credits is one which is integrally involved in the larger question of competing financing systems. In the U.S., aid type funds are clearly designated as such and do not become available for commercial transactions. However, for many of our major competitors the practice of

mixing aid type monies with commercial funds is a frequently used method of implementing economic and social goals at home and abroad. Such practices clearly enhance the competitiveness of certain export industries and provide the country with a foothold in developing country markets.

Specifically, companies were asked if to their knowledge, they had lost an export sale to a developing country as a result of concessionary financing offered by a foreign export credit facility. Fifty-seven percent of the respondents indicated that they were aware of specific instances in which such financing had been made available to their competitors. Fifty percent of these companies were able to relate specific cases and terms of such financing.

> A large electrical goods manufacturer replied that in the case of a $120 million power facility in Tunisia, both French and German financing amounted to concessional loans. In the case of Germany, 100 percent of German goods and services were covered by 26 semi-annuals at a fixed rate of 6 1/2 percent. Interest during the construction was to be paid in one single payment after commercial operation of the facility. French financing consisted of two loans, the first covering 20 percent of French goods and services with eight years grace and 25 years repayment at 3 percent p.a. fixed and the second covered 80 percent French goods and services in 20 semi-annuals commencing after commercial operation at 7 1/2 percent p.a. fixed.
>
> Terms available to the U.S. firm from Exim were as follows for 100 percent U.S. goods and services: 45 percent direct Exim credit at 9 percent p.a. fixed, 20 percent PEFCO participation at 9 percent p.a. fixed and 20 percent commercial bank

participation. Exim's term was 4 years grace with 20 semi-annuals.

The Exim and commercial bank participation figures do not reflect additional costs such as commitment, guarantee, management and agent fees. Such fees were not required by either the Germans or the French.

The German firm was awarded the contract.

A major manufacturer of electronic hardware expressed the situation as

> "...a classical problem of dealing in a less than pure environment with the counterparts of Eximbank in other developed countries, especially France. We have found that in a number of sizable programs we have been left at the financial "starting gate" by the competition being able to offer "mix" financing to our customers which melds straight export financing with public interest dollars, the latter at substantially lower interest rates and extended payment terms. For the most part, the latter packaging of the financing has eliminated any requirement for the purchaser to come up with a down payment, and in a number of situations avoids the uncertainties of variable rate financing which almost universally accompanies the commercial bank participation in Exim packages.

International Export Credit Negotiations

In September 1974, a preliminary "Gentlemen's Agreement" was signed by the major industrialized trading nations to establish a floor for officially supported export credit interest rates. This endeavor was one in a series of attempts over the years to set up international guidelines governing the various aspects of official export credit support programs. Previous efforts

have been undertaken by the Berne Union and the OECD to establish various agreements and "stand stills" binding the participants to limit, in various ways, their official export credit support. Historically, all previous agreements guiding export credit practices have proved to be of only marginal value - and generally bound U.S. official policy while being circumvented in one way or another by other governments when it suited their interests to do so.

Because of the difficulty in reaching international agreement to broaden the scope of the 1974 "Gentlemen's Agreement," several unilateral declarations were adhered to by the U.S. - on a one-year trial basis - and by six other industrialized countries in June of 1976: Germany, Japan, France, U.K., Canada and Italy. The general terms of this Consensus are as follows:

- cash payment will be a minimum of 15 percent of the export contract value
- interest rates will not be less than:

  eight percent for credits over five years to highly developed countries

  7 3/4 percent for credits over five years to intermediate countries

  7 1/2 percent for credits over five years to less developed countries
- repayment terms will not be more than:

  10 years to less developed countries

  8 1/2 years to all others

The Consensus agreed upon by the seven countries in 1976 and extended through December 1977 does not in any sense represent the final word on a firm international understanding on export credit. Yet the very concept of such an international agreement signifies the desire to promote cooperation among industrialized countries to lessen the potential for

an export credit war. Bearing this in mind, companies were asked if, since the adoption of the Consensus in June of 1976, they had become aware of a) a noticeable change in Exim's lending policy, or b) any lessening in the flexibility of foreign export credit agencies in delivering credit terms necessary to win a sale. The respondents were nearly unanimous in their response to this question that the Consensus was of little or no value to U.S. exporters. In fact, only one company was able to report any noticeable easing in Exim lending policies. Many companies commented on perceived changes in both the policies of Eximbank and those of competing facilities; but in summary, such observations related to either enhanced flexibility of the competition or further restrictiveness in Exim policies.

As a follow-up question, companies were asked if international harmonization of various export credit programs and systems is an appropriate national policy objective in view of differing national banking and export financing systems. Sixty-four percent of the respondents indicated that they considered harmonization to be a viable national policy objective. However, nearly every positive response was qualified to the extent that harmonization was deemed appropriate only when (a) adequate controls are included to assure adherence by all participants, and (b) harmonization is broadened to include all major aspects of national export credit systems.

Finally, in light of continuing efforts by the U.S. Government to carry on international negotiations on export credit terms, companies were asked what they regard as the essential ingredients of such an agreement. The most repeated recommendation for future negotiations was the inclusion of some mechanism to assure compliance by all participants. Almost 30 percent of the respondents mentioned this feature of a new international agreement. One company wrote:

The single most important ingredient is an adequate monitoring system to assure all participants are following the guidelines. This should be done through an interchange of information among agencies and subject to independent audit.

In order of frequency were the following recommendations:

- inclusion of "mixed" credits as a negotiation issue
- required participation by all major exporting countries
- elimination of inflation insurance programs
- local cost restrictions
- foreign content restrictions

Comparative Evaluation

In a series of questions aimed at eliciting a comparative evaluation of the U.S. export credit system relative to competing systems, companies were asked to draw upon their general experience to arrive at a ranking. First, companies were asked if the U.S. export credit system serves its exporters better than do the export credit systems of its major competitors. Not a single company was able to judge the U.S. export credit system to be better than those of its competitors.

Companies were then asked if they had not judged the U.S. export credit system superior to those of their major competitors then, in fact, which nation's export credit system best serves its exporters. What follows is the ranking of national export credit systems according to the survey group. The numbers indicate the number of companies which selected the nation's system to be superior.

France	14
Japan	13
U.K.	6
Germany	3
Canada	2
Spain	2
Belgium	1

Companies were then asked to rank each national export credit system relative to the services provided by the U.S. Export-Import Bank. The findings correlated very closely with the preceding evaluation with France and Japan vying for the #1 spot.

	% of survey respondents which judged systems to be better than US system
France	100
Japan	95
U.K.	91
Germany	89
Canada	67
Italy	45

LEGISLATIVE RESTRICTIONS

The Export-Import Bank Act of 1945 as amended contains a number of specific requirements and restrictions as to the mandate and lending authority of the Bank. In addition, there are several exogenous limitations on Exim's activities outside the Bank's statute, such as P.R. 17 shipping requirements (cargo preference for U.S. vessels) for officially financed exports and the Trade Act of 1974. Taking account of all these restrictions, companies were asked to identify those (if any) which in the past had some demonstrable effect on their ability to compete in world markets. Forty-nine percent of the respondents indicated that such restrictions had in fact had a competitive impact on their ability to do business abroad.

The most frequently mentioned legislative obstacle to efficient export credit financing was the restriction (i.e. ceilings) on credits to Eastern-bloc countries. Twenty-nine percent of the companies referred to this particular

restriction as causing hardship. One company wrote that:

> Various ceilings on loans to Communist countries including the Soviet Union penalize manufacturers as compared with other foreign competition with the result that many times U.S. companies are not even sent copies of the tenders and a larger foothold is being developed by our overseas competition.

The next most frequently mentioned restriction was that relating to requirements that officially financed U.S. exports be shipped on U.S. bottoms. Many companies pointed out that this is more often a hinderance than an obstacle since waivers can be obtained if, for example, this is the only factor causing the loss of an order. Twenty-six percent of the respondents referred to this restriction.

The third most acute problem is the Congressional review period required for any proposed Exim credit or guarantee of $60 million or more, and any nuclear related technology, fuel, material, or goods and services. Nineteen percent of the survey group specifically referred to this requirement as being highly undesirable.

One company wrote:

> Congressional review limits (the) approach by most customers in contacting U.S. contractors and manufacturers...First, the possibility, even if remote, of rejection or having "exposure of its plans" is a significant deterrant to any project borrower which is not already approved by other major foreign lenders/insurers.

A large electrical machinery manufacturer wrote on the same subject:

> The requirements can be a hinderance to consummation of a final contract when other commercial conditions have been resolved. Such procedures emphasize to other countries the uncertainty and possible unreliability of dealing with U.S.A. sources of supply because politically oriented interest groups can block or delay approval thru Congress.

Other issues raised in conjunction with this subject were restrictions on non-U.S. content financing, current human rights provisions, other geographical limitations, and financing restrictions on military sales.

Regarding the limitation on non-U.S. content, one machinery manufacturer wrote:

> The elimination of non-U.S. sourced items entirely from Eximbank financing causes problems in resolving financing differences, for in certain areas it takes 5 to 10 percent foreign content to make our total presentation more price competitive. Foreign financing is not usually available to handle these small items which must be included in the entire package and often must be brought to the U.S. for assembly in the package. Most foreign countries allow flexibility of up to 10 to 15 percent in non-local content.

AUTHORIZATIONS

Total Eximbank Authorizations and U.S. Exports

	Total Exim Authorization (millions)	% change	Total U.S. Exports (millions)	% change
1976	8620	+ 4%	115,000	+ 7%
1975	8300	- 9%	107,000	+ 9%
1974	9100	+ 7%	98,000	+38%
1973	8500	+18%	71,000	+44%
1972	7200			
	Net change '72-'76	= +19.7%	Net change '72-'76	= +135%

Respondents Role in Eximbank Financing

	Total Exim Participation (millions)	% change	Total Exports (millions)	% change
1976	1751.7	+ 5%	13502	+21%
1975	1668.6	-15.5%	11189	+37%
1974	1976.8	+ 4%	8162	+53%
1973	1898.0		5339	+10%
1972	NA		4853	
	Net change '73-'76	= - 8%	Net change '72-'76	= +178%

The above figures indicate that Eximbank's authorization growth within the survey group did not keep pace with the export performance of the group. In fact, authorizations to the NAM members surveyed actually diminished over the survey period while exports within the test group increased 178 percent. In comparison, total Eximbank authorizations between 1972 and 1976 showed minimal growth in constant dollars and almost no growth in real value. In terms of 1970 dollars for example, the 1976 budget authority of $8.6 billion equals $4.7 billion ($3.4 billion authorized in 1970), and 1976 direct loan authorizations of $2.1 billion amount to $1.1 billion ($2.2 billion in direct loans authorized in 1970). This stagnant growth period coincided with a period of enormous export growth, 178 percent in the survey group and 135 percent in the nation as a whole. It might be noted in addition that not only did this authorization retraction occur during a five year period of tremendous export

growth, but it was also coterminous with a period of improved income for the Bank. Thus, the data presents the anomaly of Exim funds drying up at the moment of export expansion -- a counter-cyclical tendency which, in the opinion of the survey respondents, had the effect of placing a lid on U.S. export potential.

Additionally, the survey sought to find evidence of Exim's stated shift from direct lending programs toward a more pronounced guarantee and insurance role. According to Exim's own statistics, between 1974 and 1976 authorizations for direct lending were cut back 44 percent while total authorizations were reduced by only 5.4 percent. The survey data, however, did not indicate such a pronounced reduction, with direct loan authorizations to survey respondents only falling 18 percent between 1974 and 1976.

Authorization Levels and Exports

Companies were asked if, in their judgment, the Bank's loan authority had kept pace with the changing needs of U.S. exporters. The authorization export data on page 25 has already indicated that authorizations for the survey group were further out of proportion vis a vis their export growth than were the nation's as a whole (-8% and +178% vs. +19.7% and +135%.) Thus, the survey response to the above question is, not surprisingly, quite negative. Only one firm characterized Exim authorizations as "good," 14 companies characterized them as "unsatisfactory."

> One company wrote, "Between what appears to have been a considered policy of combining a gradual tightening of lending criteria with a gradual reduction of Bank coverage as a percentage of total lending, together with the erosion in value of the U.S. dollar through inflation and devaluation, the static nature of the Bank's lending

authority has not kept pace with the growth of U.S. exports."

A manufacturer of resource extraction equipment wrote:

> According to our experience, since mid-1974 the credit support given to U.S. exporters has declined to the point of actual non-availability in the case of oil industry projects in developed countries despite the increase in competitiveness and available sources for comparable materials, equipment and services from European countries and Japan.

Several companies noted their added frustration at seeing the Bank close its books with funds still uncommitted in 1976. As of June 30, 1976 the Bank had total uncommitted funds of $4.3 billion (17%) out of its total statutory authority of $25 billion. It was pointed out that the uncommitted authority could appear to some as evidence of adequate lending authority; while in fact, it was a sign of the Bank's restrictive lending policy. The presence of uncommitted funds at year's end when foreign sales were being lost for lack of adequate financing was, to many companies, indicative of the lack of commitment by Exim to U.S. exporters' efforts to compete successfully for foreign markets against increasingly effective competition from other countries.

GENERAL COMMENTS AND RECOMMENDATIONS

In conclusion, companies were asked to summarize their views on the U.S. export credit system and Eximbank in particular. In the clear majority were those companies who chose to take this opportunity to comment on the lack of competitive support forthcoming from Eximbank. Most responses either commented on the glaring discrepancy between terms available to foreign competitors and

those available from Exim, or commented on the apparent lack of any firm export expansion policy on the part of the U.S. Government or of Eximbank. Frequently, companies referred to the "lender of last resort" mentality of Eximbank to demonstrate the rigid posture which has confronted U.S. exporters in search of official export financing. Further, restrictive Eximbank policies were also seen as reflecting a broader sentiment within the Government to understate the need for official U.S. support for exports.

In short, the survey group clearly felt that U.S. exporters, now and in the future, will require support comparable to that provided by the other major exporting nations of the world in order to maintain - and halt further erosion of - their current competitive position. It was pointed out repeatedly that major competitor countries are vigorously promoting and in some cases subsidizing their exports more intensely than ever. The zeal with which these nations have sought to spur exports has, of course, much to do with the recent recession and the five-fold increase in oil prices, both of which have added increased foreign exchange burdens. The result has been a sharp increase in foreign official export credit support -- support which in the opinion of the survey respondents has yet to be met with any sustained commitment by the U.S.

As regards individual recommendations by companies for improvements in the U.S. export credit system, there was certainly no shortage of ideas. Rather than summarize them in this space, several are quoted below. No attempt is made to list the ideas on the basis of concensus or priority.

1. Lower direct lending limit to $1,000,000
2. Raise Cooperative Financing Facility limit to $1,000,000
3. The bank should withdraw its recently imposed discount fee
4. Re-open the re-discount window which allows smaller

banks to assist smaller exporters with fixed rate financing without such re-discount window support.

5. Restrictions on military sales, while to a degree caused by Congressional policies, are carried further by Eximbank. Sales for civil aviation subordinate to DOD or run by military staffs should not be considered military sales. Military sales should be defined as combat equipment or equipment directly aiding the offensive potential of a country.
6. Sales to overseas subsidiaries should be eligible for Exim/FCIA programs or policies on the same basis as sales to non-related parties.
7. Separate authorization and funding should be established to afford mixed credits under which Exim would be able to make higher-risk loans and guarantees in support of development projects - infastructural, rather than immediately self-supporting - in LDCs.
8. Congress should restate the statutory objectives of the Bank so as to clarify the national priorities desired by Congress - a consequence which should clarify for (the) Bank's administrative officials the extent and role anticipated for each Exim program.
9. Inclusion of the Bank's operations in the Federal unified budget is a dubious exercise. In reality the Bank's operations are ex-budget; no actual appropriations by Congress are involved. The effect of inclusion is to render the Bank subject to vagrant political pressures that

inexorably are associated with taxation, expenditures and debt service problems - even though the Bank's operations impinge on none of these. Thus, the Bank should be removed from the budgetary process, and its oversight by Congress should be treated ex-budget.

10. Establish an application form for project financing, similar to OPIC, whereby the applicant can answer specific questions. Under the current system the requirements are set forth in general terms which allow the examiners or reviewer at Eximbank to request any information he deems necessary. The requirements should be established by top management at Eximbank, and guided thereby, the applicant knows what is required of him and is not confronted at a later date with requests he deems unlikely and unnecessary.

11. Restore Eximbank to its former role of a government agency that truly supports exports by their making direct loans and guaranteed loans available at competitive (fixed) rates of interests, and when required to meet competition, to provide thier guarantee for loans to cover local cost financing and/or capitalization of interest over the construction period or drawdown period.

APPENDIX

TABLE A

EXPORTS OF MANUFACTURED GOODS*

($ Billions)

	U.S.	Germany	Japan
1960	$12.7	$ 5.1	$ 3.6
1970	29.7	30.7	18.1
1975	72.1	79.6	53.2

*Source: U.S. Department of Commerce

TABLE B

JAPANESE EXPORTS

Millions of Dollars

	Total $ Millions	Capital Goods $ Millions	% of Total	Consumer Goods $ Millions	% of Total	Consumer Non-Durable $ Millions	Consumer Durable $ Millions
1970	19,318	6,001	31%	4,970	26%	851	4,119
1971	24,019	7,468	31%	6,628	27%	896	5,732
1972	28,591	9,620	34%	8,120	28%	825	7,295
1973	36,930	13,664	37%	9,154	25%	723	8,431
1974	55,536	19,497	35%	11,102	20%	687	10,415
1975	55,753	21,612	38%	11,160	20%	688	10,472
1976*	59,986	24,065	40%	14,366	24%	776	13,590

*January - November

TABLE C

Growth of U.S. Capital Goods Exports

1970 - 1976

Millions of Dollars

Sector	Exports 1970	Exports 1976	1976 as a Percentage of 1970
Other transport equipment	141	778	552
Farm tractors and machinery	358	1,617	452
Mining drilling and related processing equipment	480	2,027	422
Trucks, buses and special vehicles to countries other than Canada	318	1,171	368
Materials handling equipment	266	966	363
Trucks, buses and special vehicles to Canada	242	824	340
Electrical machinery other than consumer type	2,077	6,677	321
Scientific, medical, and professional equipment	283	909	321
Excavating and paving machinery	899	2,594	288
Other industrial machinery and components	1,354	3,648	269
Parts for aircraft and engines	1,131	2,975	263
Power generating machinery other than engines for aircraft and autos	623	1,597	256
Commercial air-conditioning, refrigerating and central heating equipment	320	774	242
Hand tools and service equipment	414	974	235
Non-farm tractors, parts, and attachments	584	1,320	226
Machine tools and metalworking machinery	549	1,220	222
Other specialized industrial machinery	906	1,985	219
Measuring, testing and control instruments	754	1,651	219
Civilian aircraft, complete	1,528	3,211	210
Business machines and computers	1,702	3,296	194
Total	14,931	40,334	270

Source: Department of Commerce

TABLE D

GROWTH OF SELECTED CAPITAL GOODS EXPORTS -- U.S., Germany, Japan

Millions of Dollars

	United States			Germany			Japan		
	'70	'75	'75 as a % of '70	'70	'76	'76 as a % of '70	'70	'75	'75 as a % of '70
1. Agricultural machinery and implements	628	2,094	333%	318	1,155	363%	72	534	742%
2. Machines for special industries	1,138	3,631	319%	1,005	2,793	279%	198	729	368%
3. Equipment for distributing electricity	89	282	317%	136	409	301%	121	299	247%
4. Mechanical handling equipment	605	1,845	305%	391	1,258	322%	120	471	392%
5. Electric power machinery and switchgear	611	1,709	280%	803	2,407	300%	297	816	275%
6. Heating and cooling equipment	494	1,310	265%	406	1,129	278%	102	457	448%
7. Pumps and centrifuges	587	1,506	256%	503	1,709	340%	112	352	314%
8. Power generating machinery other than electric	1,395	3,546	254%	708	2,446	346%	237	874	369%
9. Metalworking machinery	396	920	232%	842	2,255	268%	116	452	390%
10. Aircraft	2,658	6,171	232%	116	650	560%	33	26	79%
11. Ships and boats	151	326	216%	305	1,621	531%	1,410	5,999	425%
12. Textile and other machinery	273	486	178%	868	1,786	206%	327	784	240%
13. Office machines	1,547	2,640	170%	625	1,642	262%	329	778	236%
TOTAL	10,572	26,466	250%	7,026	21,260	330%	3,474	12,568	362%

Sources: U.S. -- Department of Commerce, FT 455
Germany and Japan -- Organization for Economic Cooperation and Development, Statistics of Foreign Trade, Trade Series B

TABLE E

EXPORT-RELATED EMPLOYMENT: 1960 to 1975

	Merchandise Exports (Census Basis) (Billions of $1)	Total Employment Attributable to Merchandise Exports (Millions)	Jobs/$1 Billion of Merchandise Exports (Thousands)
1960	19.7	2.28	115
1965	26.7	2.37	89
1970	42.7	2.93	69
1972	49.2	2.85	58
1973	70.8	3.47	49
1974	97.9	3.78	39
1975	107.1	3.74	35

Sources:

Merchandise Exports: International Economic Report of the President, January, 1977, page 150.

Total Employment, 1960-1973: Statistical Abstract of the United States, 1975, Table 1363.

Jobs/$1 Billion, 1974-1975: Charles S. Friedman, "Estimate of Cost Effectiveness of the DISC Legislation," U.S. Department of Commerce, February, 1976.

January 3, 1977

EXPORT CREDIT SURVEY QUESTIONNAIRE

1) Company Information

A. Name of company

B. Name and title of respondent

C. Total company sales*+ _____

D. Total company sales - minus sales of foreign affiliates* _____

E. Total exports from the U.S.* _____

F. Please indicate major export product lines, e.g. earth moving equipment, machine tools, etc.

2) Export Credit Transactions - use of Eximbank facilities and other bank lending. Please answer question A., and to the extent possible -- depending on the available data -- please provide the information requested in B.*

A. Please estimate for the five years listed, the dollar total of your company's Eximbank participation relative to the dollar total of all export transactions. For the purpose of this question, please date export sales and financing by commitment rather than shipment. Rough estimates are adequate if data are lacking.

* Please use most recent annual figures available and, if possible, include a copy of your company's most recent annual report.

\+ Where applicable, please subtract public utility revenue from total sales figure.

3) B. Authorizations - In your judgement, has the Bank's loan authority kept pace with the changing needs of U.S. exporters?

☐ Outstanding

☐ Good

☐ Adequate

☐ Unsatisfactory

C. Administration - Do the procedures for Exim services in any way restrict your ability to fully utilize Exim/FCIA programs; for example, have you recently experienced difficulty in making timely bids because of delays in Eximbank commitments?

☐ Outstanding

☐ Good

☐ Adequate

☐ Unsatisfactory

Comment:

D. General experience with the Bank.

☐ Outstanding

☐ Good

☐ Adequate

☐ Unsatisfactory

	A. Total Exim Participation	B. Total Export Sales
1976	_____	_____
1975	_____	_____
1974	_____	_____
1973	_____	_____
1972	_____	_____

2) B. Please estimate totals for the following financing sources as a percentage of total Exim participation. For each of the three years, the figure used for total Exim participation should equal the corresponding estimate recorded in column A. above.

	% 1976	% 1975	% 1974
(1) Amount of Exim direct loans	_____	_____	_____
(2) Amount of private financing guaranteed by Exim	_____	_____	_____
(3) Total private financing	_____	_____	_____
(4) Amount of outside private financing covered by FCIA	_____	_____	_____

(3) Based on your utilization of Eximbank services, how would you rate the Bank's current performance in the following areas?

A. Competitiveness - How well is the Bank able to meet the government supported financing available to foreign exporters?

Please make particular note of Exim's flexibility in meeting competition in special instances.

☐ Outstanding

☐ Good

☐ Adequate

☐ Unsatisfactory

4) Please document recent instances in which your company has lost export sales as a result of inadequate U.S. export credit financing facilities. If possible, please indicate which aspects of the financing package, e.g. term, interest rate, down payment, local currency financing, etc. resulted in the lost sale. For each instance described, please indicate, where possible, the specific terms of the financing available to the foreign competitor.
(Please use separate sheet).

5) In your opinion, would your company undertake an increased export effort if you were assured of export credit facilities comparable to those of your major competitors? yes ☐ no ☐
Comment:

6) To your knowledge, has your company lost an export sale to a developing country as a result of concessionary financing offered by a foreign export export credit facility? Has your company found this ability of foreign credit agencies to offer mixed credits to be an acute problem in obtaining competitive financing for your exports? Please document instances in which this has occurred; also please give instances where concessionary financing terms have been extended to industrial countries by competing foreign credit agencies.
(Please use separate sheet).

7) Has your company chosen to supply goods from plants located overseas rather than from the U.S. due to availability of better export credit facilities in the foreign country of export? Please specify the differences in financing which precluded exporting from the U.S. plant. (Please use separate sheet).

8) Please estimate, to the best of your ability, employment lost by your company in the U.S. as a result of lost export business due to an inability to meet foreign export credit terms and conditions available to your competitors. Please cite case examples if possible.
(Please use separate sheet).

9) In June of 1976, a set of "guidelines" relating to minimum interest rates, repayment terms and maturities was adhered to by the Eximbank on a one-year trial basis (see attachment). While not supplanting the preliminary "Gentlemen's Agreement" signed in 1974, the guidelines do represent an attempt to promote the cooperation necessary to head off a possible export credit war among industrialized countries. Having operated under the "guidelines" for more than six months, please respond to each of the following questions:

A. Since the adoption of the "guidelines" in June, has your company become aware of either (1) noticeable changes in Exim's lending policy, or (2) any lessening in the flexibility of foreign export credit agencies in delivering credit terms necessary to win a sale?

B. Does your company feel that international "harmonization" of various export credit programs and systems is an appropriate national policy objective in view of differing banking and export financing systems?

9) C. Assuming further efforts by the U.S. Government to initiate or cooperate in efforts to reduce the likelihood of an "export credit war" by means of a "Gentlemen's Agreement," what would you see as the essential ingredients of such as an agreement? In your opinion, what means would be most appropriate to this end?

10) Overall evaluation of U.S. export credit system - Based on your experience with the Export-Import Bank, please evaluate the performance the U.S. system relative to the systems available to foreign competitors.

A. The U.S. export credit system serves its exporters better than do the export credit systems of its major competitors.

yes /___/ no /___/

B. If no, then please indicate which country's national export credit system best serves its exporters._____

C. Please complete the following form: Based on your company's experience, how do the following national export credit systems compare with the system currently serving U.S. exporters?

	Better than U.S.	Worse than U.S.
Canada	_____	_____
Japan	_____	_____
U.K.	_____	_____
Germany	_____	_____
France	_____	_____
Italy	_____	_____
Other _____	_____	_____

11) Currently, Eximbank legislation places certain specific restrictions on the lending authority of the Bank. A few of these limitations are listed below.

A. Congressional review required for any proposed Exim credit or guarantee of $60 million or more.

B. Shipping restrictions (P.R.17) on U.S. officially financed exports

C. Various ceilings (and sector sub-ceilings) on loans to communist countries in general and the Soviet Union in particular.

D. Others_____

Could you please comment on any of the above limitations in terms of their effect on your company's ability to compete in world markets.

12) General Comments - Please comment on any aspect of export financing or Eximbank operations which your company feels needs to be considered within a forum such as the NAM Task Force on export credit, and particularly within the context of Congressional hearings on renewal of the Export-Import Bank Act of 1945.

13) Please state any recommendations you would like to have considered in an effort to improve the U.S. export credit system, including specific proposals regarding Exim/FCIA programs or policies.

June 20, 1978

STATEMENT OF JAMES N. BARNES
ON BEHALF OF THE ENVIRONMENTAL DEFENSE FUND,
FRIENDS OF THE EARTH, NATIONAL AUDUBON SOCIETY,
NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB,
WILDERNESS SOCIETY, NATIONAL WILDLIFE FEDERATION,
ENVIRONMENTAL POLICY CENTER, WORLD WILDLIFE FUND,
INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT
AND CONSERVATION FOUNDATION BEFORE THE
RESOURCES PROTECTION SUBCOMMITTEE OF THE SENATE COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS REGARDING S. 3077

I am James N. Barnes, an attorney with the Center for Law and Social Policy, a public interest law firm located in Washington, D.C. I appreciate the opportunity to appear before you today on behalf of eleven environmental groups, the Environmental Defense Fund, Friends of the Earth, National Audubon Society, Natural Resources Defense Council, Sierra Club, Wilderness Society, National Wildlife Federation, Environmental Policy Center, World Wildlife Fund, the International Institute for Environment and Development, and the Conservation Foundation (the "environmental groups"),*/ to discussion application of the

*/ EDF, whose principal place of business is 475 Park Avenue, New York, N.Y. 10016, has a membership of approximately 45,000 persons and a 700-member Scientists' Advisory Committee, including members residing in 18 foreign countries. FOE, whose principal place of business is 124 Spear Street, San Francisco, Calif. 94105, has a membership of 20,000 persons and is affiliated with "sister organizations" in 12 foreign countries. The National Audubon Society, whose principal place of business is 950 Third Avenue, New York, N.Y. 10022, has a membership of approximately 400,000 persons, including members in more than 100 foreign countries. NRDC, whose principal place of business is 122 E. 42nd Street, New York, N.Y. 10017, and which has additional offices in Washington, D.C. and Palo Alto, California, has a membership of approximately 22,000 persons, including members residing in 8 foreign countries. The Sierra Club, whose principal office is at 530 Bush Street, San Francisco, California 94104, has a membership of approximately 180,000 persons, including persons residing in 67 foreign countries. (Footnote continued on next page)

National Environmental Policy Act to activities of federal agencies abroad, and particularly to the activities of the Export-Import Bank ("Eximbank").

