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APPROVED  
DEC 16 1975

*signed 12/16/75*

THE WHITE HOUSE  
WASHINGTON

ACTION

Last Day: December 16

December 15, 1975

*Posted  
12/17*

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *[initials]*

SUBJECT: Enrolled Bill S. 1537 - Defense  
Production Act Amendments of 1975

*To Archive  
12/17*

Attached for your consideration is S. 1537, sponsored by Senator Proxmire and two others, which extends the authority of the Defense Production Act of 1950 until September 30, 1977. This authority expired on November 30, 1975.

The enrolled bill also includes a number of amendments to the Defense Production Act which are discussed in OMB's enrolled bill report at Tab A.

Because the Congress neglected to provide that S. 1537 become effective on November 30, 1975, the Congress has passed a companion bill, H.R. 11027 to cover the period between November 30 and the effective date of S. 1537. H.R. 11027 is being forwarded to you in a separate memorandum.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), NSC and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 1537 at Tab B.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEC 10 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1537 - Defense Production Act  
Amendments of 1975  
Sponsor - Sen. Proxmire (D) Wisconsin and 2 others

Last Day for Action

December 16, 1975 - Tuesday

Purpose

To amend the Defense Production Act (DPA) of 1950 and to extend it until September 30, 1977.

Agency Recommendations

Office of Management and Budget	Approval
General Services Administration	Approval
Department of Defense	Approval
Federal Trade Commission	Approval
Department of Commerce	Approval (Informally)
Federal Energy Administration	No objection
Department of Justice	No objection
Department of State	No objection (Informally)

Discussion

S. 1537 extends the authority of the Defense Production Act of 1950 until September 30, 1977, (that authority expired November 30, 1975) and makes various other changes in the existing law.

The Defense Production Act of 1950 provides authority to the Federal Government to assure the economic mobilization of the country in a national defense emergency. These powers include

diverting certain materials from civilian to military use, developing preparedness programs, and making loans to private business enterprises. The Act has generally been renewed on a routine basis every two years.

### Major Provisions

Two major changes in the Act are made by the enrolled bill, both of which raise some troublesome issues.

1. Title III of the Act, which authorizes loans and loan guarantees by Federal agencies to private business enterprises, is amended to require all authority granted by it be effective for any fiscal year only to the extent provided for in advance in appropriation acts. This new requirement will impede somewhat the timely execution of such guarantees. However, this problem is not a sufficient basis for withholding approval.

2. Section 708 of the Act is amended to require a host of administrative procedures designed to assure more open disclosure of the arrangements for the development and implementation of voluntary agreements entered into by members of various industries to further the objectives of the Act. These agreements are immune from anti-trust laws. The new administrative procedures contained in the bill would specify requirements for reports, public notice, attendance at meetings, advisory committees, etc., with the intent of insuring that these voluntary agreements have the least possible anti-competitive impact. In addition, the amendments mandate the direct involvement of the Attorney General and the Federal Trade Commission in all aspects of program policy and review even when unrelated to the protection of anti-trust laws. These provisions also set forth an explicit "good faith" test in connection with the anti-trust immunity accorded to actions taken under voluntary agreements. Finally, the bill contains a requirement that a finding must be made of a "direct threat to the national defense" to justify such agreements.

A new section, 708A, applies a parallel set of explicit administrative procedures to voluntary agreements that assist in carrying out the International Energy Program. This section also provides, however, that the stringent restrictions of sections 708 and 708A shall not apply to any international voluntary agreement relating to petroleum if S. 622, the Energy Policy and Conservation Act, is enacted. However, because S. 622 applies only to agreements made under the International Energy Program, its enactment would preclude the making of any new international voluntary agreements on oil outside the purview of that Program.



On the other hand, if S. 622 is not enacted, then the nettlesome administrative procedures contained in this bill would apply to both the existing and any new international agreements on oil.

Although these two provisions are objectionable and unnecessary, affected agencies such as the General Services Administration, the Federal Energy Administration, and the Department of Defense do not believe that they constitute sufficient cause to withhold approval of the enrolled bill. This position is taken independent of consideration of S. 622, if it becomes enrolled. It should be noted that none of the procedural changes discussed above become effective until 120 days after the signing into law of S. 1537.

#### Other Provisions

There are a number of other less significant amendments to the DPA, including provisions that:

- members of the National Defense Executive Reserve (individuals with executive talents who undergo special training and agree to enter Federal service in a national emergency) may receive transportation and per diem allowances on the same basis as full time Government employees.
- cost accounting standards promulgated under the Act take into account the probable costs of implementation, including inflationary effects.
- The National Commission on Supplies and Shortages be extended from October 1, 1976, until March 31, 1977, and its funding authorization be increased from \$500,000 to \$1,484,000. Also, the Commission's first reporting date is postponed from March 31, 1976, to December 31, 1976, and authorized funding for its special advisory committees is increased from \$75,000 to \$150,000.

#### Timing/Retroactive Issue

The Congress failed to enact an extension of the Defense Production Act before its November 30, 1975, expiration date and neglected to provide that S. 1537 would become effective on that date rather than on the date of its enactment. This lack of continuity raises doubts about the viability of voluntary agreements entered into prior to December 1.

The General Services Administration is, therefore, attempting to obtain quick Congressional action on a separate bill, introduced as H.R. 11027, which would make the extension of authority of the Defense Production Act retroactive to November 30 in order to avoid possible legal difficulties. As of this writing, the House has passed this bill and we understand the Senate is scheduled to act on it the afternoon of December 10. If H.R. 11027 is enrolled and presented to you by December 16, the final day for your action on S. 1537, we recommend that you sign both bills on that date.

*James M. Frey*  
Assistant Director  
for Legislative Reference

Enclosures

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



DEC 10 1975

Honorable James T. Lynn  
Director, Office of  
Management and Budget  
Washington, DC 20503

Dear Mr. Lynn:

By letter of December 5, 1975, you requested the views of the General Services Administration (GSA) on enrolled bill S. 1537, a bill "To amend the Defense Production Act of 1950, as amended."

GSA has completed its review of this bill and offers the following views.

Although the bill, as passed, may present several operational difficulties for GSA, its enactment into law is so essential to the national defense programs of the United States GSA recommends that the President sign the bill in its present form. GSA's technical reservations are set out below.

Section 2 of the bill amends section 717(a) of the Act to require that all authorizations of Title III (including loan guarantees) be funded in advance in appropriation acts. This will cause an undesirable reduction in operating flexibility and will limit the loan guaranteeing authority of authorized agencies pursuant to section 301(d) of the Act.

There are extensive amendments to section 708 of the Act in section 3 of the bill. The Administration's position has been that these changes are unnecessary and should be undertaken only after further consideration of their need and their implications. This was stated in testimony at hearings on S. 1537 before the Economic Stabilization Subcommittee of the Senate Committee on Banking, Currency, and Housing by GSA. Some of the specific objections were:

- . That a finding of "direct threat to the national defense" constituted an unnecessary constraint on the use of the authority.
- . That the detailing of administrative procedures in the law was unnecessary and should be appropriately left to the Executive Branch since the

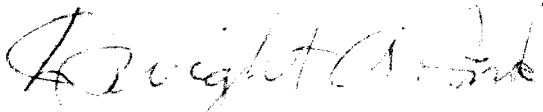
legal constraints are guarded in the existing Act and in other laws such as the Federal Advisory Committee Act and the Freedom of Information Act.

- . That the provisions involve the Attorney General and the Federal Trade Commission in matters of program policy and review in a manner unrelated to the protection of the antitrust provisions of law.
- . That the bill contains terms and phrases, such as the "good faith" provision in subsection (j), which could be objectionable to industries asked to voluntarily participate in agreements and thus discourage their participation.

These and similar objections still exist but by working with Congressional Committee staffs, GSA and other affected agencies have been able to adjust provisions to the extent that important voluntary agreements will still be possible and so that the International Energy Agreement can be upheld.

GSA will carefully monitor its experience under the provisions discussed above, and it may be necessary to seek further adjustments to the Act, based on this experience, at a later time.

Sincerely,



Dwight A. Ink  
Acting Administrator

**Department of Justice**  
**Washington, D.C. 20530**

December 8, 1975

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill, S. 1537, the Defense Production Act Amendments of 1975. The bill would extend the life of the Defense Production Act to September 30, 1977. In addition, it would amend the provisions of Section 708 granting antitrust immunity for actions taken pursuant to a voluntary agreement entered by business competitors at the request of the Government in order to assist in carrying out the objectives of the Act. The bill would also amend a few other provisions of the Defense Production Act with which the Department of Justice is not directly concerned.

Section 708 would be amended to incorporate a variety of specific procedural safeguards to permit public surveillance of voluntary agreements and protect against antitrust abuse by participants. For voluntary agreements to implement the Agreement on an International Energy Program, which was established to deal with international energy supply emergencies, the bill would establish a parallel set of explicit procedures. Under the existing provisions of Section 708, the nature and extent of procedural safeguards to be imposed have been left to the administrative discretion of the Attorney General and the sponsoring agency.

The Department of Justice has taken the position that no need has been shown for specific incorporation of these procedures in the Act. Accordingly, we have testified in opposition to enactment of such legislation at this time. Nevertheless, the Department of Justice, along with other executive agencies, has worked with both Senate and House committee staffs to seek to improve the bill's provisions. In some cases, amendments suggested by us have been incorporated in the enrolled bill. In others, provisions which we did not favor have been retained.

Prominent among the latter is a provision setting forth an explicit good faith test in connection with antitrust immunity accorded actions under voluntary agreements. We have taken the position that this would introduce an unnecessary degree of evidentiary difficulty in any suit challenging acts as not being within the scope of action to which antitrust immunity attached. Another objectionable feature would require attendance by representatives of the Department at virtually all meetings to develop and carry out a voluntary agreement, a provision which may be unduly burdensome as well as unnecessary on many occasions.

Despite this background, however, we do not feel the bill as a whole or these particular features involve questions of such serious concern to this Department as to warrant a recommendation of disapproval. As indicated above, the Section 708 amendments in essence merely codify the framework of safeguards we have customarily employed in connection with the development and operation of voluntary agreements. Accordingly, the Department of Justice offers no objection to Executive approval of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in black ink and is positioned above the printed name.

Michael M. Uhlmann

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

DEC 9 1975

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for our comments on S. 1537, an enrolled bill, "to amend the Defense Production Act of 1950, as amended."

Effective on enactment, S. 1537 would extend the Defense Production Act (DPA) until September 30, 1977. The DPA expired on November 30, 1975. In extending the Act, S. 1537 also makes significant changes in the existing provisions of the Defense Production Act dealing with voluntary agreements by private parties to carry out the purposes of the Act. In this regard, section 708 of the DPA has been totally revised to establish a multitude of procedural requirements with respect to such voluntary agreements. In addition, a new section 708A has been added establishing somewhat different requirements for voluntary agreements to assist in carrying out the International Energy Program (IEP). These requirements take into account the peculiar character of groups established by the International Energy Agency.

The Federal Energy Administration is concerned that some of the restrictions contained in the bill may hinder the development of appropriate mechanisms for providing flexible responses to future energy supply disruptions. In particular, the bill, in combination with S. 622, would prevent the use of voluntary agreements in carrying out international petroleum supply arrangements except pursuant to the IEP. Nevertheless, since we believe that the authority contained in the Defense Production Act must be continued as expeditiously as possible, we do not object to the enactment of this bill.

There is one serious shortcoming contained in the bill which should be corrected before the bill is signed by the President. As presently drafted, the bill would become effective on enactment rather than at the expiration of the Defense Production Act on November 30, 1975. This lack of continuity could cause doubt as to the continued viability of existing voluntary agreements including the Voluntary Agreement and Program related to the International Energy Program. It is essential that there be no doubt concerning the availability of antitrust immunity under this important ongoing program.

We understand that an attempt will be made to cure this defect through an amendment to the enrolled bill. We recommend that S. 1537 not be signed by the President until any amendment is also ready for signature. If the amendment is not ready for signature by the time Presidential action is required, we have no objection to the President's signing the bill.

Sincerely,

A handwritten signature in black ink that reads "Michael F. Butler". The signature is written in a cursive style with a large, prominent "M" and "B".

Michael F. Butler  
General Counsel



FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

DEC 9 1975

The Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Executive Office of the President  
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request of December 5, 1975, for the views of the Federal Trade Commission with respect to Enrolled Bill S. 1537, 94th Congress, 1st Session, an act cited as the "Defense Production Act Amendments of 1975".

S. 1537 would extend the Defense Production Act for two years. In addition, this legislation would amend Section 708 of the Act, which provides the authority for the granting of immunity from antitrust prosecution to voluntary agreements reached between the government and representatives of industry, business, labor, and other interests. These amendments would create a distinction between those agreements of a general sort which were formerly developed under the Act (Section 708) and those agreements established in support of the Agreement on an International Energy Program which was signed by the United States on November 18, 1974 (Section 708A). Furthermore, the amendments would provide for increased procedural safeguards in both instances to insure that immunity from the antitrust laws will only extend to those actions thought to be necessary to meet the goals which are considered to override normal antitrust restraints.

Among the safeguards established by these amendments is an increased role for the Federal Trade Commission in approving and monitoring voluntary agreements to assure the protection and the encouragement of competition and to prevent the occurrence of anticompetitive practices. For example, before any voluntary agreement can become effective, it must be found by the Attorney General, after consultation with the FTC, that the purpose of the agreement could not be achieved with a similar voluntary agreement having less anticompetitive effect or without any voluntary agreement at all.

Additional safeguards include a requirement for qualified public participation in meetings held to establish standards and procedures by which voluntary agreements may be developed and meetings at which the voluntary agreement itself is developed. Further, the participants in any voluntary agreement must maintain documents, minutes of meetings, transcripts, records, and other data related to the carrying out of the voluntary agreement.

The Commission supports these procedural safeguards and recommends that S. 1537 be signed into law.

By direction of the Commission.

*Acting*  
*Virginia W. Harding*  
Charles A. Tobin  
Secretary



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

10 December 1975

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D.C. 20305

Dear Mr. Lynn:

This is in response to your request of December 5, 1975 for the report of the Department of Defense on the enrolled enactment of S. 1537, 94th Congress, which enactment extends and amends the Defense Production Act of 1950.

Section 2 of the enrolled enactment extends the Defense Production Act of 1950 through September 30, 1977. The Defense Production Act is the cornerstone of the present legal structure for insuring preparedness to meet crises requiring mobilization of the Nation's industrial and material resources. We strongly support this extension of the Defense Production Act.

The proviso included in Section 2 of the enrolled enactment limits the use of the authority under Title III to the extent that amounts are provided in advance under appropriation Acts. Title III provides for certain loan authorities, including authority to guarantee loans made by private financing institutions, to assist the expansion of productive capacity and supply. Since funds are not normally needed and are not usually appropriated in advance of the guarantee of a loan, this provision may be read as limiting the government's authority to guarantee such loans. While the guarantee authority under Title III of the Defense Production Act of 1950 has not been used extensively by the DoD in recent years, there could be circumstances in the future where it would be desirable to use the authority to guarantee loans under Title III and we are concerned about the limitation that the proviso would place on such use.

Section 3 of the enrolled enactment revises the authority for voluntary agreements and anti-trust immunity in connection with those agreements covered under Section 708 of the Defense Production Act of 1950. The revised section covers, under Section 708A, voluntary agreements to accomplish the objectives of the Agreement on an International Energy Program signed by the United States on November 18, 1974, and under section 708 all other voluntary agreements for the development of preparedness programs and the expansion of productive capacity and supply. The new provisions limit the authority to arrange such

voluntary agreements to instances where the President finds that there is a direct threat to the national defense or its preparedness programs. This limitation would appear to prevent the use of such agreements for the purpose of orderly planning prior to the existence of such a direct threat. Furthermore, the establishment and operation of such agreements are circumscribed by extensive procedures which, we believe, will tend to impair the effectiveness of such agreements. With respect to Section 708A relating to voluntary agreements concerned with the International Energy Agreement, we defer to the Federal Energy Administration.

Section 4 of the enrolled enactment in essence would extend the procedural limitations of Section 3 to future activities of existing voluntary agreements.

Section 5 of the enrolled enactment authorizes transportation and per diem reimbursement for members of the executive reserve. We support this provision.

Section 6 of the enrolled enactment does not concern the DoD; it deletes a limitation on the cost of stenographic services for the Joint Committee on Defense Production.

Section 7 of the enrolled enactment requires the Cost Accounting Standards Board to take into account and report to the Congress the probable costs and probable benefits of implementing proposed standards. The Department supports this section.

The Department of Defense supports Section 8 of the enrolled enactment which extends the National Commission of Supplies and Shortages.

Notwithstanding the reservations we have expressed above on the proviso in Section 2, and the revision under Sections 3 and 4 to the voluntary agreement authority, the Department of Defense recommends the approval of the enrolled enactment of S. 1537 in order to extend the Defense Production Act of 1950, as amended.


Sincerely,



L. Niederlehner  
Acting General Counsel

NATIONAL SECURITY COUNCIL

December 11, 1975

MEMORANDUM FOR: JAMES CAVANAUGH  
FROM: Jeanne W. Davis   
SUBJECT: S. 1537

The NSC Staff concurs in S. 1537 - Defense Production Act Amendment of 1975.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 12-12-75

TO: Bob Linder

FROM: Frey

Attached is the Commerce views  
letter on S. 1537 for inclusion  
in the enrolled bill file.



**THE UNDER SECRETARY OF COMMERCE**  
Washington, D.C. 20230

DEC 10 1975

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning S. 1537, an enrolled enactment

"To amend the Defense Production Act of 1950,  
as amended,"

to be cited as the "Defense Production Act Amendments of 1975."

S. 1537 amends the Defense Production Act of 1950 in the following major respects:

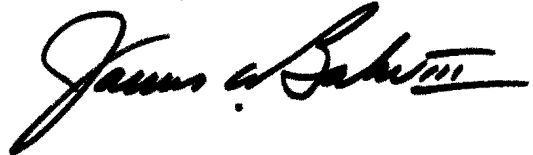
1. Extends the Act through September 30, 1977.
2. Imposes additional procedural restrictions on the President's authority under section 708 of the Act to grant antitrust immunity to voluntary agreements. The new procedures would require (a) establishment of formal rules for developing such agreements; (b) public and congressional access to the rulemaking procedures and to meetings held under those rules; (c) approval by the Attorney General, after consultation with the Federal Trade Commission, of all agreements between and among competing businesses; and (d) reconsideration of any business agreement after two years.
3. Amends the Act to authorize the Federal Energy Administrator, subject to the approval of the Attorney General, to provide similar antitrust exemptions for voluntary agreements required to implement international agreements relating to the international allocation of petroleum products. However, this authority would lapse upon the enactment of S. 622 (the Energy Policy and Conservation Act) on which the Conference Report was filed December 9, 1975.

In addition, S. 1537 amends the Defense Production Act so as to (1) extend the National Commission on Supplies and Shortages until March 31, 1977; (2) increase the per diem for members of the National Defense Executive Reserve while they participate in training programs; and (3) amend the existing provisions of the Act relating to the Cost Accounting Standards Board to require the Board to prepare an inflationary impact statement when promulgating standards and major rules and regulations.

This Department recommends approval by the President of S. 1537.

Enactment of this legislation is not expected to involve any increase in the budgetary requirements for this Department.

Sincerely,

A handwritten signature in black ink, reading "James A. Baker, III". The signature is written in a cursive style with a prominent initial "J" and a long, sweeping underline.

James A. Baker, III





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 12-12-75

TO: Bob Linder

FROM: Jim Frey

Attached is the State views  
letter on S. 1537, for inclu-  
sion in the enrolled bill file.



DEPARTMENT OF STATE

Washington, D.C. 20520

11 DEC 1975

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to the request of Mr. James M. Frey for the views of the Department of State on S.1537, an enrolled bill to amend the Defense Production Act of 1950, as amended.

The provision of S.1537 of most concern to the Department of State is Section 3, which, inter alia, amends Section 708 of the Defense Production Act to introduce new procedural requirements for voluntary agreements to carry out the purposes of the Agreement on an International Energy Program, and makes the immunity from prosecution under the anti-trust laws for actions taken under such agreements subject to a subjective "good faith" test. In our view, these amendments are unnecessarily burdensome. Nevertheless, given the importance of continuing authority to support the Voluntary Agreement which currently permits American oil companies to cooperate with the International Energy Agency, we do not object to approval of this bill.

We understand that a bill amending S.1537 to make it retroactive to November 30, the date on which the Defense Production Act expired, is near completion by the Congress. We strongly support this bill, which would help make clear the continuing validity of the current Voluntary Agreement relating to the Agreement on an International Energy Program.

Sincerely,

*Robert J. McCloskey*

Robert J. McCloskey  
Assistant Secretary for  
Congressional Relations

10-  
J. Casper  
12-11-75  
10 a.m.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEC 10 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1537 - Defense Production Act  
Amendments of 1975  
Sponsor - Sen. Proxmire (D) Wisconsin and 2 others

Last Day for Action

December 16, 1975 - Tuesday

Purpose

To amend the Defense Production Act (DPA) of 1950 and to extend it until September 30, 1977.

Agency Recommendations

Office of Management and Budget	Approval
General Services Administration	Approval
Department of Defense	Approval
Federal Trade Commission	Approval
Department of Commerce	Approval (Internally)
Federal Energy Administration	No objection
Department of Justice	No objection
Department of State	No objection (Internally)

Discussion

S. 1537 extends the authority of the Defense Production Act of 1950 until September 30, 1977, (that authority expired November 30, 1975) and makes various other changes in the existing law.

