

Calendar No. 329

91ST CONGRESS
1ST SESSION

S. 2696

[Report No. 91-336]

IN THE SENATE OF THE UNITED STATES

JULY 24, 1969

Mr. MUSKIE, from the Committee on Banking and Currency, reported the following bill; which was read twice and ordered to be placed on the calendar

A BILL

To provide for continuation of authority for the regulation and expansion of exports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Export Expansion and
4 Regulation Act of 1969".

5 **FINDINGS**

6 **SEC. 2.** The Congress finds that—

7 (1) the availability of certain materials at home
8 and abroad varies so that the quantity and composition of
9 United States exports and their distribution among im-
10 porting countries may affect the welfare of the domestic

1 economy and may have an important bearing upon ful-
2 fillment of the foreign policy of the United States;

3 (2) the unrestricted export of materials without
4 regard to whether they make a significant contribution
5 to the military potential of any other nation or nations
6 may adversely affect the national security of the United
7 States;

8 (3) the unwarranted restriction of exports from the
9 United States has a serious adverse effect on the stability
10 of our currency abroad and, therefore, upon the domestic
11 economy; and

12 (4) the uncertainty of Government policy toward
13 certain categories of exports has curtailed the efforts of
14 American business in those categories to the detriment
15 of the overall attempt to improve the trade balance of
16 the United States.

17 DECLARATION OF POLICY

18 SEC. 3. The Congress makes the following declarations:

19 (1) It is the policy of the United States both (A) to
20 encourage the expansion of trade with all countries with
21 which we have diplomatic or trading relations, except those
22 countries with which such trade has been determined by the
23 President to be against the national interest, and (B) to
24 restrict the export of goods and technology which would
25 make a significant contribution to the military potential of

1 any other nation or nations which would prove detrimental
2 to the national security of the United States.

3 (2) It is the policy of the United States to use export
4 controls (A) only to the extent absolutely necessary to
5 protect the domestic economy from the excessive drain of
6 scarce materials and to reduce the serious inflationary impact
7 of abnormal foreign demand, (B) only to the extent neces-
8 sary to further significantly the foreign policy of the United
9 States and to fulfill its international responsibilities, and
10 (C) to the extent necessary to exercise the necessary vigi-
11 lance over exports from the standpoint of their significance
12 to the national security of the United States.

13 (3) It is the policy of the United States that any export
14 controls found necessary should be applied uniformly to all
15 nations with which the United States engages in trade, except
16 where the national security, the foreign policy of the United
17 States, or the need to protect the domestic economy from
18 the excessive drain of scarce materials requires that an
19 exception be made in the case of one or more nations.

20 (4) It is the policy of the United States (A) to formu-
21 late, reformulate, and apply any necessary controls to the
22 maximum extent possible in cooperation with all nations
23 with which the United States has defense treaty commit-
24 ments, and (B) to formulate a unified commercial and trad-
25 ing policy to be observed by all such nations.

1 with special emphasis on promoting such trade with (A)
2 those countries or groups of countries with which other
3 countries or groups of countries having defense treaty com-
4 mitments with the United States have a significantly larger
5 percentage of volume of trade than does the United States.
6 and (B) other countries eligible for trade with the United
7 States but not significantly engaged in trade with the United
8 States. In addition, the Secretary shall review any list of
9 articles, materials, or supplies, including technical data or
10 other information, the exportation of which from the United
11 States, its territories and possessions, was heretofore pro-
12 hibited or curtailed with a view to making promptly such
13 changes and revisions in such list as may be necessary or
14 desirable in furtherance of the policy, purposes, and pro-
15 visions of this Act. The Secretary shall include a detailed
16 statement with respect to actions taken in compliance with
17 the provisions of this paragraph in the second quarterly re-
18 port (and in any subsequent report with respect to actions
19 taken during the preceding quarter) made by him to the
20 Congress after the date of enactment of this Act pursuant to
21 section 11.

