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COMMITTEE PRINT

BASIC DOCUMENTS ON EAST-WEST TRADE

SUBCOMMITTEE ON EUROPE

OF THE

COMMITTEE ON FOREIGN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

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FOREWORD

The attached volume describes the role of U.S. agencies in administering restrictions on East-West trade and contains the text of basic statutory and regulatory provisions pertaining thereto. It was designed to provide the necessary background materials for a series of hearings on East-West trade which opened before the Subcommittee on Europe of the Committee on Foreign Affairs on January 30, 1968.

This document is a sequel to a compendium on East-West trade published by the Committee on Foreign Relations of the U.S. Senate in February 1965. It was prepared by Mr. Vladimir N. Pregelj, of the Legislative Reference Service, the Library of Congress, with the assistance of Mr. Hugh C. Keenan, Jr., who is also associated with that Service.

It is hoped that this document will prove of help to the Congress and all other persons concerned with issues related to East-West trade.

EDNA F. KELLY, *Chairman,*
Subcommittee on Europe.

FOREWORD

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BASIC DOCUMENTS ON EAST-WEST TRADE

I. DEPARTMENT OF STATE

A. Control of United States Trade in Munitions and Primary Strategic Commodities

1. SUMMARY OF PERTINENT PROVISIONS

The Department of State administers the embargo on the shipment of strategic commodities of primary importance to any nation or combination of nations threatening the security of the United States, including the Soviet Union and all countries under its domination.[1]

In addition, section 414 of the Mutual Security Act of 1954, as amended [2] authorizes the President to control U.S. trade in arms, ammunition, implements of war and technical data relating thereto. This authority has been delegated to the Secretary of State [3] who in turn promulgated pertinent regulations,[4] which include, as major items, a list of articles subject to controls (U.S. Munitions List), and provisions for licensing controls of these articles.

The declared policy of the Department of State relative to licensing of munitions list articles for export to or imports from Communist countries is one of denying such licenses for trade with all Communist countries except Yugoslavia.[5]

2. MUTUAL DEFENSE ASSISTANCE CONTROL ACT OF 1951, AS AMENDED [6]

TITLE I—WAR MATERIALS

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 "Mutual Defense Assistance Control Act of 1951".

SEC. 101. The Congress of the United States, recognizing that in a world threatened by aggression the United States can best preserve and maintain peace by developing maximum national strength and by utilizing all of its resources in cooperation with other free nations, hereby declares it to be the policy of the United States to apply an embargo on the shipment of arms, ammunition, and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items of primary strategic significance used in the production of arms, ammunition, and implements of war to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, in order to (1) increase the national strength of the United States and of the cooperating

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[1] Sec. 101, Mutual Defense Assistance Control Act of 1951 ("Battle Act"), as amended (22 U.S.C. 1611). (See below.)

[2] See p. 3.

[3] E.O. 10973, Nov. 3, 1961 (26 F.R. 10469), and related provisions (not reproduced herein).

[4] 22 C.F.R. ch. I, subch. M: International Traffic in Arms (pts. 121–127) (not reproduced herein).

[5] 22 C.F.R. 123.22 and 125.42. (See p. 4.)

[6] 22 U.S.C. 1611–1613d.

nations; (2) impede the ability of nations threatening the security of the United States to conduct military operations; and (3) to assist the people of the nations under the domination of foreign aggressors to re-establish their freedom.

It is further declared to be the policy of the United States that no military, economic, or financial assistance shall be supplied to any nation unless it applies an embargo on such shipments to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

This Act shall be administered in such a way as to bring about the fullest support for any resolution of the General Assembly of the United Nations, supported by the United States, to prevent the shipment of certain commodities to areas under the control of governments engaged in hostilities in defiance of the United Nations.

SEC. 102. Responsibility for giving effect to the purposes of this Act shall be vested in the person occupying the senior position authorized by subsection (e) of section 406 of the Mutual Defense Assistance Act of 1949, as amended, or in any person who may hereafter be charged with principal responsibility for the administration of the provisions of the Mutual Defense Assistance Act of 1949. Such person is hereinafter referred to as the "Administrator".

SEC. 103. (a) The Administrator is hereby authorized and directed to determine within thirty days after enactment of this Act after full and complete consideration of the views of the Departments of State, Defense, and Commerce; the Economic Cooperation Administration; and any other appropriate agencies, and notwithstanding the provisions of any other law, which items are, for the purpose of this Act, arms, ammunition, and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and those items of primary strategic significance used in the production of arms, ammunition, and implements of war which should be embargoed to effectuate the purposes of this Act: *Provided*, That such determination shall be continuously adjusted to current conditions on the basis of investigation and consultation, and that all nations receiving United States military, economic, or financial assistance shall be kept informed of such determinations.

(b) All military, economic, or financial assistance to any nation shall, upon the recommendation of the Administrator, be terminated forthwith if such nation after sixty days from the date of a determination under section 103(a) knowingly permits the shipment to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, of any item which he has determined under section 103(a) after a full and complete investigation to be included in any of the following categories: Arms, ammunition, and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items of primary strategic significance used in the production of arms, ammunition, and implements of war: *Provided*, That the President after receiving the advice of the Administrator and after taking into account the contribution of such country to the mutual security of the free world, the importance of such assistance to the security of the United States, the strategic importance of imports received from countries of the Soviet bloc, and the adequacy of such country's controls over the export to the Soviet bloc of items of strategic importance, may direct the continuance of such assistance to a country which permits shipments of items other than arms, ammunition, implements of war, and atomic energy materials when unusual circumstances indicate that the cessation of aid would clearly be detrimental to the security of the United States: *Provided further*, That the President shall immediately report any determination made pursuant to the first proviso of this section with reasons therefor to the Appropriations and Armed Services Committees of the Senate and of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, and the President shall at least once each quarter review all determinations made previously and shall report his conclusions to the foregoing committees of the House and Senate, which reports shall contain an analysis of the trade with the Soviet bloc of countries for which determinations have been made.

SEC. 104. Whenever military, economic, or financial assistance has been terminated as provided in this Act, such assistance can be resumed only upon determination by the President that adequate measures have been taken by the nation concerned to assure full compliance with the provisions of this Act.

SEC. 105. For the purposes of this Act the term "assistance" does not include activities carried on for the purpose of facilitating the procurement of materials in which the United States is deficient.

TITLE II—OTHER MATERIALS

SEC. 201. The Congress of the United States further declares it to be the policy of the United States to regulate the export of commodities other than those specified in Title I of this Act to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, in order to strengthen the United States and other cooperating nations of the free world and to oppose and offset by nonmilitary action acts which threaten the security of the United States and the peace of the world.

SEC. 202. The United States shall negotiate with any country receiving military, economic, or financial assistance arrangements for the recipient country to undertake a program for controlling exports of items not subject to embargo under Title I of this Act, but which in the judgment of the Administrator should be controlled to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

SEC. 203. All military, economic, and financial assistance shall be terminated when the President determines that the recipient country (1) is not effectively cooperating with the United States, pursuant to this title, or (2) is failing to furnish to the United States information sufficient for the President to determine that the recipient country is effectively cooperating with the United States.

TITLE III—GENERAL PROVISIONS

SEC. 301. All other nations (those not receiving United States military, economic, or financial assistance) shall be invited by the President to cooperate jointly in a group or groups or on an individual basis in controlling the export of the commodities referred to in Title I and Title II of this Act to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

SEC. 302. The Administrator with regard to all titles of this Act shall—

(a) coordinate those activities of the various United States departments and agencies which are concerned with security controls over exports from other countries;

(b) make a continuing study of the administration of export control measures undertaken by foreign governments in accordance with the provisions of this Act, and shall report to the Congress from time to time but not less than once every six months recommending action where appropriate; and

(c) make available technical advice and assistance on export control procedures to any nation desiring such cooperation.

SEC. 303. The provisions of subsection (a) of section 403, of section 404, and of subsections (c) and (d) of section 406 of the Mutual Defense Assistance Act of 1949 (Public Law 329, Eighty-first Congress), as amended, insofar as they are consistent with this Act, shall be applicable to this Act. Funds made available for the Mutual Defense Assistance Act of 1949, as amended, shall be available for carrying out this Act in such amounts as the President shall direct.

SEC. 304. In every recipient country where local currency is made available for local currency expenses of the United States in connection with assistance furnished by the United States, the local currency administrative and operating expenses incurred in the administration of this Act shall be charged to such local currency funds to the extent available.

SEC. 305. There is hereby authorized to be appropriated to the Secretary of State such sums as may be necessary from time to time to administer and carry out the objectives of this Act.

3. SECTION 414 OF THE MUTUAL SECURITY ACT OF 1954, AS AMENDED [7]

MUNITIONS CONTROL

SEC. 414. (a) The President is authorized to control, in furtherance of world peace and security and foreign policy of the United States, the export and import

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[7] 22 U.S.C. 1934.

of arms, ammunition, and implements of war, including technical data relating thereto, other than by a United States Government agency. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section.

(b) As prescribed in regulations issued under this section, every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war, including technical data relating thereto, designated by the President under subsection (a) shall register with the United States Government agency charged with the administration of this section, and, in addition, shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance program of the United States, whether or not advanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(c) Any person who willfully violates any provision of this section or any rule or regulation issued under this section, or who willfully, in a registration or license application, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $25,000 or imprisoned not more than two years, or both.

4. EXCERPTS FROM CODE OF FEDERAL REGULATIONS, TITLE 22, CHAPTER I, SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

SEC. 123.22. SHIPMENTS TO OR FROM CERTAIN COUNTRIES.

The policy of the Department of State is to deny license applications for U.S. Munitions List Articles destined for or originating in Albania, Bulgaria, Communist China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, Union of Soviet Socialist Republics, any of the area of Viet-Nam which is under de facto Communist control, or any other area which is from time to time determined by the Department of State to be under Communist control. The exemptions provided by this part do not apply to shipments destined for or originating in any of the foregoing countries or areas.

* * * * * * *

SEC. 125.42. SINO-SOVIET BLOC DESTINATIONS.

The policy of the Department of State is to deny export license applications for technical data destined for Albania, Bulgaria, Communist China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, Union of Soviet Socialist Republics, any of the area of Viet-Nam which is under de facto Communist control, or any other area which is from time to time determined by the Department of State to be under Communist control. The exemptions provided by this part, except by § 125.30 (a) (1) and (2),[8] do not apply to the foregoing destinations.

B. Control of Third Countries' Trade

1. SUMMARY OF PERTINENT PROVISIONS

The United States exercises a certain degree of control or at least influence over the trade of third countries with Communist countries through two principal channels: (1) international cooperation and consultation as to the commodities the exportation of which to certain Communist countries ought to be denied or controlled for strategic purposes, and as to the procedure for such controls, and (2) threat

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[8] Sec. 125.30(a) (1) and (2) pertain to published and publicly disseminated data.

of sanctions, mostly in the form of suspension or curtailment of U.S. foreign aid to foreign aid recipients unless they subject their exports to certain Communist countries to controls deemed satisfactory by the United States.

(1) The principal means of cooperative international control over strategic exports to Communist countries is the system of control established through the multilateral Consultative Group (CG) and Coordinating Committee (COCOM) organization. The United States participates in this organization under the provisions of section 301 of the Mutual Defense Assistance Control Act of 1951 (Battle Act), as amended, which directs the President to invite nonrecipients of U.S. aid to cooperate in controlling the exportation of strategic commodities to any nation or combination of nations threatening the security of the United States, including the Soviet Union and all countries under its domination.[9]

Member-nations of the CG–COCOM organization,[10] operating jointly and under a unanimity rule, establish and annually revise international embargo and watch lists of commodities the exports of which to Communist bloc countries are prohibited or restricted.

(2) Commodity and/or shipping trade with all or certain Communist bloc countries of free-world countries that receive U.S. foreign aid is subject to a number of U.S. statutory provisions tending to stop or curtail such trade under the pain of sanctions in the field of foreign aid.

Section 101 of the Battle Act [11] denies all assistance to any nation receiving any kind of U.S. foreign aid that does not apply an embargo on shipments of war materials to the Soviet Union and all countries under its domination, unless the President determines that such a denial would not be in the interest of the security of the United States and so reports to the appropriate committees of the Congress.[12]

The same act also requires that arrangements be negotiated with U.S. foreign aid recipient countries, designed to control, to the satisfaction of the United States, their exportation of commodities other than war materials to bloc countries.[13] In the event that a foreign-aid-receiving country does not effectively cooperate with the United States in this control program, all types of U.S. assistance to it must be terminated.[14]

Provisions regulating trade of third countries with specific Communist countries are included in the foreign aid authorizing and appropriating legislation. The Foreign Assistance Act of 1961, as amended, denies any type of foreign assistance within the purview of that act (except assistance to American schools, libraries, and hospitals abroad) to any nation that permits ships or aircraft under its registry to transport any commodities to or from Castro's Cuba.[15] It also denies any type of foreign aid, including sales within the Food for Peace program, to any country which sells or furnishes any com-

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[9] Sec. 301, Mutual Defense Assistance Control Act of 1951, as amended (22 U.S.C. 1613). (See p. 3.)

[10] Belgium, Canada, Denmark, France, West Germany, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Turkey, United Kingdom, and United States.

[11] See p. 1.

[12] Sec. 103(b). (See p. 2.)

[13] Sec. 202. (See p. 3.)

[14] Sec. 203. (See p. 3.)

[15] Sec. 620(a)(3). (See p. 6.)

modities to North Vietnam as long as the latter gives support to hostilities in South Vietnam.[16]

Similar restrictions have also been incorporated in foreign aid appropriation acts. The Foreign Assistance and Related Agencies Appropriation Act, 1968, prohibits the furnishing of any assistance within the purview of the Foreign Assistance Act of 1961, as amended, to any country that sells, furnishes, or permits ships under its registry to carry to Castro's Cuba or to North Vietnam any war or primary strategic materials, including petroleum products.[17] It also denies any economic assistance under the Foreign Assistance Act of 1961, as amended, to any country that sells, furnishes, or permits its ships to carry to Castro's Cuba or to North Vietnam any items of economic assistance.[18]

2. EXCERPTS FROM THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED[19]

SEC. 221.[20] GENERAL AUTHORITY.—(a) In order to facilitate and increase the participation of private enterprise in furthering the development of the economic resources and productive capacities of less developed friendly countries and areas, the President is authorized to issue guaranties as provided in subsection (b) of this section of investments in connection with projects, including expansion, modernization, or development of existing entrprises, in any friendly country or area with the government of which the President has agreed to institute the guaranty program. The guaranty program authorized by this title shall be administered under broad criteria, and each project shall be approved by the President.