The Defense Production Act of 1950 provides authority to the Federal Government to assure the economic mobilization of the country in a national defense emergency. These powers include

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: December 11

Time: 1030pm

FOR ACTION:

Glenn Schleede *sk*  
Max Friedersdorf *sk*  
Ken Lazarus *sk*  
NSC/S *sk*  
Paul Leach *sk*

cc (for information):

Jack Marsh  
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 12

Time: 800pm

SUBJECT:

S. 1537 - Defense Production Act Amendments of 1975

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: December 11

Time: 1:30pm

FOR ACTION: Glenn Schleede  
Max Friedersdorf  
Ken Lazarus  
NSC/S  
Paul Leach

cc (for information): Jack Marsh  
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 11

Time: 6 00pm

SUBJECT:

S. 1537 - Defense Production Act Amendments of 1975

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Recommend Approval - Schleede*

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Stamp: JAN 11 1976

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: December 11

Time: 1:30pm

FOR ACTION:

Glenn Schleede  
Max Friedersdorf  
Ken Lazarus  
NSC/S  
Paul Leach

cc (for information):

Jack Marsh  
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 11

Time: 6 00pm

SUBJECT:

S. 1537 - Defense Production Act Amendments of 1975

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 12/11/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. ...  
For the Staff Secretary

THE WHITE HOUSE

WASHINGTON

December 11, 1975

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: MAX L. FRIEDERSDORF *M.L.F.*  
SUBJECT: S. 1537 - Defense Production Act Amendments of 1975

The Office of Legislative Affairs concurs with the agencies  
that the *subject bill be passed.*

Attachments

December 4, 1975

Dear Mr. Director:

The following bill was received at the White House on December 4th:

S. 1537

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C.



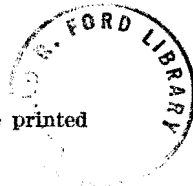
DEFENSE PRODUCTION ACT  
AMENDMENTS OF 1975

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REPORT  
OF THE  
COMMITTEE ON BANKING, HOUSING  
AND URBAN AFFAIRS  
UNITED STATES SENATE  
TO ACCOMPANY  
S. 1537



JULY 31, 1975.—Ordered to be printed



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1975

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(iii)

### COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

WILLIAM PROXMIRE, Wisconsin, *Chairman*  
JOHN SPARKMAN, Alabama      JOHN TOWER, Texas  
HARRISON A. WILLIAMS, JR., New Jersey      EDWARD W. BROOKE, Massachusetts  
THOMAS J. MCINTYRE, New Hampshire      BOB PACKWOOD, Oregon  
ALAN CRANSTON, California      JESSE HELMS, North Carolina  
ADLAI E. STEVENSON, Illinois      JAKE GARN, Utah  
JOSEPH R. BIDEN, JR., Delaware

ROBERT MORGAN, North Carolina

KENNETH A. MCLEAN, *Staff Director*

ANTHONY T. CLOFF, *Minority Staff Director*

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(ii)

DEFENSE PRODUCTION ACT AMENDMENTS OF 1975

JULY 31, 1975.—Ordered to be printed

Mr. PROXMIRE, from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

[To accompany S. 1537]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (S. 1537), to amend and extend the Defense Production Act of 1950, as amended, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following language:

That this Act may be cited as the "Defense Production Act Amendments of 1975".  
SEC. 2. The first sentence of section 717 (a) of the Defense Production Act of 1950 (64 Stat. 822) is amended by striking out "September 30, 1975" and inserting in lieu thereof "September 30, 1977".

SEC. 3. Section 708 of the Defense Production Act of 1950 is amended to read as follows:

"Sec. 708. (a) Except as specifically provided in subsection (j) of this section and section 708A (j) of this Act, no provision of this Act shall be deemed to provide to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"(b) As used in this section, the term 'antitrust laws' means—

"(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (23 Stat. 290), as amended;

"(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 730), as amended;

"(3) the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes' (38 Stat. 717), as amended;

"(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (28 Stat. 579), as amended;

"(5) the Act of June 19, 1936 (49 Stat. 1526); and

"(6) the Act entitled 'An Act to promote export trade and for other purposes' (40 Stat. 516), as amended.

"(c) (1) Upon finding that conditions exist which may pose a direct threat to the national defense or to its preparedness programs, the President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to providing for the making of voluntary agreements and programs by such persons, and may request the undertaking or entering into of such voluntary agreements or programs, in accordance with the provisions of this section, for the purpose of assuring adequate productive capacity and supply for mobilization.

"(2) The authority granted in paragraph (1) of this subsection shall be delegated only (A) to officials who shall for the purpose of such delegation be required to be appointed by the President, by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (B) upon the condition that such officials consult with the Attorney General and with the Federal Trade Commission not less than ten days before making any request thereunder, and (C) upon the condition that such officials obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to any request thereunder. For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection shall not be delegated except to one and only one official of the Government.

"(3) The authority granted in paragraph (1) of this subsection shall be exercised only if the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section certifies, with a written justification to be published in the Federal Register prior to approval of any proposed voluntary agreement, that such voluntary agreements and programs are necessary to accomplish the objectives of paragraph (1) of this subsection and if the Attorney General, after consultation with the Federal Trade Commission, certifies, in a report setting forth the competitive consequences of the proposed voluntary agreement, also to be published in the Federal Register, that such objectives cannot reasonably be accomplished through alternative means having lesser anticompetitive effects. Each voluntary agreement or program authorized under this section, together with any associated advisory committee provided for under subsection (d), shall expire two years from the date of the entering into force of the voluntary agreement, except that it may be extended for two more years every two years after—

"(A) the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section determines that its continuance is necessary to further the objectives of subsection (c) (1) and sets forth a detailed explanation of the reasons justifying its continuance, consistent with the need to protect the security of classified national defense information, to be published in the Federal Register at a reasonable time prior to the date of expiration; and

"(B) the Attorney General, after consultation with the Federal Trade Commission, determines that such objectives cannot reasonably continue to be accomplished through alternative means having lesser anticompetitive effects.

"(4) Upon making the determination that there no longer exists a requirement for a voluntary agreement or program or associated advisory committee, the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section shall recommend to the President that such voluntary agreement or program or associated advisory committee be terminated, setting forth the reasons for the recommendation, and shall inform the Attorney General and the Federal Trade Commission of the intended termination and date of its effect.

"(5) The requirements of this section shall be the sole procedures applicable to the development or implementation of the voluntary agreements or programs to accomplish the objectives of subsection (c) (1) of this section, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or programs.

"(d) (1) (A) To achieve the objectives of subsection (c) (1) of this section, the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section may provide for the establishment of such advisory committees as he determines are necessary. In addition to the provisions of the section, any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5,

United States Code, shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

"(B) The authority granted in paragraph (1) (A) of this subsection shall be delegated only (i) to officials who shall for the purpose of such delegation be required to be appointed by the President, by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (ii) upon the condition that such officials consult with the Attorney General and with the Federal Trade Commission not less than ten days before making any request thereunder, and (iii) upon the condition that such officials obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to any request thereunder. For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) (A) of this subsection shall not be delegated except to one and only one official of the Government.

"(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552 (b) (1) and (b) (3), of title 5, United States Code.

"(e) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section shall promulgate, by rule, subject to the prior approval of the Attorney General and the Federal Trade Commission, standards and procedures by which representatives of industry, business, financing, agriculture, labor, and other interests may develop and implement voluntary agreements and programs necessary to accomplish the objectives of subsection (c) (1) of this section.

"(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

"(1) such agreements and programs shall be developed by meetings of committees, councils, or other groups which include representatives of the public, of interested segments of the relevant industry or industries and of consumers, and shall in all cases be chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code;

"(2) meetings held to develop a voluntary agreement or program shall—

"(A) permit attendance by interested persons; and

"(B) be preceded by timely and adequate public notice, published in the Federal Register not less than ten days in advance of any such meeting, including identification of the agenda of such meeting;

"(3) interested persons shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings; and

"(4) a full and complete verbatim transcript shall be kept of any meeting, conference, or communication held to develop or implement a voluntary agreement or program under this section and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and copying, subject to provisions of section 552 (b) (1) and (b) (3) of title 5, United States Code.

"(5) No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or any logs of communications.

"(g) (1) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section may exempt, subject to the prior approval of the Attorney General and the Federal Trade Commission, types or classes of meetings, conferences or communications from the requirements of subsections (d) (2) and (f) (4) of this section: *Provided*, That such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing a voluntary agreement or program authorized pursuant to this section. Such ministerial meeting, conference, or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference, or communica-

tion shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed, consistent with the need to protect the security of classified national defense information. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

"(2) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section may suspend, subject to the prior approval of the Attorney General and the Federal Trade Commission, the application of—

"(A) sections 10 and 11 of the Federal Advisory Committee Act,

"(B) subsection (d) (2) of this section,

"(C) the requirement under subsection (f) (2) of this section that meetings be open to the public; and

"(D) the second sentence of paragraph (f) (4) of this section;

if the official designated pursuant to subsections (c) (2) and (d) (1) (B) determines in each instance that such suspension is essential to protect the security of classified national defense information and that application of such provisions would be detrimental to the defense of the United States.

"(3) On complaint, the United States District Court for the District of Columbia has jurisdiction to enjoin any exemption or suspension pursuant to subsections (g) (1) and (g) (2) of this section and to order the production of the records filed with the Attorney General and the Federal Trade Commission as set forth in subsection (g) (1) of this section where the court determines that such records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any parts thereof shall be withheld under any of the exemption or suspension provisions set forth in subsections (g) (1) and (g) (2) of this section, and the burden is on the agency to sustain its action.

"(h) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement programs authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of subsection (c) (1) of this section. A voluntary agreement or program under this section may not be implemented unless approved by the Attorney General and the Federal Trade Commission. The Attorney General or the Federal Trade Commission shall have the right, after consultation with the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section, to review, amend, modify, disapprove, or revoke, on its own motion or upon the request of any interested person, any voluntary agreement or program at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of this section.

"(2) Any voluntary agreement or program entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented, and it shall be made available for public inspection and copying, subject to the provisions of subsection (g) of this section. Any action taken pursuant to such voluntary agreement or program shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

"(i) (1) The Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and programs authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effects.

"(2) The Attorney General and the Federal Trade Commission shall promulgate joint regulations concerning the maintenance of necessary and appropriate documents, minutes, transcripts, and other records related to the development and implementation of voluntary agreements and programs pursuant to this section.

"(3) Persons developing and implementing voluntary agreements and programs pursuant to this section shall maintain those records required by such joint regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

"(4) The Federal Trade Commission and the Attorney General may each prescribe pursuant to section 553, title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. Each may utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever such provision of law refers to 'the purposes of this Act' or like terms, the reference shall be understood to be this section.

"(j) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect of actions taken to develop or implement a voluntary agreement or program (provided that such actions were not taken unnecessarily and for the purpose of injuring competition) that—

"(1) such action was taken—

"(A) in the course of developing a voluntary agreement or program pursuant to this section, or

"(B) pursuant to a voluntary agreement or program authorized and approved in accordance with this section, and

"(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

Persons interposing the defense provided by this section shall have the burden of proof, except that the burden shall be on the plaintiff with respect to whether the actions were taken unnecessarily and for the purpose of injuring competition.

"(k) No provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

"(l) (1) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section shall report annually to the President and to the Congress on performance under each voluntary agreement or program authorized and approved in accordance with this section on its contribution to achievement of the objectives of subsection (c) (1) of this section.

"(2) The Attorney General and the Federal Trade Commission are each directed to make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General and the Federal Trade Commission shall each submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.

"(m) (1) Effective on the date of enactment of this Act, the immunity conferred by this section shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973.

"(2) Effective one hundred and twenty days after the date of enactment of this Act, the provisions of and immunity conferred by this section shall not apply to any actions taken or authorized to be taken by or under the Agreement on an International Energy Program, signed by the United States on November 18, 1974."

Sec. 4. The Defense Production Act of 1950 is further amended by adding after section 708, the following new section:

"Sec. 708A. (a) Except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"(b) As used in this section—

"(1) The term 'antitrust laws' means—

"(A) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (26 Stat. 290), as amended;

"(B) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 730), as amended;

"(C) the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes' (38 Stat. 717), as amended;

"(D) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (28 Stat. 579), as amended;

"(E) the Act of June 19, 1936 (49 Stat. 1526); and

"(F) the Act entitled 'An Act to promote export trade, and for other purposes' (40 Stat. 516), as amended.

"(2) The term 'international energy emergency' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

"(3) The term 'international agreement' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974.

"(4) The term 'Administrator' means the Administrator of the Federal Energy Administration.

"(5) The term 'petroleum product' means—

"(A) crude oil,

"(B) natural gas liquids and other liquids produced in association with crude oil or natural gas,

"(C) refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and

"(D) blending agents and additives used in conjunction with crude oil and refined petroleum products.

"(c) The requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or plans of action.

"(d) (1) To achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act and section 17 of the Federal Energy Administration Act, whether or not such Acts or any of their provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5, United States Code, and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

"(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552(b)(1) and (b)(3) of title 5, United States Code.

"(3) For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees, other than individuals employed pursuant to section 3109 of title 5, United States Code, established or utilized to advise the United States Government with respect to the formulation or carrying out of any agreement or plan of action under the international agreement.

"(e) The Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

"(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

"(1) (A) Meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

"(B) No meetings may be held to develop or implement a voluntary agreement or plan of action under this section, unless a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent.

"(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings.

"(3) A verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement or, with respect to meetings held or communications made to develop a voluntary agreement, persons who may become parties to such an agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552(b)(1) and (b)(3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

"(4) No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.



"(g) Subject to the prior approval of the Attorney General and the Federal Trade Commission, the Administrator may suspend the application of—

"(1) sections 10 and 11 of the Federal Advisory Committee Act,

"(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act,

"(3) the requirement under subsection (d) (1) of this section that meetings be open to the public; and

"(4) the second sentence of subsection (d) (2) of this section;

if the Administrator determines in each instance that such suspension is essential to the implementation of the international agreement as it relates to the internal allocation of petroleum products or the information system provided in such agreement and if the Secretary of State determines that the application of such provisions would be detrimental to the foreign policy interests of the United States. Such determinations by the Administrator and the Secretary of State shall be in writing, shall set forth, to the extent possible consistent with the need to protect the security of classified national defense and foreign policy information, a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

"(h) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this section. A voluntary agreement or plan of action under this section may not be implemented unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Administrator, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of this section.

"(2) Any voluntary agreement entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented (where it shall be made available for public inspection and copying subject to the provisions of subsection (g) of this section); except that during an international energy supply emergency, the Administrator, subject to approval of the Attorney General, may reduce such twenty-day period. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

"(i) (1) The Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and plans of action authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effect.

"(2) In addition to any requirements specified under subsections (e) and (f) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Administrator, shall promulgate regulations concerning the maintenance of necessary and appropriate records related to the development and implementation of voluntary agreements and plans of action pursuant to this section.

"(3) Persons developing and implementing voluntary agreements or plans of action pursuant to this section shall maintain those records required by such regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

"(4) The Attorney General and the Federal Trade Commission may each prescribe pursuant to section 553 of title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their respective

responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever any such provision of law refers to 'the purposes of this Act' or like terms, the reference shall be understood to be this section.

"(j) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect of actions taken to develop or implement a voluntary agreement or plan of action by persons engaged in the business of producing, refining, marketing, or distributing petroleum products (provided that such actions were not taken unnecessarily and for the purpose of injuring competition) that—

"(1) such action was taken—

"(A) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

"(B) pursuant to a voluntary agreement or plan of action authorized and approved in accordance with this section, and

"(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

Persons interposing the defense provided by this section shall have the burden of proof, except that the burden shall be on the plaintiff with respect to whether the actions were taken unnecessarily and for the purpose of injuring competition.

"(3) In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

"(k) No provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

"(1) (1) The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

"(2) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section."

SEC. 5. The second sentence of section 710(e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2160(e)), is amended to read as follows: "Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, as prescribed under title 5 of the United States Code for individuals serving without pay, while away from their homes or regular places of business for the purpose of participating in the executive reserve training program."

SEC. 6. The provisions of sections 708 and 708A, as amended and added respectively by this Act, shall become effective one hundred and twenty days after the date of enactment.

#### COMMITTEE DELIBERATIONS

On April 25, 1975, Senators Proxmire, Sparkman and Williams introduced S. 1537, which was referred to the Committee on Banking, Housing and Urban Affairs. The Committee held hearings on S. 1537, on July 7, 1975. On July 29, 1975, the Committee met in open executive session at which a quorum was present and at the conclusion thereof a substitute bill was ordered reported with an amendment. This amendment replaces the immunity provisions in Section 708(j) and Section 708A(j) of the substitute with immunity provisions adopted

from the parallel section of S. 622, "The Standby Energy Authorities Act," which was passed by the Senate on April 10, 1975.

### I. PURPOSE OF THE MEASURE

The purpose of S. 1537, the "Defense Production Act Amendments of 1975", is three-fold. The major purpose is to extend for the customary period of two years the titles of the Defense Production Act of 1950, as amended. These titles provide the authority for a number of programs aimed at maintaining the national defense industrial production base, at preparing mobilization programs, at providing uniform cost accounting standards for contractors, and at examining national policy with regard to materials supplies and shortages. A second purpose of the measure is to remove the \$15 limitation on per diem allowances for members of the National Defense Executive Reserve and provides that members may be allowed transportation and per diem allowances in accordance with the laws that authorize such allowances for other individuals serving the United States without pay.

A third purpose of S. 1537 is to amend Section 708 of the Defense Production Act. Section 708 provides authority for the granting of immunity from antitrust action to voluntary agreements, which the President may request from representatives of industry, business, financing, agriculture, labor and other interests in order to further the objectives of the Act. The changes which the measure makes in Sec. 708 are of two kinds. First, they make a distinction between voluntary agreements of a general sort (treated in the amended Sec. 708) and the voluntary agreement developed in support of the International Energy Program (treated in the new Sec. 708A). Secondly, the amendments provide in both cases for strengthened procedural safeguards for the development and implementation of voluntary agreements, in order that exemptions from antitrust immunity may not be granted without adequate assurance that they are in the best interest of the nation as a whole.

### II. SYNOPSIS OF LEGISLATION

SEC. 1. Enabling clause.

SEC. 2. Extends the Defense Production Act to September 30, 1977 to coincide with the new fiscal year established in the Congressional Budget Act of 1974 (P.L. 93-344).

SEC. 3. Amends Section 708 of the Defense Production Act to provide additional procedural safeguards for the granting of antitrust immunity to the development and implementation of voluntary agreements requested by the President from various industries or other interests to meet national defense emergencies.

Chief among the safeguards provided in S. 1537 are provisions for:

Greater monitoring of the development and implementation of voluntary agreements by the Attorney General and the Federal Trade Commission;

Promulgation by the Attorney General and the Federal Trade Commission of standards and procedures to be followed when developing or implementing any voluntary agreements or programs pursuant thereto, as well as joint regulations for voluntary agreements;

Certification by the Attorney General, after consultation with the Federal Trade Commission, that the objectives of the voluntary agreement cannot be reasonably accomplished through alternative means having lesser anticompetitive effects;

Advance notice of and complete records for all meetings connected with voluntary agreements and public disclosure of these meetings and records, subject to exemptions for classified national defense information;

Participation in meetings of committees, councils, or other groups established under voluntary agreements by representatives of the public, of interested segments of the relevant industry or industries, and of consumers, subject to exemptions for meetings involving classified national defense information, and Chairmanship of such meetings by a full-time Federal employee.

Access to all information and meetings concerning voluntary agreements or programs by the Attorney General, the Federal Trade Commission, and the appropriate committees of the Congress;

Annual reports and surveys by the Attorney General or the Federal Trade Commission on the status and the effects of voluntary agreements, as well as a biennial review of all voluntary agreements in effect;

Review, amendment, modification, disapproval or revocation of any voluntary agreement or withdrawal of antitrust immunity by the Attorney General and the Federal Trade Commission; and

Immunity from civil or criminal actions for any acts taken in developing or implementing voluntary agreements or programs in compliance with the rules and regulations provided in the Act.

SEC. 4. The measure adds to Section 708 of the Defense Production Act a new Section 708A to provide special authority for the voluntary agreement developed in support of the Agreement on an International Energy Program (IEP), signed by the United States on November 18, 1974. The provisions of Section 708A are parallel to and serve the same objectives as those proposed in S. 1537 for Section 708 but are distinguished by providing greater flexibility for the purpose of international negotiations and the carrying out of international programs pursuant to the voluntary agreement.

SEC. 5. Removes the \$15 per diem limitation on travel expenses for members of the National Defense Executive Reserve while serving without pay and travelling for the purpose of participating in the NDER training program and permits them to be reimbursed in accordance with applicable statutes authorizing such allowances for other individuals serving the United States without pay.

SEC. 6. Establishes the effective date for Sections 708 and 708A, allowing 120 days to bring existing agreements into conformance with the new provisions.

### III. NEED FOR AND EXPLANATION OF THE LEGISLATION

The Defense Production Act is basically a preparedness measure. Its original titles provide for programs which will improve the readiness of the nation's industrial base in peacetime and for programs which can be initiated or expanded in the event of mobilization. Among the more significant of the ongoing programs are the Defense



Priorities System, the Defense Materials System, the Machine Tool Trigger Order Program, the borrowing authority established for the expansion of productive capacity and supply, the Defense Production Act Inventory, the National Defense Executive Reserve, and the authority to grant immunity from anti-trust action for voluntary agreements requested by the President.

While the Congress has made substantial alterations in the Act over its lifetime—deleting the titles authorizing wage and price stabilization, labor dispute settlement, and control of consumer and real estate credit and adding titles authorizing uniform cost accounting standards and a temporary National Commission on Supplies and Shortages—the basic provisions relating to industrial production for the national defense have remained unchanged. The Congress has regularly seen fit to extend the life of these basic authorities, normally at intervals of two years, ever since original enactment in 1950. Without this extension, the nation's sole authority for industrial preparedness for mobilization would lapse and the readiness programs cited above would be terminated.

