

EXPORT ADMINISTRATION ACT OF 1979  
AS AMENDED IN 1985

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Deletions to the 1979 Act are overlined and bracketed.  
Amendments to the 1979 Act are underlined.

EXPORT ADMINISTRATION ACT OF 1979,  
as amended

To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

Sec. 2. The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and ~~[by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation]~~ by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, ~~[which would strengthen the Nation's economy]~~ consistent with the economic, security, and foreign policy objectives of the United States.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of

individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can ~~curtail~~ inhibit the efforts of ~~American~~-United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to ~~achievement of a positive balance of payments~~, a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

(11) The acquisition of national security sensitive goods and technology by the Soviet Union and other countries the actions or policies of which run counter to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities. This enhancement poses a threat to the security of the United States, its allies, and other friendly nations, and places additional demands on the defense budget of the United States.

(12) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(13) Excessive dependence of the United States, its allies, or countries sharing common strategic objectives with the United

States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

DECLARATION OF POLICY

Sec. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary--

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States--

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or

other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make ~~[every-reasonable-effort]~~ reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before ~~[resorting-to-the-imposition-of-controls-on-experts-from-the-United-States]~~ imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make ~~[every-reasonable-effort]~~ reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before ~~[resorting-to-the-imposition-of-export-controls]~~ imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments or common

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strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with the applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

(15) It is the policy of the United States, particularly in light of the Soviet massacre of innocent men, women, and children aboard Korean Air Lines flight 7, to continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics, subject to periodic review by the President.

GENERAL PROVISIONS

Sec. 4. (a) Types of Licenses.--Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

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(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

~~[(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter].~~

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including but not limited to the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic review of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries, and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

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(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) ~~{Commodity}~~ Control List.--The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the ~~["commodity]"~~ "control list") ~~-{consisting of any goods or technology subject to export controls under this Act}-~~ stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

(c) Foreign Availability.--In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in ~~[significant]~~ sufficient quantities and comparable in quality to those produced in the United States so as to render the controls ineffective in achieving their purposes, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) Right of Export.--No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) Delegation of Authority.--The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

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(f) Notification of the Public; Consultation with Business.--The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of ~~[the business sector]~~ a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

Sec. 5. (a) Authority.--(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2) ~~{(A)}~~ Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

~~{(B)} Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restriction, if appropriate.~~

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to

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the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States. ~~{Such regulations shall not be based upon the assumption that such effective safeguards can be devised.}~~

~~(b) Policy Toward Individual Countries.--{In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate}~~

(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account--

(A) the extent to which the country's policies are adverse to the national security interests of the United States;

(B) the country's Communist or non-Communist status;

(C) the present and potential relationship of the country with the United States;

(D) the present and potential relationships of the country with countries friendly or hostile to the United States;

(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries

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to determine whether such policy is appropriate in light of the factors ~~[specified in the preceding sentence]~~ set forth in this paragraph.

(2) No authority or permission to export may be required under this section before goods or technology are exported in the case of exports to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, if the goods or technology is at such a level of performance characteristics that the export of the goods or technology to controlled countries requires only notification of the participating governments of the Coordinating Committee.

(c) Control List.--(1) The Secretary shall establish and maintain, as part of the ~~[commodity]~~ control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

~~[(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.]~~ (3) The Secretary shall review the list established pursuant to this subsection at least once each year in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section,

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and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each annual review, the Secretary shall publish notice of that annual review in the Federal Register. The Secretary shall provide an opportunity during such review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall further assess, as part of such review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. 1

(d) Militarily Critical Technologies.--(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to--

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, ~~and~~

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, which are not possessed by ~~{countries to which exports are controlled under this section}~~ or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country{ }, and

(D) Keystone equipment which would reveal or give insight into the design and manufacture of United States military system.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

~~--(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1960.~~

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~~-(5)-The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.~~

~~(6)-The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.~~

(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies at least annually for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies any good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

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(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

(e) Export Licenses.--(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of ~~{a qualified general license in lieu of a validated license}~~ the multiple validated export licenses described in section (4)(a)(2) of this Act in lieu of individual validated licenses.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if--

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

~~{(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.}~~

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~~(4) Not later than July 1, 1990, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.~~

(3) The Secretary, subject to the provisions of subsection (1) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

(f) Foreign Availability.--(1) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to ~~such destinations~~ controlled countries from such sources in sufficient quantity and of ~~sufficient~~ comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