The Senate Committee on Banking, Housing and Urban Affairs recently reported out S. 3077, which would exempt the Export-Import Bank from having to comply with the requirements of the National Environmental Policy Act ("NEPA") unless the Bank's actions had an environmental impact within the U.S. The Committee report states at page 9 that this action "is necessary to ensure that the many complicated and sensitive public policy choices which are involved will be debated and resolved by the Congress, not left to be settled through inter-agency bargaining by executive branch bureaucracies." That report refers to proposed CEQ regulations on the general subject of applying NEPA requirements to U.S. actions abroad as being "premature."

We understand that this Subcommittee is interested in reviewing the broader question of how NEPA is being--and should be--applied to the overseas activities of all federal

[footnote continued]

The Wilderness Society's principal place of business is 1901 Pennsylvania Avenue, N.W., Washington, D.C. 20006. It has a membership of approximately 70,000 people. NWF, whose address is 1412 16th Street, N.W., Washington, D.C. 20036, is composed of associate members and members of State affiliate member organizations, comprising over 2,000,000 persons. EPC's principal place of business is 317 Pennsylvania Ave., S.E., Washington, D.C. 20003; it has no members itself but represents coalitions of citizens around the country on energy and natural resource issues. The World Wildlife Fund is a non-membership, publicly supported organization with offices at 1601 Connecticut Ave., N.W., Washington, D.C. 20009. IIED is a non-profit organization doing research on selected topics in international environmental problems, with offices in London and Washington, D.C. The Conservation Foundation is a thirty-year old, non-profit, non-membership organization dedicated to research and conservation, with major projects in land use and urban growth management, pollution, toxic substances control, energy conservation, and economics and environment.

agencies. This is an issue that the Center has been working on actively for several years. We are familiar with the present litigation involving NRDC and the Export-Import Bank, which apparently prompted the Senate Banking Committee's recent action.

In our view, exemption of the Eximbank or any federal agency from its normal NEPA obligations is both unnecessary and unwise. We believe the Banking Committee's fears are largely unjustified. In this statement, I will explain why the environmental groups believe that all federal agencies have a legal obligation to comply with NEPA if their actions -- in the U.S. or abroad -- may significantly affect the environment, and why such requirements are both practically and politically in the best interests of the United States.

1. NEPA and Its Legislative History

The key references to the environment in NEPA itself do not contain any geographical limitations. Rather, the references are broad and inclusive, for example, to "man and his environment", to the "natural environment" and similar phrases. NEPA, as implemented by Executive Order 11514 and the CEQ Guidelines, establishes a national policy to "prevent or eliminate damage to the environment and biosphere," NEPA §2, 42 U.S.C. §4321. It declares that the Federal Government has a continuing responsibility to use "all practicable means" to minimize environmental degradation, NEPA §101(b), 42 U.S.C. §4331, and directs that, "to the fullest extent possible...the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act." NEPA §102(1), 42 U.S.C. §4332. §102(2)(B),

42 U.S.C. §4332(2)(B), places an obligation on "all agencies" to "identify and develop methods and procedure in consultation with the Council on Environmental Quality...which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations."

Section 2(b) of the Executive Order directs federal agencies to

> "Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties..."

The CEQ Guidelines direct each Federal agency to

> "establish, in consultation with the Council on Environmental Quality, ... its own formal procedures for (1) identifying those agency actions requiring environmental statements, the appropriate time prior to decision for the consultations required by Section 102(2)(C), and the agency review process for which environmental statements are to be made available, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statement, (4) consulting with and taking account of the comments of appropriate Federal, State and local agencies. . ., and (5) meeting the requirements of Section 2(b) of Executive Order 11514 for providing timely public information on Federal plans and programs with environmental impact. . . ."
> CEQ Guidelines, §1500.3.

In order to implement the policies of NEPA, Congress has required that <u>all</u> federal agencies must, for "major Federal actions significantly affecting the quality of the human environment," prepare, circulate for comment, and consider in their decision-making process, a detailed statement on:

> "(i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." §102(2)(C)

Finally, in §102(2)(E), Congress directs all federal agencies to recognize "the worldwide and long-range character of environmental problems..." Nowhere in the Act, the Executive Order or the CEQ Guidelines is there any suggestion that federal agencies are only to be concerned about the U.S. environment.

The legislative history similarly indicates concern with potential impacts on the environment outside the U.S. For example, Senator Jackson, sponsor of NEPA, stated in the Senate debate prior to passage:

> "What is involved is a Congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind. That we will not intentionally initiate actions which will do irresponsible damage to the air, land, and water which supports life on earth."

In oversight hearings held before the House Merchant Marine and Fisheries Committee in 1971, the specific question of NEPA's application to U.S. actions abroad came up. The Committee rejected the State Department's assertion that environmental impact statements should not have to be filed for overseas projects, stating:

> "[T]he global effects of environmental decisions are inevitably a part of the decision-making process and must be considered in that context."

2. Agency Response

During the last eight years, most government agencies have promulgated regulations regarding application of NEPA to their activities--both in the U.S. and abroad. Some agencies, such as AID, drafted regulations in response to litigation, but most did so voluntarily. The Export-Import Bank, notably, did not adopt such regulations.

The environmental groups believe there is a sound policy basis for applying NEPA to proposed activities of our federal agencies abroad. The United States, as one of the largest developed nations of the world, has a special responsibility to protect the earth's environment, the degradation of which respects no national borders. We export many products, manufacturing plants and power generation facilities, and help nations build dams and other projects that have enormous implications for the human and global environment. Many of those implications have only recently become evident in our own nation. For example, the U.S. government has begun in recent years to ban some kinds of products for sale in the U.S., and has stringently curtailed the use of others. Pesticides are a good example. The United States has a special responsibility to ensure that we are at least aware of the possible environmental impact of our activities on other nations and on the

global environment, and should make every effort to minimize those impacts. Without a legal requirement that those potential effects be identified and explored, however, we ensure the opposite -- blindness to the implications and impacts of our actions.

What is involved in this dispute is not the application of United States law to other countries, or the imposition of United States environmental standards on the actions of other govenrments, but rather compliance by federal government agencies with the procedural requirements of NEPA for the preparation and processing of environmental impact statements. These statutory requirements are designed to assure that the environmental impacts of major federal actions are identified, understood and evaluated before the actions are decided on and undertaken. In the case of activities and impacts outside the United States, the environmental statements are for the consideration of federal agencies in this country and of government agencies in the relevant countries abroad before a final decision is made. Without the information that this process reveals, decisions can be taken that have harmful environmental consequences. Often, alternatives that would accomplish the desired development result without such environmental danger are available, but remain unidentified. A host country may have no sound basis for evaluating the possible environmental impacts of a proposed project unless the U.S. does a NEPA analysis.

3. Litigation to Enforce NEPA

The environmental groups have used litigation sparingly in attempting to bring the overseas actions of federal agencies into compliance with NEPA. The environmental community has viewed this as an area where the process is crucial.*/ We have recognized that better compliance would come as the agencies themselves became more familiarized and knowledgeable in dealing with NEPA. But in order for the process to unfold, there must be a beginning. That beginning is the agency's agreement that NEPA at least conceptually applies to some of its activities. That is the beginning that the Eximbank, alone among major agencies, has refused to make. Perhaps a little history would be helpful to the Committee.

In 1973, on behalf of the Sierra Club, NRDC and other groups, the Center sued the Atomic Energy Commission and the Eximbank regarding their participation in the export of nuclear power generating systems without meeting the requirements of NEPA. Eximbank had made loans in the prior three years of over $1.3 billion for export of nuclear power systems and enriched nuclear fuel, approximately 31% of all loans made by the bank in that period. The Bank was financing over 33% of all U.S. nuclear fuel export contracts. Yet Eximbank had never established any rules under NEPA for evaluating or considering in its decision-making process the environmental impact of its activities, including those associated with financing nuclear power plants

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*/ In a recent resolution, for example, the Sierra Club reaffirmed "its commitment to assuring that all major U.S. federal actions significantly affecting the human environment must be assessed as to their environmental impacts, no matter where in the world those impacts may be."

and nuclear fuels. Neither the AEC nor Eximbank had promulgated any environmental impact statements on this program or on individual exports.

Eximbank raised the same issues in that lawsuit that it has put forward in the present litigation with NRDC and in trying to obtain a legislative "solution" to its problem. In the 1973 suit, Eximbank filed a motion for summary judgment arguing that application of NEPA to its activities would result in imposition of U.S. environmental standards on foreign countries, and insurmountable administrative burdens that would impair its operations. For the purposes of this hearing, I would like to analyze briefly the purpose and operations of the Bank, to see if these claims are true, and to give the Committee a basis for determining whether there are grounds for a general NEPA exemption.

Eximbank's charter, the Export-Import Bank Act of 1945, 12 USC §635, establishes the Bank as an "agency" of the U.S., whose purpose is "to aid in financing and to facilitate exports and imports and the exchange of commodities between the U.S....and any foreign country..." §635(a)(1). There is nothing in the Act that would expressly prohibit compliance with §102 of NEPA, or make full compliance impossible. Moreover, Eximbank never submitted a statement to CEQ and the President, as required in §103 of NEPA, setting forth the "deficiencies or inconsistencies [in its statutory authority, policies and procedures] which prohibit full compliance with the purposes and provisions of this Act..." The considerations of administrative burden, confidentiality, competitive disadvantage and speed put forward by Eximbank do not provide any basis for exemption from NEPA.

Every agency has its own arguments for concluding that compliance with NEPA may cause undue administrative hardship. The factors raised by Eximbank may be relevant to determining the manner in which NEPA is to be complied with, but not as to whether there should be compliance. Eximbank regularly carries out a detailed review, before entering into a financial transaction, to determine whether a proposed project is economically, financially, and technically sound, and whether it would adversely affect the economy of either the U.S. or countries receiving the exports. On the technical side, Eximbank routinely reviews such factors as the engineering of the project, the proposed management plan, the technical qualifications of those responsible for project implementation, the ability of the host country to support the project, and the size of the project in relation to the needs of the host country. Before final decisions are made, the Bank normally consults with the State Department on policy matters, and sometimes with the National Advisory Council on International Monetary and Financial Policy. Viewed from this perspective, there is no logical reason to single out the environment as an area where no similar, detailed review can be made or where similar procedures could not be followed. For example, an initial environmental assessment might be undertaken before any preliminary commitments are made. Afterwards, if appropriate, a more detailed environmental impact statement under Section 102(2)(C) of NEPA might be produced. Indeed, the extensive nature of the economic and policy reviews made by Eximbank, both in-house and in consultation with other

agencies, underscore the capability of Eximbank to comply with Section 102 of NEPA, and the lack of inherent conflict between Section 102 of NEPA and Eximbank's purposes and activities. Eximbank has broad powers to withhold financial assistance, or to impose conditions on the receipt of such assistance on economic and technical grounds. Requiring the Bank to give formal consideration to NEPA factors merely adds a further ground for exercise of its broad discretion.

Application of the procedures of Section 102 of NEPA to Eximbank-financed activities does not require particular substantive results, such as application of United States standards to a foreign environment. Rather, it requires analysis, disclosure and consideration of the environmental impacts of and alternatives to agency actions. The process is geared toward the development of information, thus providing a basis for both federal decision-making and decisions by other nations affected by agency actions, to minimize or eliminate adverse environmental effects associated with the action. Provision of this analysis and information does not dictate the end result, but merely apprises decision-makers of environmental impacts and possible alternatives or modifications.

NEPA, in any event, does not elevate environmental values to overriding importance in the decision-making process. Indeed, it explicitly recognizes that substantive agency implementation of its goals must be "consistent with other essential considerations of national policy," NEPA §101(b), 42 U.S.C. §4331(b), and thus economic, social, foreign policy or other considerations may be determinative of any substantive

decisions made. Thus, merely because Section 102(2)(C) of NEPA applies procedural prerequisites to United States Governmental decisions and actions, it does not require foreign governments or non-U.S. citizens to comply with United States environmental standards. Any presumption against application of these procedures to an agency's activities abroad on the ground that it involves "extraterritorial" application of a statute would be completely inappropriate.

Section 102 of NEPA requires compliance with its provisions "to the fullest extent possible." The courts have held that NEPA "makes environmental protection a part of the mandate of every federal agency and department."*/ Eximbank has never contended that its activities, such as assisting the export of nuclear power generating systems and enriched nuclear fuels, are not "major federal actions" or that such activities may not "significantly affect the quality of the human environment."

Eximbank's role in the export process for many products is a critical one. Financing is an integral part of any major export transaction. Its decision to make or not make a loan may have a significant impact on whether particular types of exports take place, or on what conditions and with what safeguards. The Bank's lending rate is often several points below prime, which gives its decisions additional impact.

The litigation against the AEC and Eximbank in connection with nuclear export activities did not result in a final order directing Eximbank to promulgate NEPA regulations. The principal focus of the suit was preparation of an environmental impact

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*/ Calvert Cliffs, 449 F.2d at 1112.

statement on the nuclear power export program. On April 15, 1974, the AEC indicated to the court that it agreed to prepare such an impact statement, as the lead agency involved. The Department of State, conceding that NEPA applied, agreed to promulgate regulations. While noting that NEPA makes no exceptions in directing all federal agencies to comply with its requirements, the court found that it did not have to rule on the question of whether Eximbank had to file a separate EIS. The court indicated that if Eximbank was the sole federal agency involved in the export of some commodity, its decision would be different. At one point in its decision, the court stated: "[T]he Court is certain that [Eximbank] is fully cognizant of its procedural obligations under NEPA...[and] is confident that Eximbank and State share Congress' announced concern that federal agencies give 'environmental amenities... appropriate consideration in decisionmaking along with economic and technical consideration....' "

Unfortunately, Eximbank has not done what the court anticipated. Eximbank has never promulgated regulations regarding the carrying out of its NEPA obligations. That is why the present litigation against the Bank was begun.

The agency with responsibilities and problems most analagous to Eximbank is AID. AID's experience in coming to grips with the application of NEPA to its activities abroad is applicable to present conflict with Eximbank. AID originally ignored the repeated requests of CEQ and environmental organizations to issue NEPA regulations and to prepare an environmental analysis of its financing of pesticide exports to developing countries, which then totalled over $16 million per year.

On behalf of four environmental groups, the Center filed suit against AID on April 8, 1975 regarding its pesticide export program. We argued that AID lacked procedures for meeting its NEPA obligations, and had failed to file an impact statement. By December 5 of that same year, the case had been settled. In the settlement AID recognized

> "its responsibilities to conduct its operations in a manner that mitigates or avoids any potential short- or long-term deleterious environmental effects of local, regional or global proportions. AID will ensure that the environmental consequences of proposed AID-financed activities are identified and properly analyzed. AID will assist, to the extent possible, in strengthening the indigenous capabilities of developing countries to appreciate and evaluate the potential environmental effects of proposed development strategies and projects and to select, implement and manage effective environmental protection measures."

AID agreed to a stipulation not to export DDT, Alderin/Dieldrin, Chlorodane/Heptachlor and 2, 4, 5-T until an environmental impact statement was filed and regulations promulgated based upon the EIS. The draft EIS was completed on May 13, 1976, and the final EIS was released on September 30, 1976. In that period, AID changed its policy from providing a commodity list of available pesticides to developing countries that contained no environmental analysis at all, to requiring an initial environmental examination for every project involving assistance for the procurement of pesticides. If the export request is for a pesticide on which EPA has initiated regulatory action, a positive threshold decision must be made by AID, involving preparation and consideration of an environmental assessment or an EIS. Proposed regulations were published in 42 Fed. Reg. 63900 on December 12, 1977. Final regulations were promulgated in 43 Fed. Reg. 20490 on

May 12, 1978. AID developed an administrative mechanism for complying with NEPA in its day-to-day operations.

In the settlement, AID agreed to include the following information in the pesticide EIS:

(1) Historical description of the pest management program.

(2) Description of the scope and nature of both the current and projected pest management program, including an individual description of any pesticides included in such activities which had been banned in the United States.

(3) Assessment of environmental impacts, including adverse environmental impacts which cannot be avoided, of the pest management program, wherever such impacts or activities occur, including effects on humans, flora and fauna.

(4) Analysis of reasonable alternatives and their environmental effects.

(5) Conclusions as to which pesticides AID will and will not provide assistance for, including the limiting factors applicable to those pesticides AID will approve as to use, handling and packaging.

(6) Efforts to be undertaken to obtain the agreement of host countries and/or international and regional organizations for the establishment of data-gathering mechanisms to monitor or prevent potential adverse environmental impact associated with pesticide activities.

The environmental regulations AID agreed it had a legal duty to promulgate were to cover all aspects of its activities, including capital, commodity and technical assistance. The

Agency agreed that its regulations would require every proposed new activity to be assessed at the earliest possible stage to identify whether it is a major action significantly affecting the environment. Even where a full EIS was not found to be required, AID agreed to assess the potential environmental effects of the project and to make that assessment an integral part of the decision-making process.

What has been AID's experience during the last two and one-half years? In a letter to the Council on Environmental Quality dated December 9, 1977, Administrator John Gilligan reviewed the situation:

> "A.I.D.'s environmental regulations, prepared in cooperation with the Council, have now been in effect for almost 18 months. Under these regulations, A.I.D. activities have been subjected to a written environmental examination which forms a basis for a threshhold determination of significance. In more than 30 cases, decisions have been made to undertake more detailed environmental assessments. These assessments have covered or will cover a wide range of projects, including malaria control, rural development, construction of farm-to-market roads, and upgrading of housing conditions, in countries with widely varying political systems and environmental sensitivities.
>
> . . .
>
> "[O]ur overall experience is a positive one. We have discovered that developing countries themselves have come increasingly to recognize the inter-related nature of environment and development and to seek to ensure that environmental considerations are adequately addressed in development projects. Further, the practical experience of A.I.D. has been that it is possible to undertake detailed environmental analyses of U.S.-supported projects abroad and that the results obtained are useful to us, as well as to host country planners, in making project decisions."

Regarding some of the familiar objections to NEPA compliance raised by some agencies, Mr. Gilligan stated that:

> "Almost without exception, we have been able to undertake environmental analyses without strain on the relations between the United

> States and foreign countries...; [A]chievement of the Agency's mandate has not been impaired by the conduct of environmental analyses..; [N]o project has fallen through because of required environmental analyses, and, as far as we can discern, compliance with our environmental regulations may have had only minimal impact on U.S. jobs...

He concluded:

> [I]n summary, A.I.D. has no significant reservations about the preparation of environmental analyses for programs conducted abroad. We look forward to working further with the Council in the future in seeking ways to improve our Agency's procedures and to ensure that development is environmentally sound."

In the past three years, AID's attitude has changed dramatically. At a meeting sponsored by the International Institute for Environment and Development on March 23, Administrator Gilligan said:

> "As most of you probably know, AID was sued by four environmental organizations in 1975. As far as I am concerned, that suit was a stroke of good fortune both for AID and the future of developing nations." (Attachment to AID Press Release 78-25, page 5).

Mr. Chairman, in our view, the AID experience demonstrates precisely how we think a sound policy regarding NEPA abroad should be administered. We believe it is essential to look at the facts carefully and unemotionally before taking the precipitous action of exempting any federal agency from NEPA. Eximbank has never made a good faith effort to comply.

It is interesting to note that at least one international lending agency with no legal obligation to comply with NEPA-type requirements--the World Bank--has established an Office of Environmental and Health Affairs to review proposed projects on environmental grounds. The International Institute for Environment and Development recently completed a study of

nine international development financing institutions. IIED concludes that the World Bank does a decent job of dealing with the environmental implications of the projects it finances, citing many examples of funded activities that have been redesigned or had mitigation measures added after an environmental review. The study found that the World Bank's environmental consciousness was "evolving continuously in a positive direction." There is no reason why a federal development financing institution like the Eximbank cannot meet similar requirements that are imposed by law. We note that Australia recently moved to require environmental impact statements on all of its foreign aid projects.

4. CEQ Proposals

Perhaps it would be appropriate to review what CEQ has proposed, to see if it appears unreasonable. Again, a little history may be useful.

On September 24, 1976, Russell Peterson, then Chairman of CEQ, released a "Memorandum to Heads of Agencies on Applying the EIS Requirement to Environmental Imports Abroad." That memo noted different practices and interpretations among agencies regarding these requirements, and advised that "NEPA requires analyses and disclosure in environmental statements of significant impacts of federal actions on the human environment--in the United States, in other countries, and in areas outside the jurisdiction of any country." The memo noted the Council had consistently applied NEPA to U.S. international activities:

> "The policies underlying NEPA reinforce the interpretation suggested by its language and legislative history, judicial precedents and administrative practice. Analysis and disclosure in an EIS of significant environmental

> effects provide U.S. decisionmakers a fuller picture of the foreseeable environmental consequences of their decisions. Impact statements do not dictate actions on foreign soil or impose U.S. requirements on foreign countries; instead, they guide U.S. decision-makers in determining U.S. policies and actions.
>
> "In addition, EISs provide information to cooperating governments which they then could use in making decisions about projects within, or which may affect, their countries. Far from being an imposition, this information can enhance the value of U.S. assistance or participation. This full disclosure by the United States contributes to the integrity of cooperating governments' policymaking, and thus lends support to international environmental cooperation as directed in §102(2)(F), the Stockholm Declaration, and other international agreements. (footnotes omitted)(emphasis added).

On December 12, 1977, CEQ sent to heads of agencies draft regulations for the implementation of NEPA. This was pursuant to Executive Order 11991 in which President Carter directed the Council to issue regulations for the implementation of NEPA's procedural provisions. The CEQ flagged two particularly difficult problems that were not addressed in detail in the proposed regulations, one of which was international application of NEPA. CEQ stated that it wanted "to sit down with affected agencies and work out appropriate texts for the Regulations that are acceptable to Federal agencies generally... We hope that together we can generally address these difficult issues in ways that account both for the legal requirements of the environmental purposes sought to be achieved by NEPA and the practical realities that constrain certain of its applications."

On December 16, CEQ invited heads of agencies to a meeting on January 6, 1978, to discuss how the regulations

should address the activities of federal agencies having international environmental impacts. Agencies were encouraged to bring proposed regulatory provisions that would be acceptable to the agency. A "preliminary discussion draft" of proposed regulations was enclosed. This draft would require a "foreign environmental statement" "when a major Federal action significantly affects the environment only of one or more foreign nations." CEQ did not propose full-blown impact statements in these situations, but only compliance with §§1502.13, 14 and 15 of the regulations (statement of purpose and need for the federal action, alternatives, and environmental consequences, including analyses of how those consequences could be mitigated). CEQ's draft provided that each agency should consult with the Council in developing implementation procedures for the foreign environmental statements in order to fit the Act's requirements "to the practical considerations of operating in the international context." CEQ's draft provided explicitly for consideration of confidentiality, international commercial competition, and diplomatic needs. The draft put special emphasis on agency analysis of (1) activities that are illegal or strictly regulated in the U.S. to protect health or safety, (2) activities that threaten national, ecological or environmental resources of global importance, and (3) activities that may have inadvertent adverse effects on other countries.

This is the draft that apparently produced consternation in some agencies. Arguably, it imposes lesser requirements than the regulations of most agencies that are now on the books. Certainly it is not inflexible in scope or time. It appears to

deal with a problem that everyone agrees is complicated and not susceptible of glib solutions in a sensitive, sophisticated way. CEQ's proposed regulations would ensure that all federal agencies systematically consider whether their proposed actions will have significant adverse environmental impact on other countries and in the global commons. This process would give foreign governments access to analytical data on proposed U.S. actions that otherwise probably would not be available. The regulations do not require even that activities illegal in the U.S. be disallowed in other countries, but merely that the facts be disclosed. We must not close our eyes to the fact that transferring modern technologies to less developed countries, even though for the best of reasons, can have harmful, unwanted side effects. Our ability to analyze and predict those effects is often greater than a less developed nation's. Most of the world's countries do not have the necessary laws, policies, resources and personnel to adequately analyze the impacts of proposed development projects imported from the U.S. Moreover, the impacts in a developing country may be very different than in the U.S., and the tradeoffs and alternatives often are different as well. Through NEPA, the U.S. can provide other countries access to our environmental and ecological expertise in a focused way. The U.S. has an obligation to avoid inflicting environmental damage on other nations as a result of our activities overseas.

The environmental groups believe that the United States should continue to exercise its leadership in international affairs on environmental matters by ensuring

the environmental soundness of government activities having impacts outside the United States. This is consistent with the President's Environmental Message given on May 23, 1977. The President stated:

> "Environmental problems do not stop at national boundaries. In the past decade we and other nations have come to recognize the urgency of international efforts to protect our common environment."

In order to "encourage the adoption" of "environmentally sound" development programs, the President instructed the State Department, AID and other concerned federal agencies "to ensure full consideration of the environmental soundness of development projects under review for possible assistance."

The environmental groups urge this Committee to do nothing that would jeopardize these goals. In our view, CEQ is approaching the international application of NEPA in a sound, constructive manner that will allow individual agencies the flexibility they need to conduct their statutory operations while still complying with NEPA. This process should be allowed to continue.

Thank you for the opportunity to express our views.

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1978

TUESDAY, JULY 11, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON RESOURCE PROTECTION,
Washington, D.C.

The subcommittee met at 9:40 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon John C. Culver (chairman of the subcommittee) presiding.

Present: Senators Culver, Muskie, and Wallop.

OPENING STATEMENT OF HON. JOHN C. CULVER, U.S. SENATOR FROM THE STATE OF IOWA

Senator CULVER. Today the Subcommittee on Resource Protection will hold its second day of hearings on S. 3077, the Export-Import Bank Act amendments of 1978. Section 5 of this bill, which is specifically the focus of the subcommittee's review, exempts from compliance with the National Environmental Policy Act of 1969 any of the bank's activities which do not affect the environment of the United States. This bill has been referred to the subcommittee for a period ending July 24, 1978.

While S. 3077 addresses the international applicability of NEPA only to the Export-Import Bank area, this issue clearly extends beyond the power of this particular agency and includes the overseas activities of all Federal agencies. This subcommittee is examining this broader issue as NEPA applies to activities in the Federal Government now which have environmental implications abroad.

On June 20 several business and environmental groups testified on S. 3077. Several witnesses opposed the extra-territorial application of NEPA to Export-Import Bank and any other Federal agency. They believed the requirements of the 1969 law, especially the preparation of environmental impact statements, will reduce the efficient operation of these agencies, and in turn will adversely affect our exports. They expressed concern as well that time delays and added expenses associated with the preparation and possibly litigation of impact statements could impose competitive disadvantages for American companies.

Other witnesses, however, pointed out that we have a responsibility to be aware of the impacts of our Federal actions on the global environment in order to avoid exporting our environmental misfortunes abroad. This is particularly true when use of an exported item, such as certain chemicals, is banned or strictly regulated within the United

States. This testimony indicated the NEPA process can be tailored by using programmatic impact statements and shortened environmental assessments to fit the operations of Federal agencies smoothly, and one would hope without the loss of export trade, or other economic disasters. Since most developing nations cannot duplicate our environmental expertise, they would welcome, not resent, this assistance.

Before turning to our first witness, it would be useful to restate the three major questions the subcommittee is examining during these hearings. First, is clarification needed concerning the application of NEPA to the overseas activities of Federal agencies? Second, if so, should that clarification be in legislative form or regulations promulgated by the administration? Finally, if congressional action is warranted, should the subcommittee restrict itself to the Export-Import Bank, or should it address all pertinent Federal agencies?

This is certainly a complex issue involving both enviornmental, economic, and trade considerations. Generally, we must recognize our responsibility to protect the environment, but we have to be certain that this mandate can be implemented efficiently, fairly, and responsibly.

Several Federal agencies are affected by any decision regarding the scope of NEPA's applicability to Federal activities overseas, and I understand that the administration has been working to develop a comprehensive position on this issue.

Three Federal agencies will testify today about the existing problems and the implications of any proposed resolutions, and I am hopeful we will be able to explore the essential questions thoroughly.

Our first witness is Mr. Herb Hansell, the legal adviser to the State Department. It is a pleasure to welcome you, Mr. Hansell, and you may begin.

STATEMENT OF HERBERT J. HANSELL, LEGAL ADVISER, DEPARTMENT OF STATE, ACCOMPANIED BY: CHARLES WARREN, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY AND JOHN MOORE, CHAIRMAN, EXPORT-IMPORT BANK OF THE UNITED STATES

Mr. HANSELL. Thank you, Mr. Chairman.

Before I begin my formal statement, I want to express on behalf of the administration our appreciation to you and to the subcommittee for your willingness to defer this hearing, which we know was originally scheduled at an earlier date and was moved to this date at our request. We are appreciative of that consideration.

I am pleased to have this opportunity to present the administration's views on section 5 of S. 3077, the Export-Import Bank Authorization Act amendments of 1978. I am accompanied this morning by Mr. John Moore, President of the Export-Import Bank, and also by Mr. Charles Warren, Chairman of the Council on Environmental Quality. I have a brief statement, following which Mr. Moore, Mr. Warren, and I will be pleased to respond to any questions you may have, Mr. Chairman.

Section 5 would provide that no rule or regulation under the National Environmental Policy Act would be applied to any activities of the

Export-Import Bank which do not have an environmental impact within the United States. As this subcommittee is aware, the Stevenson amendment is a response to concerns of the U.S. export community that application of NEPA to the Export-Import Bank's program could hurt U.S. exports.

The administration is fully sensitive to these concerns and would do nothing to impair the operations of the Bank. But the administration does not believe a legislative provision regarding NEPA for just one of many Federal agencies conducting activities abroad is either necessary or appropriate to address what we all realize is an extremely complex problem. The administration is unable to support section 5 of S. 3077 because it addresses one aspect of a much broader set of issues that we feel should be dealt with on a Government-wide basis.

The administration recently has begun the U.S. Government's first serious effort to develop a comprehensive program to insure appropriate consideration of the environmental effects of U.S. actions having impacts abroad in a manner consistent with other U.S. interests. The State Department and CEQ in consulation with the President's counsel are making substantial progress in developing a practical approach to achieve this objective. A number of details need to be worked out, and other agencies need to be consulted, but we see the basis of agreement that can be recommended to the President shortly. Therefore, we believe it would be unwise to embark upon a piecemeal legislative solution at this time.