In terms of the specific provisions of the Defense Production Act Amendments of 1975, the justification for extending the Act until September 30, 1977 (instead of the traditional date of June 30th) seems self-evident. The former and traditional termination date coincided with the federal fiscal year; the new date will coincide with the new fiscal year established under the Congressional Budget Reform Act of 1974. It will continue to give the Congress the opportunity to review and, where necessary, amend the Defense Production Act on a regular, biennial basis.

The provision regarding per diem allowances for the National Defense Executive Reserve removes an inequity in the reimbursement of members who serve without pay but must travel to attend training sessions. Under the existing provisions of the Act, these individuals are limited to a maximum of \$15 per day as compensation for travel expenses, while other citizens also performing similar functions for the government without pay are reimbursed at higher rates under other legislation. This change to the Defense Production Act will permit compensation to NDER members for travel expenses on a comparable basis.

The improved procedural safeguards proposed for voluntary agreements are part of an effort to bring existing legislation into conformance with similar provisions in newer legislation, specifically the provisions of the Federal Energy Administration Act of 1974.

The procedural steps provided for in Sections 708 and 708A as amended and added by S. 1537 are aimed at providing a mechanism whereby the national interest in preserving a free enterprise economy can be weighed against other imperatives, such as military preparedness and energy shortages, and a determination can be made, in specific situations, as to which national objective should prevail in terms of taking specific actions. These procedures also seek to ensure that such immunity from the antitrust laws extends only to those actions absolutely essential to meeting the goals which are considered to override normal antitrust restraints. Furthermore, these procedures provide, to the extent consistent with national security and foreign policy considerations, for a development and implementation process that assures interested parties, including the Congress, of full access to

meetings and written materials related to voluntary agreements and plans of action or programs deriving therefrom.

Finally, the mechanisms established in Sections 708 and 708A as amended and added by S. 1537 require continuous review of regular reporting on voluntary agreements and actions stemming therefrom by the appropriate officials of government, so that the appropriate balance between the antitrust interest and the national defense interest can be monitored and maintained.

The current voluntary agreement provisions of the Defense Production Act, on the other hand, require amending because they are open-ended and fair to provide for statutory protection of the public interest in confining exemptions from the normal operation of the antitrust laws to narrow and necessary cases. They lack any procedural safeguards or monitoring and review process through which the necessity for such agreements can be established and through which fulfillment of their objectives can be determined. The lack of such safeguards in the existing Section 708 of the Defense Production Act has long been of concern to the Congress. This concern was most forcefully expressed in 1954 by a former chairman of the Banking Committee, Senator William Fullbright, and led to a Congressional prohibition on any new voluntary agreements between 1955 and 1969.

The need for parallelism, to the extent practicable, between the provisions of Sec. 708 and Sec. 708A in S. 1537 stems in part from the fact that other approaches which have been suggested (such as leaving the existing provisions of Sec. 708 intact while developing new provisions solely for the International Energy Program) would lead to a double standard for voluntary agreements. This would not only be confusing but would be poor lawmaking. Instead, the approach that has been adopted in S. 1537 is to apply the same standard to voluntary agreements, making exceptions, where necessary, for different types of agreements on a case by case basis.

The antitrust immunity provisions and procedures of S. 1537 accept the need for some protection from prosecution for antitrust violations under conditions flowing from overriding considerations. However, immunity from antitrust laws should never be granted except in language that limits and narrows the extraordinary exempting language. The procedures that would be established by S. 1537 are reasonable and to the point. They will safeguard the public interest in free enterprise, in adequate defense readiness, and in obtaining adequate supplies of energy under emergency conditions.

S. 1537, as introduced, provided antitrust immunity *only* for voluntary agreements needed for defense production purposes. The substitute S. 1537 provides *also* for a particular type of voluntary agreement developed pursuant to the International Energy Agreement because S. 622 and H.R. 7014 (which would have covered the voluntary agreement under the I.E.A.) have not been enacted. A comparative synopsis of the provisions of S. 1537 relating to these two types of voluntary agreements appears at the end of this portion of the report.

The difference between the voluntary agreement provisions relating to national defense objectives and those relating to the international energy agreement is that the latter include more flexibility in order to allow for international negotiations and actions involving foreign governments and firms.

The provisions of the substitute S. 1537 reflect, in many respects, the actual safeguard requirements of the Voluntary Agreement developed in 1975 in support of the International Energy Agreement and Program. These safeguards were developed by the Justice Department and the Federal Trade Commission.

The provisions of the substitute S. 1537 are, in the main, parallel to those in the Standby Energy Authorities Bill, S. 622, as passed by the Senate in April, and in H.R. 7014, the House companion, as far as they relate to voluntary agreements pursuant to the International Energy Agreement.

The provisions of the substitute S. 1537 also reflect testimony given in hearings before the Senate Banking Committee, specifically:

a. the suggestions made by General Leslie Bray, Jr., Director of Preparedness and the official chiefly responsible for carrying out the provisions of the Defense Production Act that:

(1) the restrictive language relating to circumstances when voluntary agreements may be requested should be relaxed;

(2) provision be made for exempting from disclosure meetings and documents which may involve classified national defense information; and

(3) the Attorney General and the Federal Trade Commission be confined to comment on the anticompetitive and antitrust aspects of voluntary agreements and not to the substantive questions of whether voluntary agreements are the best method for solving the problems which give rise to them.

b. the suggestions made by Mr. Kenneth Anderson of the Bureau of Competition in the Federal Trade Commission that:

(1) all voluntary agreements be subject to biennial review and rejustification and that

(2) the Federal Trade Commission should have a stronger role in the antitrust aspects of the voluntary agreements.

Additionally, the changes in the substitute S. 1537 reflect many, though not all, of the alterations recommended by representatives of the Federal Preparedness Agency (especially as regards the active role of the official designated by the President to carry out his Sec. 708 responsibilities), of the Federal Energy Administration, of the State Department, and the Federal Trade Commission in a series of meetings held to discuss the bill in June and July.

The provisions of the substitute S. 1537 are similar to those in the Federal Energy Administration Act (as regards disclosure and recordkeeping), the Federal Advisory Committee Act (as regards advisory committees), the Freedom of Information Act (as regards court tests of claims that material requires classification protection as a result of national defense implications), and the Emergency Petroleum Allocation Act (as regards the 'breach of contract' defense).

More generally, the Committee intent reflects the goals and objectives of the Senate when it twice passed similar protective provisions during the 93rd and 94th Congresses. [See committee and conference reports on S. 2589 and H.R. 11450 (93d Cong.) and S. 622 (94th Cong.); 94 Cong. Rec. S5624-5625, April 9, 1975]; 94 Cong. Rec. S3831-3832 (March 12, 1975); 93 Cong. Rec. S20725-20735 (November 19, 1973); and 93 Cong. Rec. H11245-11251 (December 12, 1973).]

Certain specific provisions of the amendments to the Defense Production Act may require explanation of the Committee's intent.

Subsection (c) (1) of the amended Section 708 seeks to relate the need for voluntary agreements more explicitly to the purposes of the Defense Production Act. The existing language of the Act merely states that voluntary agreements may be developed "to further the objectives of this Act." The Committee's intent in expanding on this language is to emphasize that any voluntary agreements authorized under the Act should be able to demonstrate a clear relation to the Act's general objective of providing for ongoing and standby programs aimed at preparing an adequate industrial base against the contingency of war. In this connection, the use of the term "mobilization" is not limiting. It does not require a formal mobilization in the technical sense of the term. Rather, it is used here to connote those activities which may be deemed appropriate to prepare for or to engage in military actions.

Subsections (f) in Sections 708 and 708A as amended and added by the Defense Production Act Amendments refer to the right of "committees of Congress" to attend meetings and to have access to certain documents related to the development and implementation of voluntary agreements or the programs or plans of action stemming therefrom. It is here understood that this provision addresses those committees of the Congress which have legislative or oversight responsibilities regarding either the subject matter of the specific voluntary agreement, the departments or agencies involved in the voluntary agreement, or the firms and the sector of the economy affected by the voluntary agreement. Further, by use of the term "access," the Committee intends to signify that authorized committee personnel shall have the right to read and review any of the documents named. It does not necessarily require that copies of such documents must be made available to the committees for their use.

Subsections (h) (1) in Sections 708 and 708A as amended and added by S. 1537 provide for the participation of the Federal Trade Commission and the Attorney General in any meeting to develop or implement voluntary agreements authorized under these sections and, where practicable, in any meeting to implement plans of action or programs authorized under these sections. The Committee recognizes that it may not be possible or necessary for them to participate in all meetings held to implement programs or plans of action in the sense of having representatives physically in attendance. However, the Committee expects those agencies to be fully aware of all such meetings, their agendas, attendance, and outcomes and to review the documentation of any of these meetings in order to satisfy the requirement for participation.

The requirement for participation "from the beginning" is construed by the Committee to mean that the Attorney General and the Federal Trade Commission shall be informed of and made parties to any plans to request voluntary agreements from individuals prior to any communication by any government agency or department with the private sector.

Subsection (j) (3) of Section 708A as added by S. 1537 provides a defense against breach of contract suits arising out of actions taken to carry out a voluntary agreement. Any other defenses to the action which may be available to such a person can be raised without prejudice to this statutory defense.

While the Committee considers it important to renew the provisions of the Defense Production Act for two more years, including the amended voluntary agreements provisions, it continues to have reservations about the status of the International Energy Agreement signed by the United States on November 18, 1974.

These reservations arise from a number of related concerns. The Committee notes that the International Energy Agreement, which is an executive agreement between heads of state and not a treaty between sovereign states ratified and approved by the Congress, does not have the full force and effect of law. It takes the position that nothing in the Defense Production Act Amendments of 1975 should be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of the executive agreement or any related protocol, annex, amendment, modification, or other agreement which has been or may in the future be entered into.

The Committee notes also that the International Energy Agreement has not itself come into force because it lacks the approval of the required 60% of the governments which are party to it and that its coming into force has now been delayed until December 31, 1975.

Furthermore, the Committee recognizes that the International Energy Program which stem from the International Energy Agreement can, at any time, be altered or amended and that such alterations or amendments do not require the review or approval of the Congress. By such action, the International Energy Program might be substantially altered and the voluntary agreements which support it would still retain the antitrust immunity provided for in Section 708A as added by S. 1537, albeit contrary to the wishes and intent of the Congress.

In view of the need to extend the major titles of the Defense Production Act and in the interest of adopting an appropriate posture in regard to an international energy emergency, the Committee has chosen to report out the legislation. It will, however, seek further assurances on these points before bringing the bill to a vote and it will prepare appropriate Committee amendments to guard against any possibility of inadvertent endorsement of the International Energy Agreement or of inadvertent immunization of actions not now contemplated under that agreement.

COMPARATIVE SYNOPSIS OF PROVISIONS OF SECS. 708 AND 708A OF S. 1537

	Sec. 708	Sec. 708A
Restriction of applicability of antitrust immunity provisions.....	(a).....	(a).
Definition of terms.....	(b).....	(b).
Relation to national defense.....	(c)(1).....	NA.
Delegation of Presidential authority.....	(c)(2).....	NA.
Certification of necessity for voluntary agreement and lack of less anticompetitive alternative.....	(c)(3).....	NA.
Termination of voluntary agreement by sponsoring official.....	(c)(4).....	NA.
Applicability of section.....	(c)(5).....	(c).
Advisory committee provisions.....	(d).....	(d).
Promulgation of standards and procedures for voluntary agreements by appropriate official.....	(e).....	(e).
Minimum standards and procedures required.....	(f).....	(f).
Authority for exemptions from public disclosure requirements.....	(g).....	(g).
Participation, review and revocation by Attorney General or Federal Trade Commission.....	(h).....	(h).
Monitoring, record-keeping requirements and other rules of the Attorney General and the Federal Trade Commission.....	(i).....	(i).
Availability of immunity from civil or criminal action under antitrust laws.....	(j).....	(j).
Limitations on grant of immunity.....	(k).....	(k).
Studies required of the sponsoring official.....	(l)(1).....	(l)(1).
Studies required of the Attorney General and the Federal Trade Commission.....	(l)(2).....	(l)(2).
Relationship to other legislation.....	(m).....	NA.
Effective date of provisions.....	Sec. 6.....	Sec. 6.

IV. COMMITTEE AMENDMENTS

The Committee amended S. 1537 by striking everything after the enabling clause and substituting a new text. The principal changes in the substitute, as amended, are as follows:

1. The termination date has been changed from June 30, 1977 to September 30, 1977.

2. The findings upon which a request for voluntary agreements may be based have been relaxed in order to give the President the flexibility to seek voluntary agreements in emergency situations short of war or mobilization.

3. The supervisory roles of the Attorney General and the Federal Trade Commission have been confined to establishing rules and procedures and to examining the anticompetitive implications of voluntary agreements and programs, thus removing them from the substantive decisions about the agreement and programs which are more properly the province of the Federal officials designated by the President to carry out the voluntary agreement authorities conferred on him in the Act.

4. A provision has been added to exempt from the participation and disclosure requirements relating to meetings, documents and materials those meetings, documents and materials which involve classified national defense information.

5. A Congressional 'right-to-know' provision has been added.

6. A requirement for a biennial review of all voluntary agreements, excepting that in support of the IEP, has been added.

7. The immunity provisions of the original bill and of the substitute were amended to reflect the provisions of the parallel section of S. 622, "The Standby Energy Authorities Act," since these provisions have already attained Senate approval.

8. Language has been added to clarify the application of Section 708 proper to actions taken or authorized under the Emergency Petroleum Allocation Act of 1973 or the Agreement on an International Energy Program signed by the United States on November 18, 1974.

9. A new section, Sec. 708A, has been added to provide separate and specific authority for the Voluntary Agreement developed in support of the Agreement on an International Energy Program of November 18, 1974. This additional section was necessitated by the fact that the Standby Energy Authorities Bill (S. 622), which would otherwise have provided the sole authority for this voluntary agreement, has not yet been enacted.

10. Provision has been made for a period of 120 days to permit the revision of existing voluntary agreements in light of the changes in statutory authority.

11. Provisions have been added providing for the termination of voluntary agreements by the sponsoring officials.

12. Provisions relating to studies by the sponsoring officials, the Attorney General, and the Federal Trade Commission have been expanded.

13. A provision has been added to remove the \$15 limitation on per diem travel expense reimbursement for members of the NDER.

## V. COMMITTEE RECOMMENDATION

The Committee on Banking, Housing and Urban Affairs in an open executive session on July 29, 1975, at which a quorum was present, agreed, without objection that S. 1537, as amended, be reported to the Senate and that it be enacted.

## VI. COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-150), the Committee provides the following estimate of the cost of this measure.

The potential costs associated with S. 1537 are of two kinds: (1) the costs which may result from removal of the \$15 limitation on per diem travel expenses for members of the National Defense Executive Reserve when attending training programs and (2) cost increases which agencies involved in the development and implementation of voluntary agreements may experience as a result of expanded requirements for supervision, advance notification, records-keeping and similar administrative functions.

In the first case, projections of additional costs are, for the most part, hypothetical, inasmuch as most agencies do not choose to authorize per diem reimbursement to National Defense Executive Reservists. And many reservists, when authorized, do not choose to claim reimbursement. During Fiscal Year 1975 only one unit authorized per diem. It actually paid out \$1,250. Had it paid for training at the per diem rate for similar service under title 5 of the U.S. Code, it would have paid out \$5,000 or \$3,750 additional. Based on this experience and expected uses of authorization by other units through Fiscal Year 1977, the total outlay is not expected to exceed \$25,000 per annum.

The administrative costs associated with the improved procedural requirements for voluntary agreements are more difficult to estimate, in that the need for these agreements in the future is difficult to predict. In view of the fact that the munitions-type agreements have, for the most part, been in an inactive status for several years and in view of the fact that voluntary agreements resulting from international oil disruptions have been required at widely spaced intervals (1956-57, 1967, 1974), it appears unlikely that the provisions of S. 1537 will require any additional personnel in the agencies involved for the foreseeable future.

In the case of the Voluntary Agreement in support of the International Energy Agreement, for which administrative regulations were established by the Justice Department, no new personnel or facilities have been required in the development and implementation of the agreement. Rather, such additional resources as were required by the agencies have been borrowed from other tasks of "taken out of hide." Presumably such would be the case in the event a new voluntary agreement becomes necessary in a single field. If, on the other hand, there were a national emergency that required full or partial mobilization and a series of voluntary agreements covering a variety of industries or other fields, the requirements of S. 1537 would likely entail a need for some additional staff as well as additional administrative services. The cost of these additional personnel and services, however, cannot be quantified or estimated in advance of the actual contingency.

## VII. EXECUTIVE COMMUNICATIONS

The Executive Branch transmitted to the Senate the following draft bill to amend and extend the Defense Production Act, together with the justification for the extension and amendments. Though submitted, the bill was never introduced. Its provisions have been adopted in their entirety in S. 1537, as amended.

MAY 13, 1975.

HON. NELSON A. ROCKEFELLER,  
*President of the Senate,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. PRESIDENT: Forwarded herewith is a draft bill "To amend and extend the Defense Production Act of 1950." A section-by-section analysis of the proposed bill is also included.

The bill would extend the Act for two years and three months, changing its termination date from June 30, 1975, to September 30, 1977. The bill would also amend section 710(e) of the Act to avoid a small but significant inequity that has existed for some years regarding the per diem allowance authorized for members of the executive reserve established pursuant to that section of the Act.

The Defense Production Act is important and time-tested legislation supporting programs vital to our national security. In the Defense Production Act the Congress addressed the need to divert certain materials and facilities from civilian use to military and related purposes, to develop preparedness programs, and to provide for the expansion of productive capacity and supply.

Title I of the Act provides authority to give priority treatment to vital defense contracts and to allocate materials and facilities for defense programs. It is under this authority that the Defense Materials System and the Defense Priorities System have been established. The regulations for these systems are basic arrangements for priority and allocation programs that can be expanded quickly to meet the needs of any future national defense emergency. Meanwhile, they serve to meet current national defense needs for essential goods and services in today's short-supply markets. These current, continuing operations also develop a corps of experienced specialists who would be a nucleus for the rapid and efficient expansion of the priorities and allocations systems that would be needed in any future industrial mobilization.

Title III of the Act provides needed authority for the expansion of the Nation's productive capacity to meet defense needs. It includes authority to make loans and loan guarantees to private business enterprises for the expansion of capacity, the development of technological processes, and the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals. This Title also authorizes the guarantee of loans to finance the performance of defense contracts.

One provision of Title VII is the basic authority for the National Defense Executive Reserve—a pool of individuals with proven executive talents who have agreed to undergo special training without salary compensation and have agreed to enter Government service if ever an emergency should require their rapid mobilization. The minor amendment offered in the enclosed draft bill would authorize individuals,



when required to travel for the purpose of the executive reserve, to receive the same per diem allowances authorized by the Congress for all other individuals serving without pay.

Title VII also provides authority under which defense contractors may, with the approval of the President, enter into voluntary agreements serving defense purposes without violating the antitrust laws.

In addition to many general provisions concerning administration of the Act, Title VII also establishes the Joint Committee on Defense Production (section 712), the Cost-Accounting Standards Board (section 719), and the National Commission on Supplies and Shortages (section 720).

The Defense Production Act is the cornerstone of the present legal structure for insuring preparedness to meet crises requiring the mobilization of the Nation's industrial and material resources. Its continuation is essential to the national security. A two-year extension interval appears to be a reasonable compromise between the needs of administrative efficiency and the need for periodic review by the Congress. The additional three-month period will permit coincidence with the new fiscal year cycle established by the Congress. The General Services Administration therefore strongly urges prompt and favorable consideration of this draft bill.

The Office of Management and Budget has advised that there is no objection to the submission of this legislative proposal to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

ARTHUR F. SAMPSON,  
*Administrator.*

Enclosure.

[Enclosure 1]

A BILL To amend and extend the Defense Production Act of 1950

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the second sentence of section 710(e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2160(e)), is amended to read as follows: "Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, as prescribed under title 5 of the United States Code for individuals serving without pay, while away from their homes or regular places of business for the purpose of participating in the executive reserve training program."

Sec. 2. The first sentence of section 717(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2166(a)), is amended by striking out "June 30, 1975" and inserting in lieu thereof "September 30, 1977."

[Enclosure 2]

BILL TO AMEND AND EXTEND THE DEFENSE PRODUCTION ACT OF 1950

SECTION-BY-SECTION ANALYSIS

*Section 1*

Removes the \$15 limitation on per diem allowances for members of the executive reserve and provides that members may be allowed trans-

portation and per diem allowances in accordance with the laws that authorize such allowances for other individuals serving the United States without pay.

*Section 2*

Extends the Act for two years and three months beyond its existing termination date, June 30, 1975, until September 30, 1977. The unusual three month additional period is needed to accommodate the transition from July 1-June 30 fiscal years to October 1-September 30 fiscal years as required by the Congressional Budget Act of 194 (P.L. 93-344).

VIII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

\* \* \* \* \*

【SEC. 708. (a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

【(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States.

【(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

【(d) Upon withdrawal of any request or finding made hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

【(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition,

create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this Section.]