22 (2) The Secretary of Commerce shall use all practicable
23 means available to him to keep the business sector of the
24 Nation fully apprised of changes in export control policy and

1 procedures instituted in conformity with this Act with a view
2 to encouraging the widest possible trade.

3 (b) To effectuate the policies set forth in section 3, the
4 President may prohibit or curtail the exportation from the
5 United States, its territories and possessions, of any articles,
6 materials, or supplies, including technical data or other in-
7 formation, except under such rules and regulations as he
8 shall prescribe. To the extent necessary to achieve effective
9 enforcement of this Act, such rules and regulations may
10 apply to the financing, transporting, and other servicing of
11 exports and the participation therein by any person. Rules
12 and regulations prescribed in the interest of the national
13 security shall provide that express permission and authority
14 must be sought and obtained to export articles, materials,
15 or supplies, including technical data or other information,
16 from the United States, its territories and possessions, to any
17 nation or combination of nations, if the President determines
18 that (1) such articles, materials, supplies, data, or informa-
19 tion would make a significant contribution to the military
20 potential of such nation or nations which would prove detri-
21 mental to the national security of the United States, and (2)
22 articles, materials, supplies, data, or information of com-
23 parable quality and technology to that sought to be exported
24 are not readily available to such nation or nations from
25 other sources: *Provided*, That express permission and au-

1 thority shall be required to be sought and obtained, in ac-
2 cordance with such rules and regulations, in order to export
3 to any nation or nations articles, materials, supplies, data,
4 or information with respect to which the President has not
5 made the determination referred to in clause (2), if the
6 President (A) determines such action to be necessary in
7 the interest of national security, and (B) includes in the
8 first quarterly report submitted, pursuant to section 11, after
9 taking such action a full and detailed statement with respect
10 to such action setting forth the pertinent articles, materials,
11 supplies, data, or information; the nation or nations affected
12 thereby; and the reasons therefor. Rules and regulations
13 prescribed under this subsection shall implement the pro-
14 visions of section 3 (6) of this Act and shall require that all
15 domestic concerns receiving requests for the furnishing of
16 information or the signing of agreements as specified in such
17 section must report this fact to the Secretary of Commerce
18 for such action as he may deem appropriate to carry out
19 the purposes of such section.

20 (c) Nothing in this Act, or in the rules and regulations
21 authorized by it, shall in any way be construed to require
22 authority and permission to export articles, materials, sup-
23 plies, data, or information except where the national security,
24 the foreign policy of the United States, or the need to pro-

1 tect the domestic economy from the excessive drain of scarce
2 materials makes such requirement necessary.

3 (d) The President may delegate the power, authority,
4 and discretion conferred upon him by this Act to such de-
5 partments, agencies, or officials of the Government as he may
6 deem appropriate.

7 (e) The authority conferred by this section shall not be
8 exercised with respect to any agricultural commodity, includ-
9 ing fats and oils, during any period for which the supply of
10 such commodity is determined by the Secretary of Agricul-
11 ture to be in excess of the requirements of the domestic
12 economy, except to the extent required to effectuate the
13 policies set forth in clause (B) or (C) of paragraph (2) of
14 section 3 of this Act.

15 CONSULTATION AND STANDARDS

16 SEC. 5. In determining what action to take with regard
17 to regulating and expanding exports, any department,
18 agency, or official making these determinations shall seek
19 information and advice from the several executive depart-
20 ments and independent agencies which are concerned with
21 aspects of our domestic and foreign policies and operations
22 having an important bearing on exports. Consistent with
23 considerations of national security, the President shall from
24 time to time seek information and advice from various seg-

1 ments of private industry in connection with the making of
2 these determinations.

3 VIOLATIONS

4 SEC. 6. (a) Except as provided in subsection (b) of this
5 section, in case of any knowing violation of any provision
6 of this Act or any regulation, order, or license issued there-
7 under, the violator or violators, upon conviction, shall be
8 punished by a fine of not more than \$10,000 or by imprison-
9 ment for not more than one year, or by both such fine and
10 imprisonment. For a second or subsequent offense, the
11 offender shall be punished by a fine of not more than three
12 times the value of the exports involved or \$20,000, which-
13 ever is greater, or by imprisonment for not more than five
14 years, or by both such fine and imprisonment.

