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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

RELEASED

JUN 5 1979

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The Honorable Neal Smith
Chairman, Committee on Small Business
House of Representatives



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Dear Mr. Chairman:

This is in response to your letter of February 6, 1979, requesting information on the number and types of firms currently reporting export sales to the Department of Agriculture. We have initiated inquiries with pertinent officials in the executive branch to determine the availability of the information you requested.

As currently operated, Agriculture's export reporting system does not divide reporting exporters into the following categories: (1) American-based firms; (2) American firms with overseas affiliates; (3) foreign firms with American affiliates; and (4) foreign firms doing business exclusively overseas. Information of this type is not available from other export data systems in the Departments of Agriculture and Commerce or in other executive branch agencies.

Approximately 370 firms now report export sales to the Department of Agriculture on a weekly basis. No distinction of the type identified above is requested by the Department. However, Export Sales Reporting regulations do not prohibit the Government from requiring exporters to provide additional information identifying themselves as domestic and/or foreign organizations. Agriculture officials we contacted oppose modifying reporting regulations to include such additional data on the grounds that it would be of no useful purpose, and that requiring foreign owned and foreign based exporters to report would be difficult. This has been their consistent position since the Export Reporting System's establishment in September 1973.

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One of the problems in modifying the export reporting system to include information on the nature of the firm exporting is the difficulty in arriving at universally acceptable definitions. One exporter's definition of a foreign affiliate often differs greatly from another's. Despite this difficulty, a breakdown of exporters into the

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four categories delineated above would be helpful in providing the Government with better information on the nature of the export market that could ultimately assist in making better program and policy decisions.

In our May 2, 1977, report, Issues Surrounding The Management Of Agricultural Exports, we surveyed all exporters reporting to Agriculture's system and attempted to categorize exporters along lines similar to those mentioned in your letter. The exporters in our survey were found to range from small firms exporting less than 100 metric tons of a single agricultural commodity to multinational companies dealing heavily in a variety of commodities. In answer to a question concerning their organization, most of the 193 respondents identified themselves as private corporations (123 firms), a small group as public corporations (31 firms) and the remainder either as partnerships (8 firms), sole proprietorships (7 firms), or some other form of business (24 firms). Although we did not determine how many of the firms are U.S. owned, 37 of the exporters said they were subsidiaries or affiliates of foreign based companies.

Pursuing the parent-subsidiary relationship, we found that one-third (70) of the surveyed exporters were a subsidiary or affiliate of another company. Sixty-six of the firms, furthermore, indicated that they exported U.S.-origin agricultural commodities to parent, subsidiary, or affiliate organizations. The latter were identified mostly as merchants, processors, or traders located in the European Community, Japan, or Canada.

In our May 1977 report, in our May 1978 testimony before the Subcommittee on Department Investigations, Oversight, and Research of the House Committee on Agriculture, and in our November 1978 testimony before the Secretary of Agriculture's Advisory Committee on Export Sales Reporting, DLG-01736 we concluded that the quality of information provided by exporters could be materially improved if Agriculture modified reporting requirements to include additional information on export sales such as:

- Classification of foreign buyer (Government agency, affiliate, private reseller, processor, distributor, or other end user).
- Contract pricing terms or formula (including identification of flexible (basis) vs. fixed-contract types).

--Exact destinations.

--Contract provisions such as loading tolerances, shipping dates, storage details, etc.

We believe that an accurate, more timely, and reliable export reporting system is necessary and desirable. More and better information on export commitments, destinations and relationship of buyers to sellers would not only enhance the Government's ability to make responsive market-oriented decisions, but it would also provide better market intelligence. This improved intelligence could enhance farmers' marketing decisions and provide a greater opportunity for small exporters and exporter cooperatives to compete effectively in the export market.