*Sec. 708. (a) Except as specifically provided in subsection (j) of this section and section 708A(j) of this Act, no provision of this Act shall be deemed to provide to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.*

*(b) As used in this section, the term "antitrust laws" means—*

*(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (23 Stat. 290), as amended;*

*(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (38 Stat. 730), as amended;*

*(3) the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), as amended;*

*(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (28 Stat. 579), as amended;*

*(5) the Act of June 19, 1936 (49 Stat. 1526); and*

*(6) the Act entitled "An Act to promote export trade and for other purposes" (40 Stat. 516), as amended.*

*(c) (1) Upon finding that conditions exist which may pose a direct threat to the national defense or to its preparedness programs, the President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to providing for the making of voluntary agreements and programs by such persons, and may request the undertaking or entering into of such voluntary agreements or programs, in accordance with the provisions of this section, for the purpose of assuring adequate productive capacity and supply for mobilization.*

*(2) The authority granted in paragraph (1) of this subsection shall be delegated only (A) to officials who shall for the purpose of such delegation be required to be appointed by the President, by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (B) upon the condition that such officials consult with the Attorney General and with the Federal Trade Commission not less than ten days before making any request thereunder, and (C) upon the condition that such officials obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to any request thereunder. For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection shall not be delegated except to one and only one official of the Government.*

*(3) The authority granted in paragraph (1) of this subsection shall be exercised only if the official designated pursuant to subsections*

*(c) (2) and (d) (1) (B) of this section certifies, with a written justification to be published in the Federal Register prior to approval of any proposed voluntary agreement, that such voluntary agreements and programs are necessary to accomplish the objectives of paragraph (1) of this subsection and if the Attorney General, after consultation with the Federal Trade Commission, certifies, in a report setting forth the competitive consequences of the proposed voluntary agreement, also to be published in the Federal Register, that such objectives cannot reasonably be accomplished through alternative means having lesser anti-competitive effects. Each voluntary agreement or program authorized under this section, together with any associated advisory committee provided for under subsection (d), shall expire two years from the date of the entering into force of the voluntary agreement, except that it may be extended for two more years every two years after—*

*(A) the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section determines that its continuance is necessary to further the objectives of subsection (c) (1) and sets forth a detailed explanation of the reasons justifying its continuance, consistent with the need to protect the security of classified national defense information, to be published in the Federal Register at a reasonable time prior to the date of expiration; and*

*(B) the Attorney General, after consultation with the Federal Trade Commission, determines that such objectives cannot reasonably continue to be accomplished through alternative means having lesser anticompetitive effects.*

*(4) Upon making the determination that there no longer exists a requirement for a voluntary agreement or program or associated advisory committee, the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section shall recommend to the President that such voluntary agreement or program or associated advisory committee be terminated, setting forth the reasons for the recommendation, and shall inform the Attorney General and the Federal Trade Commission of the intended termination and date of its effect.*

*(5) The requirements of this section shall be the sole procedures applicable to the development or implementation of the voluntary agreements or programs to accomplish the objectives of subsection (c) (1) of this section, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or programs.*

*(d) (1) (A) To achieve the objectives of subsection (c) (1) of this section, the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5, United States Code, shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission*

shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(B) The authority granted in paragraph (1) (A) of this subsection shall be delegated only (i) to officials who shall for the purpose of such delegation be required to be appointed by the President, by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (ii) upon the condition that such officials consult with the Attorney General and with the Federal Trade Commission not less than ten days before making any request thereunder, and (iii) upon the condition that such officials obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to any request thereunder. For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) (A) of this subsection shall not be delegated except to one and only one official of the Government.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552 (b) (1) and (b) (3), of title 5, United States Code.

(e) The official designated pursuant to subsection (c) (2) and (d) (1) (B) of this section shall promulgate, by rule, subject to the prior approval of the Attorney General and the Federal Trade Commission, standards and procedures by which representatives of industry, business, financing, agriculture, labor, and other interests may develop and implement voluntary agreements and programs necessary to accomplish the objectives of subsection (c) (1) of this section.

(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

(1) such agreements and programs shall be developed by meetings of committees, councils, or other groups which include representatives of the public, of interested segments of the relevant industry or industries and of consumers, and shall in all cases be chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code;

(2) meetings held to develop a voluntary agreement or program shall—

(A) permit attendance by interested persons; and

(B) be preceded by timely and adequate public notice, published in the Federal Register not less than ten days in advance of any such meeting, including identification of the agenda of such meeting;

(3) interested persons shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings; and

(4) a full and complete verbatim transcript shall be kept of any meeting, conference, or communication held to develop or implement a voluntary agreement or program under this section and shall be taken and deposited, together with any agreement

resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and copying, subject to provisions of section 552 (b) (1) and (b) (3) of title 5, United States Code.

(5) No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or any logs of communications.

(g) (1) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section may exempt, subject to the prior approval of the Attorney General and the Federal Trade Commission, types or classes of meetings, conferences or communications from the requirements of subsections (d) (2) and (f) (4) of this section: Provided, That such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing a voluntary agreement or program authorized pursuant to this section. Such ministerial meeting, conference, or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference, or communication shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed, consistent with the need to protect the security of classified national defense information. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

(2) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section may suspend, subject to the prior approval of the Attorney General and the Federal Trade Commission, the application of—

(A) sections 10 and 11 of the Federal Advisory Committee Act,

(B) subsection (d) (2) of this section,

(C) the requirement under subsection (f) (2) of this section that meetings be open to the public; and

(D) the second sentence of paragraph (f) (4) of this section; if the official designated pursuant to subsections (c) (2) and (d) (1) (B) determines in each instance that such suspension is essential to protect the security of classified national defense information and that application of such provisions would be detrimental to the defense of the United States.

(3) On complaint, the United States District Court for the District of Columbia has jurisdiction to enjoin any exemption or suspension pursuant to subsections (g) (1) and (g) (2) of this section and to order the production of the records filed with the Attorney General and the Federal Trade Commission as set forth in subsection (g) (1) of this section where the court determines that such records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any parts thereof shall be withheld under any of the exemption or suspension provisions set forth in subsections (g) (1) and (g) (2) of this section, and the burden is on the agency to sustain its action.

(h) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and when practicable, in any meeting to implement programs authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anti-competitive effects while achieving substantially the purposes of subsection (c) (1) of this section. A voluntary agreement or program under this section may not be implemented unless approved by the Attorney General and the Federal Trade Commission. The Attorney General or the Federal Trade Commission shall have the right, after consultation with the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section, to review, amend, modify, disapprove, or revoke, on its own motion or upon the request of any interested person, any voluntary agreement or program at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of this section.

(2) Any voluntary agreement or program entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented, and it shall be made available for public inspection and copying, subject to the provisions of subsection (g) of this section. Any action taken pursuant to such voluntary agreement or program shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

(i) (1) The Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and programs authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effects.

(2) The Attorney General and the Federal Trade Commission shall promulgate joint regulations concerning the maintenance of necessary and appropriate documents, minutes, transcripts, and other records related to the development and implementation of voluntary agreements and programs pursuant to this section.

(3) Persons developing and implementing voluntary agreements and programs pursuant to this section shall maintain those records required by such joint regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

(4) The Federal Trade Commission and the Attorney General may each prescribe pursuant to section 553, title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. Each may utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever such provision of law refers to 'the purposes of this Act' or like terms, the reference shall be understood to be this section.

(j) There shall be available as ad efense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect of actions taken to develop or implement a voluntary agreement or program (provided that such actions were not taken unnecessarily and for the purpose of injuring competition) that—

(1) such action was taken—

(A) in the course of developing a voluntary agreement or program pursuant to this section, or

(B) pursuant to a voluntary agreement or program authorized and approved in accordance with this section, and

(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

Persons interposing the defense provided by this section shall have the burden of proof, except that the burden shall be on the plaintiff with respect to whether the actions were taken unnecessarily and for the purpose of injuring competition.

(k) No provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

(l) (1) The official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section shall report annually to the President and to the Congress on performance under each voluntary agreement or program authorized and approved in accordance with this section on its contribution to achievement of the objectives of subsection (c) (1) of this section.

(2) The Attorney General and the Federal Trade Commission are each directed to make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General and the Federal Trade Commission shall each submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.

(m) (1) Effective on the date of enactment of this Act, the immunity conferred by this section shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973.

(2) Effective one hundred and twenty days after the date of enactment of this Act, the provisions of and immunity conferred by this section shall not apply to any actions taken or authorized to be taken by or under the Agreement on an International Energy Program, signed by the United States on November 18, 1974."

SEC. 708A. (a) Except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or



criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section—

(1) The term 'antitrust laws' means—

(A) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (26 Stat. 209), as amended;

(B) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 730), as amended;

(C) the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes' (38 Stat. 717), as amended;

(D) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (28 Stat. 579), as amended;

(E) the Act of June 19, 1936 (49 Stat. 1526); and

(F) the Act entitled 'An Act to promote export trade, and for other purposes' (40 Stat. 516), as amended.

(2) The term 'international energy supply emergency' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(3) The term 'international agreement' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974.

(4) The term 'Administrator' means the Administrator of the Federal Energy Administration.

(5) The term 'petroleum product' means—

(A) crude oil,

(B) natural gas liquids and other liquids produced in association with crude oil or natural gas,

(C) refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and

(D) blending agents and additives used in conjunction with crude oil and refined petroleum products.

(c) The requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the

development or implementation of such voluntary agreements or plans of action.

(d) (1) To achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act and section 17 of the Federal Energy Administration Act, whether or not such Acts or any of their provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5, United States Code, and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552 (b) (1) and (b) (3) of title 5, United States Code.

(3) For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees, other than individuals employed pursuant to section 3109 of title 5, United States Code, established or utilized to advise the United States Government with respect to the formulation or carrying out of any agreement or plan of action under the international agreement.

(e) The Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

(1) (A) Meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General,

the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or implement a voluntary agreement or plan of action under this section, unless a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings.

(3) A verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement or, with respect to meetings held or communications made to develop a voluntary agreement, persons who may become parties to such an agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552(b)(1) and (b)(3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

(g) Subject to the prior approval of the Attorney General and the Federal Trade Commission, the Administrator may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,  
 (2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act,

(3) the requirement under subsection (d) (1) of this section that meetings be open to the public; and

(4) the second sentence of subsection (d) (2) if this section; if the Administrator determines in each instance that such suspension is essential to the implementation of the international agreement as it relates to the international allocation of petroleum products or the information system provided in such agreement and if the Secretary of State determines that the application of such provisions would be detrimental to the foreign policy interests of the United States. Such determinations by the Administrator and the Secretary of State shall be in writing, shall set forth, to the extent possible consistent with the need to protect the security of classified national defense and foreign policy information, a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

(h) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this section. A voluntary agreement or plan of action under this section may not be implemented unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Administrator, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of this section.

(2) Any voluntary agreement entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented (where it shall be made available for public inspection and copying subject to the provisions of subsection (g) of this section); except that during

an international energy supply emergency, the Administrator, subject to approval of the Attorney General, may reduce such twenty-day period. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

(i) (1) The Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and plans of action authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effect.

(2) In addition to any requirements specified under subsections (e) and (f) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Administrator, shall promulgate regulations concerning the maintenance of necessary and appropriate records related to the development and implementation of voluntary agreements and plans of action pursuant to this section.

(3) Persons developing and implementing voluntary agreements or plans of action pursuant to this section shall maintain those records required by such regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe pursuant to section 553 of title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any and all power conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever any such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be this section.

(j) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect of actions taken to develop or implement a voluntary agreement or plan of action by persons engaged in the business of producing, refining, marketing, or distributing petroleum products (provided that such actions were not taken unnecessarily and for the purpose of injuring competition) that—

(1) such action was taken—

(A) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(B) pursuant to a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

Persons interposing the defense provided by this section shall have the burden of proof, except that the burden shall be on the plaintiff with respect to whether the actions were taken unnecessarily and for the purpose of injuring competition.

(3) In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

(k) No provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

(l) (1) The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

(2) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

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SEC. 710(a). [Subsec. (a) was repealed by section 12(c) (1) of the Federal Employees Salary Increase Act of 1955, 69 Stat. 180, June 28, 1955.]

(b) (1) The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation;

(2) The President shall be guided in the exercise of the authority provided in this subsection by the following policies—

(i) So far as possible, operations under the Act shall be carried on by full-time salaried employees of the Government, and appointments under this authority shall be to advisory or consultative positions only.

(ii) Appointments to positions other than advisory or consultative may be made under this authority only when the requirements of the positions are such that the incumbent must personally possess outstanding experience and ability not obtainable on a full-time, salaried basis.

(iii) In the appointment of personnel and in assignment of their duties, the head of the department or agency involved shall take steps to avoid, to as great an extent as possible, any conflict between the governmental duties and the private interests of such personnel.

(3) Appointees under this subsection (b) shall, when policy matters are involved, be limited to advising appropriate full-time salaried Government officials who are responsible for making policy decisions.

(4) Any person employed under this subsection (b) is hereby exempted, with respect to such employment, from the operation of

sections 281, 283, 284, 434, and 1914 of title 18, United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99) except that—

(i) exemption hereunder shall not extend to the negotiation or execution, by such appointee, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(ii) exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest;

(iii) exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under this subsection, during the period of such employment and the further period of two years after the termination of such employment; and

(iv) exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service hereunder from any source other than the private employer of the appointee at the time of his appointment hereunder.

(5) Appointments under this subsection (b) shall be supported by written certification by the head of the employing department or agency—

(i) that the appointment is necessary and appropriate in order to carry out the provisions of the Act;

(ii) that the duties of the position to which the appointment is being made require outstanding experience and ability;

(iii) that the appointee has the outstanding experience and ability required by the position; and

(iv) that the department or agency head has been unable to obtain a person with the qualifications necessary for the position on a full-time salaried basis.

(6) The heads of the departments or agencies making appointments under this subsection (b) shall file with the Division of the Federal Register for publication in the Federal Register a statement including the name of the appointee, the employing department or agency, the title of his position and the name of his private employer, and the appointee shall file with such Division for publication in the Federal Register a statement listing the names of any corporations of which he is an officer or director or within 60 days preceding his appointment has been an officer or director, or in which he owns, or within 60 days preceding his appointment has owned, any stocks, bonds, or other financial interests and the names of any partnerships in which he is, or was within 60 days preceding his appointment, a partner, and the names of any other businesses in which he owns, or within such 60-day period has owned, any similar interest. At the end of each succeeding 6-month period the appointee shall file with such

Division for publication in the Federal Register a statement showing any changes in such interests during such period.

(7) At least once every year, the Chairman of the United States Civil Service Commission shall survey appointments made under this subsection and shall report his findings to the President and the Joint Committee on Defense Production and make such recommendations as he may deem proper.

(8) Persons appointed under the authority of this subsection may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business pursuant to such appointment.

(c) The President is authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, to employ experts and consultants or organizations thereof, as authorized by section 55a of title 5 of the United States Code. Individuals so employed may be compensated at rates not in excess of \$50 per diem and while away from their homes or regular places of business they may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses while so employed. The President is authorized to provide by regulation for the exemption of such persons from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).

(d) The President may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed; and he is authorized to provide by regulation for the exemption of persons whose services are utilized under this subsection from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).

(e) The President is further authorized to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of emergency. **[Members of this executive reserve who are not full-time Government employees may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes or regular places of business for the purpose of participating in the executive reserve training program.]** *Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, as prescribed under title 5 of the United States Code for individuals serving without pay, while away from their homes or regular places of business for the purpose of participating in the executive reserve training program.* The President is authorized to provide by regulation for the exemption of such persons who are not full-time Government employees from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (5 U.S.C. 99).

\* \* \* \* \*  
 SEC. 717. (a) Title I (except section 104), title III, and title VII (except sections 708, 714 and 719) of this Act, and all authority conferred thereunder shall terminate at the close of **[June 30, 1975.]**

*September 30, 1977.* Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder, shall terminate at the close of June 30, 1953. Title IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

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## DEFENSE PRODUCTION ACT AMENDMENTS OF 1975

OCTOBER 30, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REUSS, from the Committee on Banking, Currency and Housing, submitted the following

### REPORT

[To accompany H.R. 10031]

The Committee on Banking, Currency and Housing, to whom was referred the bill (H.R. 10031) to amend the Defense Production Act of 1950, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On the first page, lines 7 and 8, strike out "September" and insert "November".

Page 16, line 18, strike out "and".

Page 16, line 19, strike out "(e)" and insert "(1)".

Page 16, line 22, strike out the period and insert in lieu thereof "; and".

Page 16, after line 22, insert the following:

(4) in subsection (j) thereof by inserting the following new paragraph:

"(3) The Commission is authorized to contract with public or private agencies, institutions, corporations, and other organizations and with individuals without regard to section 3648, Revised Statutes (31 U.S.C. 529), and section 3709, Revised Statutes (41 U.S.C. 5), for purposes of this Act."

### DEFENSE PRODUCTION ACT AMENDMENTS OF 1975

#### PURPOSES OF THE MEASURE

The purposes of H.R. 10031, the "Defense Production Act Amendments of 1975", are two-fold. The major purpose is to extend for the customary period of two years the titles of the Defense Production Act of 1950, as amended. These titles provide the authority for a number of programs aimed at maintaining the national defense industrial



production base, at preparing mobilization programs, at providing uniform cost accounting standards for contractors, and at examining national policy with regard to materials supplies and shortages.

A second purpose of H.R. 10031 is to amend Section 708 of the Defense Production Act. Section 708 provides authority for the granting of immunity from antitrust action to voluntary agreements, which the President may request from representatives of industry, business, financing, agriculture, labor and other interests in order to further the objectives of the Act. The amendments provide for strengthened procedural safeguards for the development and implementation of voluntary agreements, in order that exemptions from antitrust immunity may not be granted without adequate assurance that they are in the best interest of the nation as a whole.

Your committee believes that the giving of antitrust immunity, by statute, to participants in such voluntary agreements is extraordinary and should be accompanied by detailed procedural safeguards.

The purpose of the bill is to allow participants in a voluntary agreement who adhere to the agreement, fully comply with the Act and the regulations promulgated thereunder, and act in good faith, to have an affirmative defense under this Act from prosecution under the antitrust laws.

The purpose of section 708 of the Defense Production Act is to authorize voluntary agreements among defense contractors and others "to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand."

Agreements of this sort would ordinarily contravene the antitrust laws, so a new section 708(i) would provide a defense to the antitrust laws for acts or omissions taken in the course of developing, or taken pursuant to, an authorized voluntary agreement. The defense is qualified by the requirement that the acts or omissions must be taken "in good faith".

"Good faith" is a well understood legal concept. There are 54 pages of print in Words and Phrases summarizing more than 700 court cases construing the phrase "good faith" in a variety of legal contexts.

According to these cases, "good faith" means an honest intent to comply with the law and not to seek an unconscionable advantage. It means to act without subterfuge. It means that the motive that actuated the conduct in question was in fact what the actor ascribes to it.

The committee is concerned that the meetings called to develop voluntary agreements not be used as a forum for reaching agreements which exceed the scope of the proposed agreement defined by the appropriate government official at the outset.

Thus, if an act or omission does not appear to come within the ambit of an agreement, an interested party or the Government might bring an antitrust action, and the defendant company could easily demonstrate its good faith by disclosing minutes and other documents from the meetings that would demonstrate the conformity of the act or omission to the agreement or proposed agreement.

This is a much easier burden than the plaintiff would have in showing an opposite, bad faith purpose, such as an intent to injure competition or fix prices.

There are numerous federal statutes which use the phrase "good faith", including legislation that originated in the committee.

The Equal Credit Opportunity Act, which the committee reported last year, provides:

No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Another example of a law within the committee's jurisdiction which uses the term "good faith" is the Housing and Community Development Act of 1974. That Act uses the phrase in 7 different places.

The Real Estate Settlement Procedures Act provides for a "good faith" estimate of certain charges and provides a defense to civil liability for a "good faith" attempt to conform to the law.

Several statutes in the committee's jurisdiction relating to financial institutions use the term "good faith".

When in the 1930's Congress prohibited the payment of interest on demand deposits it exempted preexisting contracts entered into in good faith. (12 U.S.C. 371a.)

The National Bank Act, which has been in existence since 1864 and has been amended and modified from time to time, provides that a national bank may hold real property "Such as shall be mortgaged to it in good faith by way of security for debts previously contracted." (12 U.S.C. 29.)

Each director of a national bank must take an oath stating "that he is the owner in good faith and in his own right" of the number of shares of stock in the bank he is required to hold. (12 U.S.C. 73.)

A national bank cannot make a loan on the security of its own stock except when necessary "to prevent loss upon a debt previously contracted in good faith." (12 U.S.C. 8.)

Limitations on loan liability to a national bank based on capital and surplus of the bank do not apply to "drafts or bills of exchange drawn in good faith against actually existing values". (12 U.S.C. 84.)

These examples are only samples of the hundreds of uses of the term "good faith" in federal statutes.

Your Committee has worked closely with the House Committee on the Judiciary in the drafting and consideration of the anti-trust provisions of this legislation. We have solicited the suggestions and assistance of Mr. Rodino, Chairman of the Subcommittee on Monopolies and Commercial Law, and Chairman of the Full Committee, and have included those provisions of the legislation which he has suggested. The Banking Committee wishes to express its appreciation to Mr. Rodino for his assistance on this legislation, and print herewith a letter from him stating his views on the anti-trust provisions of H.R. 10031.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., October 28, 1975.

HON. HENRY S. REUSS,  
Chairman, Committee on Banking, Currency and Housing, House  
Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in reference to H.R. 10031, the "Defense Production Act Amendments of 1975" which has been ordered reported by the Committee on Banking, Currency and Housing. Section 708(i) of the bill contains a limited provision for immunity from antitrust liability for companies participating in voluntary agreements to help provide for the defense of the United States through the development of preparedness programs.

The antitrust immunity question is, of course, one which falls squarely within the jurisdiction of the Committee on the Judiciary. However, in this instance, there is in my judgment no necessity for the sequential referral of this bill or any portion thereof to the Judiciary Committee. You have kept the Judiciary Committee fully informed as to the deliberations of your Committee respecting the immunity provision, and I have provided you with my comments in my capacity as Chairman of the Monopolies and Commercial Law Subcommittee.

The immunity provision of H.R. 10031 is drafted in conformity with my views and represents in my judgment a significant improvement over the present state of the law. Accordingly, I wholeheartedly endorse that provision in the form in which it has been reported by the Committee on Banking, Currency and Housing.

With all best wishes,  
Sincerely,

PETER W. RODINO, JR.,  
Chairman.

NEED FOR THE LEGISLATION

The Defense Production Act is basically a preparedness measure. Its original titles provide for programs which will improve the readiness of the nation's industrial base in peacetime and for programs which can be initiated or expanded in the event of mobilization. Among the more significant of the ongoing programs are the Defense Priorities System, the Defense Materials System, the Machine Tool Trigger Order Program, the borrowing authority established for the expansion of productive capacity and supply, the Defense Production Act Inventory, the National Defense Executive Reserve, and the authority to grant immunity from antitrust action for voluntary agreements requested by the President.

