

Union Calendar No. 200

98TH CONGRESS
1ST SESSION

H. R. 3231

[Report No. 98-257, Parts I, II, and III]

To amend the authorities contained in the Export Administration Act of 1979,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 1983

Mr. BONKER (for himself, Mr. ZABLOCKI, Mr. FASCELL, Mr. HAMILTON, Mr. SOLARZ, Mr. MICA, Mr. BARNES, Mr. WOLPE, Mr. CROCKETT, Mr. GEJDENSON, Mr. DYMALLY, Mr. LANTOS, Mr. KOSTMAYER, Mr. TORRICELLI, Mr. BERMAN, Mr. LEVINE of California, Mr. FEIGHAN, Mr. WEISS, Mr. GARCIA, Mr. WINN, Mr. PRITCHARD, Mr. LEACH of Iowa, Mr. BEUTEER, and Mr. ZSCHAU) introduced the following bill; which was referred to the Committee on Foreign Affairs

JUNE 22, 1983

Additional sponsors: Mr. CHANDLER, Mr. PATTERSON, and Mr. McNULTY

JUNE 22, 1983

Reported, referred to the following committees for a period ending not later than July 22, 1983: to the Committee on Armed Services, for consideration of such portions of section 109 of the bill as fall within its jurisdiction pursuant to clause 1(c) of rule X; to the Committee on Banking, Finance and Urban Affairs for consideration of such portions of title III of the bill as fall within its jurisdiction pursuant to clause 1(d) of rule X; and referred to the Committee on the Judiciary for consideration of such portions of section 103 of the bill as fall within its jurisdiction pursuant to clause 1(m) of rule X

JULY 12, 1983

Referred to the Committee on Rules for a period ending not later than July 22, for consideration of portions of section 113(c) of the bill as fall within its jurisdiction pursuant to clause 1(q) of rule X

JULY 21, 1983

Referral to the Committee on Rules, extended for an additional period ending not later than July 26, 1983

1 “(3) Any person who conspires or attempts to export
2 anything contrary to any provision of this Act or any regula-
3 tion, order, or license issued under this Act shall be subject to
4 the penalties set forth in subsection (a), except that in the
5 case of a violation of an export control imposed under section
6 5 of this Act, such person shall be subject to the penalties set
7 forth in paragraph (1) of this subsection.

8 “(4) Any person who possesses any goods or
9 technology—

10 “(A) with the intent to export such goods or tech-
11 nology in violation of an export control imposed under
12 section 5 or 6 of this Act or any regulation, order, or
13 license issued with respect to such control; or

14 “(B) knowing or having reason to believe that the
15 goods or technology would be so exported;
16 shall, in the case of a violation of an export control imposed
17 under section 5, be subject to the penalties set forth in para-
18 graph (1) of this subsection and shall, in the case of a viola-
19 tion of an export control imposed under section 6, be subject
20 to the penalties set forth in subsection (a).

21 “(5) Any person who takes any action with the intent to
22 evade the provisions of this Act or any regulation, order, or
23 license issued under this Act shall be subject to the penalties
24 set forth in subsection (a), except that in the case of an eva-
25 sion of a foreign policy or national security control, such

1 person shall be subject to the penalties set forth in paragraph
2 (1) of this subsection.”.

3 (b) Section 11(c) of the Act is amended by adding at the
4 end thereof the following new paragraph:

5 “(3) An exception to any order issued under this Act
6 which revokes the authority of a United States person to
7 export goods or technology may not be made unless the
8 Committee on Foreign Affairs of the House of Representa-
9 tives and the Committee on Banking, Housing, and Urban
10 Affairs of the Senate are first consulted concerning the
11 exception.”.

12 (c) Section 11(e) of the Act is amended by inserting “or
13 any property interest or proceeds forfeited pursuant to sub-
14 section (f)” after “subsection (c)”.

15 (d) Section 11 of the Act is amended—

16 (1) by redesignating subsections (f) and (g) as sub-
17 sections (g) and (h), respectively; and

18 (2) by inserting after subsection (e) the following
19 new subsection:

20 “(f) FORFEITURE OF PROPERTY INTEREST AND PRO-
21 CEEDS.—Any person who is convicted of a violation of an
22 export control imposed under section 5 of this Act shall, in
23 addition to any other penalty, forfeit to the United States (A)
24 any property interest that person has in the goods or technol-
25 ogy that were the subject of the violation or that were used

1 to facilitate the commission of the violation, and (B) any pro-
2 ceeds derived directly or indirectly by that person from the
3 transaction from which the violation arose.”.

4 (e) Section 11(h) of the Act, as redesignated by subsec-
5 tion (d) of this section, is amended by striking out “or (f)” and
6 inserting in lieu thereof “(f), or (g)”.

7

ENFORCEMENT AUTHORITY

8 SEC. 103. Section 12(a) of the Act (50 U.S.C. App.
9 2411(a)) is amended—

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

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

14 “(2) The Secretary may designate any officer or em-
15 ployee of the Department of Commerce to do the following in
16 carrying out enforcement authorities under this Act:

17 “(A) Execute any warrant or other process issued
18 by a court or officer of competent jurisdiction with re-
19 spect to the enforcement of the provisions of this Act.

20 “(B) Make arrests without warrant for any viola-
21 tion of this Act committed in his or her presence or
22 view, or if the officer or employee has probable cause
23 to believe that the person to be arrested has committed
24 or is committing such a violation.

1 “(C) Search without warrant or process any
2 person, place, or vehicle on which, and any baggage in
3 which, the officer or employee has probable cause to
4 believe there are goods or technology being exported
5 or about to be exported in violation of this Act.

6 “(D) Seize without warrant or process any goods
7 or technology which the officer or employee has prob-
8 able cause to believe have been, are being, or are
9 about to be exported in violation of this Act.

10 “(E) Carry firearms in carrying out any activity
11 described in subparagraphs (A) through (D).

12 “(3)(A) Notwithstanding any other provision of law, the
13 authority of customs officers with respect to violations of this
14 Act shall be limited to (i) inspection of or other search for and
15 detention and seizure of goods or technology at those places
16 in which such officers are authorized by law to conduct such
17 searches, detentions, and seizures, and (ii) any investigation
18 conducted prior to such inspection, search, detention, or seiz-
19 ure. Upon seizure by any customs officer of any goods or
20 technology in the enforcement of this Act, the matter shall be
21 referred to the Department of Commerce for further investi-
22 gation and other appropriate action under this Act.

23 “(B) In conducting inspections of goods and technology
24 in the enforcement of this Act, the United States Customs
25 Service shall limit those inspections to goods and technology

1 with respect to which the Customs Service has received spe-
2 cific information of possible violations of this Act, and shall
3 not conduct random inspections which would result in the
4 detainment of shipments of goods or technology that are in
5 full compliance with this Act.

6 “(C) Notwithstanding any other provision of law, not
7 more than \$14,000,000 may be expended by the United
8 States Customs Service in any fiscal year in the enforcement
9 of export controls.

10 “(4) All provisions of law relating to the seizure, forfeit-
11 ure, and condemnation of articles for violations of the cus-
12 toms laws, the disposition of such articles or the proceeds
13 from the sale thereof, and the remission or mitigation of such
14 forfeitures, shall apply to the seizures and forfeitures in-
15 curred, or alleged to have been incurred, under the provisions
16 of this subsection or section 11(f) of this Act, insofar as such
17 provisions of law are applicable and not inconsistent with the
18 provisions of this subsection or section 11(f) of this Act;
19 except that all powers, rights, and duties conferred or im-
20 posed by the customs laws upon any officer or employee of
21 the Department of the Treasury shall, for the purposes of this
22 subsection and section 11(f) of this Act, be exercised or per-
23 formed by the Secretary or by such persons as the Secretary
24 may designate.”.

1 FINDINGS; DECLARATION OF POLICY

2 SEC. 104. (a)(1) Section 2 of the Act (50 U.S.C. App.
3 2401) is amended in paragraph (3) by striking out “which
4 would strengthen the Nation’s economy” and inserting in lieu
5 thereof “consistent with the economic, security, and foreign
6 policy objectives of the United States”.

7 (2) Section 2 of the Act is further amended by adding at
8 the end thereof the following:

9 “(10) It is important that the administration of
10 export controls imposed for foreign policy purposes
11 give special emphasis to the need to control exports of
12 goods and substances hazardous to the public health
13 and the environment that are banned or severely re-
14 stricted for use in the United States, which exports
15 could affect the international reputation of the United
16 States as a responsible trading partner.”.

17 (b) Section 3 of the Act (50 U.S.C. App. 2402) is
18 amended by adding at the end thereof the following:

19 “(12) It is the policy of the United States to sus-
20 tain vigorous scientific enterprise. To do so requires
21 protecting the ability of scientists and other scholars
22 freely to communicate their research findings by means
23 of publication, teaching, conferences, and other forms
24 of scholarly exchange.

1 “(E) A comprehensive operations license,
2 authorizing exports of goods or technology be-
3 tween and among a domestic concern and foreign
4 subsidiaries, affiliates, vendors, joint ventures, and
5 licensees of that concern which are approved by
6 the Secretary.”.