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SEC. 620.[21] PROHIBITIONS AGAINST FURNISHING ASSISTANCE TO CUBA AND CERTAIN OTHER COUNTRIES.—(a) (1) No assistance shall be furnished under this Act to the present government of Cuba; nor shall any such assistance be furnished to any country which furnishes assistance to the present government of Cuba unless the President determines that such assistance is in the national interest of the United States. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo[22] upon all trade between the United States and Cuba.

(2) Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this Act to any government of Cuba, nor shall Cuba be entitled to receive any quota authorizing the importation of Cuban sugar into the United States or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens, and to entities, no less than 50 per centum beneficially owned by United States citizens, or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.

(3) No funds authorized to be made available under this Act (except under section 214) shall be used to furnish assistance to any country which has failed to take appropriate steps, not later than 60 days after the date of enactment of the Foreign Assistance Act of 1963—

(A) to prevent ships or aircraft under its registry from transporting to Cuba (other than to United States installations in Cuba)—

(i) any items of economic assistance,

(ii) any items which are, for the purposes of title I of the Mutual Defense Assistance Control Act of 1951, as amended, arms, ammunition and implements of war, atomic energy materials, petroleum, transporta-

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[16] Sec. 620(n). (See p. 8.)
[17] Sec. 107(a). (See p. 8.)
[18] Secs. 107(b) and 116. (See p. 8.)
[19] 22 U.S.C. 2151–2407.
[20] 22 U.S.C. 2181.
[21] 22 U.S.C. 2370.
[22] See Proclamation 3447 (p. 16.)

tion materials of strategic value, or items of primary strategic significance used in the production of arms, ammunition, and implements of war, or

(iii) any other equipment, materials, or commodities, so long as Cuba is governed by the Castro regime; and

(B) to prevent ships or aircraft under its registry from transporting any equipment, materials, or commodities from Cuba (other than from United States installations in Cuba) so long as Cuba is governed by the Castro regime.[23]

(b) No assistance shall be furnished under this Act to the government of any country unless the President determines that such country is not dominated or controlled by the international Communist movement.

* * * * * * *

(f) No assistance shall be furnished under this Act, as amended (except section 214(b)) to any Communist country. This restriction may not be waived pursuant to any authority contained in this Act unless the President finds and promptly reports to Congress that: (1) such assistance is vital to the security of the United States; (2) the recipient country is not controlled by the international Communist conspiracy; and (3) such assistance will further promote the independence of the recipient country from international communism. For the purposes of this subsection, the phrase "Communist country" shall include specifically, but not limited to, the following countries:[24]

Peoples Republic of Albania,
Peoples Republic of Bulgaria,
Peoples Republic of China,
Czechoslovak Socialist Republic,
German Democratic Republic (East Germany),
Estonia,
Hungarian Peoples Republic,
Latvia,
Lithuania,
North Korean Peoples Republic,
North Vietnam,
Outer Mongolia-Mongolian Peoples Republic,
Polish Peoples Republic,
Rumanian Peoples Republic,
Tibet,
Federal Peoples Republic of Yugoslavia,
Cuba, and
Union of Soviet Socialist Republics (including its captive constituent republics).

* * * * * * *

(i) No assistance shall be provided under this or any other Act, and no sales shall be made under the Agricultural Trade Development and Assistance Act of 1954, to any country which the President determines is engaging in or preparing for aggressive military efforts, or which hereafter is officially represented at any international conference when that representation includes the planning of activities involving insurrection or subversion, which military efforts, insurrection, or subversion, are directed against—

(1) the United States,

(2) any country receiving assistance under this or any other Act, or

(3) any country to which sales are made under the Agricultural Trade Development and Assistance Act of 1954,

until the President determines that such military efforts or preparations have ceased, or such representation has ceased, and he reports to the Congress that he has received assurances satisfactory to him that such military efforts or preparations will not be renewed, or that such representation will not be renewed or repeated. This restriction may not be waived pursuant to any authority contained in this Act.

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[23] See also sec. 107, Foreign Assistance and Related Agencies Appropriation Act, 1968 (p. 8.)

[24] Cf. also sec. 103(d), Agricultural Trade Development and Assistance Act of 1954, as amended. (p. 32); general headnote 3(e), Tariff Schedules of the United States (p. 18); and sec. 2, E.O. 11285 (p. 24.)

(n) No loans, credits, guaranties, or grants or other assistance shall be furnished under this or any other Act, and no sales shall be made under the Agricultural Trade Development and Assistance Act of 1954, to any country which sells or furnishes to North Vietnam, or which permits ships or aircraft under its registry to transport to or from North Vietnam, any equipment, materials, or commodities, so long as the regime in North Vietnam gives support to hostilities in South Vietnam.[25]

3. EXCERPTS FROM THE FOREIGN ASSISTANCE AND RELATED AGENCIES APPROPRIATION ACT, 1968 [26]

SEC. 107.[27] (a) No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry to Cuba, so long as it is governed by the Castro regime, in addition to those items contained on the list maintained by the Administrator pursuant to title I of the Mutual Defense Assistance Control Act of 1951, as amended, any arms, ammunition, implements of war, atomic energy materials, or any other articles, materials, or supplies of primary strategic significance used in the production of arms, ammunition, and implements of war or of strategic significance to the conduct of war, including petroleum products.

(b) No economic assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

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SEC. 116.[28] No assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country that sells, furnishes, or permits any ships under its registry to carry to North Vietnam any of the items mentioned in subsection 107(a) of this Act.

C. Control of Foreign Travel

1. SUMMARY OF PERTINENT PROVISIONS

By virtue of its authority to issue passports to U.S. nationals and entry visas to aliens traveling to or through the United States, the Department of State exercises certain restrictive control over U.S. nationals traveling abroad and foreign nationals entering or traveling in this country.

The Secretary of State possesses statutory authority to issue passports [29] and unqualified Presidential delegated authority to prescribe rules for their issuance.[30] Under these authorizations, the Secretary of State has promulgated Federal regulations providing for denial, revocation, or restriction of U.S. passports and their invalidation for certain countries or areas.

Under the provisions of section 51.72(c), title 22, Code of Federal Regulations,[31] public notices, invalidating U.S. passports for travel to, in, or through Mainland China, Cuba, North Korea, and North Vietnam, have been most recently published on March 19, 1968.[32] Thus, U.S. citizens in general are in effect prohibited, although not necessarily in fact prevented from traveling in these designated Communist areas.

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[25] See also secs. 107 and 116, Foreign Assistance and Related Agencies Appropriation Act, 1968 (below).
[26] Pub. L. 90–249 (81 Stat. 936).
[27] See also similar provisions of the Foreign Assistance Act of 1961, as amended (sec. 620 (a) and (n)) (p. 6 and above).
[28] See also similar provision of the Foreign Assistance Act of 1961, as amended (sec. 620(n) (see above).
[29] Sec. 1, Pub. L. 69–493 (p. 9).
[30] Sec. 1, E.O. 11295 (p. 10).
[31] See p. 10.
[32] Public Notices 289–292, 33 F.R. 4695.

While the violation of this regulation does not make the violator liable to criminal prosecution, it does constitute ground for the revocation of his passport.[33]

Denial or revocation of passports issued to U.S. citizens traveling to the four above-mentioned Communist areas also seems possible under the provisions of section 51.71(c), title 22, Code of Federal Regulations,[34] as it appears virtually impossible for an unauthorized American traveler in any of these areas not to violate some aspect of the embargo declared on trade with the same four countries under the very broad scope of the Trading With the Enemy Act or similar other legislation.[35]

The Department of State has in effect guidelines which permit the validation of a passport for travel in the restricted areas when such travel is found to be in the national interest. Qualifying under these guidelines are members of certain professions or occupations, when traveling in pursuit of their professional interests.[36]

The power to grant or refuse visas for the entry into the United States has been conferred upon the consular officers of the United States subject to pertinent statutory provisions. While there are no specific provisions restricting the entry and travel in the United States of nationals of Communist countries as such, a number of statutory provisions deny the eligibility to receive visas and be admitted into the United States to aliens who are or have been members of Communist organizations, or who advocate or teach by spoken or printed word the unconstitutional overthrow of the U.S. Government, or the Communist doctrine in general.[37] These restrictions, obviously, in practice are likely to apply more frequently to nationals of Communist rather than non-Communist countries. Inadmissibility, however, can be waived individually for nonimmigrant aliens (business or pleasure travelers, and other visitors) upon the recommendation by the Secretary of State or the consular officer involved at the discretion of the Attorney General.[38] A special streamlined procedure for group waivers has been in effect since May 1966 [39] for aliens attending international conferences in the United States. Such advance group waivers eliminate the lengthy and for the United States potentially embarrassing delays connected with the processing of individual waivers.

2. EXCERPT FROM AN ACT TO REGULATE THE ISSUE AND VALIDITY OF PASSPORTS, AND FOR OTHER PURPOSES (JULY 3, 1926)

[SEC. 1] The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic

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[33] See 22 C.F.R. 51.74 (p. 11). This and related provisions are likely to be revised to reflect the ruling of the U.S. Court of Appeals for the District of Columbia in *Lynd* v. *Rusk* (Dec. 20, 1967). The ruling provides in effect that, in the absence of specific statutes, "the Secretary may deny a passport, or revoke one already extant, [only] when the sole travel that is intended by the citizen is to an area that the Secretary has declared restricted." Travel to restricted areas in conjunction with travel to nonrestricted areas, however, is not a valid ground for denial or revocation of a passport provided that its holder agrees not to take the passport into a restricted area. On the other hand, several bills providing for the Secretary's authority to restrict foreign travel and for criminal penalties in case of violation have been introduced in both Houses of Congress.

[34] See p. 10.

[35] See p. 14.

[36] Cf. "Department liberalizes exceptions to travel bans," *Department of State Bulletin,* v. 55, Aug. 15, 1966 : 234.

[37] Sec. 212(a)(28) (C) through (G), Immigration and Nationality Act, as amended; 8 U.S.C. 1182(a)(28) (C) through (G) (p. 11).

[38] Sec. 212(d)(2), Immigration and Nationality Act, as amended; 8 U.S.C. 1182(d)(2), (p. 12).

[39] See "State, Justice improve procedures on visas for conference guests," *Department of State Bulletin,* v. 54, May 30, 1966 : 869.

representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports.[40]

3. EXCERPT FROM EXECUTIVE ORDER 11295,[41] AUGUST 5, 1966

RULES GOVERNING THE GRANTING, ISSUING, AND VERIFYING OF UNITED STATES PASSPORTS

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. *Delegation of authority.* The Secretary of State is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority conferred upon the President by the first section of the Act of July 3, 1926 (22 U.S.C. 211a),[42] to designate and prescribe for and on behalf of the United States rules governing the granting, issuing, and verifying of passports.

4. EXCERPTS FROM THE CODE OF FEDERAL REGULATIONS, TITLE 22, CHAPTER I, PART 51

SUBPART E—LIMITATION ON ISSUANCE, RENEWAL, OR EXTENSION OF PASSPORTS

SEC. 51.70. DENIAL OF PASSPORTS.

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(b) A passport or renewal of a passport may be refused in any case in which:

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(4) The national has violated the provisions of § 51.74; or

(5) The Secretary determines that the national's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States; or

(6) The applicant has been the subject of a prior adverse action under this section, § 51.71, or § 51.75 and has not shown that a change in circumstances since that adverse action warrants issuance or renewal of a passport.

SEC. 51.71. REVOCATION OR RESTRICTION OF PASSPORTS.

A passport may be revoked, restricted or limited where:

(a) The national would not be entitled to issuance of a new passport under § 51.70; or

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(c) The national's activities abroad are in violation of the laws of the United States.

SEC. 51.72. PASSPORTS INVALID FOR TRAVEL TO RESTRICTED AREAS.

Upon determination by the Secretary that a country or area is:

(a) A country with which the United States is at war or

(b) A country or area where armed hostilities are in progress or

(c) A country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall cease to be valid for travel to, in, or through such country or area unless specifically validated therefor.

Any determination made under this section shall be published in the *Federal Register* along with a statement of the circumstances requiring the restriction. Unless limited to a shorter period, any such restriction shall expire at the end of 1 year from the date of publication of such notice in the *Federal Register*, unless extended or sooner revoked by the Secretary by public notice.

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[40] Sec. 1, Pub. L. 69–493; 44 Stat. 887; 22 U.S.C. 211a.
[41] 31 F.R. 10603.
[42] See p. 9.

SEC. 51.74. VIOLATION OF GEOGRAPHICAL LIMITATIONS.

Travel to, in or through a restricted country or area without a passport or without a passport specifically validated for such travel is ground for revocation or cancellation of a passport and for denial of an application for a passport or renewal of a passort until such time as the Secretary receives formal assurance and is satisfied that the person will not again travel in violation of the travel restrictions.

SEC. 51.75. NOTIFICATION OF DENIAL OR WITHDRAWAL OF PASSPORT.

Any person whose application for the issuance or renewal of a passport has been denied, or who has otherwise been the subject of an adverse action taken on an individual basis with respect to his right to receive or use a passport shall be entitled to notification in writing of the adverse action. The notification shall set forth the specific reasons for the adverse action and the procedures for review available under §§ 51.81–51.105.

SEC. 51.76. SURRENDER OF PASSPORT.

The bearer of a passport which is revoked shall surrender it to the Department or its authorized representative upon demand and upon his refusal to do so such passport may be invalidated by notifying the bearer in writing of the invalidation.

5. EXCERPTS FROM THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED [43]

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION

SEC. 212.[44] (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

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(28) Aliens who are, or at any time have been, members of any of the following classes:

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(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered

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[43] 8 U.S.C. 1101–1503.

[44] 8 U.S.C. 1182. The term "world communism" appearing in sec. 212(a)(28) (D) and (G) is defined in sec. 101 (a)(40) of the act (8 U.S.C. 1101(a)(40)) as meaning "a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement."

or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment of the United States of a totalitarian dictatorship[.]