The issue of categorizing the types of firms reporting export sales was one of the significant questions addressed by the Secretary of Agriculture's Advisory Committee on Export Sales Reporting during its hearings conducted in late 1978 and early 1979 throughout the United States. In discussing possible changes in the export sales reporting system, the Committee found it would be in the interest of an improved export reporting system to differentiate between the four basic types of firms involved in international trade of agricultural commodities:

- (1) those businesses, whether totally controlled by U.S. or foreign persons, located in the United States which export agricultural commodities;
- (2) those firms located outside the United States which are affiliates or subsidiaries of U.S.-based parent companies;
- (3) those firms located outside the United States which have affiliates or subsidiaries operating in the United States; and
- (4) those firms located outside the United States which are neither controlled by nor in direct control of any U.S. commodity marketing firm.

In addition to identifying the above categories of exporters, the Committee concluded that the Export Sales Reporting System provides accurate and timely export sales

information for category (1) firms above. However, it also noted that firms in categories (2, 3, and 4 above) are not required to report their export sales. The Committee therefore concluded:

" . . . Any foreign firm, including foreign affiliates of U.S. firms and foreign based firms with U.S. affiliates, can sell U.S. commodities without legally being required to report such sales. Of course, these sales are eventually reported by the U.S. business which supplies the commodity for delivery against the original sale.

The effect is that foreign buyers or sellers desiring to avoid immediate public disclosure of their transactions can achieve that objective by trading with or through non-U.S. firms. As noted above, a sale is eventually reported when the foreign firm contracts with a U.S. firm to obtain supplies to fill the order. But, in the meantime most of the participants in the marketing system may not have information about the export sale. This information could have affected their marketing decisions during this time."

As a result of its findings, the Committee recommended to the Secretary of Agriculture that "USDA should retain present requirements with respect to U.S.-based reporting exporters and extend discretionary authority to the Secretary of Agriculture to require the reporting of U.S. export sales by all foreign entities as part of the export sales reporting program requirements."

In its remarks on the above recommendation, the Committee cautioned that discretionary authority should be exercised in extremely tight supply (U.S. or world) situations affecting designated commodities and countries. The Committee urged new legislation be enacted to implement this recommendation. ✓

In its comments on reporting exporter categories, the Committee recognized that additional program sanctions would be required to enforce an expanded Export Sales Reporting System. In an effort to determine the extent of such sanctions Agriculture's Office of General Counsel assessed the implications of an expanded system concluding:

" . . . it is the position of this office (OGC) that the due process clause permits the extension of an export sales reporting requirement, enforced by criminal penalty directly against the reporting entity, to United States firms if the report concerns contractual arrangements negotiated by such firms. In addition, such a reporting requirement may also be extended to the United States parents controlling foreign subsidiaries, if the report concerns contractual arrangements entered into by the foreign entities, and United States subsidiaries controlled by foreign concerns, if the report pertains to contracts negotiated by such United States subsidiaries or contracts negotiated by the foreign concern of which the United States subsidiaries have knowledge. However, it is the opinion of this office that any export sales reporting requirement enforced by a criminal penalty directly against the reporting entity may not be extended to either a wholly foreign firm, a United States subsidiary controlled by a foreign parent, or a foreign subsidiary of a United States parent firm, if the report concerns contractual arrangements entered into by the foreign entity and of which the reporting entity has no knowledge."

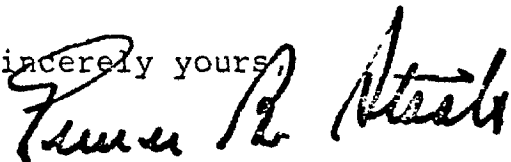
We would like to reiterate that information on the four categories of exporters identified in your letter can only be obtained if the Department of Agriculture expands its Export Sales Reporting Regulations to require such data. While there is a mixed reaction to such a change in the private sector, Agriculture continues to oppose such a modification on the grounds that information on categories of exporters would not materially enhance the effectiveness of the reporting system, and that compliance among foreign firms or foreign affiliates would prove difficult. Although modifying the system to accommodate such a change is administratively possible, the Department prefers a congressionally mandated change in the form of legislation.

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Our position as stated in our May 1977 report and as reiterated on several occasions during the past 2 years is that expansion of the system along the lines already indicated in your letter would provide information which could lead to better marketing decisions by farmers and small exporters.

Please call on us if we can be of additional assistance to you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James R. Stealy". The signature is written in a cursive style with a large initial "J" and "S".

Comptroller General
of the United States