7 NATIONAL SECURITY CONTROLS

8 SEC. 106. (a) Section 5(a)(1) of the Act (50 U.S.C. App.
9 2404(a)(1)) is amended by inserting after the first sentence
10 the following new sentence: “The authority contained in this
11 subsection includes the authority to prohibit or curtail the
12 transfer of goods or technology within the United States to
13 embassies and affiliates of countries to which exports of such
14 goods or technology are controlled under this section.”.

15 (b) Section 5(b) of the Act is amended by adding at the
16 end thereof the following new sentence: “No authority or
17 permission to export may be required under this section
18 before goods or technology are exported in the case of ex-
19 ports to a country which maintains export controls on such
20 goods or technology cooperatively with the United States,
21 except that the Secretary may require an export license for
22 the export of such goods or technology to such end users as
23 the Secretary may specify by regulation. The Secretary may
24 also by regulation require any person exporting any such
25 goods or technology otherwise subject to export controls

1 under this section to notify the Department of Commerce of
2 those exports.”.

3 (c) Section 5(e) of the Act is amended by adding at the
4 end thereof the following:

5 “(5) The export of technology and related goods subject
6 to export controls under this section, including items on the
7 list of militarily critical technologies developed pursuant to
8 subsection (d) of this section, shall be eligible for a compre-
9 hensive operations license which would authorize, over a
10 period of years and to countries other than those described in
11 section 620(f) of the Foreign Assistance Act of 1961, multi-
12 ple exports and reexports between and among a domestic
13 concern and foreign subsidiaries, affiliates, vendors, joint ven-
14 turers, and licensees of that concern which are approved by
15 the Secretary.

16 “(6) The export to countries other than those described
17 in section 620(f) of the Foreign Assistance Act of 1961 of
18 goods and technology subject to export controls under this
19 section shall be eligible for a distribution license or other li-
20 censes authorizing multiple exports. The Secretary shall peri-
21 odically monitor exports made pursuant to such licenses in
22 order to insure compliance with the provisions of this Act.”.

23 (d) Section 5(g) of the Act is amended—

1 (1) in the second sentence by striking out “by the
2 latest such increase” and inserting in lieu thereof “by
3 the regulations”; and

4 (2) by inserting after the first sentence the follow-
5 ing: “The regulations issued by the Secretary shall es-
6 tablish as one criterion for the removal of goods or
7 technology from such license requirements the antici-
8 pated needs of the military of countries to which ex-
9 ports are controlled for national security purposes.”.

10 (e) Section 5(k) of the Act is amended—

11 (1) by inserting “, including those countries not
12 participating in the group known as the Coordinating
13 Committee,” after “other countries”; and

14 (2) by striking out “section 3(9)” and inserting in
15 lieu thereof “paragraphs (9) and (10) of section 3”.

16 (f) Section 5 of the Act is amended by adding at the end
17 thereof the following new subsections:

18 “(m) REMOVAL OF CERTAIN CONTROLS.—(1) In any
19 case in which, during any 1-year period in which export li-
20 cense applications have been filed for the export of a good
21 subject to an export control under this section, all such li-
22 cense applications have been approved to a country group,
23 the Secretary shall, at the end of that 1-year period, remove
24 the export control on exports of that good to that country
25 group, except that the Secretary may require an export li-

1 Committee, and improve the structure and function of
2 the Secretariat of the Committee by upgrading profes-
3 sional staff, translation services, data base mainte-
4 nance, communications, and facilities.

5 “(6) Agreement to strengthen the Committee so
6 that it functions effectively in controlling export trade
7 in a manner that better protects the national security
8 of each participant to the benefit of all participants.”.

9 FOREIGN AVAILABILITY

10 SEC. 108. (a) Section 5(f)(4) of the Act (50 U.S.C. App.
11 2404(f)(4)) is amended by striking out the first sentence and
12 inserting in lieu thereof the following: “In any case in which
13 export controls are maintained under this section notwith-
14 standing foreign availability, on account of a determination
15 by the President that the absence of the controls would prove
16 detrimental to the national security of the United States, the
17 President shall take the necessary steps to conduct negotia-
18 tions with the governments of the appropriate foreign coun-
19 tries for the purpose of eliminating such availability. If,
20 within 6 months after the President’s determination, the for-
21 eign availability has not been eliminated, the Secretary may
22 not, after the end of that 6-month period, require a validated
23 license for the export of the goods or technology involved.”.

24 (b) Section 5(f)(3) of the Act is amended to read as fol-
25 lows:

1 “(3) With respect to export controls imposed under this
2 section, in making any determination of foreign availability,
3 the Secretary shall accept the representations of applicants
4 unless such representations are contradicted by reliable evi-
5 dence, including scientific or physical examination, expert
6 opinion based upon adequate factual information, and intel-
7 ligence information.”.

8 (c)(1) Section 5(f)(5) of the Act is amended to read as
9 follows:

10 “(5) The Secretary shall establish in the Department of
11 Commerce an Office of Foreign Availability which shall be
12 under the direction of the Assistant Secretary of Commerce
13 for Trade Administration. The Office shall be responsible for
14 gathering and analyzing all the necessary information in
15 order for the Secretary to make determinations of foreign
16 availability under this Act. The Secretary shall make availa-
17 ble to the Committee on Foreign Affairs of the House of
18 Representatives and the Committee on Banking, Housing,
19 and Urban Affairs of the Senate at the end of each 6-month
20 period during a fiscal year information on the operations of
21 the Office during that 6-month period. Such information shall
22 include a description of every determination made under this
23 Act during that 6-month period that foreign availability did
24 not exist, together with an explanation of that determina-
25 tion.”.

1 (2) Section 5(f)(6) of the Act is amended by striking out
2 “Office of Export Administration” and inserting in lieu there-
3 of “Office of Foreign Availability”.

4 (d) Section 5(f) of the Act is amended by adding at the
5 end thereof the following new paragraph:

6 “(7) The Secretary shall issue regulations with respect
7 to determinations of foreign availability under this Act not
8 later than 6 months after the date of the enactment of the
9 Export Administration Amendments Act of 1983.”.

10 (e) Section 5(h)(6) of the Act is amended by striking out
11 “and provides adequate documentation” and all that follows
12 through the end of the paragraph and inserting in lieu thereof
13 the following: “the technical advisory committee shall submit
14 that certification to the Congress at the same time the certifi-
15 cation is made to the Secretary, together with the documen-
16 tation for the certification, in accordance with the procedures
17 established pursuant to subsection (f)(1) of this section. The
18 Secretary shall investigate the foreign availability so certified
19 and, not later than 90 days after the certification is made,
20 shall submit a report to the technical advisory committee and
21 the Congress stating that (A) the Secretary has removed the
22 requirement of a validated license for the export of the goods
23 or technology, on account of the foreign availability, (B) the
24 Secretary has recommended to the President that negotia-
25 tions be conducted to eliminate the foreign availability, or (C)

1 the Secretary has determined on the basis of the investigation
2 that the foreign availability does not exist. To the extent nec-
3 essary, the report may be submitted on a classified basis. In
4 any case in which the Secretary has recommended to the
5 President that negotiations be conducted to eliminate the for-
6 eign availability, the President shall take the necessary steps
7 to conduct such negotiations with the governments of the ap-
8 propriate foreign countries. If, within 6 months after the Sec-
9 retary submits such report to the Congress, the foreign avail-
10 ability has not been eliminated, the Secretary may not, after
11 the end of that 6-month period, require a validated license for
12 the export of the goods or technology involved.”.

13 **MILITARILY CRITICAL TECHNOLOGIES**

14 **SEC. 109.** Section 5(d) of the Act (50 U.S.C. App.
15 2404(d)) is amended by striking out paragraphs (4) through
16 (6) and inserting in lieu thereof the following:

17 **“(4)(A) The Secretary and the Secretary of Defense**
18 **shall complete the integration of the list of militarily critical**
19 **technologies into the commodity control list not later than**
20 **April 1, 1985. The integration of the list of militarily critical**
21 **technologies into the commodity control list shall be complet-**
22 **ed with all deliberate speed, and the Secretary and the Sec-**
23 **retary of Defense shall report to the appropriate committees**
24 **of the Congress, before April 1, 1985, any circumstances**
25 **which would preclude the completion of the integrated list by**

1 that date. Such integrated list shall include only a good or
2 technology with respect to which the Secretary finds that
3 countries to which exports are controlled under this section
4 do not possess that good or technology, or a similar good or
5 technology, and the good or technology or similar good or
6 technology is not available in fact to such a country from
7 sources outside the United States in sufficient quantity and of
8 sufficient quality so that the requirement of a validated li-
9 cense for the export of such good or technology is or would
10 be ineffective in achieving the purpose set forth in subsection
11 (a) of this section, except in the case of a determination of the
12 President with respect to goods or technology under subsec-
13 tion (f)(1) of this section. The Secretary and the Secretary of
14 Defense shall jointly submit a report to the Congress, not
15 later than April 1, 1985, on actions taken to carry out this
16 subparagraph. In any case in which it is determined that a
17 good or technology should be included on the commodity con-
18 trol list completed pursuant to this subparagraph notwith-
19 standing foreign availability, the report to Congress shall
20 specify why inclusion of that good or technology would sig-
21 nificantly benefit United States military or national security.

