

EXPORT ADMINISTRATION ACT

JUNE 25, 1985.—Ordered to be printed

DEPARTMENT OF COMMERCE
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Mr. BONKER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S 883]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 883) to extend the Export Administration Act of 1979, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SECTION 1. SHORT TITLE.

Titles I and II of this Act may be cited as the "Export Administration Amendments Act of 1985".

TITLE I—AMENDMENTS TO EXPORT ADMINISTRATION ACT OF 1979

SEC. 101. REFERENCE TO THE ACT.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Export Administration Act of 1979.

SEC. 102. FINDINGS.

Section 2 (50 U.S.C. App. 2401) is amended as follows:

(1) Paragraph (2) is amended by striking out "by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation" and inserting in lieu thereof "by earning foreign exchange, thereby contributing favorably to the trade balance".

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(2) Paragraph (3) is amended by striking out "which would strengthen the Nation's economy" and inserting in lieu thereof "consistent with the economic, security, and foreign policy objectives of the United States".

(3) Paragraph (6) is amended to read as follows:

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

(4) Paragraph (9) is amended by striking out "achievement of a positive balance of payments" and inserting in lieu thereof "a positive contribution to the balance of payments".

(5) Section 2 is amended by adding at the end the following:

"(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."

SEC. 103. DECLARATION OF POLICY.

Section 3 (50 U.S.C. App. 2402) is amended as follows:

(1) Paragraph (3) is amended by inserting before the period at the end "or common strategic objectives".

(2) Paragraph (7) is amended—

(A) by striking out "every reasonable effort" in the second sentence and inserting in lieu thereof "reasonable and prompt efforts"; and

(B) by striking out "resorting to the imposition of controls on exports from the United States" in the second sentence and inserting in lieu thereof "imposing export controls".

(3) Paragraph (8) is amended—

(A) by striking out "every reasonable effort" in the second sentence and inserting in lieu thereof "reasonable and prompt efforts"; and

(B) by striking out "resorting to the imposition of export controls" in the second sentence and inserting in lieu thereof "imposing export controls".

(4) Paragraph (9) is amended—

(A) by inserting "or common strategic objectives" after "commitments" each place it appears; and

(B) by inserting before the period at the end the following: ", 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".

(5) Section 3 is amended by adding at the end the following:

"(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 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."

SEC. 104. GENERAL PROVISIONS.

(a) VALIDATED LICENSES AUTHORIZING MULTIPLE EXPORTS.—Section 4(a)(2) (50 U.S.C. App. 2403(a)(2)) is amended to read as follows:

"(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 reviews 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.

"(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."

(b) CONTROL LIST.—Section 4(b) is amended—

(1) by striking out "Commodity" and "commodity"; and

(2) by striking out "consisting of any goods or technology subject to export controls under this Act" and inserting in lieu thereof "stating license requirements (other than for general licenses) for exports of goods and technology under this Act".

(c) FOREIGN AVAILABILITY.—Section 4(c) is amended—

(1) by striking out "significant" and inserting in lieu thereof "sufficient";

(2) by inserting after "those produced in the United States" the following: "so as to render the controls ineffective in achieving their purposes"; and

(3) by adding at the end the following: "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) NOTIFICATION OF PUBLIC AND CONSULTATION WITH BUSINESS.—Section 4(f) is amended to read as follows:

“(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 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.”.

SEC. 105. NATIONAL SECURITY CONTROLS.

(a) AUTHORITY.—

(1) TRANSFERS TO EMBASSIES OF CONTROLLED COUNTRIES.—Section 5(a)(1) (50 U.S.C. App. 2404(a)(1)) is amended by inserting after the first sentence the following new sentence: “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.”.

(2) CLERICAL AMENDMENT.—Section 5(a)(2) is amended—

(A) by striking out “(A)”; and

(B) by striking out subparagraph (B).

(3) SAFEGUARDS TO PREVENT DIVERSIONS.—Section 5(a)(3) is amended by striking out the last sentence.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—

(1) CONTROLLED COUNTRIES.—Section 5(b) is amended by striking out the first sentence and inserting in lieu thereof the following: “(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 nu-

clear 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.”

(2) EXPORTS TO COCOM COUNTRIES.—Section 5(b) is amended by adding at the end the following:

“(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.”

(3) TECHNICAL AMENDMENT.—Section 5(b)(1), as amended by paragraph (1) of this subsection, is amended in the last sentence by striking out “specified in the preceding sentence” and inserting in lieu thereof “set forth in this paragraph”.

(c) CONTROL LIST.—

(1) ANNUAL REVIEW.—Section 5(c) is amended—

(A) in paragraph (1) by striking out “commodity”; and

(B) by amending paragraph (3) to read as follows:

“(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, 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.”

(2) EFFECTIVE DATE.—The amendment made by paragraph

(1)(B) of this subsection shall take effect on October 1, 1985.

(d) EXPORT LICENSES.—Section 5(e) is amended—

(1) in paragraph (1) by striking out “a qualified general license in lieu of a validated license” and inserting in lieu thereof “the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses”; and

(2) by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

“(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.”

(e) INDEXING.—Section 5(g) is amended to read as follows:

“(g) INDEXING.—In order to ensure that requirements for validated licenses and 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. 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.”

(f) MULTILATERAL EXPORT CONTROLS.—Section 5(i) is amended—

(1) by striking out paragraph (3);

(2) in paragraph (4)—

(A) by striking out “(4)” and inserting in lieu thereof “(3)”; and

(B) by striking out “pursuant to paragraph (3)” and inserting in lieu thereof “by the members of the Committee”; and

(3) by adding at the end the following:

“(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 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."

(g) **COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.**—Section 5(j) is amended to read as follows:

"(j) **COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.**—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that 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 in sufficient detail.

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

(h) **NEGOTIATIONS WITH OTHER COUNTRIES.**—Section 5(k) is amended—

(1) by inserting after "conducting negotiations with other countries" the following: "; including those countries not participating in the group known as the Coordinating Committee,"; and

(2) by adding at the end the following: "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 the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act."

(i) **DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.**—Section 5(l) is amended to read as follows:

"(l) **DIVERSION 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 have been

diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion 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, regardless of whether such goods or technology are available from sources outside the United States; and

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

“(2) As used in this subsection, the term ‘unauthorized use’ means the use of United States goods or technology in the design, 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.”

(j) **ADDITIONAL NATIONAL SECURITY PROVISIONS.**—Section 5 is amended by adding at the end the following new subsections:

“(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 the 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 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.”.

SEC. 106. MILITARILY CRITICAL TECHNOLOGIES.

(a) Section 5(d) (50 U.S.C. App. 2404(d)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B) by striking out “and” after “test equipment,”;

(B) by adding “and” at the end of subparagraph (C);

(C) by inserting after subparagraph (C) the following:

“(D) keystone equipment which would reveal or give insight into the design and manufacture of a United States military system,”; and

(D) by striking out “countries to which exports are controlled under this section” and inserting in lieu thereof the following: “; or available in fact from sources outside the United States to, controlled countries”; and

(2) by striking out paragraphs (4) through (6) and inserting in lieu thereof the following:

“(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.

“(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.”

SEC. 107. FOREIGN AVAILABILITY.

(a) **CONSULTATIONS ON FOREIGN AVAILABILITY.**—Section 5(f)(1) (50 U.S.C. App. 2404(f)(1)) is amended by inserting after “The Secretary, in consultation with” the following: “the Secretary of Defense and other”

(b) **DETERMINATIONS OF FOREIGN AVAILABILITY.**—Section 5(f)(3) is amended to read as follows:

“(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 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.”

(c) **NEGOTIATIONS ON FOREIGN AVAILABILITY.**—Section 5(f)(4) is amended by striking out the first sentence and inserting in lieu thereof the following: “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."

(d) OFFICE OF FOREIGN AVAILABILITY.—

(1) ESTABLISHMENT.—Section 5(f)(5) is amended to read as follows:

"(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."

(2) CLERICAL AMENDMENT.—Section 5(f)(6) is amended by striking out "Office of Export Administration" and inserting in lieu thereof "Office of Foreign Availability".

(e) REGULATIONS ON FOREIGN AVAILABILITY.—Section 5(f) is amended by adding at the end the following new paragraph:

"(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."

(f) TECHNICAL ADVISORY COMMITTEES.—

(1) MEMBERSHIP.—Section 5(h)(1) is amended by inserting "the intelligence community," after "Departments of Commerce, Defense, and State".

(2) MATTERS ON WHICH COMMITTEES CONSULTED.—Section 5(h)(2) is amended in the second sentence—

(A) by striking out "and" at the end of clause (C); and

(B) by inserting before the period at the end of the second sentence the following: "and (E) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act."