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(d)(2) The provisions of paragraph (28) of subsection (a) of this section shall not be applicable to any alien who is seeking to enter the United States temporarily as a nonimmigrant under paragraph (15)(A)(iii) or (15)(G)(v) of section 101(a).[45]

(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27) and (29)), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General.

D. Obstacles to Foreign Investment [46]

An indirect restriction is placed on the flow of American private investment into less developed Communist countries that are willing to accept foreign capital. U.S. guaranties of private investment in less developed countries, authorized by section 221 of the Foreign Assistance Act of 1961,[47] as amended, cover only "friendly" countries. In addition, such guaranties are included in the types of aid denied to Communist countries, except with a Presidential waiver,

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[45] Members of immediate family, attendants, servants, and personal employees of foreign diplomatic, consular, and other official representatives accredited to the United States or to an international organization.

[46] Cf. also provisions of the Johnson Debt Default Act (p. 22) and of the Interest Equalization Tax Act (p. 23).

[47] See p. 6.

under section 620(f) of the act.[48] The inability to obtain such a guaranty is a factor discouraging a potential investor and an obstacle to flow of capital into the country involved.

Although an investment guaranty agreement antedating the enactment of the restriction contained in section 620(f) has been in force with Yugoslavia since 1952,[49] it cannot be implemented without a special Presidential waiver.

E. Limitations Placed on the Negotiation of Agreements

As the agency responsible for the negotiation of international treaties and agreements on behalf of the U.S. Government, the Department of State is bound, in its negotiation of agreements touching the field of trade, by statutory limitations placed on commercial or other similar activities administered by other agencies.

There are two major types of agreements touching on matters within the scope of this survey, that are formally negotiated by the Department of State but administered by another U.S. agency.

Bilateral or multilateral trade and tariff agreements, implemented by the Department of the Treasury through its Bureau of Customs, must reflect the restrictions placed on Communist countries by statutory provisions currently in effect.[50]

Similarly, statutory limitations in regard to Communist countries, embodied in the Food for Peace legislation, administered mostly by the Department of Agriculture, must be observed in the negotiation of bilateral agreements within that program.[51]

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[48] See p. 7.
[49] TIAS 2688 (3 U.S.T. 5053) (not reproduced herein).
[50] See p. 16.
[51] See p. 31.

II. DEPARTMENT OF THE TREASURY

A. Embargo on All Trade With Communist China, North Korea, North Vietnam, and Cuba

1. SUMMARY OF PERTINENT PROVISIONS

An embargo on all financial and commercial transactions with Communist China, North Korea, North Vietnam, and Cuba, except by special license issued by the Secretary of the Treasury, is presently in effect. Embargo on trade with the first three listed countries has its statutory authority in section 5(b) of the Trading with the Enemy Act [1] as further implemented by section 500.201 (and related sections) of title 31, Code of Federal Regulations.[2] Embargo on trade with China and North Korea has been in effect since December 17, 1950; that on trade with North Vietnam since May 5, 1964.

The embargo on trade with Cuba has been in effect since February 7, 1962, pursuant to Presidential Proclamation 3447, [3] issued under the statutory authority of section 620(a) of the Foreign Assistance Act of 1961, as amended.[4]

2. EXCERPT FROM THE TRADING WITH THE ENEMY ACT, AS AMENDED

Sec. 5(b) [5] (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

By any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish

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[1] See below.
[2] See p. 15.
[3] See p. 16.
[4] See p. 6.
[5] 50 U.S.C. App. 5(b). National emergency proclaimed by President Harry S. Truman (Proc. 2914, Dec. 16, 1950; 15 F.R. 9029; 64 Stat. A4544) (not reproduced herein) is still in effect.

under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

3. EXCERPT FROM CODE OF FEDERAL REGULATIONS, TITLE 31, CHAPTER V, PART 500

Subpart B—Prohibitions

§ 500.201. Transactions involving designated foreign countries or their nationals, effective date.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of any designated foreign country, or any national thereof, or such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property, by any person within the United States.

(b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraphs (a) or (b) of this section is hereby prohibited.

(d) The term "designated foreign country" means a foreign country in the following schedule and the term "effective date" and the term "effective date of this section" means with respect to any designated foreign country, or any national thereof, 12:01 a.m., eastern standard time of the date specified in the following schedule:

Schedule [6]

COUNTRY AND EFFECTIVE DATE

1. China: December 17, 1950.
2. North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950.

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[6] 15 F.R. 9040 as amended by 18 F.R. 2079 and 29 F.R. 6010.

3. North Viet-Nam, i.e., Viet-Nam north of the 17th parallel of north latitude: May 5, 1964.

With respect to any conutry and for any other purpose for which an "effective date" is not otherwise provided the "effective date" shall be December 17, 1950.

4. PROCLAMATION 3447 [7]

EMBARGO ON ALL TRADE WITH CUBA

WHEREAS the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, in its Final Act resolved that the present Government of Cuba is incompatible with the principles and objectives of the Inter-American system; and, in light of the subversive offensive of Sino-Soviet Communism with which the Government of Cuba is publicly aligned, urged the member states to take those steps that they may consider appropriate for their individual and collective self-defense;

WHEREAS the Congress of the United States, in section 620(a) of the Foreign Assistance Act of 1961 [8] (75 Stat. 445), as amended, has authorized the President to establish and maintain an embargo upon all trade between the United States and Cuba; and

WHEREAS the United States, in accordance with its international obligations, is prepared to take all necessary actions to promote national and hemispheric security by isolating the present Government of Cuba and thereby reducing the threat posed by its alignment with the communist powers:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, acting under the authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do

1. Hereby proclaim an embargo upon trade between the United States and Cuba in accordance with paragraphs 2 and 3 of this proclamation.

2. Hereby prohibit, effective 12:01 A.M., Eastern Standard Time, February 7, 1962, the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba; and I hereby authorize and direct the Secretary of the Treasury to carry out such prohibition, to make such exceptions thereto, by license or otherwise, as he determines to be consistent with the effective operation of the embargo hereby proclaimed, and to promulgate such rules and regulations as may be necessary to perform such functions.

3. AND FURTHER, I do hereby direct the Secretary of Commerce, under the provisions of the Export Control Act of 1949, as amended (50 U.S.C. App. 2021–2032), to continue to carry out the prohibition of all exports from the United States to Cuba, and I hereby authorize him, under that Act, to continue, make, modify or revoke exceptions from such prohibition.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this third day of February, in the year of our Lord nineteen hundred and sixty-two, and of the Independence of the United States of America the one hundred and eighty-sixth.

[SEAL]

JOHN F. KENNEDY

B. Customs Treatment of Imports From Communist Countries

1. SUMMARY OF PERTINENT PROVISIONS

All Communist countries except Poland and Yugoslavia are presently ineligible by law to benefit from the unconditional most-favored-nation treatment that the United States as a rule accords to all of its trading partners. Currently based on section 231 of the Trade Expansion Act of 1962, as amended,[9] this ineligibility, in terms of tariff treatment, means that imports from these countries are dutied at full rates, established by the Tariff Act of 1930, rather than at lower rates

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[7] 27 F.R. 1085.
[8] See p. 6.
[9] See p. 17.

resulting from subsequent bilateral and multilateral tariff agreements to which the United States is a party, and applicable to imports from MFN countries.

Communist countries' ineligibility for MFN treatment is specifically reflected, in the field of customs tariff, in the provisions of general headnote 3(e) of the Tariff Schedules of the United States.[10] Although these schedules were not approved directly by the legislative process, their incorporation in the tariff legislation was authorized by section 101 of the Tariff Classification Act of 1962.[11]

A separate statute[12] resulted in the revocation of Cuba's MFN status as well as of the preferential tariff treatment of imports from Cuba.[13]

The applicability of the MFN status to Poland and Yugoslavia is based on the provisions of section 231(b) of the Trade Expansion Act of 1962, as amended,[14] and a subsequent Presidential determination.[15]

In addition to the special tariff treatment reserved to imports from most Communist countries, there is also in effect a total ban on imports of certain types of furskins from the Soviet Union and Communist China.[16]

Although not specifically applicable to imports from Communist countries, the ban on importation of subversive publications, contained in section 305 of the Tariff Act of 1930, as amended,[17] in practice applies mostly to publications from foreign Communist sources.

2. EXCERPT FROM THE TRADE EXPANSION ACT OF 1962, AS AMENDED

SEC. 231.[18] PRODUCTS OF COMMUNIST COUNTRIES OR AREAS.

(a) The President shall, as soon as practicable, suspend, withdraw, or prevent the application of the reduction, elimination, or continuance of any existing duty or other import restriction, or the continuance of any existing duty-free or excise treatment, proclaimed in carrying out any trade agreement under this title or under section 350 of the Tariff Act of 1930, to products, whether imported directly or indirectly, of any country or area dominated or controlled by Communism.

(b) The President may extend the benefits of trade agreement concessions made by the United States to products, whether imported directly or indirectly, of a country or area within the purview of subsection (a) which, at the time of enactment of this subsection, was receiving trade concessions, when he determines that such treatment would be important to the national interest and would promote the independence of such country or area from domination or control by international communism, and reports this determination and the reasons therefor to the Congress.

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[10] See p. 18.
[11] See p. 19.
[12] Sec. 401 of the Tariff Classification Act of 1962 (p. 19).
[13] See also general headnote 3(b) and note thereto of the Tariff Schedules of the United States (p. 18).
[14] See below.
[15] See p. 20.
[16] Headnote 4 to Subpart B, Part 5, Schedule 1, Tariff Schedules of the United States (p. 19).
[17] See p. 19.
[18] 19 U.S.C. 1861.

3. EXCERPTS FROM THE TARIFF ACT OF 1930, AS AMENDED [19]

TITLE I—TARIFF SCHEDULES OF THE UNITED STATES [20]

General Headnotes and Rules of Interpretation

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3. *Rates of Duty.* The rates of duty in the "Rates of Duty" columns numbered 1 and 2 [21] of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

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(b) *Products of Cuba.* Products of Cuba imported into the customs territory of the United States, whether imported directly or indirectly, are subject to the rates of duty set forth in column numbered 1 of the schedules. Preferential rates of duty for such products apply only as shown in the said column 1.[22]

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(e) *Products of Communist Countries.*[24]—Notwithstanding any of the foregoing provisions of this headnote, the rates of duty shown in column numbered 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of the 1962, [23] to section 231 [25] or 257(e) (2) of the Trade Expansion Act of 1962, or to action taken by the President thereunder:

Albania
Bulgaria
China (any part of which may be under Communist domination or control)
Cuba [26]
Czechoslovakia
Estonia
Germany (the Soviet zone and the Soviet section of Berlin)
Hungary
Indochina (any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control)
Korea (any part of which may be under Communist domination or control)
Kurile Islands
Latvia
Lithuania
Outer Mongolia
Rumania
Southern Sakhalin
Tanna Tuva
Tibet
Union of Soviet Socialist Republics and the area in East Prussia under the provisional administration of the Union of Soviet Socialist Republics.

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[19] 19 U.S.C. 1202–1654.

[20] Published by Presidential direction (28 F.R. 8625) under statutory authority of sec. 101(d), Tariff Classification Act of 1962 (see p. 19), and codified at 19 U.S.C. 1202.

[21] Rates of duty in col. 2 are those enacted in the Tariff Act of 1930; rates in col. 1 are rates as reduced pursuant to tariff and trade agreements presently in effect.

[22] By virtue of section 401 of the Tariff Classification Act of 1962,[23] the application to products of Cuba of either a preferential or other reduced rate of duty in column 1 is suspended. See general headnote 3(e), *infra*. The provisions for preferential Cuban rates continue to be reflected in the schedules because, under sec. 401, the rates therefor in col. 1 still form the bases for determining the rates of duty applicable to certain products, including "Philippine articles." [Footnote in the original.]

[23] See p. 19.

[24] Cf. also sec. 103(d), Agricultural Trade Development and Assistance Act of 1954, as amended (p. 32); sec. 620(f), Foreign Assistance Act of 1961, as amended (p. 7); and sec. 2, E.O. 11285 (p. 24).

[25] See p. 17.

[26] In Proclamation 3447 [see p. 16] dated February 3, 1962, the President, acting under authority of sec. 620(a) of the Foreign Assistance Act of 1961 (72 Stat. 445), as amended [see p. 6], prohibited the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba, subject to such exceptions as the Secretary of the Treasury determines to be consistent with the effective operation of the embargo. [Footnote in the original.]

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

PART 5.—HIDES, SKINS, AND LEATHER; FURSKINS

* * * * * * *

SUBPART B.—FURSKINS

Subpart B headnotes:

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4. The entry, or withdrawal from warehouse, for consumption of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furskins, raw or not dressed, or dressed, which are the product of the Union of Soviet Socialist Republics or of Communist China, is prohibited.[27]

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SEC. 305.[28] IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) Prohibition of Importation.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States [.]

4. EXCERPTS FROM THE TARIFF CLASSIFICATION ACT OF 1962[29]

TITLE I—ADOPTION OF REVISED TARIFF SCHEDULES

SEC. 101. (a) The Tariff Act of 1930, as amended, is amended by striking out titles I and II (19 U.S.C. 1001 and 1201) and, subject to subsection (b) of this section and to sections 102 and 103 of this Act, by substituting in lieu thereof a new title I entitled "Title I—Tariff Schedules of the United States".[30]

(b) Such new title I (hereinafter in this Act referred to as the "Tariff Schedules of the United States") shall consist of—

(1) the general headnotes and rules of interpretation;
(2) schedules 1 to 8, inclusive; and
(3) the appendix to the tariff schedules;

all as set forth in the report of the United States Tariff Commission (hereinafter in this Act referred to as the "Commission") entitled "Tariff Classification Study, Proposed Revised Tariff Schedules of the United States", dated November 15, 1960, as changed by the "First Supplemental Report" (January, 1962);

* * * * * * *

(d) At the earliest practicable date before the date of the proclamation of the President provided for by section 102, the President shall cause the Tariff Schedules of the United States to be published.