22 “(B) The General Accounting Office shall evaluate the
23 efforts of the Secretary and the Secretary of Defense to inte-
24 grate the list of militarily critical technologies into the com-
25 modity control list, and the feasibility of such integration. In

1 conducting such evaluation, the General Accounting Office
2 shall determine whether foreign availability was used as a
3 criterion in developing the commodity control list pursuant to
4 subparagraph (A) and whether the completed list reflected
5 the intent of the Congress in enacting this subsection. In con-
6 ducting such evaluation, the General Accounting Office shall
7 have access to all information relating to the list of militarily
8 critical technologies, and representatives of the General Ac-
9 counting Office designated by the Comptroller General may
10 attend any meetings held in the executive branch with re-
11 spect to such list. The appropriate officers or employees shall
12 notify the General Accounting Office of when and where any
13 such meeting will be held. Not later than April 1, 1985, the
14 General Accounting Office shall submit a detailed report to
15 the Congress on the results of the evaluation conducted pur-
16 suant to this subparagraph.

17 “(C) The Secretary and the Secretary of Defense, in
18 completing the commodity control list pursuant to subpara-
19 graph (A), and the General Accounting Office, in conducting
20 the evaluation pursuant to subparagraph (B), shall consider
21 mechanisms to reduce significantly the list of militarily criti-
22 cal technologies, including evaluating for possible removal
23 from the list those goods or technology which are in one or
24 more of the following categories:

1 ~~“(i) Goods and technology the transfer of which~~
2 ~~would not lead to a significant near-term improvement~~
3 ~~in the defense capability of a country to which exports~~
4 ~~are controlled under this section.~~

5 ~~“(ii) A technology that is evolving slowly.~~

6 ~~“(iii) Technology that is not process-oriented.~~

7 ~~“(iv) Components used in militarily sensitive de-~~
8 ~~vices that in themselves are not sensitive.~~

9 ~~“(D) The reports submitted pursuant to subparagraphs~~
10 ~~(A) and (B) shall each include the results of the evaluation of~~
11 ~~the goods and technology set forth in subparagraph (C) and~~
12 ~~an evaluation of the feasibility of effectively imposing export~~
13 ~~controls on technologies as opposed to goods which are the~~
14 ~~products of those technologies.”.~~

15 *MILITARILY CRITICAL TECHNOLOGIES*

16 *SEC. 109. Section 5(d) of the Act (50 U.S.C. App.*
17 *240(d)) is amended by striking out paragraphs (4) through*
18 *(6) and inserting in lieu thereof the following:*

19 ~~“(4)(A) The Secretary and the Secretary of Defense~~
20 ~~shall complete the integration of the list of militarily critical~~
21 ~~technologies into the commodity control list not later than~~
22 ~~April 1, 1985. The integration of the list of militarily critical~~
23 ~~technologies into the commodity control list shall be completed~~
24 ~~with all deliberate speed, and the Secretary and the Secre-~~
25 ~~tary of Defense shall report to the appropriate committees of~~

1 *the Congress, before April 1, 1985, any circumstances which*
2 *would preclude the completion of the integrated list by that*
3 *date. Any disagreement between the Secretary and the Secre-*
4 *tary of Defense as to whether a good or technology on the list*
5 *of militarily critical technologies should be integrated into the*
6 *commodity control list shall be resolved by the President not*
7 *later than November 1, 1984. Such integrated list shall in-*
8 *clude only a good or technology with respect to which the*
9 *Secretary finds that countries to which exports are controlled*
10 *under this section do not possess that good or technology, or a*
11 *functionally equivalent good or technology, and the good or*
12 *technology or functionally equivalent good or technology is*
13 *not available in fact to such a country from sources outside*
14 *the United States in sufficient quantity and of comparable*
15 *quality so that the requirement of a validated license for the*
16 *export of such good or technology is or would be ineffective in*
17 *achieving the purpose set forth in subsection (a) of this sec-*
18 *tion, except in the case of a determination of the President*
19 *with respect to goods or technology under subsection (f)(1) of*
20 *this section. The Secretary and the Secretary of Defense*
21 *shall jointly submit a report to the Congress not later than*
22 *April 1, 1985, on actions taken to carry out this subpara-*
23 *graph.*

24 “(B) *The General Accounting Office shall evaluate the*
25 *efforts of the Secretary and the Secretary of Defense to inte-*

1 *grate the list of militarily critical technologies into the com-*
2 *modity control list, and the feasibility of such integration. In*
3 *conducting such evaluation, the General Accounting Office*
4 *shall determine whether foreign availability was used as a*
5 *criterion in developing the commodity control list pursuant to*
6 *subparagraph (A) and whether the completed list reflected the*
7 *intent of the Congress in enacting this subsection. In con-*
8 *ducting such evaluation, the General Accounting Office shall*
9 *have access to all information relating to the list of militarily*
10 *critical technologies. Not later than April 1, 1985, the Gener-*
11 *al Accounting Office shall submit a detailed report to the*
12 *Congress on the results of the evaluation conducted pursuant*
13 *to this subparagraph.*

14 “(C) *The Secretary and the Secretary of Defense, in*
15 *integrating the list of militarily critical technologies into the*
16 *commodity control list pursuant to subparagraph (A), shall*
17 *consider mechanisms to reduce the list of militarily critical*
18 *technologies.*

19 “(5) *The Secretary of Defense shall establish a proce-*
20 *dure for reviewing the goods and technology on the list of*
21 *militarily critical technologies at least annually after the in-*
22 *tegrated list is completed pursuant to paragraph (4)(A), for*
23 *the purpose of removing from the list of militarily critical*
24 *technologies any goods or technology that are no longer mili-*
25 *tarily critical. The Secretary of Defense, may, after the inte-*

1 *grated list is so completed, add to the list of militarily critical*
2 *technologies any good or technology that the Secretary of De-*
3 *fense determines is militarily critical. If the Secretary and*
4 *the Secretary of Defense disagree as to whether any change*
5 *in the list of militarily critical technologies by the addition or*
6 *removal of a good or technology should also be made in the*
7 *commodity control list, the President shall resolve the dis-*
8 *agreement not later than three months after the change is*
9 *made in the list of militarily critical technologies.*

10 “(6) *The Secretary of Defense shall, not later than*
11 *April 1, 1985, report to the appropriate committees of the*
12 *Congress on efforts by the Department of Defense to assess*
13 *the impact that the transfer of goods or technology on the list*
14 *of militarily critical technologies to countries to which ex-*
15 *ports are controlled under this section has had or will have on*
16 *the military capabilities of those countries.*”.

17 CRITERIA FOR FOREIGN POLICY CONTROLS; CONSULTA-
18 TION WITH OTHER COUNTRIES; REPORT TO CON-
19 GRESS

20 SEC. 110. (a) Section 6(b) of the Act (50 U.S.C. App.
21 2405(b)) is amended to read as follows:

22 “(b) CRITERIA.—When imposing, expanding, or ex-
23 tending export controls on goods or technology under this
24 section, the President shall consider whether—

1 “(1) the intended foreign policy purposes of the
2 proposed controls can be achieved through negotiations
3 or other alternative means;

4 “(2) the proposed controls are compatible with the
5 foreign policy objectives of the United States and with
6 overall United States policy toward the country to
7 which exports are to be subject to the proposed
8 controls;

9 “(3) the proposed controls will have an adverse
10 effect on the economic or political relations of the
11 United States with other friendly countries;

12 “(4) the proposed controls will have a substantial
13 adverse effect on the export performance of the United
14 States, on the competitive position of the United States
15 in the international economy, on the international repu-
16 tation of the United States as a reliable supplier of
17 goods and technology, or on the economic well-being of
18 individual United States industries, companies, and
19 their employees and communities;

20 “(5) the United States has the ability to enforce
21 the proposed controls effectively;

22 “(6) the proposed controls are likely to achieve
23 the intended foreign policy purpose; and

24 “(7)(A) the good or technology, or a similar good
25 or technology, is available in sufficient quantity from

1 sources outside the United States to the country to
2 which exports are to be subject to the proposed con-
3 trols, or (B) negotiations have been successfully con-
4 cluded with the appropriate foreign governments to
5 ensure the cooperation of such governments in control-
6 ling the export of such good or technology to the coun-
7 try to which exports are to be subject to the proposed
8 controls, except that the preceding provisions of this
9 paragraph shall not apply if the President determines
10 that the proposed controls are necessary to further ef-
11 forts by the United States to counter international ter-
12 rorism or to promote observance of internationally rec-
13 ognized human rights.”.

14 (b) Section 6 of the Act is amended—

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

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

19 “(d) CONSULTATION WITH OTHER COUNTRIES.—
20 Before export controls are imposed under this section, the
21 President should consult with the countries with which the
22 United States maintains export controls cooperatively, and
23 with such other countries as the President considers appro-
24 priate, with respect to the criteria set forth in subsection (b)

1 and such other matters as the President considers
2 appropriate.”.