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

23 (c) The head of any department or agency exercising

1 any functions under this Act, or any officer or employee of
2 such department or agency specifically designated by the
3 head thereof, may impose a civil penalty not to exceed
4 \$1,000 for each violation of this Act or any regulation, order,
5 or license issued under this Act, either in addition to or in
6 lieu of any other liability or penalty which may be imposed.

7 (d) The payment of any penalty imposed pursuant to
8 subsection (c) may be made a condition, for a period not
9 exceeding one year after the imposition of such penalty,
10 to the continued right to export of the person upon whom
11 such penalty is imposed.

12 (e) Any amount paid in satisfaction of any penalty im-
13 posed pursuant to subsection (c) shall be covered into the
14 Treasury as a miscellaneous receipt. The head of the depart-
15 ment or agency concerned may, in his discretion, refund any
16 such penalty, within two years after payment, on the ground
17 of a material error of fact or law in the imposition. Notwith-
18 standing section 1346 (a) of title 28 of the United States
19 Code, no action for the refund of any such penalty may be
20 maintained in any court.

21 (f) In the event of the failure of any person to pay a
22 penalty imposed pursuant to subsection (c), a civil action
23 for the recovery thereof may, in the discretion of the head of
24 the department or agency concerned, be brought in the name
25 of the United States. In any such action, the court shall deter-

1 mine de novo all issues necessary to the establishment of
2 liability. Except as provided in this subsection and in sub-
3 section (d), no such liability shall be asserted, claimed, or
4 recovered upon by the United States in any way unless it has
5 previously been reduced to judgment.

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

7 (1) the availability of other administrative or judi-
8 cial remedies with respect to violations of this Act,
9 or any regulation, order, or license issued under this
10 Act;

11 (2) the authority to compromise and settle admin-
12 istrative proceedings brought with respect to violations
13 of this Act, or any regulation, order, or license issued
14 under this Act; or

15 (3) the authority to compromise, remit, or mitigate
16 seizures and forfeitures pursuant to section 1(b) of
17 title VI of the Act of June 15, 1917 (22 U.S.C.
18 401 (b)).

19 ENFORCEMENT

20 SEC. 7. (a) To the extent necessary or appropriate to
21 the enforcement of this Act or to the imposition of any
22 penalty, forfeiture, or liability arising under the Export
23 Control Act of 1949, the head of any department or
24 agency exercising any function thereunder (and officers or
25 employees of such department or agency specifically desig-

1 nated by the head thereof) may make such investigations
2 and obtain such information from, require such reports or
3 the keeping of such records by, make such inspection of the
4 books, records, and other writings, premises, or property of,
5 and take the sworn testimony of, any person. In addition,
6 such officers or employees may administer oaths or affirma-
7 tions, and may by subpoena require any person to appear and
8 testify or to appear and produce books, records, and other
9 writings, or both, and in the case of contumacy by, or
10 refusal to obey a subpoena issued to, any such person, the
11 district court of the United States for any district in which
12 such person is found or resides or transacts business, upon
13 application, and after notice to any such person and hearing,
14 shall have jurisdiction to issue an order requiring such person
15 to appear and give testimony or to appear and produce
16 books, records, and other writings, or both, and any failure
17 to obey such order of the court may be punished by such
18 court as a contempt thereof.

19 (b) No person shall be excused from complying with
20 any requirements under this section because of his privilege
21 against self-incrimination, but the immunity provisions of the
22 Compulsory Testimony Act of February 11, 1893 (27 Stat.
23 443; 49 U.S.C. 46) shall apply with respect to any indi-
24 vidual who specifically claims such privilege.

1 (c) No department, agency, or official exercising any
2 functions under this Act shall publish or disclose information
3 obtained hereunder which is deemed confidential or with
4 reference to which a request for confidential treatment is
5 made by the person furnishing such information, unless the
6 head of such department or agency determines that the with-
7 holding thereof is contrary to the national interest.