(3) **FOREIGN AVAILABILITY CERTIFICATIONS.**—Section 5(h)(6) is amended by striking out “and provides adequate documentation” and all that follows through the end of the paragraph and inserting in lieu thereof the following: “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 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) **STANDARD FOR FOREIGN AVAILABILITY.**—Subsections (f)(1), (f)(2), and (h)(6) of section 5 are each amended by striking out “sufficient quality” and inserting in lieu thereof “comparable quality”.

(j) **TECHNICAL AMENDMENTS.**—

(1) Subsection (f)(1) of section 5 is amended in the second sentence by striking out “such destinations” and inserting in lieu thereof “controlled countries”.

(2) Subsections (f)(4) and (h)(6) of section 5 are each amended by striking out “countries to which exports are controlled under this section” and inserting in lieu thereof “controlled countries”.

SEC. 108. FOREIGN POLICY CONTROLS.

(a) **AUTHORITY.**—Section 6(a) (50 U.S.C. App. 2405(a)) is amended—

(1) in paragraph (1)—

(A) by striking out “or (8)” and inserting in lieu thereof “(8), or (13)”; and

(B) by inserting in the second sentence after “Secretary of State” the following: “, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative,”;

(2) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

(3) by inserting after paragraph (1) the following new paragraph:

“(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.”; and

(4) in paragraph (3), as redesignated by paragraph (2) of this subsection, by striking out “(e)” and inserting in lieu thereof “(f)”.

(b) **CRITERIA.**—Section 6(b) is amended to read as follows:

“(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.**—Section 6(c) is amended to read as follows:

“(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.—Section 6 is amended—

(1) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively; and

(2) by inserting after subsection (c) the following new subsection:

“(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest 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.”.

(e) CONSULTATION WITH THE CONGRESS.—Section 6(f), as redesignated by subsection (d) of this section, is amended to read as follows:

“(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 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 sub-

mitted 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) **EXCLUSION OF CERTAIN ITEMS FROM FOREIGN POLICY CONTROLS.**—Section 6(g), as redesignated by subsection (d) of this section, is amended—

(1) by inserting after the first sentence the following: "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."; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "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) **FOREIGN AVAILABILITY.**—

(1) **IN GENERAL.**—Section 6(h), as redesignated by subsection (d) of this section, is amended—

(A) by inserting "(1)" immediately before the first sentence; and

(B) by adding at the end the following:

"(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 that 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 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 (l) 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."

(2) AMENDMENTS NOT APPLICABLE TO CERTAIN EXISTING CONTROLS.—The amendments made by paragraph (1) of this subsection shall not apply to export controls in effect under subsection (i), (j), or (k) of section 6 of the Export Administration Act of 1979 (as redesignated by subsection (d) of this section) immediately before the date of the enactment of this Act, or to export controls made effective by subsection (i)(2) of this section or by section 6(n) of the Export Administration Act of 1979 (as added by subsection (l)(1) of this section)

(h) INTERNATIONAL OBLIGATIONS.—Section 6(i), as redesignated by subsection (d) of this section, is amended by striking out "(f), and (g)" and inserting in lieu thereof "(e), (g), and (h)".

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—Section 6(j), as redesignated by subsection (d) of this section, is amended to read as follows:

"(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:

"(A) Such country has repeatedly provided support for acts of international terrorism.

"(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.

"(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."

(j) CRIME CONTROL INSTRUMENTS.—

(1) *CONCURRENCE OF SECRETARY OF STATE.*—Section 6(k)(1), as redesignated by subsection (d) of this section, is amended by adding at the end the following new sentence: “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 (l) 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) *APPLICABILITY OF AMENDMENT.*—The amendment made by paragraph (1) of this subsection shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act.

(k) *CONTROL LIST.*—Section 6(l), as redesignated by subsection (d) of this section, is amended—

(1) in the first sentence by striking out “commodity”; and

(2) by amending the second sentence to read as follows: “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.”

(l) *ADDITIONAL PROVISIONS ON FOREIGN POLICY CONTROLS.*—

(1) *CONTRACT SANCTITY, EXTENSION OF CERTAIN CONTROLS, AND EXPANDED AUTHORITY.*—Section 6 is amended by adding at the end the following:

“(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 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.”

(2) APPLICABILITY OF AMENDMENTS.—Subsections (m) and (o) of section 6 of the Export Administration Act of 1979, as added by paragraph (1) of this subsection, shall not apply to export controls in effect immediately before the date of the enactment of this Act, or to export controls made effective by subsection (i)(2) of this section or by section 6(n) of the Export Administration Act of 1979 (as added by paragraph (1) of this subsection).

SEC. 109. PETITIONS FOR MONITORING OR SHORT SUPPLY CONTROLS.

Section 7(c) (50 U.S.C. App. 2406(c)) is amended to read as follows:

“(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials ca-

able of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any 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 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 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 from 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 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 described in paragraph (1)(A) with respect to the material 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 determine whether to impose monitoring or controls, or both, on the export of 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. In making such determination, the Secretary shall determine whether—

“(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 the 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 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 after the publication of such proposed regulations, and after considering any public comments 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 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 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) 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.”.

SEC. 110. SHORT SUPPLY CONTROLS.

(a) **DOMESTICALLY PRODUCED CRUDE OIL.**—Section 7(d) (50 U.S.C. App. 2406(d)) is amended—

(1) in paragraph (1) by striking out “unless” and all that follows through “met” and inserting in lieu thereof “subject to paragraph (2) of this subsection”;

(2) in paragraph (2)(A) by striking out “makes and publishes” and inserting in lieu thereof “so recommends to the Congress after making and publishing”;

(3) in paragraph (2)(B)—

(A) by striking out “reports such findings” and inserting in lieu thereof “includes such findings in his recommendation”; and

(B) by striking out “thereafter” and all that follows through the end of the sentence and inserting in lieu thereof “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.”; and

(4) by adding at the end the following:

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

(b) **REFINED PETROLEUM PRODUCTS.**—Section 7(e)(1) is amended in the first sentence by striking out “No” and inserting in lieu thereof the following: “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”.

(c) **UNPROCESSED RED CEDAR.**—Section 7(i) is amended—

(1) in the last sentence of paragraph (1) by inserting “harvested from State or Federal lands” after “red cedar logs”;

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(3) by inserting after paragraph (1) the following new paragraph:

“(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.”; and

(4) by amending paragraph (5)(A), as redesignated by paragraph (2) of this subsection, to read as follows:

“(A) lumber 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.”.

(d) **AGRICULTURAL COMMODITIES.**—Section 7(g)(3) is amended to read as follows:

“(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 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.

“(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—

“(i) 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.”

(e) CONTRACT SANCTITY.—Section 7 is amended by striking out subsection (j) and inserting in lieu thereof the following:

“(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 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.”

SEC. 111. LICENSING PROCEDURES.

(a) REDUCTION OF PROCESSING TIME.—Section 10 (50 U.S.C. App. 2409) is amended—

(1) by striking out “60” each place it appears and inserting in lieu thereof “40”;

(2) by striking out “90” each place it appears and inserting in lieu thereof “60”; and

(3) by striking out “30” each place it appears and inserting in lieu thereof “20”.

(b) AMENDMENTS WITH REGARD TO EXPORTS TO COCOM COUNTRIES.—

(1) ACTION ON APPLICATIONS NOT REFERRED TO OTHER DEPARTMENTS OR AGENCIES.—Section 10(c) is amended by striking

out "In each case" and inserting in lieu thereof "Except as provided in subsection (o), in each case".

(2) REFERRALS TO OTHER DEPARTMENTS AND AGENCIES.—Section 10(d) is amended—

(A) by striking out "In each case" and inserting in lieu thereof "Except in the case of exports described in subsection (o), in each case"; and

(B) by adding at the end the following:

"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."

(3) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—Section 10(e) is amended—

(A) in paragraph (1) by striking out the first sentence and inserting in lieu thereof the following: "Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary 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."; and

(B) in paragraph (2)—

(i) by striking out "If the head" and inserting in lieu thereof "(A) Except in the case of exports described in subsection (o), if the head", and

(ii) by adding at the end the following:

"(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 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."

(4) ACTION BY THE SECRETARY.—Section 10(f) is amended in paragraphs (1) and (4) by adding at the end of each such paragraph the following: "The provisions of this paragraph shall not apply in the case of exports described in subsection (o)."

(c) RIGHT OF APPLICANT TO RESPOND TO NEGATIVE RECOMMENDATIONS.—Section 10(f)(2) is amended—

(1) by inserting "in writing" after "inform the applicant"; and

(2) by striking out “, and shall accord” and all that follows through the end of the paragraph and inserting in lieu thereof the following: “. 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).”.

