

98TH CONGRESS
1ST SESSION

H. R. 381

To amend the Export Administration Act of 1969 to improve the administration of export controls by assigning to the Secretary of Defense the primary responsibility for identifying the types of technologies and goods which shall be controlled for national security purposes; by providing for a comprehensive and continuing review of export controls with a view to strengthening controls over exports of critical technologies and goods while facilitating exports of any technologies and goods which will not significantly adversely affect the national security of the United States; and by providing for congressional oversight of such exports, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1983

Mr. ROE introduced the following bill; which was referred jointly to the Committee on Foreign Affairs and Armed Services

A BILL

To amend the Export Administration Act of 1969 to improve the administration of export controls by assigning to the Secretary of Defense the primary responsibility for identifying the types of technologies and goods which shall be controlled for national security purposes; by providing for a comprehensive and continuing review of export controls with a view to strengthening controls over exports of critical technologies and goods while facilitating exports of any

technologies and goods which will not significantly adversely affect the national security of the United States; and by providing for congressional oversight of such exports; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Export Administration
4 Reform Act of 1983”.

5 SEC. 2. Subsection (a) of section 4 of the Export Ad-
6 ministration Act of 1969 (50 U.S.C. App. 2403(a)) is
7 amended—

8 (1) in paragraph (1), in the second sentence by in-
9 serting after “In addition,” the following: “subject to
10 the provisions of paragraph (3) of this subsection,”; and

11 (2) by adding at the end thereof the following:

12 “(3)(A) The Secretary of Defense shall have the respon-
13 sibility for identifying technologies and goods which shall be
14 controlled for national security purposes as prescribed in sec-
15 tion 3(2)(C) of this Act. The Secretary of Defense shall con-
16 duct a comprehensive review of any list, which is in effect on
17 the effective date of this paragraph, of technologies and goods
18 which are controlled for such national security purposes. The
19 Secretary shall conduct such review in consultation with the
20 Secretary of Commerce, with intelligence agencies, and, as
21 appropriate, with the heads of other departments and agen-
22 cies concerned with aspects of domestic and foreign policy

1 having an important bearing on exports and national security,
2 and with technical advisory committees established pursuant
3 to section 5(c) of this Act. The Secretary shall, on the basis
4 of such review, make such additions, deletions, and modifica-
5 tions as may be necessary or desirable in furtherance of the
6 policy set forth in section 3(2)(C) of this Act. The Secretary
7 of Defense shall classify any item on any such list as a (i)
8 critical technology, (ii) critical good, (iii) significant technol-
9 ogy, or (iv) significant good. The Secretary shall complete
10 and publish in the Federal Register such list of items so clas-
11 sified, with any such additions, deletions, or modifications,
12 not later than 180 days after the effective date of this subsec-
13 tion. The Secretary of Defense shall continuously monitor
14 technological developments within and outside of the United
15 States and shall amend such list so that it adequately reflects
16 such developments and shall publish in the Federal Register
17 any such amendments.

18 “(B) The Secretary of Defense shall include, in the list
19 of amendments published pursuant to subparagraph (A) of
20 this paragraph, a statement concerning each item on such list
21 which is potentially available without restriction from foreign
22 sources in sufficient usable quantity and of comparable qual-
23 ity. Such statement shall identify all such potential foreign
24 suppliers and the countries involved. In accordance with sec-
25 tion 5(a) of the Act, the Secretary of Defense shall seek from

1 appropriate executive departments and agencies, including
2 intelligence agencies, and such departments and agencies
3 shall furnish to the Secretary information and advice con-
4 cerning foreign availability of items under consideration for
5 inclusion on the list referred to in subparagraph (A).

6 “(C) The Secretary shall include, in the reports made
7 pursuant to section 10 of this Act, a detailed statement of
8 actions taken to carry out the provisions of this paragraph.