8 (d) In the administration and enforcement of this Act,
9 reporting requirements shall be so designed as to reduce the
10 cost of reporting, recordkeeping, and export documentation
11 required under this Act to the extent feasible consistent
12 with effective enforcement and compilation of useful trade
13 statistics. Reporting, recordkeeping, and export documenta-
14 tion requirements shall be periodically reviewed and revised
15 in the light of developments in the field of information
16 technology. The Secretary of Commerce shall include a
17 detailed statement with respect to actions taken in compli-
18 ance with this subsection in the first quarterly report made
19 by him, pursuant to section 11, after such actions are taken.

20 EXEMPTION FROM CERTAIN PROVISIONS RELATING TO

21 ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

22 SEC. 8. The functions exercised under this Act shall be
23 excluded from the operation of sections 551, 553-559, and
24 701-706 of title 5, United States Code.

1 to its findings and recommendations not later than one year
2 after the date of enactment of this Act.

3 (c) Each member of the Commission who is appointed
4 from private life may receive compensation at a rate of
5 \$100 for each day he is engaged upon work of the Com-
6 mission, and shall be reimbursed for travel expenses, in-
7 cluding per diem in lieu of subsistence as authorized by
8 law (5 U.S.C. 5703) for persons in the Government service
9 employed intermittently.

10 (d) The Commission may, without regard to the pro-
11 visions of title 5, United States Code, relating to appoint-
12 ments in the competitive service or to classification and
13 General Schedule pay rates, appoint and fix the compen-
14 sation of an Executive Director, and the Executive Director,
15 with the approval of the Commission, may employ and
16 fix the compensation of such additional personnel as may
17 be necessary to carry out the functions of the Commission.
18 No individual so appointed may receive compensation in
19 excess of the rate authorized for GS-18 under the General
20 Schedule.

21 (e) (1) The Commission may require directly from the
22 head of any Federal executive department or agency avail-
23 able information which the Commission deems useful in the
24 discharge of its duties. All such departments and agencies
25 shall cooperate with the Commission and furnish information

1 requested by the Commission to the extent permitted by
2 law.

3 (2) The head of any executive department or agency of
4 the Government may detail, on a reimbursable basis, any
5 of its personnel to assist the Commission in carrying on its
6 work.

7 (f) Thirty days after submission of its final report, the
8 Commission shall cease to exist.

9 (g) There are authorized to be appropriated such sums
10 as may be necessary to carry out the provisions of this section.

11 QUARTERLY REPORT

12 SEC. 11. The head of any department or agency, or
13 other official exercising any functions under this Act, shall
14 make a quarterly report, within forty-five days after each
15 quarter, to the President and to the Congress of his opera-
16 tions hereunder.

17 EFFECTS ON OTHER ACTS

18 SEC. 12. (a) The Act of February 15, 1936 (49 Stat.
19 1140), relating to the licensing of exports of tinsplate scrap,
20 is hereby superseded; but nothing contained in this Act
21 shall be construed to modify, repeal, supersede, or otherwise
22 affect the provisions of any other laws authorizing control
23 over exports of any commodity.

24 (b) The authority granted to the President under this
25 Act shall be exercised in such manner as to achieve effective

1 coordination with the authority exercised under section 414
2 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

3 **EFFECTIVE DATE**

4 **SEC. 13. (a)** This Act shall take effect upon the expira-
5 tion of the Export Control Act of 1949.

6 (b) All outstanding delegations, rules, regulations,
7 orders, licenses, or other forms of administrative action under
8 the Export Control Act of 1949 or section 6 of the Act of
9 July 2, 1940 (54 Stat. 714), shall, until amended or re-
10 voked, remain in full force and effect, the same as if promul-
11 gated under this Act.

12 **TERMINATION DATE**

13 **SEC. 14.** The authority granted by this Act shall termi-
14 nate on June 30, 1973, or upon any prior date which the
15 Congress by concurrent resolution or the President by procla-
16 mation may designate.

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By Mr. MUSKIE

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