While the Congress has made substantial alterations in the Act over its lifetime—deleting the titles authorizing wage and price stabilization, labor dispute settlement, and control of consumer and real estate credit and adding titles authorizing uniform cost accounting standards and a temporary National Commission on Supplies and Shortages—the basic provisions relating to industrial production for the national defense have remained unchanged. The Congress has regularly seen fit to extend the life of these basic authorities, normally at intervals of two years, ever since original enactment in 1950. Without this ex-

tension, the nation's sole authority for industrial preparedness for mobilization would lapse and the readiness programs cited above would be terminated.

In terms of the specific provisions of the Defense Production Act Amendments of 1975, the justification for extending the Act until September 30, 1977 (instead of the traditional date of June 30th) seems self-evident. The former and traditional termination date coincided with the federal fiscal year; the new date will coincide with the new fiscal year established under the Congressional Budget Reform Act of 1974. It will continue to give the Congress the opportunity to review and, where necessary, amend the Defense Production Act on a regular, biennial basis.

The procedural steps provided for in Section 708 as amended and added by H.R. 10031 are aimed at providing a mechanism whereby the national interest in preserving a free enterprise economy can be weighed against other imperatives, such as military preparedness and energy shortages, and a determination can be made, in specific situations, as to which national objective should prevail in terms of taking specific actions. These procedures also seek to ensure that such immunity from the antitrust laws extends only to those actions absolutely essential to meeting the goals which are considered to override normal antitrust restraints.

Unlike the present law, the bill sets forth strong procedural safeguards—attendance of Federal officials at all meetings held to develop or carry out voluntary agreements, extensive participation by the Attorney General, the Chairman of the Federal Trade Commission, the administrator of the voluntary agreements program, and, in the case of international voluntary agreements, the Secretary of State, and affords an opportunity for interested persons to attend such meetings and to examine minutes and other data related to such agreements.

The mechanisms established in Section 708 as amended and added by H.R. 10031 require review of regular reporting on voluntary agreements and actions stemming therefrom by the appropriate officials of government, so that the appropriate balance between the antitrust interest and the national defense interest can be monitored and maintained.

COST OF LEGISLATION

The reported bill authorized additional expenditures totaling \$1,059,000 for fiscal year 1977. Any additional expenditures for fiscal year 1978 and later fiscal years must be authorized by the Congress in subsequent legislation.

COMMITTEE VOTE

H.R. 10031 was reported favorably by the Committee on October 21, 1975, by a voice vote. Twenty-three Members of the Committee were present.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

This report embodies the findings and recommendations of the Subcommittee on Economic Stabilization pursuant to its oversight



responsibility over the Defense Production Act of 1950, as amended. The Committee concurs in the Subcommittee determination that the legislation should be enacted as set forth in the amended bill.

#### INFLATIONARY IMPACT

The Committee has concluded that the enactment of H.R. 10031 will not result in any inflationary impact on prices and costs in the national economy.

#### SECTION-BY-SECTION ANALYSIS

The first section of this bill states that its short title is the "Defense Production Act Amendments of 1975".

Section 2 of the bill extends the Defense Production Act of 1950 for 2 years (until September 30, 1977).

Section 3 repeals the existing section 708 of the Defense Production Act of 1950 and inserts in lieu thereof a new section 708 as follows:

Section 708(a) provides that the only immunity from prosecution under the antitrust laws afforded to participants in voluntary agreements is the immunity specifically provided by section 708(i).

Section 708(b) defines the term "antitrust laws" for purposes of section 708.

Section 708(c) provides that whenever the President finds that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may provide for the making by companies of voluntary agreements to help provide for the defense of the United States. The President may delegate the authority granted to him one or more individuals appointed with the advice and consent of the Senate.

Section 708(d) states that the individual or individuals who administer the voluntary agreements program shall (after consultation with the Attorney General and the Chairman of the FTC) promulgate rules on the record after opportunity for a formal hearing which incorporate standards and procedures by which voluntary agreements may be developed and carried out. Such rules are specifically required to include a number of items. For instance, certain Federal officials must attend and chair meetings held to develop voluntary agreements. There are certain notice requirements concerning the time, place, and nature of the meetings. Interested persons may attend such meetings unless matters to be discussed during such meetings fall within the purview of matters described in section 552(b) of title 5 of the United States Code.

Such section further provides that voluntary agreements may not become effective until the Administrator certifies that the agreement is necessary to carry out the purpose of subsection (c) (1) and the Attorney General (after consultation with the Chairman of the FTC) finds that the purpose may not reasonably be achieved through a voluntary agreement having less anticompetitive effects or without any voluntary agreement.

Section 708(e) provides that any voluntary agreement automatically expires 2 years after its effective date unless the findings referred to in the above paragraph are made again with respect to such agreement.

Section 708(f) provides that the Attorney General and the Chairman of the FTC shall monitor voluntary agreements.

Section 708(g) provides that meetings held to carry out voluntary agreements shall have a Federal official in attendance. It also provides for the maintenance of minutes of such meetings and other related data. It also provides that meetings held to carry out voluntary agreements shall be open to all interested persons unless a matter is to be discussed which is within the purview of section 552(b) of title 5 of the United States Code. Such subsection also permits the Attorney General or the administrator of a voluntary agreement to terminate or modify any voluntary agreement.

Section 708(h) provides that the Attorney General and the Chairman of the FTC shall each promulgate rules to carry out his responsibility under this section.

Section 708(i) provides an affirmative defense for any person to prosecution for violation of the antitrust laws with respect to acts or omissions to act taken in good faith and in the course of developing or carrying out a voluntary agreement, so long as the person fully complied with this section and the rules promulgated hereunder and acted in accordance with the terms of the voluntary agreement.

Section 708(j) provides for the making of certain surveys of voluntary agreements by the Attorney General and the Federal Trade Commission.

Section 708(k) provides that the administrator of the program shall submit reports concerning the program to Congress and the President at least once each year.

Section 708(l) relates solely to international voluntary agreements and provides additional requirements for such agreements.

Such subsection defines international voluntary agreement to include the Voluntary Agreement and Program Relating to the Agreement on an International Emergency Program signed by the United States on November 18, 1974, and any other voluntary agreement which is certified by the Secretary of State as necessary to carry out the purposes of an international agreement to which the United States is a party or as necessary to implement a program of international cooperation between the United States and one or more foreign countries.

The subsection interjects the Secretary of State or his delegate into the development and carrying out of international voluntary agreements. It provides that the Secretary of State may close meetings whenever any matter to be discussed at any such meeting would be detrimental to the foreign policy interests of the United States. The same standard of disclosure is provided for the making available of records and other matter related to international voluntary agreements.

Section 4 of the bill provides that any voluntary agreement entered into under section 708 prior to the effective date of the bill and in effect immediately prior to such date shall continue in effect but shall be carried out in accordance with section 708 as amended by this bill.

Section 5 of the bill states that the bill and the amendments made by it shall take effect 120 days after enactment, except that section 2 (the two-year extension of the Act) takes effect upon enactment of the bill.

Section 6 of the bill extends the life of the National Commission on Supplies and Shortages until March 31, 1977, and requires that the

Commission report its recommendations to the President and Congress not later than December 31, 1976. It also increases the dollar amount of moneys authorized to be appropriated to the Commission.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

DEFENSE PRODUCTION ACT OF 1950

\* \* \* \* \*

TITLE VII—GENERAL PROVISIONS

\* \* \* \* \*

[SEC. 708. (a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such person with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

[(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States.]

[(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

[(d) Upon withdrawal of any request or finding made hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

[(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small-business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys shall include studies of the

voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.]

SEC. 708. (a) *Except as specifically provided in subsection (i) of this section, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.*

(b) *As used in this section, the term "antitrust laws" means—*

(1) *the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 290), as amended;*

(2) *the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1974 (38 Stat. 730), as amended;*

(3) *the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), as amended;*

(4) *sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (28 Stat. 579), as amended;*

(5) *the Act of June 19, 1936 (49 Stat. 1526); and*

(6) *the Act entitled "An Act to promote export trade and for other purposes" (40 Stat. 516), as amended.*

(c) (1) *Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.*

(2) *The authority granted to the President in paragraph (1) may be delegated by him to individuals who (1) are appointed by and with the advice and consent of the Senate, or (2) are holding offices to which they have been appointed by and with the advice and consent of the Senate.*

(d) (1) *The individual or individuals referred to in subsection (c) (2) shall (after consultation with the Attorney General and the Chairman of the Federal Trade Commission) promulgate rules on the record after opportunity for a hearing under the provisions of sections 556 and 557 of title 5 of the United States Code incorporating standards and procedures by which voluntary agreements may be developed and carried out.*

(2) *Notwithstanding section 533 of title 5 of the United States Code—*

(A) *general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and the notice shall include—*

(i) *a statement of the time, place, and nature of the public rulemaking proceedings;*

(ii) *reference to the legal authority under which the rule is being proposed; and*

- (iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;
- (B) the required publication of a rule shall be made not less than thirty days before its effective date; and
- (C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.
- (3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—
- (A) such agreements shall be developed at meetings which include—
- (i) the Attorney General or his delegate,
  - (ii) the Chairman of the Federal Trade Commission or his delegate, and
  - (iii) an individual designated by the President in subsection (c) (2) or his delegate,
- which are chaired by the individual referred to in clause (iii);
- (B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;
- (C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;
- (D) interested persons may attend any such meeting unless an individual designated by the President in subsection (c) (2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) of section 552, title 5, United States Code;
- (E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;
- (F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General and to the Chairman of the Federal Trade Commission; and
- (G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to subsection (b) of section 552, title 5, United States Code.
- (e) (1) A voluntary agreement may not become effective unless and until—
- (A) the individual referred to in subsection (c) (2) who is to administer the agreement approves it and certifies, in writing, that the agreement is necessary to carry out the purpose of subsection (c) (1); and
  - (B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.
- (2) Each voluntary agreement which becomes effective under paragraph (1) shall expire two years after the date it becomes effective

(and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c) (2) who administers the agreement and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) makes the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement, in which case, the voluntary agreement may be extended for an additional period of two years.

(f) The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement to assure that—

- (1) the agreement is carrying out the purpose of subsection (c) (1);
  - (2) the agreement is being carried out under rules promulgated pursuant to subsection (d); and
  - (3) participants are acting in accordance with the terms of the agreement.
- (g) The rules promulgated under subsection (d); with respect to the carrying out of voluntary agreements shall provide—
- (1) for the maintenance, by participants in any voluntary agreement, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement;
  - (2) that participants in any voluntary agreement agree, in writing, to make available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);
  - (3) that any item made available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to subsection (b) of section 552, title 5, United States Code; and
  - (4) that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement;
  - (5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement;
  - (6) that participants in any voluntary agreement provide the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement, unless the individual designated by the President in subsection (c) (2) to administer the voluntary agreement finds that the matter or matters to be discussed at such meeting falls within the purview of matters discussed in subsection (b) of section 552, title 5, United States Code;

(8) that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters discussed in subsection (b) of section 552, title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c) (2) to administer a voluntary agreement), or

(B) the individual designated by the President in subsection (c) (2) to administer a voluntary agreement (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement at any time, and that effective immediately upon such termination any antitrust immunity conferred upon the participants in the voluntary agreement by subsection (i) shall not apply to any act or omission occurring after the time of the revocation; and

(10) that participants in any voluntary agreement be reasonably representative of the appropriate industry or segment of such industry.

(h) The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as he deems necessary or appropriate to carry out his responsibility under this section.

(i) There shall be available as a defense for any person to any prosecution or civil action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

(1) such act or omission to act was taken in good faith—

(A) in the course of developing a voluntary agreement under this section, or

(B) to carry out a voluntary agreement under this section; and

(2) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

(j) The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies,

injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements.

(k) The individual or individuals designated by the President in subsection (c) (2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement in effect and its contribution to achievement of the purpose of subsection (c) (1).

(l) (1) In the case of any international voluntary agreement—

(A) the rules promulgated pursuant to subsection (d) incorporating standards and procedures by which voluntary agreements may be developed shall provide—

(i) that any such agreement shall be developed at meetings which include the Secretary of State or his delegate,

(ii) that a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Secretary of State,

(iii) that any such voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Secretary of State,

(iv) interested persons may not attend any such meeting if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing that on account of the matter or matters to be discussed at such meeting it would be detrimental to the foreign policy interests of the United States to permit such persons to attend such meetings, and

(v) any transcript of a meeting held to develop any such voluntary agreement may not be made available for public inspection and copying if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing, that to do so would be detrimental to the foreign policy interests of the United States;

(B) such agreement may not become effective unless and until the Secretary of State finds that such agreement is consistent with the foreign policy interests of the United States;

(C) the rules promulgated under subsection (d) with respect to the carrying out of voluntary agreements shall provide—

(i) that participants in any such agreement shall agree, in writing, to make available to the Secretary of State for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to subsection (g) (1) with respect to such agreement,

(ii) that any item referred to in subsection (g) (1) with respect to such agreement may not be made available for public inspection and copying if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing, that to do so would be detrimental to the foreign policy interests of the United States,



(iii) that the Secretary of State or his delegate may attend meetings to carry out any such agreement,

(iv) that participants in any such agreement provide the Secretary of State with adequate prior notice of the time, place, and nature of any meeting to be held to carry out any such agreement, and

(v) interested persons may not attend any such meeting if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing, that on account of the matter or matters to be discussed at such meeting it would be detrimental to the foreign policy interests of the United States.

(2) The requirements which are made applicable specifically in the case of international voluntary agreements under paragraph (1) of this subsection shall be in addition to any requirements made applicable to voluntary agreements generally under the other subsections of this section; except that if any requirement under paragraph (1) of this subsection is inconsistent with the corresponding requirement under any other subsection of this section, the latter requirement shall be considered to be modified to the extent necessary to give effect to the requirement under paragraph (1) of this subsection.

(3) For the purposes of this subsection, the term—

(A) "international voluntary agreement" refers to—

(i) the Voluntary Agreement and Program Relating to the Agreement on an International Energy Program signed by the United States on November 18, 1974; and

(ii) any voluntary agreement developed under rules promulgated pursuant to subsection (d) to carry out the purpose of subsection (c) (1) and which is certified by the Secretary of State as necessary to carry out the purposes of an international agreement to which the United States is a party or as necessary to implement a program of international cooperation between the United States and one or more foreign countries.

(B) "foreign country" means any country other than the United States.

\* \* \* \* \*

SEC. 717. (a) Title I (except section 104), title III, and title VII except sections 708, 714, and 719) of this Act, and all authority conferred thereunder shall terminate at the close of November 30, [1975] 1977. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1953. Title IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

\* \* \* \* \*

#### NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES

SEC. 720. (a) \* \* \*

(h) REPORTS OF THE COMMISSION.—The Commission shall report not later than [March 31, 1976] December 31, 1976, to the President

and the Congress on specific recommendations with respect to institutional adjustments, including the advisability of establishing an independent agency to provide for a comprehensive data collection and storage system, to aid in examination and analysis of the supplies and shortages in the economy of the United States and in relation to the rest of the world. The Commission may, until [October 1, 1976] March 31, 1977, prepare, publish and transmit to the President and the Congress such other reports and recommendations as it deems appropriate.

(i) ADVISORY COMMITTEE.—(1) The Commission is authorized to establish such advisory committees as may be necessary or appropriate to carry out any specific analytical or investigative undertakings on behalf of the Commission. Any such committee shall be subject to the relevant provisions of the Federal Advisory Committee Act.

(2) The Commission shall establish an advisory committee to develop recommendations as to the establishment of a policy making process and structure within the executive and legislative branches of the Federal Government as a means to integrate the total problem of balanced national growth and development, and a system for coordinating these efforts with appropriate multi-State, regional and State governmental jurisdictions. For the purpose of carrying out the provision of this paragraph there is authorized to be appropriated [not to exceed \$75,000 to remain available until October 1, 1976] not to exceed \$150,000 to remain available until March 31, 1977.

(j) STAFF AND POWERS OF THE COMMISSION.—(1) Subject to such rules and regulations as it may adopt, the Commission, through its Chairman, shall—

(A) appoint and fix the compensation of an Executive Director at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and the General Schedule under section 5332 of such title; and

(B) be authorized to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(2) The Commission or any subcommittee thereof is authorized to hold hearings and to sit and act at such times and places, as it may deem advisable.

(3) The Commission is authorized to contract with public or private agencies, institutions, corporations, and other organizations and with individuals without regard to section 3648, Revised Statutes (31 U.S.C. 529), and section 3709, Revised Statutes (41 U.S.C. 5), for purposes of this Act.

\* \* \* \* \*

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission [not to exceed \$500,000 to remain available until October 1, 1976] not to exceed \$1,484,000 to remain available until March 31, 1977, to carry out the provisions of this Act.

○

## DEFENSE PRODUCTION ACT AMENDMENTS OF 1975

NOVEMBER 18, 1975.—Ordered to be printed.

Mr. PROXMIRE, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 1537]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1537) to amend the Defense Production Act of 1950, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That this Act may be cited as the "Defense Production Act Amendments of 1975".*

*SEC. 2. The first sentence of section 717 (a) of the Defense Production Act of 1950 is amended by striking out "November 30, 1975" and inserting in lieu thereof "September 30, 1977: Provided, That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts".*

*SEC. 3. Section 708 of the Defense Production Act of 1950 is amended to read as follows:*

*"SEC. 708. (a) Except as specifically provided in subsection (j) of this section and subsection (j) of section 708A, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.*

*"(b) As used in this section and section 708A the term 'antitrust laws' means—*

*"(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.);*

*"(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.);*

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

"(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9);

"(5) the Act of June 19, 1936 chapter 592 (15 U.S.C. 13, 13g, 13b, and 21a); and

"(6) the Act entitled 'An Act to promote export trade and for other purposes', approved April 10, 1918 (15 U.S.C. 61-65).

(c) (1) Except as otherwise provided in section 708A(o), upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

"(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1). For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection shall not be delegated to more than one individual.

"(d) (1) To achieve the objectives of subsection (c) (1) of this section, the President or any individual designated pursuant to subsection (c) (2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

"(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying,

subject to the provisions of section 552(b) (1) and (b) (3) of title 5, United States Code.

"(e) (1) The individual or individuals referred to in subsection (c) (2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements may be developed and carried out.

"(2) In addition to the requirements of section 553 of title 5, United States Code—

"(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

"(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

"(ii) reference to the legal authority under which the rule is being proposed, and

"(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

"(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

"(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

"(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

"(A) such agreements shall be developed at meetings which include—

"(i) the Attorney General or his delegate,

"(ii) the Chairman of the Federal Trade Commission or his delegate, and

"(iii) an individual designated by the President in subsection (c) (2) or his delegate,

and which are chaired by the individual referred to in clause (iii);

"(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

"(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

"(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c) (2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552 of title 5, United States Code;

"(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

"(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the At-

torney General and to the Chairman of the Federal Trade Commission; and

"(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to subsections (b) (1) and (b) (3) of section 552, title 5, United States Code.

(f) (1) A voluntary agreement may not become effective unless and until—

"(A) the individual referred to in subsection (c) (2) who is to administer the agreement approves it and certifies, in writing, that the agreement is necessary to carry out the purposes of subsection (c) (1); and

"(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

"(2) Each voluntary agreement which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c) (2) who administers the agreement and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement, in which case, the voluntary agreement may be extended for an additional period of two years.

"(g) The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement to assure—

"(1) that the agreement is carrying out the purposes of subsection (c) (1);

"(2) that the agreement is being carried out under rules promulgated pursuant to subsection (e);

"(3) that the participants are acting in accordance with the terms of the agreement; and

"(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

"(h) The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements shall provide—

"(1) for the maintenance, by participants in any voluntary agreement, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement;

"(2) that participants in any voluntary agreement agree, in writing, to make available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

"(3) that any item made available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to subsections (b) (1) and (b) (3) of section 552 of title 5, United States Code;

"(4) that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement;

"(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement;

"(6) that participants in any voluntary agreement provide the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement;

"(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement, unless the individual designated by the President in subsection (c) (2) to administer the voluntary agreement finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552 of title 5, United States Code;

"(8) that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552 of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

"(9) that—

"(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c) (2) to administer a voluntary agreement), or

"(B) the individual designated by the President in subsection (c) (2) to administer a voluntary agreement (after consultation with the Attorney General and the Chairman of the Federal Trade Commission),

may terminate or modify, in writing, the voluntary agreement at any time, and that effective, immediately upon such termination



or modification, any antitrust immunity conferred upon the participants in the voluntary agreement by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification; and

"(10) that participants in any voluntary agreement be reasonably representative of the appropriate industry or segment of such industry.

"(i) The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

"(j) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

"(1) such act or omission to act was taken in good faith by that person—

"(A) in the course of developing a voluntary agreement under this section, or

"(B) to carry out a voluntary agreement under this section; and

"(2) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

"(k) The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements.

"(l) The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement in effect and its contribution to achievement of the purpose of subsection (c)(1).

"(m) On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the

exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

"Sec. 708A. (a) Except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"(b) As used in this section—

"(1) The term 'international energy supply emergency' means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

"(2) The term 'international agreement' means the Agreement on an International Energy Program, signed by the United States on November 18, 1974.

"(3) The term 'Administrator' means the Administrator of the Federal Energy Administration.

"(4) The term 'petroleum products means—

"(A) crude oil,

"(B) natural gas liquids and other liquids produced in association with crude oil or natural gas,

"(C) refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and

"(D) blending agents and additives used in conjunction with crude oil and refined petroleum products.

"(c) The requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or plans of action.