(d) RIGHTS OF APPLICANT WITH RESPECT TO PROPOSED DENIAL.—Section 10(f)(3) is amended by striking out the first sentence and inserting in lieu thereof the following: “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—

“(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.”.

(e) ADDITIONAL PROVISIONS.—Section 10 is amended—

(1) in the section heading by adding “; OTHER INQUIRIES” after “APPLICATIONS”; and

(2) by adding at the end the following new subsections:

“(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.

“(l) 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 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 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

“(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

“(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.”.

SEC. 112. VIOLATIONS.

(a) *IN GENERAL.*—Section 11(a) (50 U.S.C. App. 2410(a)) is amended by inserting after “violates” the following: “or conspires to or attempts to violate”.

(b) *WILLFUL VIOLATIONS.*—Section 11(b) is amended—

(1) in paragraph (1)—

(A) by striking out “exports anything contrary to” and inserting in lieu thereof “violates or conspires to or attempts to violate”;

(B) by striking out “such exports” and inserting in lieu thereof “the exports involved”;

(C) by inserting after “benefit of” the following: “; or that the destination or intended destination of the goods or technology involved is,”; and

(D) by striking out “country to which exports are restricted for national security or” and inserting in lieu thereof “controlled country or any country to which exports are controlled for”;

(2) in paragraph (2) by striking out the last sentence; and

(3) by adding after paragraph (2) the following new paragraphs:

“(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 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.—Section 11(c) is amended—

(1) by striking out "head" and all that follows in paragraph (1) through "thereof," and inserting in lieu thereof "Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary)"; and

(2) by adding at the end the following new paragraphs:

"(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 and 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) REFUNDS OF PENALTIES.—Section 11(e) is amended—

(1) by inserting after "subsection (c)" the following: ", or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g),"; and

(2) by inserting after "refund any such penalty" the following: "imposed pursuant to subsection (c)".

(e) FORFEITURES; PRIOR CONVICTIONS.—Section 11 is amended—

(1) by redesignating subsection (g) as subsection (i); and

(2) by inserting after subsection (f) the following new subsections:

"(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

“(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.”

“(f) TECHNICAL AMENDMENT.—Section 11(i), as redesignated by subsection (e) of this section, is amended by striking out “or (f)” and inserting in lieu thereof “(f), (g), or (h)”.

SEC. 113. ENFORCEMENT.

(a) GENERAL AUTHORITY.—Section 12(a) (50 U.S.C. App. 2411(a)) is amended—

(1) by inserting “(1)” immediately before the first sentence;

(2) by striking out “such investigations and” and inserting in lieu thereof “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”;

(3) by striking out “the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and” and inserting in lieu thereof “a district court of the United States,”;

(4) by adding at the end the following new sentence: “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.”; and

(5) by adding at the end the following new paragraphs:

“(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.

“(iv) Make arrests without warrant for any violation of this 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:

“(i) 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 admin-

istrative 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 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) **CONFIDENTIALITY.**—Section 12(c)(3) is amended—

(1) by striking out "Departments or agencies which obtain" and inserting in lieu thereof "Any department or agency which obtains";

(2) by inserting ", including information pertaining to any investigation," after "enforcement of this Act";

(3) by striking out "the department" and inserting in lieu thereof "each department"; and

(4) by adding at the end the following: "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 heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information."

SEC. 114. ADMINISTRATIVE PROCEDURE.

Section 13 (50 U.S.C. App. 2412) is amended—

(1) in the section heading by striking out "EXEMPTION FROM CERTAIN PROVISIONS RELATING TO";

(2) in subsection (a) by inserting "and subsection (c) of this section" after "11(c)(2)"; and

(3) by adding at the end the following:

"(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 provi-

sions 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 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 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."

SEC. 115. ANNUAL REPORT.

(a) **CONTENTS OF REPORT.**—Section 14(a)(15) (50 U.S.C. App. 2413(a)(15)) is amended by striking out "an analysis" and all that follows through "process, and".

(b) **ADDITIONAL REPORTING REQUIREMENTS.**—Section 14 is amended by adding at the end the following:

"(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."

SEC. 116. UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION; REGULATIONS.

(a) **IN GENERAL.**—Section 15 (50 U.S.C. App. 2414) is amended to read as follows:

"ADMINISTRATIVE AND REGULATORY AUTHORITY

"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 Sen-

ate, 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 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.”

(b) PAY FOR THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by inserting “Under Secretary of Commerce for Export Administration,” after “Under Secretary of Commerce for Economic Affairs,”

(c) PAY FOR THE ASSISTANT SECRETARIES.—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).”

(d) EFFECTIVE DATE.—The provisions of section 15(a) of the Export Administration Act of 1979, as amended by subsection (a) of this section, and the amendments made by subsections (b) and (c) of this section shall take effect on October 1, 1986.

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

SEC. 117. DEFINITIONS.

Section 16 (50 U.S.C. App. 2415) is amended—

(1) in paragraph (3), by inserting "natural or manmade substance," after "article,";

(2) by amending paragraph (4) to read as follows:

"(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;"

(3) by redesignating paragraph (5) as paragraph (8); and

(4) by inserting after paragraph (4) the following new paragraphs:

"(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".

SEC. 118. EFFECT ON OTHER ACTS.

(a) TECHNICAL AMENDMENTS.—

(1) Section 17(a) (50 U.S.C. App. 2416(a)) is amended by striking out "Nothing" and inserting in lieu thereof "Expect as otherwise provided in this Act, nothing"

(2) Section 17(c) is amended by striking out the last sentence.

(b) **ACT NOT TO AFFECT CERTAIN PROVISIONS OF AGRICULTURAL ACT OF 1970.**—Section 17 is amended by adding at the end the following:

"(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)."

SEC. 119. AUTHORIZATION OF APPROPRIATIONS.

Section 18 (50 U.S.C. App. 2417) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"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 subsections (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 non-discretionary costs.”.

SEC. 120. TERMINATION OF AUTHORITY.

Section 20 (50 U.S.C. App. 2419) is amended to read as follows:

“**TERMINATION DATE**

“*SEC. 20. The authority granted by this Act terminates on September 30, 1989.*”.

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.

(2) 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).

TITLE II—EXPORT PROMOTION PROGRAMS

SEC. 201. REQUIREMENT OF PRIOR AUTHORIZATION.

(a) GENERAL RULE.—Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of this Act; or

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

(b) EXCEPTION FOR LATER LEGISLATION AUTHORIZING OBLIGATIONS OR EXPENDITURES.—To the extent that legislation enacted after the making of an appropriation to carry out any export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) PROVISIONS MUST BE SPECIFICALLY SUPERSEDED.—The provisions of this section shall not be superseded except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(d) EXPORT PROMOTION PROGRAM DEFINED.—For purposes of this title, the term “export promotion program” means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of foreign marketing opportunities and other marketing information to United States producers of goods and services, including the expansion of foreign markets for United States textiles and apparel and any other United States products;

(2) the development of regional and multilateral economic policies which enhance United States trade and investment interests, and the provision of marketing services with respect to foreign countries and regions;

(3) the exhibition of United States goods in other countries; and

(4) the operations of the United States and Foreign Commercial Service, or any successor agency.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated \$113,273,000 for each of the fiscal years 1985 and 1986 to the Department of Commerce to carry out export promotion programs.

SEC. 203. BARTER ARRANGEMENTS.

(a) REPORT ON STATUS OF FEDERAL BARTER PROGRAMS.—The Secretary of Agriculture and the Secretary of Energy shall, not later than 90 days after the date of the enactment of this Act, submit to the Congress a report on the status of Federal programs relating to the barter or exchange of commodities owned by the Commodity Credit Corporation for materials and products produced in foreign countries. Such report shall include details of any changes necessary in existing law to allow the Department of Agriculture and, in the case of petroleum resources, the Department of Energy, to implement fully any barter program.

(b) AUTHORITIES OF THE PRESIDENT.—The President is authorized—

(1) to barter stocks of agricultural commodities acquired by the Government for petroleum and petroleum products, and for other materials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur; and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) OTHER PROVISIONS OF LAW NOT AFFECTED.—In the case of any petroleum, petroleum products, or other materials vital to the national interest, which are acquired under subsection (b), nothing in this section shall be construed to render inapplicable the provisions of any law then in effect which apply to the storage, distribution, or use of such petroleum, petroleum products, or other materials vital to the national interest.

(d) CONVENTIONAL MARKETS NOT TO BE DISPLACED BY BARTERS.—The President shall take steps to ensure that, in making any barter described in subsection (a) or (b)(1) or any purchase authorized by subsection (b)(2), existing export markets for agricultural commodities operating on conventional business terms are safeguarded from displacement by the barter described in subsection (a), (b)(1), or (b)(2), as the case may be. In addition, the President shall ensure that any such barter is consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(e) REPORT TO THE CONGRESS.—The Secretary of Energy shall report to the Congress on the effect on energy security and on domestic energy supplies of any action taken under this section which results in the acquisition by the Government of petroleum or petroleum products. Such report shall be submitted to the Congress not later than 90 days after such acquisition.

TITLE III—NUCLEAR AGREEMENTS FOR COOPERATION

SEC. 301. AGREEMENTS FOR COOPERATION.

(a) NOTIFICATION OF AND CONSULTATION WITH THE CONGRESS; HEARINGS.—Section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is amended—

(1) in subsection a. by inserting after “Assessment Statement” the following: “(A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)”;

(2) in subsection b. by inserting before “the President” the following: “the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and”;

and

(3) in subsection d. by inserting before the sentence which begins “Any such proposed agreement” the following: “During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved.”.

(b) CONGRESSIONAL REVIEW OF AGREEMENTS.—Subsection d. of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) is amended—

(1) by striking out “adopts a concurrent resolution” and inserting in lieu thereof “adopts, and there is enacted, a joint resolution”;

(2) by striking out the period at the end of the first proviso and inserting in lieu thereof “: Provided further, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.”; and

(3) by striking out “130 of this Act for the consideration of Presidential submissions” and inserting in lieu thereof “130 i. of this Act”.

(c) PROCEDURES FOR CONSIDERATION OF AGREEMENTS.—

(1) *TECHNICAL CHANGES.*—Section 130 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2159(a)) is amended—

(A) in the first sentence—

(i) by striking out “123 d.”; and

(ii) by striking out “, and in addition, in the case of a proposed agreement for cooperation arranged pursu-

ant to subsection 91 c., 144 b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate,"; and (B) in the proviso, by striking out "and if, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution".

(2) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—
Section 130 of the Atomic Energy Act of 1954 is amended—

(A) by amending subsection g.—

(i) by redesignating paragraphs (1) and (2) as clauses (A) and (B);

(ii) by striking out "g. For" and inserting in lieu thereof "g. (1) Except as provided in paragraph (2), for"; and

(iii) by adding at the end thereof the following new paragraph:

"(2) For purposes of this section insofar as it applies to section 123—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

"(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session."; and

(B) by adding at the end thereof the following new subsection:

"i. (1) For the 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 (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on . . .', with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

"(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123 d., a joint resolution with respect to such agreement for cooperation 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 an agreement for cooperation 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.

"(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred

to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91 c., 144 b., or 144 c., the Committee on Armed Services.

"(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, 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; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

"(5) A joint resolution under this subsection 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 subsection, 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 subsection 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.

"(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

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

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

(d) **APPLICABILITY OF AMENDMENTS.**—The amendments made by this section shall apply to any agreement for cooperation which is entered into after the date of the enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

DANTE B. FASCELL,

DON BONKER,

DAN MICA,

H.L. BERMAN,

TOBY ROTH,

DOUGLAS BEREUTER,

Solely for consideration of sections 113(a)(5) and 114 of the House amendment and modifications committed to conference:

PETER W. RODINO, Jr.

BILL HUGHES,

BILL MCCOLLUM,

Solely for consideration of section 126 and title II of the House amendment and modifications committed to conference:

JOHN D. DINGELL,

AL SWIFT,

JAMES T. BROYHILL,

Managers on the Part of the House.

JAKE GARN,

JOHN HEINZ,

WILLIAM PROXMIRE,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 883) to extend the Export Administration Act of 1979, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

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

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

SECTION 108. FOREIGN POLICY CONTROLS

House Position: The House bill amends section 6(i) of the Act to restore Iraq to the list of countries supporting international terrorism 90 days after enactment unless the President makes the certification required to remove a country from the list to Congress during that 90 days.

Senate Position: No provision.

Conference Substitute: The conferees have acceded to the State Department's request that language be deleted from the conference substitute which would have required the President to put Iraq back on the list of terrorist-supporting nations in ninety days or certify that Iraq has ceased support for terrorism.

The conferees note that Secretary of State Shultz has sent a letter to the author of the original House's bill requirement requesting deletion of the modified language agreed to in conference. The letter states that the Administration will promptly return Iraq to the list of countries identified as supporting terrorism in any group based in or supported by Iraq engages in terrorist acts.

The conferees believe that this permanent commitment is more useful than the bill's requirement for one Presidential certification in ninety days that Iraq has not supported terrorism for six months. As the Secretary of State's letter notes, there have been periods in the past when the notorious Abu Nidal terrorist organization has apparently moved to Syria only to return to Baghdad later.

The Secretary of State's letter includes a commitment to encourage Iraq to take more active measures against international terror-

ists. It notes that members of at least one Iraqi-based terrorist organization, May 15, although currently inactive, have not been detained or prosecuted.

Congressional concern about Iraq's policy on international terrorism has been instrumental in securing significant progress over the last several months, including the expulsion of the Abu Nidal organization. Members of Congress will continue to monitor Iraq's actions and urge Iraq to adopt anti-terrorist policies as strong as those of most nations, an unequivocal most Arab nations. Specifically, the government of Iraq is urged to adopt an unequivocal policy of detaining and prosecuting any terrorist or terrorists found on its territory.

The letter from the Secretary of State follows:

THE SECRETARY OF STATE,
Washington, June 20, 1985.

Hon. HOWARD L. BERMAN,
House of Representatives.

DEAR MR. BERMAN: I am writing to request that the House-Senate conference on the Export Administration Act remove from the Act the requirement that the President certify that Iraq does not support terrorism, or put Iraq back on the list of terrorist-supporting nations.

During the more than three years that this provision and similar legislation has been under consideration, Iraq has taken important steps against terrorist organizations previously operating from its territory. Most significant was Iraq's expulsion in 1983 of Abu Nidal's notorious "Black June" organization, whose long record of outrageous terrorist acts includes recent attacks on Jordanian airlines offices in Europe.

Your insistence upon and support for our diplomatic efforts to halt state support for international terrorism has played a direct role in the favorable change in Iraqi policy on this issue. In your own discussions directly with Iraqi Foreign Minister Tariq Aziz, he unequivocally affirmed that his Government had concluded that the activities of these groups are a danger to Iraq itself. We appreciate your concern that Iraq might renew its support for terrorism. There have been periods in the past, for example, when the Abu Nidal organization apparently moved to Syria only to return to Baghdad later. I assure you that, should we conclude that any group based in or supported by Iraq is engaged in terrorist acts, we would promptly return Iraq to the list of countries identified as supporting terrorism.

Although Iraq has effectively disassociated itself from international terrorism, an important objective of our diplomatic discussions on this issue remains to be met: we are encouraging Iraq to take more active measures against international terrorists. You have noted, for example, that although the May 15 organization has been inactive since at least December, 1983, we have no evidence that its members have been detained, prosecuted, or expelled from Iraq.

As you are aware, several recent instances of active Iraqi cooperation against specific terrorist threats to shared interests provide reason to expect further progress. We can best encourage this

through continued diplomacy backed by strong Congressional support. Removal of the portion of the proposed amendment to the Export Administration Act relevant to Iraq is appropriate to recognize the steps Iraq already has taken and to encourage further movement. Moreover, under present circumstances, the legislation you proposed would be seen and resented in Baghdad as a foreign attempt to dictate Iraqi policy, severely disrupting our diplomatic dialogue on this and other sensitive issues.

Other governments must know that the U.S. policy of promoting active international cooperation against terrorism knows no differences across party lines or branches of government. The most candid consultations between the Congress and Department of State on this issue have been essential to the success we have seen in Iraq's case. Hence, Department officers are instructed to stay in close consultation with interested committees and Members of Congress, such as yourself, on the global issue of state support for international terrorism and particularly on developments in Iraq's policies toward terrorism. We will continue to make available all relevant information on this issue through appropriate channels. I understand the Iraqi Foreign Minister has invited you to visit Baghdad. If you go, I think it would be important and very helpful for you to stress the solidarity between the executive and legislative branches on this issue.

One further point: I know you remain concerned about the sale of aircraft to Iraq. I assure you that I share your concern that U.S. aircraft exports to Iraq are consistent with our foreign policy objectives, particularly our efforts to oppose state support for terrorism. I will keep you and appropriate committees of the Congress advised on licensing questions regarding significant aircraft sales to Iraq.

Sincerely yours,

GEORGE P. SHULTZ.

SECTION 113. ENFORCEMENT

House Position: Section 113 of the House bill added paragraph (4) to section 12(a) of the Act specifying that the enforcement activities of the Commerce Department and the Customs Service under the Act be pursuant to regulations promulgated by the Attorney General.

Senate Position: No provision.

Conference Substitute: The conference substitute revises section 113(b)(4) to require that new law enforcement authorities of the Commerce Department be exercised pursuant to guidelines approved by the Attorney General. Such guidelines are to be issued within 120 days of enactment of the conference substitute. The authorities conferred by subsection 113(b)(3)(B) are intended by the conferees to constitute new Commerce Department enforcement powers.

The conferees believe that the law enforcement powers of the federal government should be uniformly applied by all federal agencies. The statutory requirement of Attorney General guidelines is not extended to the Customs Service, since the law enforcement authority of the Customs Service is not new. However, the managers intend that there be consultation between the Attorney

General and the Secretary of the Treasury on the exercise of law enforcement authority under the conference substitute by the Customs Service.

SECTION 114. ADMINISTRATIVE PROCEDURE

House Position: The House bill amended section civil 13(c) of the Act to provide, among other things, that parties subject to charges under the Act can contest the charges in a hearing before a newly created administrative law judge rather than a hearing commissioner.

Senate Position: No provision.

Conference Substitute: The Senate recedes with an amendment clarifying that any person who, for at least 2 of the 10 years immediately preceding the date of enactment of the conference substitute, has served as a hearing commissioner of the Commerce Department, shall be eligible for appointment to the administrative law judge position created by the subsection.

SECTION 116. UNDER SECRETARY OF COMMERCE

House Position: The House bill creates a new Under Secretary of Commerce for Export Administration with three subordinate assistant secretaries, effective October 1, 1985.

Senate Position: No provision.

Conference Substitute: The Senate recedes with an amendment: 1) delaying the effective date until October 1, 1986; 2) reducing the number of new assistant secretaries from 3 to 2; and 3) clarifying that the new assistant secretaries would be Presidential appointments subject to Senate confirmation.

SECTION 119. AUTHORIZATION OF APPROPRIATIONS

House Position: The House bill authorizes a total of \$29,500,000 for FY86, including \$10,000,000 for enforcement, \$2,000,000 for foreign availability, and \$7,500,000 for other activities.

Senate Position: No provision.

Conference Substitute: The Senate recedes with an amendment changing the FY86 levels as follows: total—\$29,382,000, including \$9,243,000 for enforcement, \$2,000,000 for foreign availability, and \$18,139,000 for other activities. These changes would conform the authorization levels to the Administration request.

The conference substitute requires that appropriations to the Commerce Department to carry out the Act must be authorized before being obligated or expended, and authorizes appropriations of \$24,600,000 for 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, and \$14,037,000 shall be available for all other activities, and authorizes appropriations of \$29,382,000 for fiscal year 1986, of which \$9,243,000 shall be available only for enforcement, \$2 million shall be available only for foreign availability assessments, and \$18,139,000 shall be available for all other activities.

The processing of export license applications and responses to inquiries from government personnel at ports as to license require-

ments for particular shipments would be speeded by increasing the number of engineers and other highly trained personnel in the Commerce Department's Office of Export Administration (OEA). Present civil service rating applicable to OEA personnel have resulted in compensation levels which are not comparable to opportunities in the private sector. The conferees expect the executive branch to re-evaluate, and upgrade where appropriate, civil service ratings applicable to such positions.

SECTION 301. NUCLEAR AGREEMENTS FOR COOPERATION

House Position: The House bill contains provisions clarifying the circumstances under which nuclear agreements for cooperation shall be submitted to the Congress for review and the procedures Congress shall employ in conducting such reviews.

Senate Position: No provision.

Conference Substitute: The Senate recedes with an amendment clarifying that the time period during which an agreement for cooperation is referred to the Congress carries over from one session of a Congress to the next session of the same Congress.

Section 132 of the Atomic Energy Act, as amended by the 1978 Nuclear Non-Proliferation Act [NNPA], 42 U.S.C. 2153, requires that proposed agreements for nuclear cooperation with other countries shall include the terms, duration, nature, scope of cooperation, and other requirements listed in that section. Subsection d. of that section presently provides that the President must submit proposed agreements for nuclear cooperation to the Congress and that such agreements cannot become effective if, during a 60-day review period, Congress adopts a concurrent resolution stating Congress does not favor the agreement. The Supreme Court's June 1983 *Chadha* decision raised serious questions about the constitutionality of that concurrent resolution disapproval procedure. In order to remedy that legal problem, and to ensure an adequate and timely congressional review procedure for agreements for nuclear cooperation proposed by the President, the conference substitute makes changes to the existing provisions of sections 123 and 130 of the Atomic Energy Act of 1954.

Section 123a. of the Atomic Energy Act presently requires, among other things, that the Director of the Arms Control and Disarmament Agency [ACDA] must prepare a nuclear proliferation assessment statement regarding any proposed agreement for nuclear cooperation to which the requirement applies. The conference substitute amends section 123a. to require that any such assessment statement must "analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of the Atomic Energy Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in section 123a." This provision is intended to ensure that the ACDA director specifically analyzes in writing why any proposed agreement is or is not consistent with each of these nine criteria.

This provision is very important because section 123d. of the Atomic Energy Act is also amended to provide that if the President exempts a proposed agreement from one or more of the criteria for nuclear agreements which are set forth in section 123a., then the

agreement cannot be brought into force unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor the agreement. If there is no exemption, then such agreements for cooperation can be brought into effect after the congressional review period is completed unless Congress adopts a joint resolution of disapproval.

The conference substitute also amends section 123b. of the Atomic Energy Act to require that before the beginning of the 60-day congressional review period set forth in section 123d., as amended by the conference substitute, the President submit the text of a proposed agreement along with the Nuclear Proliferation Assessment Statement to the Committees on Foreign Affairs and Foreign Relations of the House and Senate respectively, and consult with these committees for a period of not less than 30 days of continuous session concerning the consistency of the terms of the proposed agreement with all the requirements of the Atomic Energy Act. This special provision—the amendment to section 123b.—does not have any precedential value for other agreements concluded by the President and is included here solely because a new system for nuclear cooperation agreements is being adopted so that the balance between the Congress and the President on nuclear agreements that was upset by the *Chadha* decision can be restored. Since the track chosen for approving such agreements depends on whether they are outside the parameters of the nine non-proliferation criteria in section 123a., the provision is intended to ensure that the committees can advise the President on that all important issue during the 30-day prior consultation period but not necessarily before that agreement is signed.

For example, if during the 30-day prior consultation period either the House Foreign Affairs Committee or the Senate Foreign Relations Committee indicates that in its judgment the proposed agreement is outside the parameters of the nine criteria in section 123a., the Congress expects that the President will submit an exemption. When an exemption is submitted, the amendment to section 123d. requires that the Congress pass a joint resolution of approval before such an agreement becomes effective. During the 30-day period of informal committee review, the respective committees could, of course, conduct hearings to assist their Members in reaching a recommendation as to whether the President should submit an exemption.

The provisions of section 123b., as amended, are not intended to insert Congress into the process of negotiating agreements. After the 30-day period of informal consultation, the President may choose to renegotiate an agreement. However, the provision does not require renegotiation of an agreement prior to its final consideration by the Congress. These provisions are intended to ensure that the President has the advice of the Congress as to whether there should be an exemption from any of the nine nonproliferation criteria of section 123a.

The steps for submitting, consulting and approving nuclear cooperation agreements set forth in section 123b., as amended, need not be taken in any particular sequence. It is up to the President to decide if he wants to authorize the execution of an agreement for cooperation before seeking congressional service regarding whether

an exemption is required, and thus the agreement may or may not be approved and executed prior to submission for the 30-day prior consultation review period. While the President may choose to resubmit an agreement following the 30-day consultation period, these amendments do not require separate submissions under section 123b. and section 123d. A single submission would satisfy the law. The Congress fully expects, however, that the President will resubmit any agreement for which he has not submitted an exemption if either committee during the prior consultation period recommends that an exemption is required.

The conference substitute, as noted above, also amends section 123d. of the Atomic Energy Act to provide that if the President exempts a proposed agreement for nuclear cooperation from any section 123a. nonproliferation criteria, then the agreement cannot be brought into force unless the Congress enacts a joint resolution of approval. If there is no exemption, the agreement can go into effect after the 60-day congressional review period in section 123d. unless Congress passes a joint resolution of disapproval.

Section 123d. is further amended to provide that during the 60-day period proposed agreements for nuclear cooperation are formally before the Congress, the Committees on Foreign Affairs and Foreign Relations of the House and Senate shall hold hearings on them and report to their respective bodies whether such agreements should be approved or disapproved. This is to ensure that Members of each body are given an opportunity to cast an informed vote on such agreements. It is the clear intention of the conferees that the respective committees shall hold hearings on each proposed agreement for cooperation. The conferees fully expect and are directing and mandating in law that the committees of jurisdiction comply with this requirement.

However, if for some reason, either of the committees fails to hold the hearings and/or submit the reports by the end of the congressional review period mandated by section 123d., that would not constitute a procedural defect in the congressional review of an agreement for nuclear cooperation, and would not prevent the entry into force of the agreement. This amendment to section 123 makes clear that only a joint resolution of disapproval may prevent the entry into force of such an agreement unless there has been a Presidential exemption of a required provision, in which case a joint resolution of approval is needed to permit such an agreement to come into force. If unanticipated circumstances ever prevent a hearing from being held or a report from being issued during the statutory period, the conferees fully expect that the appropriate committee chairman will explain in writing to the respective House the precise reasons for such an unexpected omission.

The conference substitute also amends section 130 of the Atomic Energy Act with respect to its provisions providing expedited procedures for consideration of nuclear cooperation agreements. That section has been amended to state, among other things, that all joint resolutions of approval and disapproval which are introduced in the House of Representatives shall be referred to the "appropriate committee or committees." This does not mean that such agreements or resolutions relating to them will be referred to an ex-

panded number of committees in the House or will be subjected to hearings before an expanded number of committees in the House.

It is the intention of the managers that both agreements and related resolutions dealing with civil nuclear cooperation will continue to be referred to the House Foreign Affairs Committee, as under current law, and that agreements and resolutions for defense nuclear cooperation will continue to be referred to the Armed Services Committee as well. This is what would occur currently under House rules, and this is appropriate in view of the expertise and jurisdiction of these committees in this area. Finally, section 130 of the Atomic Energy Act is also amended to make clear that the specified number of days of "continuous session" for Congress to review proposed nuclear agreements for cooperation can carry over from one session of Congress to another, but not to a new Congress. Thus there is a cumulative effect between sessions of the same Congress, but not from one Congress to the next. This amendment also specifies that the intrasessional recess would not be counted as days for the Congressional review of such agreements.

REMAINDER OF BILL

The Senate recesses to the House, and the conferees note the following:

EXPORT ADMINISTRATION ACT—STATEMENT OF MANAGERS

INTRODUCTION

The committee of conference adopted without change most of the provisions worked out in the last Congress by the conferees on similar legislation passed in that Congress, H.R. 3231 and S. 979. The following comments by the committee of conference on S. 883 are not intended to cover all sections of the bill but rather to touch on specific points of interest in this bill and particularly those areas where changes have been made from the 1984 conference agreement.

AMENDMENTS TO SECTION 4

Amendments to section 4(a) of the Export Administration Act of 1979 (the "Act") repeal the authority of the Secretary of Commerce (the "Secretary") to offer qualified general licenses and authorize the Secretary to offer distribution, comprehensive operations, project, and service supply licenses, except that distribution and comprehensive operations licenses may not be offered for exports to controlled countries.

By designating in the conference substitute certain multiple licensing procedures, such as the comprehensive operations license, the conferees do not intend to limit the Secretary's discretionary authority to establish new categories of multiple licenses to assist in the effective and efficient implementation of export controls and enforcement of the Act. (If the Secretary determines that a multiple licensing procedure for exports of certain commodities or to certain geographic locations is needed for the effective and efficient operation of the Act, he may establish the license under his general authority of section 4(a)(4) of the Act.)

The conferees endorse the distribution license for exports to countries other than the controlled countries listed pursuant to section 5(b) of the Act, as amended in the conference substitute, as a means of reducing the burden on exporters engaging in trade not prejudicial to the national security, and of reducing the license processing burden on administering authorities. The factors described in the provision to be considered when relevant in individual applications for a license are not to be determinative in creating categories or general criteria for denial of applications or for withdrawal of such a license. This does not limit the authority of the Secretary to determine which items on the control list are eligible for export under a distribution license.

AMENDMENTS TO SECTION 5

Amendments to section 5(b) of the Act eliminate U.S. licensing requirements for exports to CoCom countries with respect to relatively low-technology items that require only notification for export under CoCom multilateral controls, that is, for items specified in the Administrative Exception Notes [AEN's] of the control list. U.S. licensing requirements for all other exports of controlled goods and technology to such cooperating countries are preserved. However, amendments contained in section 111 of the conference substitute modify the licensing process for these exports effective 4 months after the date of enactment to provide greater speed and predictability for export license applicants.

The application process under section 10 of the Act is amended to provide that for individual validated licenses for exports to CoCom countries, if the Secretary does not inform the applicant within 15 working days after receipt of the export license application of the disposition of the application or that more time is necessary to consider it, the license automatically becomes valid and effective and shipment can be made pursuant to that license. If the Secretary notifies the applicant that more time is necessary to consider the application, an additional 15-working-day period is available for the Secretary to take action. At the end of this second 15-working-day period, however, absent action by the Secretary to deny the license, the license automatically becomes valid and effective.

The conferees intend that the notification by the Department of Commerce to an export license applicant that the Department has received an export license application contain an application number that will be identical to the number of the subsequent license to export, and when a license becomes effective, either by Government action or by the expiration of the specified time periods, the exporter may refer to that number—such as on a Shipper's Export Declaration—in exporting the goods or technology specified in the application, without waiting to receive a formal license to export.

U.S. exporters gain certainty that they may ship their products to cooperating countries after no more than 15 or, if necessary, 30 working days after submitting an application, unless the application is denied within such time periods. Export authority obtained in this manner constitutes an individual validated export license in

all respects, while general and multiple licensing procedures remain unaffected.

The same treatment of license applications shall be applied, as provided in section 5(k) of the Act, as amended in the conference substitute, to all exports to non-CoCom countries which cooperate formally or informally with the United States in maintaining restrictions comparable in practice to those maintained by CoCom.

The review by the conferees of the implementation of the Act during the last session of the 98th Congress revealed instances in which the competitiveness of U.S. exporters has been hampered by the inefficiency of the agencies with regulatory and enforcement authority over exports. Specifically, the conferees are aware that the application of the export administration regulations in some cases is inconsistent and irrational, and that some U.S. exporters and foreign customers are not accorded the fair and equal treatment on a day-to-day basis to which they are entitled.

These problems are not specifically addressed in the conference substitute, in the belief that it is the express policy of the United States that these controls be administered fairly. The two committees of jurisdiction intend, however, to monitor closely the administrative practices in the future and, if necessary, to consider remedial legislation.

The conference substitute expands the category of agreements to export technical data which must be reported to the Secretary under section 5(j) of the Act, and retains the existing exemption for educational institutions.

In retaining the exemption in current law for colleges, universities, and other educational institutions from the requirement to report agreements which involve technical cooperation, the conferees note and emphasize that educational institutions remain subject to the same controls and license requirements for technology transfers as all other exporters. Prior reporting of technical cooperation agreements, however, is a mechanism for possible prior restraint of scientific discourse. The courts have generally recognized and upheld a freer standard for such discourse in the academic setting than for commercial speech. (See, for example, *Trane Co. v. Baldrige*, 552 Fed. Supp. 1378, Aff'd 728 F. 2d 915.)

On that basis, the conferees conclude that it is appropriate to require prior reporting of commercial agreements with foreign government agencies, but to place no such requirement on colleges, universities, and other educational institutions, which must nevertheless obtain appropriate licenses before exporting any controlled technology, technical data, or goods. It is the intent of the conference committee that U.S. government agencies should require, as part of U.S. Government research contracts with colleges, universities, and other educational institutions, reporting to the Commerce Department of such institutions' agreements with any agency of the Government of a controlled country that might involve transfer of technology or technical data, to the extent that any U.S. Government agency might wish to be informed of such agreements.

The conference substitute amends section 5(k) of the Act to require negotiations on controls with countries which are not members of CoCom to provide that countries which enter into agreements on export restrictions comparable in practice to those of

CoCom are to be treated like CoCom countries for purposes of export controls, and to specify that treating other countries like CoCom countries includes comparable treatment on exports by multiple as well as individual licenses, the elimination of licenses for low-technology items indicated in the Administration Exception Notes, and the expedited processing of applications provided in the new subsection (o) of section 10 of the Act.

The managers believe that the Secretary should focus on the practical effect of agreements with non-CoCom countries in restricting transfer of goods and technology to potential adversaries, rather than the formal or informal nature of the agreements or arrangements, in deciding whether to extend favorable licensing treatment on exports to such cooperating countries.

The conference substitute also amends section 5 of the Act to state that controls may not be imposed on a good containing an embedded microprocessor unless the function of the good itself is such that export of the good would make a significant contribution to the military potential of a controlled country. The conferees concurred with actions of the Secretary, in consultation with the Secretary of Defense, in April 1984 to decontrol 94 categories of unilaterally-controlled instruments incorporating microprocessors.

AMENDMENTS TO SECTION 6

The committee of conference agreed to a number of constraints on the President's authority to impose new foreign policy controls, including additional requirements for consultations and reports, and greater attention to foreign availability of items controlled for foreign policy purposes.

The conference substitute amends section 6(e) of the Act, the provision that deals with Congressional consultation. The conferees believe that actual consultation with Congress has rarely been within the spirit of the law. It has been perfunctory at best. That is why the Congress finds it necessary to strengthen this subsection. Under this amendment the President would be required to consult with the Congress prior to the imposition of foreign policy export controls.

This should result in more meaningful consultation, which is in keeping with article I, section 8, of the Constitution which gives to the Congress the power to regulate international commerce. Export control authority is only delegated by Congress to the President, as provided in the Act, and the Congress intends that the President consult with the Congress in the conduct of that delegated authority.

The conferees intend that this will result in greater deliberation given by the President to suggestions to impose foreign policy controls and that once imposed, the prior consultation with Congress will result in wiser control policies enjoying greater Congressional support.

The conferees recognize that, under the provision, the President can still approach the Congress shortly before he wishes to take action imposing foreign policy export controls. In fact, on some occasions conditions may require that consultation take place no sooner than shortly before the controls are imposed.

This consultation provision can be satisfied by means of consultation with the Chairmen and Ranking Members of the committee of jurisdiction in the Senate and the committee of jurisdiction in the House. Such consultation should also extend to the Chairmen and Ranking Members of the relevant subcommittee of these committees.

It is important to note that the Act refers to imposition, expansion or extension of foreign policy controls. Controls in effect on the date of enactment, or made effective by enactment, may be extended for an additional time period upon their renewal date and in some cases are exempted from these new constraints. But addition of items or destinations to the control list constitutes imposition of new controls, even if the items or destinations are added to an existing category of controls. Imposition of new controls or expansion of existing controls after the date of enactment is subject to these new constraints.

One of the most strongly contested issues in the debate over extension of the Export Administration Act of 1979 in the 98th Congress was the question of the extent of the President's authority to require the breaking of contracts previously entered into. The Senate bill (S. 979) effectively precluded the imposition of controls with respect to exports covered by a previous contract or agreement, under section 6 of the Act, although it opened a bit wider the door to doing so in the International Emergency Economic Powers Act (IEEPA) through the declaration of national emergency.

The House bill (H.R. 3231) also amended current law, which is silent on this subject, by specifying the circumstances under which the President was explicitly permitted to break contracts. Those circumstances included acts of aggression or international terrorism, gross violations of internationally recognized human rights, or nuclear weapons tests.

In the conference on the bills during 1984 the House ultimately agreed to recede to the Senate by a vote of 8 to 7. Subsequently, since no conference report was filed, when a "compromise" bill was offered in the Senate in the closing days of the session by Senators Garn and Heinz, it contained language somewhat different from that which the conferees had agreed to, in the interest of trying to resolve amicably this bitterly contested matter.

That compromise language was identical to that contained in this conference substitute. It precludes the breaking of contracts except in those situations where a breach of the peace poses a serious and direct threat to the strategic interest of the United States and where the prohibition or curtailment of such contracts, agreements, licenses, or authorizations would be instrumental in remedying the situation posing the direct threat. The provision also specifies that the controls shall continue only so long as the direct threat persists.

The most important thing to note in this new language is the operation of the cause and effect relationship between the two actions that are prerequisites to the imposition of controls on exports subject to a contract or agreement. Simply put, the provision requires a clear and direct relationship between the proposed control that requires the breaking of a contract and the remedying of the event causing the direct threat to our strategic interests. The certification required of the President by this provision must make clear

that such breaking or curtailment of a contract or contracts will be instrumental in remedying the situation that has occurred.

It is the judgment of the conferees that this constraint significantly narrows, but does not entirely eliminate, the authority of the President to impose controls on exports subject to, contracts or agreements, and that it will, thereby, be helpful in reestablishing the credibility of U.S. exporters without sacrificing the preservation of U.S. strategic interests. The conferees expect the President to adhere to the intent of Congress in implementing this provision and to treat the certification required by the provision with the utmost gravity. That is, any certification should specify; the breach of the peace the President has found to have occurred, the strategic interest of the United States that is seriously and directly threatened, and how the proposed control will be instrumental in remedying such situation.

The conference substitute also contains language (section 108(1) (2)) specifying that the contract sanctity language described above does not apply to controls in effect immediately before the date of enactment of this bill, those made effective by section 108 (i) (2) of the conference substitute, and those made effective by section 6(n) of the Act as added by the conference substitute. It is the intent of the conferees that this provision not apply to expansions of such controls, for example, to cover additional products or technology, or to their extension for reasons unrelated to their original imposition. In those circumstances the control in question would be considered to be a new control and therefore subject to the provisions of section 6 (m) as added by the conference substitute.

AMENDMENTS TO SECTION 7

Petitions for Monitoring or Controls

The Conference substitute amends section 7 (c) of the Act to require the Secretary to make and publish certain determinations of private petitions as well as on self/initiated motions before imposing monitoring or controls or both on exports of metallic materials capable of being recycled.

This amendment requires that each petition filed requesting the imposition of monitoring, controls, or both, on metallic materials capable of being recycled shall indicate that each of the criteria in section 7(c)(3)(A) is satisfied. The amendment requires the Secretary to make and publish certain determinations, including findings of fact in support of the determinations, before deciding whether to impose monitoring, controls, or both on exports of such material, including whether 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, and whether exports of such material are as important as any other cause of the domestic price increase or shortage relative to demand.

The amendment continues to permit the Secretary to deny complete consideration to any new petition filed within 6 months after consideration of the prior petition has been completed. The amendment also allows the Secretary to impose monitoring, controls, or both, on a temporary basis after a petition is filed if the Secretary considers such action to be necessary to carry out the policy set

forth in section 3(2)(C) of the Act, but before the Secretary makes a determination under section 7(c)(3) only if 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. This amendment requires that if the Secretary determines, on his initiative, to monitor, control, or both, the export of such material, the Secretary shall publish the reasons for such determination in accordance with section 7(c)(3) (A) and (B).

Existing law requires that increased domestic prices or domestic shortage "results from" increased exports. This language is vague and may lead some to believe that exports have to be the sole or primary cause of an increase in domestic prices or a domestic shortage. The amendment adopted by the conferees would clarify this standard and require that exports of the material must be as important as any other cause of the increased domestic prices or shortage relative to demand found pursuant to clause (ii). Under this standard, increased exports need not be the sole or principal cause of the price rise or domestic shortage in order for exports of the material to be controlled or monitored. If exports are an important cause of the domestic price increase or domestic shortage relative to demand and other causes are not more important than exports, monitoring or controls may be imposed. No mathematical weighing of the factors that contribute to price increase or shortage relative to demand is possible or desirable.

Crude Oil Study

Section 126 of the conference substitute requires a Presidential study on the export of crude oil.

The President is required to submit to the Congress 9 months after enactment of the bill 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, 100,000, 200,000, and 500,000 barrels per day, as well as the appropriateness of continuing existing controls.

It is intended that the study include, but not be limited to, a review of the issues and related data on the effect of such changes on the energy and national security of the United States and its allies; the role of such changes in U.S. foreign policymaking, including international energy policymaking; the impact of such changes on employment levels in the maritime industry, the oil industry, and other industries; the impact of such changes on the refiners and consumers; the impact of such changes on the revenues and expenditures of the Federal Government and the Government of Alaska; the effect of such changes on incentives for oil and gas exploration and development in the United States; and the effect of such changes on the overall U.S. trade deficit, and the U.S. trade deficit with respect to particular countries, including the effect of such changes on the trade barriers of other countries. The Presi-

dent is required to develop, after consulting with appropriate State and Federal officials and other persons, findings, options, and recommendations regarding the production and distribution of Alaskan North slope crude oil, and to transmit the report to the Congress containing the results of the review undertaken, and the findings, options, and recommendations developed, under this section.

In agreeing to require the President to review the issues and related data concerning possible changes in existing incentives to produce crude oil from the North Slope of Alaska, it is expected that the President, in the preparation of the review, seek the advice of such other agencies and departments as the President deems advisable, and should consult with representatives of the maritime industry, the oil industry, consumer groups, environmental groups, foreign governments, and all other industries, groups, or individuals likely to be affected by any change in existing law. To the extent the President delegates responsibility for initial preparation of the review, the conferees intend such delegation to be to the Commerce Department. It is also intended that the report produced as a result of the review address each of the criteria set forth in subsection (a)(1) of this section and provide a detailed description of each of the factors considered with respect to each of those criteria.

Short Supply Contract Sanctity—Unprocessed Red Cedar

The conference substitute provides for sanctity of prior contracts from export controls imposed under section 7 of the Act on any agricultural commodity, including fats, oils, and animal hides, any forest product, and any fishery product, and provides for sanctity of certain contracts to harvest unprocessed western red cedar. It retains the validated license requirement for exports under subsection (i).

The intention is that this provision shall not affect the prohibition contained in section 7(i) of the Act, which took effect on September 30, 1982, on exports of all unprocessed western red cedar logs harvested from Federal or state lands for which contracts were entered into on or after October 1, 1979. The provision permits the export of unprocessed western red cedar logs under harvesting contract on State lands before October 1, 1979, to continue, less any amount that has been exported under the phaseout mandated in section 7(i)(1)(A) through (C) of the Act, and less any amount exported under section 101(o) of the Public Law 96-536 and any other provision of law. This provision is not intended to affect controls mandated by other statutes of exports of unprocessed western red cedar logs harvested from Federal lands.

The conferees believe that the requirements of this provision may be met through alternatives to the present validated license requirement for each export shipment of unprocessed red cedar logs under a pre-October 1, 1979, harvesting contract on State lands and for exports of unprocessed red cedar logs harvested from private lands, including the granting of a single, validated license to an exporter for multiple shipments of unprocessed red cedar logs.

Export of Horses

The conference substitute strikes out section 7(j) of the Act, and places the provision in the Act of March 3, 1891. The effect is to continue the prohibition on the export by sea of any consignment of horses unless 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.

SECTION 10(G)

Throughout the debate over the renewal of the Act, one of the most contentious issues was that of defining the role of the Department of Defense in the licensing process. The ambiguities in the interpretation of the relationship between the Commerce and Defense Departments had led to a serious interagency conflict impeding effective administration of the Act. In an effort to address that problem the Senate bill S. 979 in the 98th Congress initially contained an amendment to section 10(g) of the Act regarding authority for the Defense Department to request to review license applications where there was, in the Department's judgment, a clear risk of diversion. Notwithstanding the fact that the amendment clearly made such review contingent on Commerce Department approval in each case a request was made, substantial opposition to the amendment arose from those who object to review of licenses by the Defense Department other than licenses for exports to controlled countries. In the end, the need for the amendment was removed by the decision of the President on his own initiative to provide for Defense Department review of license applications to specified countries and for specified categories of products, subject to continuing oversight by the National Security Council. As a result, the President's action obviates the need for the legislative change originally proposed by the Senate, and the conference substitute contains no amendment to section 10(g). This matter may be raised again should the need arise, and both House and Senate committees of jurisdiction intend to exercise close oversight with respect to implementation of the President's initiative.

AMENDMENTS TO SECTION 12—ENFORCEMENT

Section 113 of the conference substitute amends section 12(a) of the Act regarding investigation and other enforcement authorities. The intent of these amendments is to clarify as precisely as possible in statutory language the relationship between the Department of Commerce and the Customs Service in enforcing the Act. Enforcement has been hampered by unresolved questions about the nature of that relationship and the inability of the two agencies to develop procedures for sharing information better to assist each agency in its enforcement responsibilities.

With respect to overseas enforcement activities, the conferees intend that the Customs Service have primary enforcement responsibility, particularly in countries where the Customs Service has an enforcement agreement with the host government. The Commerce Department's overseas enforcement role is limited to those areas discussed *infra*. It is intended that investigations beyond U.S. bor-

ders of allegations of wrongdoing should be investigated by the Customs Service, whether or not a license has been issued or persons other than the consignee designated by a license are involved.

The conferees also intend that the Customs Service have primary responsibility for enforcement at ports of entry and exit from the United States. While the term "ports of entry and exit" can logically and properly be construed more broadly for other purposes, for the purpose of defining the area within the United States where the Commerce Department must seek the concurrence of the Customs Service in order to engage in export enforcement operations, the conferees intend that the term be narrowly construed so as to apply to actual borders and ports of entry and exit from the United States. This authority is in addition to, and not a limitation on, any other authority by Congress and recognized by the courts.

Under the conference substitute, the Commerce Department's overseas enforcement activities shall consist of alleged boycott violation investigations, pursuant to section 8 of the Act, investigations of firms prior to the issuance of a license which the firm has applied for, or for which the firm is indicated to be the overseas consignee, and postshipment verifications. The Department of Commerce shall focus its responsibility for investigating alleged domestic violations of the Act at points other than ports and borders as defined above. In that regard, the conferees expect enforcement officials of the Commerce Department to utilize pre-license checks and investigations to identify possible violations before controlled items leave the country and to prevent issuance of export licenses based on invalid information. As part of that authority, the Commerce Department should also actively engage in enforcement activities designed to discover and deter domestic circumvention of the export licensing system. The exercise by the Commerce Department of enforcement authorities at ports of entry and exit requires the concurrence of the Commissioner of Customs or a person designated by the Commissioner. After a license is issued, post-shipment verifications by the Commerce Department should be sufficient to confirm that all license conditions and representations are, in fact, being fulfilled.

Effective enforcement of the Act will depend on close cooperation between the Customs Service and the Department of Commerce. Accordingly, the conferees intend that the two agencies cooperate with each other fully, including providing each other with access to information necessary to their enforcement efforts. The conferees intend these amendments to the Act to foster open and free exchange of information among the Commissioner of Customs, the Secretary of Commerce, and the Attorney General so that the activities of these agencies complement each other and achieve more effective enforcement.

The conference substitute amends section 12 of the Act to provide that officers of the Customs Service are authorized to conduct border searches in connection with suspected illegal exports of goods or technology. This amendment is in addition to, and not a limitation on, the authority that customs officers already have. Although two United States circuit courts of appeals have specifically held that Customs officers may conduct border searches, it is not clear in the remaining circuits. See *United States v. Ajlouny*, 629

F.2d 830 (2nd Cir. 1980); *United States v. Swarovski*, 557 F.2d 40 (2nd Cir. 1977), 592 F.2d 131 (2nd Cir. 1979); *United States v. Duncan*, 693 F.2d 971 (9th Cir. 1982); *United States v. Stanley*, 545 F.2d 661 (9th Cir. 1976). One effect of the amendment is to clarify the situation for the remaining circuits.

The language as provided for by the conference substitute contains specific authority for arrests without a warrant in connection with the enforcement of the Act. This authority is in addition to any other arrest authority presently given to Customs officers. Although Customs officers currently make arrests without a warrant for export violations, as well as for violations of other laws delegated to the Customs Service for enforcement, *United States v. Swarovski*, 557 F.2d 40 (2nd Cir. 1977) held that such arrests were to be determined by the standards set forth in the various State laws since Congress had not given Customs officers specific Federal arrest authority in this area. The purpose of this amendment is to create uniformity in laws governing arrests related to export violations. Having to depend on 50 different State laws creates inefficiency and confusion in this area of importance to national security.

The conferees expect that the conference substitute will result in a greater number of criminal prosecutions for violations of the Act. However, the conferees also wish to emphasize that the Commerce Department should continue to bring administrative proceedings seeking to impose civil penalties and other administrative sanctions. In this regard, some confusion has arisen concerning the time limits for initiating administrative actions and on bringing actions in Federal court to collect civil penalties.

The intent of the committee of conference is that the Commerce Department must bring its administrative case within 5 years from the date the violation occurred. Thereafter, if it is necessary for the Government to seek to enforce collection of the civil penalty, the complaint must be filed in Federal court within 5 years from the date the penalty was due, but not paid. Any other interpretation would have the Commerce Department discover, investigate, prosecute, and file a complaint in U.S. District Court to collect the penalty imposed, but not paid, in the administrative proceeding all within 5 years from the date of the violation. In many instances, particularly those involving well-hidden diversions through foreign countries, such a task would be impossible.

IMPORT CONTROL SANCTION

The conference substitute amends the Trade Expansion Act of 1962 to provide authority to impose national security import controls, since such authority belongs more appropriately in trade law containing other provisions authorizing import restrictions for national security reasons. This import control authority, under rules of the House of Representatives, would be solely within the jurisdiction of the Committee on Ways and Means in the House. The chairman of the Subcommittee on Trade has assured the conferees on behalf of the Senate that he will not seek repeal of the authority before there has been a fair opportunity to assess actual experience in its operation, although the subcommittee may wish to hold

oversight hearings at such time as import controls are actually imposed.

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DON BONKER,
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Solely for consideration of sections 113(a)(5) and 114 of the House amendment and modifications committed to conference:

PETER W. RODINO, Jr.,
BILL HUGHES,
BILL MCCOLLUM,

Solely for consideration of section 126 and title II of the House amendment and modifications committed to conference:

JOHN D. DINGELL,
AL SWIFT,
JAMES T. BROYHILL,

Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM PROXMIRE,

Managers on the Part of the Senate.