3 (c) Section 6(f) of the Act, as redesignated by subsection
4 (b)(1) of this section, is amended to read as follows:

5 “(f) CONSULTATION WITH THE CONGRESS.—(1) The
6 President may impose, expand, or extend export controls
7 under this section only after consultation with the Committee
8 on Foreign Affairs of the House of Representatives and the
9 Committee on Banking, Housing, and Urban Affairs of the
10 Senate.

11 “(2) Following consultation with the Congress in ac-
12 cordance with paragraph (1) and before imposing, expanding,
13 or extending export controls under this section, the President
14 shall submit to the Congress a report—

15 “(A) indicating how the proposed export controls
16 will further, significantly, the foreign policy of the
17 United States or will further its declared international
18 obligations;

19 “(B) specifying the conclusions of the President
20 with respect to each of the criteria set forth in subsec-
21 tion (b), and any possible adverse foreign policy
22 consequences;

23 “(C) describing the nature, the subjects, and the
24 results of the consultation with industry pursuant to

1 subsection (c) and with other countries pursuant to sub-
2 section (d);

3 “(D) specifying the nature and results of any al-
4 ternative means attempted under subsection (e), or the
5 reasons for imposing, expanding, or extending the con-
6 trols without attempting any such alternative means;
7 and

8 “(E) describing the availability from other coun-
9 tries of goods or technology comparable to the goods
10 or technology subject to the proposed export controls,
11 and describing the nature and results of the efforts
12 made pursuant to subsection (h) to secure the coopera-
13 tion of foreign governments in controlling the foreign
14 availability of such comparable goods or technology.

15 The concerns expressed by Members of Congress during the
16 consultations required by this subsection shall be specifically
17 addressed in each report submitted pursuant to this
18 paragraph.

19 “(3) To the extent necessary to further the effectiveness
20 of the export controls, portions of a report required by para-
21 graph (2) may be submitted to the Congress on a classified
22 basis, and shall be subject to the provisions of section 12(c) of
23 this Act.

24 “(4) In the case of export controls under this section
25 which prohibit or curtail the export of any agricultural com-

1 modify, a report submitted pursuant to paragraph (2) shall be
2 deemed to be the report required by section 7(g)(3) of this
3 Act.”.

4 (d) Section 6(i) of the Act, as redesignated by subsection
5 (b)(1) of this section, is amended by striking out “(f), and (g)”
6 and inserting in lieu thereof “(e), (g), and (h)”.

7 EFFECT OF CONTROLS ON EXISTING CONTRACTS AND
8 LICENSES

9 SEC. 111. (a) Section 6 of the Act (50 U.S.C. App.
10 2405), as amended by section 110 of this Act, is further
11 amended by adding at the end thereof the following new
12 subsection:

13 “(m) EFFECT OF CONTROLS ON EXISTING CON-
14 TRACTS AND LICENSES.—Any export controls imposed
15 under this section shall not affect any contract to export en-
16 tered into before the date on which such controls are imposed
17 or any export license issued under this Act before such date.
18 The preceding sentence shall not apply in a case in which the
19 export controls imposed relate directly, immediately, and sig-
20 nificantly to actual or imminent acts of aggression or of inter-
21 national terrorism, to actual or imminent gross violations of
22 internationally recognized human rights, or to actual or im-
23 minent nuclear weapons tests, in which case the President
24 shall promptly notify the Congress of the circumstances to
25 which the export controls relate and of the contracts or li-

1 censes affected by the controls. Any export controls described
2 in the preceding sentence shall affect existing contracts and
3 licenses only so long as the acts of aggression or terrorism,
4 violations of human rights, or nuclear weapons tests continue
5 or remain imminent. For purposes of this subsection, the
6 term 'contract to export' includes, but is not limited to, an
7 export sales agreement and an agreement to invest in an en-
8 terprise which involves the export of goods or technology.'".

9 (b) Section 7 of the Act (50 App. 2406) is amended by
10 adding at the end thereof the following new subsection:

11 "(k) EFFECT OF CONTROLS ON EXISTING CON-
12 TRACTS.—Any export controls imposed under this section
13 shall not affect any contract to export entered into before the
14 date on which such controls are imposed, including any con-
15 tract to harvest unprocessed western red cedar (as defined in
16 subsection (i)(4) of this section) from State lands, the perform-
17 ance of which contract would make the red cedar available
18 for export. For purposes of this subsection, the term 'contract
19 to export' includes, but is not limited to, an export sales
20 agreement and an agreement to invest in an enterprise which
21 involves the export of goods or technology.'".

22 (c) The amendment made by subsection (a) shall not
23 apply to export controls imposed before the date of the enact-
24 ment of this Act. The amendment made by subsection (b)
25 shall apply to export controls in effect on the date of the

1 enactment of this Act and export controls imposed after such
2 date.

3 EXEMPTION FROM FOREIGN POLICY CONTROLS

4 SEC. 112. Section 6(g) of the Act (50 U.S.C. App.
5 2405(g)), as redesignated by section 110(b)(1) of this Act, is
6 amended—

7 (1) by inserting after the first sentence the follow-
8 ing: “This section also does not authorize export con-
9 trols on donations of goods, such as food and clothing,
10 intended to be used to relieve human suffering.”; and

11 (2) by adding at the end thereof the following:
12 “The President may impose export controls under this
13 section on medicine, medical supplies, food, and dona-
14 tions of goods without regard to the other provisions of
15 this subsection in order to carry out the policy set forth
16 in paragraph (13) of section 3 of this Act.”.

17 FOREIGN POLICY CONTROLS AUTHORITY

18 SEC. 113. (a) The first sentence of section 6(a)(1) of the
19 Act (50 U.S.C. App. 2405(a)(1)) is amended to read as fol-
20 lows: “In order to carry out the policy set forth in paragraph
21 (2)(B), (7), (8), or (13) of section 3 of this Act, the President
22 may prohibit or curtail the exportation from the United
23 States of any goods, technology, or other information pro-
24 duced in the United States, to the extent necessary to further

1 significantly the foreign policy of the United States or to ful-
2 fill its declared international obligations.”.

3 (b) Section 6(a) of the Act is further amended by redes-
4 ignating paragraphs (2) through (4) as paragraphs (3) through
5 (5), respectively, and by inserting after paragraph (1) the fol-
6 lowing new paragraph:

7 “(2) Any export control imposed under this section shall
8 apply to any transaction or activity undertaken with the
9 intent to evade that export control, even if that export con-
10 trol would not otherwise apply to that transaction or
11 activity.”.

12 (c) Section 6 of the Act, as amended by sections 110
13 and 111 of this Act, is further amended by adding at the end
14 thereof the following new subsection:

15 “(n) EXPANDED AUTHORITY TO IMPOSE CON-
16 TROLS.—(1) In any case in which the President determines
17 that it is necessary to impose controls under this section—

18 “(A) with respect to goods, technology, other in-
19 formation, or persons other than that authorized by
20 subsection (a)(1) of this section; or

21 “(B) without any limitation contained in subsec-
22 tion (c), (d), (e), (g), (h), or (m) of this section,

23 the President may impose those controls only if the President
24 submits that determination to the Congress, together with a
25 report pursuant to subsection (f) of this section with respect

1 equipment shall be made in concurrence with the rec-
2 ommendations of the Secretary of State submitted to
3 the Secretary with respect to the application pursuant
4 to section 10(e) of this Act,

5 except that if the Secretary does not agree with the Secre-
6 tary of State with respect to any such determination, the
7 matter shall be referred to the President for resolution.”.

8 (b) The amendment made by subsection (a) shall apply
9 to determinations of the Secretary of Commerce which are
10 made on or after the date of the enactment of this Act.

11 REIMPOSITION OF EXPORT CONTROLS

12 SEC. 115. (a) Section 6 of this Act, as amended by sec-
13 tions 110, 111, and 113 of this Act, is further amended by
14 adding at the end thereof the following new subsection:

15 “(o) EXTENSION OF CERTAIN CONTROLS.—Those
16 export controls imposed under this section which were in
17 effect on February 28, 1982, and ceased to be effective on
18 March 1, 1982, September 15, 1982, or January 20, 1983
19 (except those controls with respect to the 1980 summer
20 Olympic games), shall become effective on the date of the
21 enactment of this subsection, and shall remain in effect until
22 1 year after such date of enactment. At the end of that 1-
23 year period, any of those controls made effective by this sub-
24 section may be extended by the President in accordance with
25 subsections (b) and (f) of this section.”.

1 (b) Section 6(j) of this Act, as redesignated by section
2 110(b)(1) of this Act, is amended by adding at the end thereof
3 the following new sentence: "Any such determination which
4 has been made with respect to a country may not be rescind-
5 ed unless the President first submits to the Congress a report
6 justifying the rescission and certifying that the country con-
7 cerned has not provided support for international terrorism,
8 including support for groups engaged in such terrorism, for
9 the preceding 12-month period."

10 (c) The amendment made by subsection (b) shall apply
11 with respect to any export control made effective by the
12 amendment made by subsection (a).