"(d)(1) To achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act and section 17 of the Federal Energy Administration Act of 1974, whether or not such Acts or any provisions thereof expire or terminate during the term of this Act or of such committees, and, in all cases such advisory committees

shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

"(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 552 (b) (1) and (b) (3) of title 5, United States Code.

"(3) For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration of 1974 shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees (other than individuals employed pursuant to section 3109 of title 5, United States Code) established or utilized to advise the United States Government with respect to the development or implementation of any agreement or plan of action under the international agreement.

"(e) The Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

"(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

"(1) (A) Meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan

of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

"(B) No meetings may be held to develop or implement a voluntary agreement or plan of action under this section, unless a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent.

"(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings.

"(3) A verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement, or with respect to meetings held or communications made to develop a voluntary agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552 (b) (1) and (b) (3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

"(g) Subject to the prior approval of the Attorney General and the Federal Trade Commission, the Administrator may suspend the application of—

"(1) section 10 and 11 of the Federal Advisory Committee Act,

"(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974,

"(3) the requirement under subsection (d)(1) of this section that meetings be open to the public; and

"(4) the second sentence of subsection (d)(2) of this section; if the Administrator determines in each instance that such suspension is essential to the implementation of the international agreement as it relates to the international allocation of petroleum products or the information system provided in such agreement and if the Secretary of State determines that the application of such provisions would be detrimental to the foreign policy interests of the United States. Such determinations by the Administrator and the Secretary of State shall be in writing, shall set forth, to the extent possible consistent with the need to protect the security of classified national defense and foreign policy information, a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

"(h)(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this section. A voluntary agreement or plan of action under this section may not be implemented unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Administrator, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of this section.

"(2) Any voluntary agreement entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented (where it shall be made available for public inspection and copying subject to the provisions of subsection (g) of this section); except that during an international energy supply emergency, the Administrator, subject to approval of the Attorney General, may reduce such twenty-day period. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i)(3) and (i)(4).

"(i)(1) The Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary

agreements and plans of action authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effect.

"(2) In addition to any requirements specified under subsections (e) and (f) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Administrator, shall promulgate regulations concerning the maintenance of necessary and appropriate records related to the development and implementation of voluntary agreements and plans of action pursuant to this section.

"(3) Persons developing and implementing voluntary agreements or plans of action pursuant to this section shall maintain those records required by such regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

"(4) The Attorney General and the Federal Trade Commission may each prescribe pursuant to section 553 of title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever any such provision of law refers to 'the purposes of this Act' or like terms, the reference shall be understood to be this section.

"(j)(1) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

"(A) such act or omission to act was taken in good faith by that person—

"(i) in the course of developing a voluntary agreement under this section, or

"(ii) to carry out a voluntary agreement under this section; and

"(B) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

"(2) In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

"(k) No provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in

compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

"(l) (1) The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

"(2) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

"(m) The authorities contained in this section with respect to the executive agreement, commonly known as the Agreement on an International Energy Program dated November 18, 1974, and referred to in this section as the international energy agreement, shall not be construed in any way as advice and consent, ratification, endorsement, or any other form of congressional approval of the specific terms of such executive agreement or any related annex, protocol, amendment, modification, or other agreement which has been or may in the future be entered into.

"(n) Any action or agreement undertaken or entered into pursuant to this section shall be deemed to be undertaken or entered into in the United States.

"(o) If S. 622, Ninety-fourth Congress (the Energy Policy and Conservation Act) is enacted, then (effective on the effective date of the provisions of S. 622 which relate to international voluntary agreements to carry out the International Energy Program) this section and section 708 shall not be applicable to (1) any voluntary agreement or plan of action developed or implemented to carry out obligations of the United States under the international agreement, or (2) any voluntary agreement or plan of action which relates to petroleum products and which is developed, in whole or in part, to carry out the purposes of a treaty or executive agreement to which the United States is a party or to implement a program of international cooperation between the United States and one or more foreign countries."

SEC. 4. (a) Any voluntary agreement—

(1) entered into under section 708 of the Defense Production Act of 1950 and prior to the effective date of this Act, and

(2) in effect immediately prior to such date

may continue in effect (except as otherwise provided in section 708A (o) of the Defense Production Act of 1950, as amended by this Act) and shall be carried out in accordance with such section 708, as amended by this Act, and such section 708A.

(b) No provision of the Defense Production Act of 1950, as amended by this Act, shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this Act, (2)

outside the scope and purpose or not in compliance with the terms and conditions of the Defense Production Act of 1950, or (3) subsequent to the expiration or repeal of the Defense Production Act of 1950.

(c) Effective on the date of enactment of this Act, the immunity conferred by section 708 or 708A of the Defense Production Act of 1950, as amended by this Act, shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973.

SEC. 5. The second sentence of section 710(e) of the Defense Production Act of 1950 is amended to read as follows: "Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 of the United States Code (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program."

SEC. 6. Section 712(c) of the Defense Production Act of 1950 is amended by striking out the following: "The cost of stenographic services to report such hearing shall not be in excess of 40 cents per hundred words."

SEC. 7. The last sentence of subsection (g) of section 717 of the National Defense Production Act of 1950 is amended to read as follows:

"In promulgating such standards and major rules and regulations for the implementation of such standards, the Board shall take into account, and shall report to the Congress in the transmittal required by section 719(h)(3) of this Act, the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits, including advantages and improvements in the pricing, administration, and settlement of contracts."

SEC. 8. Section 720 of the Defense Production Act of 1950 is amended—

(1) in subsection (h) thereof by striking out "March 31, 1976" and inserting in lieu thereof "December 31, 1976" and by striking out "October 1, 1976" and inserting in lieu thereof "March 31, 1977";

(2) in the last sentence of subsection (i) (2) by striking out "not to exceed \$75,000 to remain available until October 1, 1976" and inserting in lieu thereof "not to exceed \$150,000 to remain available until March 31, 1977";

(3) in subsection (l) thereof by striking out "not to exceed \$500,000 to remain available until October 1, 1976" and inserting in lieu thereof "not to exceed \$1,484,000 to remain available until March 31, 1977"; and

(4) in subsection (j) thereof by inserting the following new paragraph:

"(3) The Commission is authorized to contract with public or private agencies, institutions, corporations, and other organizations."

*Sec. 9. This Act and the amendments made by it shall take effect on the one hundred and twentieth day beginning after the date of its enactment, except that the amendment made by section 2 shall take effect upon the date of enactment of this Act.*

And the House agree to the same.

WILLIAM PROXMIRE,  
JOHN SPARKMAN,  
HARRISON WILLIAMS,  
JOHN TOWER,  
ED BROOKE,

*Managers on Part of the Senate.*

HENRY S. REUSS,  
THOMAS L. ASHLEY,  
JAMES J. BLANCHARD,  
JOHN J. LaFALCE,  
THOMAS M. REES,  
JERRY M. PATTERSON,  
GLADYS NOON SPELLMAN,  
STEWART B. MCKINNEY,  
RICHARD T. SCHULZE,  
BILL GRADISON,  
*Managers on Part of the House.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1537) to amend the Defense Production Act of 1950, as amended, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### EXPIRATION OF THE ACT

#### *House*

Section 2 of the House amendment extended the life of the Defense Production Act to November 30, 1977, *provided* that all authority extended under title III of the Act (relating to loan guarantees for the purpose of expanding productive capacity and supply) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

#### *Senate*

Section 2 of the Senate bill extended the Defense Production Act until September 30, 1977, to conform to the end of the federal fiscal year and in accordance with the practice of extending the Act for two year intervals.

#### *Conference substitute*

Section 2 of the conference substitute combines the termination date of the Senate bill with the House amendment's proviso relating to appropriations for title III programs of the Defense Production Act.

### JOINT COMMITTEE ON DEFENSE PRODUCTION

#### *House*

The House amendment provided in section 8 for the repeal, effective July 1, 1976, of the requirements relating to the Joint Committee on Defense Production contained in section 712 of the Defense Production Act.

#### *Senate*

The Senate bill contained no provision.



*Conference substitute*

The House recedes to the position of the Senate on the understanding that the termination of the Joint Committee on Defense Production will be coincident with the termination of the Defense Production Act, as set forth in section 717(a) of that Act, and that the Congress will review the renewal of the Joint Committee at the same time as it considers the extension of the Defense Production Act.

## AUTHORIZATION FOR EXPENSES FOR THE JOINT COMMITTEE

*House*

The House amendment contained no provision.

*Senate*

The Senate bill in section 9 removed the \$100,000 limitation on expenses for the Joint Committee on Defense Production to be paid from the contingent fund of the House of Representatives, as established in section 712(e) of the Defense Production Act.

*Conference substitute*

The Senate recedes to the position of the House amendment.

## STENOGRAPHIC SERVICES FOR THE JOINT COMMITTEE

*House*

The House amendment contained no provision.

*Senate*

The Senate bill in section 8 deleted a requirement contained in section 712(c) of the Defense Production Act that the cost of stenographic services to report hearings shall not be in excess of 40 cents per hundred words.

*Conference substitute*

The House recedes to the provisions of the Senate bill.

## NATIONAL DEFENSE EXECUTIVE RESERVE

*House*

The House amendment contained no provision.

*Senate*

The Senate bill, in section 5, amended the second sentence of section 712(e) of the Defense Production Act to provide that members of the National Defense Executive Reserve who are not full-time employees of the government may be allowed transportation and per diem in lieu of subsistence, as prescribed under title 5 of the United States Code for individuals serving without pay while away from their homes or regular places of business for the purpose of participating in the executive reserve training program.

*Conference substitute*

The House recedes to the provision of the Senate bill.

## COST ACCOUNTING STANDARDS BOARD

*House*

The House amendment in section 6 modified section 719 of the Defense Production Act to provide for (1) the establishment by the Cost Accounting Standards Board of criteria and procedures for cost-benefit analyses of cost-accounting standards, (2) the evaluation of each standard, rule or regulation in accord with these criteria, and (3) for the certification and transmission to the Congress of such evaluations with a copy of the proposed standard, rule, or regulation. It additionally provided for a summary of such cost-benefit evaluations, as well as a cost-benefit evaluation of all prior major standards and rules and regulations, to be included in the annual report of the Cost Accounting Standards Board of August 15, 1976.

*Senate*

The Senate bill contained no provision.

*Conference substitute*

Section 7 of the conference substitute provides that, in promulgating standards and major rules and regulations, the Cost Accounting Standards Board shall take into account and report to the Congress on the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits, including advantages and improvements in the pricing, administration and settlement of contracts.

The substitute for section 6 as added by the House of Representatives to S. 1537 incorporates the salient new provisions of section 6, the requirement for the cost-benefit analysis respecting Board rules and regulations and the specific attention to any inflationary effects of proposed standards, rules, and regulations. It also explicitly recognizes the Board's consistent practice heretofore of reporting to the Congress on its analysis of probable costs and benefits respecting proposed cost accounting standards. The substitute does avoid the imposition of the detailed and very time-consuming process set out in section 6 and thus preserves the time and energy of the Board for its task of promulgating cost accounting standards without further prolonged delay.

## NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES

*House*

The House amendment provided in section 7 that the National Commission on Supplies and Shortages will report to the President and the Congress on specific recommendations not later than December 31, 1976, as compared to March 31, 1976 as currently provided for, and, further, that the Commission might continue to prepare and publish reports and recommendations until March 31, 1977, as compared to October 1, 1976 as currently provided for. It also authorized funding in the amount of \$150,000 for an advisory committee to the Commission, in lieu of the \$75,000 presently authorized. Additionally, it authorized an increase of funds not to exceed \$1,484,000 to carry out

the activities of the Commission, which is authorized to contract with public or private agencies, institutions, corporations, and other organizations.

*Senate*

The Senate bill contained no provision.

*Conference substitute*

The Senate recedes to the provisions of the House amendment.

ANTITRUST IMMUNITY FOR VOLUNTARY AGREEMENTS

*House*

Section 3 of the House amendment modified section 708 of the Defense Production Act to provide in subsection (a) that, except as specifically provided in subsection (i), no provision of the Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

It further provided in subsection (b) that, as used in section 708, the term "antitrust laws" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (26 Stat. 290), as amended; the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1974 (38 Stat. 730), as amended; the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), as amended; sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (28 Stat. 579), as amended; the Act of June 19, 1936 (49 Stat. 1526); and the Act entitled "An Act to promote export trade and for other purposes" (40 Stat. 516), as amended.

It further provided in subsection (c) that except as otherwise provided in subsection (1) (4), upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

The authority granted to the President in paragraph (1) of subsection (c) may be delegated by him to individuals who (1) are appointed by and with the advice and consent of the Senate, or (2) are holding offices to which they have been appointed by and with the advice and consent of the Senate.

It further provided in subsection (d) that the individual or individuals referred to in subsection (c) shall (after consultation with the Attorney General and the Chairman of the Federal Trade Commission) promulgate rules on the record after opportunity for a hearing under the provisions of sections 556 and 557 of title 5 of the United States Code incorporating standards and procedures by which voluntary agreements may be developed and carried out.

Notwithstanding section 553 of title 5 of the United States Code general notice of the proposed rulemaking referred to in paragraph (1) of subsection (d) shall be published in the Federal Register, and the notice shall include a statement of the time, place and nature of the public rulemaking proceedings; reference to the legal authority under which the rule is being proposed; and, either the terms of substance of the proposed rule or a description of the subjects and issues involved. It further provided that the required publication of a rule shall be made not less than thirty days before its effective date; and that the individual or individuals referred to in paragraph (1) of subsection (d) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule. It also provided that the rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that such agreements shall be developed at meetings which include the Attorney General or his delegate, the Chairman of the Federal Trade Commission or his delegate, and, an individual designated by the President in subsection (c) (2) or his delegate, which are chaired by the individual referred to in the above clause. It further provided at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register; that interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation; that interested persons may attend any such meeting unless an individual designated by the President in subsection (c) (2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) of section 552, title 5, United States Code; that a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission; that any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General and to the Chairman of the Federal Trade Commission; and, that any transcript referred to above and any voluntary agreement also referred to above shall be available for public inspection and copying, subject to subsection (b) of section 552, title 5, United States Code.

It further provided in subsection (e) that a voluntary agreement may not become effective unless and until the individual referred to in subsection (c) (2) who is to administer the agreement approves it and certifies, in writing, that the agreement is necessary to carry out the purposes of subsection (c) (1); and that the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

Each voluntary agreement which becomes effective under the above paragraph shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c) (2) who administers the agreement and the At-

torney General (after consultation with the Chairman of the Federal Trade Commission) makes the certification or finding, as the case may be, described in the above paragraph with respect to such voluntary agreement, in which case, the voluntary agreement may be extended for an additional period of two years.

The House amendment further provided in subsection (f) that the Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement to assure that the agreement is carrying out the purpose of subsection (c) (1); that the agreement is being carried out under rules promulgated pursuant to subsection (d); and that participants are acting in accordance with the terms of the agreement.

It further provided in subsection (g) that the rules promulgated under subsection (d) with respect to the carrying out of voluntary agreements shall provide that for the maintenance, by participants in any voluntary agreement, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement, the participants in any voluntary agreement agree, in writing, to make available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to in this paragraph. Also provided in subsection (g) of the House amendment was that any item made available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to the preceding paragraph shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to subsection (b) of section 552 title 5, United States Code; and, that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement.

Furthermore, that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement; that participants in any voluntary agreement provide the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement; for the attendance by interested persons of any meeting held to carry out any voluntary agreement, unless the individual designated by the President in subsection (c) (2) to administer the voluntary agreement finds that the matter or matters to be discussed at such meeting falls within the purview of matters discussed in subsection (b) of section 552, title 5, United States Code; that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agree-

ment, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters discussed in subsection (b) of section 552, title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting; that the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c) (2) to administer a voluntary agreement), or that the individual designated by the President in subsection (c) (2) to administer a voluntary agreement (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement at any time, and that effective immediately upon such termination any antitrust immunity conferred upon the participants in the voluntary agreement by subsection (i) shall not apply to any act or omission occurring after the time of the revocation.

In addition, subsection (g) provides that participants in any voluntary agreement by reasonably representative of the appropriate industry or segment of such industry.

The House amendment further provided in subsection (h) that the Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as he deems necessary or appropriate to carry out his responsibility under this section.

In subsection (i) of the House amendment, it provided that there shall be available as a defense for any person to any prosecution or civil action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that such act or omission to act was taken in good faith by that person in the course of developing a voluntary agreement under this section, or to carry out a voluntary agreement under this section; and, that such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

The House amendment also provided in subsection (j) that the Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements.

The House amendment further provided in subsection (k) that the individual or individuals designated by the President in subsection (c) (2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement in effect and its contribution to achievement of the purpose of subsection (c) (1).

In addition, it provided in subsection (l) that in the case of any



international voluntary agreement the rules promulgated pursuant to subsection (d) incorporating standards and procedures by which voluntary agreements may be developed shall provide that any such agreement shall be developed at meetings which include the Secretary of State or his delegate, that a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Secretary of State; that any such voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Secretary of State; that interested persons may not attend any such meeting if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing that on account of the matter or matters to be discussed at such meeting it would be detrimental to the foreign policy interests of the United States to permit such persons to attend such meetings; and that any transcript of a meeting held to develop any such voluntary agreement may not be made available for public inspection and copying if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing, that to do so would be detrimental to the foreign policy interests of the United States.

Moreover, such agreement may not become effective unless and until the Secretary of State finds that such agreement is consistent with the foreign policy interests of the United States. Subsection (l) further provided that the rules promulgated under subsection (d) with respect to the carrying out of voluntary agreements shall provide that participants in any such agreement shall agree, in writing, to make available to the Secretary of State for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to subsection (g) with respect to such agreement; that any item referred to in subsection (g) with respect to such agreement may not be made available for public inspection and copying if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing, that to do so would be detrimental to the foreign policy interests of the United States; that the Secretary of State or his delegate may attend meetings to carry out any such agreement; that participants in any such agreement provide the Secretary of State with adequate prior notice of the time, place, and nature of any meeting to be held to carry out any such agreement; and, that interested persons may not attend any such meeting if the Secretary of State or his delegate finds (after consultation with the Attorney General), in writing, that on account of the matter or matters to be discussed at such meeting it would be detrimental to the foreign policy interests of the United States.

Subsection (l) of the House amendment further provided that the requirements which are made applicable specifically in the case of international voluntary agreements under the above paragraph of subsection (l) shall be in addition to any requirements made applicable to voluntary agreements generally under the other subsections of this section; except that if any requirement under the above paragraph of subsection (l) is inconsistent with the corresponding requirement under any other subsection of this section, the latter requirement shall be considered to be modified to the extent necessary to give effect to the requirement under the above paragraph of this subsection.

For the purposes of subsection (l), the term—"international voluntary agreement" refers to the Voluntary Agreement and Program Relating to the Agreement on an International Energy Program signed by the United States on November 18, 1974; and, any voluntary agreement developed under rules promulgated pursuant to subsection (d) to carry out the purpose of subsection (c) (1) and which is certified by the Secretary of State as necessary to carry out the purposes of an international agreement to which the United States is a party or as necessary to implement a program of international cooperation between the United States and one or more foreign countries. "Foreign country" means any country other than the United States.

If Senate bill 622, Ninety-four Congress (the Energy Policy and Conservation Act) is enacted, then (effective on the effective date of the provisions of Senate bill 622 which relate to international voluntary agreements to carry out the International Energy Program) this section shall not be applicable to (A) any international voluntary agreement described in the above paragraph, or (B) any international voluntary agreement described in the above paragraph which relates to crude oil, residual fuel oil, or refined petroleum products.

The House amendment further provided in section 4 that any voluntary agreement entered into under section 708 of the Defense Production Act of 1950 prior to the effective date of this Act and in effect immediately prior to such date shall continue in effect but shall be carried out in accordance with that section as amended by this Act.

Section 5 of the House amendment additionally provided that this Act and the amendments made by it shall take effect on the one hundred and twentieth day beginning after the date of its enactment, except that the amendment made by section 2 shall take effect upon the date of enactment of this Act.

#### *Senate*

Sections 3 and 4 of the Senate bill altered section 708 of the Defense Production Act of 1950, as amended, to provide in subsection (a) that, except as specifically provided in subsection (j), no provision of the Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

In subsection (b), it defined the term "antitrust laws" as used in section 708 to mean the Act entitled "An Act to protect commerce against unlawful restraints and monopolies", approved July 2, 1890 (23 Stat. 290), as amended; the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730), as amended; the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), as amended; sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (28 Stat. 579), as amended; the Act of June 19, 1936 (49 Stat. 1526); and the Act entitled "An Act to promote export trade and for other purposes" (40 Stat. 516), as amended.

It further provided in subsection (c) that upon finding that conditions exist which may pose a direct threat to the national defense or to

its preparedness programs, the President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to providing for the making of voluntary agreements and programs by such persons, and may request the undertaking or entering into of such voluntary agreements or programs, in accordance with the provisions of this section, for the purpose of assuring adequate productive capacity and supply for mobilization.

The authority granted in paragraph (1) of subsection (c) shall be delegated only to officials who shall for the purpose of such delegation be required to be appointed by the President, by and with the advice and consent of the Senate unless otherwise required to be so appointed, and upon the condition that such officials consult with the Attorney General and with the Federal Trade Commission not less than ten days before making any request thereunder, and upon the condition that such officials obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to any request thereunder. For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection (c) shall not be delegated except to one and only one official of the Government.