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(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of ~~[sufficient]~~ comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

~~{(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.}~~

(3) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information or intelligence information. In making the determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this paragraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, or operation or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

~~(4) [In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such~~

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~~availability}~~ In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. If, within 6 months after the President's determination, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to ~~[countries to which exports are controlled under this section]~~ controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

~~{(5) In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.}~~

(5) The Secretary shall establish in the Department of Commerce an Office of Foreign Availability which, in the fiscal year 1985, shall be under the direction of the Assistant Secretary of Commerce for Trade Administration, and, in the fiscal year 1986 and thereafter, shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Foreign Commercial Service officers. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

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(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the ~~[Office of Export Administration]~~ Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(7) The Secretary shall issue regulations with respect to determinations of foreign availability under this Act not later than 6 months after the date of the enactment of the Export Administration Amendments Act of 1985.

(g) Indexing.--In order to ensure that requirements for validated licenses and ~~{qualified-general}~~ other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. ~~{Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (e) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list.}~~ The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) Technical Advisory Committees.--(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any

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such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving

(A) technical matters,

(B) worldwide availability and actual utilization of production technology,

(C) licensing procedures which affect the level of export controls applicable to any goods or technology, ~~{and}~~

(D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls, and

(E) any other questions relating to actions designed to carry out the policy set forth in Section 3(2)(A) of this Act.

Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary

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shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to ~~[countries to which exports are controlled under this section,]~~ controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of ~~[sufficient]~~ comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, ~~[and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.]~~ the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that--

(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability,  
or

(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to

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eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States.

(i) Multilateral Export Controls.--The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in the subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

~~[(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.]~~

~~[(4)]~~ (3) Agreement on more effective procedures for enforcing the export controls agreed to ~~[pursuant to paragraph (3):]~~ by the members of the Committee.

(4) Agreement to enhance full compliance by all parties with the export controls imposed by agreement of the Committee through the establishment of appropriate mechanisms.

(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for the Committee, and improve the structure and function of the Secretariat of the Committee by upgrading professional staff, translation services, data base maintenance, communications, and facilities.

(6) Agreement to coordinate the systems of export control documents used by the participating governments in order to verify effectively the movement of goods or technology subject to

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controls by the Committee from the country of any such government to any other place.

(7) Agreement to establish uniform, adequate criminal and civil penalties to deter more effectively diversions of items controlled for export by agreement of the Committee.

(8) Agreement to increase on-site inspections by national enforcement authorities of the participating governments to ensure that end users who have imported items controlled for export by agreement of the Committee are using such items for the stated end uses, and that such items are, in fact, under the control of those end users.

(9) Agreement to strengthen the Committee so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all participants.

(j) Commercial Agreements with Certain Countries.--(1) Any United States firm, enterprise, or other nongovernmental entity which, ~~[for commercial purposes,]~~ enters into any agreement with any agency of the government of a controlled country, ~~[to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling]~~ that calls for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency ~~[to the Secretary]~~ in sufficient detail.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) Negotiations with Other Countries.--The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions for those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including

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the same manner as exports are treated under subsection (b)(2) of this section and Section 10(o) of this Act.

(1) Diversion ~~[to-Military-Use]~~ of Controlled Goods or Technology.--(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology[,] which were exported subject to national security controls under this section to a controlled country ~~[to-which-exports-are-controlled-for-national-security-purposes,]~~ have been diverted to ~~[significant-military-use]~~ an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion ~~[to-significant-military-use]~~ continues--

(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section ~~[which-contribute-to-that-particular-military-use,]~~ regardless of whether such goods or technology are available ~~[to-that-country]~~ from sources outside the United States; and

(B) may take such additional ~~[steps]~~ actions under this Act with respect to the party or parties referred to in subparagraph (A) as ~~[are-feasible,]~~ the Secretary determines are appropriate in the circumstances to deter the further ~~[military]~~ unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term ~~["diversion-to-significant-military-use"-and-"significant-military-use"]~~ "unauthorized use" means the use of United States goods or technology ~~[to]~~ in the design, ~~[or-produce]~~ production, or maintenance of any item on the United States Munitions List~~[-]~~, or the military use of any item on the International Control List of the Coordinating Committee.