13 PETITIONS FOR SHORT SUPPLY CONTROLS

14 SEC. 116. (a) Section 7(c)(1)(A) of the Act (50 U.S.C.
15 App. 2406(c)(1)(A)) is amended to read as follows:

16 "(c) PETITIONS FOR MONITORING OR CONTROLS.—
17 (1)(A) Any entity, including a trade association, firm, or certi-
18 fied or recognized union or group of workers, which is repre-
19 sentative of an industry or a substantial segment of an indus-
20 try which processes metallic materials capable of being recy-
21 cled (i) with respect to which an increase in domestic prices
22 or a domestic shortage, either of which results from increased
23 exports, is or may be a substantial cause of adverse effect on
24 the national economy or any sector thereof or on a domestic
25 industry, and (ii) with respect to which a significant increase

1 in exports is or may be a substantial cause of adverse effect
2 on the national economy or any sector thereof or on a domes-
3 tic industry, may transmit a written petition to the Secretary
4 requesting the monitoring of exports or the imposition of
5 export controls, or both, with respect to such material, in
6 order to carry out the policy set forth in section 3(2)(C) of
7 this Act.”.

8 (b) Section 7(c)(1)(B) of the Act is amended—

9 (1) in clause (i) by striking out “and” after
10 “supply,”; and

11 (2) by striking out the period at the end thereof
12 and inserting in lieu thereof “, and (iii) that the criteria
13 set forth in paragraph (3)(A) of this subsection are
14 satisfied.”.

15 (c) Section 7(c)(1) of the Act is further amended by
16 adding at the end thereof the following:

17 “(C)(i) For purposes of this subsection, the term ‘sub-
18 stantial cause’ means a cause which is important and not less
19 than any other cause.

20 “(ii) Before March 1, 1984, the Secretary shall issue
21 regulations, in accordance with section 553 of title 5, United
22 States Code, which define the operative terms contained in
23 section 3(2)(C) of this Act and in this subsection, including
24 but not limited to the following: ‘excessive drain’, ‘scarce ma-
25 terials’, ‘serious inflationary impact of foreign demand’, ‘do-

1 mestic shortage', 'increase in domestic prices' and 'increase
2 in the domestic price', 'representative of an industry or a
3 substantial segment of an industry', 'domestic industry', 'spe-
4 cific period of time', 'national economy or any sector thereof',
5 'significant increase in exports', and 'adverse effect'."

6 (d) Section 7(c)(3) of the Act is amended to read as
7 follows:

8 "(3)(A) Within 45 days after the end of the 30-day or
9 45-day period described in paragraph (2), as the case may be,
10 the Secretary shall determine whether to impose monitoring
11 or controls, or both, on the export of the material which is
12 the subject of the petition, in order to carry out the policy set
13 forth in section 3(2)(C) of this Act. In making such determi-
14 nation, the Secretary shall determine whether—

15 "(i) there has been a significant increase, in rela-
16 tion to a specific period of time, in exports of such
17 material;

18 "(ii) there has been a significant increase in the
19 domestic price of such material or a domestic shortage
20 of such material and exports are a substantial cause of
21 such domestic price increase or domestic shortage;

22 "(iii) exports of such material are or may be a
23 substantial cause of adverse effect on the national
24 economy or any sector thereof or on a domestic indus-
25 try; and

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

4 “(B) The Secretary shall publish in the Federal Register
5 a detailed statement of the reasons for the Secretary’s deter-
6 mination pursuant to subparagraph (A) of whether to impose
7 monitoring or controls, or both, including the findings of fact
8 in support of that determination.”.

9 (e) Section 7(c)(6) of the Act is amended to read as
10 follows:

11 “(6) If a petition with respect to a particular material or
12 group of materials has been considered in accordance with all
13 the procedures prescribed in this subsection, the Secretary
14 shall not consider any other petition with respect to the same
15 material or group of materials which is filed within 6 months
16 after final action on the prior petition has been completed.”.

17 (f) Section 7(c) of the Act is further amended—

18 (1) by striking out paragraph (8) and redesignating
19 paragraphs (9) and (10) as paragraphs (8) and (9),
20 respectively;

21 (2) by amending paragraph (8), as redesignated by
22 paragraph (1) of this subsection, to read as follows:

23 “(8) The authority under this subsection shall not be
24 construed to affect the authority of the Secretary under any
25 provision of this Act other than this section.”; and

1 (3) by adding at the end thereof the following:

2 “(10) Notwithstanding subsection (a) or (b) of this sec-
3 tion, no action in response to an informal or formal request
4 by any entity described in paragraph (1)(A) of this subsection
5 to impose controls on or monitor the export of metallic mate-
6 rials capable of being recycled shall be taken under this sec-
7 tion except pursuant to this subsection. The Secretary, in any
8 other case, may not impose controls on or monitor the export
9 of metallic materials capable of being recycled unless the
10 Secretary makes the determination required by paragraph
11 (3)(A) of this subsection with respect to such controls or mon-
12 itoring and complies with paragraph (3)(B) with respect to
13 that determination.”.

14 (g) Section 13(a) of the Act is amended by striking out
15 “section 11(c)(2)” and inserting in lieu thereof “sections
16 7(c)(1)(C)(ii) and 11(c)(2)”.

17 **DOMESTICALLY PRODUCED CRUDE OIL**

18 **SEC. 117.** Section 7(d) of the Act (50 U.S.C. 2406(d)) is
19 amended by adding at the end thereof the following:

20 “(4) Notwithstanding the provisions of section 20 of this
21 Act, the provisions of this subsection shall expire on Septem-
22 ber 30, 1987.”.

23 **REFINED PETROLEUM PRODUCTS**

24 **SEC. 118.** Section 7(e)(1) of the Act (50 U.S.C. App.
25 2406(e)(1)) is amended in the first sentence by striking out

1 “No” and inserting in lieu thereof “In any case in which the
2 President determines that it is necessary to impose export
3 controls on refined petroleum products in order to carry out
4 the policy set forth in section 3(2)(C) of this Act, the Presi-
5 dent shall notify the Congress of that determination. The
6 President shall also notify the Congress if and when he deter-
7 mines that such export controls are no longer necessary.
8 During any period in which a determination that such export
9 controls are necessary is in effect, no”.

10

AGRICULTURAL EXPORTS

11 SEC. 119. (a) Section 7(g)(3) of the Act (50 U.S.C. App.
12 2406(g)(3)) is amended by amending the second sentence to
13 read as follows: “If the Congress, within 60 days after the
14 date of its receipt of such report, does not adopt a joint reso-
15 lution approving such prohibition or curtailment, then such
16 prohibition or curtailment shall cease to be effective at the
17 end of that 60-day period.”.

18 (b) The third sentence of section 7(g)(3) of the Act is
19 amended by striking out “30-day” and inserting in lieu there-
20 of “60-day”.

21

LICENSING PROCEDURES

22 SEC. 120. (a) Section 10(c) of the Act (50 U.S.C. App.
23 2409(c)) is amended by striking out “90” and inserting in
24 lieu thereof “60”.

25 (b) Section 10(f)(2) of the Act is amended—

1 (1) by inserting “in writing” after “inform the ap-
2 plicant”; and

3 (2) by striking out “, and shall accord” and all
4 that follows through the end of the paragraph and in-
5 serting in lieu thereof a period and the following:

6 “Before a final determination with respect to the application
7 is made, the applicant shall be entitled—

8 “(A) to respond in writing to such questions, con-
9 siderations, or recommendations within 30 days after
10 receipt of such information from the Secretary; and

11 “(B) upon the filing of a written request with the
12 Secretary within 15 days after the receipt of such in-
13 formation, to respond in person to the department or
14 agency raising such questions, considerations, or
15 recommendations.”.

16 (c) Section 10(f)(3) of the Act is amended—

17 (1) in the first sentence—

18 (A) by inserting “the proposed” before
19 “denial” the first two places it appears; and

20 (B) by striking out “denial” the third place it
21 appears and inserting in lieu thereof “determina-
22 tion to deny the application”; and

23 (2) by inserting after the first sentence the follow-
24 ing new sentence: “The Secretary shall allow the ap-

1 plicant at least 30 days to respond to the Secretary's
2 determination before the license application is denied."

3 (d) Section 10 of the Act is amended—

4 (1) in the section heading by adding “; other in-
5 quiries” after “applications”; and

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

8 “(k) CHANGES IN REQUIREMENTS FOR APPLICA-
9 TIONS.—Except as provided in subsection (b)(3) of this sec-
10 tion, in any case in which, after a license application is sub-
11 mitted, the Secretary changes the requirements for such a
12 license application, the Secretary may request appropriate
13 additional information of the applicant, but the Secretary may
14 not return the application to the applicant without action be-
15 cause it fails to meet the changed requirements.

16 “(l) OTHER INQUIRIES.—(1) In any case in which the
17 Secretary receives a written request asking for the proper
18 classification of a good or technology on the commodity con-
19 trol list, the Secretary shall, within 10 days after receipt of
20 the request, inform the person making the request of the
21 proper classification.