It further provided that the authority granted in paragraph (1) of this subsection (c) shall be exercised only if the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708 certifies, with a written justification to be published in the Federal Register prior to approval of any proposed voluntary agreement, that such voluntary agreements and programs are necessary to accomplish the objectives of paragraph (1) of subsection (c) and if the Attorney General, after consultation with the Federal Trade Commission, certifies, in a report setting forth the competitive consequences of the proposed voluntary agreement, also to be published in the Federal Register, that such objectives cannot reasonably be accomplished through alternative means having lesser anticompetitive effects. Each voluntary agreement or program authorized under this section, together with any associated advisory committee provided for under subsection (d), shall expire two years from the date of the entering into force of the voluntary agreement, except that it may be extended for two more years every two years after the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708 determines that its continuance is necessary to further the objectives of subsection (c)(1) and sets forth a detailed explanation of the reasons justifying its continuance, consistent with the need to protect the security of classified national defense information, to be published in the Federal Register at a reasonable time prior to the date of expiration; and the Attorney General, after consultation with the Federal Trade Commission, determines that such objectives cannot reasonably continue to be accomplished through alternative means having lesser anticompetitive effects. It provided that upon making the determination that there no longer exists a requirement for a voluntary agreement or program or associated advisory committee, the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708 shall recommend to the President that such voluntary agreement or program associated advi-

sory committee be terminated, setting forth the reasons for the recommendation, and shall inform the Attorney General and the Federal Trade Commission of the intended termination and date of its effect. It further provided that the requirements of section 708 shall be the sole procedures applicable to the development or implementation of the voluntary agreements or programs to accomplish the objectives of subsection (c)(1) of section 708 and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreement or programs.

Subsection (d) of section 708 of the Senate bill provides that to achieve the objectives of subsection (c)(1) of this section 708 the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708 may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in section 708 any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5, United States Code, and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

In subsection (d)(1)(B) it provided that the authority granted in the paragraph above shall be delegated only to officials who shall for the purpose of such delegation be required to be appointed by the President, by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and upon the condition that such officials consult with the Attorney General and with the Federal Trade Commission not less than ten days before making any request thereunder, and upon the condition that such officials obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to any request thereunder. For the purpose of carrying out the objectives of title I of this Act, the authority granted in the above paragraph shall not be delegated except to one and only one official of the Government. A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552(b)(1) and (b)(3), of title 5, United States Code.

Subsection (c) provided that the official designated pursuant to subsections (c) paragraph (2) and (d)(1)(B) of section 708 shall promulgate, by rule, subject to the prior approval of the Attorney General and the Federal Trade Commission, standards and procedures by which representatives of industry, business, financing, agriculture, labor, and other interests may develop and implement voluntary agree-

ments and programs necessary to accomplish the objectives of subsection (c) paragraph (1) of section 708.

It further provided in subsection (f) that the standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that such agreements and programs shall be developed by meetings of committees, councils, or other groups which include representatives of the public, of interested segments of the relevant industry or industries and of consumers, and shall in all cases be chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; meetings held to develop a voluntary agreement or program shall permit attendance by interested persons; and be preceded by timely and adequate public notice, published in the Federal Register not less than ten days in advance of any such meeting, including identification of the agenda of such meeting; interested persons shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings; and a full and complete verbatim transcript shall be kept of any meeting, conference, or communication held to develop or implement a voluntary agreement or program under this section and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and copying, subject to provisions of section 552 (b)(1) and (b)(3) of title 5, United States Code.

It further provided that no provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or any logs of communications.

Subsection (g)(1) provided that the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708 may exempt, subject to the prior approval of the Attorney General and the Federal Trade Commission, types or classes of meetings, conferences or communications from the requirements of subsections (d)(2) and (f)(4) of section 708: *Provided*, That such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing a voluntary agreement or program authorized pursuant to this section. Such ministerial meeting, conference, or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference, or communication shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed, consistent with the need to protect the security of classified national defense information. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

Subsection (g)(2) provided that the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708 may suspend, subject to the prior approval of the Attorney General and the Federal Trade Commission, the application of sections 10 and 11 of the Federal Advisory Committee Act, subsection (d)(2) of section 708, the re-

quirement under subsection (f)(2) of section 708 that meetings be open to the public; and the second sentence of paragraph (f)(4) of this section; if the official designated pursuant to subsections (c)(2) and (d)(1)(B) determines in each instance that such suspension is essential to protect the security of classified national defense information and that application of such provisions would be detrimental to the defense of the United States.

Subsection (g) further provided that on complaint, the United States District Court for the District of Columbia has jurisdiction to enjoin any exemption or suspension pursuant to subsections (g)(1) and (g)(2) of section 708 and to order the production of the records filed with the Attorney General and the Federal Trade Commission as set forth in subsection (g)(1) of section 708 where the court determines that such records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any parts thereof shall be withheld under any of the exemption or suspension provisions set forth in subsections (g)(1) and (g)(2) of section 708, and the burden is on the agency to sustain its action.

Subsection (h) of the Senate bill provided that the Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement programs authorized under section 708. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of subsection (c)(1) of section 708. A voluntary agreement or program under this section may not be implemented unless approved by the Attorney General and the Federal Trade Commission. The Attorney General or the Federal Trade Commission shall have the right, after consultation with the official designated pursuant to subsections (c)(2) and (d)(1)(B) of section 708, to review, amend, modify, disapprove, or revoke, on its own motion or upon the request of any interested person, any voluntary agreement or program at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of section 708. Any voluntary agreement or program entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented, and it shall be made available for public inspection and copying, subject to the provisions of subsection (g) of section 708. Any action taken pursuant to such voluntary agreement or program shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations and shall be prescribed under subsections (i)(3) and (i)(4).

Subsection (i) provided that the Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and programs authorized under section 708 to assure the protection and fostering of competition and to prevent anticompetitive practices and effects. The Attorney General and the Federal Trade Commission shall promulgate joint regulations

concerning the maintenance of necessary and appropriate documents, minutes, transcripts, and other records related to the development and implementation of voluntary agreements and programs pursuant to section 708. In subsection (i) (3) the Senate bill provided that persons developing and implementing voluntary agreements and programs pursuant to this section shall maintain those records required by such joint regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice. In subsection (i) (4) it provided that the Federal Trade Commission and the Attorney General may each prescribe pursuant to section 553, title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. Each may utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be to section 708.

In subsection (j) the Senate bill provided that there shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or implement a voluntary agreement or program (provided that such actions were not taken unnecessarily for the purpose of injuring competition) that such action was taken in the course of developing a voluntary agreement or program pursuant to this section, or pursuant to a voluntary agreement or program authorized and approved in accordance with this section, and such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder. Persons interposing the defense provided by section 708 shall have the burden of proof, except that the burden shall be on the plaintiff with respect to whether the actions were taken unnecessarily for the purpose of injuring competition.

It provided in subsection (k) that no provision of section 708 shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred prior to the date of enactment of this section, or outside the scope and purpose or not in compliance with the terms and conditions of this section, or subsequent to the expiration or repeal of this section or Act.

In subsection (l) the Senate bill provided that the official designated pursuant to subsections (c) (2) and (d) (1) (B) of this section shall report annually to the President and to the Congress on performance under each voluntary agreement or program authorized and approved in accordance with this section on its contribution to achievement of the objectives of subsection (c) (1) of section 708. The Attorney General and the Federal Trade Commission are each directed to make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concen-

tration of economic power in the course of the administration of this Act. Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General and the Federal Trade Commission shall each submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.

It provided in subsection (m) that effective on the date of enactment of the Act, the immunity conferred by section 708 would not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973. Effective one hundred and twenty days after the date of enactment of this Act, the provisions of and immunity conferred by this section shall not apply to any actions taken or authorized to be taken by or under the Agreement on an International Energy Program, signed by the United States on November 18, 1974.

Section 4 of the Senate bill further amended the Defense Production Act of 1950 by adding after section 708, the new section 708A which provided in subsection (a) that except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

In subsection (b) it defined the term "antitrust laws" as used in section 708A to mean the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 290), as amended; the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730), as amended; the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), as amended; sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (28 Stat. 579), as amended; the Act of June 19, 1936 (49 Stat. 1526); and the Act entitled "An Act to promote export trade, and for other purposes" (40 Stat. 516), as amended.

It defined the term "international energy supply emergency" to mean any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

It defined the term "international agreement" to mean the Agreement on an International Energy Program, signed by the United States on November 18, 1974. It defined the term "Administrator" to mean the Administrator of the Federal Energy Administration. Also it defined the term "petroleum product" to mean crude oil, natural gas



liquids and other liquids produced in association with crude oil or natural gas, refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and blending agents and additives used in conjunction with crude oil and refined petroleum products.

The Senate bill provides in subsection (c) that the requirements of section 708A shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or plans of action.

It further provided in subsection (d) that to achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section 708A, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act and section 17, of the Federal Energy Administration Act, whether or not such Acts or any of their provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5, United States Code, and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting. A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552 (b) (1) and (b) (3) of title 5, United States Code. For the purposes of section 708A, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees, other than individuals employed pursuant to section 3109 of title 5, United States Code, established or utilized to advise the United States Government with respect to the formulation or carrying out of any agreement or plan of action under the international agreement.

The Senate bill further provided in Subsection (e) that the Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of the international agreement

which relate to international allocation of petroleum products and the information system provided in such agreement.

It provided in subsection (f) that the standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States. Subsection (f) additionally provided that no meetings may be held to develop or implement a voluntary agreement or plan of action under section 708A, unless a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent. Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings. A verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement or, with respect to meetings held or communications made to develop a voluntary agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be

available for public inspection and copying, except as otherwise provided in section 552 (b) (1) and (b) (3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

Subsection (f) further provided that no provision of section 708A may be exercised so as to prevent committees of Congress from attending meetings to which subsection (f) applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

The Senate bill further provided in subsection (g) that subject to the prior approval of the Attorney General and the Federal Trade Commission, the Administrator may suspend the application of sections 10 and 11 of the Federal Advisory Committee Act, subsections (b) and (c) of section 17 of the Federal Energy Administration Act, the requirement under subsection (d) (1) of section 708A that meetings be open to the public; and the second sentence of subsection (d) (2) section 708A if the Administrator determines in each instance that such suspension is essential to the implementation of the international agreement as it relates to the international allocation of petroleum products or the information system provided in such agreement and if the Secretary of State determines that the application of such provisions would be detrimental to the foreign policy interests of the United States. Such determinations by the Administrator and the Secretary of State shall be in writing, shall set forth, to the extent possible consistent with the need to protect the security of classified national defense and foreign policy information, a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

The Senate bill provided in subsection (h) that the Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under section 708A and, when practicable, in any meeting to implement plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this section. A voluntary agreement or plan of action under this section may not be implemented unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2) of this subsection (h), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Administrator, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of section 708A.

Paragraph (2) of subsection (h) further provided that any voluntary agreement entered into pursuant to section 708A shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented (where it shall be made available for public inspection and copying subject to the provisions of subsection (g) of section 708A); except that during an international energy supply emergency, the Administrator, subject to approval of the Attorney General, may reduce such twenty-day period. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

Subsection (i) of the Senate bill provided that the Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and plans of action authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effect.

Paragraph (2) of subsection (i) provided that in addition to any requirements specified under subsections (e) and (f) of section 708A and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Administrator, shall promulgate regulations concerning the maintenance of necessary and appropriate records related to the development and implementation of voluntary agreements and plans of action pursuant to this section.

In paragraph (3) of subsection (i) it was provided that persons developing and implementing voluntary agreements or plans of action pursuant to section 708A shall maintain those records required by such regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

Paragraph (4) of subsection (i) provided that the Attorney General and the Federal Trade Commission may each prescribe pursuant to section 553 of title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever any such provision of law refers to 'the purposes of this Act' or like terms, the reference shall be understood to be section 708A.

It provided in subsection (j) that there shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect of actions taken to develop or implement a voluntary agreement or plan of action by persons engaged in the business of producing, refining, marketing, or distributing petroleum products (provided that such actions were not taken unnecessarily for the purpose of injuring competition) rather than such action was taken in the course of developing a voluntary agreement or plan of action pursuant to this section, or pursuant to a voluntary agreement

or plan of action authorized and approved in accordance with this section, and that such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

Persons interposing the defense provided by section 708A shall have the burden of proof, except that the burden shall be on the plaintiff with respect to whether the actions were taken unnecessarily for the purpose of injuring competition. In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

Subsection (k) of the Senate bill further provided that no provision of section 708A shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

Subsection (l) of the Senate bill provided that the Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement. Also, the Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

The Senate bill provided in subsection (m) that the authorities contained in section 708A with respect to the executive agreement, commonly known as the Agreement on an International Energy Program dated November 18, 1974, shall not be construed in any way as advice and consent, ratification, endorsement, or any other form of congressional approval of the specific terms of such executive agreement or any related annex, protocol, amendment, modification, or other agreement which has been or may in the future be entered into.

Subsection (n) of the Senate bill provided that any action or agreement undertaken or entered into pursuant to section 708A shall be deemed to be undertaken or entered into in the United States.

Section 6 of the Senate bill provided that the provisions of sections 708 and 708A, as amended and added respectively by this Act, shall become effective one hundred and twenty days after the date of enactment.

Section 7 of the Senate bill amended section 713 of the Defense Production Act of 1950 by adding at the end thereof the following new sentence: "Any action or agreement undertaken or entered into pursuant to section 708A of this Act shall be deemed to be undertaken or entered into within such areas."

### *Conference substitute*

As regards antitrust immunity for voluntary agreements requested for national defense purposes, the conference substitute combines the provisions of the House amendment with a series of procedural safeguards adapted from the Senate bill, as requested by the Senate and agreed to by the House.

These modifications to section 3 include:

adding to section 708(c)(2) of section 3 of the House amendment the language in section 708(c)(2) of section 3 of the Senate bill which requires the prior consent of the Attorney General to making a request for a voluntary agreement (Section 708(c)(2) of section 3 of the conference substitute);

adding to section 3 of the House amendment the advisory committee provisions contained in section 708(d) of section 3 of the Senate bill (Senate 708(d) of section 3 of the conference substitute);

substituting in section 708(d)(1) of section 3 of the House amendment the provisions set forth in section 708(e) and (f) of section 3 of the Senate bill requiring the approval of the Attorney General for voluntary agreement standards and procedures and requiring a rulemaking proceeding under the terms of section 553 of title 5, United States Code (Sections 708(e)(1) and (2) of section 3 of the conference substitute);

adding at the end of section 708 of section 3 of the House amendment the language in section 708(g)(3) of section 3 of the Senate bill, providing for jurisdiction of the United States District Court for the District of Columbia to enjoin improper withholding of information required to be supplied under particular provisions of the Act (section 708(m) of section 3 of the conference substitute);

adding to section 708(f) of section 3 of the House amendment the language of section 708(i)(1) of section 3 of the Senate bill, providing that the Attorney General and the Chairman of the Federal Trade Commission shall monitor voluntary agreements to assure the protection and fostering of competition and to prevent anticompetitive practices and effects (section 708(g)(4) of section 3 of the conference substitute); and

adding to section 3 of the House amendment the language from section 708A(m)(1) of section 3 of the Senate bill which restricts the applicability of the grant of immunity from antitrust action from applying to actions taken under the Emergency Petroleum Allocation Act of 1973 (Section 4(c) of the conference substitute).

For voluntary agreements related to the International Energy Agreement signed by the United States on November 18, 1974, the Conference substitute adopts the provisions of section 4 of the Senate bill, as modified by the inclusion of the language of the House amendment regarding the grant of antitrust immunity [proposed section 708(i) of section 3 of House amendment in lieu of proposed subsection (j), (except paragraph (3) thereof) of section 708A of section

4 of the Senate bill] and as modified by the stipulation in the House amendment that the voluntary agreement provisions of the Defense Production Act shall not be applicable to any international agreement or to any international voluntary agreement relating to crude oil, residual fuel oil, or refined petroleum products if the Energy Policy and Conservation Act (S. 622) is enacted.

Specifically, the conference substitute alters section 708 of the Defense Production Act to provide that, in subsection (a), except as specifically provided in subsection (j) of this section, and subsection (j) of section 708A no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws. In subsection (b), the conference substitute defines the term "antitrust laws" to mean the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.); the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.); the Federal Trade Commission Act (15 U.S.C. 41 et seq.); sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9); the Act of June 19, 1936 chapter 592 (15 U.S.C. 13), 13a, 13b, and 21a); and the Act entitled "An Act to promote export trade and for other purposes," approved April 10, 1918 (15 U.S.C. 61-65).

The conference substitute states further in subsection (c) that, except as otherwise provided in section 708A(o), upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

Furthermore, the authority granted to the President in paragraph (1) and subsection (d) may be delegated by him to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, and upon the conditions that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1). For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection may not be delegated to more than one individual.

In section 3 of the conference substitute subsection 708(d) provides to achieve the objectives of subsection (c) (1) of section 708, the President or any individual designated pursuant to subsections (c) (2) may

provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, any such advisory committee is subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees are chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code), and include representatives of the public, and the meetings of such committees are open to the public. The Attorney General and the Federal Trade Commission must have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

A full and complete verbatim transcript must be kept of such advisory committee meetings, and is taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement are available for public inspection and copying, subject to the provisions of section 552(b) (1) and (b) (3), of title 5, United States Code.

Subsection 708(c) provides that the individual or individuals referred to in subsection (c) (2) shall, after approval of the Attorney General after consultation by the Attorney General with the Chairman of the Federal Trade Commission promulgate rules in accordance with section 553 of title 5, United States Code incorporating standards and procedures by which voluntary agreements may be developed and carried out.

In addition to the requirements of section 553 of title 5 of the United States Code—general notice of the proposed rulemaking referred to in paragraph (1) must be published in the Federal Register, and the notice shall include—a statement of the time, place, and nature of the public rulemaking proceedings, reference to the legal authority under which the rule is being proposed, and either the terms of substance of the proposed rule or a description of the subjects and issues involved. In addition, the required publication of a rule shall be made not less than thirty days before its effective date, and the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

These rules must provide, among other things, that such agreements shall be developed at meetings which include the Attorney General or his delegate, the Chairman of the Federal Trade Commission or his delegate, and the President's designee which are chaired by the President's designee. Also the rules must provide for: at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register, interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation, interested persons may attend any such meeting unless the President's designee finds that the matter or matters be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552, title 5, United States Code, a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney



General and to the Chairman of the Federal Trade Commission, any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General and to the Chairman of the Federal Trade Commission, and any transcript referred to above and any voluntary agreement referred to above shall be available for public inspection and copying, subject to subsections (b) (1) and (b) (3) of section 552, title 5, United States Code.

In section 3 of the conference substitute, subsection 708(f) provides that a voluntary agreement may not become effective unless and until the individual appointed by the President approves it and certifies, in writing, that the agreement is necessary to carry out the purposes of subsection (c) (1), and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

"(2) Each voluntary agreement which becomes effective under this provision expires two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c) (2) who administers the agreement and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) makes the certification or finding, as the case may be, described above with respect to such voluntary agreement, in which case, the voluntary agreement may be extended for an additional period of years.

Subsection 708(g) requires that the Attorney General and the Chairman of the Federal Trade Commission monitor the carrying out of any voluntary agreement to assure that the agreement is carrying out the purpose of subsection (c) (1); that the agreement is being carried out under rules promulgated pursuant to subsection (e); that the participants are acting in accordance with the terms of the agreement, and the protection and fostering of competition and the prevention of anti-competitive practices and effects.

Subsection 708(h) of section 3 of the conference substitute the rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements provides for the maintenance, by participants in any voluntary agreement, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement, that participants in any voluntary agreement agree, in writing, to make available to the President's designee, the Attorney General, and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to the above provision; that any item made available to the President's designee, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to subsections (b) (1) and (b) (3) of section 552 title 5, United States Code; that the President's designee, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to

carry out any voluntary agreement; that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement; that participants in any voluntary agreement provide the President's designee, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement; for the attendance by interested persons of any meeting held to carry out any voluntary agreement, unless the President's designee finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552, title 5, United States Code; that the President's designee has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552, title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting; that the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the President's designee), or the President's designee (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement at any time, and that effective immediately upon such termination any antitrust immunity conferred upon the participants in the voluntary agreement by subsection (i) shall not apply to any act or omission occurring after the time of the revocation; and that participants in any voluntary agreement be reasonably representative of the appropriate industry or segment of such industry.

In addition, subsection 708(i) of section 3 of the conference substitute requires that the Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as he deems necessary or appropriate to carry out his responsibility under section 708.

Subsection 708(j) provides as a defense for any person to any criminal or civil action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under section 708 that such act or omission to act was taken in good faith by that person in the course of developing a voluntary agreement under this section, or to carry out a voluntary agreement under section 708, and that such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

Subsection 708(k) requires the Attorney General and the Federal Trade Commission to each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements authorized by this section. The Attorney General shall

(after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements.

Subsection 708(1) requires the President's designee to submit to the Congress and the President at least once every year reports describing each voluntary agreement in effect and its contribution to achievement of the purpose of subsection (c) (1).

Subsection (m) gives the United States District Court for the District of Columbia jurisdiction to enjoin any exemption or suspension pursuant to certain subsections of the Act, and to order the production of records maintained by the Attorney General, the Federal Trade Commission or pursuant to section 708, any individual designated under subsection (c) (2) where the court determines that such records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

"Sec. 708A. Furthermore, section 3 of the conference substitute adds to the Defense Production Act a section 708A, relating to the International Energy Agreement which provides, in subsection (a) that, except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"Subsection (b) defines the term "international energy supply emergency" mean any period beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under the first clause of the preceding sentence. Any determination respecting the beginning or end of any such period must be published in the Federal Register. The conference substitute provides the following definitions relating to International Energy Program voluntary agreements:

Also, "international agreement" means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, "Administrator" means the Administrator of the Federal energy Administration, and "petroleum product" means—crude oil, natural gas liquids and other liquids produced in association with crude oil or natural gas, refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and blending agents and additives used in conjunction with crude oil and refined petroleum products.

Section 708A(c) of section 3 of the conference substitute provides that the requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the interna-

tional agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or plans of action.

In section 708A(d) of section 3, the conference substitute provides that: to achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in section 708A, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act and section 17 of the Federal Energy Administration Act, whether or not such Acts or any of their provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee, other than an individual employed pursuant to section 3109 of title 5, United States Code, and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission must have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting. A full and complete verbatim transcript must be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552(b)(1) and (b)(3) of title 5, United States Code. For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees (other than individuals employed pursuant to section 3109 of title 5, United States Code) established or utilized to advise the United States Government with respect to the formulation or carrying out of any agreement or plan of action under the international agreement.