(m) Goods Containing Microprocessors.--Export controls may not be imposed under this section on a good solely on the basis that the good contains an embedded microprocessor, if such microprocessor cannot be used or altered to perform functions other than those it performs in the good in which it is embedded. An export control may be imposed under this section on a good containing an embedded microprocessor referred to in the preceding sentence only on the basis that the functions of the good itself are such that the good, if exported, would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States.

(n) Security Measures.--The Secretary and Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical

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assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

(o) Recordkeeping.--The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

(p) National Security Control Office.--To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense for Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

(q) Exclusion for Agricultural Commodities.--This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

FOREIGN POLICY CONTROLS

Sec. 6. (a) Authority.--(1) In order to carry out the policy set forth in paragraph (2)(B), (7), ~~(8)~~ (8) or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

~~(2)~~ (3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President

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in accordance with subsections (b) and ~~{(e)}~~ (f). Any such extension shall not be for a period of more than one year.

~~{(3)}~~ (4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

~~{(4)}~~ (5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

~~{(b) Criteria.--When imposing, expanding, or extending export controls under this section, the President shall consider--~~

~~{1} the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;~~

~~{2} the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;~~

~~{3} the reaction of other countries to the imposition or expansion of such export controls by the United States;~~

~~{4} the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;~~

~~{5} the ability of the United States to enforce the proposed controls effectively; and~~

~~{6} the foreign policy consequences of not imposing controls.~~

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(b) Criteria.--(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that--

(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

(E) the United States has the ability to enforce the proposed controls effectively.

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a) (3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

~~[(c) Consultation with Industry.--The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.]~~

(c) Consultation with Industry.--The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b) (1) and such other matters as the Secretary considers appropriate.

(d) Consultation with Other Countries.--When imposing export controls under this section, the President shall, at the earliest

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appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

[(d)] (e) Alternative Means.--Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

~~[(e) Notification to Congress.--The President in every possible instance shall consult with the Congress before imposing any export control under this section.--Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying--~~

~~(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and~~

~~(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.~~

~~Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.--To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.]~~

(f) Consultation with the Congress.--(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report--

(A) specifying the purpose of the controls;

(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to

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subsection (c) and with other countries pursuant to subsection (d);

(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.

(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

(5) In addition to any written report required under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

~~{-f-}~~ (g) Exclusion for Medicine and Medical Supplies and for Certain Food Exports.--This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary

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of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies, or of food under the International Emergency Economic Powers Act. ~~[This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981.]~~ This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of Section 3 of this Act.

~~[(g)]~~ (h) Foreign Availability.--(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of the evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6

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months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.<sup>2</sup>

~~[(h)]~~ (i) International Obligations.--The provisions of subsections (b), (c), (d), ~~[(e)]~~ (e), (g) and ~~[(g)]~~ (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

~~[(i)]~~ (j) Countries Supporting International Terrorism.--(1) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than \$7,000,000 to any country concerning which the Secretary of State has made the following determinations:

~~[(1)]~~ (A) Such country has repeatedly provided support for acts of international terrorism.

~~[(2)]~~ (B) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

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(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, at least 30 days before the proposed rescission would take effect, submits to the Congress a report justifying the rescission and certifying that--

(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

(B) the country concerned has provided assurances that it will not support acts of international terrorism in the future.

~~[(k)]~~ (k) Crime Control Instruments.--(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act--

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act, except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organizations or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

~~[(k)]~~ (1) Control List.-- The Secretary shall establish and maintain, as part of the ~~foreign~~-control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. ~~[Such goods or technology shall be clearly identified as subject to controls under this section.]~~ The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable

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to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods or technology comparable to those controlled for export from the United States under this section.

(m) Effect on Existing Contracts and Licenses.--The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information--

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that--

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(n) Extension of Certain Controls.--Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(o) Expanded Authority to Impose Controls.--(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m), of this section, the

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President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on \_\_\_\_\_ a determination of the President under Section 6(o)(1) of the Export Administration Act of 1979, with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

SHORT SUPPLY CONTROLS

Sec. 7. (a) Authority.--(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

§ 7(b-c)

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) Monitoring.--(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) Petitions for Monitoring or Controls.--(1) (A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, ~~[which] that is~~ representative of an industry or a substantial segment of an industry ~~[which] that~~ processes metallic materials capable of being recycled ~~[with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof,]~~ may transmit a