22 “(2) In any case in which the Secretary receives a writ-
23 ten request for information about the applicability of export
24 license requirements under this Act to a proposed export
25 transaction or series of transactions, the Secretary shall,

1 within 30 days after receipt of the request, reply with that
2 information to the person making the request.”.

3

ANNUAL REPORT

4 SEC. 121. Section 14 of the Act (50 U.S.C. App. 2413)
5 is amended—

6 (1) by redesignating paragraphs (11) through (20)
7 as paragraphs (12) through (21), respectively; and

8 (2) by inserting after paragraph (10) the following
9 new paragraph:

10 “(11) the removal of export controls on goods
11 pursuant to section 5(m);”.

12

TECHNICAL AMENDMENTS

13 SEC. 122. (a) Section 7(i)(1) of the Act (50 U.S.C. App.
14 2406(i)(1)) is amended in the last sentence by inserting “har-
15 vested from State or Federal lands” after “red cedar logs”.

16 (b) Section 17(a) of the Act (50 U.S.C. App. 2416(a)) is
17 amended by striking out “Nothing” and inserting in lieu
18 thereof “Except as otherwise provided in this Act, nothing”.

19 (c) Section 38(e) of the Arms Export Control Act (22
20 U.S.C. 2778(e)) is amended by striking out “(f)” and insert-
21 ing in lieu thereof “(g)”.

22

AUTHORIZATION OF APPROPRIATIONS

23 SEC. 123. (a) Section 18 of the Act (50 U.S.C. App.
24 2417) is amended to read as follows:

1 “AUTHORIZATION OF APPROPRIATIONS

2 “SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGIS-
3 LATION.—(1) Notwithstanding any other provision of law,
4 money appropriated to the Department of Commerce for ex-
5 penses to carry out the purposes of this Act may be obligated
6 or expended only if—

7 “(A) the appropriation thereof has been previously
8 authorized by law enacted on or after the date of the
9 enactment of the Export Administration Amendments
10 Act of 1983; or

11 “(B) the amount of all such obligations and ex-
12 penditures does not exceed an amount previously pre-
13 scribed by law enacted on or after such date.

14 “(2) To the extent that legislation enacted after the
15 making of an appropriation to carry out the purposes of this
16 Act authorizes the obligation or expenditure thereof, the limi-
17 tation contained in paragraph (1) shall have no effect.

18 “(3) The provisions of this subsection shall not be super-
19 seded except by a provision of law enacted after the date of
20 the enactment of the Export Administration Amendments
21 Act of 1983 which specifically repeals, modifies, or super-
22 sedes the provisions of this subsection.

23 “(b) AUTHORIZATION.—There are authorized to be ap-
24 propriated to the Department of Commerce to carry out the
25 purposes of this Act—

1 throughout the continental United States during the normal
2 business hours of those exporters.

3 TITLE II—EXPORT PROMOTION PROGRAMS

4 REQUIREMENT OF PRIOR AUTHORIZATION

5 SEC. 201. (a) Notwithstanding any other provision of
6 law, money appropriated to the Department of Commerce for
7 expenses to carry out any export promotion program may be
8 obligated or expended only if—

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

12 (2) the amount of all such obligations and expend-
13 itures does not exceed an amount previously prescribed
14 by law enacted on or after such date.

15 (b) To the extent that legislation enacted after the
16 making of an appropriation to carry out any export promotion
17 program authorizes the obligation or expenditure thereof, the
18 limitation contained in subsection (a) shall have no effect.

19 (c) The provisions of this section shall not be superseded
20 except by a provision of law enacted after the date of the
21 enactment of this Act which specifically repeals, modifies, or
22 supersedes the provisions of this section.

23 (d) For purposes of this title, the term “export pro-
24 motion program” means any activity of the Department of
25 Commerce designed to stimulate or assist United States busi-

1 nesses in marketing their goods and services abroad competi-
2 tively with businesses from other countries, including but not
3 limited to—

4 (1) trade development (except for the trade adjust-
5 ment assistance program) and dissemination of foreign
6 marketing opportunities and other marketing informa-
7 tion to United States producers of goods and services,
8 including the expansion of foreign markets for United
9 States textiles and apparel and any other United States
10 products;

11 (2) the development of regional and multilateral
12 economic policies which enhance United States trade
13 and investment interests, and the provision of market-
14 ing services with respect to foreign countries and
15 regions;

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

18 (4) the operations of the United States Commer-
19 cial Service and the Foreign Commercial Service, or
20 any successor agency.

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 202. There is authorized to be appropriated for
23 each of the fiscal years 1984 and 1985 to the Department of
24 Commerce to carry out export promotion programs
25 \$100,458,000.

1

BARTER ARRANGEMENTS

2

SEC. 203. (a) The President shall, not later than 180
3 days after the date of the enactment of this Act, submit to the
4 Congress a contingency plan for the promotion of exports of
5 agricultural commodities through the bartering of surplus ag-
6 ricultural commodities produced in the United States for pe-
7 troleum and petroleum products, and for other materials vital
8 to the national interest, which are produced abroad, and
9 make recommendations as to the feasibility of implementing
10 such bartering.

11 (b) Notwithstanding any other provision of law, the Presi-
12 dent is authorized—

13 (1) to barter stocks of agricultural commodities ac-
14 quired by the Government for petroleum and petroleum
15 products, and for other materials vital to the national
16 interest, which are produced abroad, in situations in
17 which sales would otherwise not occur; and

18 (2) to purchase petroleum and petroleum products,
19 and other materials vital to the national interest, which
20 are produced abroad and acquired by persons in the
21 United States through barter for agricultural commod-
22 ities produced in and exported from the United States
23 through normal commercial trade channels.

24 (c) The President shall take steps to insure that any
25 barter described in subsections (a) and (b)(1) and any pur-

1 chases authorized by subsection (b)(2) safeguard existing
 2 export markets for agricultural commodities operating on
 3 conventional business terms from displacement by barters de-
 4 scribed in subsections (a), (b)(1), and (b)(2).

5 TITLE III—SOUTH AFRICA

6 SHORT TITLE

7 SEC. 301. This title may be cited as the “United States
 8 Policy Toward South Africa Act of 1983”.

9 Subtitle 1—Labor Standards

10 ENDORSEMENT AND IMPLEMENTATION OF FAIR

11 EMPLOYMENT PRINCIPLES

12 SEC. 311. Any United States person who—
 13 (A) has a branch or office in South Africa, or
 14 (B) controls a corporation, partnership, or other
 15 enterprise in South Africa,
 16 in which more than 20 people are employed shall take the
 17 necessary steps to insure that, in operating such branch,
 18 office, corporation, partnership, or enterprise, those principles
 19 relating to employment practices set forth in section 312 of
 20 this Act are implemented.

21 STATEMENT OF PRINCIPLES

22 SEC. 312. (a) The principles referred to in section 311
 23 of this Act are as follows:

24 (1) Desegregating the races in each employment
 25 facility, including—

1 (A) removing all race designation signs;

2 (B) desegregating all eating, rest, and work
3 facilities; and

4 (C) terminating all regulations which are
5 based on racial discrimination.

6 (2) Providing equal employment for all employees,
7 including—

8 (A) assuring that any health, accident, or
9 death benefit plans that are established are non-
10 discriminatory and open to all employees, whether
11 they are paid a salary or are compensated on an
12 hourly basis; and

13 (B) implementing equal and nondiscrimina-
14 tory terms and conditions of employment for all
15 employees, and abolishing job reservations, job
16 fragmentation, apprenticeship restrictions for
17 blacks and other nonwhites, and differential em-
18 ployment criteria, which discriminate on the basis
19 of race or ethnic origin.

20 (3) Establishing equal pay for all employees doing
21 equal or comparable work, including—

22 (A) establishing and implementing, as soon
23 as possible, a wage and salary structure which is
24 applied equally to all employees, regardless of

1 race, who are engaged in equal or comparable
2 work;

3 (B) reviewing the distinction between hourly
4 and salaried job classifications, and establishing
5 and implementing an equitable and unified system
6 of job classifications which takes into account such
7 review; and

8 (C) eliminating inequities in seniority and in-
9 grade benefits so that all employees, regardless of
10 race, who perform similar jobs are eligible for the
11 same seniority and in-grade benefits.

12 (4) Establishing a minimum wage and salary
13 structure based on a cost-of-living index which takes
14 into account the needs of employees and their families.

15 (5) Increasing, by appropriate means, the number
16 of blacks and other nonwhites in managerial, supervi-
17 sory, administrative, clerical, and technical jobs for the
18 purpose of significantly increasing the representation of
19 blacks and other nonwhites in such jobs, including—

20 (A) developing training programs that will
21 prepare substantial numbers of blacks and other
22 nonwhites for such jobs as soon as possible,
23 including—

24 (i) expanding existing programs and
25 forming new programs to train, upgrade, and

1 improve the skills of all categories of em-
2 ployees, and

3 (ii) creating on-the-job training pro-
4 grams and facilities to assist employees to
5 advance to higher paying jobs requiring
6 greater skills;

7 (B) establishing procedures to assess, identi-
8 fy, and actively recruit employees with potential
9 for further advancement;

10 (C) identifying blacks and other nonwhites
11 with high management potential and enrolling
12 them in accelerated management programs;

13 (D) establishing and expanding programs to
14 enable employees to further their education and
15 skills at recognized education facilities; and

16 (E) establishing timetables to carry out this
17 paragraph.