9 “(4) The Secretary of Defense shall establish, within the
10 Office of the Under Secretary of Defense for Research and
11 Engineering, an Office of Technology Export which shall be
12 given primary responsibility for assisting the Secretary in
13 carrying out his responsibilities under this Act. Any request
14 of the executive branch for appropriations for the Department
15 of Defense for any fiscal year, which request is submitted to
16 the Congress, shall specify the amount of funds requested for
17 the Office of Technology Export.”.

18 SEC. 3. (a) Subsection (b) of section 4 of the Export
19 Administration Act of 1969 (50 U.S.C. App. 2403(b)) is
20 amended—

21 (1) in paragraph (1), by striking out the first sen-
22 tence and inserting in lieu thereof the following: “To
23 implement the policies set forth in section 3 of this
24 Act, the President, as provided in such rules, regula-
25 tions, and orders as he may prescribe, may prohibit,

1 curtail, or control the exportation of any articles, mate-
2 rials, supplies (including technical data or any other in-
3 formation, in whatever form or of whatever type) sub-
4 ject to the jurisdiction of the United States or exported
5 by any person subject to the jurisdiction of the United
6 States.”.

7 (b) Subsection (b) of section 4 of the Export Administra-
8 tion Act of 1969 is further amended by striking out subpara-
9 graph (B) of paragraph (2) and inserting in lieu thereof the
10 following:

11 “(B) Rules and regulations issued under this subsection
12 for national security purposes shall include provisions—

13 “(i) prohibiting the export of any critical technol-
14 ogy or critical good to any controlled nation;

15 “(ii) prohibiting the export of any critical technol-
16 ogy or critical good to any nation (other than a con-
17 trolled nation) except pursuant to a validated license,
18 and prohibiting any such license to be issued for the
19 export of a critical technology or critical good to such
20 a nation the government of which fails to provide ade-
21 quate assurances that the technology or good will not
22 be transferred to any controlled nation; and

23 “(iii) prohibiting the export of any significant tech-
24 nology or significant good to any controlled nation
25 except pursuant to a validated license.

1 “(C) The President, in issuing rules and regulations
2 under this subsection for national security purposes, shall
3 take into account all technology transfers, including (but not
4 limited to) turnkey factories, engineering and design docu-
5 mentation, training, commercial visits, and technology ex-
6 changes. Rules and regulations shall be issued under this sub-
7 section to conform to the classification of items on and revi-
8 sions of the list referred to in subsection (a)(3) of this section,
9 and to conform to any subsequent amendment thereto. Such
10 rules and regulations shall take effect not later than 60 days
11 after the publication, under subsection (a)(3), of the revised
12 list or subsequent amendment thereto, as the case may be.
13 The President may not modify the classification of any item
14 which is classified by the Secretary of Defense as a critical
15 technology, critical good, significant technology, or signifi-
16 cant good unless the President determines that adequate evi-
17 dence has been presented demonstrating that such technology
18 or good no longer meets the criteria for such classification in
19 the definition set forth in paragraph (3) of this subsection.
20 The President may not, for national security purposes, pro-
21 hibit the export of, or deny a license application to an other-
22 wise eligible applicant for the export of, any significant tech-
23 nology or significant good which he finds to be available from
24 foreign sources without restriction and in sufficient and
25 usable quantity and of comparable quality, unless the Presi-

1 dent determines that adequate evidence has been presented
2 demonstrating that permitting such export would prove detri-
3 mental to the national security of the United States. The
4 nature of such evidence shall be included in the semiannual
5 report required by section 10 of this Act. In any case in
6 which, notwithstanding such foreign availability, the export
7 of any item classified as a critical technology, critical good,
8 significant technology, or significant good is prohibited for
9 national security purposes, or a license application to export
10 a significant technology or significant good is denied to an
11 otherwise eligible applicant, the President shall attempt, by
12 negotiations with the foreign government or governments
13 concerned, to eliminate such availability. If such negotiations
14 fail, the President may take any steps which he considers
15 appropriate, including the withdrawal of United States eco-
16 nomic and military assistance, to urge such foreign govern-
17 ment or governments to reconsider its export policies with
18 respect to such technology or good. If at such time the Presi-
19 dent determines that foreign availability cannot be eliminat-
20 ed, the President shall direct the Secretary of Defense to
21 review the classification of the technology or good concerned.
22 The nature of such efforts to eliminate foreign availability
23 and of any such review of the classification of a technology or
24 good shall be included in the semi-annual report required by
25 section 10 of this Act.”.