Section 708A(e) of section 3 of the conference substitute requires that the Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

Additionally, section 708A(f) of section 3 of the conference substitute provides that the standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They must provide, among other things, that meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, in-

cluding all interested segments of the petroleum industry, consumers committees of Congress, and the public, must be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

This same subsection requires the standards to allow meetings to be held to develop or implement a voluntary agreement or plan of action under this section, only if a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent. Also, interested persons permitted to attend such a meeting must be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings. Lastly, a verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement or, with respect to meetings held or communications made to develop a voluntary agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of any such communication (other than in the course of such a meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552(b)(1) and (b)(3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States. However, no provision of this section may be exercised

so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

The conference substitute, in section 708A(g) of section 3, states that, subject to the prior approval of the Attorney General and the Federal Trade Commission, the Administrator may suspend the application of section 10 and 11 of the Federal Advisory Committee Act, subsections (b) and (c) of section 17 of the Federal Energy Administration Act, the requirement under subsection (d)(1) of section 708A that meetings be open to the public; and the second sentence of subsection (d)(2) of section 708A; if the Administrator determines in each instance that such suspension is essential to the implementation of the international agreement as it relates to the international allocation of petroleum products or the information system provided in such agreement and if the Secretary of State determines that the application of such provisions would be detrimental to the foreign policy interests of the United States. Such determinations by the Administrator and the Secretary of State shall be in writing, shall set forth, to the extent possible consistent with the need to protect the security of classified national defense and foreign policy information, a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

The conference substitute establishes, in section 708A(h) of section 3, that the Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anti-competitive effects while achieving substantially the purposes of this section. A voluntary agreement or plan of action under this section may not be implemented unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Administrator, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively to immunity which may be conferred by subsection (j) of section 708A. Any voluntary agreement entered into pursuant to section 708A shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented (where it shall be made available for public inspection and copying subject to the provisions of subsection (g) of section 708A); except that during an international energy supply emergency, the Administrator, subject to approval of the Attorney General, may reduce such twenty-day period. Any action taken pursuant to such voluntary

agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

Under section 708A(i) of section 3, the conference substitute states that the Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and plans of action authorized under this section to assure the protection of fostering of competition and to prevent anticompetitive practices and effect. In addition to any requirements specified under subsections (e) and (f) of section 708A and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Administrator, shall promulgate regulations concerning the maintenance of necessary and appropriate records related to the development and implementation of voluntary agreements and plans of action pursuant to this section. Persons developing and implementing voluntary agreements or plans of action pursuant to this section shall maintain those records required by such regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice. The Attorney General and the Federal Trade Commission may each prescribe pursuant to section 553 of title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever any such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be section 708A.

Section 708A(j) of section 3 of the conference substitute states that there shall be available as a defense for any person to any criminal or civil action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that such act or omission to act was taken in good faith by that person in the course of developing a voluntary agreement under this section, or to carry out a voluntary agreement under this section; and that such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement. It further provides that in any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

The conference substitute provides, in section 708A(k) of section 3, that no provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of

enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

In section 708A(1) of section 3 of the conference substitute, provision is made for the Attorney General and the Federal Trade Commission each to submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

Section 708A(m) of section 3 of the conference substitute states that the authorities contained in this section with respect to the executive agreement, commonly known as the Agreement on an International Energy Program dated November 18, 1974, shall not be construed in any way as advice and consent, ratification, endorsement, or any other form of congressional approval of the specific terms of such executive agreement or any related annex, protocol, amendment, modification, or other agreement which has been or may in the future be entered into.

Section 708A(n) of section 3 of the conference substitute states that any action or agreement undertaken or entered into pursuant to this section shall be deemed to be undertaken or entered into in the United States.

Section 708A(o) of section 3 of the conference substitute provides that, if S. 622, Ninety-fourth Congress (the Energy Policy and Conservation Act) is enacted, then (effective on the effective date of the provisions of S. 622 which relate to international voluntary agreements to carry out the International Energy Program) sections 708 and 708A shall not be applicable to any international agreement or any international voluntary agreement which relates to crude oil, residual fuel oil, or refined petroleum products.

In section 4, subsection (a), the conference substitute states that any voluntary agreement entered into under section 708 of the Defense Production Act of 1950 prior to the effective date of this Act and in effect immediately prior to such date shall continue in effect but shall be carried out in accordance with that section as amended by this Act. It further provides, in subsection (b) that no provision of the Defense Production Act of 1950, as amended by this Act, shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this Act, (2) outside the scope and purpose or not in compliance with the terms and conditions of the Defense Production Act of 1950, or (3) subsequent to the expiration or repeal of the Defense Production Act of 1950. Section 4(c) of the conference substitute states that, effective on the date of enactment of this Act, the immunity conferred by section 708 or

708A of the Defense Production Act of 1950, as amended by this Act shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973.

WILLIAM PROXMIRE,  
JOHN SPARKMAN,  
HARRISON WILLIAMS,  
JOHN TOWER,  
ED BROOKE,

*Managers on the Part of the Senate.*

HENRY S. REUSS,  
THOMAS L. ASHLEY,  
JAMES J. BLANCHARD,  
JOHN J. LAFALCE,  
THOMAS M. REES,  
JERRY M. PATTERSON,  
GLADYS NOON SPELLMAN,  
STEWART B. MCKINNEY,  
RICHARD T. SCHULZE,  
BILL GRADISON,

*Managers on the Part of the House.*

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## DEFENSE PRODUCTION ACT AMENDMENTS OF 1975

NOVEMBER 18, 1975.—Ordered to be printed

Mr. REUSS, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 1537]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1537) to amend the Defense Production Act of 1950, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That this Act may be cited as the "Defense Production Act Amendments of 1975".*

*SEC. 2. The first sentence of section 717 (a) of the Defense Production Act of 1950 is amended by striking out "November 30, 1975" and inserting in lieu thereof "September 30, 1977: Provided, That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts".*

*SEC. 3. Section 708 of the Defense Production Act of 1950 is amended to read as follows:*

*"SEC. 708. (a) Except as specifically provided in subsection (j) of this section and subsection (j) of section 708A, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.*

*"(b) As used in this section and section 708A the term 'antitrust laws' means—*

*"(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.);*

*"(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.);*

# Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,  
one thousand nine hundred and seventy-five*

## An Act

To amend the Defense Production Act of 1950, as amended.

*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 "Defense Production Act Amendments of 1975".

Sec. 2. The first sentence of section 717(a) of the Defense Production Act of 1950 is amended by striking out "November 30, 1975" and inserting in lieu thereof "September 30, 1977: *Provided*, That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts".

Sec. 3. Section 708 of the Defense Production Act of 1950 is amended to read as follows:

"Sec. 708. (a) Except as specifically provided in subsection (j) of this section and subsection (j) of section 708A, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the anti-trust laws.

"(b) As used in this section and section 708A the term 'antitrust laws' means—

"(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.);

"(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.);

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

"(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9);

"(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a); and

"(6) the Act entitled 'An Act to promote export trade and for other purposes', approved April 10, 1918 (15 U.S.C. 61-65).

"(c) (1) Except as otherwise provided in section 708A(o), upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

"(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any



persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1). For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection shall not be delegated to more than one individual.

“(d) (1) To achieve the objectives of subsection (c) (1) of this section, the President or any individual designated pursuant to subsection (c) (2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

“(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552(b) (1) and (b) (3) of title 5, United States Code.

“(e) (1) The individual or individuals referred to in subsection (c) (2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements may be developed and carried out.

“(2) In addition to the requirements of section 553 of title 5, United States Code—

“(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

“(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

“(ii) reference to the legal authority under which the rule is being proposed; and

“(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

“(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

“(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

“(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

“(A) such agreements shall be developed at meetings which include—

“(i) the Attorney General or his delegate,

“(ii) the Chairman of the Federal Trade Commission or his delegate, and

“(iii) an individual designated by the President in subsection (c) (2) or his delegate, and which are chaired by the individual referred to in clause (iii);

“(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

“(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

“(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c) (2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552 of title 5, United States Code;

“(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

“(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General and to the Chairman of the Federal Trade Commission; and

“(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to subsections (b) (1) and (b) (3) of section 552 of title 5, United States Code.

“(f) (1) A voluntary agreement may not become effective unless and until—

“(A) the individual referred to in subsection (c) (2) who is to administer the agreement approves it and certifies, in writing, that the agreement is necessary to carry out the purposes of subsection (c) (1); and

“(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement having less anticompetitive effects or without any voluntary agreement.

“(2) Each voluntary agreement which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c) (2) who administers the agreement and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement, in which case, the voluntary agreement may be extended for an additional period of two years.

“(g) The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement to assure—

“(1) that the agreement is carrying out the purposes of subsection (c) (1);

“(2) that the agreement is being carried out under rules promulgated pursuant to subsection (e);

“(3) that the participants are acting in accordance with the terms of the agreement; and

“(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

“(h) The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements shall provide—

“(1) for the maintenance, by participants in any voluntary agreement, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement;

“(2) that participants in any voluntary agreement agree, in writing, to make available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

“(3) that any item made available to the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to subsections (b) (1) and (b) (3) of section 552 of title 5, United States Code;

“(4) that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement;

“(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement;

“(6) that participants in any voluntary agreement provide the individual designated by the President in subsection (c) (2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement;

“(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement, unless the individual designated by the President in subsection (c) (2) to administer the voluntary agreement finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552 of title 5, United States Code;

“(8) that the individual designated by the President in subsection (c) (2) to administer the voluntary agreement has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b) (1) or (b) (3) of section 552 of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

“(9) that—

“(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c) (2) to administer a voluntary agreement), or

“(B) the individual designated by the President in subsection (c) (2) to administer a voluntary agreement (after consultation with the Attorney General and the Chairman of the Federal Trade Commission),

may terminate or modify, in writing, the voluntary agreement at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification; and

“(10) that participants in any voluntary agreement be reasonably representative of the appropriate industry or segment of such industry.

“(i) The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

“(j) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

“(1) such act or omission to act was taken in good faith by that person—

“(A) in the course of developing a voluntary agreement under this section, or

“(B) to carry out a voluntary agreement under this section; and

“(2) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

“(k) The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements.

“(l) The individual or individuals designated by the President in subsection (c) (2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement in effect and its contribution to achievement of the purpose of subsection (c) (1).

“(m) On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d) (2), (e) (3) (D) and (G), and (h) (3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c) (2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court

shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

“SEC. 708A. (a) Except as specifically provided in subsection (j) of this section and section 708(j) of this Act, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

“(b) As used in this section—

“(1) The term ‘international energy supply emergency’ means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international agreement is required by chapters III and IV of such program, and (B) ending on a date on which he determines such allocation is no longer required. Such a period may not exceed ninety days, but the President may establish one or more additional periods by making the determination under clause (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

“(2) The term ‘international agreement’ means the Agreement on an International Energy Program, signed by the United States on November 18, 1974.

“(3) The term ‘Administrator’ means the Administrator of the Federal Energy Administration.

“(4) The term ‘petroleum products’ means—

“(A) crude oil,

“(B) natural gas liquids and other liquids produced in association with crude oil or natural gas,

“(C) refined petroleum products, including but not limited to gasoline, kerosene, distillates, residual fuel oil, refined lubricating oil, and liquefied petroleum gases; and

“(D) blending agents and additives used in conjunction with crude oil and refined petroleum products.

“(c) The requirements of this section shall be the sole procedures applicable to the development or implementation of voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, and to the availability of immunity from the antitrust laws respecting the development or implementation of such voluntary agreements or plans of action.

“(d) (1) To achieve the purposes of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act and section 17 of the Federal Energy Administration Act of 1974, whether or not such Acts or any provisions thereof expire or terminate during the term of this Act or of such committees, and, in all cases, such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code)

and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

“(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 552 (b) (1) and (b) (3) of title 5, United States Code.

“(3) For the purposes of this section, the provisions of subsection (a) of section 17 of the Federal Energy Administration Act of 1974 shall apply to any board, task force, commission, committee, or similar group, not composed entirely of full-time Federal employees (other than individuals employed pursuant to section 3109 of title 5, United States Code) established or utilized to advise the United States Government with respect to the development or implementation of any agreement or plan of action under the international agreement.

“(e) The Administrator, subject to the approval of the Attorney General, after both of them have consulted with the Federal Trade Commission and the Secretary of State, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing petroleum products may develop and implement voluntary agreements and plans of action which are required to implement the provisions of the international agreement which relate to international allocation of petroleum products and the information system provided in such agreement.

“(f) The standards and procedures under subsection (e) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

“(1) (A) Meetings held to develop or implement a voluntary agreement or plan of action under this section shall permit attendance by interested persons, including all interested segments of the petroleum industry, consumers, committees of Congress, and the public, shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency) to the public, and shall be initiated and chaired by a Federal employee other than an individual employed pursuant to section 3109 of title 5, United States Code; except that (i) meetings of bodies created by the International Energy Agency established by the international agreement need not be open to interested persons and need not be initiated and chaired by a Federal employee, and (ii) the Administrator, in consultation with the Secretary of State and the Attorney General, may determine that a meeting held to implement or carry out an agreement or plan of action shall not be public and that attendance may be limited, subject to reasonable representation of affected segments of the petroleum industry (as determined by the Administrator, after consultation with the Attorney General) if he finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

“(B) No meetings may be held to develop or implement a voluntary agreement or plan of action under this section, unless a Federal employee other than an individual employed pursuant

to section 3109 of title 5, United States Code, is present; except that during an international energy supply emergency, a meeting to implement such an agreement or plan of action may be held outside the presence of such an employee (and need not be initiated or chaired by such an employee) if prior consent is granted by the Administrator and the Attorney General. The Administrator and the Attorney General shall each make a written record of the granting of any such prior consent.

“(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present in writing and orally, data, views, and arguments at such meetings.

“(3) A verbatim transcript or, if keeping a verbatim transcript is not practicable, full and complete notes or minutes shall be kept of any meeting held or communication made to develop or implement a voluntary agreement or plan of action under this section, between or among persons who are parties to such a voluntary agreement, or with respect to meetings held or communications made to develop a voluntary agreement; except that, during any international energy supply emergency, in lieu of minutes or a transcript, a log may be kept containing a notation of the parties to, and subject matter of, any such communication (other than in the course of such a meeting). Such minutes, notes, transcript, or log shall be deposited, together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General and the Federal Trade Commission. Such minutes, notes, transcripts, logs, and agreements shall be available for public inspection and copying, except as otherwise provided in section 552 (b) (1) and (b) (3) of title 5, United States Code, or pursuant to a determination by the Administrator, in consultation with the Secretary of State and the Attorney General, that such disclosure would be detrimental to the foreign policy interests of the United States.

No provision of this section may be exercised so as to prevent committees of Congress from attending meetings to which this subsection applies, or from having access to any transcripts or minutes of such meetings, or logs of communication.

“(g) Subject to the prior approval of the Attorney General and the Federal Trade Commission, the Administrator may suspend the application of—

“(1) sections 10 and 11 of the Federal Advisory Committee Act,

“(2) subsections (b) and (c) of section 17 of the Federal Energy Administration Act of 1974,

“(3) the requirement under subsection (d) (1) of this section that meetings be open to the public; and

“(4) the second sentence of subsection (d) (2) of this section;

if the Administrator determines in each instance that such suspension is essential to the implementation of the international agreement as it relates to the international allocation of petroleum products or the information system provided in such agreement and if the Secretary of State determines that the application of such provisions would be detrimental to the foreign policy interests of the United States. Such determinations by the Administrator and the Secretary of State shall be in writing, shall set forth, to the extent possible consistent with the need to protect the security of classified national defense and foreign policy information, a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.



“(h) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in any meeting to develop or implement voluntary agreements authorized under this section and, when practicable, in any meeting to implement plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this section. A voluntary agreement or plan of action under this section may not be implemented unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Administrator, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (j) of this section.

“(2) Any voluntary agreement entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented (where it shall be made available for public inspection and copying subject to the provisions of subsection (g) of this section); except that during an international energy supply emergency, the Administrator, subject to approval of the Attorney General, may reduce such twenty-day period. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under subsections (i) (3) and (i) (4).

“(i) (1) The Attorney General and the Federal Trade Commission shall monitor the development and implementation of voluntary agreements and plans of action authorized under this section to assure the protection and fostering of competition and to prevent anticompetitive practices and effect.

“(2) In addition to any requirements specified under subsections (e) and (f) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Administrator, shall promulgate regulations concerning the maintenance of necessary and appropriate records related to the development and implementation of voluntary agreements and plans of action pursuant to this section.

“(3) Persons developing and implementing voluntary agreements or plans of action pursuant to this section shall maintain those records required by such regulations. Both the Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and places and upon reasonable notice.

“(4) The Attorney General and the Federal Trade Commission may each prescribe pursuant to section 553 of title 5, United States Code, such rules and regulations as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws, the Antitrust Procedures and Penalties Act, or the Antitrust Civil Process Act; and wherever any such pro-

vision of law refers to 'the purposes of this Act' or like terms, the reference shall be understood to be this section.

"(j) (1) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

"(A) such act or omission to act was taken in good faith by that person—

"(i) in the course of developing a voluntary agreement under this section, or

"(ii) to carry out a voluntary agreement under this section; and

"(B) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

"(2) In any action in any Federal or State court for breach of contract there shall be available as a defense that the alleged breach of contract was caused solely by action taken during an international energy supply emergency in accordance with a voluntary agreement authorized and approved under the provisions of this section.

"(k) No provision of this section shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this section, (2) outside the scope and purpose or not in compliance with the terms and conditions of this section, or (3) subsequent to the expiration or repeal of this section or Act.

"(1) (1) The Administrator, after consultation with the Secretary of State, shall report annually to the President and the Congress on the performance under voluntary agreements or plans of action to accomplish the objectives of the international agreement with respect to international allocation of petroleum products and the information system provided in such agreement.

"(2) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, reports on the impact on competition and on small business of actions authorized by this section.

"(m) The authorities contained in this section with respect to the executive agreement, commonly known as the Agreement on an International Energy Program dated November 18, 1974, and referred to in this section as the international energy agreement, shall not be construed in any way as advice and consent, ratification, endorsement, or any other form of congressional approval of the specific terms of such executive agreement or any related annex, protocol, amendment, modification, or other agreement which has been or may in the future be entered into.

"(n) Any action or agreement undertaken or entered into pursuant to this section shall be deemed to be undertaken or entered into in the United States.

"(o) If S. 622, Ninety-fourth Congress (the Energy Policy and Conservation Act) is enacted, then (effective on the effective date of the provisions of S. 622 which relate to international voluntary agreements to carry out the International Energy Program) this section and section 708 shall not be applicable to (1) any voluntary agreement or plan of action developed or implemented to carry out obligations of the United States under the international agreement, or (2) any voluntary agreement or plan of action which relates to petroleum

products and which is developed, in whole or in part, to carry out the purposes of a treaty or executive agreement to which the United States is a party or to implement a program of international cooperation between the United States and one or more foreign countries.”.

SEC. 4. (a) Any voluntary agreement—

(1) entered into under section 708 of the Defense Production Act of 1950 prior to the effective date of this Act, and

(2) in effect immediately prior to such date

may continue in effect (except as otherwise provided in section 708A (o) of the Defense Production Act of 1950, as amended by this Act) and shall be carried out in accordance with such section 708, as amended by this Act, and such section 708A.

(b) No provision of the Defense Production Act of 1950, as amended by this Act, shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this Act, (2) outside the scope and purpose or not in compliance with the terms and conditions of the Defense Production Act of 1950, or (3) subsequent to the expiration or repeal of the Defense Production Act of 1950.

(c) Effective on the date of enactment of this Act, the immunity conferred by section 708 or 708A of the Defense Production Act of 1950, as amended by this Act, shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973.

SEC. 5. The second sentence of section 710(e) of the Defense Production Act of 1950 is amended to read as follows: “Members of this executive reserve who are not full-time Government employees may be allowed transportation and per diem in lieu of subsistence, in accordance with title 5 of the United States Code (with respect to individuals serving without pay, while away from their homes or regular places of business), for the purpose of participating in the executive reserve training program.”.

SEC. 6. Section 712(c) of the Defense Production Act of 1950 is amended by striking out the following: “The cost of stenographic services to report such hearing shall not be in excess of 40 cents per hundred words.”.

SEC. 7. The last sentence of subsection (g) of section 717 of the Defense Production Act of 1950 is amended to read as follows: “In promulgating such standards and major rules and regulations for the implementation of such standards, the Board shall take into account, and shall report to the Congress in the transmittal required by section 719(h)(3) of this Act, the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits, including advantages and improvements in the pricing, administration, and settlement of contracts.”.

SEC. 8. Section 720 of the Defense Production Act of 1950 is amended—

(1) in subsection (h) thereof by striking out “March 31, 1976” and inserting in lieu thereof “December 31, 1976” and by striking out “October 1, 1976” and inserting in lieu thereof “March 31, 1977”;

(2) in the last sentence of subsection (i)(2) by striking out “not to exceed \$75,000 to remain available until October 1, 1976” and inserting in lieu thereof “not to exceed \$150,000 to remain available until March 31, 1977”;

(3) in subsection (l) thereof by striking out "not to exceed \$500,000 to remain available until October 1, 1976" and inserting in lieu thereof "not to exceed \$1,484,000 to remain available until March 31, 1977"; and

(4) in subsection (j) thereof by inserting the following new paragraph:

"(3) The Commission is authorized to contract with public or private agencies, institutions, corporations, and other organizations."

SEC. 9. This Act and the amendments made by it shall take effect on the one hundred and twentieth day beginning after the date of its enactment, except that the amendment made by section 2 shall take effect upon the date of enactment of this Act.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*