* * * * * * *

TITLE IV—TARIFF TREATMENT OF CUBAN PRODUCTS

SEC. 401. (a) Cuba is hereby declared to be a nation described in section 5 of the Trade Agreements Extension Act of 1951, as amended[31] (19 U.S.C. 1362, relating to imports from nations and areas dominated or controlled by the for-

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[27] This headnote supersedes sec. 11, Trade Agreements Extension Act of 1951 (65 Stat. 75), which was repealed by sec. 303(c), Tariff Classification Act of 1962 (76 Stat. 77).
[28] 19 U.S.C. 1305.
[29] Pub. L. 87–456 (76 Stat. 72).
[30] 22 U.S.C. 1202; 28 F.R. 8625.
[31] Sec. 5 was repealed by sec. 257(e)(1) of the Trade Expansion Act of 1962 (Public Law 87–794) (76 Stat. 882), and superseded by sec. 231 of the same act, as amended (19 U.S.C. 1861). (See p. 17.)

eign government or foreign organization controlling the world Communist movement). Articles which are—

(1) the growth, produce, or manufacture of Cuba, and

(2) imported on or after the date of the enactment of this Act, shall be denied the benefits of concessions contained in any trade agreement entered into under the authority of section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351).

(b) Nothing in subsection (a) shall affect the rates of duty or the customs or excise treatment of articles the growth, produce, or manufacture of any country other than Cuba.

(c) Subsection (a) shall not apply on or after the date on which the President proclaims that he has determined that Cuba is no longer dominated or controlled by the foreign government or foreign organization controlling the world Communist movement.

(d) The Act of December 17, 1903 (19 U.S.C. 124, 125), and section 316 of the Tariff Act of 1930, as amended (19 U.S.C. 1316), both relating to the implementation of the treaty with Cuba concluded on December 11, 1902,[32] shall not apply during the period which subsection (a) applies.

5. DETERMINATION UNDER SECTION 231(b) OF THE TRADE EXPANSION ACT OF 1962, AS AMENDED, PERMITTING CONTINUATION OF NONDISCRIMINATORY TRADE TREATMENT FOR POLAND AND YUGOSLAVIA[33]

THE WHITE HOUSE,
Washington, March 26, 1964.

Memorandum for: The Secretary of State.
The Secretary of the Treasury.

Subject: Determination under section 231(b) of the Trade Expansion Act of 1962, as amended, permitting continuation of nondiscriminatory trade treatment for Poland and Yugoslavia.

Pursuant to section 231(b) of the Trade Expansion Act of 1962, as amended, I hereby determine that extending the benefits of trade agreement concessions made by the United States to products, whether imported directly or indirectly, of the Polish People's Republic and the Socialist Federal Republic of Yugoslavia, both of which were receiving trade concessions on December 16, 1963, will be important to the national interest and will promote the independence of these two countries from domination or control by international communism. The reasons for this determination are contained in the attached statement.

The Secretary of State is directed to report this determination and the reasons therefor to the Congress, as required by section 231(b) of the Trade Expansion Act of 1962, as amended.

The Secretary of the Treasury is directed to inform the Commissioner of Customs of this determination.

LYNDON B. JOHNSON.

STATEMENT

Subject: Determination under section 231(b) of the Trade Expansion Act of 1962, as amended, permitting continuation of nondiscriminatory trade treatment for Poland and Yugoslavia.

The principal objective of U.S. policy in Eastern Europe is to encourage peaceful efforts toward loosening of control from Moscow. Both Yugoslavia and Poland have demonstrated that they are prepared to undertake considerable risks to maintain and increase their independence. Trade with the free world, and in particular with the United States, is one of the basic ways in which these countries can resist Soviet control. Depriving them of the opportunity to trade on competitive terms with the United States would be a sure way to reverse the trend in Eastern Europe and to increase the power and influence of the Soviets in Eastern Europe.

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[32] Convention of Commercial Reciprocity (33 Stat. 2136; TS 427), granting reciprocal preferential tariff treatment. This convention was rendered inoperative and a new reciprocal preferential tariff schedule was established by the Exclusive Agreement Supplementary to the General Agreement on Tariffs and Trade (61 Stat. 3699; TIAS 1703) signed on Dec. 19 and 22, 1947, for such time as both signatories remain contracting parties to the GATT.

[33] 29 F.R. 4851 or 4913; 48 C.F.R., pt. 190.

A. YUGOSLAVIA

Although Yugoslavia is a Communist country, its determination to maintain its independence from Soviet bloc domination has been demonstrated over the past 15 years. The Yugoslav Government has encouraged a broad range of contacts between Yugoslavia and the West and has made Yugoslavia accessible to people, ideas, and information coming from the West.

Yugoslavia is not a member of the Warsaw Pact nor of the Soviet bloc's Council for Mutual Economic Assistance (CEMA). On the other hand, Yugoslavia has long been associated with all of the major free world economic organizations, including the International Bank for Reconstruction and Development, the International Monetary Fund, the OECD, and the GATT. In addition, it has been seeking the opportunity to discuss trade arrangements with the EEC. More than 70 percent of Yugoslavia's foreign trade is with the free world, and Yugoslavia has undertaken important reforms in its foreign trade system to bring it more into line with Western practices.

Since 1948, when Yugoslavia's refusal to submit to domination by the U.S.S.R. caused its expulsion from the Soviet bloc, the United States has followed a policy of supporting Yugoslavia's desire to make its way as an independent state. This policy has served the national interest of the United States in important ways. Yugoslavia's assertion of independence greatly weakened the strategic threat of Soviet-controlled military power in Eastern Europe. Indeed, the final victory over Communist guerrillas in Greece was made possible by the closing of the Yugoslav border against them. Yugoslav self-assertion began the destruction of the image of monolithic Communist solidarity, and it showed that a country can successfully refuse to submit to domination by the Soviet Union.

These considerations are still valid and remain important to U.S. national interest today. The significance of Yugoslavia's independence has not diminished. As long as its example exists, the pressures on other Communist parties and governments to seek similar advantageous solutions based on the exercise of national independence will grow.

The continuation of nondiscriminatory trade treatment of Yugoslavia by the United States is of fundamental importance in supporting the independence of Yugoslavia. Such trade relations with the United States demonstrates to the Yugoslav leadership and people, as well as to the other nations of Eastern Europe, that the United States will permit normal trading possibilities to countries which assert their independence from domination by international communism.

Nondiscriminatory trade is also essential to enable Yugoslavia to maintain its exports to the United States so that it can import from us and earn the dollars required to meet its debt repayment obligations to the United States. Yugoslavia's payments on dollar repayable obligations will be well over $10 million in each of the next several years.

The Soviet Union and other countries of the Soviet bloc are now, once again, making a concentrated effort to improve economic and other relations with Yugoslavia. U.S. failure to continue nondiscriminatory trade treatment would contribute to forcing Yugoslavia into greater dependence upon the Soviet-controlled Communist countries and thus undermine our efforts to assist Yugoslavia to pursue an independent, unalined policy.

B. POLAND

Poland has not achieved the degree of independence from Moscow that Yugoslavia has. Nevertheless, since the events of 1956, Poland has attained a large measure of autonomy both in internal affairs and in foreign relations.

After 1956, Poland reversed its policy toward collectivization of agriculture. Today, 87 percent of the arable land of Poland is privately held.

A far greater degree of freedom of speech has been permitted in Poland since 1956, and intellectual activity remains stimulating and lively. Poland has discontinued jamming broadcasts of the Voice of America and Radio Free Europe and has participated in certain USIA programs by which American books and periodicals have been made available to the people of Poland. Poland has also permitted relatively free emigration to the West and has regularly permitted Poles to come to the United States to visit.

Finally, basic freedom of worship is possible in Poland today. Poland permits religious education for children as well as a Catholic university and seminaries. A number of religious holy days are observed as national holidays. While religion

remains anathema to the Communists, and the Gomulka regime has probed for ways of bringing the church under some control, Catholicism in Poland remains a potent force and an obstacle to complete Communist domination. The regime, well aware that an all-out attack on the church will prejudice its beneficial relationship with the West, must show restraint so long as there is anything to gain in Poland's relation with the West.

The United States and Poland have made good progress in resolving outstanding financial and economic problems. Over the past 7 years the volume of trade has grown and there are good prospects for steady growth in the future.

Nondiscriminatory treatment for Poland's products permits that country to earn dollars with which it can buy American goods and meet its substantial financial obligations to the U.S. Government and to private American citizens. Poland's payments on these obligations have reached almost $11 million annually and will increase to over $20 million in 1967. These debts include, among others, the obligations arising from the settlement of claims of U.S. nationals whose properties were nationalized in Poland, and the obligations to repay in dollars for previous purchases of surplus agricultural commodities under Public Law 480. Cutting off trade on the present nondiscriminatory basis would impair Poland's ability to meet these obligations.

As a consequence of the Polish events of 1956, Secretary of State Dulles determined, for purposes of section 107 of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480), that Poland was not a nation dominated or controlled by the foreign government or foreign organization controlling the world Communist movement. Since that determination the United States has kept the Polish situation under close and continuing scrutiny. In November 1961 Secretary of State Rusk reaffirmed the determination of 1956. This is still our judgment today.

CONCLUSION

Continuation of nondiscriminatory trade treatment for the products of Yugoslavia and Poland is important to our national interest. The maintenance of commercial trade relations between the United States and these countries will further the objective of encouraging and promoting their independence from domination or control by international communism.

C. Johnson Debt Default Act [34]

1. SUMMARY OF PROVISIONS

American transactions in bonds, securities, or other obligations of, or loans to a foreign government, its political subdivisions, or its agent, while such foreign entity is in default in the payment of its obligations to the United States are prohibited under criminal penalties. The prohibition does not apply to transactions carried out by U.S. public corporations,[35] or to those in regard to foreign countries that are members of both the International Monetary Fund and the International Bank for Reconstruction and Development (World Bank).

In an opinion,[36] the Attorney General of the United States determined that the Johnson Debt Default Act does not apply to the extension of normal commercial credit or acquisition of customary commercial paper. The act would apply, however, to "extensions of credit for an inordinately long period" "if used as a subterfuge to evade it."

While these provisions do not apply specifically to any Communist nation as such, a number of the latter are in technical default to the United States (Czechoslovakia, Hungary, Poland, Rumania, Soviet Union, and Yugoslavia). Of these only Yugoslavia is a member of the two international financial bodies.

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[34] See p. 23. Cf. also provisions discussed on pp. 12 and 23.
[35] E.g., transactions undertaken by or in conjunction with the Export-Import Bank.
[36] Oct. 9, 1963; 42 Op. A.G., No. 15 (not reproduced herein).

2. JOHNSON DEBT DEFAULT ACT [37]

Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness, while such government, political subdivision, organization or association, is in default in the payment of its obligations, or any part thereof, to the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both.

This section is applicable to individuals, partnerships, corporations, or associations other than public corporations, created by or pursuant to special authorizations of Congress, or corporations in which the United States has or exercises a controlling interest through stock ownership or otherwise. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this section shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof, or of any organization or association acting for or on behalf of such government or political subdivision, or to making of any loan to such government, political subdivision, organization, or association.

D. Interest Equalization Tax Act, as Amended

1. SUMMARY OF PERTINENT PROVISIONS

Since 1964, an interest equalization tax has been levied on acquisitions by Americans of indirect investment securities issued in developed foreign countries.[38] While such securities issued in less developed countries are exempt from the interest equalization tax, the statute specifically excludes any country of the Sino-Soviet bloc from the definition of a less developed country. By a Presidential proclamation, all Communist countries except Yugoslavia have been designated as falling within this exclusion.[39]

2. EXCERPTS FROM THE INTEREST EQUALIZATION TAX ACT, AS AMENDED [40]

SEC. 2 INTEREST EQUALIZATION TAX

(a) IMPOSITION OF TAX.—Subtitle D [41] (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 41—INTEREST EQUALIZATION TAX

* * * * * * *

"Subchapter A—Acquisitions of Foreign Stock and Debt Obligations

* * * * * * *

"SEC. 4911. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed, on each acquisition by a United States person (as defined in section 4920(a)(4)) of stock of a foreign issuer, or of a debt obligation of a foreign obligor (if such obligation has a period remaining to maturity of 1 year or more), a tax determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) RATES OF TAX.—Except as provided in paragraphs (2) and (3)—

"(A) STOCK.—The tax imposed by subsection (a) on the acquisition of stock shall be equal to 15 percent of the actual value of the stock.

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[37] 18 U.S.C. 955.
[38] See below.
[39] See p. 24.
[40] 26 U.S.C. 4911–4931.
[41] *I.e.*, of the Internal Revenue Code (title 26, United States Code).

"(B) DEBT OBLIGATIONS.—The tax imposed by subsection (a) on the acquisition of a debt obligation shall be equal to a percentage of the actual value of the debt obligation measured by the period remaining to its maturity and determined under column II(a) of the following table:

[Table omitted.]

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"(d) TERMINATION OF TAX.—The tax imposed by subsection (a) shall not apply to any acquisition made after December 31, 1969.

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"SEC. 4916. EXCLUSION FOR INVESTMENTS IN LESS DEVELOPED COUNTRIES.

"(a) GENERAL RULE.—The tax imposed by section 4911 shall not apply to the acquisition by a United States person of—

[certain specified types of stocks and debt obligations issued by or in a less developed country]

"(b) LESS DEVELOPED COUNTRY DEFINED.—For purposes of this section, the term 'less developed country' means any foreign country (other than an area within the Sino-Soviet bloc)[42] or any possession of the United States with respect to which, as of the date of an acquisition referred to in subsection (a), there is in effect an Executive order by the President of the United States designating such country as an economically less developed country for purposes of the tax imposed by section 4911.

3. EXCERPT FROM THE EXECUTIVE ORDER 11285,[43] JUNE 10, 1966

DESIGNATION OF CERTAIN FOREIGN COUNTRIES AS ECONOMICALLY LESS DEVELOPED FOR PURPOSES OF THE INTEREST EQUALIZATION TAX

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SEC. 2. *Definition of the term "foreign country within the Sino-Soviet bloc."* For purposes of this order, the term "foreign country within the Sino-Soviet bloc" shall mean Albania, Bulgaria, any part of China which is dominated or controlled by International Communism, Cuba, Czechoslovakia, Estonia, Hungary, any part of Korea which is dominated or controlled by International Communism, Latvia, Lithuania, Outer Mongolia, Poland (including any area under its provisional administration), Rumania, Soviet Zone of Germany and the Soviet Sector of Berlin, Tibet, Union of Soviet Socialist Republics and the Kurile Islands, Southern Sakhalin, and areas in East Prussia which are under the provisional administration of the Union of Soviet Socialist Republics, and any part of Viet Nam which is dominated or controlled by International Communism.[44]

E. Enforcement of Export Control Regulations

Through its Bureau of Customs, the Department of the Treasury also enforces, at the point of exportation, export control regulations otherwise administered by the Department of State[45] and the Department of Commerce.[46]

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[42] For definition of the term "foreign country within the Sino-Soviet bloc" see sec. 2, E.O. 11285 (below).

[43] 31 F.R. 8211.

[44] Cf. also sec. 103(d), Agricultural Trade Development and Assistance Act of 1954, as amended (p. 32); sec. 620(f), Foreign Assistance Act of 1961, as amended (p. 7); and general headnote 3(e), Tariff Schedules of the United States (p. 18).

[45] See pp. 1–4.

[46] See pp. 36–41.

III. DEPARTMENT OF JUSTICE

A. General Functions

1. SUMMARY OF PERTINENT PROVISIONS

The Department of Justice does not have direct regulatory jurisdiction in any aspect of East-West trade; its role is essentially of a secondary or residual character.

Perhaps the most important of the Department's functions in East-West trade relations is the legal enforcement of pertinent penal provisions and the prosecution of violators of legislation and/or regulation otherwise within the administrative jurisdiction of other U.S. agencies. Criminal penalties are applicable to violators of munitions export control (sec. 414(c) of the Mutual Security Act of 1954, as amended);[1] of embargo on trade with Communist China, North Korea, and North Vietnam (sec. 5(b)(3) of the Trading With the Enemy Act, as amended);[2] of the ban on long-term credits to nations in default to the United States (Johnson Debt Default Act);[3] of export controls (sec. 5 of the Export Control Act of 1959, as amended);[4] of controls over U.S.-flag shipping to most Communist countries (sec. 6 of Transportation Order T–1)[5] and specifically to Far Eastern Communist countries (sec. 7 of Transportation Order T–2);[6] and of controls over export of nuclear materials and information (secs. 221 through 224 of the Atomic Energy Act of 1954, as amended).[7]

The Attorney General is empowered by section 212(d)(3) of the Immigration and Nationality Act, as amended,[8] to waive the ineligibility of an alien nonimmigrant (tourist, or similar) to receive a nonimmigrant visa, or his inadmissibility to the United States, on a number of grounds, including those applicable mostly to nationals of Communist countries.[9]

The Department of Justice is also the agency with which foreign agents, including those operating in the commercial or financial area, must register pursuant to the provisions of the Foreign Agents Registration Act of 1938, as amended.[10] This act does not have any regulatory impact on foreign trade; it merely requires the agents to disclose their activity, the arrangement pursuant to which they act, their receipts and expenditures on behalf of their foreign principal, as well as to label and file with the Department of Justice copies of all material disseminated by them in the United States pertaining to the public or political interests of their foreign principal.

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[1] See p. 3.
[2] See p. 26.
[3] See p. 23.
[4] See p. 39.
[5] See p. 43.
[6] See p. 44.
[7] See p. 49.
[8] See p. 12.
[9] Sec. 212(a)(28)(C) through (G). (See pp. 11–12.)
[10] See p. 26.

Exempt from registration are agents who engage only in private and nonpolitical financial and mercantile activities in furtherance of the bona fide trade or commerce of their foreign principal.[11]

The types of foreign agents in the field of foreign trade that are required to register under the act are: purchasing agents (retained by foreign governments to procure commodities on their behalf), sales agents (acting as direct sources within the United States for purchase of foreign goods), package companies (sending post-and-duty paid parcels abroad, or money for the purchase of such a parcel abroad, the parcel serving as a gift from a U.S. resident to a foreign resident), foreign government investment offices, and American public relations firms, and other similar agencies promoting trade with and investment in the foreign country on whose behalf they act. A number of such registered agencies represent principals in Communist countries, generally a Government agency of the latter.

Violators of the act are subject to criminal prosecution and penalties.[12]

2. EXCERPT FROM SECTION 5(b)(3) OF THE TRADING WITH THE ENEMY ACT, AS AMENDED [13]

[. . .] Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

3. EXCERPTS FROM FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED [14]

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SEC. 1. (q) For the purpose of section (3)(d) hereof, activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic person engaged in substantial commercial, industrial or financial operations in the United States shall not be deemed to serve predominantly a foreign interest because such activities also benefit the interests of a foreign person engaged in bona fide trade or commerce which is owned or controlled by, or which owns or controls, such domestic person: *Provided*, That (i) such foreign person is not, and such activities are not directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in substantial part by, a government of a foreign country or a foreign political party, (ii) the identity of such foreign person is disclosed to the agency or official of the United States with whom such activities are conducted, and (iii) whenever such foreign person owns or controls such domestic person, such activities are substantially in furtherance of the bona fide commercial, industrial or financial interests of such domestic person.

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SEC. 2. (a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section 2(a) and section 2(b) hereof unless he is exempt from registration under the provisions of this Act.

Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a

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[11] Sec. 3(d). (See p. 29.)
[12] Sec. 8. (See p. 29.)
[13] 50 U.S.C. App. 5(b)(3).
[14] 22 U.S.C. 611–621.

registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal.

The registration statement shall include the following, which shall be regarded as material for the purposes of this Act:

(1) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2) Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each; the

name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal;

(4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity;

(5) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder, including a detailed statement of any such activity which is a political activity;

(7) The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign prinicpal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign

principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of title 18, United States Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where a contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10) Such other statements, information, or documents pertinent to the purposes of this Act as the Attorney General, having due regard for the national security and the public interest, may from time to time require;

(11) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b) Every agent of a foreign principal who has filed a registration statement required by section 2(a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), (6), and (9) of section 2(a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e) If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of the Act of October 17, 1940 (54 Stat. 1201), the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of the Act of October 17, 1940 (54 Stat. 1201).

(f) The Attorney General may, by regulation, provide for the exemption—

(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a part-

ner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act.

EXEMPTIONS

SEC. 3. The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

* * * * * * *

(d) Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 4), and such rules and regulations as may be prescribed thereunder; [* * *]

* * * * * * *

ENFORCEMENT AND PENALTIES

SEC. 8. (a) Any person who—

(1) willfully violates any provision of this Act or any regulation thereunder, or

(2) in any registration statement or supplement thereto or in any statement under section 4(a) hereof concerning the distribution of political propaganda or in any other document filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, except that in the case of a violation of subsection (b), (e), or (f) of section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than $5,000 or imprisonment for not more than six months, or both.

(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

(c) Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provision of this Act or any regulation thereunder shall be subject to deportation in the manner provided by sections 241, 242, and 243 of the Immigration and Nationality Act.

(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1(j) hereof in the form of prints or in any other form reasonably adapted to, or reasonably appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.

(e) Failure to file any such registration statement or supplements thereto as is required by either section 2(a) or section 2(b) shall be considered a continuing

offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(f) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred clause and shall be expedited in every way.

(g) If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this Act and the regulations issued thereunder.

(h) It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either express or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.

IV. DEPARTMENT OF AGRICULTURE

A. Restrictions on Sales of Agricultural Products Within the Food for Peace Program

1. SUMMARY OF PERTINENT PROVISIONS

One of the principal purposes of the Food for Peace program, enacted by the Agricultural Trade Development and Assistance Act of 1954, as amended,[1] is to authorize the sale of American agricultural commodities to foreign countries for dollars on credit or for currencies of the purchasing countries.[2]

The act, however, limits such sales to "friendly" countries and defines the latter in two ways, depending on whether a dollar credit sale or a sale for foreign currency is involved.[3] This differentiation in the definition of a "friendly" country results, in practice, in a policy which prohibits—

(a) *both types of sales* in respect to any country dominated by international Communism; and

(b) *sales for foreign currency*, but not for dollar credit, to any Communist country. Based on the present interpretation of the difference between a Communist country and a country dominated by international communism, Poland and Yugoslavia would be eligible for sales for dollar credits.[4]

In addition, a specific provision prohibits all sales, either for foreign currencies or for dollar credits, to a country controlling a world Communist movement (Soviet Union, China) or one with which the United States does not have diplomatic relations (among the Communist countries: Albania, Cuba, East Germany, China, North Korea, North Vietnam),[5] or one which is a military aggressor against any country having diplomatic relations with the United States.[6]

As some other similar legislation, this act also affects third countries' trade with certain Communist countries. It specifically exempts from the definition of a "friendly" country any country that sells, furnishes, or permits its ships or aircraft to carry from or to Cuba or North Vietnam, as long as they remain under a Communist regime, any commodities at all. This ban is somewhat mitigated in respect to nations trading with Cuba in that it permits sales to countries which supply or transport to Cuba only medical supplies, nonstrategic raw materials for agriculture, and nonstrategic agricultural or food commodities, if the President finds that such sales are in the national interest.[7]

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[1] 7 U.S.C. 1691–1736d.
[2] Sec. 101. (See p. 32.)
[3] Sec. 103(d). (See p. 32.)
[4] Sec. 103(j). (See p. 33.)
[5] Sec. 103(j). (See p. 33.)
[6] Sec. 103(d). (See p. 32.)
[7] Sec. 103(d). (See p. 32.)

Sale of agricultural commodities within the Food for Peace program to countries which sell, furnish, or permit ships or aircraft under their registry to transport to North Vietnam any commodities has also been prohibited by the Department of Agriculture and Related Agencies Appropriation Act, 1968.[8] A similar prohibition was included also in comparable legislation for 1967.[9]

2. EXCERPTS FROM THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED

SEC. 2.[10] The Congress hereby declares it to be the policy of the United States to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; and to promote in other ways the foreign policy of the United States.

TITLE I

SEC. 101.[11] In order to carry out the policies and accomplish the objectives set forth in section 2 of this Act, the President is authorized to negotiate and carry out agreements [12] with friendly countries to provide for the sale of agricultural commodities for dollars on credit terms or for foreign currencies.

SEC. 103.[13] In exercising the authorities conferred upon him by this title, the President shall—

* * * * * *

(d) make sales agreements only with those countries which he determines to be friendly to the United States: *Provided*, That the President shall periodically review the status of those countries which are eligible under this subsection and report the results of such review to the Congress. As used in this Act, "friendly country" shall not include[14] (1) any country or area dominated or controlled by a foreign government or organization controlling a world Communist movement, or (2) for the purpose only of sales of agricultural commodities for foreign currencies under title I of this Act, any country or area dominated by a Communist government, or (3) for the purpose only of sales of agricultural commodities under title I of this Act, any nation which sells or furnishes or permits ships or aircraft under its registry to transport to or from Cuba or North Vietnam (excluding United States installations in Cuba) any equipment, materials, or commodities so long as they are governed by a Communist regime: *Provided*, That with respect to furnishing, selling, or selling and transporting to Cuba medical supplies, non-strategic raw materials for agriculture, and non-strategic agricultural or food commodities, sales agreements may be entered into if the President finds with respect to each such country, and so informs the Senate and the House of Representatives of the reasons therefor, that the making of each such agreement would be in the national interest of the United States and all such findings and reasons therefor shall be published in the Federal Register[.] . . . Notwithstanding any other Act, the President may enter into agreements for the sale of agricultural commodities for dollars on credit terms under title I of this Act with countries which fall within the definition of "friendly country" for the purpose of such sales and no sales under this Act shall be made with any country if the President finds such country is (a) an aggressor, in a military sense, against any country having diplomatic relations with the United States, or (b) using funds, of

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[8] See p. 33.
[9] Pub. L. 89–556; 80 Stat. 702 (not reproduced herein).
[10] 7 U.S.C. 1691.
[11] 7 U.S.C. 1701.
[12] As indicated earlier (p. 13), the negotiation of these agreements is within the province of the Department of State.
[13] 7 U.S.C. 1703.
[14] Cf. also sec. 620(f). Foreign Assistance Act of 1961, as amended (p. 7); general headnote 3(e), Tariff Schedules of the United States (p. 18); and sec. 2, E.O. 11285 (p. 24).

any sort, from the United States for purposes inimical to the foreign policies of the United States;

* * * * * * *

(j) exercise the authority contained in title I of this Act to assist friendly countries to be independent of domination or control by any world Communist movement. Nothing in this Act shall be construed as authorizing sales agreements under title I with any government or organization controlling a world Communist movement or with any country with which the United States does not have diplomatic relations[.]

3. EXCERPTS FROM THE DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES APPROPRIATION ACT, 1968 [15]

DEPARTMENT OF AGRICULTURE

TITLE III—CORPORATIONS

* * * * * * *

COMMODITY CREDIT CORPORATION

* * * * * * *

[N]o funds appropriated by this Act shall be used to formulate or administer programs for the sale of agricultural commodities pursuant to Title I of Public Law 480, 83d Congress, as amended, to any nation which sells or furnishes or which permits ships or aircraft under its registry to transport to North Vietnam any equipment, material or commodities, so long as North Vietnam is governed by a Communist regime.[16]

B. Sales of Subsidized Agricultural Commodities to Non-"Friendly" Nations

1. SUMMARY OF PERTINENT PROVISIONS

In section 2(c) of the Agricultural Act of 1961,[17] the Congress declares it to be its policy "* * * in no manner either [to] subsidize the export, sell, or make available any subsidized agricultural commodity to any nations other than such [18] friendly nations * * *".

In its practical application, this provision appears to have no binding legal effect. The Attorney General in his opinion of October 9, 1963,[19] ruled that "[i]t is clear that the policy declaration contained in section 2(c) does not have the legal effect of prohibiting commercial sales of subsidized agricultural commodities to bloc countries at world market prices for U.S. dollars, gold, or convertible currencies. Declarations of policy in legislation, like preambles and other introductory material, do not alter specific operative provisions of law * * *".

C. Allocation of Sugar Import Quotas

1. SUMMARY OF PERTINENT PROVISIONS

The provisions of the Sugar Act of 1948, as amended,[20] which regulate the allocation of U.S. sugar import quotas to sugar-producing

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[15] Pub. L. 90–113; 81 Stat. 319.

[16] See also sec. 103(d) of the Agricultural Trade Development and Assistance Act, of 1954, as amended (7 U.S.C. 1703(d) (p. 32).

[17] 75 Stat. 294; 7 U.S.C. 1282 note (not reproduced herein).

[18] Referring to erstwhile provisions of sec. 107 of the Agricultural Trade Development and Assistance Act of 1954, presently replaced by similar provisions of sec. 103(d) of the same act as amended. (See p. 32.)

[19] 42 Op. A.G., No. 15 (not reproduced herein).

[20] Pertinent provisions in sec. 202 (7 U.S.C. 1112). (See p. 34.)

countries, affect only one of the Communist countries, Cuba. Other Communist countries, historically, have not been sources of U.S. sugar imports.

Although the present version of the act allocates to Cuba a share equal to 50 percent of the global general sugar quota [21] (after allocating some specific quotas to a number of countries), it also provides that this share be withheld from Cuba during the current suspension of diplomatic relations between the United States and Cuba, and be redistributed among other quota beneficiaries.[22]

Cuba has been also specifically excluded from participating in any supplemental apportionment of sugar allocations on a first-come, first-served basis, as long as the break in diplomatic relations remains in effect.[23] Cuban quota and other possible allocations are to be restored in an orderly fashion only after diplomatic relations have been resumed.[24]

A provision similar to the above cited mandatory withholding of the Cuban sugar quota, but subject to Presidential discretion, is contained in sec. 620(a)(2) of the Foreign Assistance Act of 1961, as amended.[25]

2. EXCERPTS FROM THE SUGAR ACT OF 1948, AS AMENDED

SEC. 202.[26] Whenever a determination is made, pursuant to section 201, of the amount of sugar needed to meet the requirements of consumers, the Secretary shall establish quotas, or revise existing quotas—

* * * * * * *

(c)(3) For the calendar years 1966 through 1971, inclusive, for individual, foreign countries other than the Republic of the Philippines, Ireland, and the Bahama Islands, by prorating the amount of sugar determined under paragraph (1) of this subsection, less the amounts required to establish quotas as provided in paragraph (4) of this subsection for Ireland and the Bahama Islands, among foreign countries on the following basis:

(A) For countries in the Western Hemisphere:

Country	*Per centum*
Cuba	50.00

* * * * * * *

(d) Notwithstanding any other provision of this Act—

(1)(A) During the current period of suspension of diplomatic relations between the United States and Cuba, the quota provided for Cuba under subsection (c) shall be withheld and a quantity of sugar equal to such quota shall be prorated as follows:

(i) any quantity of quota withheld from Cuba at a determination up to and including the amount of ten million short tons, raw value, under section 201 shall be prorated to other foreign countries named in paragraph (3) of subsection (c) on the basis of the percentages stated therein; and, in addition,

(ii) any quantity of quota withheld from Cuba at a determination in excess of the amount of ten million short tons, raw value, under section 201, shall be prorated to other foreign countries named in paragraph (3)(A) of subsection (c) that are members of the Organization of American States on the basis of the percentages stated therein.

(B) Whenever and to the extent that the President finds that the establishment or continuation of a quota or any part thereof for any foreign country would be contrary to the national interest of the United States, such quota or part thereof shall be withheld or suspended, and such importation shall not be

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[21] Sec. 202(c)(3)(A) (below).
[22] Sec. 202(d)(1)(A) (below).
[23] Sec. 202(d)(2)(A) (below).
[24] Sec. 202(e) (p. 35).
[25] See p. 6.
[26] 7 U.S.C. 1112.

permitted. A quantity of sugar equal to the amount of any quota so withheld or suspended shall be prorated to the other countries listed in subsection (c)(3)(A) (other than any country whose quota is withheld or suspended) on the basis of the quotas then in effect for such countries.

* * * * * * *

(2)(A) Whenever the Secretary finds that it is not practicable to obtain the quantity of sugar needed from foreign countries to meet any increase during the year in the requirements of consumers under section 201 by apportionment to countries pursuant to subsections (b) and (c) and the foregoing provisions of this subsection, such quantity of sugar may be imported on a first-come, first-served basis from any foreign country, except that no sugar shall be authorized for importation from Cuba until the United States resumes diplomatic relations with that country and no sugar shall be authorized for importation hereunder from any foreign country with respect to which a finding by the President is in effect under paragraph (1)(B) of this subsection: *Provided*, That such findings shall not be made in the first nine months of the year unless the Secretary also finds that limited sugar supplies and increases in prices have created or may create an emergency situation significantly interfering with the orderly movement of foreign raw sugar to the United States. [. . .]

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(e) Whenever the President finds that it is no longer contrary to the national interest of the United States to reestablish a quota or part thereof withheld or suspended under subsection (d)(1) of this section, and, in the case of Cuba, diplomatic relations have been resumed by the United States, such quota shall be restored in the manner the President finds appropriate: *Provided*, That the entire amount of such quota shall be restored for the third full calendar year following such finding by the President. The temporary quotas established pursuant to subsection (d)(1) shall, notwithstanding any other provision of this section, be reduced pro rata to the extent necessary to restore the quota in accordance with the provisions of this subsection. [. . .]

V. DEPARTMENT OF COMMERCE

A. Export Control

1. SUMMARY OF PERTINENT PROVISIONS

The basic statute authorizing the establishment of controls over U.S. exports of commodities and technical information is the Export Control Act of 1949, as amended.[1] Since this statute delineates only general authority and guidelines, the detailed implementation of the export control program is principally in the hands of the U.S. Office of Export Control of the Department of Commerce.

Export controls within the scope of this survey are primarily those established for reasons of national security. In addition to an embargo on exports to Far Eastern Communist areas and Cuba, mentioned elsewhere in this survey,[2] they include broad controls over exports to the Soviet Union and East European Communist countries.[3]

These controls are exercised through a system of export licenses, which are of two major types: *general* licenses, that is, broad blanket permissions to export certain types of commodities or information, presumed to have no bearing on national security, to certain destinations without any prior specific approval of the Office of Export Control; and *validated* licenses, issued only upon specific application by the exporter and after the consideration of the security aspects of each individual export transaction by the Office of Export Control.

The authority to export under a general license is contained in the *Comprehensive Export Schedule*, a voluminous document published annually by the Office of Export Control [4] and updated as it need be by *Current Export Bulletins* and publication in the *Federal Register*. The schedule specifies the conditions under which each general license may be used.

The bulk of U.S. exports that are authorized by a general license, are made under the general license G–DEST covering all regular commercial transactions. In addition, several other general licenses, authorizing specific types of exports under special circumstances, are in effect. The latter cover commodities of low value, in transit or shipped as foreign aid, dunnage, bunkerage, baggage, tools of trade, gift parcels, and commodities in other similar, not strictly commercial circumstances.

For the purpose of general licensing, the countries of the world are assigned to several country groups, each of which is subject to export

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[1] See p. 38.
[2] See p. 14 ff.
[3] Although practically identical in its purpose with the control system implemented within the international framework of the Consultative Group-Coordinating Committee (see p. 5), the U.S. export control program is generally more restrictive than the international one.
[4] *Comprehensive Export Schedule* also constitutes parts 368 through 399 of chapter III, title 15, Code of Federal Regulations.

controls of different severity. Communist countries fall into the following country groups:

Country group V: Yugoslavia (group includes also most non-Communist countries outside the Western Hemisphere);

Country group W: Poland and Rumania;

Country group Y: Albania, Bulgaria, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, and the Soviet Union;

Country group Z: Communist China, North Korea, North Vietnam, and Cuba.

The specific regulation as to whether an individual commodity may be exported to a certain destination is contained in the Commodity Control List which constitutes a major part of the *Comprehensive Export Schedule* and consists of a listing of all commodities that fall under the export control authority of the Department of Commerce. The list identifies for each listed commodity the destinations for which a validated export license is required. The export of commodities to destinations for which a validated license is not required may be made under general license G–DEST.

As might be surmised, the restrictiveness of controls over exports to Communist countries increases from group V to group Z, and so does the number of commodities that require a validated export license. In fact, every commodity to be exported to group Z destinations must have a validated license.

It might be added that, in practice, there is also some differentiation in the controls over exports to group Y destinations. A substantial number of commodities that may be exported under general license G–DEST to other countries of the group, require a validated license for export to East Germany. Thus, controls over exports to Communist countries are presently applied at five different levels (in order of increasing restrictiveness): (1) Yugoslavia, (2) group W, (3) group Y less East Germany, (4) East Germany, and (5) group Z.

In view of the fact that the detailed implementation of the export control program does not depend directly on statutory provisions but rather on regulations promulgated by the Office of Export Control, the practical effect of the program can be modified without prior legislative modification. This effect depends, in general lines, on two primary considerations: (*a*) whether the commodity in question requires a validated license for the contemplated destination, or not, and (*b*) the licensing policy in regard to the commodity and/or destination for items that do require a validated license, that is, in what circumstances a validated license ought or ought not to be issued.

Although the validated license requirement has been, in the recent past, eliminated for a substantial number of items destined to group Y countries, this action has, in practice, not resulted in a significant change in the flow of commodities involved from the United States to the countries in question. As a rule, items newly placed under general licence G–DEST are those for which a validated license would have been readily issued in any event. Removing the validated license requirement in practice meant only the elimination of the administrative work involved in applying for and issuing a validated license.

The general policy of the Office in issuing validated licenses for exports to Communist countries is to deny such licenses for all exports

to group Z countries, except for commodities destined to friendly diplomatic missions located in such countries.

A list of commodities that have been approved for export under a validated license is published daily by the Office of Export Control, and a more comprehensive report on the operation of the export control program, listing also major items for which a validated license had been denied, is published on a quarterly basis.

Violations of export control provisions are subject to penal as well as administrative sanctions (sec. 5 of the act).[5]

2. EXPORT CONTROL ACT OF 1949, AS AMENDED[6]

AN ACT To provide for continuation of authority for the regulation of exports, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembeld, That this Act may be cited as the "Export Control Act of 1949."

FINDINGS

SECTION 1. (a) Certain materials continue in short supply at home and abroad so that the quantity of United States exports and their distribution among importing countries affect the welfare of the domestic economy and have an important bearing upon fulfillment of the foreign policy of the United States.

(b) The unrestricted export of materials without regard to their potential military and economic significance may adversely affect the national security of the United States.

DECLARATION OF POLICY

SEC. 2. (1) The Congress hereby declares that it is the policy of the United States to use export controls to the extent necessary (A) to protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand; (B) to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and (C) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(2) The Congress further declares that it is the policy of the United States to formulate, reformulate, and apply such controls to the maximum extent possible in cooperation with all nations with which the United States has defense treaty commitments, and to formulate a unified commercial and trading policy to be observed by the non-Communist-dominated nations or areas in their dealings with the Communist-dominated nations.

(3) The Congress further declares that it is the policy of the United States to use its economic resources and advantages in trade with Communist-dominated nations to further the national security and foreign policy objectives of the United States.

(4) The Congress further declares that it is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

AUTHORITY

SEC. 3. (a) To effectuate the policies set forth in section 2 hereof the President may prohibit or curtail the exportation from the United States, its Territories, and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, such rules

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[5] See p. 39.

[6] **50 App. U.S.C. 2021–2032.**

and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any persons. Such rules and regulations shall provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its Territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President shall determine that such export makes a significant contribution to the military or economic potential of such nation or nations which would prove detrimental to the national security and welfare of the United States. Such rules and regulations shall implement the provisions of section 2(4) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in section 2(4) must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of section 2(4).

(b) The President may delegate the power, authority, and discretion conferred upon him by this Act, to such departments, agencies, or officials of the Government as he may deem appropriate.

(c) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent required to effectuate the policies set forth in section 2(1)(B) or 2(1)(C) of this Act.

CONSULTATION AND STANDARDS

SEC. 4. (a) In determining what shall be controlled hereunder, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports.

(b) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provisions shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

VIOLATIONS

SEC. 5. (a) Except as provided in subsection (b) of this section, in case of any violation of any provision of this Act or any regulation, order, or license issued hereunder, the violator or violators, upon conviction, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. For a second or subsequent offense, the offender shall be punished by a fine of not more than three times the value of the exports involved or $20,000, whichever is greater, or by imprisonment for not more than five years, or by both such fine and imprisonment.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued hereunder, with knowledge that such exports will be used for the benefit of any Communist-dominated nation, shall be punished by a fine of not more than five times the value of the exports involved or $20,000, whichever is greater, or by imprisonment for not more than five years, or by both such fine and imprisonment.

(c) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed $1,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.

(e) Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Nothing in subsection (c), (d), or (f) shall limit—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act or any regulation, order, or license issued under this Act,

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act or any regulation, order, or license issued under this Act, or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 6. (a) To the extent necessary or appropriate to the enforcement of this Act, the head of any department or agency exercising any functions hereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443) shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE ACT

SEC. 7. The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237), except as to the requirements of section 3 thereof.

QUARTERLY REPORT

SEC. 8. The head of any department or agency or official exercising any functions under this Act shall make a quarterly report, within 45 days after each quarter, to the President and to the Congress of his operations hereunder.

DEFINITION

SEC. 9. The term "person" as used herein shall include the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

EFFECTS ON OTHER ACTS

SEC. 10. The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tin-plate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

EFFECTIVE DATE

SEC. 11. This Act shall take effect February 28, 1949, upon the expiration of section 6 of the Act of July 2, 1940 (54 Stat. 714), as amended. All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under said section 6 of the Act of July 2, 1940, shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

TERMINATION DATE

SEC. 12. The authority granted herein shall terminate on June 30, 1969, or upon any prior date which the Congress by concurrent resolution or the President may designate.

B. Control of Shipping

1. SUMMARY OF PERTINENT PROVISIONS

The control over the exportation of commodities is backstopped by a similar parallel system of restrictions on shipping of these commodities. The U.S. policy in this regard is two-pronged: it controls the traffic of U.S.-flag sea and air carriers with certain Communist countries, and it attempts to influence such traffic of foreign-flag carriers.

(*a*) The *control of domestic-flag shipping* is carried out under the provisions of Transportation Orders T–1 and T–2, promulgated under the general authority of section 101 of the Defense Production Act of 1950, as amended,[7] and administered by the Assistant Secretary of Commerce for Domestic and International Business.[8]

Transportation Order T–1 [9] prohibits a U.S.-flag sea or air carrier and any of its agents or employees to transport certain security-controlled commodities (even though originating in a non-U.S. port)[10] to, or discharge them at, a port located in a country included in country groups X, Y, or Z,[11] unless a pertinent validated export license (for shipments from U.S. ports) or an authorization issued by the Assistant Secretary (for shipments from foreign ports) has been obtained.

It must be pointed out, however, that a large number of commodities that need a validated license if exported from the United States,

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[7] 50 U.S.C. App. 2071 (not reproduced herein).

[8] The administration of T–1 and T–2 was originally entrusted to the Under Secretary for Transportation. However, when activities under his jurisdiction were transferred to the newly created Department of Transportation and his office was, for all practical purposes, transformed into that of the Secretary of Transportation, the authority of the two transportation orders remained within the Department of Commerce and was delegated to its Assistant Secretary for Domestic and International Business (cf. amendment to Department of Commerce Order 181, 32 F.R. 3110; not reproduced herein).

[9] See p. 43.

[10] Sec. 1. Interpretation 1, T–1 (see p. 43).

[11] Country group X: Hong Kong and Macao; for groups Y and Z see p. 37.

do not require a shipping authorization if loaded at a foreign port; the latter requirement applies only to relatively sophisticated controlled commodities of some strategic importance.

A U.S.-flag carrier, likewise, is not prohibited from calling at a restricted port even though it has on board a commodity that could not be discharged at that port, if that commodity, in fact, is not discharged at the port in question.[12]

Transportation Order T–2 [13] deals exclusively with U.S.-flag sea or air carrier traffic with Communist China, North Korea, and Communist areas in Vietnam. It flatly prohibits U.S.-flag ships and aircraft from calling at ports in these areas, from transporting or even loading any cargo that is ultimately destined for any of these areas. The order contains no provisions for the issuance of a permit or license that would authorize any of the otherwise prohibited acts.

Both T–1 and T–2 contain sections providing for penal as well as administrative sanctions in case of violation.[14]

(*b*) In addition to controlling domestic-flag shipping in Communist trade, the United States also exercises a certain degree of *control over foreign-flag ships* in trade with certain Communist countries.

Foreign-flag ships are dissuaded from calling at Cuban ports inasmuch as, pursuant to National Security Action Memorandum No. 220,[15] dated February 5, 1963, U.S. Government-financed cargoes, shipped from U.S. ports, are denied to foreign-flag vessels that have at any time since January 1, 1963, called at a Cuban port. The denial applies also to those vessels that have since their visit to Cuba changed their name and/or registry. The ban may be lifted in case of vessels whose owner or other person in control gives satisfactory certification and assurance—

(*a*) That such vessels will not, thenceforth, be employed in the Cuba trade so long as it remains the policy of the U.S. Government to discourage such trade; and

(*b*) That no other vessel under their control will thenceforth be employed in the Cuba trade, except as provided in paragraph (*c*); and

(*c*) That vessels under their control which are covered by contractual obligations, including charters, entered into prior to December 16, 1963, requiring their employment in the Cuba trade shall be withdrawn from such trade at the earliest opportunity consistent with such contractual obligations.

A complete list of interdicted as well as reinstated vessels is published by the Maritime Administration at irregular intervals in the *Federal Register*.

An identical program pursuant to National Security Action Memorandum No. 340,[16] dated January 25, 1966, is in effect in regard to foreign-flag vessels that have called at a North Vietnamese port since January 25, 1966.

Individual Government agencies that use sea shipping services for the transportation of supplies owned by them or procured under their

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[12] Sec. 4, Interpretation 1, T–1 (see p. 44).
[13] See p. 44.
[14] Sec. 6. T–1 (see p. 43), and sec. 7, T–2 (see p. 44).
[15] Memorandum is classified; text could not be obtained.
[16] Memorandum is classified; text could not be obtained.

contracts, also have promulgated regulations consonant with the provisions of the two national security action memorandums.[17]

Foreign-flag sea and air carriers are also discouraged to call at Cuban and Far Eastern Communist-held ports by provisions of the *Comprehensive Export Schedule* which prohibit the furnishing of petroleum fuels and other petroleum products to ships departing for Cuba, or on the Cuban "black list," or ships that have called within the last 180 days or will call within the next 120 days at a Far Eastern Communist port, or will carry within the next 120 days cargo destined to a Far Eastern Communist port.[18] An identical ban applies also to foreign flag aircraft that have called within the last 30 days or will call within the next 30 days or will carry within the next 30 days cargo destined to a Far Eastern Communist point.[19]

2. EXCERPTS FROM TRANSPORTATION ORDER T–1, AS AMENDED[20]

SEC. 1. PROHIBITED TRANSPORTATION AND DISCHARGE.

No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time not identified by the symbol B in the last column of the Commodity Control List (399.1 of the Comprehensive Export Schedule, issued by the Bureau of International Commerce, Department of Commerce (15 CFR Parts 368–399), any article designated as arms, ammunition, and implements of war in the United States Munitions List (22 CFR Parts 121–128), or any commodity, including fissionable materials controlled for export under the Atomic Energy Act of 1954, as amended, to any destination at the time in country groups X, Y, or Z as set forth in the Comprehensive Export Schedule (15 CFR 370.1(g)(2)), and no person shall discharge from any such ship or any such aircraft any such commodity or article at any port or place or at any other port or place in transit to any such destination, unless a validated export license under the Export Control Act of 1949, as amended, under section 414 of the Mutual Security Act of 1954, as amended, or under the Atomic Energy Act of 1954, as amended, has been obtained for the shipment, or unless authorization for the shipment has been obtained from the Under Secretary for Transportation.[21] This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, or any other officer, employee or agent of the owner of the ship or aircraft who participates in the transportation. The consular officers of the United States are furnished with current copies of the Commodity Control List and will advise which commodities are subject to this restriction.

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SEC. 6. VIOLATIONS.

Any person who willfully violates any provisions of this order or willfully conceals a material fact or furnishes false information in the course of operation under this order is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

3. EXCERPTS FROM INTERPRETATION 1 OF TRANSPORTATION ORDER T–1[22]

SECTION 1. SHIPMENTS FROM THE UNITED STATES.

Transportation Order T–1 applies to shipments from the United States, as well as to shipments from foreign ports, on American flag ships and aircraft.

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[17] See p. 44 for a sample of such a regulation promulgated by the Department of Defense (32 C.F.R. 1.1410).
[18] Sec. 371.13(a)(2) (i) and (ii). (See p. 45.)
[19] Sec. 371.13(b)(2). (See p. 45.)
[20] 32A C.F.R. ch. VII, T–1.
[21] See footnote 8 on p. 41.
[22] 32A C.F.R. ch. VII, T–1, Interpretation 1.

SEC. 4. CALLS AT RESTRICTED PORTS EN ROUTE TO AN UNRESTICTED PORT WITH RESTRICTED CARGO.

Order T–1 does not prohibit an American flag ship or aircraft from going to or calling at one of the restricted ports, even though it has on board a commodity which could not be discharged at that port.

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4. EXCERPTS FROM TRANSPORTATION ORDER T–2, AS AMENDED [23]

SECTION 1. PROHIBITION OF MOVEMENT OF AMERICAN CARRIERS TO COMMUNIST CHINA, NORTH KOREA, OR TO THE COMMUNIST-CONTROLLED AREA OF VIET NAM.

No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to any Chinese Communist port, North Korea, any other place under the control of the Chinese Communists, or to the Communist-controlled area of Viet Nam.

SEC. 2. PROHIBITION ON TRANSPORTATION OF GOODS DESTINED FOR COMMUNIST CHINA, NORTH KOREA, OR THE COMMUNIST-CONTROLLED AREA OF VIET NAM.

No person shall transport, in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States, to Chinese Communist ports, North Korea, and other place under the control of the Chinese Communists, or to the Communist-controlled area of Viet Nam, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if he knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly for Communist China, North Korea, or for the Communist-controlled area of Viet Nam. No person shall discharge from any ship documented under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States, any material, commodity, or cargo of any kind which he knows or has reason to believe is destined for Communist China, North Korea, or for the Communist-controlled area of Viet Nam.

SEC. 3. PERSONS AFFECTED.

The prohibitions of this order apply to the owner of the ship or aircraft, to the master of the ship or aircraft, and to any other officer, employee, or agent of the owner of the ship or to any other person who participates in the prohibited activities.

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SEC. 7. VIOLATIONS.

Any person who willfully violates any provisions of this order, or willfully conceals a material fact, or furnishes false information in the course of operation under this order, shall, upon conviction, be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

5. EXCERPT FROM THE CODE OF FEDERAL REGULATIONS, TITLE 32, CHAPTER I

SEC. 1.1410. NONUSE OF FOREIGN-FLAG VESSELS ENGAGED IN CUBAN AND NORTH VIETNAM TRADE.

(a) Supplies owned by or procured under any contract of a Department of Defense activity (including supplies for military assistance) will not be shipped from any U.S. port on a foreign-flag vessel which has called at a Cuban port on or after January 1, 1963, or a North Vietnam port on or after January 25, 1966, unless the Secretary of Commerce has made an exception applicable to such vessel.

(b) Procuring activities shall include the following clause in any contract which may involve the use of foreign-flag vessels in the ocean transportation from a U.S. port of supplies to be delivered under the contract or to be incorporated in supplies or other end product of the contract:

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[23] 32A C.F.R. ch. VII, T–2.

Nonuse of Foreign-Flag Vessels Engaged in Cuban and North Vietnam Trade (April 1966)

(a) If, after the date of award, any supplies to be furnished or any materials to be incorporated in such supplies or in a construction project will require ocean transportation from the United States in the performance of this contract, the Contractor shall not use any foreign-flag vessel which the Maritime Commission has listed in the Federal Register as having called at a Cuban port on or after January 1, 1963, or a North Vietnam port on or after January 25, 1966, unless an exception has been made by the Secretary of Commerce.

(b) For purposes of this clause, the term "United States" includes the 50 States, Puerto Rico, possessions of the United States, and the District of Columbia.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in each subcontract or purchase order hereunder which may involve ocean transportation from the United States.

6. EXCERPTS FROM THE COMPREHENSIVE EXPORT SCHEDULE[24]

SEC. 371.13(a)(2). RESTRICTIONS ON THE EXPORT OF PETROLEUM AND PETROLEUM PRODUCTS.

(i) Far Eastern Communist Ports.—No export of petroleum or petroleum products (including those used as bunker fuel) listed in paragraph (a)(3) below may be made under this general license on a foreign vessel of 500 gross registered tons or more departing from the United States for use on board such vessel if the vessel (a) has called at a port under Far Eastern Communist control during the 180 days immediately preceding the date on which such commodities are to be laden aboard the vessel; (b) will call at a port under Far Eastern Communist control within 120 days after the date on which such commodities are laden aboard the vessel; or (c) will carry within the next 120 days commodities, of any origin, known by the owner, master, or agent to be destined directly or indirectly to these ports, unless the commodities so carried are covered by an export license issued by the Office of Export Control or any other agency of the United States Government.

(ii) Cuban Ports.—No export of petroleum or petroleum products (including those used as bunker fuel) listed in paragraph (a)(3) below may be made under this general license on a foreign vessel, regardless of tonnage, departing from the United States for use on board such vessel if the vessel (a) will call at a port under Cuban control on its current voyage or (b) is ineligible to carry United States Government financed cargo because it has called at a port under Cuban control at any time since January 1, 1963.

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(b)(2) Restrictions on the export of petroleum and petroleum products for use on aircraft. No export of petroleum or petroleum products (including those used as fuel) listed in paragraph (a)(3) above may be made under this general license on a foreign aircraft of 12,000 pounds or more gross load departing from the United States, for use on board such aircraft if the aircraft (i) has called at any point under Far Eastern Communist control during the 30 days immediately preceding the date on which such commodities are to be laden aboard the aircraft, (ii) will call at any point under Far Eastern Communist control within 30 days after the date such commodities are laden aboard the aircraft, (iii) will carry within this 30-day period commodities, of any origin, known by the owner, aircraft commander, or agent to be destined directly or indirectly to any point under Far Eastern Communist control, unless the commodities so carried are covered by an export license issued by the Office of Export Control or any other agency of the United States Government, or (iv) is registered in, owned or controlled by, or under charter or lease to a country included in Country Group W, Y, or Z (excluding Cuba), or a national of any of these countries.

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[24] 15 C.F.R. Part 371.

VI. ATOMIC ENERGY COMMISSION

A. Control of Export of Nuclear Material and Information

1. SUMMARY OF PERTINENT PROVISIONS

The Atomic Energy Act of 1954, as amended,[1] places under the jurisdiction of the Atomic Energy Commission all transactions, domestic as well as foreign, in any kind of nuclear material, facilities, or information. International transactions are permitted only within the framework of agreements for cooperation with the foreign country or international organization involved.[2] There are in effect no agreements with Communist countries. Yugoslavia, however, has participated in the U.S. international nuclear cooperation through her membership in the International Atomic Energy Commission with which the United States has concluded an agreement.

The act authorizes the Commission to regulate, by means of licensing the exports of items falling within the purview of the act. The categories of nuclear material and related items covered by the act are: special nuclear material, nuclear source material, nuclear byproduct material, nuclear production facilities, and nuclear technical information.

The Atomic Energy Commission itself has promulgated detailed regulations requiring either general or specific licenses for exports of any nuclear items. Such exports to any Communist country, except Yugoslavia, require a specific license.[3]

The act as well as the regulations provide for criminal prosecution and penalties for violators of any of the pertinent provisions.[4]

2. EXCERPTS FROM THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEC. 3. PURPOSE.—It is the purpose of this Act to effectuate the policies set forth above by providing for—

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e. a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit: [. . .]

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CHAPTER 6. SPECIAL NUCLEAR MATERIAL

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SEC. 54. FOREIGN DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—The Commission is authorized to cooperate with any nation by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms

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[1] 42 U.S.C. 2011–2281. For pertinent provisions (see below).

[2] Sec. 123, Atomic Energy Act of 1954, as amended (see p. 48).

[3] 10 C.F.R. 40.23 and 40.90 (see p. 50). Although the regulations cited in this footnote apply only to nuclear source materials, identical provisions (not reproduced herein) are in effect also in regard to other nuclear items.

[4] Secs. 221–224, Atomic Energy Act of 1954, as amended (see p. 49) ; sec. 40.81, title 10, C.F.R. (see p. 50).

of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. [. . .]

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SEC. 57. PROHIBITION.—

a. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material. [. . .]

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CHAPTER 7. SOURCE MATERIAL

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SEC. 62. LICENSE FOR TRANSFERS REQUIRED.—Unless authorized by a general or specific license issued by the Commission, which the Commission is hereby authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removel from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

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SEC. 64. FOREIGN DISTRIBUTION OF SOURCE MATERIAL.—The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United Sates

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SEC. 69. PROHIBITION.—The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

CHAPTER 8. BYPRODUCT MATERIAL

SEC. 81. DOMESTIC DISTRIBUTION.—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section or by section 82. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. [. . .]

SEC. 82. FOREIGN DISTRIBUTION OF BYPRODUCT MATERIAL.—

a. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 123.

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CHAPTER 9. MILITARY APPLICATION OF ATOMIC ENERGY

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SEC. 92. PROHIBITION.—It shall be unlawful, except as provided in section 91, for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101.

CHAPTER 10. ATOMIC ENERGY LICENSES

SEC. 101. LICENSE REQUIRED.—It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, im-

port, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104.

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SEC. 103. COMMERCIAL LICENSES.—

a. Subsequent to a finding by the Commission as required in section 102, the Commission may issue licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, such type of utilization or production facility. Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

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SEC. 109. COMPONENT PARTS OF FACILITIES.—With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11t.(2) or 11aa.(2) the Commission may (a) issue general licenses for activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security.

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CHAPTER 11. INTERNATIONAL ACTIVITIES

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SEC. 123. COOPERATION WITH OTHER NATIONS.—No cooperation with any nation or regional defense organization pursuant to sections 53, 54, 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the Commission or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c. or 144b. which are to be implemented by the Department of Defense, the Department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendations thereon, which proposed agreement shall include (1) the terms, conditions, duration, nature, and scope of the cooperation; (2) a guaranty by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. a guaranty by the cooperating party that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any Restricted Data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;

b. the President has approved and authorized the execution of the proposed agreement for cooperation, and has made a determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security;

c. the proposed agreement for cooperation, together with the approval and the determination of the President, has been submitted to the Joint Committee and a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *Provided, however,* That the Joint Committee, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91 c., 144 b., or 144 c., has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while Congress is in session, but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed

agreement for cooperation: *Provided, however*, That during the Eighty-fifth Congress such period shall be thirty days (in computing such sixty days, or thirty days, as the case may be, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days).

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CHAPTER 18. ENFORCEMENT

SEC. 221. GENERAL PROVISIONS.—

a. To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

b. The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act.

c. No action shall be brought against any individual or person for any violation under this Act unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: *Provided, however*. That no action shall be brought under sections 222, 223, 224, 225 or 226 except by the express direction of the Attorney General.

SEC. 222. VIOLATION OF SPECIFIC SECTIONS.—Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 57, 92, or 101, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 108, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by death or imprisonment for life (but the penalty of death or imprisonment for life may be imposed only upon recommendation of the jury), or by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both.

SEC. 223. VIOLATION OF SECTIONS GENERALLY.—Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161 b., i., or p. shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both.

SEC. 224. COMMUNICATION OF RESTRICTED DATA.—Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

a. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by death or imprisonment for life (but the penalty of death or imprisonment for life may be imposed only upon recommendation of the jury), or by a fine of not more than $20,000 or imprisonment for not more than twenty years, or both;

b. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than $10,000 or imprisonment for not more than ten years. or both.

3. EXCERPTS FROM THE CODE OF FEDERAL REGULATIONS, TITLE 10: ATOMIC ENERGY

PART 40—LICENSING OF SOURCE MATERIAL

SEC. 40.20. TYPES OF LICENSES.

Licenses for source material are of two types: general and specific. The general licenses provided in this part are effective without the filing of applications

with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

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SEC. 40.23. GENERAL LICENSES TO EXPORT.

(a) A general license, designated AEC–GRO–SMA, is hereby issued authorizing the export at any one time of up to three (3) pounds of source material from the United States to any foreign country or destination except Southern Rhodesia, Cuba or countries or areas listed in § 40.90. Each person exporting source material pursuant to this general license shall file with the Collector of Customs or the Postmaster one copy, in addition to those otherwise required, of the Shipper's Export Declaration covering each export, and mark such copy for transmittal to the Director, Division of State and Licensee Relations, U.S. Atomic Energy Commission, Washington, D.C. 20545.

(b) A general license, designated AEC–GRO–SMB, is hereby issued authorizing the export of incandescent gas mantles containing thorium, without regard to quantity, from the United States to any foreign country or destination except Southern Rhodesia, Cuba or countries or destinations listed in § 40.90.

(c) A general license designated AEC–GRO–SMB, is hereby issued authorizing the United States to any foreign country or destination, except South Rhodesia, or countries or destinations listed in § 40.90, of uranium in the form of counterweights installed in aircraft, rockets, projectiles or missiles, provided that such counterweights have been manufactured under a specific license issued by the Commission and have been impressed with the statement, clearly legible after plating, which states, "Caution—Radioactive Material—Uranium."

(d) No person may export source material from the United States knowing or having reason to believe that it is to be reexported directly or indirectly, in whole or in part, from the country of ultimate destination shown on the export license, shipper's export declaration, bill of lading, or commercial invoice, unless either:

(1) The reexport has been authorized by the Commission; or

(2) At the time of export, the material may be exported directly from the United States to the new country of ultimate destination under the terms of one of the general licenses established in this section.

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SEC. 40.81. VIOLATIONS.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

SEC. 40.90. SCHEDULE A.

Albania.
Bulgaria.
China, including Manchuria (and excluding Taiwan (Formosa)) (includes Inner Mongolia; the provinces of Tsinghai and Sikang; Sinkiang; Tibet; the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province).
Communist-controlled area of Viet Nam.
Czechoslovakia.
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).
Estonia.
Hungary.
Latvia.
Lithuania.
North Korea.
Poland (including Danzig).
Outer Mongolia.
Rumania.
Union of Soviet Socialist Republics.

VII. EXPORT-IMPORT BANK OF THE UNITED STATES

A. Export Credit

1. SUMMARY OF PERTINENT PROVISIONS

The Export-Import Bank of the United States is a U.S. Government corporation established primarily for the direct financing of, or participation in private financing of, American exports. Its activities are, however, severely restricted in regard to credits involving exports to Communist countries. The Bank, generally, may not extend its own credit or guarantee, insure, or participate in other lenders' operations for the financing of export sales or leases directly to a Communist country, or to a non-Communist country if the known ultimate destination of the export involved is a Communist country. The applicable definition of a Communist country is that provided by the foreign assistance legislation.[1] Exceptions to this ban may be made in the case of transactions which the President determines to be in the national interest if he reports that determination within 30 days to both Houses of Congress.[2]

A similar ban on Export-Import Bank's activities is in effect in regard to direct or indirect exports to any country engaged in armed conflict with U.S. Armed Forces, or in regard to a country which furnishes by direct governmental action goods, supplies, military assistance or advisers to a country in armed conflict with U.S. Armed Forces. This ban is not subject to a Presidential determination of national interest.[3]

A somewhat less detailed statutory ban on Eximbank's credits and credit guarantees to Communist nations has been included, since 1964, also in foreign aid appropriation legislation.[4] The Bank's credit operations with Communist countries are also affected, in practice, by the prohibition to extend any credits or guarantees to nations trading with or carrying goods to North Vietnam, contained in section 620(n) of the Foreign Assistance Act of 1961, as amended.[5]

It should be, moreover, pointed out that the restriction placed on Eximbank's credit operations with Communist countries indirectly affects also the ability of private lenders to extend long-term credit to certain Communist countries. The provisions of the Johnson Debt Default Act, as discussed earlier,[5a] in effect, require the participation of the Export-Import Bank in any private long-term export credits extended to a number of Communist countries which are in technical default to the United States.

Presidential determinations of national interest have, thus far, been made in regard to short- and/or medium-term credit guarantees for

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[1] Sec. 620(f), Foreign Assistance Act of 1961, as amended (see p. 7).
[2] Sec. 2(b)(2), Export-Import Bank Act of 1945, as amended (see p. 52).
[3] Sec. 2(b)(3), Export-Import Bank Act of 1945, as amended (see p. 53).
[4] Cf. title III, Foreign Assistance and Related Agencies Appropriation Act, 1968 (see p. 53).
[5] See p. 8.
[5a] See p. 22.

export of all products and services to all the Communist countries except the Soviet Union, Albania, East Germany, Cuba, and the Asian bloc countries, and for export sales of agricultural products to the Soviet Union.[6]

It ought to be pointed out that these Presidential determinations in no way modify or impair the legislative or regulatory provisions, restricting the exportation of strategic and other controlled commodities to Communist countries. They merely allow such commodities as may licitly be exported to a Communist country to be financed with the participation of the Export-Import Bank.

2. EXCERPTS FROM EXPORT-IMPORT BANK ACT OF 1945, AS AMENDED

AN ACT To provide for increasing the lending authority of the Export-Import Bank of the United States, 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 of 1945."

SEC. 2.[7] (a) There is hereby created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the Bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued; to complain and to defend in any court of competent jurisdiction; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the Bank. The Bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The bank is hereby authorized to use all of its assets and all moneys which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions. Net earnings of the Bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(b)(1) It is the policy of the Congress that the Bank in the exercise of its functions should supplement and encourage and not compete with private capital; that loans, so far as possible consistently with carrying out the purposes of subsection (a), shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing such loans the Board of Directors should take into account the possible adverse effects upon the United States economy.

(2) The Bank in the exercise of its functions shall not guarantee, insure, or extend credit, or participate in any extension of credit—

(A) in connection with the purchase or lease of any product by a Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended), or agency or national thereof, or

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[6] See p. 54.
[7] 12 U.S.C. 635.

(B) in connection with the purchase or lease of any product by any other foreign country, or agency, or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Communist country (as so defined),

except that the prohibitions contained in this paragraph shall not apply in the case of any transaction which the President determines would be in the national interest if he reports that determination to the Senate and House of Representatives within thirty days after making the same.

(3) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation—

(A) which engages in armed conflict, declared or otherwise, with armed forces of the United States; or

(B) which furnishes by direct governmental action (not including chartering, licensing or sales by non-wholly-owned business enterprises) goods, supplies, military assistance, or advisers to a nation described in subparagraph (A);

nor shall the Bank guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in a nation described in subparagraph (A) or (B).

* * * * * * *

(c) (1) The Export-Import Bank of the United States, in furtherance of its objects and purposes under this Act, is authorized and empowered to guarantee, insure, coinsure, and reinsure United States exporters and foreign exporters doing business in the United States in an aggregate amount not in excess of $3,500,000,000 outstanding at any one time against political and credit risks of loss arising in connection with United States exports; and to establish and maintain fractional reserves in connection therewith. The reserves maintained by the Bank for the guarantees, insurance, coinsurance or reinsurance issued pursuant to this section shall be not less than 25 per centum of the related contractual liability of the Bank. Insofar as contracts of guarantee, insurance, coinsurance, and reinsurance are concerned, only that part of the Bank's liabilities represented by reserves provided for above shall be taken into account for the purposes of applying the limitations imposed by section 7 of this Act. Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with the risks covered.

(2) The Bank may issue such guarantees, insurance, coinsurance,and reinsurance to or with exporters, insurance companies, financial institutions, or others, or groups thereof, and where appropriate may employ any of the same to act as its agent in the issuance and servicing of such guarantees, insurance, coinsurance, and reinsurance, and the adjustment of claims arising thereunder.

3. EXCERPT FROM THE FOREIGN ASSISTANCE AND RELATED AGENCIES APPROPRIATION ACT, 1968

TITLE III—EXPORT-IMPORT BANK

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None of the funds made available because of the provisions of this title shall be used by the Export-Import Bank to either guarantee the payment of any obligation hereafter incurred by any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended) or any agency or national thereof, or in any other way to participate in the extension of credit to any such country, agency, or national, in connection with the purchase of any product of such country, agency, or national, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination.[8]

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[8] Pub. L. 90–249; 81 Stat. 943.

4. LETTERS FROM PRESIDENT JOHNSON TO PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE OF REPRESENTATIVES REGARDING GUARANTEES IN CONNECTION WITH THE SALE OF PRODUCTS AND SERVICES TO CERTAIN COMMUNIST COUNTRIES

(a) *All products and services to Yugoslavia*

FEBRUARY 4, 1964.

DEAR MR. PRESIDENT (MR. SPEAKER): In compliance with title III of the Foreign Aid and Related Agencies Appropriation Act of 1964, this is to inform you that I have determined that it is in the national interest for the Export-Import Bank to issue guarantees in connection with the sale of U.S. products and services to Yugoslavia. The Bank will report the individual guarantees to the Congress as they are issued.

Sincerely,

LYNDON B. JOHNSON.

(b) *Agricultural products to the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, and Rumania*

FEBRUARY 4, 1964.

DEAR MR. PRESIDENT (MR. SPEAKER): In compliance with title III of the Foreign Aid and Related Agencies Appropriation Act of 1964, this is to inform you that I have determined that it is in the national interest for the Export-Import Bank to issue guarantees in connection with the sale of United Sates agricultural products to the Union of Soviet Socialist Republics, Bulgaria, Czechoslovakia, Hungary, Poland and Rumania. The Bank will report the individual guarantees to the Congress as they are issued.

Sincerely,

LYNDON B. JOHNSON.

(c) *All products and services to Rumania*

JUNE 15, 1964.

DEAR MR. PRESIDENT (MR. SPEAKER): In compliance with title III of the Foreign Aid and Related Agencies Appropriation Act, 1964, this is to inform you that I have determined that it is in the national interest for the Export-Import Bank to issue guarantees in connection with the sale of United States products and services to Rumania. This determination is in addition to the determination relating to agricultural products of which I informed you on February 4, 1964, and is intended to cover all types of United States products and services.

These guarantees will be limited to sales on short and medium term credits.

The Export-Import Bank will report the individual guarantees to the Congress as they may be issued.

Sincerely,

LYNDON B. JOHNSON.

(d) *All products and services to Bulgaria, Czechoslovakia, Hungary, and Poland*

OCTOBER 11, 1966.

DEAR MR. PRESIDENT (MR. SPEAKER): In compliance with title III of the Foreign Assistance and Related Agencies Appropriation Act, 1966, this is to inform you that I have determined that it is in the national interest for the Export-Import Bank to issue guarantees in connection with the sale of United States products and services to Bulgaria, Czechoslovakia, Hungary and Poland. This determination is in addition to the determination relating to agricultural products of which I informed you on February 4, 1964 and to that on all goods and services to Romania dated June 15, 1964. The present determination covers all peaceful goods and services.

These guarantees will be limited to sales on short and medium term credits.

The Export-Import Bank will report the individual guarantees to the Congress as they may be issued.

Sincerely,

LYNDON B. JOHNSON.