1 (c) Subsection (b) of section 4 of the Export Administra-
2 tion Act of 1969 is further amended by adding at the end
3 thereof the following new paragraph:

4 “(3) As used in this subsection the term—

5 “(A) ‘critical technology’ means a state of the art
6 or emerging technology possessed by the United States
7 which is indispensable to current or projected United
8 States military systems, and which is significantly su-
9 perior to that of any controlled nation, so that the
10 United States has a present or probable military ad-
11 vantage;

12 “(B) ‘critical good’ means any good which would
13 contribute significantly to the transfer of a critical tech-
14 nology because—

15 “(i) analysis of the good would give insight
16 into such critical technology and thereby facilitate
17 the design and manufacture of such good,

18 “(ii) the good would complete or extend a
19 process line employed in the application of such
20 critical technology, or

21 “(iii) analysis of the good would reveal all or
22 part of a United States military system and would
23 thereby facilitate the development of countermeas-
24 ures;

1 “(C) ‘significant technology’ means a United
2 States technology, other than a critical technology,
3 which would make a significant contribution to the mil-
4 itary potential of a controlled nation, including, but not
5 limited to, a technology which is obsolete by United
6 States standards, but which is superior to a controlled
7 nation’s technology;

8 “(D) ‘significant good’ means a good, other than a
9 critical good, which would contribute significantly to
10 the transfer of a significant technology because—

11 “(i) analysis of the good would give insight
12 into such significant technology and thereby facili-
13 tate the design and manufacture of such good; or

14 “(ii) the good would complete or extend a
15 process line employed in the application of such
16 significant technology; and

17 “(E) ‘controlled nation’ means a nation designated
18 by the President in accordance with subsection
19 (b)(2)(A) to be a threat to the national security of the
20 United States.”.

21 SEC. 4. Subsection (e) of section 4 of the Export Admin-
22 istration Act of 1969 (50 U.S.C. App. 2403(e)) is amended to
23 read as follows:

24 “(e) The President may delegate the power, authority,
25 and discretion conferred upon him by this Act to such depart-

1 ments, agencies, or officials of the Government as he may
2 deem appropriate. The President may not delegate or trans-
3 fer either the power, authority, and discretion conferred upon
4 the Secretary of Defense under this Act, or any authority to
5 modify determinations or decisions made by the Secretary of
6 Defense pursuant to the provisions of the Act.”.

7 SEC. 5. Section 4 of the Export Administration Act of
8 1969 (50 U.S.C. App. 2403) is amended by adding at the end
9 thereof the following new subsection:

10 “(m)(1) No decision of the President to overrule or
11 modify (A) any classification made by the Secretary of De-
12 fense pursuant to subparagraph (A) of subsection (a)(3) of this
13 section, or (B) any finding with respect to foreign availability
14 made by the Secretary pursuant to subparagraph (B) of such
15 subsection, shall become effective unless the President sub-
16 mits to the Congress a national security impact statement
17 relating to such action of the Secretary, together with the
18 reasons for the decision of the President, and unless, within
19 30 days after the date on which such national security impact
20 statement is submitted to the Congress, neither House of
21 Congress adopts a resolution disapproving the decision of the
22 President.

23 “(2) No decision of the President overruling or modify-
24 ing a recommendation made by the Secretary of Defense pur-
25 suant to subsection (h) of this section shall become effective

1 unless the President submits to the Congress a national secu-
2 rity impact statement relating to such recommendation, to-
3 gether with the reasons for the decision of the President, and
4 unless, within 30 days after the date on which such national
5 security impact statement is submitted to the Congress,
6 neither House of Congress adopts a resolution disapproving
7 the decision of the President.

8 “(3) The President, the Secretary of Defense, or any
9 Federal department or agency, as the case may be, shall,
10 within 10 days after any committee or subcommittee of either
11 House of Congress which has jurisdiction over domestic or
12 foreign policies relating to export trade or national security
13 requests a national security impact statement with respect to
14 any action taken under this Act, submit to such committee or
15 subcommittee such national security impact statement.

16 “(4) For purposes of this subsection, ‘national security
17 impact statement’ means a complete record of any action
18 taken pursuant to this Act (including the approval or disap-
19 proval of a validated license application and the modification
20 of any list of items controlled for national security purposes
21 and of any classification) with respect to the administration of
22 export controls for national security purposes as prescribed
23 by section 3(2)(C) of this Act. Such record shall include the
24 following, as appropriate:

1 “(A) with respect to a technology or good in-
2 volved in the action—

3 “(i) the technical facts upon which the action
4 was based, including (but not limited to) the
5 nature and strategic importance of the technology
6 or good, and the analysis of such facts,

7 “(ii) the extent of the technological lead of
8 the United States,

9 “(iii) foreign availability of such technology
10 or good, and

11 “(iv) the safeguards against the transfer of
12 the technology involved to a controlled nation;

13 “(B) material factual and policy issues;

14 “(C) each department or agency which partici-
15 pated in the action and the recommendations of such
16 department or agency with respect to the action; and

17 “(D) such other information as is necessary and
18 appropriate to an understanding of the action.

19 The national security impact statement shall be prepared by
20 the head of the agency primarily responsible for the action,
21 and shall include information gathered by any other agency
22 with respect to such action. Each national security impact
23 statement shall be written in clear and plain language with a
24 minimum of technical jargon and, if appropriate, a technical
25 appendix may be included in the statement.

1 “(5) Each department and agency participating in any
2 action taken under this Act with respect to export controls
3 for national security purposes as prescribed in section 3(2)(C)
4 of this Act shall retain for at least 5 years any information,
5 pertaining to its participation in such action, which would be
6 necessary for the preparation of a national security impact
7 statement with respect to such action.

8 “(6) In the computation of any 30-day period under
9 paragraph (1) or (2) of this subsection, there shall be excluded
10 the days on which either House of Congress is not in session
11 because of an adjournment of more than 3 days.”.

12 SEC. 6. Subsection (c) of section 5 of the Export Admin-
13 istration Act of 1969 (50 U.S.C. App. 2404) is amended—

14 (1) in the first sentence of paragraph (1) by strik-
15 ing out “of Commerce” and inserting in lieu thereof
16 “of Defense”;

17 (2) in the first sentence of paragraph (2) by strik-
18 ing out “of Commerce” and inserting in lieu thereof
19 “of Defense”;

20 (3) in the third sentence of paragraph (2) by in-
21 serting “of Commerce” after “the Secretary”;

22 (4) in the fourth sentence of paragraph (2) by in-
23 serting “of Commerce or the Secretary of Defense”
24 after “the Secretary”;

1 (5) in the fifth sentence of paragraph (2) by insert-
2 ing "in consultation with the Secretary of Defense"
3 after "Secretary of Commerce";

4 (6) in paragraph (3) by inserting "of Defense"
5 after "the Secretary";

6 (7) in the second sentence of paragraph (4) by in-
7 serting "of Defense" after "the Secretary"; and

8 (8) in paragraph (5) by striking out "Secretary of
9 Commerce" and inserting in lieu thereof "Secretary of
10 Defense".

11 SEC. 7. The amendments made by this Act shall take
12 effect upon enactment.

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