18 (6) Taking reasonable steps to improve the quality
19 of employees' lives outside the work environment with
20 respect to housing, transportation, schooling, recrea-
21 tion, and health, including—

22 (A) providing assistance to black and other
23 nonwhite employees for housing, health care,
24 transportation, and recreation either through the
25 provision of facilities or services or providing fi-

1 nancial assistance to employees for such purposes,
2 including the expansion or creation of in-house
3 medical facilities or other medical programs to im-
4 prove medical care for black and other nonwhite
5 employees and their dependents; and

6 (B) participating in the development of pro-
7 grams that address the education needs of
8 employees, their dependents, and the local
9 community.

10 (7) Recognizing labor unions and implementing
11 fair labor practices, including—

12 (A) recognizing the right of all employees,
13 regardless of racial or other distinctions, to self-
14 organization and to form, join, or assist labor or-
15 ganizations, freely and without penalty or reprisal,
16 and recognizing the right to refrain from any such
17 activity;

18 (B) refraining from—

19 (i) interfering with, restraining, or co-
20 ercing employees in the exercise of their
21 rights of self-organization under this para-
22 graph,

23 (ii) dominating or interfering with the
24 formation or administration of any labor or-

- 1 organization, or sponsoring, controlling, or con-
2 tributing financial or other assistance to it,
- 3 (iii) encouraging or discouraging mem-
4 bership in any labor organization by discrimi-
5 nation in regard to hiring, tenure, promotion,
6 or other condition of employment,
- 7 (iv) discharging or otherwise disciplining
8 or discriminating against any employee who
9 has exercised any rights of self-organization
10 under this paragraph, and
- 11 (v) refusing to bargain collectively with
12 any organization freely chosen by employees
13 under this paragraph;
- 14 (C) allowing employees to exercise rights of
15 self-organization, including solicitation of fellow
16 employees during nonworking hours, allowing dis-
17 tribution and posting of union literature by em-
18 ployees during nonworking hours in nonworking
19 areas, and allowing reasonable access to labor or-
20 ganization representatives to communicate with
21 employees on employer premises at reasonable
22 times;
- 23 (D) allowing employee representatives to
24 meet with employer representatives during work-
25 ing hours without loss of pay for purposes of col-

1 mitted pursuant to section 314(a) and, where necessary, to
2 supplement the information contained in such reports. The
3 Advisory Council shall be composed of ten members appoint-
4 ed by the Secretary from among persons representing trade
5 unions committed to nondiscriminatory policies, the United
6 States Chamber of Commerce in South Africa, and the South
7 African academic community, and from among South African
8 community and church leaders who have demonstrated a con-
9 cern for equal rights. In addition to the ten appointed mem-
10 bers of the Advisory Council, the United States Ambassador
11 to South Africa shall be a member of the Advisory Council,
12 ex officio.

13 (b) The Secretary shall establish in the United States an
14 American Advisory Council to make policy recommendations
15 with respect to the labor practices of United States persons
16 in South Africa and to review periodically the progress of
17 such persons in carrying out the provisions of section 311 of
18 this Act. The American Advisory Council shall be composed
19 of 11 members appointed by the Secretary from among quali-
20 fied persons, including officers and employees of the Depart-
21 ment of State, the Department of Commerce, the Depart-
22 ment of Labor, and the Equal Employment Opportunity
23 Commission, and representatives of labor, business, civil
24 rights, and religious organizations. The Secretary shall pub-

1 lish in the Federal Register any recommendations made by
2 the American Advisory Council under this subsection.

3 (c) Members of the Advisory Council in South Africa
4 and of the American Advisory Council shall be appointed for
5 3-year terms, except that of the members first appointed,
6 three on each Council shall be appointed for terms of two
7 years, and three on each Council shall be appointed for terms
8 of one year, as designated at the time of their appointment.
9 Any member appointed to fill a vacancy occurring before the
10 expiration of the term for which the predecessor of such
11 member was appointed shall be appointed only for the re-
12 mainder of such term.

13 (d) the United States Ambassador to South Africa shall
14 provide to the Advisory Council in South Africa the neces-
15 sary clerical and administrative assistance. The Secretary
16 shall provide such assistance to the American Advisory
17 Council.

18 (e) Members of the Advisory Council in South Africa
19 and of the American Advisory Council shall serve without
20 pay, except that, while away from their homes or regular
21 places of business in the performance of services for the re-
22 spective Councils, members of the Advisory Councils shall be
23 allowed travel expenses, including per diem in lieu of subsist-
24 ence, in the same manner as persons employed intermittently

1 in the Government service are allowed expenses under sec-
2 tion 5703 of title 5, United States Code.

3 ENFORCEMENT; SANCTIONS

4 SEC. 314. (a) Each United States person referred to in
5 section 311 of this Act shall submit to the Secretary (1) a
6 detailed and fully documented annual report on the progress
7 of that person in complying with the provisions of this subti-
8 tle, and (2) such other information as the Secretary deter-
9 mines is necessary.

10 (b) In order to insure compliance with this subtitle and
11 any regulations issued to carry out this subtitle, the
12 Secretary—

13 (1) shall establish mechanisms to monitor such
14 compliance, including on-site monitoring with respect
15 to each United States person referred to in section 311
16 of this Act at least once in every 2-year period;

17 (2) shall make reasonable efforts within a reason-
18 able period of time to secure such compliance by
19 means of conference, conciliation, mediation, and
20 persuasion;

21 (3) shall, in any case in which the Secretary has
22 reason to believe that any person has furnished the
23 Secretary with false information relating to the provi-
24 sions of this subtitle, recommend to the Attorney Gen-

1 eral that criminal proceedings be brought against such
2 person; and

3 (4) may conduct investigations, hold hearings, ad-
4 minister oaths, examine witnesses, receive evidence,
5 take depositions, and require by subpoena the attend-
6 ance and testimony of witnesses and production of all
7 books, papers, and documents relating to any matter
8 under investigation.

9 (c) The Secretary shall, within 90 days after giving
10 notice and an opportunity for a hearing to each United States
11 person referred to in section 311 of this Act, make a determi-
12 nation with respect to the compliance of that United States
13 person with the provisions of this subtitle and any regulations
14 issued to carry out this subtitle.

15 (d)(1) Any United States person with respect to whom
16 the Secretary makes a determination under subsection (c) or
17 (f) of this section either that the person is not in compliance
18 with this subtitle or any regulations issued to carry out this
19 subtitle, or that the compliance of the person with this subti-
20 tle or those regulations cannot be established on account of a
21 failure to provide information to the Secretary or on account
22 of the provision of false information to the Secretary, may
23 not—

24 (A) export any goods or technology directly or in-
25 directly to South Africa; or

1 (B) use the services of the Export-Import Bank of
2 the United States.

3 (2)(A) In addition to the penalties set forth in paragraph
4 (1), the Secretary may impose upon any United States person
5 subject to those penalties—

6 (i) if other than an individual, a fine of not more
7 than \$1,000,000, or

8 (ii) if an individual, a fine of not more than
9 \$50,000.

10 (B)(i) Any officer, director, or employee of a United
11 States person subject to the penalties set forth in subpara-
12 graph (A), or any individual in control of that United States
13 person, who knowingly and willfully ordered, authorized, ac-
14 quiesced in, or carried out the act or practice constituting the
15 violation involved and (ii) any agent of such United States
16 person who knowingly and willfully carried out such act or
17 practice, shall be subject to a fine, imposed by the Secretary,
18 of not more than \$10,000.

19 (C) A fine imposed under subparagraph (B) may not be
20 paid, directly or indirectly, by the United States person com-
21 mitting the violation involved.

22 (D) The payment of any fine imposed under this para-
23 graph shall be deposited in the miscellaneous receipts of the
24 Treasury. In the event of the failure of any person to pay a
25 fine imposed under this paragraph, the fine may be recovered

1 in a civil action in the name of the United States brought by
2 the Secretary in an appropriate United States district court.

3 (3) Any United States person who violates the provi-
4 sions of paragraph (1)(A) of this subsection shall, in addition
5 to any other penalty specified in this subtitle, be fined, for
6 each such violation, not more than five times the value of the
7 exports involved or \$50,000, whichever is greater, or impris-
8 oned not more than five years, or both. For purposes of para-
9 graph (1)(A) of this subsection, “goods” and “technology”
10 have the same meanings as are given those terms in para-
11 graphs (3) and (4) of section 16 of the Export Administration
12 Act of 1979 (50 U.S.C. App. 2415).

13 (e) The Secretary shall issue an order carrying out any
14 penalty imposed under paragraph (1) or (2) of subsection (d).

15 (f)(1) The Secretary shall, at least once in every 2-year
16 period, review and, in accordance with subsection (c), make a
17 redetermination with respect to the compliance of each
18 United States person referred to in section 311 of this Act
19 with the provisions of this subtitle and any regulations issued
20 to carry out this subtitle.