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written petition to the Secretary requesting the monitoring of exports~~[-,]~~ or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating ~~[(i)-that-there-has-been-a-significant-increase,-in-relation-to-a-specific-period-of-time,-in-exports-of-such-material-in-relation-to-domestic-supply,-and-(ii)-that-there-has-been-a-significant-increase-in-the-price-of-such-material-or-a-domestic-shortage-of-such-material-under-circumstances-indicating-the-price-increase-or-domestic-shortage-may-be-related-to-exports.-]~~ that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall --

(A) include the name of the material ~~[-which]-~~ that is the subject of the petition,

(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported for the United States,

(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

(D) provide that interested persons shall have a period of 30 days ~~[-commencing-with]-~~ beginning on the date of publication of such notice to submit to the Secretary written data, views[, ] or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity describe in paragraph (1)(A) with respect to the material ~~[-which]-~~ that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3) (A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall ~~[-(A)-]~~ determine whether to impose monitoring or controls, or both, on the export of ~~[-such]-~~ the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act~~[-, and-]~~. In making such determination, the Secretary shall determine whether-

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(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for ~~[such determination]~~ the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days ~~[following]~~ after the publication of such proposed regulations, and after considering any public comments ~~[thereon]~~ on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses ~~[thereto]~~ to such petitions, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection

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shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) ~~[if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.]~~ with respect to that material only if--

(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

(B) the Secretary considers such action to be necessary to carry out the policy set forth in Section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act~~[-]~~, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3)(A) and (B) of this subsection.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) Domestically Produced Crude Oil.--(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(i) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may

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be exported from the United States, or any of its territories and possessions, ~~[unless the requirements of paragraph (2) of this subsection are met.]~~ subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if--

(A) the President ~~[makes and publishes]~~ so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges--

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or changes, result in

(I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and

(II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished.

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President ~~[reports such findings]~~ includes such findings in his recommendation to the Congress and the Congress, within 60 days [thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.] after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

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(4) Notwithstanding the provisions of section 20 of this Act, the provisions of this subsection shall expire on September 30, 1990.

(e) Refined Petroleum Product.--(1) ~~{No}~~In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in Section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) Certain Petroleum Products.--Petroleum products refined in United States Foreign Trade Zones, or in the United States

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Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) Agricultural Commodities.--(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authority which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

~~[(3) If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is~~

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~~not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.]~~

(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of Section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls then such controls shall cease to be effective upon the expiration of that 60-day period.

(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls--

(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4)(A) For purposes of this paragraph, the term "joint resolution" means only a joint resolution in the matter after the resolving clause of which is as follows: "That pursuant to Section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on . . . , with the blank space being filled with the appropriate date."

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

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(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then--

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

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) Barter Agreements.--(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

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(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that--

(A) for the period during which the barter agreement is to be performed--

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) Unprocessed Red Cedar.--(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (*Thuja plicata*) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs harvested from State or Federal lands during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs may be exported from the United States.

(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of validated licenses for exports under this subsection.

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~~[(2)]~~ (3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

~~[(3)]~~ (4) Unprocessed western red cedar logs shall not be considered ~~to~~ be an agricultural commodity for purposes of subsection (g) of this section.

~~[(4)]~~ (5) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into--

(A) lumber [without wane,] of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better.

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

~~[(j) Export of Horses.--(1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.--~~

~~(2) The Secretary, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary, in consultation with the Secretary of Agriculture, determines that no horse in the consignment is being exported for purposes of slaughter.]~~

(j) Effect of Controls on Existing Contracts.--The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such

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controls are imposed. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

FOREIGN BOYCOTTS

Sec. 8. (a) Prohibitions and Exceptions.--(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotted country. Nothing in this paragraph shall prohibit the

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furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for--

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country or origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

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(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of the country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of the foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in the subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign Policy Controls.--(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity,

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description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) Preemption.--The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF  
FROM EXPORT CONTROLS

Sec. 9. (a) Filing of Petitions.--Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Decision of the Secretary.--Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) Factors to be Considered.--For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception

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to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account--

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have an attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING  
EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

Sec. 10. (a) Primary Responsibility of the Secretary.-- (1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on

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exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) Initial Screening.--Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall--

(1) send the applicant an acknowledgement of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) Action on Certain Applications.--Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within ~~{90}~~ 60 days after a properly completed application has been submitted pursuant to this section.

(d) Referral to Other Departments and Agencies.--Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within ~~{30}~~ 20 days after the submission of a properly completed application--

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

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(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

(e) Action by Other Departments and Agencies.--(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary ~~{, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application.}~~ the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) (A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional {30} 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o) (1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o) (1) (C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits

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permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by the Secretary.--(1) Within ~~{90}~~ 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the ~~{90}~~ 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations.~~[and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.]~~ Before a final determination with respect to the application is made, the applicant shall be entitled--

(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of ~~[the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures.]~~

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(A) the determination,

(B) the statutory basis for the proposed denial,

(C) the policies set forth in Section 3 of this Act which would be furthered by the proposed denial,

(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefore. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(g) Special Procedures for Secretary of Defense.--(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions

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which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than ~~{30}~~ 20 days after notification of the request, shall--

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

If the President notifies the Secretary, within ~~{30}~~ 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.

(h) Multilateral Control.--In any case in which an application which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the

license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approved of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within ~~[60]~~ 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such ~~[60]~~ 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every ~~[60]~~ 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) Records.--The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) Appeal and Court Action.--(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on the license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within ~~[30]~~ 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or

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the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(k) Changes in Requirements for Applications.--Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

(1) Other Inquiries.--(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after the receipt of the request, reply with that information to the person making the request.

(m) Small Business Assistance.--Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures.

(n) Reports on License Applications.--(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing-

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this

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section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken .

(2) With regard to each application, each listing shall identify--

(A) the application case number;

(B) the value of the goods or technology to which the application relates;

(C) the country of destination of the goods or technology;

(D) the date on which the application was received by the Secretary;

(E) the date on which the Secretary approved or denied the application;

(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

(3) With respect to an application which was referred to other departments or agencies, the listing shall also include--

(A) the departments or agencies to which the application was referred;

(B) the date or dates of such referral; and

(C) the date or dates on which recommendations were received from those departments or agencies.

(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include--

(A) the office responsible for processing the application and the position of the officer responsible for the office; and

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(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

(5) Each report shall also provide an introduction which contains--

(A) a summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to--

(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, on which action was not completed within 60 days.

(o) Exports to Members of Coordinating Committee.--(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the Coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless--

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

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(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless-

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

VIOLATIONS

Sec. 11. (a) In General.--Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

~~[(b)-Willful violations.--(1)-Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes--]~~

(b) Willful Violations.--(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that

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the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes--

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense--

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both. [~~For purposes of this paragraph, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.~~]

(3) Any person who possesses any goods or technology--

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under Section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under Section 6 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under Section 5 or 6 of this Act (or any regulation, order, or license issued with respect to such

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control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

(c) Civil Penalties; Administrative Sanctions.--(1) ~~The [head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof;]~~ Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act or any regulation, order or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed \$100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives of the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(d) Payment of Penalties.--The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) Refunds.--Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

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

(g) Forfeiture of Property Interest and Proceeds.--(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under Section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States--

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

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(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of Section 1963 of Title 18, United States Code.

(h) Prior Convictions.--No person convicted of a violation of Section 793, 794, or 798 of Title 18, United States Code, Section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

~~[(g)]~~ (1) Other Authority.--Nothing in subsection (c), (d), ~~or (f)]~~ (f), (g) or (h) limits--

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

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

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

ENFORCEMENT

Sec. 12. (a) General Authority.--(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make ~~such-- investigations and~~ such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or

§ 12(a)

property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, ~~[the district court of the United States, for any district in which such person is found or resides or transacts business, upon application, and]~~ a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of Section 8 of this Act.

(2) (A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

§ 12(a)

(iv) Make arrests without warrant for any violation of the Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of Section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

(1) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under Section 11(c) of this Act, or to the Attorney General for Criminal action in accordance with this Act.

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export

§ 12(b-c)

controls under this Act not more than \$12,000,000 in the fiscal year 1985 and not more than \$14,000,000 in the fiscal year 1986.

(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.

(b) Immunity.--No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) Confidentiality.--(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress, or from the General Accounting Office. All information obtained at any time under this Act or previous Acts regarding the control of exports,

§ 12(d)

including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) ~~Departments or agencies which obtain~~ Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to ~~the~~ each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the head of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(d) Reporting Requirements.--In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping and export documentation requirements

§ 13(a-c)

shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) Simplification of Regulations.--The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

~~[EXEMPTION FROM CERTAIN PROVISIONS RELATING TO]~~ ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Sec. 13. (a) Exemption.--Except as provided in section 11(c)(2) and subsection (c) of this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) Public Participation.--It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(c) Procedures Relating to Civil Penalties and Sanctions.--(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of Section 8) is sought under Section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with Sections 556 and 557 of Title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review.

(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is

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submitted, unless the administrative law judge extends such period for good cause shown.

(3) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under Section 3105 of Title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a hearing commissioner of the Department of Commerce shall be included among those considered as qualified for selection and appointment to such position.

(d) Imposition of Temporary Denial Orders.--(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") to a person. A temporary denial order may be effective no longer than 60 days unless renewed in writing by the Secretary for additional 60-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review. The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act.

(e) Appeals From License Denials.--A determination of the Secretary, under Section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such

§ 14(a)

judge in the proceedings shall be reviewed by the Secretary; who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in Section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

ANNUAL REPORT

Sec. 14. (a) Contents.--Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to--

- (1) the implementation of the policies set forth in section 3;
- (2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of authorities contained in sections 5(a), 6(a), and 7(a);
- (3) the results of the review of United States policy toward individual countries pursuant to section 5(b);
- (4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);
- (5) actions taken to carry out section 5(d);
- (6) changes in categories of items under export control referred to in section 5(e);
- (7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;
- (8) actions taken in compliance with section 5(f)(5);
- (9) the operation of the indexing system under section 5(g);
- (10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

§ 14(b)

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by section 7(b)(2), together with an analysis of--

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including ~~an analysis of the time required to process license applications, the number and disposition of export license applications taking more than 90 days to process, and~~ an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act.

(19) violations under section 11 and enforcement activities under section 12; and

(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

(b) Report on Certain Export Controls.--To the extent that the President determines that the policies set forth in section 3

§ 15(a)

of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) Report on Negotiations.--The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

(d) Report on Exports to Controlled Countries.--The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of Section 12(c) of this Act.

(e) Report on Domestic Economic Impact of Exports to Controlled Countries.--The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

ADMINISTRATIVE AND REGULATORY AUTHORITY

~~{Sec. 15.--The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act.--Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.}~~

Sec. 15. (a) Under Secretary of Commerce.--The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985, and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the

Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(b) Issuance of Regulations.--The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of Section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of Section 5, or of Section 4(a) for the purpose of administering the provisions of Section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, and such other departments and agencies as the Secretary considers appropriate. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(c) Amendments to Regulations.--If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to the United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under Section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to Sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors. <sup>6</sup>

#### DEFINITIONS

Sec. 16. As used in this Act--

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

§ 17(a-c)

(3) the term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term "export" means-

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country, or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term "controlled country" means a controlled country under Section 5(b)(1) of this Act;

(7) the term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in Section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

[(5)] (8) the term "Secretary" means the Secretary of Commerce.

EFFECT ON OTHER ACTS

Sec. 17.(a) In General.--Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) Coordination of Controls.--The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) Civil Aircraft Equipment.--Notwithstanding any other provision of law, any product

§ 18(a)

(1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and

(2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act. ~~{For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.}~~

(d) Nonproliferation Controls.--(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) Termination of Other Authority.--On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611-1613d), is superseded.

(f) Agricultural Act of 1970.--Nothing in this Act shall affect the provisions of the last sentence of Section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3).

AUTHORIZATION OF APPROPRIATIONS

~~{Sec. 18 (a) Requirement of Authorizing Legislation.-- Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.}~~

~~(b) Authorization.-- There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act--~~

~~(1) \$9,659,000 for each of the fiscal years 1982 and 1983, and of which \$1,250,000 shall be available for each such fiscal~~

§ 18(b)

~~year-only-for-purposes-of-carrying-out-foreign-availability-assessments-pursuant-to-section-5(f)(5)-and~~

~~(2)-such-additional-amounts,-for-each-such-fiscal-year,-as-may-be-necessary-for-increases-in-salary,-pay,-retirement,-other-employee-benefits-authorized-by-law,-and-other-nondiscretionary-costs.-~~

Sec. 18. (a) Requirement of Authorizing Legislation.--(1) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if--

(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

(b) Authorization.--There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act--

(1) \$24,600,000 for the fiscal year 1985, of which \$8,712,000 shall be available only for enforcement, \$1,851,000 shall be available only for foreign availability assessments under subsection (f) and (h)(6) of Section 5 of this Act, and \$14,037,000 shall be available for all other activities under this Act;

(2) \$29,382,000 for the fiscal year 1986, of which \$9,243,000 shall be available only for enforcement, \$2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and \$18,139,000 shall be available for all other activities under this Act; and

(3) such additional amounts for each of the fiscal years 1985 and 1986 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

Sec. 19. (a) Effective Date.--This Act shall take effect upon the expiration of the Export Administration Act of 1969.

(b) Issuance of Regulations.--(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued to take effect not later than January 1, 1980.

TERMINATION DATE

Sec. 20. The authority granted by this Act terminates on September 30, 19~~83~~89. ~~{,--or-upon-any-prior-date-which-the-President-by-proclamation-may-designate--}~~

SAVINGS PROVISIONS

Sec. 21. (a) In General.--All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) Administrative Proceedings.--This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

Sec. 22. (a) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969" and inserting in lieu thereof "subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act".

(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended--

(A) by striking out "1969" and inserting in lieu thereof "1979"; and

(B) by striking out "(A)" and inserting in lieu thereof "(C)".

(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out "section 7 of the Export Administration Act of 1969" and inserting in lieu thereof "section 12 of the Export Administration Act of 1979".

(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 933(c)(2)(D)) is amended--

(1) by striking out "4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))" and inserting in lieu thereof "7(a) of the Export Administration Act of 1979"; and

(2) by striking out "(A)" and inserting in lieu thereof "(C)".

#### INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

Sec. 23. (a) Section 9 of the International Investment Survey Act of 1976 (22 U.S.C. 3108) is amended to read as follows:

#### AUTHORIZATIONS

"Sec. 9. To carry out this Act, there are authorized to be appropriated \$4,400,000 for the fiscal year ending September 30, 1980, and \$4,500,000 for the fiscal year ending September 30, 1981."

(b) The amendment made by subsection (a) shall take effect on October 1, 1979.

#### MISCELLANEOUS

Sec. 24. Section 402 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting "or beer" in the second sentence immediately after "wine".

## FOOTNOTES

1/ The amendment made to section 5(c)(3) shall take effect on October 1, 1985.

2/ The amendments contained in section 6(h)(2-4) shall not apply to export controls in effect under subsection (i), (j), or (k) of section 6 of the Export Administration Act of 1979 immediately before the date of the enactment of this Act, or to export controls made effective by section 6(n) of the Export Administration Act of 1979.\*

3/ The amendment made to section 6(k)(1) shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act.

4/ Subsections (m) and (o) of section 6 of the Export Administration Act of 1979 shall not apply to export controls in effect immediately before the date of the enactment of Act, or to export controls made effective by section 6(n) of the Export Administration Act of 1979.\*

5/ Section 5314 of title 5, United States Code, pertaining to pay for the Under Secretary, is amended by inserting "Under Secretary of Commerce for Export Administration," after "Under Secretary of Commerce for Economic Affairs,". Section 5315 of such title is amended by striking out "Assistant Secretaries of Commerce (8)." and inserting in lieu thereof "Assistant Secretaries of Commerce (11)."

6/ The provisions of section 15(a-c) of the Export Administration Act of 1979, as amended, shall take effect on October 1, 1986.

Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided by the amendments to section 15 shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.

\*/ Reference was also inadvertently retained in Conference Report 99-180 to section 6(j)(2) of H.R. 1786 that reinstated export controls in effect prior to January 1, 1982 on countries that support international terrorism. Section 6(j)(2) was deleted in S. 883.

## ADDENDUM

Sections 121-126 of title I of the Export Administration Amendments Act of 1985 mandate other changes beyond the immediate scope of the Export Administration Act of 1979. These changes have been reprinted below.

### SEC. 121. IMPORT SANCTIONS.

Chapter 4 of title II of the Trade Expansion Act of 1962 (19 U.S.C. 1861 et seq.) is amended by adding at the end the following new section:

#### "SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.

"(a) Any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404), or any regulation, order, or license issued under that section, may be subject to such controls, on the importing of goods or technology into the United States as the President may prescribe.

"(b) Except as provided in subsection (a) of this section, any person who violates any regulation issued under a multilateral agreement, formal or informal, to control exports for national security purposes, to which the United States is a party, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe, but only if--

"(1) negotiations with the government or governments, party to the multilateral agreement, with jurisdiction over the violation have been conducted and been unsuccessful in restoring compliance with the regulation involved;

"(2) the President, after the failure of such negotiations, has notified the government or governments described in paragraph (1) and the other parties to the multilateral agreement that the United States proposes to subject the person committing the violation to specific controls on the importing of goods or technology into the United States upon the expiration of 60 days from the date of such notification; and

"(3) a majority of the parties to the multilateral agreement (other than the United States), before the end of that 60-day period, have expressed to the President concurrence in the proposed import controls or have abstained from stating a position with respect to the proposed controls."

SEC. 122. HOURS OF OFFICE OF EXPORT ADMINISTRATION.

The Secretary of Commerce shall modify the office hours of the Office of Export Administration of the Department of Commerce on at least four days of each workweek so as to accommodate communications to the Office by exporters throughout the continental United States during the normal business hours of those exporters.

SEC. 123. TECHNICAL AMENDMENTS.

(a) ARMS EXPORT CONTROL ACT.--Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "(f)" and inserting in lieu thereof "(g)".

(b) MINERAL LEASING ACT OF 1920.--Subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) is amended--

(1) by striking out "1969 (Act of December 30, 1969; 83 Stat. 841)" and inserting in lieu thereof "1979 (50 U.S.C. App. 2401 and following)"; and

(2) by striking out "1969" each subsequent place it appears and inserting in lieu thereof "1979".

SEC. 124. AMENDMENT TO THE FOREIGN ASSISTANCE ACT OF 1961.

Section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) is amended by inserting after "Senate" the first place it appears the following: "and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration Act of 1979)."

SEC. 125. EXPORT OF HORSES.

The Act of March 3, 1891 (46 U.S.C. 466a and 466b), is amended by adding at the end the following:

"SEC. 3. EXPORT OF HORSES.

"(a) RESTRICTION ON EXPORT OF HORSES.--Notwithstanding any other provision of law, no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under subsection (b).

"(b) GRANTING OF WAIVERS.--The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if

the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

"(c) PENALTIES.--

(1) CRIMINAL PENALTY.--Any person who knowingly violates this section or any regulation, order, or license issued under this section shall be fined not more than 5 times the value of the consignment of horses involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

"(2) CIVIL PENALTY.--The Secretary of Commerce, after providing notice and an opportunity for an agency hearing on the record, may impose a civil penalty of not to exceed \$10,000 for each violation of this section or any regulation, order, or license issued under this section, either in addition to or in lieu of any other liability or penalty which may be imposed."

SEC. 126. ALASKAN OIL STUDY.

(a) REVIEW OF ALASKAN OIL POLICY.--

(1) IN GENERAL.--The President shall undertake a comprehensive review of the issues and related data concerning possible changes in the existing incentives to produce crude oil from the North Slope of Alaska (including changes in Federal and State taxation, pipeline tariffs, and Federal leasing policies) and possible changes in the existing distribution of crude oil from the North Slope of Alaska (including changes in export restrictions which would permit exports at free market levels and at levels of 50,000 barrels per day, 100,000 barrels per day, 200,000 barrels per day, and 500,000 barrels per day), as well as the appropriateness of continuing existing controls. Such review shall include, but not be limited to, a study of--

- (A) the effect of such changes on the energy and national security of the United States and its allies;
- (B) the role of such changes in United States foreign policymaking, including international energy policymaking;
- (C) the impact of such changes on employment levels in the maritime industry, the oil industry, and other industries;

- (D) the impact of such changes on the refiners and on consumers;
- (E) the impact of such changes on the revenues and expenditures of the Federal Government and the government of Alaska;
- (F) the effect of such changes on incentives for oil and gas exploration and development in the United States; and
- (G) the effect of such changes on the overall trade deficit of the United States, and the trade deficit of the United States with respect to particular countries, including the effect of such changes on trade barriers of other countries.

FINDINGS, OPTIONS, AND RECOMMENDATIONS.--The President shall develop, after consulting with appropriate State and Federal officials and other persons, findings, options, and recommendations regarding the production and distribution of crude oil from the North Slope of Alaska.

(b) CONSULTATION AND REPORT.--In carrying out subsection (a), the President shall consult with the Committees on Foreign Affairs and Energy and Commerce of the House of Representatives and the appropriate committees of the Senate. Not later than 9 months after the date of the enactment of this Act, the President shall transmit to each of those committees a report which contains the results of the review under subsection (a)(1), and the findings, options, and recommendations developed under subsection (a)(2).