To put this question in perspective, it may be helpful to recall briefly the history of the issue. A careful review of the legislative history of the National Environmental Policy Act shows that Congress never discussed whether the environmental impact statement requirements of section 102(2)(C) are applicable to the effects of "major Federal actions" on the environment outside the United States. Although the issue has been touched on in a few cases, to date no court has decided the question.

In recent years some departments and agencies have established procedures to enable them to take into consideration the environmental effects outside the United States of their actions. The Departments of State and Defense, AID, Coast Guard, ACDA, and NASA are among those that have environmental regulations or procedures that apply to such effects. However, in the past 9 years there has not been an attempt to establish a comprehensive, Government-wide program to deal with the complex problem of accommodating environmental concerns with other important U.S. foreign policy and economic policy interests.

This administration, however, is now making such an effort. It believes that the United States has concerns for the environment that extend beyond the water's edge. The question, thus, is not whether environmental considerations should be taken into account, but how they should be taken into account.

We must be mindful of the effect of our actions on the global environment and on the environment in other countries. At the same time, we must be respectful of the sovereignty of other States and of their priorities and decisionmaking procedures. We must also protect the

national security interests of the United States, insure the health of our economy, and encourage export industries. It is no easy task to balance these interests, but we must try to do so.

In the years since the enactment of NEPA, the Government has come a long way in developing procedures to insure that environmental impacts within our jurisdiction are adequately analyzed before final decisions are taken. But there are obvious difficulties in dealing with environmental questions that arise with respect to impacts outside our jurisdiction that directly affect our foreign relations.

Foreign policy decisions often must be taken speedily. Specific information on environmental effects abroad may be difficult to come by. Confidentiality may be required. U.S. review of conditions in other countries can have political repercussions in those countries. Foreign purchasers may not be willing to purchase U.S. exports if they are concerned that shipments may be delayed by lengthy administrative or judicial proceedings.

Thus, the procedures developed to insure that foreign environmental effects of our actions are adequately considered as part of the decisionmaking process must take all these considerations into account.

I am pleased to report that after a number of meetings between the State Department and the Council during the past 2 months, substantial progress has been made toward reaching agreement. Both agencies have learned and appreciated that the issue is extremely complex; legitimate but apparently conflicting objectives must be addressed in a coherent, Government-wide program that allows for the myriad differences in the kinds of Federal activities occurring outside the United States. Although we are not in a position today to report agreement on all aspects of the problem, we can state that agreement is emerging on certain basic concepts for submission to the President:

The administration will develop a Government-wide program that will permit each department and agency to develop its own procedures to take into consideration significant, adverse impacts of its major actions on the environment outside the United States;

This program may be included in an Executive order; The order would focus on four situations of paramount concern: (1) The global commons, particularly the oceans and Antarctica; (2) chemical and radiological hazards in another country; (3) significant, adverse impacts in a third nation not involved in an action; (4) particular natural or ecological resources of global importance determined to be deserving of special protection;

An environmental impact statement would be prepared for major Federal actions significantly affecting the environment of the global commons;

No environmental document would be prepared for in-country impacts except in the cases described above;

In those cases agencies would have a choice as regards the form of document and flexibility as to the contents, timing, and availability of the document;

Specified kinds of Federal actions would not be subject to these procedures;

A separate procedure relating to environmental effects of nuclear reactor exports will be developed which will insure that the United States will be a reliable exporter of nuclear fuel and equipment to countries that have adopted fullscope safeguards and other nonproliferation conditions;

Only narrow, strictly selected categories of Federal export actions would be subjected to environmental scrutiny (the vast majority of U.S. exports would be unaffected);

Finally, the administration's program for evaluating the environmental effects of Federal actions abroad will be carefully designed to minimize litigation.

The State Department and the Council have been meeting frequently and constructively toward resolving the remaining issues, with White House assistance. In view of this substantial progress, the staffs expect an agreed and approved program can be achieved by the end of this month.

Therefore, Mr. Chairman, in view of the administration's program to deal with these issues on a Government-wide basis, we believe that legislation focusing only on one agency is untimely and unnecessary, and thus do not support section 5.

Mr. Chairman, that concludes my statement. Mr. Moore, Mr. Warren and I would be glad to respond to any questions.

Senator CULVER. Thank you very much, Mr. Hansell.

Mr. Warren, Mr. Moore, do you care to make any statement at this time?

Mr. MOORE. No, sir.

Mr. WARREN. No, sir.

Senator CULVER. Senator Wallop, the ranking minority member of the committee, has joined us. Senator Wallop, do you care to make an opening statement at this time?

Senator WALLOP. No, I don't care to make a statement.

Senator CULVER. I thought I might just address several questions to the panel, and perhaps you could individually respond as you see appropriate.

I am a little concerned at the outset, Mr. Hansell. Fully recognizing the enormous complexity of the balancing of interests that you have outlined in your statement, I am a little disappointed that we don't have an approved administration recommendation at this time. We have afforded this delay in the hearing data in order to accommodate you in that process. It seems to me that we had every reason to expect on the occasion of your appearance here this morning that you prepared to give us that administration position.

Again, I am frank to acknowledge how very complicated and challenging this exercise is in this particular instance. I am a little concerned this administration isn't aware enough that it may have only a short life ahead. We wait and wait for this administration to get its act together in a number of different policy areas. You have a 4-year term as I read the Constitution.

Why couldn't the President sign on to this before he left for Europe?

Mr. HANSELL. Mr. Chairman, I do want to say that we are likewise disappointed that all of this could not have been brought to a con-

clusion by today. As I indicated in my statement, we think we are very close to a final resolution of it for submission to the President.

Senator CULVER. You want me to go to bat to stop Senator Stevenson from going ahead with this approach. At least you want this subcommittee to be sensitive and appreciative of the alternative approach that you have outlined.

How would you like to be me or Senator Wallop and have to go to Senator Stevenson and say, "Senator Stevenson, with regard to that Export-Import matter, please be advised that"—in your own words—" 'we see the basis of agreement that can be recommended to the President shortly.' "

Or the alternative, " 'The question is not whether environmental considerations should be taken into account, but how they should be taken into account.' "

Or this one, " 'We are not in a position today to report agreement on all aspects of the problem,' Senator Stevenson, 'we can state, however, that agreement is emerging' "—and " 'is emerging on certain basic concepts for submission to the President' of the United States."

Then we could go on, if we really wanted to, " 'The administration will develop' "—will develop, at some future time, as yet undetermined—" 'a government-wide program that will permit each department and agency to develop its own procedures to take into consideration significant, adverse impacts.' "

You say they will permit each department and agency to develop its own procedure. How about the Export-Import Bank? Are you telling me they can develop their own procedures to take into account their interests? Their interests are not having any environmental impact statement. Problem solved on a unilateral basis.

Then you say on page 6, If Senator Stevenson wants a more precise elaboration of the administration's position that I am urging as an alternative to his legislation, "This program may be included in an Executive order." May be. Is it going to be an Executive order? Are you going to submit legislation?

I really think, with all due respect, it is awfully hard to carry water in a bucket that has so many holes you can't get away from the well before it is empty.

Mr. HANSELL. If I could comment, I hope you would also point to the last sentence in the paragraph on page 7 indicating that the staffs expect an agreed and approved program can be achieved by the end of this month. I would hope that you would also assure——

Senator CULVER. You say the staffs expect. I have seen a lot of staff expectation in my day, sir. I don't know how much experience you have had with staff expectation. I get it every day from my staff.

Mr. HANSELL. That refers to the expectation——

Senator CULVER. Staff expectation, how would you like to bet your life on staff expectation? Do you want me to bet my political life on your estimation of staff expectation?

Mr. HANSELL. The timing on the Eximbank authorization, as we understand it, would be that some definitive decision would be needed by around the first of the month.

Senator CULVER. Mr. Hansell, our expectation was that you would be here at 9:30 this morning. Our expectation was that we would have

a copy of your testimony, in accordance with the rules of this committee, 24 hours ago. The White House staff assured us that they expected resolution by today when they asked me to defer this hearing. We must report this bill by July 24. So much for staff expectation.

I just want you to be well advised that, with all due respect to the monthly economic summit in Europe, we better get this kind of thing done. And the people that are in the White House better know we expect an agreement here or you had better be looking for somebody else to make alternative suggestions to the Stevenson amendment.

Generally speaking, I notice here on page 6 at the bottom you say "in those cases agencies would have a choice," and you are talking about "No environmental document would be prepared for in-country impacts except in the cases described above," and you have cited those:

> In those cases agencies would have a choice as regards the form of document and flexibility as to the contents, timing, and availability of the document.

If you give that much discretion to an individual agency, doesn't that really constitute a license to steal in terms of the obvious totality of flexibility that they have?

You said that an agency head can determine the form of document and flexibility as to the contents, timing, and availability of the document.

What do you mean by that?

Mr. HANSELL. What that means, Senator, is that each agency's procedures would make provision for forms of documents.

Senator CULVER. I understand that.

Mr. HANSELL. But it is not intended to be a license to steal. It is quite the contrary. What it is intended to do and what we think it will do is reflect the diversity of policy interests that you referred to in your opening statement and that I referred to in mine.

When we are dealing with agencies that are involved in foreign operations they present, as you know, quite a spectrum and diversity of activities and considerations as you enumerated and have indicated. Our feeling is that it is very important to be able to accommodate the needs, the particular policy concerns, of given agencies, given countries, given projects, and we want to be able to permit the agencies to do so, but, nevertheless, of course, within the framework of addressing our environmental concerns. We don't think there is any reason——

Senator CULVER. Well, when you give that latitude, I don't think you intended to afford them a license to steal. I haven't gotten to that point yet even for purposes of debate. I clearly don't think that is your intent. But I wonder if that isn't going to be the possible consequences in the balancing test of interests when you afford them this flexibility, with no general review, as I understand it, no general standard of application by way of minimum requirements in terms of contents, timing and availability?

Mr. HANSELL. Senator, we have some ideas as to how to deal with those problems. Since these are recommendations to the President, we are not obviously——

Senator CULVER. You say you are not in a position to report agreement on all aspects. Let me tell you something. If you keep these

secrets too close to your vest, I am going to lose interest in finding out what they are. We aren't having this hearing to hear from you that if and when you can ever have a meeting with the President of the United States, you are going to tell him what you intend to do. Because the next time you say, "Senator, would you please have another meeting"—you know, I am busy, too.

If you can tell me what you have in mind here on this one occasion that I have an opportunity to seriously focus on this subject, I am here to entertain that. I am not here to hear from you that you hope to tell the President what you intend to do and then expect that I am going to be ready to rubberstamp it.

I am not going to play that role for you. So please give me any ammunition you have got, because this is all I have to carry. Make your case. And the case can't be "if and when we get the ear of the President, we may have a policy." Tell me something substantive.

Mr. HANSELL. Mr. Chairman, this Government has struggled with this problem for 9 years. As far as I know the efforts that have been under way in the last 3 months are the first genuine effort to try to address this problem in terms of the Government's needs, either legislatively or otherwise.

Senator CULVER. You said that in your prepared statement.

Mr. HANSELL. I understand, but I think that is a consideration that ought to be of significance to Senator Stevenson. In terms of the very diverse needs of this Government and its programs that cover, as you know as well as we do, an extraordinary spectrum of activities, we think we have really taken this Government very far down the road to solving the problem.

Senator CULVER. So I should tell Mr. Stevenson, Mr. Hansell is very impressed about how far you have taken the Government down the road.

Mr. HANSELL. And we hope by the end of the month, if it all goes as we now foresee, we will in fact have a resolution of the issue. Our timing, unfortunately, did not accord with the scheduling of this hearing, but it is not for want of trying.

Senator CULVER. The most effective way, it seems to me, to make any serious effort to assure protection of the international environment is through some kind of multilateral cooperation. There is some evidence, I understand, that other nations, the General Assembly of NATO, and some others are pursuing initiatives in this regard. I understand also that Senator Pell has a resolution calling for an international treaty of some kind.

Mr. HANSELL. Yes, sir.

Senator CULVER. During your negotiations what considerations have you given to encouraging this kind of international effort?

Mr. HANSELL. A great deal, and one of the mechanisms that would be accommodated in these procedures for environmental documentation and for analysis of environmental effects would be either multilateral or other international procedures that are available to fit a particular situation. We do want to fit into this program the kind of activity that Senator Pell's resolution contemplates and other international agreements contemplate, and we have tried to do so.

Senator CULVER. What have you done by way of taking the lead in some of these international agreements? We usually can't get a Mem-

ber of Congress to go to a NATO General Assembly meeting. Some have participated in the past. What are you doing by way of putting this in as a priority on the agenda of international interests and concerns? Nothing?

Mr. HANSELL. No.

Senator CULVER. Well, you never admit to doing nothing.

Mr. HANSELL. We have taken a number of initiatives, a good deal in connection with what is perhaps the most important multinational effort, namely the Law of the Sea discussions. A major effort was made in the most recent Law of the Sea session to address U.S. concerns about environmental protection.

Senator CULVER. Let me tell you if you are waiting to do something in this area to accompany the final conclusion of the Law of the Sea Conference, Mr. Hansell, it will have to be a post mortem acknowledgement by you and me.

Mr. HANSELL. That is a major international effort.

Senator CULVER. I know, as herculean as the one you just outlined in our own domestic bureaucracy. What I am emphasizing is it is such a massive thing. Can't you take some steps here that have some modest protection outside of those negotiations?

Mr. HANSELL. There are a number of efforts, bilateral and multilateral.

Senator CULVER. By the end of the month would you put some starch in this aspect of your presentations, too?

Mr. HANSELL. Yes, sir, we would be glad to.

Senator CULVER. Get the legal authorities in the State Department to decide. Tell them they have one Senator interested.

Mr. HANSELL. Yes, sir.

Senator CULVER. Really interested, because it seems to me you are simultaneously going to approach this on a multiplicity of fronts, and the most obvious is multinational.

Mr. WARREN. Senator Culver, I would also like to call the committee's attention to the fact within the past 18 months this administration has participated with other nations in various U.N. conferences with the subject of general consideration on the environment. For example, the U.N. Conference on Water that was held in Mar del Plata, Argentina, last year at which the scarcity of this particular resource throughout particular portions of the world was considered at length by the various delegations, and a water policy for international application, the beginnings of one, was formulated.

Then most recently the U.N. Conference on Desertification at which a majority of the international community, through delegations, addressed again a very sensitive and serious environmental threat to the global environment. Most recently we participated, along with other member nations, in a meeting of the Governing Council of the United Nations environmental program at which, among other things, a provision was made for a permanent Secretariat to deal with problems of human habitation, and to further the development of a global environmental monitor system.

I think it would be unfair to suggest that this administration is not interested or involved in international environmental aspects.

Senator CULVER. I didn't suggest that. I just want you to do something about it. There is more to it than just flying all over attending meetings and setting up secretaries.

Mr. WARREN. If I may continue.

Senator CULVER. Don't imply that I suggested this administration is not interested in the problem of the international environment.

Mr. WARREN. I didn't want to suggest you implied that. Some have. I want to correct any thinking for those who might be included to do that.

Senator CULVER. Those some that have suggested are duly on notice.

Mr. WARREN. Further, along with the Department of State and other agencies, we are in the process of completing a study dealing with such global matters as population growth, resource demand, and environmental implications of accommodating those resource demands between now and the year 2000. We expect this report to identify and verify a range of environmental concerns.

Senator CULVER. Don't you think that catalog of your current activities is more appropriate for another hearing on another subject, perhaps even in another form?

Mr. WARREN. I am sorry, I thought perhaps it might have some informational value.

Senator CULVER. I'm afraid I don't understand what that has to do with what we are talking about?

Mr. WARREN. I misunderstood your question then.

Senator CULVER. Mr. Warren, I have several questions concerning this preliminary draft that you distributed in January to all these various Federal agencies and departments.

Mr. WARREN. Are you talking about that portion of the draft that deals with the——

Senator CULVER. The one that got the export-import banking community all upset. Are there others you distributed in January that have relevance to the hearing this morning?

Mr. WARREN. We have two drafts, one that deals with basic environmental impact statements for domestic application, and another draft which applies to NEPA activities abroad.

Senator CULVER. I think the reason we are here is because you were talking about application abroad.

Mr. WARREN. Very well.

Senator CULVER. Because of the nature of the Export-Import Bank's operations, the preparation of a lengthy environmental impact statement is often not possible. For instance, it is my understanding that the Export-Import Bank oftentimes only has 1 or 2 weeks to give a preliminary commitment on loans, for example, to finance American business operations overseas: They are involved in intense competition, and so on.

Similarly, American ventures that are financed by the Bank often constitute a very small proportion of a large foreign undertaking. In these circumstances it is obviously extremely difficult, if not impossible, it seems to me, to gather detailed environmental information about a foreign project.

Specifically how could NEPA then be integrated into the operations of the Eximbank without bringing those operations to a virtual halt?

Mr. WARREN. NEPA asks agencies of the Federal Government to do only that which is practicable, and to do so consistent with its mission objections.

Senator CULVER. Only that which is practicable?

Mr. WARREN. Yes.

Senator CULVER. That is a very subjective determination. There is no objective standard?

Mr. WARREN. The objective standard depends upon the requirements necessary for the agency to accomplish its mission, what is essential for the agency to accomplish its statutory mission generally.

Senator CULVER. As perceived by the agency.

Mr. WARREN. As perceived by the agency, yes, sir, and that brings us to the point of flexibility, which the Department of State and others are attempting to bring together so that each agency will be able to deal with its own statuory mission and its objectives in a manner consistent with NEPA. And if this means a shortened or abbreviated assessment for particular types of activities abroad, then each agency can make provision for that.

Senator CULVER. Well, practicality is like beauty, it is in the eyes of the beholder. It is viewed from the particular mission perspective of an individual government bureaucracy.

Mr. WARREN. That is correct.

Senator CULVER. Say you have a hard-charging head of the Eximbank, like Mr. Moore, who says, "We really want to get in competition with foreign nations and sell, sell, sell; don't bother with all the environmental nonsense. The French aren't worrying about it. I just think it is practical in my eyes to let somebody else worry about it."

I don't mean to reflect adversely on Mr. Moore, who I am sure is enormously sensitive to the continued viability of the global environment. But for the sake of argument, suppose we don't always have Mr. Moore. Say Attila the Hun is there next time, would you be comfortable and confident that practicality will guarantee to those that are most obsessed by the Furbish lousewort that they can be confident that even if it means losing the sale to the French, the Furbish lousewort will win out again?

What I am really asking is, what is the real guarantee or safeguard inherent in leaving it to the subjective determination of an individual agency head as to what is practical when it comes to taking steps for maximum protection of the environment? Can you really have any confidence that that is going to be much more than rhetoric and mood music?

Mr. WARREN. We are not making provision for subjective determination by the head of the agency.

Senator CULVER. He won't have the final say then?

Mr. WARREN. The decision will be based on procedures which will be set forth by the agency to be employed in a situation which requires unique consideration.

Senator CULVER. Will those procedures be reviewed?

Mr. WARREN. Yes; the procedures are to be established in an open and public manner.

Senator CULVER. First of all, you say they are going to have procedures that can accommodate themselves to a unique situation, with

flexibility implicit in that. Does that mean in every one of those given fact situations it has to be subsequently reviewed and approved by some higher authority?

Mr. WARREN. No.

Senator CULVER. Then I don't see where you are talking about providing for general governing procedures that will be at the same time sufficiently flexible to accommodate these specific situations.

Mr. WARREN. My only point is the decisionmaker will exercise that discretionary judgment based on information made available in accordance with procedures set forth and determined in an open and public manner.

Senator CULVER. For each individual transaction?

Mr. WARREN. No, for each agency. Each agency will have its unique procedures by which the environmental considerations can be assessed.

Senator CULVER. Who will review it in terms of the agency activity? Will CEQ review those procedures?

Mr. WARREN. Possibly, but not necessarily.

Senator CULVER. Could you explain that further, please?

Mr. WARREN. That CEQ will review the Eximbank's environmental impact? The answer is probably not, but that it will be prepared and available, as environmental impacts are presently available for public review and comment for the purpose of determining to what extent significant and adverse environmental impacts of any proposed project can be either mitigated or the project modified to eliminate those significant adverse effects. That is the essence of the environmental impact statement and NEPA process. It does not force a decision.

Senator CULVER. I am talking about procedures.

Mr. WARREN. It makes sure the decisionmaker is informed of the environmental consequences of his actions and to minimize those consequences if at all possible.

Senator CULVER. I think we are confusing things. I am asking who will review these procedures that you are talking about? Mr. Hansell says on page 6, "Agencies would have a choice as regards the form of document and flexibility as to the contents, timing and availability of the document."

Mr. WARREN. They will be reviewed as all agency regulations are reviewed in the same manner. I am also advised that it is proposed in the formulation of those regulations that each agency will do so in consultation with the Department of State and CEQ.

Senator CULVER. You are CEQ.

Mr. WARREN. That is correct.

Senator CULVER. That was my question.

Mr. WARREN. I thought the question referred to the environmental impact statement and not the procedure.

Senator CULVER. So you will review it.

Mr. WARREN. Yes.

Senator CULVER. And you will have final authority on approving or rejecting it?

Mr. WARREN. I can't go that far; no, sir. The role of the Department of State and CEQ in the formulation by each agency of their procedures is presently consultative.

Senator CULVER. What are some of the significant examples of Federal action taking place in a foreign country which should require environmental assessment?

Mr. WARREN. As Mr. Hansell indicated, the solution which is emerging applies NEPA in full to activities abroad of Federal agencies which affect the global commons, such as, the marine environment, the atmospheric environment, for example, the climate modification efforts of NOAA.

It also addresses the situation where an activity abroad in one country would have significant and adverse environmental effects on the environment of a nonparticipating country, or a third country which is not involved in a proposed action. Actions in countries which have chemical and radiological or possibly other effects which because of their nature and effect on public health and safety are strictly regulated in this country. There are a number of such issues before this Congress at the present time for consideration. Tris, for example, or what to do with the difficult issue of siting and safety considerations of nuclear power stations during this session of Congress.

Some attention was paid to the siting of a reactor in a foreign country, which raised a question to what extent should this country share with importing countries its knowledge of environmental safety.

Finally there are activities which would affect particular and significant environmental and ecological characteristics of global importance which, once identified, should be addressed by an environmental document by the agency proposing the action.

Senator CULVER. I would like to ask unanimous consent to include in the record an article from Business Week dated June 12, 1978 entitled "Banned at Home—But Exported."

[The article referred to follows:]

[From Business Week, June 12, 1978]

BANNED AT HOME—BUT EXPORTED

Last year, when the Consumer Product Safety Commission banned the sale of children's clothes treated with Tris, a flame-retardant chemical suspected of causing cancer, the CPSC allowed the export of the clothes to other countries. A few weeks ago, the agency changed its mind and announced a ban on all such exports.

Item: When the Food & Drug Administration turned down a petition from Upjohn Co. to market Depo-provera as a contraceptive because it caused tumors in dogs, it prevented Upjohn from exporting the drug from the U.S. for contraceptive use. But now the FDA is uring drug-law revisions that would permit such exports.

Such conflicting policies reflect a growing debate within the government: Should the U.S. attempt to impose its health and safety standards on the rest of the world? And, if not, how can the U.S. justify sending, many times to Third World nations, products that it has labeled unfit for use in the U.S.?

Banned products now being exported include the pesticides DDT, BHC, and chlordane; cyclamate food sweeteners; and certain food dyes, such as Red Dye No. 2. And Tris-treated clothing reportedly is still being shipped out by some apparel manufacturers who question the CPSC's authority to impose an export ban. The list is expected to grow as regulatory agencies ban more substances for health and safety reasons and as U.S. companies push for exports.

FEW SAFEGUARDS

So far there is no sign that a broad policy on such exports will emerge from Congress. A new drug law now under consideration will make it possible for drug companies to ship abroad drugs not approved for sale in the U.S.—illegal now except for certain drugs exported for clinical testing. On the other hand, amendments nearing final passage in Congress would tighten up the current pesticide law by requiring the Environmental Protection Agency to inform other governments when it cancels its approval of the use of a pesticide and by reqiuring the purchaser of any unregistered pesticide to sign a statement acknowledging that he is aware of the pesticide's status. A copy of that statement would go to the importer's government.

Congress became interested last year after learning that Tris-treated clothing was being sold to other countries. Inquiries revealed that there are few export safeguards. "Every single agency has a different statutory mandate, and none is adequate," says Representative Benjamin S. Rosenthal (D-N.Y.), who will chair hearings on the export policies of regulatory agencies in late June. "We should not be in the business of exporting hazards," he says.

While many banned products are willingly accepted abroad, some health officials fear that the developing countries are being used as both "dumping" and testing grounds by U.S. corporations. Last year, the U.N. Environmental Program passed a resolution urging governments to prohibit the export of potentially harmful chemicals except with the "knowledge and consent of appropriate authorities in the importing countries."

But Harold B. Hubbard, chief of food and drug control for the Pan American Health Organization, says that most recipient nations do not have the expertise or laboratory facilities to carry out a sophisticated product safety program. "Sometimes there is virtually no control," he says.

BIG BUSINESS

In many cases, a developing country may use a suspected cancer-causing product because the benefits outweigh the risks. The classic example is the toxic pesticide DDT, which was banned for sale in the U.S. in 1972. The countries that continue to import DDT use it to kill disease-carrying mosquitos, and see the alternative—widespread outbreaks of malaria—as far worse.

Although companies that export pesticides are reluctant to supply data, it appears that exporting unregistered pesticides is a big business for some U.S. companies. The Natural Resources Defense Council, one of the few groups that have been collecting statistics in this area, estimates that 15% of the 588 million lb. of pesticides exported in 1975 were not registered for use in the U.S.

The National Institute of Occupational Safety & Health (NIOSH) first recognized the potential problems of such exports in 1976, when it was investigating the causes of nerve damage suffered by workers at a Velsicol Chemical Corp. plant in Bayport, Tex. The workers were handling the pesticide leptothos. The substance had never been approved for sale in the U.S., but it was being sold in 50 countries, and NIOSH discovered that it had been a suspected cause of an outbreak of paralysis in water buffalo in Egypt, which resulted in the deaths of more than 1,000 animals. Velsicol ceased production of the chemical in 1976.

But in the absence of any proof of harm to workers or consumers, the makers of other banned products feel no compunction about shipping them abroad. Richard W. Kasperson, vice-president for regulatory affairs at Abbott Laboratories, says he "violently" disagrees with the FDA ban on cyclamates, and his company is marketing them throughout Canada and Europe. Also, many apparel makers are seething over the Consumer Product Safety Commission's ban on Tris, and Bates Nitewear Co., of Greensboro, N.C., is one that shipped its stocks of Tris-treated clothing overseas. "I shipped it to places where it couldn't get back into this country," says President Louis Bates. "But I got only $400,000 for my $2.5 million in goods."

Senator CULVER. Mr. Moore, how do you feel about this whole subject? Obviously you have an agency constituency that is quite naturally motivated with a very vigorous desire to sell abroad and successfully compete in an increasingly competitive international market at a time of disturbing imbalance of trade and so forth. Could you share with us some of your general thoughts?

Mr. MOORE. Yes, Senator, I would be happy to do so. I do affirm exactly what you have just said. I, as well as other members of the administration, have very great concern that we take every step reasonably possible to correct the very bad balance of trade and balance of payments the United States has at this point. On the other hand, I think it behooves the administration and the administration of the Export-Import Bank of the United States to take every step it can to encourage proper ecological controls, and to do everything it can consistent with the first objective to see that our own environmental concerns and those of our friends abroad are furthered throughout the world.

I can't answer your questions about flexibility, because I would look for every flexibility. But I would also seek to see that our agency administers any regulations in the best way we can and that we discuss and foster the export of United States services which would further environmental studies and environmental controls. I believe there are many steps we can take that can be successful in doing this.

Senator CULVER. Well, Ex-Im takes the position, does it not, that NEPA does not apply to its activities overseas, and does the Bank, therefore, voluntarily undertake to conduct any environmental analyses of any of its activities at the present time?

Mr. MOORE. At the present time we are beginning to do so, and we do propose to implement our guidelines and regulations to do as much study as we can.

Senator CULVER. But the answer to this point is no?

Mr. MOORE. That is correct.

Senator CULVER. What kinds of activities, in your judgment, should receive environmental review by the Eximbank?

Mr. MOORE. I know of an environmental study that was done on the Parana River in South America. That river runs through Brazil, Paraguay, Uraguay, and Argentina. I believe it was a joint project between Brazil and Paraguay and now one is being done by Argentina and Paraguay to develop the river. There were really very intensive negotiations that went on about the dams, because the one upstream could possibly ruin the others. There were extended negotiations that went on among the countries before the project was finally settled.

I am not suggesting that the environment was not properly discussed and a correct decision made in that case. But I think the United States generally and the Eximbank particularly should know before it makes an offer of financing for exports that the matter was sensibly resolved. That doesn't mean we are imposing our will on any of those countries. It is just that we know they have resolved the issue first and we are not aiding a project that may cause a war in some part of the world. That may be a gross example.

Senator CULVER. Is it not true that many of these products could have possible serious environmental consequences but there is no way your would be able to make a determination as to the end use of the particular item in question?

Mr. MOORE. That is absolutely true. Off-the-shelf items such as turbines and generators that can be used in different projects may be put to bid and sold from the United States.

Senator CULVER. Or bulldozers.

Mr. MOORE. Yes.

Senator CULVER. Have you ever talked to Robert McNamara of the World Bank about this?

Mr. MOORE. I have not personally talked to him; no.

Senator CULVER. I wonder the extent to which the international financial lending community is sensitive to these kinds of issues now. We have talked about some of these other international initiatives that are rather in their infancy. But I wonder if to the extent there is concern and consideration within their operations whether you interact with other similar national lending institutions—the British and French?

Mr. MOORE. I quite agree with you. We do work closely with international banking and financing institutions, and we get and give information all the time.

Senator CULVER. How about on this issue?

Mr. MOORE. I don't know expressly, but it is my impression that environmental consideration would be carefully studied.

Senator CULVER. When you come back here on July 24 or when we get this final report, I would like a full report from you. I would like to know also during this interim what steps you have taken to strengthen those initiatives.

Mr. MOORE. The short answer is none with the World Bank. I would be glad to find the information and take your suggestion.

I would also like to state that with respect to other export credit agencies, we do negotiate with them on a regular basis, not in the environmental field, but on the practices, the amounts of financing they promise and approaches to it. I do think that forum should be used to discuss general environmental questions and approaches of all the agencies, because I think that as we all move forward in the economic race with each other, in a time when it is tight and all nations are worried about exports, to be sure we can succeed. We should say that none of us should go forward if the project is economically unfeasible, none of us should go forward with programs that are ecologically unsound or continue to contribute to bad air pollution or whatever the issue is. I cannot promise that the French or others will listen, but I think the point should be made. I appreciate your suggestion.

Senator CULVER. There are opportunities through foreign consortium efforts to find that kind of cooperation.

Mr. MOORE. There are.

Senator CULVER. You are pledged to try to do that, to sensitize the agency to be alert to those?

Mr. MOORE. Yes, sir.

Senator CULVER. Senator Wallop.

Senator WALLOP. Mr. Chairman, I think your questions took care of a great many of mine, but just for clarifying the situation that exists, I will ask one or two.

Can an Executive order provide certain criteria for Eximbank activities?

Mr. HANSELL. Was the question can it?

Senator WALLOP. Yes.

Mr. HANSELL. Yes, sir.

Senator WALLOP. So one of the things you are talking about working out and we can expect at some time is an Executive order that will deal with some of these specified things on pages 6 and 7?

Mr. HANSELL. That is the way we think the program will come out.

Senator WALLOP. Why shouldn't we exempt them from NEPA in the meantime; wouldn't that give you a little more impetus to get your Executive order and put whatever criteria you want in it? Looking at page 7 on the part about nuclear reactor exports, among the things you are talking about, they are all ouside NEPA.

Mr. Moore, I see you shaking your head. I don't see anything in NEPA that talks about nonproliferation conditions. These are all outside the full-scope safeguards and other nonproliferation conditions. That is not NEPA.

Mr. WARREN. I am shaking my head at the suggestion our efforts to compile an Executive order to deal with the application of NEPA abroad would be assisted by excluding Eximbank from the provisions of NEPA. It would be just the reverse.

Senator WALLOP. I am suggesting that we haven't seen a whole lot from the administration, as Senator Culver mentioned, by way of activity and by way of response to this committee, and you come before us with the suggestion that somewhere down the road, probably by the end of the month—possibly by the end of the month—there will be an Executive order taking care of it. Why shouldn't this committee go along with Senator Stevenson in his recommendation that they be exempted? You can provide the criteria, the President can provide the criteria for the operation of the Eximbank on those kinds of things by Executive order. That is what you are saying in this testimony.

Mr. WARREN. But NEPA is the legal base for the issuance of the Executive order, and the Executive order, I suspect, would only have application, at least generally, by virtue of the existence of NEPA's application to Eximbank. So if Eximbank is exempted from NEPA, then I am not quite sure if the Executive order would have application to Eximbank.

Senator WALLOP. There are criteria that the President could apply, to select them out of NEPA without calling it NEPA, to provide the kinds of flexibilty you were talking about earlier, are there not?

Mr. WARREN. The Executive order is an attempt by the administration and this Government, as Mr. Hansell indicated, for the first time in 9 years, to deal with the international aspects of NEPA, which have been gleaned by some courts from the four corners of NEPA. We are attempting to deal with it in a way which will apply to all agencies and not single out just one agency having activities abroad, but applying it equally and fairly and consistently to all.

Senator WALLOP. Mr. Warren, that is just fine, but not all agencies are created for the same purpose, isn't that correct? You were talking of the types of things that would come into play; you mentioned NOAA's weather modification system, certain AID programs, that is a different thing than the Eximbank. It seems to me the Bank's basic function is primarily to lend money to the private sector or to countries trying to hire from the private sector. They are not programs like AID; they are not part of that. And if you tell me they are, we sure don't need both.

I don't see any explanation here this morning, nor have I heard yet from the administration or any other witnesses who have come before this committee, that would make the kind of activity that Eximbank is engaged in subject to NEPA on the same level that AID

would be, as NOAA would be, and a number of other activities of Federal agencies in this country, the Corps of Engineers or anything else. They are a lending institution, are they not?

Mr. WARREN. As I understand, their primary mission is to lend, but there are situations where that action may constitute a major Federal action. NEPA does not say in its terms that it shall apply to the following Federal agencies; it says all Federal agencies in their major activities having significant environmental effects shall. It makes no attempt to distinguish among agencies based upon what the particular activities of the agencies are. It applies to all.

Senator WALLOP. Why the violent disagreement with the administration on this?

Mr. WARREN. There is really not a violent disagreement. This deals with a situation as it faced us. When this administration came into office and the Council on Environmental Quality was composed, we surveyed the use of NEPA by Federal agencies and discovered that for the most part Federal agencies were complying in ways inconsistent, inefficient, and in some cases uneconomic.

We suggested to the President that he instruct us to prepare a set of regulations which would be applicable to activities of all Federal agencies in implementing the Government-wide duty created when you passed the National Environmental Policy Act in 1969. It applies to all agencies in their activities affecting the environment to take into consideration those effects.

In complying with that order to prepare regulations for the instruction of Federal agencies, we came to the realization that NEPA might have application to activities of Federal agencies abroad, and we attempted to deal with it, as the President's Executive order requires us to.

We recognized that it was a sensitive issue because for the first time a number of agencies whose major activities were abroad faced the prospect of NEPA compliance. Some agencies, based on precedent, had assumed that NEPA did not apply. Others, such as AID, recognizing the possibility, were complying with NEPA. Others had been requested or told to do so by the courts.

We were attempting to deal with a whole universe of situations and activities, and it was struggling through this chaos that made it difficult and presented us with a wide range of divergent opinions. It is this wide range of divergent opinions that we have been attempting to resolve.

Every agency has its own solution as to how NEPA should apply to it. In an attempt to deal with this universe of solutions that the agencies had presented us when the issue arose, we early on decided that the best way to deal with this unstructured problem was to deal as we have done; that is, the Department of State, the agency with principal responsibiliy, for the conduct of our foreign affairs, and CEQ, the agency with responsibility for, under the President's Executive order, preparing these regulations for implementation of NEPA, with the guidance of the President's counsel, to determine how NEPA can be implemented in a manner which each agency will find acceptable and will not detract from each agency's accomplishment of its statutory objective.

That is what we are doing. I suggest to you we are doing it far more successfully than any of us anticipated who have been working with this particular problem now for admittedly several months. We had been working on it several months prior to the amendment which is the specific subject of this hearing today.

Our efforts to implement NEPA abroad, admittedly, are difficult, and, frankly, we find the amendment to be inconsistent with our efforts. And we not only find it inconsistent, but to some extent it might interfere and hamper those efforts. We would certainly like to be able to come to you today with a solution.

We thought if we came to you with the outlines of our solution, the assurance we have been working weekends and nights in trying to accommodate these needs and to set for ourselves an outside time parameter for completion, that this would assist you in your efforts in dealing with Senator Stevenson's amendment.

Senator WALLOP. In all honesty, you haven't established an outside time frame.

Mr. WARREN. I think we have indicated we believe it is the staff opinion—well, it is more than staff opinion, it is my opinion as Chairman of CEQ and as one of the principals involved in the deliberations we will have the solution by the end of this month.

Senator WALLOP. Is the Council peculiarly well oriented to making economic decisons?

Mr. WARREN. We are well oriented to see to it that agencies which make economic decisions do so in a manner which is sensitive to the environmental effects.

Senator WALLOP. That is what you quote as one of your obligations as head of CEQ. In your answer a little while ago, you said you had environmental consideration, and it was up to you to find out if the program they were launching upon was economic.

Mr. WARREN. No; we do not consider particular programs. Our principal and primary interest is to see to it that Federal agencies have procedures or regulations in place which properly implement NEPA.

Senator WALLOP. Where does economics come in? You were talking about your judgment as to whether things were economical.

Mr. WARREN. If the agency's primary mission, its reason for existence, is to deal with economic matters, we do not attempt, nor does NEPA, to tell them how to make those economic decisions, except it does require them to assess the environmental effects of proposed actions before making those economic decisions. That is all we can do.

Senator WALLOP. That is not what you said, and I want to get this clear. You said that you as well—"you" being CEQ—had a judgment about the economics of a given project that they might be interested in otherwise, and I never thought that that was its obligation.

Mr. WARREN. I may have made a statement leading you to draw that conclusion when I said it was our purpose to make the NEPA process more efficient and more economical. History has shown that the NEPA procedures can be unduly expensive and time consuming. We wanted to make them more efficient, and we wanted to make them more economical. That is in the proposed regulations that we have issued for general application to domestic activities. We believe we have suc-

ceeded in doing that. But that is the only sense in which the CEQ is concerned with economic aspects, only to see to it that the procedures are efficient.

Senator WALLOP. Let me see if we can get some rather precise answers.

What agency will have the authority to approve or disapprove the regulations proposed pursuant to policy?

Mr. HANSELL. The present plan, Senator, is they will be developed in consultation with CEQ and State, but the agency will develop individual regulations, and it will promulgate its regulations under, of course, the direction of the President.

Senator WALLOP. Does that mean you are implying CEQ will not have to approve it?

Mr. HANSELL. Approval by another agency or CEQ would not be required under the present plan, that is correct.

Senator WALLOP. Then let me ask any one of you what do you feel the prospect for litigation over a particular export will be under the process that you are created here?

Mr. HANSELL. Our expectation and target is that we would, as I indicated in my statement, minimize those.

Senator WALLOP. It sounds to me like you would maximize them. They are going to differ for every agency. Each one is going to sign off on its own.

Mr. HANSELL. Senator, one of the things we hope to do here is to achieve a solution that takes account of the kinds of controversies you were referring to but enables us basically to get beyond them. We want to get the job done. We want to get the environmental job done, we want to get the export job done, we want to get the foreign policy job done, and we are trying to find a formulation that will enable us to do all of that with a minimum of potential interferences including litigation. We want to do it as effectively, as efficiently, and as economically as we can.

As I say, it is not going to be possible, perhaps, to achieve the millennium, but we are trying to balance all of those considerations, and we think we have got a formula for doing it. Unfortunately, we are not in a position to say we will in fact avoid litigation. We do think, however, that by avoiding some of these legal issues and taking an administration position on them, we have a means perhaps of circumventing the litigation risk, but one can never be sure.

Senator WALLOP. Let me ask you one other thing. On page 7 of your statement, you say, "Only narrow, strictly selected categories of Federal export actions would be subjected to environmental scrutiny (the vast majority of U.S. exports would be unaffected)." Could you say which narrow, strictly selected categories of Federal export actions?

Mr. HANSELL. I can't say now, no, sir, because we haven't formulated those standards that precisely.

Senator WALLOP. How do we know they are narrow then?

Mr. HANSELL. Because the understanding we have, which has yet to be put in precise language to be submitted to the President, but the understanding we have is quite well formulated that justifies this language that they would be narrow and quite precisely defined.

We just have not yet put all that into the words to do the trick, but we are close.

It is like any other process. As you come toward the final resolution of some problem on the table, you try to bring together a couple of different themes to come to the ultimate resolution.

Senator WALLOP. Supposing we get these jointly promulgated and acceptable regulations, is it the position of the administration that the force and services of the Justice Department in defending a lawsuit will go to the agency or to CEQ should litigation result?

Mr. HANSELL. They would go to both. This is a united program.

Senator WALLOP. It hasn't been yet.

Mr. HANSELL. We understand there have been divergent points of view. But again, the direction of this effort is to bring the foreign policy community, CEQ, all the agencies, Justice, onboard to a program that will command Government-wide support, so that if we are successful in this, and we have every expectation we will be, there won't be a divergence. We will not have different agencies taking different points of view as to the legal issues. So we would not confront that situation if it works the way we hope it will. We think it is a very substantial step forward in moving this Government along.

Senator WALLOP. Do you think this is achievable, on the track record to date?

Mr. MOORE. Yes, Senator Wallop. It is my belief, and I am quite hopeful that by the time specified there will be a resolution of these issues to the satisfaction of the administration and to both Houses of Congress. In terms of legislative debate, I think that the administrative route is the better route now. That is why I suggest the administration could not support the Stevenson admendment at this time.

Senator WALLOP. Thank you.

Senator CULVER. Senator Muskie, might I ask one question on this point before calling on you?

Mr. Moore, following up on that, what we are talking about here is essentially, as you know, the American business community, or very substantial parts of it, which have a great deal of difficulty accepting even the health and safety standards that are applied to our own U.S. products. Is that not true?

Mr. MOORE. That is my impression, Senator.

Senator CULVER. I think that can be generally stipulated.

Having said that, the issue here is whether or not even though we make an official Government determination that the health and safety risks are unacceptable for the domestic population, and ban a product, should we in clear conscience make that particular item available for consumers abroad in foreign countries? These are oftentimes lesser developed countries without the sophistication to make independent determinations, and to know the risk to their own people in the utilization of such materials? Isn't that one of the major issues here?

Mr. MOORE. I believe it is.

Senator CULVER. How can the United States justify sending many types of products to Third World nations labeled——

Mr. MOORE. We have been informed by those who have studied drugs for use in the United States that there may be some which it would

be wrong to export. But even in this country the riskiness of a drug depends upon particular uses and circumstances.

Senator CULVER. According to this Business Week article that I referred to earlier:

> Banned products now being exported include the pesticides DDT, BHC, and chlordane; cyclamate food sweetener; and certain food dyes, such as Red Dye No. 2. And Tris-treated clothing reportedly is still being shipped out by some apparel manufacturers who question the CPSC's authority to impose an export ban. The list is expected to grow as regulatory agencies ban more substances for health and safety reasons, and as U.S. companies push for exports.

There have also been reports and concerns expressed, as you know, by health officials, that the lesser developed countries have been used as dumping grounds to unload a lot of these chemicals that have been banned from U.S. shelves. And some of these lesser developed countries just don't have the capability to carry out a product safety program of their own and convey the implications to their own people.

What kind of coordination do you feel morally obligated to carry out with the consumer protection agencies, in terms of increasing the sensitivity on this point with regard to Export-Import Bank transtions?

Mr. MOORE. I feel an obligation to deal with the agencies that have made the decisions to ban products and find out the reason why.

Senator CULVER. And also to notify and advise potential recipients of those products as to the health implications and safety consequences as determined by U.S. studies?

Mr. MOORE. Steps are taken by other agencies to give that information, which we verify.

Senator CULVER. Could you also provide me more formally, in addition to this other information you have agreed to make available later, what formal steps you have taken now to establish the strongest possible linkage in that regard?

Mr. MOORE. Yes, sir.

I would like to make one additional point. Over the years Export-Import Bank has supported 8 to 10 percent of the exports from the United States. We have nothing to say about the other 90 to 92 percent.

So how effective we will be——

Senator CULVER. But you could sell one product to Indonesia—DDT or something similar—to control a rice pest, and it apparently killed all their fish at the same time in their rice paddies—it really destroyed essentially a whole culture and a whole livelihood.

We have cases in Indonesia. We have other cases where trachoma eye disease has been perpetrated throughout a population where attempts were made to improve sanitary and dietary standards but they backfired.

And as you know, in the celebrated case in January 1976, the Export-Import Bank authorized a loan of $277 million, plus loan guarantees of $367 million, to permit the Philippines to buy the nuclear power reactor. It was going to be located in an earthquake belt with volcanic problems, and furthermore the Philippines have no stable salt formations in which to dispose of radioactive waste. So your poor person who suffers from a reactor accident as a result of that loan is not going to worry if he is in your 10 percent portfolio. He can be as dead with your 10 percent as with the other 90. And it can be as intolerable, immoral action as any perpetrated in the world.

So, I am not impressed that you only have a 10-percent chance to murder people. I am worried about the accountability of your 10 percent.

I can't help but believe, when we talk about international competition as the world community becomes more sensitized to some of the environmental problems and issues and consequences of these products, that this can enhance our competitive position rather than detract from it. We can develop the international reputation that we aren't just a callous and insensitive people going around the world for pure profit, exploiting opportunities and markets like some of our competition, and that we do have a more humane and enlightened concern and consideration for people.

If we start to think in more positive packaging terms like that it will strengthen our opportunities to compete in a capitalistic market, rather than be a negative influence. What do you think about that?

Mr. MOORE. I couldn't agree with you more, Senator. I think everything we do in this should be put in the most affirmative, absolute way. The United States has developed information on a number of subjects and we would like to export those services.

Senator CULVER. Not just the service, sensitivity to the actual product sales as well.

Mr. MOORE. I think I agree. I am not sure of what has been done before I came to the Bank and cannot comment on it, but we will report to you the steps we are taking now on drugs, and pesticides, in particular, because they are difficult to deal with.

And I couldn't agree more that it is important that we not support the export of a pesticide that destroys a crop.

Senator CULVER. Thank you.

Senator Muskie?

Senator MUSKIE. Thank you very much, Mr. Chairman.

I would like to begin by referring to legislative intent mentioned in your statement. And I am also frustrated, or quite often frustrated, where in a period of 20 years I find bureaucratic descriptions of legislative intent 180° opposite from what I know actual legislative intent to have been.

In this case the environmental impact statement is the product of the Subcommittee on Environmental Pollution. And it was an amendment that I offered to the National Environmental Policy Act. So when people speak to me of legislative intent, I have some awareness of what actual legislative intent was.

It seems to me it might be useful if I came here this morning for the purpose of describing that. There is this statement on the bottom of page 2:

> A careful review of the legislative history of the National Environmental Policy Act shows that Congress never discussed whether the environmental impact statement requirements of Section 102(2)(C) are applicable to the effects of "major Federal actions" on the environment outside the United States.

The implication from that sentence is that because we did not discuss the question specifically that there is an argument that it was not intended to cover "major Federal actions" which impact outside the United States. But I would make the contrary argument that because no one raised the question as to whether major Federal actions included those major Federal actions that would have an impact on the

environment outside the United States, that they, therefore, were included.

There is certainly no reservation in mind on that score. As chairman of the Environmental Pollution Subcommittee from the very beginning, I have become aware as much as anyone that the environment is not divisible by political boundaries.

The environment is indivisible, as far as I am concerned, and the thought never occurred to me that somewhere down the line 9 years later the argument would be made that because major Federal actions impacting on areas outside the United States were not specifically referenced that, therefore, they were excluded. I don't need a court to decide that question for me. I have no doubt about it.

Second, I would not agree that no reference to it was made. Let's read the act itself. I wonder how many of those addressing themselves to these issues have bothered to read the legislative language which we are proposing to implement or abolish.

This is what it says:

> * * * included every recommndation or report, proposals or legislation and other major Federal actions significantly affecting the quality of the human environment.

And does the human environment end at our borders? Is that the argument of the lawyers, that the human environment ends at our borders?

Then in subsection IV, "the relationship between local short-term uses of man's environment." Does man's environment stop at our borders?

In my view, the intention of the National Environmental Policy Act and the environmental impact statement was to apply to major Federal actions wherever they impact within the United States or outside. I just want to make that statement very clear in the record at this point.

Now, how that policy should be implemented realistically and effectively is a legitimate question, and much more attention has been paid to its implementation within the United States than outside the United States. I gather that the Eximbank has made no effort prior to fairly recent weeks or months to implement it. I gather that no administration until recent months has sought to implement it with respect to Eximbank operations. Am I correct?

Mr. MOORE. That is correct.

Senator MUSKIE. And that it hasn't been hampered by it as yet. Suddenly, we are faced with an amendment to exempt Eximbank from legislation which it said would hamper Eximbank's operations.

Well, the legislation has been on the books for 9 years. Has it as yet hampered Eximbank's operations?

Mr. MOORE. No, sir.

Senator MUSKIE. Then what is the crisis? What we are involved with is the implementation of a piece of legislation that should have been implemented 9 years ago. And the administration position is that we should take a few weeks now and write the regulations to implement a clearly stated—and I emphasis "clearly stated"—congressional enactment.

I think as we have observed the implementation of the National Environmental Policy Act internally, that there is room for improvement in procedures, the streamlining of procedures to make it more efficient and effective and less costly.

And at the hearing on Mr. Warren's confirmation, we discussed that and got his assurance that that objective would be a high priority, and I concur in it. In many ways the environmental impact statement has been made an obstacle, not only to decisionmaking generally but to the achievement of environmental values because of the cumbersomeness of some of the procedures.

But let's not confuse that with the goal, which I think Senator Culver has put so eloquently and so wisely. And I hope as we seek to devise regulations, rules to implement the policy, let us do it consistent with other responsibilities of the National Government and not throw out the baby with the bath water, to use a much overused figure of speech. This is a baby that has lived 9 years. I think it is healthy and vigorous and deserves life, and I think it not ought be aborted at this stage of the development of environmental policy.

So, I hope you would get a policy from the administration without too much delay that will help us to focus on what we ought to do.

Incidentally, in order to add to the legislative hearing record on what congressional intent was at the time the National Environmental Policy Act was enacted, let me read from Senator Jackson's statement during the Senate floor consideration. He was the floor manager of this legislation which came out of the Interior Committee. The environmental impact statement was an amendment offered by us as the Environmental Pollution Subcommittee.

But this is his description of it:

> What is involved is a congressional declaration that we do not intend as a government or as a people to initiate actions which endanger the continued existence or the health of mankind; that we do not intend to initiate action which would do damage to the air, cattle, land, and water which support life on earth.

Now, there is certainly nothing ambiguous or indefinite about that declaration of legislative intent. And up to now the record is clear that that has not hampered in any way whatsoever Export-Import Bank's operations. It has not made us less competitive; and it has not created any of these alarming consequences for our balance of payments, our balance of trade, our competition with other countries that are offered as a justification for the Stevenson amendment, up to this point. And it ought to be made clear.

Now, I understand there are agencies of the Federal Government which have undertaken to implement environmental regulations. Not always enthusiastically or willingly, but they have developed experience. I understand we have in the audience Mr. Albert Printz from the Agency for International Development. And I would like to invite Mr. Printz to come to the witness table so we might put some questions to him.

Director John Gilligan, the director of AID, has a letter addressed to Charles Warren which I will ask to be put in the record.

[The letter follows:]

31-565 O - 78 - 15

DEPARTMENT OF STATE,
AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, D.C., December 9, 1977.

Hon. CHARLES WARREN,
Chairman, Council on Environmental Quality,
Washington, D.C.

DEAR MR. CHAIRMAN: In a memorandum dated October 21, 1977, to heads of agencies with foreign affairs responsibilities, the Acting Director of the Office of Management and Budget noted that several agencies had "expressed reservations about the preparation of Environmental Impact Statements for programs conducted abroad," and suggested that comments on this subject should be sent to you to assist the Council in its current review of its environment guidelines. Because A.I.D. is one of the few foreign affairs agencies with direct, practical experience in preparing detailed analyses of projects conducted abroad, I am hopeful that our comments can be most useful to you in conducting your review.

A.I.D.'s environmental regulations, prepared in cooperation with the Council, have now been in effect for almost 18 months. Under these regulations, A.I.D. activities have been subjected to a written environmental examination which forms a basis for a threshold determination of significance. In more than 30 cases, decisions have been made to undertake more detailed environmental assessments. These assessments have covered or will cover a wide range of projects, including malaria control, rural development, construction of farm-to-market roads, and upgrading of housing conditions, in countries with widely varying political systems and environmental sensitivities. Additionally, while our experience with preparation of Environmental Impact Statements in conformance with CEQ guidelines is limited, we have recently completed a programmatic impact statement on our pest management programs, and we are about to commence preparation of an Environmental Impact Statement concerning the development of the master sewerage plan for the city of Alexandria, Egypt, which will assess the implications of this project for the entire Eastern Mediterranean region.

Like most Federal agencies, A.I.D. has not undertaken environmental responsibilities without encountering administrative difficulties. We are now engaged in the process of reevaluating our existing regulations in order to propose modifications, where appropriate, which will ensure that environmental analysis is effectively and meaningfully integrated into program planning. Yet, our overall experience is a positive one. "We have discovered that developing countries themselves have come increasingly to recognize the inter-related nature of environment and development and to seek to ensure that environmental considerations are adequately addressed in development projects. Further, the practical experience of A.I.D. has been that it is possible to undertake detailed environmental analyses of U.S.-supported projects abroad and that the results obtained are useful to us, as well as to host country planners, in making project decisions."

A.I.D.'s experience, moreover, has demonstrated that, in practice, none of the four potential negative impacts hypothetically associated with the conduct of environmental analyses, as outlined in the Acting Director's memorandum of October 21, constitutes a significant problem for agency operations:

(1) Many of A.I.D.'s projects involve delicate negotiations with foreign governments and/or private organizations in foreign countries. A.I.D.'s environmental regulations contain special procedures which seek to accommodate the exigencies of foreign policy which may arise in the course of development. Yet, we have not found it necessary to date to utilize all the available procedures contained in our regulations, and, almost without exception, we have been able to undertake environmental analyses without strain on the relations between the United States and foreign countries. In fact, we have found that environmental analysis is no more intrusive, or potentially upsetting, than other reviews, e.g., those for social soundness or women in development, that are routinely undertaken by the Agency.

(2) Achievement of the Agency's mandate has not been impaired by the conduct of environmental analyses. This Agency's experience fully supports the President's conviction, expressed in his environmental message of May 23, that "development programs that are environmentally sound will yield the most economic benefits." Further, Congress, in enacting Section 113 of the International Development and Food Assistance Act of 1977, confirmed the important place which protection of the environment and natural resources must hold in the constellation of development priorities.

(3) The fear of loss of U.S. jobs is, I presume, based upon the assumption that, if agencies must conduct environmental analyses, it will be more difficult to con-

summate proposed export transactions. Quite simply, there has been no problem in this regard for A.I.D. No project has fallen through because of required environmental analyses, and, as far as we can discern, compliance with our environmental regulations may have had only minimal impact on U.S. jobs in the chemical industry as a result of the discontinuance of our financing selected pesticides.

(4) A.I.D.'s compliance with its environmental regulations has resulted in an increase in program operating costs in terms of both staff allocations and contractual services. Such an increase is, of course, inevitable in connection with any new endeavor undertaken by an agency. Expenditures for environmental evaluation are highly variable depending on the type of analysis needed, the size of the project, and the personnel conducting the assessment, but the following will serve as indicators of cost incurred: In fiscal year 1977, A.I.D. expenditures for four formal assessments within the Asia bureau, prepared by individuals under a technical services contract, averaged $22,500 each. The office of Housing uses $30,000 as an appropriate estimate for each Housing Guaranty Loan—this cost being based upon consultative services to prepare either comprehensive Initial Environmental Examinations or subsequent Environmental Assessments. Costs within the Africa bureau have ranged from $55,000 for a contract to prepare an assessment for a rural development project to $90,000 for a major irrigation project. The cost to complete the Environmental Impact Statement on the Agency's pest management activities was $276,000. This, however, was not a project-related assessment, but rather an assessment of a program covering the entire Agency. An assessment for an expanded research project into the eradication of the Tsetse Fly required $92,500. The assessment was prepared by an assemblage of individual experts on the subject of fly eradication and range management.

In summary, A.I.D. has no significant reservations about the preparation of environmental analyses for programs conducted abroad. We look forward to working further with the Council in the future in seeking ways to improve our Agency's procedures and to ensure that development is environmentally sound.

Sincerely yours,

JOHN J. GILLIGAR.

Senator MUSKIE. I would like to put a few questions to Mr. Printz so that we might have some hearing record on AID's experience in dealing with NEPA overall.

Senator CULVER. Would the Senator yield at this point?

Senator MUSKIE. Yes; I would be very glad to.

Senator CULVER. Senator, I want to express my appreciation to you for noting the legislative intent and specific reference to the floor debate.

There is another reference brought to my attention from the legislative history, in which the House Merchant Marine and Fisheries Committee has rejected arguments that the law should not be applied to actions in other nations.

Stated most charitably, the committee disagrees with this interpretation of NEPA. The history of the Act makes it clear that the global effects are a part of the decisionmaking process and must be considered in that context.

Thank you, Senator.

Senator MUSKIE. I make one other point, with which we have taken pride as a government and a people, of the fact that in international environmental policy our country has exerted a strong leadership position. That isn't to say that all agencies of the Federal Government have been enthusiastic, but at least at the leadership level we have in many ways. And I think that ought to be documented for the hearing record.

And we ought not to back off from that leadership position when it is quite possible, in my judgment, to reconcile our trade interests or international economic interests and our worldwide environmental interests. And it is possible to reconcile them internationally the same way we reconcile them internally.

To me, we can export worldwide for the benefit of mankind the policies adopted by the United States. Our Clean Air Act was transferred wholesale to Japan. The Japanese adopted it and enforced it more rigidly than we have. The same can be true elsewhere especially in the underdeveloped nations which have not experienced the consequences of environmental degradation and can benefit from that leadership by the country that perhaps more than any other has suffered from the degradation of the environment.

Why should we withhold the export of that leadership so that those countries will not benefit and advance before they make our mistakes? We have the sophistication, wisdom, experience, and the information we have developed and we should export that information and that understanding and that comprehension and that awareness in every conceivable way through every agency of the Government which has any contact with the outside world whatsoever.

That is my view. That is not to say—and I repeat—that we should do so through cumbersome regulations that block rather than advance the objective. I have found if we adopt regulations which are too cumbersome, the tendency of people is to disregard the environmental goals which are the object of the regulations. So we must strike that balance, which I understood is the effort of the agencies represented here today.

Now, Mr. Prinz, I wonder if you are in a position to elaborate on what aspect of AID operations have benefited by NEPA application?

STATEMENT OF ALBERT PRINTZ, AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. PRINTZ. Thank you, Mr. Chairman.

I would like to have an opportunity to elaborate in that regard. We did move into the area, as you pointed out, as a result of a suit against the Agency Administrator Gilligan has noted on a number of occasions, that the suit may be the best thing that could have happened to AID.

Because of that action, we have moved on two fronts. One, by considering environmental aspects of AID supported development, using procedures worked out with the Council on Environmental Quality, and the second by beginning to develop the kinds of programs that Congress authorized when amending the Foreign Assistance Act by adding a new section 118.

We have seen the need to examine environmental aspects of development and we have seen similar concerns being expressed by developing countries. Their concern for environmental and natural resource protection is presenting a new area in which the United States can cooperate and provide assistance to those countries. So in general, as a result of the suit, we have moved in two firm directions and brought a new dimension to the Agency with regard to the environment.

Senator MUSKIE. Have you encountered resistance in the recipient countries?

Mr. PRINTZ. To this point, we have not. I believe that as we go through the process of carrying out our responsibilities to insure the soundness of the development we support, the countries recognize that what we are doing is designed to protect their environment and natural resource base.

Senator MUSKIE. What efforts do you make to—I hate to use the word "educate." It sounds too patronizing. But what efforts do you make to inform the developing countries as to the objectives and the reasons of your analysis and why they should be concerned?

Mr. PRINTZ. We have numerous efforts underway in this area. The approach selected to inform others depends a great deal on the sensitivity and understanding of the particular country and the issue itself.

We are right now, as an example, educating our own mission personnel to the issues of environment and development so that they can better communicate our concerns to the appropriate individuals within their host country.

We are also assisting the Indonesian Government's new Ministry for the Environment formulate their program in terms of goals and activities.

We placed an environmental specialist in the Philippines for 1 year to work with our mission and with host government officials in reviewing AID programs and helping them develop expertise in environmental impact assessment.

We are assisting the country of Mauritania in preparing a development strategy that fully considers the environmental and the social constraints to effective development of their country. A training component of the project will help insure their understanding of the approach to developemnt that is appropriate for them to pursue.

We have just assisted Botswana put on a symposium on drought preparation to help them better understand and prepare for an expected drought.

These are all examples of sensitizing techniques we pursue in individual countries to help them better understand our concerns about the environment and why we are proceeding as we are. There are others, but these provide some good examples.

Senator MUSKIE. Do you believe AID's experience is representative of what other agencies which operate in the foreign area would find under NEPA?

Mr. PRINTZ. I can only speak to AID's experience. Our work, to some degree, is like a domestic agency in that we are involved over a longer period of time with projects and have been able to develop a procedure with CEQ that provides for our needs and gives us the flexibility we require to keep our operations underway.

We have seen some difficulties with our proceedures over the 2 years of their life. I can only speak to the appropriateness of our work and our needs.

Senator MUSKIE. Is AID part of the consulting process underway to develop regulations?

Mr. PRINTZ. We have been deeply engaged in discussions with CEQ and State for some period of time. Our positions are well known to them and are being taken into account as a part of the broader picture, of which we are only one small piece.

Senator MUSKIE. Prior to a lawsuit in 1975, I understand AID resisted full-scale application of NEPA to its operations. Do you feel now you have successfully integrated environmental impact in your decision process?

Mr. PRINTZ. I think we have come a long way. I am not sure I can say it is fully integrated at this time. But we have come an awfully

long way since the passage of NEPA toward integrating the intent of NEPA into our activities.

Senator MUSKIE. Could you add anything to what you have testified as to the method of identifying which project requires additional environmental scrutiny?

Mr. PRINTZ. We are working on this subject ourselves and have made recommendations to the council that to some degree follow their suggestions for streamlining the domestic process. We need to change our regulations to identify some activities that will always need assessment as well as those that do not need to be screened each time.

We are beginning to acquire a better understanding of our needs and alternative approaches to evaluating our activities. To date we have identified 54 AID actions that need further environmental analysis and are beginning to see that for certain types of activities—river basin development, integrated rural development, road construction, et cetera—we can anticipate the need for environmental analysis at an early enough stage to allow the environmental issues to be defined and addressed as a part of project preparation.

The degree to which we conduct assessments with the cooperation and participation of the host country, and the degree to which we in the future, accept any assessment they might prepare are subjects which will continue to require individualized treatment. But we hope that we are moving toward a day when development activities will be proposed by countries on the basis of their understanding of environmental issues and it will be them rather than us that will be responsible for insuring the soundness of their development.

Senator MUSKIE. Would it be possible to make available for the committee an analysis of those 54 projects?

Mr. PRINTZ. We would be pleased to, sir.

Senator MUSKIE. Could you also provide for the record a copy of the form used by AID project officers in completing environmental examinations?

Mr. PRINTZ. We would be pleased to.

Senator MUSKIE. Do you feel that such an approach including a checklist of possible impact provides necessary and useful information to decisionmaking?

Mr. PRINTZ. It does.

Senator MUSKIE. Do you feel a streamlined checklist concept is adaptable to other agency procedures in the foreign arena?

Mr. PRINTZ. I would imagine there is some form of a checklist that could be useful to other agencies. It would have to be tailored to their type of operation.

[Mr. Printz supplied the following material in accordance with Senator Muskie's request:]

PROJECTS WITH EA OR EIS COMPLETED

1. Programmatic EIS on AID's Pest Management Activities
2. Sri Lanka - Malaria Control Program
3. Sri Lanka - Mahaweli Basin Development Stage II
4. Sri Lanka - Amparai Irrigation and Area Development
5. Philippines - BICOL Integrated Area Development
6. Guyana - Roads
7. Panama - San Miquelito Wastewater Collection and Transport System
8. Peru - Development of Subtropical Lands
9. Liberia - Upper Bong County Integrated Rural Development
10. Tanzania - Research on Tsetse Fly Control
11. Senegal - BAKEL Irrigated Perimeters
12. Yemen - Taiz Water Supply and Sewerage Project
13. Lesotho - Rural Roads
14. Philippines - Small Scale Irrigation
15. Philippines - Agro - Forestation
16. Philippines-Barangay water
17. Philippines - Rural Electrification
18. Pakistan - Rural Roads
19. Pakistan - Rural Clean Water Supply
20. Pakistan - Rural Electrification

	Identified	In Progress	Completed	
Central			1	1
Africa	7	5	4	16
Asia	3	-	10	13
LA	4	-	2	6
NE	15	2	1	18
	29	7	18	54

AID PROJECTS REQUIRING

ENVIRONMENTAL ASSESSMENT (EA) OR ENVIRONMENTAL IMPACT STATEMENT (EIS)

DEFINITION

- Identified: the need for an EA or an EIS has been determined but the assessment activities are yet to begin.
- In Progress: assessment activities are under way.
- Completed: environmental assessment on the project has been completed.

AFRICA

Identified

1. Benin and Togo - Rural Water Supply
2. Chad - Bongor Irrigated Crop Producation
3. Kenya - Marginal Lands Development
4. Mali - Operation Haute Valley Integrated Rural Development Project
5. Sahel Regional Irrigation Rehabilitation Program
6. Liberia - Low Income Housing
7. Togo - Low Income Shelter

In Progress

1. Chad - Irrigated Agriculture

Completed

2. Lesotho - Rural Roads
3. Sudan - Traditional Agricultural Sector Mechanization - Southern Blue Nile
4. Swaziland - Integrated Rural Development
5. Ethiopia - Gemu Gofa Area Rehabilitation
6. Cameroon - Mandara Mountains Water Resources

Completed

1. Liberia - Upper Bong County Integrated Rural Development
2. Senegal - Bakel Irrigated Perimeters
3. Tanzania - Research on Tsetse Fly Control

ASIA

Identified

1. Bangladesh - Rural Electrification
2. Indonesia - Rural Electrification

Completed 3. Pakistan - Rural Roads

Completed 4. " - Rural Clean Water Supply

Completed 5. " - Rural Electrification

6. Thailand - Lam Nam Oon On-Farm Development

Completed 7. Philippines - Small-Scale Irrigation

Completed 8. " - Agro-Forestation

Completed 9. " - Barangay Water

In Progress

Completed 1. Philippines - Rural Electrification

Completed

1. Philippines - Bicol Integrated Area Development II
2. Sri Lanka - Mahaweli Basin Development
3. " - Malaria Control

LATIN AMERICA

Identified

1. Costa Rica - Urban Environment Project
2. " - Resource Conservation Service
3. Panama - Access Roads
4. " - Watershed Management

Completed

1. Panama - San Miguelito Wastewater Collection and Transport System
2. Peru - Development of subtropical lands

NEAR EAST

Identified

1. Egypt - Suez/Port Said Development
2. " - Cairo Sewage System
3. " - Low Cost Housing
4. " - Grain/TOF Storage
5. " - Canal Cities Water and Sewerage
6. " - Flat Glass Plant
7. " - Railways Rolling Stock Plant
8. " - Maadi Cement Plant
9. " - Edfu Pulp and Paper Mill
10. " - Para-xylene/DMT Production
11. Jordan - Aqaba Water and Sewerage
12. " - Amman Water and Sewerage Project
13. " - Jordan Valley Irrigation Project (Stage II)
14. Syria - Akkar Plain Irrigation Development
15. " - Tartous Lattakia Highway

In Progress

1. Egypt - Polyester Fiber Plant
2. " - Alexandria Master Sewerage Plan

Completed

1. Yemen - Taiz Water Supply and Sewerage Project

Guideline
for
Preparation of Initial Environmental Examination

I. Introduction

As a matter of policy, AID is now committed to careful consideration of the environmental implications of all AID-supported projects.

Procedures for environmental evaluation of AID projects have now been developed under the title Regulation 16, Environmental Procedures. They stem from the U.S. National Environmental Policy Act of 1969 (NEPA) and from U.S. environmental procedures already in existence (Council on Environmental Quality Guidelines). Although NEPA is primarily focused on U.S. environmental concerns, it has influenced an approach to the study of environmental problems that is applicable to non-U.S. situations. The purpose of the AID Environmental Procedures is to insure that the environmental impacts of AID activities are given appropriate consideration, taking into account particular countries' stages of development, goals, and priorities.

II. General Information

A critical step in AID's Environmental Procedures is an initial examination of all AID projects (programs). The purpose of this Initial Environmental Examination (IEE) is to identify reasonably foreseeable environmental impacts, to determine the relative degree of impact, and to recommend the kind of further action (environmental evaluation) that may be required. A finding of significant potential adverse environmental impact does not necessarily preclude a decision to move forward with an activity; it does mean, however, that the impacts must be understood and evaluated prior to final decision.

It is essential that the IEE be made an integral part of early project design. This will provide sufficient time for more detailed evaluation, if required, to be made as final project design is developed. If possible, environmental effects might be identified during Project Identification Document (PID) preparation. However, the IEE should begin after approval of the PID and, in accordance with AID Environmental Procedures, it must be completed with and made part of the Project Review Paper (PRP) or equivalent document.

The person (or persons) who prepares the IEE needs to be familiar with the objectives and details of the project, particularly in the context of its relation to host country and people. The reviewer may wish to call upon specialists (host country or other) for specific assistance or pertinent information.

August 1976

III. Definitions

The definitions given here are excerpted from the AID Environmental Procedures and are also repeated, where useful, in the text.

A. Initial Environmental Examination (IEE)

An Initial Environmental Examination is an initial study of the reasonably foreseeable effects of a proposed action on the human environment. Its function is to provide the basis for a Threshold Decision as to whether an Environmental Assessment or an Environmental Impact Statement will be required. If an Environmental Assessment or an Environmental Impact Statement is required, the IEE will also provide the basis for its preparation. The IEE should identify and describe where appropriate: (1) the nature, scope and magnitude of any reasonably foreseeable effects of an action or any part of an action on the human environment; (2) the reasonably foreseeable effects of any such environmental impact on organisms in the biosphere including human life; and, where an Environmental Assessment or an Environmental Impact Statement is required, (3) reasonable alternatives to the proposed action which will be studied in detail in the Environmental Assessment or draft Environmental Impact Statement. The IEE will be an integral part of the Project Review Paper or equivalent document which will be circulated to selected Federal agencies for comment, when an Environmental Assessment is to be prepared.

B. Threshold Decision

A Threshold Decision is a formal Agency decision which determines, based on an Initial Environmental Examination, whether a proposed Agency action is or is not an action which will have a significant effect on the human environment and, if so, whether an Environmental Assessment or an Environmental Impact Statement is required.

C. Environmental Assessment

An Environmental Assessment is a detailed study of the reasonably foreseeable environmental effects, both positive and negative, of a proposed action and its reasonable alternatives carried out within or affecting specific developing countries. To the extent practicable, the Assessment will be developed in close collaboration with the host country institutions and subject to recipient country review.

D. Environmental Impact Statement (EIS)

An Environmental Impact Statement is a detailed study of the reasonably foreseeable environmental impacts, both positive and negative, of a proposed AID action and its reasonable alternatives, prepared when

major Agency actions significantly affect: the global environment or areas outside the jurisdiction of any nation (e.g., the oceans); the environment of the United States; or as a matter of policy, other aspects of the human environment at the discretion of the Administrator.

E. Negative Determination

A Negative Determination is a formal written document based on a Threshold Decision that a proposed action is not a major action which will have a significant effect on the human environment and is, therefore, an action for which an Environmental Assessment or an Environmental Impact Statement will not be required.

F. Negative Declaration

A Negative Declaration is an official written Agency decision made by an Assistant Administrator which states that the Agency will not develop an Environmental Assessment or an Environmental Impact Statement for an action which the Agency has identified as being ordinarily covered by AID Environmental Procedures. The decision may be based on: (1) overriding considerations such as the provision of disaster relief; (2) the fact that a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past; or (3) the fact that the Agency has previously decided to prepare a programmatic Assessment or Statement covering the activity in question.

IV. Format for Presentation of Initial Environmental Examination

The following format should be used:

Face Page, showing:

INITIAL ENVIRONMENTAL EXAMINATION

Project Location:

Project Title:

Funding (Fiscal Year and Amount):

Life of Project:

IEE Prepared by: Date:

Environmental Action Recommended:
(Environmental Assessment, Negative Determination, etc. Cite page where Recommendation for Environmental Action is fully stated in body of IEE.)

Concurrence: Date:
(By Mission Director or other appropriate official)

Assistant Administrator's/Director's Decision: Date:
(Approval/Disapproval of Environmental Action Recommended in the IEE. The Assistant Administrator/Director of the responsible Bureau or Independent Office reviews the IEE concurrently with the PRP or equivalent document.)

Contents of Initial Environmental Examination

I. Examination of Nature, Scope, and Magnitude of Environmental Impacts

Description of Project

Identification and Evaluation of Environmental Impacts
(See Impact Identification and Evaluation Form.)

II. Recommendation for Environmental Action

V. Preparing the Examination of Nature, Scope, and Magnitude of Environmental Impact

A. Description of Project

The description of the project should include enough information to give readers a clear understanding of the proposed action and its relation to the environmental setting, which is not usually covered in the PRP. The location or the general area affected by the proposed action should be identified; and its major land and water forms, land use, population, and socioeconomic characteristics should be included in the description. Any special cultural features likely to be affected by the proposed action should be described. The description should be based on readily available maps and published information. Surveys and development of technical data for the specific project are not recommended for preparation of this section.

B. Identification and Evaluation of Environmental Impacts

1. General

The AID program represents a wide spectrum of activities, ranging from emergency assistance to longer-term assistance, from capital projects to technical assistance, from commodity assistance to training; etc. The characteristics of the project determine the kind and extent of environmental evaluation required.

All projects must undergo examination to identify the nature, scope, and magnitude of environmental impact. This examination will enable the reviewer to weigh relative effects on the environment and to arrive at a recommendation as to whether an Environmental Assessment or an Environmental Impact Statement is required or whether a Negative Determination is appropriate.

There are some AID projects which by their general nature ordinarily have little or no impact on the environment and therefore usually do not require the preparation of an Environmental Assessment (or an Environmental Impact Statement). These are:

- Education or training programs not directly affecting the environment

- Controlled experimentation exclusively for the purpose of research which is confined to small areas and carefully monitored

- Analyses, studies, academic or investigative research, workshops and meetings

- Projects where AID is a minor donor* to a multidonor project and there are no potential effects upon the environment of the U.S. or areas outside any nation's jurisdiction. (The determination of minor donor will have to be made on a case-by-case basis.)

- Document and information transfers

- Contributions to international, regional, or national organizations by the U.S. which are not for the purpose of carrying out a specifically identifiable project or projects

- Disaster and emergency relief activities

- U.S. institution-building grants, as provided for under Section 211(d) of the Foreign Assistance Act

- Program loans and other loans or grants to intermediate credit institutions and/or regional development banks, including financial transfer type projects, where the third party actions are unknown, nonspecific or lack significance in terms of their environmental impact

- Loans or grants for core support to private voluntary organizations and international or interregional organizations

On the other hand, some AID projects ordinarily will require preparation of an Environmental Assessment (or an Environmental Impact Statement). Examples are:

- Certain chemical programs, including those involving insecticides, herbicides, and rodenticides and other similar programs directed towards species suppression or genetic modification

- Certain large-scale, on-the-ground research activities such as pilot tests involving hazardous substances, large area land transformation, or extensive treatment of sizable areas

- Regional development programs that include comprehensive development plans and endorsement of specific work projects

- Irrigation systems designed to serve large areas

- New and rebuilt road systems or segments of systems, including improved but unpaved roads, and road maintenance and repair programs

*Minor Donor - AID is a minor donor for purposes of these Environmental Procedures when its total contribution to a multidonor project will not exceed $1,000,000 or 25% of the estimated project cost, provided, that AID does not, under the terms of the agreement governing its contribution, control the planning or design of the multi-donor project.

- Major public utilities and infrastructure such as dams, power plants, rural electrification, water supply and sanitary sewer systems

- Selected commodities when the end use is known

2. Use of Impact Identification and Evaluation Form

The attached Impact Identification and Evaluation Form is intended to help the person preparing the IEE to identify impacts that may be inherent in different kinds of projects. It has been devised to enable the reviewer not only to identify impact but also to allow for evaluation of the degree of impact. This form is not meant to be all-inclusive; impacts which are not included in the form but which are relevant because of particular environmental setting should be considered along with those highlighted in the form.

When identifying possible impacts suggested in the Impact Identification and Evaluation Form, it will be necessary to use information, technical and otherwise, that is readily available; to obtain host country expert opinion and participation, or other expertise if required; and to exercise reasonable judgment in impact identification.

In using the form, it is important to think in terms of significant effect. While it is difficult to state exactly what significant means, even in the U.S. context, it can be interpreted to mean "impacts that will result in important consequences or changes." It should be kept in mind that changes need not be large to be important and significant. It should also be noted that, even though there may be many beneficial impacts as a result of the project, a few significant adverse impacts could have serious or disadvantageous effect on the environment.

The Impact Identification and Evaluation Form should be cited in the section on Examination of Nature, Scope, and Magnitude of Environmental Impacts and should be attached as a reference.

VI. Recommendation for Environmental Action

A. Recommendation for Threshold Decision

The completion of Section I of the IEE should establish the information needed and the basis on which to make a Threshold Decision. There are three recommendations that can be made, as follows:

31-565 O - 78 - 16

1. That the project will not have a significant effect on the environment, and therefore a Negative Determination is appropriate. A Negative Determination, to repeat, is a formal written document based on a Threshold Decision that a proposed action is not a major action which will have a significant effect on the human environment and is, therefore, an action for which an Environmental Assessment or Environmental Impact Statement will not be required.

2. That the project will have a significant effect on the environment, and therefore an Environmental Assessment is required. An Environmental Assessment is a detailed study of the reasonably foreseeable environmental effects, both positive and negative, of a proposed action and its reasonable alternatives carried out within or affecting specific developing countries.

3. That the project will have a significant effect on the environment, and that an Environmental Impact Statement is required. This is appropriate for a project which will significantly affect:

- the global environment or areas outside the jurisdiction of any nation (e.g., the oceans);

- the environment of the United States; or

- as a matter of policy, other aspects of the human environment at the discretion of the Administrator.

While both beneficial and adverse impacts are to be considered in arriving at a recommendation, fundamentally it is adverse environmental impacts that indicate need for more careful study to assure that project design and implementation is done in such way as to eliminate or minimize them. It should be noted, however, that an Environmental Assessment (or Environmental Impact Statement) is required when significant impact is determined, regardless of whether the effects are presumed to be beneficial or adverse.

The reviewer should summarize the reasons leading to the recommendation. This summary, taken together with the completed Impact Identification and Evaluation Form (which includes a Discussion of Impacts), should fully justify the recommendation made.

If an Environmental Assessment or an Environmental Impact Statement is recommended, the reviewer should also provide the basis for its preparation. That is, he should recommend that the EA or EIS (1) should address in detail the implications of particular impacts and (2) should search for best solutions for minimizing or eliminating any adverse impacts inherent in the project.

In addition, if an EA or an EIS is recommended, the reviewer should discuss reasonable alternatives to the proposed action. Since all the parameters of a project are not established at the PID or PRP stage, alternatives will of necessity have to be viewed from a very broad standpoint. However, these should be pointed out to allow for their inclusion as a part of the EA or EIS.

B. The Use of Negative Declaration in Limited Cases

A Negative Declaration is an official written Agency decision made by an Assistant Administrator which states that the Agency will not develop an Environmental Assessment or an Environmental Impact Statement for an action which the Agency has identified [by an IEE] as being ordinarily covered by AID Environmental Procedures. The decision may be based on: (1) overriding considerations such as provision of disaster relief; (2) the fact that a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past; or (3) the fact that the Agency has previously decided to prepare a programmatic Assessment or Statement covering the activity in question.

To further explain provision (3), the programmatic approach may be used for broad programs which include a variety of specific activities, or for certain types of projects which are generally applied on a regional and/or worldwide basis, when the environmental impacts of all the activities are substantially similar. Examples of activities which might be suitable for programmatic approach are: pest management programs which may be environmentally acceptable over a broad area or on a worldwide basis (an AID programmatic EIS is being prepared for this activity, 1976); large-scale development programs; fertility control programs; introduction of new crops; certain commodities.

A programmatic approach is useful in developing overall Agency policy regarding certain groups of activities and has the advantage of permitting the analysis of cumulative effects of a series or group of actions. The disadvantage may be lack of specificity when applied to individual country or program components. In general, the programmatic approach should be considered when initiating new programs, when making major changes in existing programs, or when major policy determinations are under study.

If a project lends itself to a programmatic approach and if a programmatic evaluation is being developed and will be applied to the project, a recommendation for a Negative Declaration is appropriate. The findings and recommendations of the programmatic EA or EIS must be included in the project design for the specific project. If for some reason the programmatic evaluation will not be made, separate evaluation for the project must of course be considered.

If a Negative Declaration is recommended, the reviewer should specify the basis for the decision, i.e. provision (1), (2), or (3); and he should provide ample explanation and justification in support of this choice.

VII. Concurrence of Mission Director or Other Appropriate Official

The recommendation should have the concurrence of the Mission Director or other appropriate official. This should appear on the face page of the IEE.

VIII. Assistant Administrator's Decision

The Assistant Administrator of the responsible Bureau or the Director of the Independent Office will review the IEE concurrently with the PRP or equivalent document and will make the Threshold Decision (or Negative Declaration if applicable). A line for his decision (approval or disapproval of the environmental action recommended in the IEE) should be included on the face page.

It might be noted here that when preparation of an EA is recommended, the PRP or equivalent document, including the IEE, will be forwarded to other U.S. Federal agencies having an interest in the kinds of environmental impact involved. The reason for this is that these agencies may have technical expertise that could be helpful in advising on environmental evaluation. The appropriate Bureau or Independent Office will be responsible for circulation to other Federal agencies.

Attachment:
Impact Identification and Evaluation Form

IMPACT IDENTIFICATION AND EVALUATION FORM

Explanatory Notes

The following is provided for guidance in completing this form.

I. Identification of Impacts

The human environment includes both natural and man-made environments. The Impact Identification and Evaluation Form is a checklist for identifying and measuring significant environmental impacts. Major areas of impact addressed are:

A. LAND USE

B. WATER QUALITY

C. ATMOSPHERIC

D. NATURAL RESOURCES

E. CULTURAL

F. SOCIOECONOMIC

G. HEALTH

H. GENERAL

Section IV below, Description of Possible Impacts, delineates the kinds of impacts that may be identified in each of these areas and their sub-areas. This Description is keyed by letter, number, and abbreviated title to the entries in the Impact Identification and Evaluation From.

This is not an exhaustive list of impacts. It should serve to highlight possible impacts and to stimulate identification of additional environmental impacts that may appear in particular projects or programs.

August 1976

II. Evaluation of Impacts

Each impact identified should also be evaluated. These evaluations will allow the reviewer to focus on the more significant environmental impacts. The gradings and symbols for impacts are:

N - No environmental impact

L - Little environmental impact

M - Moderate environmental impact

H - High environmental impact

U - Unknown environmental impact

An Unknown impact is one where no knowledge is at hand or available to make a determination; it is not to be used for an impact whose full extent may be difficult to measure.

It should be noted that impact evaluation is a judgmental process which should be made in view of all the relevant conditions and circumstances that surround the project.

III. Discussion of Impacts

A Discussion of Impacts section should be attached to the Impact Identification and Evaluation Form (this Discussion will be referred to in the body of the Initial Environmental Examination). In this section the reviewer should individually address each sub-area in which an environmental impact is identified or in which the impact is unknown. The information given should be germane and brief yet sufficient to indicate the basis on which each evaluation was made. Where the expected impacts are high, fuller discussion should be made.

Attention is drawn to the impacts listed in the last area, H. GENERAL. These are most important considerations and should be used in the analysis of every sub-area.

Some areas in the form overlap others. It is difficult to avoid this problem, which individually may be solved by appropriate cross-referencing of the discussions.

It should be stressed that the Impact Identification and Evaluation Form is simply a guide to identify environmental impacts of programs and projects and to allow the reviewer to indicate his evaluation of their degree of significance. The form should be used and expanded to meet the needs of individual program managers and analysts. On the basis of information developed by use of the form and amplified in the accompanying Discussion of Impacts, a Threshold Decision can be recommended.

IV. Description of Possible Impacts*

A. LAND USE

Land should be prudently used for the management and conservation of the resources needed for the health and safety of man. Alterations of land forms or depletion of some of their natural defenses often take place over a period of years; nature's reactions usually take even longer. Therefore, analyses of proper land use tend to stress the long-term considerations over the short-term.

Some lands are affected relatively rapidly and irreversibly by seemingly small changes in an ecosystem. These areas are the particularly fragile ones such as rain forests, islands, and coastal lands.

Almost every development involves some use of land. Strip mining clearly changes the shape of the land. Other actions appear to retain the character of the land yet can have far-reaching deleterious effects. Therefore analysts should look into the role land plays in contributing to or conserving the health of a people or an area. Some of the land-use environmental impacts may involve:

1. Changing the character of the land through:

a. Increasing the population of people or animals in an area. Stress is put on the land through additional requirements for water, waste-disposal facilities, use of ground cover by grazing animals, roads, agricultural land, abodes, and a varied number of community services such as power and sanitation.

b. Extracting natural resources such as minerals or water. The baring of land for minerals can cause high erosion; moreover, the process water used in many mining operations can result in the discharge of volumes of highly acidic or alkaline waters, and of heavy metals. These discharges can pollute surface and ground waters, and prevent for a long period the use of any "downstream" land for agricultural purposes. The extraction of water from wells can lower the water table, causing subsidence of the land or, if the area is near the sea, salt water intrusion--i.e., salt water mixing with fresh to yield a brackish drinking or irrigating water.

c. Land clearing. The removal of ground cover takes place through almost every use of land. In addition to the impacts already noted, special problems may exist in tropical areas; for example, the clearing away of a tropical forest often reveals infertile soil, which is almost impossible to cultivate more than a season or two even with the help of fertilizers.

*These are not listed in order of precedence.

d. Changing the character of the soil. Slash-and-burn agriculture can destroy the replenishments of nutrients to the soil. Irrigation water can leach out needed trace elements in the soil. Erosion can take away the topsoil and increase a population's encroachment on forested areas. Overgrazing can remove ground cover, which in an arid and infertile area might never recover and lead to desertification.

2. Altering some of the significant natural defenses provided by an area. A wooded area such as a forest prevents flooding of lower or adjacent areas. Sand dunes and their grasses help maintain the stability of the landward areas. Long reaches of beach lessen the impact of the sea on the land; coral reefs act the same way. Mangrove forests prevent the sea from claiming more land; in fact, such forests build land.

Trying to stem some of the actions of nature could exacerbate a situation: groins built to maintain a beach could denude others; seawalls or breakwaters sometimes hasten shore erosion, or prevent the building of land on the leeward side of a barrier island or spit. Moreover, a mountain road poorly designed can direct waters from a flash storm in flood volume into lower lands or valley; or can take away just enough ground cover from the side of the mountain to cause erosion of the lower portion of the land.

3. Foreclosing important and perhaps better uses of the land. Scarce agricultural land may be flooded by a dam or partially lost to a roadway or airport. A marshland or mangrove lagoon, which are spawning grounds for many fish, may be filled for land developments. Other habitats for animals or other organisms which are used for food or are members of endangered species of worldwide importance may be destroyed. An aquifer recharge area may be eliminated by developments that could be put elsewhere.

4. Jeopardizing man or his works because either is put into a zone of potential disaster. A development may be planned for a flood-plain, near an active volcano, in an earthquake area, in the path of frequent typhoons or hurricanes, or in an area subject to locust or other plagues. The foregoing are natural disaster areas. There are also potential man-made disaster areas where land may be in the path of a weakly built dam, or an increasing load of water pollution.

5. Other factors. (Please describe and evaluate.)

B. WATER QUALITY

Water is the solvent for many of man's waste products. It also is the vehicle for growth of all life on this planet.

The use of water for public water supplies, agricultural waters, industrial water supplies, recreational tourism, and as media for fishing and transportation depends intimately on the chemical, biological and physical states of the water. Overloading the capacity of water to absorb waste products, or altering its composition, will affect man's ability to use the water, sometimes critically. The impacts may involve:

1. Changing the physical state of the water. Increased siltation or sediment loads change the physical state of water. Activities bringing this about include: erosion runoff from new roads or near shore construction sites or resulting from deforestation or removal of ground cover; irrigation projects; dredging; discharge of solid wastes from processors such as sugar mills, pulp mills, refineries, steel mills, and such.

Changing the physical state of a water body usually changes the chemical and biological states; when sediments lessen the amount of light that penetrates a water body, photosynthesis is slowed down or stopped, thereby altering the ecological balance of the water body and bringing about associated biological and chemical changes.

Raising the temperature of receiving waters, say by the effluent of an electricity generating plant, changes the physical state of water. Similarly, dumping solid wastes such as construction debris will bring physical changes to a water body, as will the discharge of sewage sludge and garbage.

2. Changing the chemical or biological states of the water. A pollutant by definition causes deleterious changes in the state of water, usually of a chemical or biological nature. Pollution is introduced by sewage, leaking septic tanks, animal wastes washed into a stream or percolating into ground water, fertilizer similarly finding its way into ground or surface waters, and herbicides and pesticides contaminating the same waters.

Other sources of water pollution may stem from industrial discharges of wastes directly into surface waters, or into ground waters by injection of the wastes into deep wells or by allowing the wastes to seep down to the ground waters; spills or leaks of toxic materials such as oil; and the leaching into waters of accumulated salts from dumps and landfills, or from other substances subject to the dissolving power of the rain.

Even the dumping of wastes seemingly far from any influence on the shorelands can, through unfortunate currents, bring some of the pollutants back to the land.

3. Changing the ecological balance of a water body, thereby changing its chemical and biological balance. For example, implanting alien organisms into a water body can bring about profound changes in that body: Newly introduced plant forms could proliferate and clog or eventually eutrophy a waterway; the addition of some predator fish could destroy the population of less aggressive fish which in turn might have kept an insect population under control.

Introducing toxics into a water body, especially a small one, could destroy much of the life there. Similarly, a habitat or ecosystem would be altered forever through land reclamation; e.g., by filling a swamp or marshland. These areas might be the feeding and nesting places for fish and animals which may play an essential part in the ecology of the region; these areas might also be one of the natural defenses of the area, such as a mangrove swamp.

4. Other factors. (Please describe and evaluate.)

C. ATMOSPHERIC

Airborne pollutants and some allegedly benign additives in sufficient concentrations and quantities can harm and destroy animal and vegetable life and cultural artifacts such as buildings, tapestries, and statues. In addition, airborne pollutants can alter the chemical characteristics of rain. Moreover, air pollution, by changing the reflectivity (albedo) of the atmosphere, can modify the weather and even climate of an area and possibly make the area more arid. Other intrusions into the atmosphere such as high levels of noise can modify and destroy a human community or a wildlife habitat.

Accordingly, atmospheric impacts may be grouped as follows:

1. Air additives. Spraying of herbicides and pesticides into the air--from aircraft or land-based dispensers--can harm or destroy life other than that targeted. Moveover, the additives can affect ground and surface waters, and eventually become concentrated in fish and thus in man in areas many miles from the source of spraying.

2. Air pollution. Particles and gases that can cause pollution may enter the atmosphere through industrial processes, engine exhausts, and the burning of solid wastes. Major air pollutants include: suspended particulates such as dust, pollen, ash, soot, metals, and various chemicals; sulfur dioxide; carbon monoxide, nitrogen dioxide; hydrocarbons; and the photochemical oxidants that are generated by the action of sunlight on chemical precursors.

The effects of these pollutants include the aggravation of respiratory and cardiovascular diseases, reduced growth of plants and premature drop of their fruit and leaves, and the deterioration of building materials and other surfaces.

A particularly hazardous air pollution comes from the generation of dust during an industrial, construction, or mining process where workers are not protected from the particulates. In these instances, severe occupational diseases can be anticipated.

3. Noise pollution. Excessive noise--that is, noise that can impair hearing and some bodily and psychological functions, may be introduced by an industrial process or by vehicles. A riveting machine and a nearby jet plant takeoff make about the same painful noise; a heavy truck and a pneumatic drill make highly discomforting noise, about the same as a New York subway train pulling into a station.

4. Other factors. (Please describe and evaluate.)

D. NATURAL RESOURCES

Exploitable natural resources are those that can be taken from the sea, from the surface of the land or from beneath the ground, or extracted from the atmosphere. A major consideration from a community's viewpoint is the benefit expected from exploiting one of its natural resources. However, another consideration becomes one of determining the environmental effects of the resource's removal or diversion.

Natural resource environmental impacts may come from:

1. Diversion, storage or increased use of water. Dams, irrigation systems, watercourse diversion or channelization can profoundly affect people, animals, and other organisms that depended on the original sources of water. Entire species of organisms, and others that depended on them, could be harmed or destroyed. At the same time, other less desirable species could be encouraged. Far-reaching effects include the erosion of land, the spreading of desert lands, and the dissemination of diseases such as schistosomiasis.

2. Irreversible or inefficient commitments of natural resources. A plentiful natural resource might be taken without foreknowledge of the ecological role it plays. For example, sand might be extracted offshore without the realization that this sand may replenish a downstream beach; thus, a coastal area could be left defenseless. Precious coral could be extracted by primitive dredging methods, thereby destroying future crops and possibly a new industry. Animals such as goats or sheep could be released for pasture in an isolated area only to result in the destruction of the ground cover and also other perhaps

valuable life there. Forests could be cut down for pulp without the realization of the role the forests may play in stemming floods, in protecting animal life, in storing water in a landform possibly adaptable for the hydroelectric generation of power.

3. Other factors. (Please describe and evaluate.)

E. CULTURAL

An activity may depreciate or seriously harm the culture or cultural heritage of a people. Culture may be defined in terms of the values a people hold, the consequent behavior patterns the people follow, and the knowledge and beliefs they have distilled from their forebears. Evidences of culture may be ensconced in (1) sacred or otherwise important waters and lands, historic and archeological sites, buildings and other artifacts, or other physical symbols; or in (2) a people's mythology, lore, ethics, history, teachings, activities, ethnology.

There are international conventions that now exist dealing with protection of the world cultural and natural heritage and with protection of endangered species. These conventions will ultimately indicate in each of the signatory countries those cultural and natural heritages and endangered species that need protection. Host country experts who are now a part of these activities should be consulted to obtain their views on possible impacts in this area.

Cultural impacts, although often subtle, can be pervasive and may involve:

1. Altering or destroying important physical symbols of a culture; e.g., monuments, sacred ground, ancient shrines, etc.

2. Diluting a culture, possibly through methods such as introducing alien cultures, or dispersing or otherwise adulterating the indigenous culture. For example, a forced mixture of populations could introduce alien ideas, as perhaps could direct TV broadcasts containing culturally erotic material. Resettlement of a population could break important cultural ties and thereby weaken a society dependent on site and on historic leaders.

It is recognized that cultural impacts and changes may be critically needed to help conserve the society.

3. Other factors. (Please describe and evaluate.)

F. SOCIOECONOMIC

Socioeconomic impacts arise out of the striving of a people to earn a livelihood and to achieve a quality of life that provides a measure of food, housing and health. Thus, socioeconomic impacts may involve:

1. Changes in patterns of economic growth and employment. For example, a labor-intensive industry may move into a rural area because of the training and cheapness of labor there; or move out because these attributes of labor are offered elsewhere. Marginal agricultural land may be brought into production, bringing with it not only increased employment but also increased need for services such as water and roads. A marginal mineral deposit may be found whose exploitation could change the socioeconomic pattern of the area.

The factors that bring about economic changes are endless but often highly significant in socioeconomic impact analyses.

2. Movement, resettlement, or changes in population. This element is related to the use of land and community services, but the stress here is on the extent of change expected in the socioeconomic relationships among the people and between the people and their community.

3. Changes in cultural patterns that could affect socioeconomic patterns in a major way. For example, the persuasion of women to work, or the removal of children from the labor market would affect family income and relationships. Similarly, the eating of healthful but formerly taboo foods, which may be plentiful, or of unfamiliar food additives such as fish protein concentrate, could have large quality-of-life impacts on a people.

4. Other factors. (Please describe and evaluate.)

G. HEALTH

Impacts related to health broadly pertain to man and to the organisms and environments needed in large diversity and profusion to sustain man on the planet. These impacts may involve:

1. Altering or destroying a natural environment. Such changes could come about through the addition of chemicals to an environmental system to get rid of selected vectors of disease. For example, a copper compound can be added to a fresh water body to poison the intermediate (snail) host of schistosomiasis, but the poison will also kill other organisms. Similarly a larvacide could be used to help

eliminate the chocerciasis (River Blindness) vector. Bush clearing or barricades could be used to destroy a tsetse fly colony but at the same time could jeopardize other organisms.

2. Eliminating an element in an ecosystem. The killing of coyotes to prevent crop destruction could give rise to the proliferation of the rodents that coyotes feed on. The destruction of mangroves to eliminate mosquitoes and other pests could give rise to the destruction by wave action of a coastline (see Item A2).

3. Other factors. (Please describe and evaluate.)

H. GENERAL

Some impacts are of overriding international interest and concern. Others, while not immediately apparent, may accrue to an overall program of which the proposed activity is a part, or an early step. Thus, general impacts may involve:

1. Activities that will affect the United States or other nations, directly or indirectly, now or at some later time. The agent for such impacts could be the ocean, the atmosphere, or carriers such as man, birds, or other organisms.

2. Activities that are matters of controversy locally, nationally, or globally.

3. Activities that are part of a larger program, or intended to be part of a larger program, whose total effect would require an appraisal of environmental impacts. If the activity fits this category, then use the present form for the appraisal of the entire and overall program.

4. Other factors. (Please describe and evaluate.)

IMPACT IDENTIFICATION AND EVALUATION FORM

Impact Areas and Sub-areas 1/	Impact Identification and Evaluation 2/
A. LAND USE	
1. Changing the character of the land through:	
a. Increasing the population	
b. Extracting natural resources	
c. Land clearing	
d. Changing soil character	
2. Altering natural defenses	
3. Foreclosing important uses	
4. Jeopardizing man or his works	
5. Other factors	
B. WATER QUALITY	
1. Physical state of water	
2. Chemical and biological states	
3. Ecological balance	
4. Other factors	

1/ See Explanatory Notes for this form.

2/ Use the following symbols:
N - No environmental impact
L - Little environmental impact
M - Moderate environmental impact
H - High environmental impact
U - Unknown environmental impact

August 1976

IMPACT IDENTIFICATION AND EVALUATION FORM

C. ATMOSPHERIC

1. Air additives ---------- _____
2. Air pollution ---------- _____
3. Noise pollution ---------- _____
4. Other factors

_____ _____

_____ _____

D. NATURAL RESOURCES

1. Diversion, altered use of water ---------- _____
2. Irreversible, inefficient commitments ---------- _____
3. Other factors

_____ _____

_____ _____

E. CULTURAL

1. Altering physical symbols ---------- _____
2. Dilution of cultural traditions ---------- _____
3. Other factors

_____ _____

_____ _____

F. SOCIOECONOMIC

1. Changes in economic/employment patterns ---------- _____
2. Changes in population ---------- _____
3. Changes in cultural patterns ---------- _____
4. Other factors

_____ _____

_____ _____

Senator MUSKIE. Thank you very much. Mr. Chairman, I have completed the questions I have. As far as any other questions to State and CEQ and Eximbank, I could submit those.

I hope we can get responses for the record. I would like to express my appreciation to Mr. Printz for his willingness to come. It took some persuasion to get the permission, but sometimes persuasion works. Not always. That is why we need public policy written into law.

Thank you very much.

Senator CULVER. Thank you very much, Senator Muskie, for an extremely valuable contribution to this record.

I want to emphasize, as we conclude the hearing this morning, the importance of Mr. Hansell getting this act together and having something submitted to us formally with Presidential approval and support at the earliest possible date.

Secondly, I want to emphasize my own pressing concern that the State Department at the highest levels far more aggressively take a leadership role in international efforts to get agreement. I think this also will affect the kind of pressures reflected here in the Eximbank problem.

And finally, I want to emphasize, Mr. Moore, the importance of aggressively seeking internal coordination with the appropriate domestic agencies, the health and safety groups, both in terms of our linkages with Exim activity and also with regard to other multilateral lending institutions such as the World Bank.

It is my understanding that there is a continuing attitude on the part of multilateral, and national banks as well, that environmental institutions and laws are exclusive responsibilities of the host countries. It seems to me that this is likely to be highly ineffectual.

And finally, I want to mention that bulldozer example. We also have evidence available that studies have been made, for instance on the Mekong Delta activities. There was a study made there with regard to an Indonesian group that demonstrated some of the adverse environmental consequences of dredging. So when we finance barge activities, we have an obligation to accompany that with available data and knowledge about the possible dangers. It seems to me that is something we can give serious consideration to.

If we are on notice and advise certain Third World countries of the consequences from the misapplication of technology, it seems to me we can do a much better job of sharing our experience so that these mistakes are not repeated. So, I hope you will alert appropriate people in your department as to the obligations in this regard.

The hearing will stand in recess until further call of the Chair.

[Whereupon, at 11:41 a.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Statements supplied for the record follow:]

31-565 O - 78 - 17

STATEMENT

OF

THE HONORABLE JOHN D. DINGELL

BEFORE

THE SENATE COMMITTEE ON THE ENVIRONMENT
AND PUBLIC WORKS

ON

S. 3077

JULY 11, 1978

Mr. Chairman and Members of the Committee, I appreciate the opportunity to present my views on Section 5 of S. 3077, the amendment which would single out the Export-Import Bank for special relief from the National Environmental Policy Act. Having been greatly concerned with environmental problems, I was actively involved with the drafting and passage of the NEPA. Many of my fellow Congressmen and I saw that historic Act as a critical step in protecting both man and his environment. It was clear at that time, and it remains just as clear today, that our interests would be served best by a national policy which explicitly recognizes the global character of the environment. We therefore must promote specific policies and specific programs, both in this country and abroad, which consistently and unequivocally address themselves to the serious nature of man-induced threats to the stability and health of our environment.

The legislative history of the NEPA and subsequent judicial interpretations clearly indicate that the law must apply to all major federal undertakings which might result in serious environmental damage, whether this impact occurs

within this country or beyond our borders. This government has a responsibility to identify clearly and openly its assessment of the impacts. As Senator Jackson said in debate prior to passage of the NEPA:

> "What is involved is a Congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind. That we will not intentionally initiate damage to the air, land, and water which supports life on earth."

This view has since been supported in judicial interpretations of the law; the courts have clearly indicated that the NEPA does indeed apply to federal actions with impacts beyond our national boundaries.

The dangers of omitting even the most rudimentary assessment of environmental risks can be disastrous. For example, I call your attention to the case in which a government agency, AID, knowingly financed the export of a chemical pesticide so dangerous that it had been banned for use in the United States. This chemical, known as leptophos, was shipped to Indonesia, South Vietnam and Egypt, where the impacts on men and their environment were both appalling and unpardonable. Bringing the case closer to home, we

can look at the Export-Import Bank's recent financing of a nuclear power plant in the Philippines. In that case, we provided the country with financial assistance amounting to $644 million to buy a reactor to be built fourteen miles from an active volcano.

It seems entirely reasonable to ask that such projects require at least a rudimentary or abbreviated environmental assessment. Is it not in our interest to assure ourselves that a project is indeed a safe and sound investment not only for our taxpayers but for those countries that use our goods? Should we not alert foreign governments to both the environmental harms -- and benefits -- associated with the use of our products? Since the leptophos case, AID has incorporated an impact assessment procedure into its authorization process. This has been useful to AID and welcomed by the recipients of its assistance. I think it is high time that the Congress should enforce a similar requirement for the Export-Import Bank.

The preliminary draft regulations proposed by the CEQ would provide an adequate assessment procedure which would not unnecessarily restrict the Export-Import Bank. Yet they would provide at least the minimal amount of information needed to insure that both our people and those who are purchasing our goods and services are adequately informed of

the impacts involved. This would promote the nation's interests by avoiding situations in which activities supported by our public funds cause unacceptable damage in other countries. Such impacts would ultimately damage our standing abroad, and I think in the long run undermine the future salability of our goods in those countries.

By promoting an honest appraisal of the major impacts associated with our publicly financed activities abroad, we would ultimately foster a healthier climate for our businesses there. AID representatives have said that in many cases the recipient countries are eager to get information on the environmental impacts of their proposed projects. Often, they simply do not have the resources or expertise to adequately perform these assessments themselves. Furthermore, where these assessments are openly provided to the client they may enhance the sales value of our products overseas. For under such circumstances, the customer is better able to consider the advantages and disadvantages of the American product. When compared to foreign products whose environmental impacts are greater or less well known, the American import may seem more desirable.

In closing, I would like to add a final comment. This nation has been the international leader in environmental matters. Countries around the world have looked to us for guidance in establishing environmental standards of their own, standards which will ultimately benefit this country by promoting the general health of the global environment. Section 5 would seriously undermine this leadership role, and weaken our efforts to promote a sound environment and to secure a happy future for other generations. For these reasons, I strongly urge that it be deleted from the bill. Thank you.

NEPA, EXIMBANK FOREIGN ACTIONS, AND THE PHILIPPINE REACTOR[1]

by

The Philippine Movement for Environmental Protection[2]
and the Friends of the Filipino People[3]

At the present time, the Senate Committee on Environment and Public Works is holding crucial hearings on a proposed bill, S 3077. Of particular significance is the controversial Section 5 of this bill, otherwise known as the Stevenson Amendment. Supporters of the Amendment seek to exempt the Export-Import Bank (Eximbank) from the provisions of the National Environmental Policy Act (NEPA) which requires Eximbank to file an Environmental Impact Statement (EIS) prior to granting a loan which would facilitate the purchase of US goods by a foreign country. As will be proven shortly, the Stevenson Amendment is a direct contradiction to the legislative intent and history of NEPA. Furthermore, it will also be clear that what ought to be given priority consideration in these hearings is the creation of modes whereby the foreign dimension of NEPA will be enhanced and reinforced with all due consideration for other American interests. The urgent nature of this important task will be better appreciated when the example of the Eximbank loan to the Philippine government for the purchase of a Westinghouse nuclear reactor is studied in detail.

1/ Statement submitted to the Senate Committee on Environment and Public Works for inclusion in the official records of the Hearings on Section 5 of SB 3077

2/ A nationwide anti-nuclear alliance in the Philippines composed of environmentalists, scientists, government officials, religious, labor, and farmer groups, teachers, students, and others some of which are recognized authorities in their field; estimated 50,000 sympathizers as of July 1978

3/ A nationwide US organization founded in 1973 by Americans concerned with the welfare of the Philippines; in addition to numerous sympathizers, FFP is composed of 300 active members, 95% of whom are Americans; many notable American scholars compose the Board of Sponsors; FFP congressional testimonies concern

The nature of and previous court rulings on NEPA point to the emptiness of the Stevenson Amendment. For example, Charles Warren, chairman of the presidential Council on Environmental Quality, points out that NEPA does not limit the scope of coverage of the need to file an EIS on the US alone (1). Words or phrases like 'biosphere', 'the worldwide and long-range character of environmental problems', and 'maintaining environmental quality to the overall welfare and development of man' point out that a broader socio-geographical audience was intended by the NEPA.

Furthermore, Warren points out that the legislative history of NEPA bears out that federal agencies are obliged to prepare an EIS on US exports or actions abroad. For concrete support of his argument, Warren cites the following evidences: a) the statement of Sen. Henry Jackson on NEPA discussions as recorded in the Congressional Record (October 8,1969) to wit: 'Although the influence of the U.S. policy will be limited outside its own borders, the global character of ecological relationships must be the guide for domestic activities'; b) the rejection by the House Merchant and Fisheries Committee of the argument that NEPA does not apply to US actions abroad; c) the D.C. Court of Appeals ruling (Wilderness v. Morton) that the interests of Canadian environmentalists were protected by NEPA; d) the court-approved settlement (Environmental Defense Fund v. Agency for International Development) which required AID to prepare an EIS on its pest management program; e) the court decision (Sierra Club v. Atomic Energy Commission) forcing the AEC and the Eximbank to comply with NEPA on nuclear exports; and,

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the continual assessment of US-Philippine relationship.

f) the implicit recognition of federal agencies like the State Department, Federal Power Commission, National Oceanic and Atmospheric Administration, and the AID which have all voluntarily file EISs on some of their actions aborad.

Warren cites all these actions to show that, indeed, "the language of NEPA strongly implies a Congressional concern with the environmental impact of U.S. projects abroad; the legislative history of NEPA is explicit on this point; the courts have ruled, in specific cases, that NEPA governs the actions of U.S. agencies abroad; and several agencies have implicitly recognized that governance by voluntarily filing EISs".

As if to add further evidence to Warren's contention, the Natural Resource Defense Council (NRDC) has filed a suit against Eximbank for not complying with the provisions of NEPA with regards to Eximbank's foreign actions.

Therefore, from all these foregoing facts, it is clear that the Stevenson Amendment goes contrary to the purpose and legislative history of NEPA. Furthermore, this Amendment only distracts the attention of all concerned from the real issue that has to be contended with: the reinforcement of NEPA's international perspective. The Philippines case will provide a rationale for this need.

The Eximbank financed the sale of a nuclear reactor to the Philippines without doing an EIS as required by NEPA. Although Eximbank claims to have studied the safety, technical, and socio-economic aspects of the nuclear export, Eximbank's statements at the hearings held by the Subcommittee on Foreign Operations and Related Agencies, headed by Rep. Clarence Long (2), plus evidence obtained from Eximbank's files as made public by a Freedom of Information request by the Union of Concerned Scientists (UCS), suggest that feasibility analysis was not done thoroughly.

For better perspective, it should be borne in mind that Eximbank's treatment of this loan would have been more thorough had it done an EIS. Consequently, Eximbank would not have the dubious honor of having financed a reactor which was, and still is, plagued with unresolved safety, economic, and social problems. And this uncomfortable position is further aggravated by the international exposure the problems of the Philippine reactor is having (3).

Let us take the safety issue, then, as a very concrete example.

Chairman John Moore of Eximbank, when asked by the Long Committee, did not have specific answers to the safety problems of the Philippine reactor. Instead, Moore kept on referring to his not being at Eximbank during the time the decisions were made. He would also add that he will submit a prepared statement to the Long Committee to accurately answer the questions on safety (4). However, in some instances, Moore would contradict himself and go further to attempt to erase the cynicism of some Committee members by stating that he was certain that Eximbank did a detailed and thorough review of the safety problems of the reactor (5).

However, when one analyzes the prepared statement that was submitted by Moore almost a month later (6), one finds out that many of the safety problems were not considered during the time the loan was being assessed. In fact, since most of the evidence presented in the Eximbank prepared statement were post facto* explanations, one can logically argue by implication that, indeed, Eximbank did not do any thorough safety review of the reactor. Not only this. From the evidence found in this same prepared statement, one can conclude that no adequate safety review could have been done by Eximbank at that point

*post facto with respect to the date the loan was approved by Eximbank

of time considering the data that Eximbank had as well as their perceptual position concerning the safety problem and the whole project for that matter.

In the first place, Eximbank claims that the Philippine Atomic Energy Commission (PAEC), the International Atomic Energy Agency (IAEA), and a consultant from the Nuclear Regulatory Commission (NRC) of the U.S. reviewed the safety studies prior to the issuance of a construction permit (7). Let it be repeated and noted that these agencies were doing a review for a construction permit, not a loan application.

However, for the benefit of the doubt, let it be granted that , in fact, these same agencies reviewed the safety problems for Eximbank prior to the latter's decision of granting a loan.

Immediately, several things surface: a) from the above statements, Eximbank confirms that they themselves did not do a rigorous safety study but instead relied on other agencies to do the study; b) the objectivity of the IAEA in this matter is questionable since the IAEA finds itself in a conflict-of-interest situation; by Eximbank's own admittance(8) and the documents that the Philippine government submitted to support its loan application (9), the IAEA was largely responsible in getting the reactor project going; now we find Eximbank relying on an agency which is in the highly questionable position of evaluating its own work; c) a similar problem can be said of the PAEC; how can it do this analysis when its stated objectives include the promotion of nuclear power; furthermore, it has also declared in writing that it does not have "the depth of technical expertise nor breadth of experience" to review a Preliminary Site Investigation Report (PSIR) (10); and, d) as far as the NRC is concerned, it has stated its initial unwillingness to do a staff review of the PSIR for PAEC because this process

normally takes 6 man-years and NRC did not have the surplus manpower to do this requested review (11).

However, granting further that all these agencies were in a position to evaluate the safety study properly and objectively, the question arises: Just what type of safety study did they have available during the time that Eximbank was studying the loan application? Ironically, by Eximbank's own admission, the safety study they had available for evaluation was "general" (12). In fact, a careful study of Eximbank's prepared statement reveals, by implication, that the safety study was too general to be of any use for a real safety analysis (13).

This conclusion is significant when linked to the evidence available on just precisely what type of data the National Power Corporation (NPC) of the Philippines had concerning reactor site considerations. Below is a quotation from an NPC feasibility study which also reveals the limited site data that the IAEA had at the time the reactor was being negotiated:

> "Possible sites for nuclear power stations were reviewed first of all in 1964-65 in connection with the first nuclear feasibility study (1) then again in 1971-72 in connection with the current study (2,3).
>
> "The two sites recommended by the IAEA siting mission (3) for consideration in the current feasibility study were:
>
> 1. Bagac (Bataan)
> 2. San Juan (Batangas)
>
> "None of the above studies collected more than the preliminary site information necessary to be able to list the sites in a rough order of preference. Much basic data such as detailed geological, topographical, and seismic information specific to the sites and necessary for realistic preliminary plant designs was not (sic!) available at the start of the current study. ... In other cases, particularly for geological and seismic aspects, broad assumptions, which may later prove inaccurate, had to be made. .."(14). (Underscoring provided.)

Clearly then, only the vaguest type of data on safety considerations was

available during the time the loan was being negotiated. For, again, according to Eximbank's prepared statement (15) as well as from evidence obtained by UCS from Eximbank (16), the PSIR was not available during the time of the loan negotiations. By comparison, in the United States, a PSIR, according to Louis Nosenzo of the Department of State, is the first basic site study considered for review (17).

Even granting all these things were in order, it is furthermore doubtful whether Eximbank could have made a valid analysis on safety. For one thing, Ann Crittenden of New York Times wrote that William Casey, chairman of Eximbank during the time the loan was being processed, admitted that Eximbank did not have "the capability to judge the validity of the price Westinghouse was quoting"(18). If in these simplier matters of price quotations Eximbank's 5-man engineering staff were not qualified to judge, then what more when this same Eximbank staff would have been asked to evaluate more comples safety considerations.

Added to this is the strong evidence that safety was only a secondary consideration in selecting the site. The common thread running through the statements of Eximbank showed that, if safety problems arose in the chosen site, it was only a matter of reinforcing the design of the reactor to take these things into consideration (19). It never occured to Eximbank that there could be better alternative sites than the present one!

So now the Philippines is stuck with a nuclear reactor plagued with site, design, environmental, and other serious problems. This is presently causing a lot of anger, concern, uproar, and frustration in the Philippines and is forcing normally-passive citizens to go out of their way and organize forums, sign petitions calling for a halt to reactor construction, and engage in other public

actions despite the heavy-handed techniques of the Marcos dictatorship in dealing with the desire of Filipinos for public accountability.

Similarly, American prestige and sincerity is also under trial now that more and more people in the Philippines and other countries become aware of the dubious aspects of the Philippine nuclear reactor purchase. Even William Sullivan, for US ambassador to the Philippines, in a confidential telegram made public through a Freedom of Information request, stated:

> "... I stressed that embassy considered great deal of American prestige riding on Westinghouse performance, and that therefore we intended to follow project closely. I pointed out that this was in effect Filipino Aswan Dam, being largest and most expensive construction project ever undertaken in this country"(20).

All these repercussions because an American bank thought it prudent not to follow the provisions of NEPA for federal agencies with significant action abroad.

To seal the argument, let us take a final example of Eximbank considered the economic issues involved with the reactor loan to the Philippines. For, according to Eximbank, they hold as important the consideration of alternative energy sources in deciding whether nuclear power is really needed or not (21). Furthermore, this need for a consideration of alternative energy sources is an important component in the formulation of a thorough EIS (22).

During the hearings, Moore's assessment of the geothermal energy potentials in the Philippines can be summed up in a single statement: the Philippines does not have "enough steam coming out of the earth, so they must have the nuclear program"(23).

Had Eximbank been more thorough in its review and had it done an EIS,

it would have noted that a whole array of evidence points out that geothermal energy would be a safer, more economic, less technically complicated, and more appropriate source of energy than nuclear power in the Philippine context. Furthermore, geothermal energy also lives up to the national energy goal of the Philippines to be self-reliant in all possible ways.

For example, a study by RAND corporation revealed that the Philippine government, in its paper, Toward a National Energy Policy, cited a World Bank study in 1975 that estimated the geothermal potential of the Philippines to be 1300 MW (24). In addition, certain scientists have observed that the Philippines is located in the so-called 'Pacific Fire Belt', an area of intense tectonic and volcanic activity. This relatively unique location is reflected in the more optimistic figures of the Energy Development Board (EDB) of the Philippines which places the country's geothermal potential at 1595 MW (operational) by 1987 (25).

Furthermore, EDB, in a move which indicated the relative simplicity and economy of geothermal energy, decided that a 20% return on investment by service contractors was more than reasonable, especially since the risks involved were relatively small (26). Furthermore, EDB calculations showed that the cost of installing 1350 MW by 1985 would only be about half the costs of the 620 MW reactor being constructed now in Bataan thanks to Eximbank loans and guarantees.(27) Around $644 million of the $1.1 billion estimated reactor costs is either financed or guaranteed by Eximbank.

On the basis of these facts, Moore's statement becomes yet another proof of the haphazard analysis Eximbank gave the Philippine loan application. This conclusion is reinforced by Eximbank's attitude of promoting American interests

first at the expense of other valid and important considerations. This attitude is seen convincingly in the statements of Moore and Nosenzo during the Long Hearings (28). The evidence is also found in the document that Eximbank gave both the Senate and House of Representatives when they asked these legislative bodies to approve their loan to the Philippines (29). A more incriminating and unretractable evidence also comes from the candid statement of William Casey when he was asked concerning a possible Westinghouse over-pricing of the reactor. In his classic reply of non-concern, Casey said:

> "If they (Westinghouse) charged too much, the Philippines has to pay it. It's their government; they have to protect themselves from being fleeced. We cannot run the world and do it for them"(30).

With this perceptual filter or block, could an adequate total project feasibility analysis have been done?

In summary and for emphatic reiteration, what is clearly needed then is a reinforcement of the NEPA provisions concerning the external affairs of federal agencies. This is necessary if the United States wants to maintain its image of trustworthiness and fairness not only among her Filipino allies but also before the growing international forum. The suspicion, which is currently gaining varied audiences in many parts of the world, that the US would not stop at anything so long as she is able to sell her dubious goods abroad, must be dispelled. As the ramifications are subtle and complex, the only thing sure one can say about a tarnished international image is not to have one.

Although the main point of this statement is to make a strong case for reinforcement of NEPA, it will also attempt to outline the possible directions that efforts to give NEPA political and legal clout can take.

A major consideration would be to make the EIS "product"-oriented rather than agency-oriented. The need for a set-up like this is obvious when the rationale of NEPA is clearly borne in mind. For indeed if one is to be concerned in a thorough evaluation of the environmental impact of a project or product, then questions of staffing and expertise limitations in an agency should be subordinated and supportive of this overriding concern.

If this is accepted, then creative ways will have to be found towards facilitating inter-agency interaction and consultation to contain the foreseeable problem of technical personnel deficiencies and unnecessary duplication of marginal effort. One can immediately see the advantage of a product-approach since thresholds of minumum expertise can easily be considered once one knows what product is being assessed. Thus, it is foreseeable that an agency may only need a minimum level of personnel training to cope up with the level of EIS sophistication that a product may need.

Secondly, the Council on Environmental Quality should be given more leeway to reinforce the provisions of NEPA. Although it can be added that the inter-agency cooperation outlined above can result in a more authentic EIS, one should also make provisions to discourage possible connivance on this level. Giving CEQ a hand in the rejection of an EIS would exert more pressure for the agencies concerned to do the job properly.

And thirdly, if one is concerned with checks and balances, there is no better way than to get public-interest groups involved either in the formulation of an EIS or in its review. And allowance should be made to see to it that enough time is given to inform the public about possible conflict areas.

Another possibility that can be considered is the early involvement of technical expertise from the regulatory agency of the foreign country for which a certain US good or project is intended. Aside from giving the US federal agency concerned an idea of the perspective the foreign country involved would like to have in the project, this procedure can also minimize subsequent probable frictions between the two countries on questions of misrepresentations.

With regard to the present existing problem on Eximbank's loan to the Philippines for the reactor, the Senate Committee on Environment and Public Works can probably initiate efforts to get Eximbank to do an EIS on the Philippine reactor which should have been done a long time ago. Furthermore, until this problem is not solved, Eximbank should desist from making any further disbursements. After all, according to its agreement with the Philippines, it is not obligated to disburse any funds until 1980.(31) This is one conrete way for Eximbank to rectify its previous gross errors as well as being one concrete way for the US to demonstrate its authenticity in carrying out the spirit of the NEPA provisions.

A big help along this line will be the initiation of an action by the same Senate Committee whereby the NRC will be required to abstain from making any decision on licensing the export of the nuclear reactor until these questions of health and safety, at the very least, are resolved.

Furthermore, reinforcement of NEPA concerning this issue can also mean making it easier for the IAEA to implement Section 7 of Article 12 of IAEA statues which gives this international atomic agency the right to require the two parties involved in an Agreement of Cooperation to follow its safeguard provisions.

31-565 O - 78 - 18

In conclusion, it is in the long-term interest of the United States to reinforce provisions that assure the quality of her exports and the sincerity of her intentions. Reinforcing NEPA provisions, as outlined above, is definitely not a case of 'veiled interventionism'. The USAID has stated that doing EIS for international projects has not produced any strain as far as foreign relations is concerned (32). In fact, the products and programs of the US become more saleable if supported by an EIS because the impression conveyed to the recipient is that the US is taking positive steps to establish a symbiotic relationship. For indeed, why should US manufacturers and financiers fear? Unless they have skeletons in their closet?

July 12, 1978

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2. U.S. House Committee on Appropriations, Foreign Operations and Related Agencies, FY 1979, Hearing. (Washington, D.C.: U.S. Government Printing Office, 1978).

3. April 27,1978 was called the International Day of Protest on the Westinghouse nuclear reactor sale to the Philippines which was facilitated by Eximbank financing. Protest actions were held at Washinton D.C., Boston, and San Francisco. Outside the U.S., similar actions were staged in Japan, Australia, and the Philippines. The recent SEABROOK rally also became a forum on the Philippine nuclear issue. Numerous publications in the U.S., Europe, Asia, and Australia have carried articles criticizing the sale of the reactor to the Philippines.

4. U.S. House Committee on Appropriations, op. cit., pp.78,83,91,100,101,105.

5. ibid, pp. 78,101,103.

6. Eximbank Prepared Statement, Background Information on Philippine Reactor. Deatiled answer to questions raised during the Hearings of the Subommittee on Foreign Operations and Related Agencies. March 1978. Also incorporated in the text of Reference 2.

7. ibid, p.16. (paging refers to that of the original document)

8. ibid, pp.2-3.

9. Documents released by Eximbank in response to a Freedom of Information Request by the Union of Concerned Scientist. April 21,1978.

10. Scherr, J., Memorandum Re: US-Philippines Nuclear Cooperation - Revised Chronology. January 31,1978. (based on the integration of various State Department telegrams and internal NRC documents obtained through a Freedom of Information Request by the Natural Resource Defense Council)

11. ibid, p.7.

12. Eximbank prepared statement, op.cit., p.17.

13. ibid, pp.17-18.

14. National Power Corporation, Philippines. Xeroxed without title heading and sent by a reliable source within NPC. 1973. p.4-1.

15. Eximbank Prepared Statement, op.cit., p.17.

16. Reference 9, op. cit.

17. U.S. House Committee on Appropriations, op. cit., pp.102-103.

18. Crittenden, A., Behind the Philippine Loan, New York Times, February 12,1978, p.F9.

19. U.S. House Committee on Appropriations, op. cit., p.101; see also Eximbank Prepared Statement, op. cit., p.17.

20. Sullivan, W., Telegram No. 11505, September 1974. American Embassy in Mainla, Philippines. (declassified)

21. U.S. House Committee on Appropriations, op. cit.,pp.74-75; see also Eximbank Prepared Statement, op. cit., pp.1-2.

22. Warren, C., op. cit., p.13.

23. U.S. House Committee on Appropriations, op. cit., p.74.

24. Rand Corporation , sent xeroxed without title. An analysis of the energy policies and strategies of selected Asian countries. 1978, p. 66.

25. ibid, pp. 66,71.

26. ibid, p.69.

27. Wideman, B., Philippine Nuclear Plant: The Critics Grumble. Petroleum News. 8(7): p.8.

28. U.S. House Committee on Appropriations, op. cit.,pp. 9, 86, 87, 94, 103.

29. see Reference 9

30. Crittenden, A., op. cit.

31. Reference 9, op. cit.

32. Warren, C., op. cit., p. 7.; see also, Lyons, R.L., Environmental Proposal for U.S. Exports Debated. Washington Post. June 21, 1978. p. A-4.

CHARTERED 1693
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OFFICE OF THE DEAN

June 26, 1978

Mr. Paul Chimes
Senate Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chimes:

I am herewith submitting a copy of a study I completed on international applicability of NEPA. I would appreciate it if you would include this study in the record of the hearing held June 20, 1978 on this subject.

Sincerely,

Scott C. Whitney

Scott C. Whitney
Professor of Law

Enclosure
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BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

June 20, 1978

INTERNATIONAL APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

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On May 24, 1977, President Carter directed the Council on Environmental Quality (CEQ) [1] to issue regulations to Federal agencies for the implementation of the procedural provisions of the National Environmental Policy Act. [2] This Executive Order [3] amended an earlier Executive Order [4] which had added to the CEQ's statutory responsibilities the duty to promulgate guidelines for the preparation of environmental impact statements (EIS) for proposed major federal decisions which significantly affected the quality of the human environment. [5] President Carter's purpose was two-fold: (1) to improve the quality and effectiveness of the EIS process, and (2) to give the CEQ provisions the full force and effect of law rather than being merely "guidelines".

On December 12, 1977, CEQ circulated to all federal Heads of Agencies a document entitled "Draft Regulations to Implement the National Environmental Policy Act". Thereafter, on January 11, 1978, CEQ circulated to all federal Heads of Agencies a memorandum with an attachment entitled "Draft Provisions to Implement the National Environmental Policy Act (NEPA) for Agency Activities Affecting the Environment in Foreign Nations and the Global Commons." [6] This latter document raises the question whether, or to what extent, Congress intended NEPA to apply to federal decisionmaking affecting areas outside of the United States.

Because the United States is a major world power, a significant portion of federal decisionmaking relates to proposed federal actions in areas of the world outside the geographical boundaries of the United States. These exterritorial actions are quite diverse but may be summarized into seven prototype categories:

1. Decisions affecting U. S. Territories or U. S. Trust Territories. The Executive Branch has formally taken the position that NEPA applies to this category of decisions.[7] The President, citing the Constitution and various statutes including NEPA, defines "the United States" as including "the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territory of the Pacific Islands." This view is supported by judicial decision as well.[8]

2. Decisions affecting general global conditions such as the atmosphere or the ozone shield. There appears to be consensus that NEPA would clearly apply to such federal decisions. The Department of Transportation, for example, voluntarily prepared an EIS concerning the supersonic transport and examined, inter alia, the ozone shield issue.[9] Application of NEPA to such decisions can be rationalized on the ground that they significantly affect the quality of the domestic environment as well as the entire planet.

3. Decisions affecting the "global commons", i.e. site-specific environmental impacts in areas of the world outside the political jurisdiction of any sovereign nation, such as those resulting from deep sea mining. This question is more difficult. Congress is presently considering legislation to regulate deep sea mining by United States firms acting on a unilateral

basis pending the outcome of the Law of the Sea Negotiations.[10] This legislation contains express provisions imposing NEPA requirements, a circumstance that suggests Congress does not believe NEPA would otherwise apply.[11]

4. Decisions affecting Antarctica, a region treated specifically separate from other "global commons" by the CEQ Draft Regulations. The President submitted to Congress as a part of his Environmental Program the Antarctic Conservation Act of 1977,[12] "to implement the 'Agreed Measures for the Conservation of Antarctic Fauna and Flora,' an international agreement between the 12 nations which are parties to the Antarctic Treaty." Under the terms of this legislation the CEQ initiative to promulgate draft regulations to apply NEPA to federal decisionmaking affecting Antarctica would be superseded by a provision that would authorize the National Science Foundation (NSF) and the Department of Interior (DOI) to prescribe and administer regulations to implement the protection and conservation measures agreed to by the 12 signatories of the international agreement. CEQ would undoubtedly participate at least in the role of commentator in the formulation of these NSF-DOI regulations. The President directed CEQ, with the cooperation of the Department of State, "to ensure that we achieve the best possible coordination of the international environmental programs within the Executive Branch."[13]

5. Decisions affecting the environment within the boundaries of other sovereign states which relate to financial assistance of one form or another. The President expressly mandated in his Environmental Message that environmental factors be considered in decisions concerning economic development

assistance. The President stated, "whether to try to prevent or undo environmental damage is a decision each country must make for itself. But I am convinced that in the long run, development programs that are environmentally sound will yield the most economic benefits. To encourage the adoption of such programs, I have taken these steps:

(1) I have instructed the Secretary of State, the Administrator of AID, and other concerned federal agencies to ensure full consideration of the environmental soundness of development projects under review for possible assistance.

(2) I have asked the Administrator of AID to make available to developing countries assistance in environment and natural resources management. Such assistance could help developing countries design environmentally sound projects, regardless of the source of funding for a particular project."[14]

Nearly two years prior to President Carter's directive, the Environmental Defense Fund sued AID to compel preparation of an EIS for AID-funded international pest management programs including the distribution, funding and use of pesticides in foreign countries. AID entered into a stipulation in which it not only agreed to prepare a programmatic and site-specific EIS for such programs but to adopt regulations to conform all AID activities to NEPA.[15] Subsequent AID environmental regulations clearly contemplated preparation of an EIS to assess the "cummulative impact in a given country or geographical area . . ."[16] There is presently pending in the District Court for the District of Columbia a suit to compel the Export-Import Bank of the United States to comply with NEPA by preparing an EIS before deciding to

finance a project that would have a significant impact on the environment of a foreign country.[17] President Carter's 1977 directive is consistent with the EDF decision of 1975.

6. Decisions which impact the environment within the boundaries of other sovereign states. One such situation involves activities actually conducted by a federal instrumentality or agency which significantly affect the environment of the foreign state and the environment of the United States. The Federal District Court for the District of Columbia enjoined the Federal Highway Commission (FHC) from continuing construction of a portion of the Pan American Highway system that would transit Colombia and Panama.[18] The FHC had in fact undertaken the preparation of an EIS although it was after the project had begun and the precise route selected. Hence the Court had no occasion to address the question whether NEPA applied to this category of foreign activity because the parties did not raise this issue. Rather the Court addressed the question whether the EIS voluntarily prepared by FHC was deficient. The Court found the EIS deficient on two grounds: (1) it failed to consider the possibility that the highway would undermine the effectiveness of the foot-and-mouth disease control program with the consequent spread of the disease to the United States, and (2) the failure to consider whether an alternate route might lessen or avoid adverse impacts on local primitive Indian cultures.

7. Decisions whose impact is confined entirely to the environment of a foreign state and which do not involve financial aid or another basis for imposing the NEPA process as a condition precedent.

No such case has as yet arisen. The closest litigated cases involved the export program of nuclear power facilities and materials. The Atomic Energy Commission, predecessor of the Nuclear Regulatory Commission, (NRC) agreed as a result of litigation to prepare a generic EIS on the global impacts of the overall nuclear power export program.[19] However, NRC has steadfastly refused to prepare an EIS dealing with site-specific impacts in the countries purchasing either nuclear reactor equipment or nuclear fuel. NRC denied a petition filed by a West German citizen's group seeking to intervene in an export licensing proceeding on the grounds that the issues concern domestic German impacts, not impacts on the United States environment, and that the German government will impose regulations "designed to meet the perceived needs of that country . ."[20] NRC relied on its earlier decision denying intervention to American environmentalists in a licensing proceeding concerning export of nuclear fuel to India.[21]

NRC bases its position primarily on three propositions:

(a) Preparation of an EIS dealing with site-specific impacts ~~with~~ in a foreign state would violate international law by intruding on the foreign state's sovereignty.

(b) Implicit in the foregoing proposition is that Congress did not enact a statute (NEPA) that would intrude on the sovereignty of a foreign state, because it lacks power to do so.

(c) ~~That~~ NRC is acting lawfully by virtue of preparing the generic EIS addressing global or United States impacts and by meeting its foreign policy obligations by compliance with the Presidential directive to transmit

license applications to the Department of State to obtain the views of the Executive Branch.[22]

A. NEPA contains only one explicit provision dealing with international environmental issues. A section by section analysis of NEPA indicates Congress enacted only a single provision that addresses international environmental problems.

Section 2 of NEPA declares three environmental purposes to be achieved by the Act:

1. to declare a national policy which will encourage productive and enjoyable harmony between man and his environment;

2. to promote efforts which will prevent or eliminate damage to the environment and stimulate the health and welfare of man; and

3. to enrich the understanding of the ecological systems and natural resources important to the nation.

The use of the expressions "man and his environment" and "the health and welfare of man" could conceivably be construed as "all mankind and his environment" and "the health and welfare of all mankind". Such a construction is not necessarily negated by the phrase "ecological systems and natural resources important to the nation". Ecologists stress and Congress was aware of the transborder and global impacts of certain environmental macro-phenomena.

However, several factors indicate that such a construction is erroneous.

First, the only relevant legislative history states, "The purpose of

the bill as hereby reported, is to create a Council on Environmental Quality with a broad and independent overview of current and long-term trends in the quality of our national environment . ." [23]

Secondly, Section 101(a)[24] which refers to ". . the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man" and the need ". . to create and maintain conditions under which man and nature can exist in productive harmony" concludes with the phrase which limits the application of the term "man" to "present and future generations of Americans." This suggests that when Congress used the term "man" it was using the term synonymously and interchangeably with "American".

Moreover, Section 101(b) which enumerates six substantive policy goals does not advert to any international dimension.[25] The corresponding legislative history is likewise silent on this subject. Certain of their goals can only be read as domestic goals, e.g. the goals expressed in 101(b) 2 and 4 are explicitly domestic and 101(b) 3, 5 and 6 clearly involve matters beyond Congressional power to regulate in a foreign country without infringement of sovereignty.

This interpretation is strengthened by the fact that in Section 102 as well, the terms "man's environment" and "human environment" are used in connection with substantive provisions that are clearly limited to subject matter under United States sovereignty and over which the Congress lacks power to regulate if the above terms were attributed any international application. For example, Section 102(2) A mandates a systematic, inter-

disciplinary approach which presupposes data access that Congress has power to mandate only in the United States and which, if attempted in foreign sovereign nations, would constitute a violation of sovereignty.

Similarly, Section 102(2) C mandates as to major decisions that significantly affect the quality of the human environment that alternatives to the proposed action be considered, that the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources that would result be likewise considered. All of these provisions if applied abroad would be viewed as obtruding into the domestic affairs of the subject nation in a manner that seriously violated its sovereignty.

Section 201 clearly restricts the CEQ Annual Report to reporting various environmental matters related to the "Nation". Section 202, which creates the CEQ, provides, inter alia, that it is "to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation .." (emphasis added)

Moreover, Section 204 which enumerates the duties and functions of the CEQ does not list a single duty or function that mentions international application of NEPA nor does the legislative history that pertains to Section 204 contain any such references.[26]

Finally, NEPA expressly defines the international environmental role

Congress intended agencies of the Federal Government to perform. Section 102(2) E provides that "all agencies of the Federal Government shall recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment."

This language makes it clear that when Congress intended to address international environmental problems it used the phrase "mankind's world environment". Consequently, it would be impermissible to attribute international connotations to the terms "man's environment" or "human environment" in other provisions of NEPA.

The sole provision of NEPA which mandates address of international problems by federal decisionmakers is carefully limited. First, it is limited to situations where the federal agency action would be "consistent with the foreign policy of the United States". Executive Order 11514 provides that "achieving international cooperation for dealing with environmental problems" shall be done "under the foreign policy guidance of the Secretary of State." [27]

A second limitation relates to the nature of the activity that may lawfully be undertaken if the threshold "consistency" determination has been made by the Secretary of State. The Federal Agency is confined to lending "appropriate support to initiatives, resolutions and programs designed to maximize international cooperation . . ." This language clearly refers to

bilateral or multilateral environmental agreements between the United States and other sovereign states to effect "international cooperation" in dealing with international environmental problems. This language clearly does not provide a Congressional mandate for the unilateral imposition of the "action forcing" provisions of NEPA on federal decisionmaking affecting areas outside the United States or its territories.

B. What are the Limits on NEPA's Application in the International Sphere.

Based on the foregoing statutory analysis it would appear that the NEPA 102 process clearly applies to only three of the seven prototype categories discussed supra. Categories (1) and (2) supra would clearly be subject to the NEPA 102 process.[28] It is equally clear that if the decision as well as that of a foreign nation (Category 6), produces impacts on the United State's environment the NEPA 102 process would apply at least as to that aspect of the decision.[29]

With respect to the "global commons" and Antarctica, it seems clear that both the Executive Branch and Congress believe that environmental legislation additional to or in lieu of NEPA is required in these special situations.[30] The role of CEQ in such international situations is defined by Section 102(2) E of NEPA, viz. ". . to lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment." Accordingly NEPA 102 process would not apply except to the extent that specific comparable substantive provisions are enacted in the special environmental regime of law that Congress is considering to deal

with these aspects of the international environment. It follows that the CEQ draft regulations that would impose NEPA 102 process in these special situations are ultra vires, and would not withstand judicial review.

Wherever the decision involves the issue whether the U. S. will fund or otherwise assist in providing financing, for a project in a foreign country, as a practical matter the United States holds the bargaining leverage to exact compliance with NEPA 102 Process as one of the conditions for receiving the grant. It should be recognized that this pragmatic fact does not answer the legal question whether, absent the bargaining leverage which in effect compels foreign state conduct that satisfies NEPA 102 process, the statute itself would require the NEPA 102 process in such cases. As heretofore demonstrated, Section 102(2) E, the sole provision of NEPA which addresses international issues, provides no basis to require NEPA 102 process. This point is concededly academic inasmuch as Executive decree and judicial decision support the use of economic suasion to obtain foreign state compliance with the NEPA 102 process.

Where, as in Sierra Club v. Coleman[31] the case involves not only United States funding, but potential impacts on the United State's environment, and United States physical participation in the construction project, NEPA 102 process would apply to the extent impacts on the United State's environment are involved. Neither the funding aspect nor the physical participation aspect provide a basis under the statute for application of the NEPA 102 process.

The ideal category 7 paradigm would involve a federal decision to authorize the export of equipment for use in a foreign state which would

produce environmental impacts confined entirely to that country. No United States funding or aid would be involved. One example might be the sale of an Instrument Landing System (ILS) to a small airport in Queensland which would enable the use of jet equipment thereby impacting neighboring householders with jet noise and jet aircraft emissions. If a Queensland Citizens group petitioned for intervention in the United States export license proceeding alleging standing under NEPA to insure that all reasonable alternatives are considered, The petition must, of course, be denied. To seek to impose NEPA 102 process in this situation would invade the sovereignty of Australia in violation of international law. Congress lacks power to impose on Australia or Queensland the consideration of alternatives, to install ILS let alone compel submission of analyses showing the relationship between short-term uses and long-term productivity, or data relating to such matters as irreversible commitments of resources.

To be sure, the Executive Branch could attempt to coerce compliance by refusal to grant the export permit unless NEPA 102 Process is implemented, just as it can coerce compliance as a condition precedent to receiving aid or financing. Quite apart from the likely devastating economic consequences to United States Foreign Trade, it must be recognized that this would be coercion, not a statutory basis for imposing the NEPA - 102 Process.

Conclusion

The objectives of NEPA are laudable and there is little real controversy that NEPA has substantially influenced Federal decision-making to consider environmental factors as well as socio-economic factors. To the extent the

NEPA 102 Process can lawfully be extended to international situations without adverse impact on national security, United State foreign policy and foreign trade such extension is clearly in the public interest.

However, the CEQ Draft requlations which purport to apply to specific sites in the global commons (especially as to deep seabed mining), Antarctica and decisions which involve only the internal environment of a sovereign state are ultra vires and should be deleted before the CEQ requlations are made final.

FOOTNOTES

1. The Council on Environmental Quality (CEQ) was created by Congress in Title II of the National Environmental Policy Act of 1969 (NEPA). 42 U.S.C. §§ 4321 et seq. 83 Stat. 852, Pub. L. No. 91-190 (1970).

Sec. 204. It shall be the duty and function of the Council--

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authorative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

2. These provisions, referred to as the "action-forcing" provisions of NEPA, consist of two sets of requirements that Congress imposed on Federal decisionmaking:

Sec. 102 The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall--

(a) (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environment amenties and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(D) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, which consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs

designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

(b) (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

3. Executive Order 11991, May 24, 1977.

4. Executive Order 11514, March 5, 1970.

5. See note 2(b) supra.

6. Section 1508.13 Human Environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the interaction of people with that environment. The human environment is not confined to the geographical borders of the United States.

Section 1506.13 Application of NEPA to Significant Environmental Effects Not Confined to the United States

(a) Agencies shall fully comply with these regulations insofar as their major Federal actions significantly affect the environment of:

(1) The United States and its trust territories.

(2) The global commons, which consists of areas outside the jurisdiction of any nation (e.g., the oceans).

(3) Antarctia.

(b) Agencies shall comply with the provisions of these regulations pertaining to foreign environmental statements (sec. 1508.__) insofar as their major Federal actions significantly affect the environment only of one or more foreign nations.

Section 1508.__. Foreign Environmental Statement

(a) "Foreign environmental statement" is the statement required by sec. 102(2)(C) of the Act when a major Federal action significantly affects the environement only of one or more foreign nations. Such statements need only contain the information called for in sections 1502.13-.15.

(b) In developing their implementing procedures for such statements under section 1507.3, affected agencies shall consult with the Council which shall assist the agency in fitting the Act's requirements to the practical considerations of operating in the international context. Among other things these procedures shall:

(1) Establish criteria by which the agency can determine that a foreign environmental statement or portions thereof will not be subject to public comment when such review would be inconsistent with the accomplishment of the agency's statutory objectives.

(2) Take into account special factors which would limit the review period or the required detail of the statement such as:

(i) Diplomatic considerations or the relative unavailability of information;
(ii) Whether the Federal agency role is one limited to passing on proposals developed elsewhere (as opposed to situations where the agency is involved in early planning or joint sponsorship); and
(iii) International commercial competition and confidentiality.

(3) Ensure consideration in foreign environmental statements of:

(i) Activities which are unlawful or strictly regulated in the United States in order to protect public health or safety;
(ii) Activities which threaten natural, ecological or environmental resources of global importance; and
(iii) Activities which may have inadvertent adverse effects on other foreign countries.

These Draft Regulations incorporate by reference the following provisions of the December 12, 1977 Draft Regulations:

Section 1502.13 Purpose and Need

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the action and alternatives. Normally this section shall not exceed one page.

Section 1502.14 Alternatives Including the Proposed Action

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Environmental Consequences (sec. 1502.15) and the Affected Environment (sec. 1502.16), it should present the proposal and the alternatives in comparative form, thus sharpening the issues and providing a clear basis for choice among options by the decisionmaker and the public. In preparing this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives.

(b) Devote substantially equal treatment to each alternative including the proposed action.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the no action alternative.

(e) Identify the environmentally preferable alternative (or alternatives if two or more are equally preferable) and the reasons for identifying it. If the alternative chosen is for no action, the agency shall also identify the alternative other than no action that is environmentally preferable and the reasons for identifying it.

(f) Identify the agency's preferred alternative or alternatives if one or more exists in the draft statement and identify such alternative(s) in the final statement unless another law prohibits the expression of such a preference.

(g) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Section 1502.15 Environmental Consequences

This section shall consolidate the discussions of those elements of an environmental impact statement required by secs. 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement. It forms the scientific and analytic basis for the comparisons under sec. 1502.14. This includes the environmental impact of the proposed action and alternatives, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement

of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This section shall include discussions of:

(a) Direct effects and their significance.

(b) Indirect effects and their significance. Indirect effects may include health effects, growth inducing effects, and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, and water or other natural resources, including ecological systems.

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local land use plans, policies, controls for the area concerned.

(d) The environmental effects of both the proposed action and alternatives described under sec. 1502.14, devoting substantially equal treatment to each.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) How adverse environmental impacts can be mitigated.

Section 1507.3, Agency Procedures

(a) Not later than six months after publication of these regulations as finally adopted in the Federal Register, or three months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. The procedures shall be adopted only after an opportunity for public review and shall not be effective until approved by the Council as in conformoty with the Act and these regulations. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and the agency's procedures. Agencies shall continue to review their policies and procedures and to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall include:

(1) Those procedures required by section 1505.1.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not (categorical exclusions (section 1508.4)).

(iii) Which normally require other environmental documents.

Section 1505.1 Agency Decisionmaking Procedures

Agencies ahall adipt procedures (sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under Sec. 102(2) to achieve the requirements of Secs. 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs and assuring that the NEPA process corresponds with them.

(c) Specifying in advance how environmental impact statements are to be used when agencies depart from usual practice.

(d) Requiring that the environmental impact statement be part of the record in formal rulemaking or adjudicatory proceedings.

(e) Requiring that the environmental impact statement and comments accompany the proposal through existing agency review processes so agency officials use the statements in making decisions.

(f) Requiring that the alternatives considered by the decision- decisionmaker are included among the alternatives discussed in the environmental impact statements. If another decision document accompanies the environmental impact statement to the decision maker, agencies are encouraged to make available to the public before the decision is made any part of that document as relates to the comparison of alternatives.

Section 1508.4 Categorical Exclusion

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (section 1507.3). Any such procedures shall provide for extraordiary circumstances in which a normally excluded action may have a significant environmental effect.

7. Executive Order 11897, May 24, 1977.

8. Enewetak v. Laird 353 F. Supp. 811 (D. Hawaii, 1973).

9. U. S. Department of Transportation, Federal Aviation Administration, Final Environmental Impact Statement, September, 1975.

10. H.R. 3350, S. 2053.

11. For analysis of pending legislation see Whitney, Environmental Regulation of United States Deep Seabed Mining 19 Wm. + Mary L. R. 77,

12. The President's Environmental Program, F.FS-34, May 23, 1977.

13. CEQ, Eighth Annual Report, P. 360.

14. Id. at 361.

15. Environmental Defense Fund v. Agency for International Development, 6 ELR 20121 (D.D.C. Dec. 5, 1975).

16. 22 C.F.R. §§ 216.5(c)(12), June 30, 1976.

17. Natural Resources Defense Council v. Export - Import Bank of the United States, No. 77-0080 (D.D.C., filed January 14, 1977).

18. Sierra Club v. Coleman 405 F. Supp. 53 (D.D.C. 1975), injunction continued. 421 F. Supp. 63 (D.D.C. 1976).

19. Sierra Club v. Atomic Energy Commission 4 ELR 20685 (D.D.C. Aug. 3, 1974).

20. In the Matter of Babcock and Wilcox No. 50-571, (N R C June 27, 1977) 7 ELR 30017 at 30019.

21. In the Matter of Edlow International 3 N R C 563 (1976).

22. Executive Order 11902, 41 Fed. Reg. 4877 (Feb. 3, 1976).

23. Code Cong. and Admin. News 2751 (emphasis added).

24. Sec. 101(a) provides: (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

25. Sec. 101(b) provides: In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

26. See f.n, 1 supra.

27. Sec 3(h).

28. See f.n. 18 supra, and accompanying text.

29. See f.n. 7 and 8 supra, and accompanying text.

30. See f.n. 11 and 12 supra, and accompanying text.

31. See f.n. 18 supra, and accompanying text.

STATEMENT OF JEFFREY N. SHANE, ATTORNEY,
BEFORE THE
SUBCOMMITTEE ON RESOURCE PROTECTION,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
UNITED STATES SENATE

Mr. Chairman, the specific issue before the Subcommittee is whether the Export-Import Bank should be legislatively exempted from the environmental impact statement requirement of NEPA in connection with any activity of the Bank whose impact is not likely to be felt within the United States. For reasons which I shall explain in this statement, I would argue against such an exemption.

A much broader issue is at stake, however. Many of the arguments raised in favor of exempting Eximbank from NEPA's operation appear in fact to suggest that NEPA should not be applied to any of the U.S. Government's activities abroad. For that reason, the outcome of current deliberations on the NEPA-related section of S.3077 may well be taken as an indication of fundamental Congressional policy regarding the "extraterritorial" application of NEPA in general. It is principally in response to this larger concern, and because I strongly believe that broadly exempting all foreign-based activities from the EIS requirement would be a very serious mistake, that I wish to place my views before the Subcommittee.

I am a Washington, D.C., attorney. I have specialized in the legal aspects of environmental management for the past eight years. For more than two years, from late 1975 until the end of 1977, I was associated with a United Nations regional project based in Bangkok, Thailand. The project was addressed

specifically to the legal and institutional issues which typically arise in connection with the environmental management programs of developing nations. I was privileged to work closely with government officials in Thailand, Malaysia, the Philippines, Iran, and Sri Lanka during the project's lifetime and became generally familiar with a number of other countries in the region. I acquired during this period a thoroughgoing understanding of the motivations and constraints which characterize current efforts by LDC governments to rationalize the use of their environmental resources.

Many of the perceptions which emerged from that experience have to do with the utility of, and government attitudes about, environmental impact assessment requirements in developing countries. This has been a subject of special personal interest for some time. I was deeply involved in the domestic implementation of NEPA as Special Assistant for Environmental Affairs in the Department of Transportation's Office of General Counsel from 1970 through 1972. As the Subcommittee is well aware, the Department of Transportation was one of the agencies most profoundly affected by the advent of NEPA, and my participation in the process of developing a reasonable compliance strategy in connection with some of America's largest public works programs proved to be of immense practical value during my recent U.N. assignment in Asia.

Later, as a private practitioner, I helped to prepare a book-length report[1/], based on detailed case studies, on the way

1/ Shane, Pondfield, and Conrad, NEPA in Action: The Impact of the National Environmental Policy Act on Federal Decision-making, Environmental Law Institute, Washington, D.C. (1975).

in which NEPA was affecting government decision-making. The report, commissioned by the Council on Environmental Quality, further enhanced my understanding of the dynamics of the EIS process.

I apologize for this somewhat belabored curriculum vitae. But the point of view set forth in this statement probably differs to some extent from others which have been expressed, and it is therefore important that the Subcommittee have some acquaintance with the professional background, both here and abroad, upon which it is based.

Environmental Challenges in Developing Nations

I would like to focus my remarks on United States Government activities in developing countries, for it is there that the EIS process is probably producing its greatest dividends. The environmental challenges confronting the Third World, amply documented elsewhere, are mounting rapidly. The introduction of new industrial technology, for example, has come at particularly high environmental price. Agricultural areas irrigated by rivers polluted by upstream factories and mills produce lower yields than expected; pollution of inland and coastal waters has exacerbated already serious fish shortages; the demand for new power generation facilities -- hydroelectric and nuclear -- has created an entirely new set of environmental stresses and health risks.

Drastic reductions in forest cover during recent years have resulted in unprecedented flooding and destruction, the loss of enormous quantities of soil, the siltation of hydroelectric projects and irrigation schemes, and even climatic changes

in some areas. At the same time major cities are growing at what appears to be an exponential rate; agricultural chemicals are often applied indiscriminately; wildlife habitat is steadily diminishing. The list goes on.

There can be little doubt that enhanced environmental planning is long overdue in the developing world. Ironically, although it is in these countries that environmental resources are the most fragile, it is in these countries that environmental resources have received the least attention. The United States can and should set an important example by ensuring, through the EIS process, that its own activities and those which it helps to finance do not carry with them unintended adverse consequences. Put another way, it would be unseemly if the United States, with its special experience under NEPA, ignored that experience in precisely those areas where the environmental risks are highest.

Arguments for Exemption Unpersuasive

I have examined the arguments made against applying NEPA to U.S. Government activities abroad and I am compelled to say, at least in the context of the developing nations with which I am familiar, that they are largely mistaken.

One argument is that Congress did not intend NEPA to apply "extraterritorially." But the EIS requirement applies, according the NEPA, to any major decision likely to have a significant impact upon the quality of the human environment. Because it seems unlikely that Congress intended the words "human environment" to exclude all foreign countries, there would appear to be little room for debate about the import of

the statutory language. In any event, the Council on Environmental Quality -- the agency principally responsible for interpreting NEPA -- has consistently maintained that the statute incorporates no geographical limitation whatsoever, and the statutory question, therefore, should be treated as settled.

The weakness of other arguments against applying NEPA to foreign-based activities is clear evidence that the statutory question should be allowed to remain settled. For example, it has been alleged that the extraterritorial application of NEPA would encroach somehow on the sovereignty of other nations. This view has been expressed, I am told, even by the State Department.

The argument would seem to be the product of some very muddy thinking. It is difficult to see anything wrong in the U.S. Government taking steps to assure itself that the activities which it undertakes or finances are properly planned from an environmental standpoint. Indeed, insofar as the EIS procedure, strictly speaking, is a feature of the U.S. Government's internal administration, it would not appear to be the legitimate object of a foreign government's complaint. We too, after all, are a sovereign nation.

Moreover, to the extent that baseline data requirements call for investigations to be carried out on foreign soil, the EIS requirement would not appear to differ materially from the more traditional economic and social measurements that have long been prerequisite to the approval of multilateral and bilateral foreign assistance projects. The "sovereignty" argument has not been raised in connection with those more

orthodox assessments, as far as I am aware, and there would appear to be little force in the argument now, particularly insofar as an environmentally bad project is more often than not an economically bad project as well.

It has also been suggested that the EIS requirement is simply unworkable in the context of many foreign-based activities to which it would apply. This is argued with particular vehemence in connection with Eximbank's responsibilities. Requiring Eximbank to comply with NEPA, it is said, would only create another obstacle to effective U.S. competition in the global marketplace.

There can be no doubt that this argument reflects a legitimate concern about the efficiency of Eximbank's decision-making process. Moreover, since Eximbank typically enters the project development process only at the financing stage, it is not entirely clear that an EIS newly prepared by Eximbank at that point would accomplish the result envisioned in NEPA. It is well established, after all, that an EIS, to be fully useful, should be prepared at the earliest practicable point in the planning process.

But Eximbank's special circumstances do not warrant the outright exemption from NEPA which has been proposed. As a federal agency, Eximbank should share the government's commitment to environmentally sound planning and the avoidance of unintended adverse environmental consequences, and the EIS process is essential to the achievement of that objective. Eximbank's circumstances do appear to justify some procedural adjustments

in the way in which NEPA's mandate is carried out, but those adjustments should be consistent with the need for an effective assessment of the environmental consequences of major projects.

Notwithstanding the State Department's concern about the sovereignty of other nations, and in spite of earlier fears that program efficiency might be compromised, the Agency for International Development has launched exciting new initiatives aimed at ensuring the environmental soundness of its activities abroad. Those initiatives are all in keeping with the policy framework established by NEPA, but the actual procedures employed have been carefully tailored to AID's unique requirements. The Agency has worked in close harmony with environmental groups in formulating its approach, and the effort to date has been impressive.

Eximbank could adopt a similarly tailored response. The Bank might make it known through regulations, for example, that for certain categories of major projects -- most proposals would probably not be affected at all -- an environmental impact statement, submitted by the applicant, will be a prerequisite to approval for financing. The Bank might commission the preparation of generic environmental impact statements for certain major project categories as a basis for evaluating individual proposals on an expedited basis. It might take other steps, in cooperation with other relevant agencies and institutions, to encourage the establishment of effective environmental impact assessment procedures by host countries.

With imagination and a positive commitment, in short, Eximbank might contribute meaningfully to the environmental

soundness of the activities in which it participates without jeopardizing the effectiveness of its program in any way.

Finally, it has been argued that the application of NEPA's EIS requirement to foreign-based activities would represent an unwarranted, arrogant imposition of our standards on other countries. But the EIS process is nothing more than a planning tool, and it would be employed only in connection with U.S. Government decisions. The outcome of the process would be a determination by a U.S. agency to participate, or not to participate, in a proposed activity. The principal objective of the EIS process, moreover, is merely to ensure, in connection with major federal agency undertakings, that avoidable environmental harm is in fact avoided. NEPA's underlying principles -- they can hardly be called "standards" -- are thus essentially non-controversial. I have seen no evidence that LDC governments are offended by them in any way.

I would be prepared to argue, of course, that the United States would be right to persevere in its insistence on sound environmental planning even if host countries did resent such a policy as an intrusion or imposition. There is by now a well established international consensus on the need for environmental sensitivity in development planning, and we ought not to be apologetic about our own expectations in that regard. Furthermore, the United States Government, to its credit, has frequently used its leverage to encourage changes in the internal conduct of foreign nations where fundamental values were at stake, even at the risk of offending those nations. There would be no reason to treat the integrity of environmental

resources as a less compelling issue.

But the fact is that such diplomatic arm-twisting is simply unnecessary in this case, and all arguments about the propriety of such an approach are simply beside the point. LDC governments are not likely to resist or resent our EIS procedures because they are rapidly adopting similar procedures themselves. This is a point that does not appear to be widely understood.

EIS Requirements Increasingly Popular Abroad

The utility of EIS requirements has been increasingly acknowledged throughout the Third World. In November 1977, for example, a meeting of Asian ministers of industry convened by the Economic and Social Commission for Asia and the Pacific (ESCAP) recommended that member states adopt environmental impact assessment procedures. Last July an ESCAP Intergovernmental Meeting on Environmental Protection Legislation, attended by representatives of eighteen Asian and Pacific nations, concluded that EIS procedures are "desirable and necessary" in order to facilitate "the transformation of environmental data into useful policy guidance for the decision makers." Environmental impact statement obligations are even included in several articles of the Informal Composite Negotiating Text issued by the United Nations Conference on the Law of the Sea, probably the first time such procedures have been incorporated in a proposed international agreement.

At the national level, it is interesting to note that the Philippines, in June 1977, adopted a new statute

entitled "Philippine Environmental Policy" (Presidential Decree No. 1151), modeled largely on NEPA. A National Environmental Protection Council was established to implement the new statute's EIS requirement. Similar assessment requirements are included in the legislation of Iran (Environmental Protection and Enhancement Act, 1974), Malaysia (Environmental Quality Act, 1974), and Thailand (Enhancement and Conservation of National Environmental Quality Act, 1975). Papua New Guinea has proposed a rigorous new EIS procedure in its recent Environmental Planning Bill of 1978. Other examples abound.

A recent survey of environmental law in Asia revealed that a number of countries which have not enacted EIS legislation as such nevertheless perform such assessments as a matter of policy (Bangladesh, the Cook Islands, Indonesia, New Zealand, Pakistan, Singapore, and Sri Lanka). In one notable example, Sri Lanka recently sent a request to AID for assistance in doing an environmental impact statement in connection with a major river diversion project.

Quite clearly, our emphasis on environmental impact statements would not be treated as an imposition by any of these countries, nor would we be regarded as arrogant. The only arrogance I have seen is implicit in the assumption that we are somehow unique among nations in recognizing the utility of the EIS process.

Conclusion

There can be no doubt that NEPA carries with it some important new burdens, and that there may well be some temporary inefficiencies in the first days of its implementation. In

that respect, federal agencies whose decisions have an impact on foreign soil are no different from all other federal agencies. Because the data gathering process is necessarily more demanding, it is always more difficult to make fully informed decisions than partially informed decisions.

But we have reached the point, particularly in developing countries, where partially informed decisions are no longer acceptable. Environmental impact assessment represents a major improvement in the decision-making process, and there is no sound reason for circumventing it simply because the environmental consequences of a proposed action are likely to be confined, at least in the short run, to foreign lands.

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KARL R BRAITHWAITE URGENT
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE ROOM 4204
WASHINGTON DC 20510

JUNE 14, 1978

DEAR MR. CHAIRMAN:

WE APPRECIATE THE OPPORTUNITY TO PRESENT RELEVANT INFORMATION WHICH WE BELIEVE WILL BE USEFUL TO YOU AND THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS IN THE HEARINGS OF JUNE 20, 1978, ON THE APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) TO U.S. ACTIVITIES ABROAD.

SINCE OCTOBER, 1977, THE EAST-WEST ENVIRONMENT AND POLICY INSTITUTE OF THOLENDMQHWEST CENTER HAS BEEN STUDYING NATURAL RESOURCE AND ENVIRONMENTAL ASSESSMENT FOR DEVELOPMENT PLANNING AND ASSISTANCE. THE PROPOSED APPLICATION OF NEPA TO SIGNIFICANT FOREIGN ENVIRONMENTAL EFFECTS IS OF MUTUAL CONCERN TO THE UNITED STATES AND NATIONS IN ASIA AND THE PACIFIC BASIN WHICH TAKE PART IN ACTIVITIES OF THE EAST-WEST CENTER. WE HAVE OBSERVED THE GROWING INTEREST IN THE PROPOSED ''FOREIGN ENVIRONMENTAL STATEMENT'' BY OFFICIALS, SCIENTISTS, PLANNERS AND OPINION LEADERS FROM THESE COUNTRIES AS THEY HAVE MET AND CORRESPONDED WITH OUR STAFF OVER THE PAST YEAR, AND WITH US AND U.S. PARTICIPANTS IN A RECENT WORKSHOP HELD UNDER OUR AUSPICES. THIS LETTER IS RESPECTFULLY SUBMITTED AS AN INFORMAL REPORT OF THE MOST IMPORTANT ELEMENTS OF THESE DISCUSSIONS.

ALTHOUGH DOCUMENTATION IS NOT POSSIBLE AT THIS TIME, WE FEEL THAT THE ISSUES, SENSITIVITIES, AND INITIAL CONCLUSIONS IN THIS LETTER ACCURATELY REFLECT MUCH OF THE INFORMED THINKING IN THE COUNTRIES WITH WHICH WE WORK. WE HOPE THIS REPORT MAY BE HELPFUL IN PROCEEDING TO FORMALIZE POLICY INTO ACTIONS REQUIRED OF U.S. FEDERAL AGENCIES.

IT IS OUR OVERALL CONCLUSION THAT ACCEPTANCE OF ENVIRONMENTAL ASSESSMENT AS A USEFUL, CONSTRUCTIVE TOOL FOR MANAGING DEVELOPMENT IS AT A CRITICAL STAGE. THE VALUE OF ASSESSMENTS IN SETTING POLICIES FOR THE WISE USE OF RESOURCES AND ENVIRONMENTAL CARRYING CAPACITY TO MEET HUMAN NEEDS IS BEING RECOGNIZED. HOWEVER, THE EXPERIENCES--WHETHER GOOD OR BAD--WITH THIS RELATIVELY NEW APPROACH OVER THE NEXT FEW YEARS MAY WELL DETERMINE THE LONG-TERM PATTERN OF ACCEPTANCE AND IMPLEMENTATION IN MOST COUNTRIES.

ANY MISUNDERSTANDINGS OR TENSIONS INTRODUCED BY THE ACTIONS ANOTHER COUNTRY, SUCH AS THE EXTENSION OF THE U.S. NEPA, COULD PREMATURELY RESTRICT THE FULL POTENTIAL OF ENVIRONMENTAL ASSESSMENT IN THE DEVELOPMENT PROCESS. WE FEEL THAT IT IS ESSENTIAL THAT ACTIONS OF THE UNITED STATES AND OTHER COUNTRIES BE AS MUTUALLY SUPPORTIVE AS POSSIBLE IN ENVIRONMENTAL ASSESSMENT UNDERTAKINGS. WITH THIS OBJECTIVE IN MIND, WE OFFER SEVERAL OBSERVATIONS FOLLOWED BY SOME INITIAL CONCLUSIONS AND SUGGESTIONS.

FINDINGS

1. THERE IS A STEADILY INCREASING APPRECIATION IN MOST NATIONS OF ASIA AND THE PACIFIC OF THE NEED TO MAINTAIN ENVIRONMENTAL QUALITY AND TO PROTECT THE RESOURCE BASE; THIS DESPITE THE URGENT DEMAND IN THE LESS-DEVELOPED COUNTRIES FOR ECONOMIC GROWTH TO MEET BASIC HUMAN NEEDS. THEY ARE ANXIOUS ABOUT THE LONG-TERM HEALTH AND PRODUCTIVITY OF THEIR LAND AND WATER. THEY ARE NOW TAKING IMPORTANT STEPS TO BUILD INSTITUTIONAL AND TECHNICAL CAPABILITIES TO PERFORM ENVIRONMENTAL ASSESSMENT. THERE ARE INSTANCES WHERE RECIPIENT COUNTRIES HAVE MODIFIED A DEVLOPMENT PROJECT WHEN THE IMPLICATIONS OF ADVERSE CONSEQUENCES TO THE ENVIRONMENT HAVE BEEN UNDERSTOOD.

2. THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT AND OTHER INSTITUTIONS NOW REQUIRE THAT ENVIRONMENTAL ASSESSMENTS BE PERFORMED ON PROJECTS THAT THEY SUPPORT EVEN IF THEY ARE CONDUCTED ENTIRELY WITHIN THE TERRITORY OF OTHER COUNTRIES. THIS PRACTICE SEEMS TO BE GENERALLY ACCEPTED BY THE RECIPIENT COUNTIRES. IT IS FELT THAT DONOR AGENCIES SHOULD BE ABLE TO ASSURE THEMSELVES, AS WELL AS RECIPIENTS, THAT PROJECTS WILL USE NATURAL RESOURCES WISELY, WILL RECOGNIZE THE CARRYING CAPACITY OF ECOSYSTEMS AND WILL NOT IRREVERSIBLY DEGRADE THE SUSTAINED PRODUCTIVITY OF THE ENVIRONMENT.

3. WHEN ENVIRONMENTAL ASSESSMENTS ARE REQUIRED AND PERFORMED BY COUNTRIES, THEY ARE USUALLY CONDUCTED AT THE PROJECT STAGE NEAR THE END OF THE DEVELOPMENT PLANNING AND IMPLEMENTATION SEQUENCE. THERE IS A GROWING RECOGNITION THAT THE ASSESSMENT PROCESS COULD BE MORE USEFUL IF IT WERE INTRODUCED EARLIER AND DEALT WITH ALTERNATIVE OPPORTUNITIES FOR THE USE OF THE NATURAL RESOURCE BASE.

4. THE REACTIONS OF OTHER COUNTRIES TO A U.S. REQUIREMENT FOR A FOREIGN ENVIRONMENTAL ASSESSMENT ARE UNDERSTANDABLY BASED ON ISSUES OF-SOVEREIGNTY, PREVIOUS EXPERIENCE AND PRACTICE, AND EMOTION. THE PRACTICAL IMPLEMENTATION OF THIS REQUIREMENT IS NOT YET CLEAR AND UNCERTAINTY IS GENERATING CONCERNS SUCH AS THOSE OUTLINED BELOW.

   A. THE U.S. PREOCCUPATION WITH PROCESS AND PROCEDURE CREATES THE IMPRESSION OF A STUMBLING BLOCK RATHER THAN AN AID TO PROGRESS. DELAY IN DEVELOPMENT IS A GENUINE CONCERN BECAUSE OF THE URGENCY TO INCREASE FOOD SUPPLIES, CREATE JOBS, SECURE FOREIGN EXCHANGE AND ACHIEVE A GREATER MEASURE OF SELF-RELIANCE. THE U.S. NEPA IS OFTEN REGARDED

BY OTHER COUNTRIES (DEVELOPED AND DEVELOPING) AS A MEANS FOR INTERVENORS TO TIE-UP PROJECTS ON TRIVIAL ENVIRONMENTAL AND PROCEDURAL POINTS EVEN THOUGH THEIR REAL MOTIVATIONS INCLUDE UNRELATED ISSUES OF SOCIAL OR POLITICAL PHILOSOPHY.

B. THE POLITICAL USE OF ENVIRONMENTAL ASSESSMENT INFORMATION IS A MAJOR CONCERN. WHILE INFORMAL U.S. PUBLIC COMMENT ON INTERNATIONAL TRADE AND DEVELOPMENT PROJECTS IN OTHER COUNTRIES IS EXPECTED (IF NOT ALWAYS WELCOME), THE POSSIBILITY OF FORMAL INTERVENTION RAISES PROBLEMS. IF THE INTERVENTION IS AT A PROFESSIONAL LEVEL OF ENVIRONMENTAL EXPERTS CONSULTING ABOUT SCIENTIFIC INFORMATION, THE REACTION MAY BE FAVORABLE. IF A U.S. OR DONOR AGENCY ENVIRONMENTAL STATEMENT DEALS WITH THE FUNDAMENTAL DEVELOPMENT STRATEGY OR POLICY OF THE RECIPIENT COUNTRY, THE INTERVENTION MAY BE RESISTED. IF THE U.S. PUBLIC ACCESS TO THE DECISION MAKING PROCESS INVOLVING A FOREIGN GOVERNMENT INCLUDES ATTEMPTS BY ENVIRONMENTAL GROUPS AND THE PRESS (IN THE U.S. OR THE RECIPIENT COUNTRY) TO INFLUENCE PUBLIC OPINION IN THE RECIPIENT COUNTRY, THAT GOVERNMENT COULD REGARD SUCH INTERVENTION AS INAPPROPRIATE.

C. WHILE ENVIRONMENTAL ASSESSMENT INFORMATION IS WELCOME, THE FINAL BALANCING DECISION IS GENERALLY EXPECTED TO BE LEFT TO THE HOST GOVERNMENT. A VETO OF DEVELOPMENT ASSISTANCE BY U.S. AGENCIES ON CONTROVERSIAL PROCEDURAL OR SUBSTANTIVE GROUNDS MIGHT RESULT IN THE RECIPIENT COUNTRY TURNING TO OTHER DONORS OR PROCEEDING WITH OTHER SOURCES OF FUNDS WHERE POSSIBLE. SUCH AN EXPLICIT AND VISIBLE DIFFERENCE IN VALUES AND PRIORITIES COULD CAUSE SOME STRAINS IN INTERNATIONAL RELATIONS.

D. AN ENVIRONMENTAL ASSESSMENT REQUIRES THE ACQUISITION AND ANALYSIS OF A GREAT DEAL OF INFORMATION TO WHICH SOME COUNTRIES MAY NOT WISH THE UNITED STATES TO HAVE ACCESS (E.G., RESOURCE INVENTORIES). EVEN IN CASES WHERE THE U.S. ALREADY HAS THE DATA, THE COUNTRY MAY NOT WISH IT TO BE MADE PUBLICLY AVAILABLE TO OTHER COUNTRIES OR TO THE PRIVATE SECTOR.

E. THERE IS CONCERN IN OTHER COUNTRIES THAT FACTIONS IN RECIPIENT COUNTRIES THAT ARE OPPOSED TO U.S. TRADE AND AID MAY USE THE FOREIGN ENVIRONMENTAL STATEMENT TO GENERATE ANTAGONISM AGAINST FURTHER COOPERATION.

F. THE U.S., AS A RESULT OF THE FOREIGN ENVIRONMENTAL STATEMENT, MIGHT BECOME AWKWARDLY INVOLVED IN A DISPUTE TO WHICH IT WAS NOT A DIRECT PARTY. FOR EXAMPLE, SOME DEVELOPMENT PROJECTS MAY CAUSE TRANS-NATIONAL POLLUTION RESULTING IN DISAGREEMENTS BETWEEN TWO RO MORE FOREIGN GOVERNMENTS.

RECOMMENDATIONS

BASED ON THE ABOVE OBSERVATIONS, WE OFFER THE FOLLOWING

INITIAL CONCLUSIONS AND SUGGESTIONS.

1. IT IS VERY IMPORTANT THAT THE PRECISE NATURE OF U.S. CONCERNS BE MADE REASONABLY EXPLICIT IN THE EARLY STAGES OF IMPLEMENTING A POLICY FOR FOREIGN ENVIRONMENTAL ASSESSMENT. THE REACTION OF OTHER COUNTIRS WILL VARY MARKEDLY DEPENDING ON WHETHER THE ASSESSMENT IS TO REFLECT U.S. CONCERNS ABOUT U.S. INTERESTS OR, ON THE CONTRARY, CONCERNS OF THE UNITED STATES ABOUT WHAT IT THINKS SHOULD BE THE INTERESTS OF OTHERS. THERE ARE DIFFERENT PERCEPTIONS OF THE LEGITIMACY OF VARIOUS U.S. INTERESTS THAT COULD FURTHER COMPLICATE THE IMPLEMENTATION OF POLICY. THE ASSESSMENT PROCESS WILL NOT BE FAVORABLY RECEIVED IF IT BECOMES A DEVICE FOR IMPOSING ON OTHER COUNTRIES U.S. ENVIRONMENTAL VALUES AND PRIORITIES RATHER THAN SIMPLY INTEGRATING THEM INTO THE PROCESS OF INTERNAL U.S. DECISION MAKING.

2. RECIPIENT COUNTRIES SHOULD BE GIVEN THE OPPORTUNITY TO COLLABORATE NOW IN THE PROCESS OF IMPLEMENTING THE FOREIGN ENVIRONMENTAL STATEMENT. POTENTIAL MISUNDERSTANDINGS CAN ARISE FROM DIFFERENCES IN NEEDS, VALUES, PRIORITIES, TRADITIONS, STYLES, PROCESSES, AND CAPABILITIES. SOME OF THE SENSITIVE AREAS ARE:

A. ACCESS TO THE ASSESSMENT DOCUMENTS
B. SELECTION OF THE PERFORMER OF ASSESSMENT; WITH SPECIAL EMPHASIS ON STRENGTHENING LOCAL CAPABILITIES
C. THE ROLE OF PUBLIC PARTICIPATION--IN THE U.S. AND THE OTHER COUNTRY
D. THE STAGE IN THE DEVELOPMENT SEQUENCE (FROM PREFEASIBILITY ANALYSIS TO OPERATION) WHERE ASSESSMENT IS REQUIRED
E. WHO DECIDES ON TRADE-OFFS AMONG ALTERNATIVES
F. SCOPE OF ASSESSMENT (E.G., INCLUSION OF SOCIO-CULTURAL IMPACTS)

IF ENVIROMENTAL ASSESSMENT IN THE FORM OF THE FOREIGN ENVIRONMENTAL STATEMENT IS GOING TO ACCOMPLISH THE INTENT OF THE NEPA, THESE QUESTIONS MAY HAVE TO BE DISCUSSED AND NEGOTIATED ON A COUNTRY-BY-COUNTRY AND EVEN CASE-BY-CASE BASIS. THIS WOULD REQUIRE A FLEXIBLE POLICY FRAMEWORK.

3. ASSESSMENT PROCEDURES AND CONTENT MUST BE ADAPTED AND SIMPLIFIED TO THE NEEDS, CAPABILITIES, TIMETABLES AND SOCIO-CULTURAL SYSTEMS OF THE RECIPIENT COUNTRIES. MONEY AND MANPOWER TO PERFORM ASSESSMENTS WILL ALWAYS BE LIMITED AND THE PRIORITIES FOR GATHERING AND ANALYZING INFORMATION SHOULD REFLECT LOCAL VALUES AND CRITERIA.

4. SPECIAL CARE AND ATTENTION MUST BE DEVOTED AT THE EARLIEST POSSIBLE TIME TO THE PROCESS THAT THE UNITED STATES AND OTHERS WILL ADOPT FOR EXPLORING THE TYPES OF ISSUES, SENSITIVITIES AND AND SUGGESTIONS OUTLINED HERE. SOME OF THESE ISSUES ARE SO DEEPLY ENMESHED IN THE INTERNAL AFFAIRS AND PRACTICES OF SOVEREIGN STATES THAT THE POTENTIAL FOR STRAINED RELATIONS IS VERY GREAT--OFTEN IN AREAS THAT MIGHT BE CONSIDERED ANCILLARY TO THE ASSESSMENT PROCESS AS ENVISIONED BY U.S. OFFICIALS. AS WITH MOST ISSUES IN THE REALM OF INTERNATIONAL RELATIONS, THESE WILL

REQUIRE NEGOTIATIONS BASED ON RESPECT, CORDIALITY, AND DIPLOMACY. THESE NEGOTIATIONS SHOULD ALSO BE VIEWED AS AN OPPORTUNITY TO STRENGTHEN INTERNATIONAL RELATIONS AND UNDERSTANDING IN DEVELOPMENT PLANNING AND FINANCIAL ASSISTANCE IN GENERAL.

THESE PRELIMINARY OBSERVATIONS WILL BE REFINED AS THE WORK OF OUR INTERNATIONAL COOPERATIVE PROJECT CONTINUES. OUR OBJECTIVES ARE: 1) TO ENHANCE THE PROCESS AND PRODUCTS OF ASSESSMENT TO AID DECISION MAKERS; 2) TO UNDERSTAND THE RAMIFICATIONS OF REQUIRING ENVIRONMENTAL ASSESSMENT AS A CONDITION OF DEVELOPMENT ASSISTANCE; AND 3) TO INFORM POLICY MAKERS AND SCIENTISTS IN ALL COUNTRIES ON THE RESULTS OF OUR RESEARCH. WE STAND READY TO BE OF HELP TO YOU AND OTHER CONCERNED PARTIES AS U.S. POLICY IS FORMULATED AND IMPLEMENTED.

SINCERELY,

WILLIAM H. MATTHEWS
DIRECTOR

RICHARD A. CARPENTER
RESEARCH ASSOCIATE

05:50 EST

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