21 (2) In the case of any United States person with respect
22 to whom the Secretary makes a determination under subsec-
23 tion (c) or paragraph (1) of this subsection either that the
24 person is not in compliance with this subtitle or any regula-
25 tions issued to carry out this subtitle, or that the compliance

1 of the person with this subtitle or those regulations cannot be
2 established on account of a failure to provide information to
3 the Secretary or on account of the provision of false informa-
4 tion to the Secretary, the Secretary shall, upon the request of
5 that person and after giving that person an opportunity for a
6 hearing, review and redetermine that person's compliance
7 within 60 days after that person files the first annual report
8 pursuant to subsection (a) of this section after the negative
9 determination is made.

10 (g) Any United States person aggrieved by a determina-
11 tion of the Secretary under subsection (c) or (f) of this section
12 may seek judicial review of that determination in accordance
13 with the provisions of chapter 7 of title 5, United States
14 Code.

15 (h) The Secretary shall submit an annual report to the
16 Congress on the compliance of those United States persons
17 referred to in section 311 of this Act with the provisions of
18 this subtitle.

19 **REGULATIONS**

20 **SEC. 315.** (a) The Secretary shall, after consulting with
21 the Advisory Councils established pursuant to section 313 of
22 this Act, issue such regulations as are necessary to carry out
23 this subtitle. Such regulations shall be issued not later than
24 180 days after the date of the enactment of this Act. The
25 Secretary shall establish dates by which United States per-

1 sons must comply with the different provisions of this subti-
2 tle, except that the date for compliance with all the provi-
3 sions of this subtitle shall not be later than one year after the
4 date of the enactment of this Act.

5 (b) Before issuing final regulations pursuant to subsec-
6 tion (a), the Secretary shall publish in the Federal Register
7 the regulations proposed to be issued and shall give interest-
8 ed persons at least 30 days to submit comments on the pro-
9 posed regulations. The Secretary shall, in issuing the final
10 regulations, take into account the comments so submitted.

11 WAIVER OR TERMINATION OF PROVISIONS

12 SEC. 316. (a) In any case in which the President deter-
13 mines that compliance by a United States person with the
14 provisions of this subtitle would harm the national security of
15 the United States, the President may waive those provisions
16 with respect to that United States person. The President
17 shall publish in the Federal Register each waiver granted
18 under this subsection and shall submit to the Congress each
19 such waiver and the justification for granting the waiver.
20 Any such waiver shall become effective at the end of 30 days
21 after the date on which the waiver is submitted to the Con-
22 gress unless the Congress, within that 30-day period, adopts
23 a concurrent resolution disapproving the waiver. In the com-
24 putation of such 30-day period, there shall be excluded the
25 days on which either House of Congress is not in session

1 because of an adjournment of more than three days to a day
2 certain or because of an adjournment of the Congress sine
3 die.

4 (b) Upon a written determination by the President that
5 the Government of South Africa has terminated its practice
6 of systematic racial discrimination and allows all the people
7 of South Africa, regardless of race or ethnic origin, to partici-
8 pate fully in the social, political, and economic life in that
9 country, the provisions of this subtitle and any regulations
10 issued to carry out this subtitle shall cease to be effective.

11 Subtitle 2—Prohibition on Loans and Importation of Gold
12 Coins

13 LOANS TO SOUTH AFRICA

14 SEC. 321. (a) No bank operating under the laws of the
15 United States may make any loan directly or through a for-
16 eign subsidiary to the South African Government or to any
17 corporation, partnership, or other organization which is
18 owned or controlled by the South African Government, as
19 determined under regulations issued by the Secretary. The
20 prohibition contained in this subsection shall not apply to
21 loans for educational, housing, or health facilities which are
22 available to all persons on a totally nondiscriminatory basis
23 and which are located in geographic areas accessible to all
24 population groups without any legal or administrative
25 restriction.

1 (4) in any case in which the Secretary has reason
2 to believe that any person has furnished the Secretary
3 with false information relating to the provisions of this
4 subtitle, referring the matter to the Attorney General
5 for appropriate action.

6 (b)(1) Any person, other than an individual, that violates
7 section 321 or 322 of this Act shall be fined not more than
8 \$1,000,000.

9 (2) Any individual who violates section 321 of this Act
10 shall be fined not more than \$50,000, or imprisoned not more
11 than five years, or both.

12 (3) Any individual who violates section 322 of this Act
13 shall be fined not more than five times the value of the kru-
14 gerrands or gold coins involved.

15 (c)(1) Whenever a person violates section 321 or 322 of
16 this Act—

17 (A) any officer, director, or employee of such
18 person, or any natural person in control of such person,
19 who knowingly and willfully ordered, authorized, ac-
20 quiesced in, or carried out the act or practice constitut-
21 ing the violation, and

22 (B) any agent of such person who knowingly and
23 willfully carried out such act or practice,
24 shall, upon conviction, be fined not more than \$10,000, or
25 imprisoned not more than five years, or both.

1 (2) A fine imposed under paragraph (1) on an individual
2 for an act or practice constituting a violation may not be
3 paid, directly or indirectly, by the person committing the vio-
4 lation itself.

5

WAIVER BY PRESIDENT

6 SEC. 324. The President may waive the prohibitions
7 contained in sections 321 and 322 of this Act for periods of
8 not more than one year each if the President determines that
9 the Government of South Africa has made substantial prog-
10 ress toward the full participation of all the people of South
11 Africa in the social, political, and economic life in that coun-
12 try and toward an end to discrimination based on race or
13 ethnic origin. The President shall submit any such determina-
14 tion, and the basis therefor, to the Congress. Each such
15 waiver shall take effect at the end of 30 days after the date
16 on which that determination is submitted to the Congress
17 unless the Congress, within that 30-day period, adopts a con-
18 current resolution disapproving that determination. In the
19 computation of such 30-day period, there shall be excluded
20 the days on which either House of Congress is not in session
21 because of an adjournment of more than three days to a day
22 certain or because of an adjournment of the Congress sine
23 die.

1 signed on the basis of ethnic origin, including the
2 Transkei, Bophuthatswana, and Venda; and

3 (4) a United States person shall be presumed to
4 control a corporation, partnership, or other enterprise
5 in South Africa if—

6 (A) the United States person beneficially
7 owns or controls (whether directly or indirectly)
8 more than 50 percent of the outstanding voting
9 securities of the corporation, partnership, or
10 enterprise;

11 (B) the United States person beneficially
12 owns or controls (whether directly or indirectly)
13 25 percent or more of the voting securities of the
14 corporation, partnership, or enterprise, if no other
15 person owns or controls (whether directly or indi-
16 rectly) an equal or larger percentage;

17 (C) the corporation, partnership, or enter-
18 prise is operated by the United States person pur-
19 suant to the provisions of an exclusive manage-
20 ment contract;

21 (D) a majority of the members of the board
22 of directors of the corporation, partnership, or en-
23 terprise are also members of the comparable gov-
24 erning body of the United States person;

1 (E) the United States person has authority to
2 appoint a majority of the members of the board of
3 directors of the corporation, partnership, or enter-
4 prise; or

5 (F) the United States person has authority to
6 appoint the chief operating officer of the corpora-
7 tion, partnership, or enterprise.

8 **APPLICABILITY TO EVASIONS OF TITLE**

9 **SEC. 333.** (a) Subtitle 1 of this title shall apply to any
10 United States person who undertakes or causes to be under-
11 taken any transaction or activity with the intent to evade the
12 provisions of subtitle 1 of this title or any regulations issued
13 to carry out that subtitle.

14 (b) Subtitle 2 of this title shall apply to any bank operat-
15 ing under the laws of the United States, or to any other
16 person, who or which undertakes or causes to be undertaken
17 any transaction or activity with the intent to evade the provi-
18 sions of subtitle 2 of this title or any regulations issued to
19 carry out that subtitle.

20 **CONSTRUCTION OF TITLE; SEVERABILITY**

21 **SEC. 334.** (a) Nothing in this title shall be construed as
22 constituting any recognition by the United States of the
23 homelands referred to in section 332(3) of this Act.

24 (b) If any provision of this title or the application of this
25 title to any person or circumstance is held invalid, neither the

- 1 remainder of this title nor the application of that provision to
- 2 other persons or circumstances shall be affected thereby.

Union Calendar No. 200

98TH CONGRESS
1ST SESSION

H. R. 3231

[Report No. 98-257, Parts I, II, and III]

A BILL

To amend the authorities contained in the Export Administration Act of 1979, and for other purposes

JULY 12, 1983

Referred to the Committee on Rules for a period ending not later than July 22, 1983, for consideration of such portions of section 113(c) of the bill as fall within its jurisdiction pursuant to clause 1(q) of rule X

JULY 21, 1983

Referral to the Committee on Rules extended for an additional period ending not later than July 26, 1983

JULY 22, 1983

Reported from the Committee on Armed Services with an amendment

JULY 22, 1983

Committees on Banking, Finance and Urban Affairs and the Judiciary discharged

JULY 26, 1983

Reported from the Committee on Rules, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed