

## Legal Authority

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## PART I

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### STATUTORY CITATIONS

Export Control Reform Act of 2018, Public Law 115-232--Title XVII, Subtitle B, as amended by:

X Consolidated Appropriations Act, 2019, Pub. L. 116-6, Division H, Title II, Section 205

#### Sec. 1741. Short Title.

This subtitle may be cited as the "Export Control Reform Act of 2018"

#### Sec. 1742. Definitions.

(1) **Controlled.**--The term "controlled" refers to an item subject to the jurisdiction of the United States under part I.

(2) **Dual-use.**--The term "dual-use", with respect to an item, means the item has civilian applications and military, terrorism, weapons of mass destruction, or law-enforcement- related applications.

(3) **Export.**--The term "export", with respect to an item subject to controls under part I, includes--

(A) The shipment or transmission of the item out of the United States, including the sending or taking of the item out of the United States, in any manner; and

(B) The release or transfer of technology or source code relating to the item to a foreign person in the United States.

(4) **Export Administration Regulations.**--The term "Export Administration Regulations" means--

(A) The Export Administration Regulations as promulgated, maintained, and amended under the authority of the International Emergency Economic Powers Act and codified, as of the date of the enactment of this Act, in subchapter C of chapter VII of title 15, Code of Federal Regulations; or

(B) regulations that are promulgated, maintained, and amended under the authority of part I on or after the date of the enactment of this Act.

(5) **Foreign person.**--The term "foreign person" means--

(A) any natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in section 274B(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)));

(B) any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated in the United States or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of a foreign government (e.g., diplomatic mission).

(6) **In-country transfer.**--The term "in-country transfer", with respect to an item subject to controls under part I, means a change in the end-use or end user of the item within the same foreign country.

(7) **Item.**--The term "item" means a commodity, software, or technology.

(8) **Person.**--The term "person" means--

(A) a natural person;

(B) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, or any government or agency thereof; and

(C) any successor to any entity described in subparagraph (B).

(9) **Reexport.**--The term "reexport", with respect to an item subject to controls under part I, includes--

(A) The shipment or transmission of the item from a foreign country to another foreign country, including the sending or taking of the item from the foreign country to the other foreign country, in any manner; and

(B) The release or transfer of technology or source



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code relating to the item to a foreign person outside the United States.

**(10) Secretary.**--Except as otherwise provided, the term "Secretary" means the Secretary of Commerce.

**(11) Technology.**--The term "technology" includes information, in tangible or intangible form, necessary for the development, production, or use of an item.

**(12) United states.**--The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

**(13) United states person.**--The term "United States person" means--

(A) for purposes of part I--

(i) any individual who is a citizen or national of the United States or who is an individual described in subparagraph (B) of section 274B(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3));

(ii) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia; and

(iii) any person in the United States; and

(B) for purposes of part II, any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations by the Secretary.

**(14) Weapons of mass destruction.**--The term "weapons of mass destruction" means nuclear, radiological, chemical, and biological weapons and delivery systems for such weapons.

## PART I--AUTHORITY AND ADMINISTRATION OF CONTROLS

### Sec. 1751. Short Title.

This part may be cited as the "Export Controls Act of 2018".

### Sec. 1752. Statement of Policy.

The following is the policy of the United States:

(1) To use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary--

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

(B) To restrict the export of items if necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.

(2) The national security and foreign policy of the United States require that the export, reexport, and in-country transfer of items, and specific activities of United States persons, wherever located, be controlled for the following purposes:

(A) To control the release of items for use in--

(i) The proliferation of weapons of mass destruction or of conventional weapons;

(ii) The acquisition of destabilizing numbers or types of conventional weapons;

(iii) acts of terrorism;

(iv) military programs that could pose a threat to the security of the United States or its allies; or

(v) activities undertaken specifically to cause significant interference with or disruption of critical infrastructure.

(B) To preserve the qualitative military superiority

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of the United States.

(C) To strengthen the United States defense industrial base.

(D) To carry out the foreign policy of the United States, including the protection of human rights and the promotion of democracy.

(E) To carry out obligations and commitments under international agreements and arrangements, including multilateral export control regimes.

(F) To facilitate military interoperability between the United States and its North Atlantic Treaty Organization (NATO) and other close allies.

(G) To ensure national security controls are tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States.

(3) The national security of the United States requires that the United States maintain its leadership in the science, technology, engineering, and manufacturing sectors, including foundational technology that is essential to innovation. Such leadership requires that United States persons are competitive in global markets. the impact of the implementation of this part on such leadership and competitiveness must be evaluated on an ongoing basis and applied in imposing controls under sections 1753 and 1754 to avoid negatively affecting such leadership.

(4) The national security and foreign policy of the United States require that the United States participate in multilateral organizations and agreements regarding export controls on items that are consistent with the policy of the United States, and take all the necessary steps to secure the adoption and consistent enforcement, by the governments of such countries, of export controls on items that are consistent with such policy.

(5) Export controls should be coordinated with the multilateral export control regimes. Export controls that are multilateral are most effective, and should be tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States and its allies.

(6) Export controls applied unilaterally to items widely available from foreign sources generally are less effective in preventing end-users from acquiring those items. Application of unilateral export controls should be limited for purposes of protecting specific United States national security and foreign policy interests.

(7) The effective administration of export controls requires a clear understanding both inside and outside the United States Government of which items are controlled and an efficient process should be created to regularly update the controls, such as by adding or removing such items.

(8) The export control system must ensure that it is transparent, predictable, and timely, has the flexibility to be adapted to address new threats in the future, and allows seamless access to and sharing of export control information among all relevant United States national security and foreign policy agencies.

(9) Implementation and enforcement of United States export controls require robust capabilities in monitoring, intelligence, and investigation, appropriate penalties for violations, and the ability to swiftly interdict unapproved transfers.

(10) Export controls complement and are a critical element of the national security policies underlying the laws and regulations governing foreign direct investment in the United States, including controlling the transfer of critical technologies to certain foreign persons. Thus, the President, in coordination with the Secretary, the Secretary of Defense, the Secretary of State, the Secretary of Energy, and the heads of other Federal agencies, as appropriate, should have a regular and robust process to identify the emerging and other types of critical technologies of concern and regulate their release to foreign persons as warranted regardless of the nature of the underlying transaction. Such identification efforts should draw upon the resources and expertise of all relevant parts of the United States Government, industry, and academia. these efforts should be in addition to traditional efforts to modernize and update the lists of controlled items under the multilateral export control regimes.

(11) The authority under this part may be exercised only in furtherance of all of the objectives set forth in paragraphs (1) Through (10).

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### Sec. 1753. Authority of the President.

**(a) Authority.**--In order to carry out the policy set forth in paragraphs (1) Through (10) of section 1752, the President shall control--

(1) The export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons; and

(2) The activities of United States persons, wherever located, relating to specific--

(A) nuclear explosive devices;

(B) missiles;

(C) chemical or biological weapons;

(D) whole plants for chemical weapons precursors;

(E) foreign maritime nuclear projects; and

(F) foreign military intelligence services.

**(b) Requirements.**--In exercising authority under this part to carry out the policy set forth in paragraphs (1) Through (10) of section 1752, the President shall--

(1) regulate the export, reexport, and in-country transfer of items described in subsection (a)(1) of United States persons or foreign persons;

(2) regulate the activities described in subsection (a)(2) of United States persons, wherever located;

(3) seek to secure the cooperation of other governments and multilateral organizations to impose control systems that are consistent, to the extent possible, with the controls imposed under subsection (a);

(4) maintain the leadership of the United States in science, engineering, technology research and development, manufacturing, and foundational technology that is essential to innovation;

(5) protect United States technological advances by prohibiting unauthorized technology transfers to foreign persons in the United States or outside the United States, particularly with respect to countries that may pose a significant threat to the national security of the United States;

(6) strengthen the United States industrial base, both with respect to current and future defense requirements; and

(7) enforce the controls through means such as regulations, requirements for compliance, lists of controlled items, lists of foreign persons who threaten the national security or foreign policy of the United States, and guidance in a form that facilitates compliance by United States persons and foreign persons, in particular academic institutions, scientific and research establishments, and small- and medium-sized businesses.

**(c) Application of Controls.**--The President shall impose controls over the export, reexport, or in-country transfer of items for purposes of the objectives described in subsections (b)(1) or (b)(2) without regard to the nature of the underlying transaction or any circumstances pertaining to the activity, including whether such export, reexport, or in-country transfer occurs pursuant to a purchase order or other contract requirement, voluntary decision, inter-company arrangement, marketing effort, or during a joint venture, joint development agreement, or similar collaborative agreement.

### Sec. 1754. Additional Authorities.

**(a) In General.**--In carrying out this part on behalf of the President, the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the heads of other Federal agencies as appropriate, shall--

(1) establish and maintain a list of items that are controlled under this part;

(2) establish and maintain a list of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in section 1752(2)(A);

(3) prohibit unauthorized exports, reexports, and in-country transfers of controlled items, including to foreign persons in the United States or outside the United States;

(4) restrict exports, reexports, and in-country transfers of any controlled items to any foreign

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person or end-use listed under paragraph (2);

(5) require licenses or other authorizations, as appropriate, for exports, reexports, and in-country transfers of controlled items, including--

(A) imposing conditions or restrictions on United States persons and foreign persons with respect to such licenses or other authorizations; and

(B) suspending or revoking such licenses or authorizations;

(6) establish a process for an assessment to determine whether a foreign item is comparable in quality to an item controlled under this part, and is available in sufficient quantities to render the United States export control of that item or the denial of a license ineffective, including a mechanism to address that disparity;

(7) require measures for compliance with the export controls established under this part;

(8) require and obtain such information from United States persons and foreign persons as is necessary to carry out this part;

(9) require, to the extent feasible, identification of items subject to controls under this part in order to facilitate the enforcement of such controls;

(10) inspect, search, detain, or seize, or impose temporary denial orders with respect to items, in any form, that are subject to controls under this part, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this part;

(11) monitor shipments and other means of transfer;

(12) keep the public appropriately apprised of changes in policy, regulations, and procedures established under this part;

(13) appoint technical advisory committees in accordance with the Federal Advisory Committee Act;

(14) create, as warranted, exceptions to licensing

requirements in order to further the objectives of this part;

(15) establish and maintain processes to inform persons, either individually by specific notice or through amendment to any regulation or order issued under this part, that a license from the Bureau of Industry and Security of the Department of Commerce is required to export; and

(16) undertake any other action as is necessary to carry out this part that is not otherwise prohibited by law.

**(b) Relationship to IEEPA.**--The authority under this part may not be used to regulate or prohibit under this part the export, reexport, or in-country transfer of any item that may not be regulated or prohibited under section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), except to the extent the President has made a determination necessary to impose controls under subparagraph (A), (B), or (C) of paragraph (2) of such section.

## **(c) Countries Supporting International Terrorism.**--

### **(1) Commerce license requirement.**--

**(A) In general.**--A license shall be required for the export, reexport, or in-country transfer of items, the control of which is implemented pursuant to subsection

(a) by the Secretary, to a country if the Secretary of State has made the following determinations:

(i) The government of such country has repeatedly provided support for acts of international terrorism.

(ii) The export, reexport, or in-country transfer of such items could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

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**(B) Determination under other provisions of law.**--A determination of the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law that the government of a country described in subparagraph (A) has repeatedly provided support for acts of international terrorism shall be deemed to be a determination with respect to such government for purposes of clause (i) of subparagraph (A).

### **(2) Notification to congress.**--

**(A) In general.**--The Secretary of State and the Secretary shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is issued as required by paragraph (1).

**(B) Contents.**--The Secretary of State shall include in the notification required under subparagraph (A)--

(i) a detailed description of the items to be offered, including a brief description of the capabilities of any item for which a license to export, reexport, or in-country transfer the items is sought;

(ii) The reasons why the foreign country, person, or entity to which the export, reexport, or in-country transfer is proposed to be made has requested the items under the export, reexport, or in-country transfer, and a description of the manner in which such country, person, or entity intends to use such items;

(iii) The reasons why the proposed export, reexport, or in-country transfer is in the national interest of the United States;

(iv) an analysis of the impact of the proposed export, reexport, or in-country transfer on the military capabilities of the foreign country, person, or entity to which such transfer would be made;

(v) an analysis of the manner in which the proposed export, reexport, or in-country transfer would affect the relative military strengths of countries in the region to which the items that are the subject of such export, reexport, or in-country transfer would be delivered and whether other countries in the region have comparable kinds and amounts of items; and

(vi) an analysis of the impact of the proposed export, reexport, or in-country transfer on the relations of the United States with the countries in the region to which the items that are the subject of such export, reexport, or in-country transfer would be delivered.

**(3) Publication in federal register.**--Each determination of the Secretary of State under paragraph (1)(A)(i) shall be published in the Federal Register, except that the Secretary of State may exclude confidential information and trade secrets contained in such determination.

**(4) Rescission of determination.**--A determination of the Secretary of State under paragraph (1)(A)(i) may not be rescinded unless the President submits to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Affairs, and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate--

(A) before the proposed rescission would take effect, a report certifying that--

(i) There has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) That government is not supporting acts of international terrorism; and

(iii) That government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that--

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(i) The government concerned has not provided any support for acts international terrorism during the preceding 6-month period; and

(ii) The government concerned has provided assurances that it will not support acts of international terrorism in the future.

### (d) Enhanced Controls.--

**(1) In general.**--In furtherance of section 1753(a), the President shall, except to the extent authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce, require a United States person, wherever located, to apply for and receive a license from the Department of Commerce for--

(A) The export, reexport, or in-country transfer of items described in paragraph (2), including items that are not subject to control under this part; and

(B) other activities that may support the design, development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of, or for the performance of services relating to, any such items.

**(2) Items described.**--The items described in this paragraph include--

(A) nuclear explosive devices;

(B) missiles;

(C) chemical or biological weapons;

(D) whole plants for chemical weapons precursors; and

(E) foreign maritime nuclear projects that would pose a risk to the national security or foreign policy of the United States.

**(e) Additional Prohibitions.**--The Secretary may inform United States persons, either individually by specific notice or through amendment to any regulation or order issued under this part, that a license from the Bureau of Industry and Security of the Department of Commerce is required to engage in any activity if the activity involves the types of movement, service, or support described in subsection (d). the absence of any such notification does not excuse the United States person from compliance with the license requirements of subsection (d), or any regulation or

order issued under this part.

**(f) License Review Standards.**--The Secretary shall deny an application to engage in any activity described in subsection (d) if the activity would make a material contribution to any of the items described in subsection (d)(2).

## Sec. 1755. Administration of Export Controls.

**(a) In General.**--The President shall rely on, including through delegations, as appropriate, the Secretary, the Secretary of Defense, the Secretary of State, the Secretary of Energy, the Director of National Intelligence, and the heads of other Federal agencies as appropriate, to exercise the authority to carry out the purposes set forth in subsection (b).

**(b) Purposes.**--The purposes of this section include to--

### (1) advise the President with respect to--

(A) identifying specific threats to the national security and foreign policy that the authority of this part may be used to address; and

(B) exercising the authority under this part to implement policies, regulations, procedures, and actions that are necessary to effectively counteract those threats;

### (2) review and approve--

(A) criteria for including items on, and removing such an item from, a list of controlled items established under this part;

(B) an interagency procedure for compiling and amending any list described in subparagraph (A);

(C) criteria for including a person on a list of persons to whom exports, reexports, and in-country transfers of items are prohibited or restricted under this part;

(D) standards for compliance by persons subject to controls under this part; and

(E) policies and procedures for the end-use monitoring of exports, reexports, and in-country

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transfers of items controlled under this part; and

(3) benefit from the inherent equities, experience, and capabilities of the Federal officials described in subsection (a).

**(c) Sense of Congress.**--It is the sense of Congress that the administration of export controls under this part should be consistent with the procedures relating to export license applications described in Executive Order 12981 (1995).

### Sec. 1756. Licensing.

**(a) In General.**--The Secretary shall, consistent with delegations as described in section 1755, establish a procedure to license or otherwise authorize the export, reexport, and in-country transfer of items controlled under this part in order to carry out the policy set forth in Section 1752 and the requirements set forth in section 1753(b). the procedure shall ensure that--

(1) license applications and other requests for authorization are considered and decisions made with the participation of appropriate Federal agencies, as appropriate; and

(2) licensing decisions are made in an expeditious manner, with transparency to applicants on the status of license and other authorization processing and the reason for denying any license or request for authorization.

**(b) Sense of Congress.**--It is the sense of Congress that the Secretary should make best efforts to ensure that an accurate, consistent, and timely evaluation and processing of licenses or other requests for authorization to export, reexport, or in-country transfer items controlled under this part is generally accomplished within 30 days from the date of such license request.

**(c) Fees.**--No fee may be charged in connection with the submission, processing, or consideration of any application for a license or other authorization or other request made in connection with any regulation in effect under the authority of this part.

**(d) Additional Procedural Requirements.**--

(1) **In general.**--The procedure required under

subsection (a) shall provide for the assessment of the impact of a proposed export of an item on the United States defense industrial base and the denial of an application for a license or a request for an authorization of any export that would have a significant negative impact on such defense industrial base, as described in paragraph (3).

**(2) Information from applicant.**--The procedure required under subsection (a) shall also require an applicant for a license to provide the information necessary to make the assessment provided under paragraph (1), including whether the purpose or effect of the export is to allow for the significant production of items relevant for the defense industrial base outside the United States.

**(3) Significantly negative impact defined.**--A significant negative impact on the United States defense industrial base is the following:

(A) A reduction in the availability of an item produced in the United States that is likely to be acquired by the Department of Defense or other Federal department or agency for the advancement of the national security of the United States, or for the production of an item in the United States for the Department of Defense or other agency for the advancement of the national security of the United States.

(B) A reduction in the production in the United States of an item that is the result of research and development carried out, or funded by, the Department of Defense or other Federal department or agency to advance the national security of the United States, or a federally funded research and development center.

(C) A reduction in the employment of United States persons whose knowledge and skills are necessary for the continued production in the United States of an item that is likely to be acquired by the Department of Defense or other Federal department or agency for the advancement of the national security of the United States.

### Sec. 1757. Compliance Assistance.

**(a) System for Seeking Assistance.**--The President

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may authorize the Secretary to establish a system to provide United States persons with assistance in complying with this part, which may include a mechanism for providing information, in classified form as appropriate, who are potential customers, suppliers, or business partners with respect to items controlled under this part, in order to further ensure the prevention of the export, reexport, or in-country transfer of items that may pose a threat to the national security or foreign policy of the United States.

**(b) Security Clearances.**--In order to carry out subsection (a), the President may issue appropriate security clearances to persons described in that subsection who are responsible for complying with this part.

### **(c) Assistance for Certain Businesses.**--

**(1) In general.**--Not later than 120 days after the date of the enactment of this Act, the President shall develop and submit to Congress a plan to assist small- and medium-sized United States businesses in export licensing and other processes under this part.

**(2) Contents.**--The plan shall include, among other things, arrangements for the Department of Commerce to provide counseling to businesses described in paragraph (1) on filing applications and identifying items controlled under this part, as well as proposals for seminars and conferences to educate such businesses on export controls, licensing procedures, and related obligations.

## **Sec. 1758. Requirements to Identify and Control the Export of Emerging and Foundational Technologies.**

### **(a) Identification of Technologies.**--

**(1) In general.**--The President shall establish and, in coordination with the Secretary, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the heads of other Federal agencies as appropriate, lead, a regular, ongoing interagency process to identify emerging and foundational technologies that--

(A) are essential to the national security of the United States; and

(B) are not critical technologies described in clauses (i) Through (v) of section 721(a)(6)(A) of the Defense Production Act of 1950, as amended by section 1703.

**(2) Process.**--The interagency process established under subsection (a) shall--

(A) be informed by multiple sources of information, including--

(i) publicly available information;

(ii) classified information, including relevant information provided by the Director of National Intelligence;

(iii) information relating to reviews and investigations of transactions by the Committee on Foreign Investment in the United States under section 721 of the Defense Production Act of 1950

(50 U.S.C. 4565); and

(iv) information provided by the advisory committees established by the Secretary to advise the Under Secretary of Commerce for Industry and Security on controls under the Export Administration Regulations, including the Emerging Technology and Research Advisory Committee;

(B) Take into account--

(i) The development of emerging and foundational technologies in foreign countries;

(ii) The effect export controls imposed pursuant to this section may have on the development of such technologies in the United States; and

(iii) The effectiveness of export controls imposed pursuant to this section on limiting the proliferation of emerging and foundational technologies to foreign countries; and

(C) include a notice and comment period.

### **(b) Commerce Controls.**--

**(1) In general.**--Except to the extent inconsistent



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with the authorities described in subsection (a)(1)(B), the Secretary shall establish appropriate controls under the Export Administration Regulations on the export, reexport, or in-country transfer of technology identified pursuant to subsection (a), including through interim controls (such as by informing a person that a license is required for export), as appropriate, or by publishing additional regulations.

### (2) Levels of control.--

(A) **In general.**--The Secretary may, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, specify the level of control to apply under paragraph (1) with respect to the export of technology described in that paragraph, including a requirement for a license or other authorization for the export, reexport, or in-country transfer of that technology.

(B) **Considerations.**--In determining under subparagraph (A) The level of control appropriate for technology described in paragraph (1), the Secretary shall take into account--

(i) lists of countries to which exports from the United States are restricted; and

(ii) The potential end uses and end users of the technology.

(C) **Minimum requirements.**--At a minimum, except as provided by paragraph (4), the Secretary shall require a license for the export, reexport, or in-country transfer of technology described in paragraph (1) To or in a country subject to an embargo, including an arms embargo, imposed by the United States.

### (3) Review of license applications.--

(A) **Procedures.**--The procedures set forth in Executive Order 12981 (50 U.S.C. 4603 note; relating to administration of export controls) or a successor order shall apply to the review of an application for a license or other authorization for the export, reexport, or in-country transfer of technology described in paragraph (1).

(B) **Consideration of information relating to national security.**--In reviewing an application for a license or other authorization for the export, reexport, or in-country transfer of technology described in paragraph (1), the Secretary shall take into account information provided by the Director of National Intelligence regarding any threat to the national security of the United States posed by the proposed export, reexport, or transfer. the Director of National Intelligence shall provide such information on the request of the Secretary.

(C) **Disclosures relating to collaborative arrangements.**--In the case of an application for a license or other authorization for the export, reexport, or in-country transfer of technology described in paragraph (1) submitted by or on behalf of a joint venture, joint development agreement, or similar collaborative arrangement, the Secretary may require the applicant to identify, in addition to any foreign person participating in the arrangement, any foreign person with significant ownership interest in a foreign person participating in the arrangement.

### (4) Exceptions.--

(A) **Mandatory exceptions.**--The Secretary may not control under this subsection the export of any technology--

(i) described in section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)); or

(ii) if the regulation of the export of that technology is prohibited under any other provision of law.

(B) **Regulatory exceptions.**--In prescribing regulations under paragraph (1), the Secretary may include regulatory exceptions to the requirements of that paragraph.

(C) **Additional exceptions.**--The Secretary shall not be required to impose under paragraph (1) a requirement for a license or other authorization with respect to the export, reexport, or in-country transfer of technology described in paragraph (1) pursuant to any of the following transactions:

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(i) The sale or license of a finished item and the provision of associated technology if the United States person that is a party to the transaction generally makes the finished item and associated technology available to its customers, distributors, or resellers.

(ii) The sale or license to a customer of a product and the provision of integration services or similar services if the United States person that is a party to the transaction generally makes such services available to its customers.

(iii) The transfer of equipment and the provision of associated technology to operate the equipment if the transfer could not result in the foreign person using the equipment to produce critical technologies (as defined in section 721(a) of the Defense Production Act of 1950, as amended by section 1703).

(iv) The procurement by the United States person that is a party to the transaction of goods or services, including manufacturing services, from a foreign person that is a party to the transaction, if the foreign person has no rights to exploit any technology contributed by the United States person other than to supply the procured goods or services.

(v) Any contribution and associated support by a United States person that is a party to the transaction to an industry organization related to a standard or specification, whether in development or declared, including any license of or commitment to license intellectual property in compliance with the rules of any standards organization (as defined by the Secretary by regulation).

### (c) Multilateral Controls.--

**(1) In general.**--The Secretary of State, in consultation with the Secretary and the Secretary of Defense, and the heads of other Federal agencies, as appropriate, shall propose that any technology identified pursuant to subsection (a) be added to the list of technologies controlled by the relevant multilateral export control regimes.

**(2) Items on commerce control list or united states munitions list.**--If the Secretary of State proposes to a multilateral export control regime under paragraph (1) To add a technology identified pursuant to subsection (a) To the control list of that regime and that regime does not add that technology to the control list during the 3-year period beginning on the date of the proposal, the applicable agency head may determine whether national security concerns warrant the continuation of unilateral export controls with respect to that technology.

**(d) Report to Committee on Foreign Investment in the United States.**--Not less frequently than every 180 days, the Secretary, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, shall submit to the Committee on Foreign Investment in the United States a report on the results of actions taken pursuant to this section.

**(e) Report to Congress.**--Not less frequently than every 180 days, the Secretary, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, shall submit a report on the results of actions taken pursuant to this section, including actions taken pursuant to subsections (a), (b), and (c), to--

(1) The Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate; and

(2) The Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives.

### (f) Modifications to Emerging Technology and Research Advisory Committee.--

**(1) In general.**--The Secretary shall revise the objectives of the Emerging Technology and Research Advisory Committee, established by the Secretary under the Export Administration Regulations, to include advising the interagency process established under subsection (a) with respect to emerging and foundational technologies.

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### (2) Duties.--The Secretary--

(A) shall revise the duties of the Emerging Technology and Research Advisory Committee to include identifying emerging and foundational technologies that may be developed over a period of 5 years or 10 years; and

(B) may revise the duties of the Advisory Committee to include identifying trends in--

(i) The ownership by foreign persons and foreign governments of such technologies;

(ii) The types of transactions related to such technologies engaged in by foreign persons and foreign governments;

(iii) The blending of private and government investment in such technologies; and

(iv) efforts to obfuscate ownership of such technologies or to otherwise circumvent the controls established under this section.

### (3) Meetings.--

(A) **Frequency.**--The Emerging Technology and Research Advisory Committee should meet not less frequently than every 120 days.

(B) **Attendance.**--A representative from each agency participating in the interagency process established under subsection (a) should be in attendance at each meeting of the Emerging Technology and Research Advisory Committee.

(4) **Classified information.**--Not fewer than half of the members of the Emerging Technology and Research Advisory Committee should hold sufficient security clearances such that classified information, including classified information described in clauses (ii) and (iii) of subsection (a)(2)(A), from the interagency process established under subsection (a) can be shared with those members to inform the advice provided by the Advisory Committee.

(5) **Applicability of federal advisory committee act.**-- Subsections (a)(1), (a)(3), and (b) of section

10 and sections 11, 13, and 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Emerging Technology and Research Advisory Committee.

(6) **Report.**--The Emerging Technology and Research Advisory Committee shall include the findings of the Advisory Committee under this subsection in the annual report to Congress required by section 1765.

(g) **Rule of Construction.**--Nothing in this subtitle shall be construed to alter or limit--

(1) The authority of the President or the Secretary of State to designate items as defense articles and defense services for the purposes of the Arms Export Control Act (22 U.S.C. 2751 et seq.) or to otherwise regulate such items; or

(2) The authority of the President under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Nuclear Non- Proliferation Act of 1978 (22 U.S.C. 3201 et seq.), the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), or the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) or any other provision of law relating to the control of exports.

## Sec. 1759. Review Relating to Countries Subject to Comprehensive United States Arms Embargo.

(a) **In General.**--The Secretary, the Secretary of Defense, the Secretary of State, the Secretary of Energy, and the heads of other Federal agencies as appropriate, shall conduct a review of license requirements for exports, reexports, or in-country transfers of items to countries subject to a comprehensive United States arms embargo, including, as appropriate--

(1) The scope of controls under title 15, Code of Federal Regulations, that apply to exports, reexports, and in-country transfers for military end uses and military end users in countries that are subject to a comprehensive United States arms embargo and countries that are subject to a United Nations arms embargo; and

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(2) entries on the Commerce Control List maintained under title 15, Code of Federal Regulations, that are not subject to a license requirement for the export, reexport, or in-country transfer of items to countries subject to a comprehensive United States arms embargo;

**(b) Implementation of Results of Review.**--Not later than 270 days after the date of the enactment of this Act, the Secretary shall implement the results of the review conducted under subsection (a).

## Sec. 1760. Penalties.

### (a) Unlawful Acts.--

**(1) In general.**--It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of this part or of any regulation, order, license, or other authorization issued under this part, including any of the unlawful acts described in paragraph (2).

**(2) Specific unlawful acts.**--The unlawful acts described in this paragraph are the following:

(A) No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by this part, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(B) No person may cause or aid, abet, counsel, command, induce, procure, permit, or approve the doing of any act prohibited, or the omission of any act required by this part, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(C) No person may solicit or attempt a violation of this part, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(D) No person may conspire or act in concert with one or more other persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of this part, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(E) No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, or conduct negotiations to facilitate such activities for, any item exported or to be exported from the United States, or that is otherwise subject to the Export Administration Regulations, with knowledge that a violation of this part, the Export Administration Regulations, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item unless valid authorization is obtained therefor.

(F) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to the Department of Commerce, or an official of any other United States agency, including the Department of Homeland Security and the Department of Justice, or indirectly through any other person--

(i) in the course of an investigation or other action subject to the Export Administration Regulations;

(ii) in connection with the preparation, submission, issuance, use, or maintenance of any export control document or any report filed or required to be filed pursuant to the Export Administration Regulations; or

(iii) for the purpose of or in connection with effecting any export, reexport, or in-country transfer of an item subject to the Export Administration Regulations or a service or other activity of a United States person described in section 1754.

(G) No person may engage in any transaction or take any other action with intent to evade the provisions of this part, the Export Administration Regulations, or any order, license, or authorization issued thereunder.

(H) No person may fail or refuse to comply with any reporting or recordkeeping requirements of the Export Administration Regulations or of any order, license, or authorization issued thereunder.

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(I) Except as specifically authorized in the Export Administration Regulations or in writing by the Department of Commerce, no person may alter any license, authorization, export control document, or order issued under the Export Administration Regulations.

(J) No person may take any action that is prohibited by a denial order or a temporary denial order issued by the Department of Commerce to prevent imminent violations of this part, the Export Administration Regulations, or any order, license or authorization issued thereunder.

**(3) Additional requirements.**--For purposes of paragraph (2)(F), any representation, statement, or certification made by any person shall be deemed to be continuing in effect. Each person who has made a representation, statement, or certification to the Department of Commerce relating to any order, license, or other authorization issued under this part shall notify the Department of Commerce, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention had occurred or may occur in the future.

**(b) Criminal Penalty.**--A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of, an unlawful act described in subsection (a)--

(1) shall be fined not more than \$1,000,000; and

(2) in the case of the individual, shall be imprisoned for not more than 20 years, or both.

### **(c) Civil Penalties.**--

**(1) Authority.**--The Secretary may impose the following civil penalties on a person for each violation by that person of this part or any regulation, order, or license issued under this part, for each violation:

(A) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under this part to the person.

(C) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under this part.

**(2) Procedures.**--Any civil penalty under this subsection may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(3) Standards for levels of civil penalty.--The Secretary may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator's record of cooperation with the Government in disclosing the violation.

### **(d) Criminal Forfeiture.**--

(1) In general.--Any person who is convicted under subsection (b) of a violation of a control imposed under section 1753 (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States any of the person's property--

(A) used or intended to be used, in any manner, to commit or facilitate the violation;

(B) constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of the violation; or

(C) constituting an item or technology that is exported or intended to be exported in violation of this title.

**(2) Procedures.**--The procedures in any forfeiture under this subsection shall be governed by the procedures established under section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of such section.

### **(e) Prior Convictions.**--

**(1) License bar.**--

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### (A) In general.--The Secretary may--

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) To export, reexport, or in-country transfer outside the United States any item, whether or not subject to controls under this part, for a period of up to 10 years beginning on the date of the conviction; and

(ii) revoke any license or other authorization to export, reexport, or in-country transfer items that was issued under this part and in which such person has an interest at the time of the conviction.

### (B) Violations.--The violations referred to in subparagraph (A) are any criminal violations of, or criminal attempt or conspiracy to violate--

(i) This part (or any regulation, license, or order issued under this part);

(ii) any regulation, license, or order issued under the International Emergency Economic Powers Act;

(iii) section 371, 554, 793, 794, or 798 of title 18, United States Code;

(iv) section 1001 of title 18, United States Code;

(v) section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or

(vi) section 38 of the Arms Export Control Act (22 U.S.C. 2778).

**(2) Application to other parties.**--The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or business, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in subsection (c)(2).

### (f) Other Authorities.--Nothing in subsection (c), (d),

or (e) limits--

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

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

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

## Sec. 1761. Enforcement.

**(a) Authorities.**--In order to enforce this part, the Secretary, on behalf of the President, may exercise, in addition to relevant enforcement authorities of other Federal agencies, the authority to--

(1) issue orders and guidelines;

(2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this part;

(3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;

(4) conduct investigations within the United States and outside the United States consistent with applicable law;

(5) inspect, search, detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this part, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this part, or any regulations, order, license, or other authorization issued thereunder;

(6) carry firearms;

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(7) conduct prelicense inspections and post-shipment verifications; and

(8) execute warrants and make arrests.

### (b) Undercover Investigations.--

**(1) In general.**--Amounts made available to carry out this part may be used by the Secretary to carry out undercover investigations that are necessary for detection and prosecution of violations of this part, including to--

(A) purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to--

(i) sections 1341 and 3324 of title 31, United States Code;

(ii) section 8141 of title 40, United States Code;

(iii) sections 3901, 6301(a) and (b)(1) To (3), and 6306 of title 41, United States Code; and

(iv) chapter 45 of title 41, United States Code; and

(B) establish or acquire proprietary corporations or business entities as part of the undercover operation and operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code.

**(2) Deposit of amounts in banks or other financial institutions.**--Amounts made available to carry out this part that are used to carry out undercover operations under paragraph (1) may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code.

**(3) offset of necessary and reasonable expenses.**--Any proceeds from an undercover operation carried out under paragraph (1) may be used to offset necessary and reasonable expenses incurred in such

undercover operation without regard to the provisions of section 3302 of title 31, United States Code.

**(4) Disposition of corporations and business entities.**--If a corporation or business entity established or acquired as part of an undercover operation carried out under paragraph (1) with a net value of over \$50,000 is to be liquidated, sold, or otherwise disposed of, the Secretary shall report the circumstances to the Comptroller General of the United States as much in advance of such disposition as the Secretary determines is practicable. the proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

**(5) Deposit of proceeds.**--As soon as the proceeds from an undercover operation carried out under paragraph (1), with respect to which an action is certified and carried out under this subsection, are no longer needed for the conduct of such operation, the proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

**(c) Enforcement of Subpoenas.**--In the case of contumacy by, or refusal to obey a subpoena issued to, any person under subsection (a)(3), a district court of the United States, after notice to such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, regardless of format, that are the subject of the subpoena. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

### (d) Best Practice Guidelines.--

**(1) In general.**--The Secretary, in consultation with the heads of other appropriate Federal agencies, should publish and update ``best practices" guidelines to assist persons in developing and

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implementing, on a voluntary basis, effective export control programs in compliance with the regulations issued under this part.

**(2) Export compliance program.**--The implementation by a person of an effective export compliance program and a high quality overall export compliance effort by a person should ordinarily be given weight as mitigating factors in a civil penalty action against the person under this part.

**(e) Reference to Enforcement.**--For purposes of this section, a reference to the enforcement of, or a violation of, this part includes a reference to the enforcement or a violation of any regulation, order, license or other authorization issued pursuant to this part.

**(f) Wiretapping.**--Section 2516(1) of title 18, United States Code, is amended--

(1) in subparagraph (s), by striking ``or" at the end;

(2) by redesignating subparagraph (t) as subparagraph (u); and

(3) by inserting after subparagraph (s) (as amended by paragraph (1) of this subsection) The following new subparagraph: ``(t) any violation of the Export Control Reform Act of 2018; or".

**(g) Immunity.**--A person shall not be excused from complying with any requirements under this section because of the person's privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

**(h) Confidentiality of Information.**--

**(1) Exemptions from disclosure.**--

**(A) In general.**--Information obtained under this part may be withheld from disclosure only to the extent permitted by statute, except that information described in subparagraph (B) shall be withheld from public disclosure and shall not be subject to disclosure under section 552(b)(3) of title 5, United States Code, unless the release of

such information is determined by the Secretary to be in the national interest.

**(B) Information described.**--Information described in this subparagraph is information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or in-country transfer items or engage in other activities, a recordkeeping or reporting requirement, an enforcement activity, or other operations under this part, including--

(i) The license application, license, or other authorization itself;

(ii) classification or advisory opinion requests, and the response thereto;

(iii) license determinations, and information pertaining thereto;

(iv) information or evidence obtained in the course of any investigation; and

(v) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

**(2) Information to the congress and GAO.**--

**(A) In general.**--Nothing in this section shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability office.

**(B) Availability to the congress.**--

**(i) In general.**--Any information obtained at any time under any provision of the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), under the Export Administration Regulations, or under this part, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such



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committee or subcommittee.

**(ii) Prohibition on further disclosure.**--No such committee or subcommittee, or member thereof, may disclose any information made available under clause (i), that is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.

### (C) Availability to GAO.--

**(i) In general.**--Information described in clause (i) of subparagraph (B) shall be subject to the limitations contained in section 716 of title 31, United States Code.

**(ii) Prohibition on further disclosure.**--An officer or employee of the Government Accountability office may not disclose, except to the Congress in accordance with this paragraph, any such information that is submitted on a confidential basis or from which any individual can be identified.

### (3) Information sharing.--

**(A) In general.**--Any Federal official described in section 1755(a) who obtains information that is relevant to the enforcement of this part, including information pertaining to any investigation, shall furnish such information to each appropriate department, agency, or office with enforcement responsibilities under this section to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities.

**(B) Exceptions.**--The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code, and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)), may be disclosed only as authorized by that section.

**(C) Exchange of information.**--The President shall ensure that the heads of departments, agencies, and offices with enforcement authorities under this part, consistent with protection of law

enforcement and its sources and methods--

(i) exchange any licensing and enforcement information with one another that is necessary to facilitate enforcement efforts under this section; and

(ii) consult on a regular basis with one another and with the head of other departments, agencies, and offices that obtain information subject to this paragraph, in order to facilitate the exchange of such information.

### **(D) Information sharing with federal agencies.**--

- Licensing or enforcement information obtained under this part may be shared with departments, agencies, and offices that do not have enforcement authorities under this part on a case-by-case basis.

**(i) Reporting Requirements.**--In the administration of this section, reporting requirements shall be designed to reduce the cost of reporting, recordkeeping, and documentation to the extent consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

### **(j) Civil Forfeiture.**--

**(1) In general.**--Any property, real or personal, tangible or intangible, seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United States in accordance with applicable law.

**(2) Procedures.**--Any seizure or forfeiture under this subsection shall be carried out in accordance with the procedures set forth in section 981 of title 18, United States Code.

**(k) Rule of Construction.**--Nothing in this Act shall be construed to limit or otherwise affect the enforcement authorities of the Department of Homeland Security which may also complement those set forth herein.

### **Sec. 1762. Administrative Procedure.**

**(a) In General.**--Except as provided in section

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1760(c)(2) or 1774(c), the functions exercised under this part shall not be subject to sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

### (b) Administrative Law Judges.--

#### (1) In general.--The Secretary may--

(A) appoint administrative law judges, consistent with the provisions of section 3105 of title 5, United States Code; and

(B) designate properly appointed administrative law judges from other Federal agencies who are provided to the Department of Commerce pursuant to a legally authorized interagency agreement.

(2) **Limitation.**--An administrative law judge appointed or designated by the Secretary under paragraph (1) may preside only over proceedings of the Department of Commerce.

(c) **Amendments to Regulations.**--The President shall notify in advance the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives of any proposed amendments to the Export Administration Regulations with an explanation of the intent and rationale of such amendments.

### **Sec. 1763. Review of Interagency Dispute Resolution Process.**

(a) **In General.**--The President shall review and evaluate the interagency export license referral, review, and escalation processes for dual-use items and munitions under the licensing jurisdiction of the Department of Commerce or any other Federal agency, as appropriate, to determine whether current practices and procedures are consistent with established national security and foreign policy objectives.

(b) **Report.**--Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report that contains the results of the review carried out under subsection (a).

(c) **Operating Committee for Export Policy.**--In any case in which the Operating Committee for Export Policy established by Executive Order 12981 (December 5, 1991; relating to Administration of Export Controls) is meeting to conduct an interagency dispute resolution relating to applications for export licenses under the Export Administration Regulations, matters relating to jet engine hot section technology, commercial communication satellites, and emerging or foundational technology may be decided by majority vote.

(d) **Appropriate Congressional Committees Defined.**--In this section, the term "appropriate congressional committees" means--

(1) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

(2) The Committee on Armed Services and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**Sec. 1764. Consultation with Other Agencies on Commodity Classification.** Notwithstanding any other provision of law, the Secretary shall consult with the Secretary of Defense, the Secretary of State, and the Secretary of Energy, as appropriate, regarding commodity classifications for any item the Secretary and the Secretary of Defense, the Secretary of State, and the Secretary of Energy identify and mutually determine is materially significant enough to warrant interagency consultation.

### **Sec. 1765. Annual Report to Congress.**

(a) **In General.**--The Secretary shall submit to Congress, by December 31 of each year, a report on the implementation of this part during the preceding fiscal year. The report shall include a review of--

(1) The effect of controls imposed under this part on exports, reexports, and in-country transfers of items in addressing threats to the national security or foreign policy of the United States, including a description of licensing processing times;

(2) The impact of such controls on the scientific and technological leadership of the United States;

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(3) The consistency with such controls of export controls imposed by other countries;

(4) efforts to provide exporters with compliance assistance, including specific actions to assist small- and medium-sized businesses;

(5) a summary of regulatory changes from the prior fiscal year;

(6) a summary of export enforcement actions, including of actions taken to implement end-use monitoring of dual-use, military, and other items subject to the Export Administration Regulations;

(7) a summary of approved license applications to proscribed persons;

(8) efforts undertaken within the previous year to comply with the requirements of section 1759, including any critical technologies identified under such section and how or whether such critical technologies were controlled for export; and

(9) a summary of industrial base assessments conducted during the previous year by the Department of Commerce, including with respect to counterfeit electronics, foundational technologies, and other research and analysis of critical technologies and industrial capabilities of key defense-related sectors.

**(b) Form.**--The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

## Sec. 1766. Repeal.

**(a) In General.**--The Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) (other than Sections 11A, 11B, and 11C of such Export Administration Act of 1979) is repealed.

**(b) Implementation.**--The President shall implement the amendment made by subsection (a) by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

## Sec. 1767. Effect on Other Acts.

**(a) In General.**--Except as otherwise provided in this part, nothing contained in this part shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over the export or reexport of any item.

## (b) Coordination of Controls.--

**(1) In general.**--The authority granted to the President under this part shall be exercised in such manner so as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778) and all other export control and sanctions authorities exercised by Federal departments and agencies, particularly the Department of State, the Department of the Treasury, and the Department of Energy.

**(2) Sense of congress.**--It is the sense of Congress that in order to achieve effective coordination described in paragraph (1), such Federal departments and agencies--

(A) should continuously work to create enforceable regulations with respect to the export, reexport, and in-country transfer by United States and foreign persons of commodities, software, technology, and services to various end uses and end users for foreign policy and national security reasons;

(B) should regularly work to reduce complexity in the system, including complexity caused merely by the existence of structural, definitional, and other non- policy based differences between and among different export control and sanctions systems; and

(C) should coordinate controls on items exported, reexported, or in-country transferred in connection with a foreign military sale under chapter 2 of the Arms Export Control Act (22 U.S.C. 2761 et seq.) or a commercial sale under section 38 of the Arms Export Control Act to reduce as much unnecessary administrative burden as possible that is a result of differences between the exercise of those two authorities.

**(c) Nonproliferation Controls.**--Nothing in this part

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shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

### Sec. 1768. Transition Provisions.

**(a) In General.**--All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), or the Export Administration Regulations, and are in effect as of the date of the enactment of this Act, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of this part.

**(b) Administrative and Judicial Proceedings.**--This part shall not affect any administrative or judicial proceedings commenced, or any applications for licenses made, under the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), or the Export Administration Regulations.

### (c) Certain Determinations and References.--

**(1) State sponsors of terrorism.**--Any determination that was made under section 6(j) of the Export Administration Act of 1979

(as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act) shall continue in effect as if the determination had been made under section 1754(c).

**(2) Reference.**--Any reference in any other provision of law to a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as in effect on the day before the date of the enactment of this Act and as continued in effect pursuant to the International Emergency Economic Powers Act), is a government that has repeatedly provided support for acts of international terrorism shall be deemed to refer

to a country the government of which the Secretary of State has determined, for purposes of section 1754(c), is a government that has repeatedly provided support for acts of international terrorism.

## PART II—ANTI-BOYCOTT ACT OF 2018

**Sec. 1771. Short Title.** This part may be cited as the “Anti-Boycott Act of 2018”.

**Sec. 1772. Statement of Policy.** Congress declares it is the policy of the United States--

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

(2) To encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or any United States person; and

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

### Sec. 1773. Foreign Boycotts.

#### (a) Prohibitions and Exceptions.--

**(1) Prohibitions.**--For the purpose of implementing the policies set forth in section 1772, the President shall issue regulations prohibiting any United States person, with respect to that person's activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by any foreign country, against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted

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

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

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

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

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

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

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

(A) complying or agreeing to comply with requirements--

(i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

(ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

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

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

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

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

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

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

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

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

## (b) Foreign Policy Controls.--

**(1) In general.**--In addition to the regulations issued pursuant to subsection (a), regulations issued under part I to carry out the policies set forth in section 1752(1)(D) shall implement the policies set forth in this section.

**(2) Requirements.**--Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in subsection (a) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. the Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 1772.

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

## Sec. 1774. Enforcement.

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**(a) Criminal Penalty.**--A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act section 1773--

(1) shall, upon conviction, be fined not more than \$1,000,000; or

(2) if a natural person, may be imprisoned for not more than 20 years, or both.

**(b) Civil Penalties.**--The President may impose the following civil penalties on a person who violates section 1773 or any regulation issued under this part:

(1) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(2) Revocation of a license issued under part I to the person.

(3) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under part I.

**(c) Procedures.**--Any civil penalty or administrative sanction (including any suspension or revocation of authority to export) under this section may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code, and shall be subject to judicial review in accordance with chapter 7 of such title.

**(d) Standards for Levels of Civil Penalty.**--The President may by regulation provide standards for establishing levels of civil penalty under this section based upon factors such as the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

## PART III--ADMINISTRATIVE AUTHORITIES

### Sec. 1781. Under Secretary of Commerce for Industry and Security.

#### (a) Under Secretary of Commerce for Industry and

**Security.**--The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Industry and Security, who shall carry out--

(1) all functions of the Secretary under this subtitle; and

(2) all functions delegated to the Under Secretary of Commerce for Export Administration on the day before the date of the enactment of this Act.

**(b) Reference.**--On and after the date of the enactment of this Act, any reference in any law or regulation to the Under Secretary of Commerce for Export Administration shall be deemed to be a reference to the Under Secretary of Commerce for Industry and Security.

**(c) Title 5.**--Section 5314 of title 5, United States Code, is amended by striking "Under Secretary of Commerce for Export Administration" and inserting "Under Secretary of Commerce for Industry and Security".

**(d) Continuation in office.**--The individual serving as Under Secretary of Commerce for Export Administration on the day before the date of the enactment of this Act may serve as the Under Secretary of Commerce for Industry and Security on and after that date without the need for renomination or reappointment.

### Sec. 1782. Assistant Secretaries of Commerce.

**(a) In General.**--The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary of Commerce for Industry and Security in carrying out the functions described in paragraphs (1) and (2) of section 1781(a).

**(b) Continuation in Office of One Assistant Secretary.**--An individual appointed as an Assistant Secretary of Commerce under section 15(a) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) and serving in that position on the day before the date of the enactment of this Act may serve in one of the Assistant Secretary positions established under

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subsection (a) on and after that date without the need for renomination or reappointment.



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**Part I.2. Export Administration Act of 1979, as amended, which has now been repealed in part<sup>2</sup>**

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<sup>1</sup> The Export Administration Act of 1979, previously codified at 50 U.S.C. §§ 4601-4623 (“EAA”), lapsed on August 20, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)) continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq.) (2012)(“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, which included the Export Control Reform Act of 2018, now codified at 50 U.S.C. §§ 4801-4852 (“ECRA”). Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of the date of ECRA’s enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to authority provided under ECRA.

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<b>STATUTORY CITATIONS</b>		Fiscal Year 1991, Pub. L. 101-510	
	Export Administration Act of 1979, Pub. L. 96-72, 93 Stat. 503, previously codified at 50 U.S.C. §§ 4601-4623, as amended by:	X	Miscellaneous Foreign Affairs (Title III-Control and Elimination of Chemical and Biological Weapons), Pub. L. 102-182
X	International Security and Development Act of 1980 (Section 111), Pub. L. 96-533	X	Export Administration Act of 1979 (extension), Pub. L. 103-10
X	Export Administration Amendments Act of 1981, Pub. L. 97-145	X	Act for Reform in Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and other New Independent States, Pub. L. 103-199
X	Export Administration Act of 1979, Extension, Pub. L. 98-108		
X	Export Administration Act of 1979, Extension, Pub. L. 98-207	X	Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236
X	Export Administration Act of 1979, Extension, Pub. L. 98-222	X	Export Administration Act of 1979 (extension), Pub. L. 103-277
X	Export Administration Amendments Act of 1985, Pub. L. 99-64	X	Act to Provide References in Law to Committees and Officers of the House of Representatives, Pub. L. 104-14
X	Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, Pub. L. 99-399	X	General Accounting Office Act of 1996 (Section 128), Pub. L. 104-316
X	Tax Reform Act of 1986 (Section 2), Pub. L. 99-514	X	Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277
X	Export Administration Act of 1979, Authorization, Pub. L. 99-633		
X	National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. 100-180	X	Pub. L. 106-508, November 13, 2000.
X	Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418	X	Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458.
X	United States-Canada Free-Trade Implementation Act of 1988 Pub. L. 100-449	X	Trade Facilitation and Trade Enforcement Act of 2015 (Section 802), Pub. L. 114-125
		(annotated below)	
X	Anti-Terrorism and Arms Export Amendments Act of 1989, Pub. L. 101-222		# # # # #
X	National Defense Authorization Act for		

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

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

### Section 1. SHORT TITLE

This Act may be cited as the “Export Administration Act of 1979”.

### Section 2. FINDINGS

The Congress makes the following findings:

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

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

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

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

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

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

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

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

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

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

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

(12) Excessive dependence of the United States,

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it allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

### Section 3. DECLARATION OF POLICY

The Congress makes the following declarations:

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

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

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

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

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

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

(4) It is the policy of the United States to use its economic resources and trade potential to further the

sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

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

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

(B)to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

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

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

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

(8) It is the policy of the United States to use export

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controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

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

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

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

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

(13) It is the policy of the United States to

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

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

## Section 4. GENERAL PROVISIONS<sup>3</sup>

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

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

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

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the

Protection in this section.

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<sup>3</sup> Section 802, Pub. L. 114-125 (2016), updated the title of the Commissioner of U.S. Customs and Border

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responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignee's geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

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

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

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

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

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

**(b)** Control List.-- The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

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

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

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

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

(g) Fees.-- No fee may be charged in connection with the submission or processing of an export license application.

### Section 5. NATIONAL SECURITY CONTROLS<sup>4</sup>

(a) Authority--

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

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the

Secretary shall publish in the *Federal Register* a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

(4) (A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee [Coordinating Committee for Multilateral Export Controls], or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

- (i) supercomputers;
- (ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);
- (iii) devices for surreptitious interception of wire or oral communications; and
- (iv) goods or technology intended for such end users as the Secretary may specify by regulation.

(5) (A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to

Protection in this section.

<sup>4</sup> Section 802, Pub. L. 114-125 (2016), updated the title of the Commissioner of U.S. Customs and Border



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the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and--

(i) The value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or

(ii) The export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the “controlled United States content” of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term “supercomputer” for purposes of those paragraphs.

### (b) Policy Toward Individual Countries--

(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(f)], except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account--

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

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

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

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

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

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

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

(2) (A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988, [August 23, 1988, Title II - Pub. L. 100-418] would require only notification of the participating governments of the Coordinating Committee.

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**(B) (i)** The Secretary may require a license for the export of goods or technology described in subparagraph (A) To such end users as the Secretary may specify by regulation.

**(ii)** The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

**(C)** The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

**(i)** national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

**(ii)** a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

**(iii)** an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

**(iv)** a system of export control documentation to verify the movement of goods and technology; and

**(v)** procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determination made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

**(3) (A)** No authority or permission may be required under this section to export to any country,

other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

**(B)** The Secretary may require any person exporting any goods or technology under subparagraph (A) To notify the Secretary of those exports.

## **(c) Control List--**

**(1)** The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

**(2)** The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

**(3)** The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly

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review, the Secretary shall publish notice of that review in the *Federal Register*. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the *Federal Register* any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

(5) (A) Not later than 6 months after the date of enactment of this paragraph [August 23, 1988], the following shall no longer be subject to export controls under this section:

(i) All goods and technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the

Coordinating Committee agrees to maintain such notification requirement.

(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.

(6) (A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that--

(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the *Federal Register* on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item

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has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary--

(A) shall determine the truth of the allegation;

(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

(C) shall, pursuant to such review, submit a finding for publication in the *Federal Register*.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

### (d) Militarily Critical Technologies.—

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

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

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

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

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, and

(D) keystone equipment which would reveal or give insight into the design and manufacture of a United States military system, which are not possessed

by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

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

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

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily

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critical technologies any good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

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

(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

### (e) Export Licenses.--

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

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

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

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

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

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

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

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

(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if--

(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

### (f) Foreign Availability.--

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### (1) Foreign Availability to Controlled Countries.—

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

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President

determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

### (2) Foreign Availability to Other Than Controlled Countries--

(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a

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country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

### (3) Procedures for Making Determinations.—

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

(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the *Federal Register* notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for

review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the *Federal Register*, that--

(i) The foreign availability does exist and--

(I) the requirement of a validated license has been removed,

(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

(ii) The foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) To which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

(4) Negotiations to Eliminate Foreign Availability.--

(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United

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States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(5) Expedited License for Items Available to Countries Other Than Controlled Countries.--

(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary

shall designate such goods or technology as eligible for export to such country under this paragraph.

(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the *Federal Register* and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the *Federal Register*. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

(6) Office of Foreign Availability.-- The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on International Relations of the House of



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Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Foreign Commercial Service officers. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

(7) **Sharing of Information.**-- Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

(8) **Removal of Controls on Less Sophisticated Goods or Technology.**-- In any case in which the Secretary may not, pursuant to paragraph (1), (2), (3) or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

(9) **Notice of All Foreign Availability Assessments.**-- Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the *Federal Register*.

(10) **Availability Defined.**-- For purposes of this subsection and subsections (f) and (h), the term "available in fact to controlled countries" includes

production or availability of any goods or technology in any country--

(A) from which the goods or technology is not restricted for export to any controlled country; or

(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

(g) **Indexing.**--

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

(2) (A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology--

(i) which are eligible for export under a distribution license,

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(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

(B) In any case in which the Secretary receives a request which--

(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under distribution license, and

(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the *Federal Register*.

### (h) Technical Advisory Committees.--

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

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

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) Technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) The issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in Section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

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

(4) Each such committee shall elect a chairman,

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

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

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that--

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

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

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

exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the exports of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(i) **Multilateral Export Controls.**-- Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in the subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Enhanced public understanding of the Committee's purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

(3) Strengthened legal basis for each government's export control system, including, as appropriate, increased penalties and statutes of limitations.

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(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of such items no longer serves the common strategic objectives of the members of the Committee.

For purposes of reviews of the International Control List, the President may include as advisors to the United States delegation to the Committee

representatives of industry who are knowledgeable with respect to the items being reviewed.

### (j) Commercial Agreements with Certain Countries.--

(1) Any United States firm, enterprise, or other nongovernmental entity which, enters into an agreement with any agency of the government of a controlled country that calls for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

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

(k) Negotiations with Other Countries.-- The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions for those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and Section 10(o) of this Act.

### (l) Diversion of Controlled Goods or Technology.--

(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology, which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in

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violation of the conditions of an export license, the Secretary for as long as that diversion continues--

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

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

(2) As used in this subsection, the term “unauthorized use” means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

(m) Goods Containing Controlled Parts and Components.-- Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components--

(1) are essential to the functioning of the good,

(2) are customarily included in sales of the good in countries other than controlled countries, and

(3) comprise 25 percent or less of the total value of the good, unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

(n) Security Measures.-- The Secretary and the Commissioner of U.S. Customs and Border Protection, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or

technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

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

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

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

## Section 6. FOREIGN POLICY CONTROLS

(a) Authority.--

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

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such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

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

(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension shall not be for a period of more than one year.

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

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

(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in

response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

### (b) Criteria.--

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

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

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

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

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

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

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985 [July

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12, 1985], the President, in determining whether to extend those controls, as required by subsection (a) (3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

**(c) Consultation with Industry.**-- The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155] before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b) (1) and such other matters as the Secretary considers appropriate.

**(d) Consultation with Other Countries.**-- When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

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

**(f) Consultation with the Congress.**--

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

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

**(A)** specifying the purpose of the controls;

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

**(C)** describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

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

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

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

**(3)** To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.<sup>5</sup>

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

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<sup>5</sup> Pub. L. 104-316 128(c) (110 Stat. 3841) amended subsection (f)(3) by striking the second sentence which provided for the report to be submitted to the

General Accounting Office for the purpose of assessing compliance with this subsection.

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

(g) Exclusion for Medicine and Medical Supplies and for Certain Food Exports.-- This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) That are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Administrator of the Agency for International Development in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Administrator with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Administrator of the Agency for International Development, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines

that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies, or of food under the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*]. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985]. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of Section 3 of this Act.<sup>6</sup>

## (h) Foreign Availability.--

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

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

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the

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<sup>6</sup> Pub. L. 105-277 1422(b)(7) (112 Stat. 2681-793) amended references to the Director of the United States International Development Cooperation Agency to

the Administrator of the Agency for International Development.



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export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (l) of this section if the Secretary determines that such action is appropriate.

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

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

(j) Countries Supporting International Terrorism.--

(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on International Relations of the House of Representatives and the Committee on

Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989 [December 12, 1989], shall be published in the *Federal Register*.

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate--

(A) before the proposed rescission would take effect, a report certifying that--

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that--

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

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

(5) (A) As used in paragraph (1), the term "repeatedly provided support for acts of international terrorism" shall include the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.

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**(B)** In this paragraph--

**(i)** the term “territory of a country” means the land, waters, and airspace of the country; and

**(ii)** the term “sanctuary” means an area in the territory of a country--

**(I)** That is used by a terrorist or terrorist organization--

**(aa)** To carry out terrorist activities, including training, financing, and recruitment; or

**(bb)** as a transit point; and

**(II)** The government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory.

**(6)** The Secretary and the Secretary of State shall include in the notification required by paragraph (2)--

**(A)** a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

**(B)** the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

**(C)** the reasons why the proposed export or transfer is in the national interest of the United States;

**(D)** an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

**(E)** an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods

or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

**(F)** an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.<sup>7</sup>

**(k)** Negotiations with Other Countries.--

**(1)** Countries participating in certain agreements.-  
- The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out--

**(A)** the policy set forth in section 3(2)(B) of this Act [50 U.S.C. app. 2402(2)(B)] and

**(B)** United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (l).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreed export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act [50 U.S.C. app. 2402(b)(2)(C)].

**(2)** Other Countries.-- The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding

subsection (j)(5)

<sup>7</sup> Pub. L. 103-236, 736 (108 Stat. 506), added

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their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreements on export restrictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act [50 U.S.C. app. 2404(b)(2)(C)], the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports are treated to countries that are MTCR adherents.

**(3) Review of Determinations.--** The Secretary shall annually review any determination under paragraph (2) with respect to a country. For each such country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5(b)(2)(C) [50 U.S.C. app. 2404(b)(2)(C)], the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

### **(I) Missile Technology.--**

**(1) Determination of Controlled Items.--** The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies--

**(A)** shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

**(B)** may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

**(2) Requirement of Individual Validated Licenses.--** The Secretary shall require an individual validated license for--

**(A)** any export of goods or technology on the list established under paragraph (1) To any country; and

**(B)** any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

### **(3) Policy of Denial of Licenses.--**

**(A)** Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

**(B)** Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) To have repeatedly provided support for acts of international terrorism.

### **(4) Consultation with Other Departments.--**

**(A)** A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

**(B)** Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

**(C)** The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

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(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(5) Information Sharing.-- The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

### (m) Chemical and Biological Weapons.--

(1) Establishment of List.-- The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

(2) Requirement for Validated Licenses.-- The Secretary shall require a validated license for any

export of goods or technology on the list established under paragraph (1) To any country of concern.

(3) Countries of Concern.-- For purposes of paragraph (2), the term "country of concern" means any country other than--

(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.<sup>8</sup>

### (n) Crime Control Instruments.--

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

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

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

<sup>8</sup> Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Pub. L. No. 102-182, 304(b), 105 Stat. 1245, 1246-1247, added subsection (m). Section 304(a) of the Act directs the President to cause the authorities of the Export Administration Act of 1979 to control the export of those goods and technologies that the

President determines would assist the government of any foreign country in acquiring the capability to develop, produce, stockpile, deliver or use chemical or biological weapons. (22 U.S.C. 5603)).

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(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organizations or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961 [22 U.S.C. 2304].

(o) Control List.-- The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods or technology comparable to those controlled for export from the United States under this section.

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

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

(2) under a validated license or other authorization issued under this Act, unless and until the President determines and certifies to the Congress that--

(A) a breach of the peace poses a serious and

direct threat to the strategic interest of the United States,

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

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

(q) Extension of Certain Controls.-- Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection [July 12, 1985], and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(r) Expanded Authority to Impose Controls.--

(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (p), of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on , a

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determination of the President under Section 6(r)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.”, with the date of the receipt of the determination and report inserted in the blank.

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

(s) Spare Parts.--

(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection [August 23, 1988], an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

## Section 7. SHORT SUPPLY CONTROLS

(a) Authority.--

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

of short supply.

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

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

(b) Monitoring.--

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970 [7 U.S.C. 612c-3]) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that (c) The monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

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

(3) The Secretary shall consult with the Secretary

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

### (c) Petitions for Monitoring or Controls.--

(1) (A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

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

(A) include the name of the material that is the subject of the petition,

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

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

(D) provide that interested persons shall have a

period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

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

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

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

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

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

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

(B) The Secretary shall publish in the *Federal Register* a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or

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both, including the findings of fact in support of that determination.

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

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

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

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if--

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

(B) the Secretary considers such action to be necessary to carry out the policy set forth in Section

3(2)(C) of this Act.

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

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

## (d) Domestically Produced Crude Oil.--

(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the TransAlaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United



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States Code)<sup>9</sup> may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

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

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

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

(ii) will, within 3 months following the initiation of such exports or changes, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

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

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

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

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

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act

of 1920 [30 U.S.C. 185(u)], the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) Refined Petroleum Product.--

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

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

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

<sup>9</sup> U.S.-Canada Free-Trade Agreement, Pub. L.

100-449, 305, 102 Stat. 1851, 1876.

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States to such country in any fiscal year.

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

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

(f) Certain Petroleum Products.-- Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) Agricultural Commodities.--

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

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to

such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) That such commodities will eventually be exported, (B) That neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) That storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) That the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

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

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

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

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

(4) (A) For purposes of this paragraph, the term “joint resolution” means only a joint resolution the matter after the resolving clause of which is as follows: “That pursuant to Section 7(g)(3) of the Export

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Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on .”, with the blank space being filled with the appropriate date.

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

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

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

**(E)** A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. “ 2151 *et seq.*, Pub. L. 94-329, June 30, 1976). For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to

the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

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

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

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

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

## **(h) Barter Agreements.--**

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

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

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

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

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

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

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

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act [September 30, 1979].

### (i) Unprocessed Red Cedar.--

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

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

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

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

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

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

of validated licenses for exports under this subsection.

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

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

(5) As used in this subsection, the term “unprocessed western red cedar” means red cedar timber which has not been processed into--

(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

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

(E) shakes and shingles.

(j) Effect of Controls on Existing Contracts.-- The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term “contract to export” includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

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**(k)** Oil Exports for Use by United States Military Facilities.-- For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.<sup>10</sup>

## Section 8. FOREIGN BOYCOTTS

### (a) Prohibitions and Exceptions.--

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

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

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

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

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

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

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

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

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

subsection (k).

<sup>10</sup> Pub. L. 100-180 1246 (101 Stat. 1165) added

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

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

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

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

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

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

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

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

### (b) Foreign Policy Controls.--

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

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of

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this Act.

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

### Section 9. PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

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

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

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

(1) Whether denial would cause a unique hardship

to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account--

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

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

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

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

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

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

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

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

### Section 10. PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

(a) Primary Responsibility of the Secretary.--

(1) All export license applications required under this Act shall be submitted by the applicant to the

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Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Action by Other Departments and Agencies.--

(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department



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or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

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

(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

### (f) Action by the Secretary.--

(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations,

the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

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

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

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

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

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of--

(A) the determination,

(B) the statutory basis for the proposed denial,

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

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

(E) which officers and employees of the Department of Commerce who are familiar with the

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application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

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

(G) the availability of appeal procedures.

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

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

(g) Special Procedures for Secretary of Defense.--

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

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for

the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall--

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

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

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

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

(3) The Secretary shall approve or disapprove a

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license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

**(h) Multilateral Controls.--** In any case in which an application which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

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

the Secretary, any dissenting recommendations received from any such department or agency.

## **(j) Appeal and Court Action.--**

**(1)** The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

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

**(3)** If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

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

## **(l) Other Inquiries.--**

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

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request, inform the person making the request of the proper classification.

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

(m) Small Business Assistance.-- Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988 [August 23, 1988], report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.

### (n) Reports on License Applications.--

(1) Not later than 180 days after the date of the enactment of this subsection [July 12, 1985], and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on International Relations of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing--

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of

this section, as the case may be, and upon which final action has not been taken.

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

(A) the application case number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the number of days which elapsed before action on the applications was completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

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

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

(o) Exports to Members of Coordinating Committee.-

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

license unless--

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

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

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

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

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

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

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

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

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985].

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### Section 11. VIOLATIONS

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

(b) Willful Violations.--

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes--

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

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

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

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

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

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

(A) with the intent to export such goods or

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

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

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

(4) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under Section 5 or 6 of this Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

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

(c) Civil Penalties; Administrative Sanctions.--

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act or any regulation, order or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C. 2778] may not exceed \$100,000.

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

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section 8(a) of this Act.

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

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

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

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

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

**(e)** Refunds.-- Any amount paid in satisfaction of

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

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

**(g)** Forfeiture of Property Interest and Proceeds.--

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

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

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

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

**(2)** The procedures in any forfeiture under this

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

### (h) Prior Convictions.--

(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701 *et seq.*], Section 793, 794, or 798 of Title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

(i) Other Authorities.-- Nothing in subsection (c), (d), (f), (g) or (h) limits--

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

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

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

## Section 11A. MULTILATERAL EXPORT CONTROL VIOLATIONS

(a) Determination by the President.-- The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that--

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988 [August 23, 1988].

(b) Sanctions.-- The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

(c) Exceptions.-- The President shall not apply sanctions under this section--

(1) in the case of procurement of defense articles or defense services--



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(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to--

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) Exclusion.-- The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that--

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(D) a system of export control documentation to verify the movement of goods and technology; and

(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

(e) Definitions.-- For purposes of this section--

(1) the term “component part” means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term “finished product” means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term “sanctioned person” means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

(f) Subsequent Modifications of Sanctions.-- The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that--

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(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

**(g) Reports to Congress.--** The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

**(h) Discretionary Imposition of Sanctions.--** If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

**(i) Compensation for Diversion of Militarily Critical Technologies to Controlled Countries.--**

(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign

person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

**(j) Other Actions by the President.--** Upon making a determination under subsection (a) or (h), the President shall--

(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

**(k) Damages for Certain Violations.--**

(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

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(3)<sup>11</sup> The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

(I) Definition.-- For purposes of this section, the term “foreign person” means any person other than a United States person.

### Section 11B. MISSILE PROLIFERATION CONTROL VIOLATIONS

(a) Violations by United States Persons.--

(1) Sanctions.--

(A) If the President determines that a United States person knowingly--

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act (22 U.S.C. 2797 et seq.), section 5 or 6 of this Act, or any regulations or orders issued under any such provisions,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in subparagraph (B).

(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the

MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

(2) Discretionary Sanctions.-- In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 11 of this act

(3) The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that--

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) Transfers of Missile Equipment or Technology by Foreign Persons.--

(1) Sanctions.--

(A) Subject to paragraphs (3) Through (7), if the President determines that a foreign person, after the date of the enactment of this section [November 5, 1990], knowingly--

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or

<sup>11</sup> So in original. Subsection (k) was enacted

without a paragraph 2.

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technology, subject to the jurisdiction of the United States under this Act,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act (22 U.S.C. 2797b(a)), then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.

(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(2) Inapplicability with Respect to MTCR Adherents.-- Paragraph (1) does not apply with respect to--

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end-user in a country that is an MTCR adherent

(3) Effect of Enforcement Actions by MTCR Adherents.-- Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(4) Advisory Opinions.-- The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(5) Waiver and Report to Congress.--

(A) In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(B) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(6) Additional Waiver.-- The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that--

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(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(7) Exceptions.-- The President shall not apply the sanction under this subsection under this subsection prohibiting the importation of the products of a foreign person--

(A) in the case of procurement of defense articles or defense services--

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to--

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or productions.

(c) Definitions.-- For purposes of this section and subsections (k) and (l) of section 6 [50 U.S.C. app. 2405(k), (l)]--

(1) the term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex;

(6) the term “foreign person” means any person other than a United States person;

(7) (A) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

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(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term “person” means--

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

(8) the term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end- user of the item to be exported or transferred.

### Section 11C. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

#### (a) Imposition of Sanctions.--

(1) Determination by the President.-- Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, [December 4, 1991], has knowingly and materially contributed--

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) To use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

#### (2) Countries, Projects, or Entities Receiving

Assistance.

Paragraph (1) applies in the case of--

(A) any foreign country that the President determines has, at any time after January 1, 1980--

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) Persons Against Which Sanctions are to be Imposed.-- Sanctions shall be imposed pursuant to paragraph (1) on--

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) Consultations with and Actions by Foreign Government of Jurisdiction.--

(1) Consultations.-- If the President makes the determination described in subsection (a)(1) with

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respect to a foreign person, the Congress urges the President to initiate consultation immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

**(2) Actions by Government of Jurisdiction.--** In order to pursue such consultations with that government, the President may delay the imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay the imposition of sanction for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

**(3) Report to Congress.--** The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

### **(c) Sanctions.--**

**(1) Description of Sanctions.--** The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

**(A) Procurement Sanction.--** The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

**(B) Import Sanctions.--** The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

**(2) Exceptions.--** The President shall not be required to apply or maintain sanctions under this sectionB

**(A)**in the case of procurement of defense articles or defense services--

**(i)** under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

**(ii)** if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

**(iii)** if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

**(B)**to product or services provided under contracts entered into before the date of which the President publishes his intention to impose sanctions;

**(C)**to--

**(i)** spare parts,

**(ii)** component parts, but not finished products, essential to United States products or production, or

**(iii)** routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

**(D)**to information and technology essential to United States products or production; or

**(E)**to medical or other humanitarian items.

**(d) Termination of Sanctions.--** The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts

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to acquire chemical or biological weapons capability as described in that subsection.

### (e) Waiver.--

(1) **Criterion for Waiver.--** The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) **Notification of and Report to Congress.--** If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) **Definition of Foreign Person.--** For purposes of this section, the term “foreign person” means--

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

## Section 12. ENFORCEMENT<sup>12</sup>

### (a) General Authority.--

(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically

designated by the head thereof) may make such investigations within the United States, and the Commissioner of U.S. Customs and Border Protection (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of Section 8 of this Act.

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

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

Protection in this section.

<sup>12</sup> Section 802, Pub. L. 114-125, updated the title of the Commissioner of U.S. Customs and Border



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

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

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

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

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of Section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within

the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of U.S. Customs and Border Protection or a person designated by the commissioner.

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

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

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

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

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

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

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than \$12,000,000 in the fiscal year 1985 and not more than \$14,000,000 in the fiscal year 1986.

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

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

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

(c) Confidentiality.--

(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this

subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress, or from the General Accounting Office. All information obtained at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921 (31 U.S.C. 716), be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this

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paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)), may be disclosed only as authorized by such section. The Secretary and the Commissioner of U.S. Customs and Border Protection, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of U.S. Customs and Border Protection shall consult on a continuing basis with one another and with the head of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

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

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

## Section 13. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

**(a) Exemption.--** Except as provided in section 1-1(c)(2) and subsection (c) of this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

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

**(c) Procedures Relating to Civil Penalties and Sanctions.--**

**(1)** In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of Section 8) is sought under Section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with Sections 556 and 557 of Title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

**(2)** The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

**(3)** The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine

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liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

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

### (d) Imposition of Temporary Denial Orders.--

(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") To a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The

written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act. All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.

(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) Appeals from License Denials.-- A determination of the Secretary, under Section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in Section 12(c) of this Act, the Secretary's decision shall be published in the *Federal Register*.

## Section 14. ANNUAL REPORT

(a) Contents.-- Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the

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preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to--

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(6);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

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

(12) export controls and monitoring under

section 7;

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

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3);

(B) the worldwide supply of such commodities; and

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

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

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

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

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

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

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

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

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**(b) Report on Certain Export Controls.--** To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

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

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

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

**(f) Annual Report of the President.--** The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of

any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

## Section 15. ADMINISTRATIVE AND REGULATORY AUTHORITY

**(a) Under Secretary of Commerce.--** The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

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

**(c) Amendments to Regulations.--** If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives on the intent and rationale of

## Legal Authority

such amendments. Such report shall evaluate the cost and burden to the United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under Section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to Sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

## Section 16. DEFINITIONS

As used in this Act--

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

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

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

(4) the term “technology” means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) That can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical

data, but not the goods themselves;

(5) the term “export” means-

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

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

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

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

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

(8) the term “Secretary” means the Secretary of Commerce.

## Section 17. EFFECT ON OTHER ACTS

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

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

(c) Civil Aircraft Equipment.-- Notwithstanding any other provision of law, any product (1) which is

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standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act (22 U.S.C. 2778(b)(2)).

### (d) Nonproliferation Controls.--

(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2139a(c)).

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2139a(c)), is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

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

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

## Section 18. AUTHORIZATION OF APPROPRIATIONS

### (a) Requirement of Authorizing Legislation.--

(1) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may

be obligated or expended only if--

(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985]; or

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

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

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985] which specifically repeals, modifies, or supersedes the provisions of this subsection.

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

(1) \$42,813,000 for the fiscal year 1993;

(2) such sums as may be necessary for the fiscal year 1994; and

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

## Section 19. EFFECTIVE DATE

Effective Date.-- This Act shall take effect upon the expiration of the Export Administration Act of 1969.

## Section 20. TERMINATION DATE

The authority granted by this Act terminates on



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August 20, 2001.<sup>13</sup>

**Section 21.**  
**SAVINGS PROVISIONS**

**(a) In General.**-- All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export

Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

**(b) Administrative Proceedings.**-- This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect [September 30, 1979].

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<sup>13</sup> Pub. L. 106-508 (November 13, 2000) replaced “August 20, 1994” with “August 20, 2001.” The Act lapsed on August 20, 2001 and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), continued the Regulations in

effect under the International Emergency Economic Powers Act until the Export Control Reform Act of 2018 was passed on August 13, 2018, providing permanent authorization for the Regulations.

**Part I.3. International Emergency Economic Powers Act, as amended**

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**STATUTORY CITATIONS**

International Emergency Economic Powers Act of 1977, Pub. L. 95-223, 91 Stat. 1626, codified at 50 U.S.C. Sec. 1701 – 1708, as amended by:

X Pub. L. 100-418, Section 2502(b)(1)

X Pub. L. 103-236, Section 525(c)(1) (“Free Trade in Ideas”)

X Pub. L. 107-56, Section 106

X Pub. L. 110-96, Section 2

# # # # #

**Section 201**  
**SHORT TITLE**

This title may be cited as the “International Emergency Economic Powers Act.”

**Section 202**  
**SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED**

(a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

**Section 203**  
**GRANT OF AUTHORITIES**

(a) (1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, license, or otherwise --

(A) investigate, regulate, or prohibit --

(i) any transactions in foreign exchange,

(ii) Transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) The importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and

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upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment of furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly --

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations

(A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title,

(B) are in response to coercion against the proposed recipient or donor, or

(C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979 [50 USC app. 2404], or under section 6 of such Act [50 USC app. 2405] to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code [18 USC 791 et seq.];

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) **Classified information.** In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

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### Section 204 CONSULTATION AND REPORTS

(a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this title and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying --

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) Through (5) of subsection (b).

(d) The requirements of this section are supplemental to those contained in title IV or the National Emergencies Act.

### Section 205 AUTHORITY TO ISSUE REGULATIONS

The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this title.

### Section 206 PENALTIES

(a) **Unlawful acts.** It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this title.

(b) **Civil penalty.** A civil penalty may be imposed on any person who commits an unlawful act described in subsection (a) in an amount not to exceed the greater of--

(1) \$ 250,000; or

(2) an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(c) **Criminal penalty.** A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) shall, upon conviction, be fined not more than \$ 1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

### Section 207 SAVINGS PROVISION

(a) (1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act or a national emergency declared for purposes of this title, any authorities granted by this title, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President

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determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section

(c) (1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2) and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

### Section 208 SEVERABILITY

If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

**PART II**  
**OTHER STATUTORY AUTHORITY**

## Legal Authority

**Part II.1. NAVAL PETROLEUM RESERVES PRODUCTION ACT**

*Note: Section 201(11) of the Naval Petroleum Reserves Production Act, Pub. L. 94-258, April 5, 1976, 90 Stat. 303, codified at 10 U.S.C. 8720(e) (formerly 10 USC 7430(e)), provides for limitations on exports of petroleum produced from the Naval Petroleum Reserves. Section 201(1), now codified at 10 U.S.C. 8720 (formerly 10 U.S.C. 7420), provides relevant definitions. These provisions are described below, as they have been amended.*

## 10 USC 8720

In this chapter:

(1) The term “national defense” includes the needs of, and the planning and preparedness to meet, essential defense, industrial, and military emergency energy requirements relative to the national safety, welfare, and economy, particularly resulting from foreign military or economic actions.

(2) The term “naval petroleum reserves” means the naval petroleum and oil shale reserves established by this chapter, including Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912; Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912; Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915; Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919; Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

(3) The term “petroleum” includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of

any of such resources.

(4) The term “Secretary” means the Secretary of Energy.

(5) The term “small refiner” means an owner of a refinery or refineries (including refineries not in operation) who qualifies as a small business refiner under the rules and regulations of the Small Business Administration.

(6) The term “maximum efficient rate” means the maximum sustainable daily oil or gas rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to the ultimate recovery.

\* \* \* \* \*

## 10 USC 8730(e)

(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

**Part II.2 EXPORT OF HORSES**

*Note: This provision was enacted by Sec. 125 of the Export Administration Amendments Act of 1985, Pub. L. 99-64, July 12, 1985, 99 Stat. 156, and is codified at 15 U.S.C. 1824a (prior to 2006, 46 U.S.C. app. 466c). An earlier provision, identical except that it did not include a penalties*



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*section, previously was found in Section 7(j) of the Export Administration Act of 1979 (which, at the time, was codified at 50 U.S.C. app. 2406(j)) from 1979 to 1985.*

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

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

(c) Penalties

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

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

**Part II.3 UNITED NATIONS  
PARTICIPATION ACT of 1945**

*Note: Section 5 of the 1945 Act that allowed for the participation of the United States in the United Nations, Dec. 20, 1945, c. 583, § 5, 59 Stat. 620, now codified at 22 U.S.C. 287c, gives the President authority to implement UN Security Council Resolutions.*

*Below is the text of that provision, as it has been amended through the years.*

22 USC 287c

(a) Enforcement measures; importation of Rhodesian chromium

Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States. Any Executive order which is issued under this subsection and which applies measures against Southern Rhodesia pursuant to any United Nations Security Council Resolution may be enforced, notwithstanding the provisions of any other law. The President may exempt from such Executive order any shipment of chromium in any form which is in transit to the United States on March 18, 1977.

(b) Penalties

Any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to subsection (a) of this section shall, upon conviction, be fined not more than \$1,000,000 or, if a natural person, be imprisoned for not more than 20 years, or both.

(c) Steel mill products containing chromium; certificate of origin; regulations; subpoenas; certificate exemption; release from customs custody; definitions

(1) During the period in which measures are applied against Southern Rhodesia under subsection (a) of this section pursuant to any United Nations Security Council Resolution, a shipment of any steel mill product (as such product may be defined by the Secretary) containing chromium in any form may not be released from customs custody for entry into the United States if--

## Legal Authority

(A) a certificate of origin with respect to such shipment has not been filed with the Secretary; or  
 (B) in the case of a shipment with respect to which a certificate of origin has been filed with the Secretary, the Secretary determines that the information contained in such certificate does not adequately establish that the steel mill product in such shipment does not contain chromium in any form which is of Southern Rhodesian origin;

unless such release is authorized by the Secretary under paragraph (3)(B) or (C).

(2) The Secretary shall prescribe regulations for carrying out this subsection.

(3)(A) In carrying out this subsection, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any such subpoena may, upon application by the Secretary, be enforced in a civil action in an appropriate United States district court.

(B) The Secretary may exempt from the certification requirements of this subsection any shipment of a steel mill product containing chromium in any form which is in transit to the United States on March 18, 1977.

(C) Under such circumstances as he deems appropriate, the Secretary may release from customs custody for entry into the United States, under such bond as he may require, any shipment of a steel mill product containing chromium in any form.

(4) As used in this subsection--

(A) The term "certificate of origin" means such certificate as the Secretary may require, with respect to a shipment of any steel mill product containing chromium in any form, issued by the government (or by a designee of such government if the Secretary is satisfied that such designee is the highest available certifying authority) of the country in which such steel mill product was produced certifying that the steel mill product in such shipment contains no chromium in any form which is of Southern Rhodesian origin; and

(B) The term "Secretary" means the Secretary of the Treasury.

## Part II.4. SYRIA ACCOUNTABILITY AND LEBANESE SOVEREIGNTY RESTORATION ACT OF 2003 (SAA)

*Note: Sections 2 - 4 of the SAA, Pub. L. 108-175, December 12, 2003, codified as a note to 22 U.S.C. 2151, set forth Congress' findings, sense of the Congress, and statement of U.S. policy regarding*

*Syria and Lebanon. Section 5, reproduced below, directs the President to take certain export control-related measures, which he did through Executive Order 13338 of May 11, 2004.*

## Sec. 5. Penalties and Authorization.

(a) Penalties.-- Until the President makes the determination that Syria meets all the requirements described in paragraphs (1) Through (4) of subsection (d) and certifies such determination to Congress in accordance with such subsection--

(1) The President shall prohibit the export to Syria of any item, including the issuance of a license for the export of any item, on the United States Munitions List or Commerce Control List of dual-use items in the Export Administration Regulations (15 CFR part 730 et seq.); and

(2) The President shall impose two or more of the following sanctions:

(A) Prohibit the export of products of the United States (other than food and medicine) To Syria.

(B) Prohibit United States businesses from investing or operating in Syria.

(C) Restrict Syrian diplomats in Washington, D.C., and at the United Nations in New York City, to travel only within a 25-mile radius of Washington, D.C., or the United Nations headquarters building, respectively.

(D) Prohibit aircraft of any air carrier owned or controlled by Syria to take off from, land in, or overfly the United States.

(E) Reduce United States diplomatic contacts with Syria (other than those contacts required to protect United States interests or carry out the purposes of this Act).

(F) Block transactions in any property in which the Government of Syria has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States.

(b) Waiver.-- The President may waive the application of subsection (a)(1), (a)(2), or both if the President

## Legal Authority

determines that it is in the national security interest of the United States to do so and submits to the appropriate congressional committees a report containing the reasons for the determination.

(c) Authority To Provide Assistance To Syria.-- If the President--

(1) makes the determination that Syria meets the requirements described in paragraphs (1) Through (4) of subsection (d) and certifies such determination to Congress in accordance with such subsection;

(2) determines that substantial progress has been made both in negotiations aimed at achieving a peace agreement between Israel and Syria and in negotiations aimed at achieving a peace agreement between Israel and Lebanon; and

(3) determines that the Government of Syria is strictly respecting the sovereignty, territorial integrity, unity, and political independence of Lebanon under the sole and exclusive authority of the Government of Lebanon through the Lebanese army throughout Lebanon, as required under paragraph (4) of United Nations Security Council Resolution 520 (1982), then the President is authorized to provide assistance to Syria under chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance).

(d) Certification.-- A certification under this subsection is a certification transmitted to the appropriate congressional committees of a determination made by the President that--

(1) The Government of Syria has ceased providing support for international terrorist groups and does not allow terrorist groups, such as Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, and the Popular Front for the Liberation of Palestine--General Command to maintain facilities in territory under Syrian control;

(2) The Government of Syria ended its occupation of Lebanon described in section 2(7) of this Act;

(3) The Government of Syria has ceased the development and deployment of medium- and long-range surface-to-surface ballistic missiles, is not pursuing or engaged in the research, development,

acquisition, production, transfer, or deployment of biological, chemical, or nuclear weapons, has provided credible assurances that such behavior will not be undertaken in the future, and has agreed to allow United Nations and other international observers to verify such actions and assurances; and

(4) The Government of Syria has ceased all support for, and facilitation of, all terrorist activities inside of Iraq, including preventing the use of territory under its control by any means whatsoever to support those engaged in terrorist activities inside of Iraq.

## Part II.5. NUCLEAR NON-PROLIFERATION ACT OF 1978

*Note: Section 309(c) of the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, March 10, 1978, 92 Stat. 141, codified at 42 U.S.C. 2139a(c), as amended, sets forth the Commerce Department's responsibility for controlling the export of dual-use items of significance for nuclear explosive purposes. The Nuclear Non-Proliferation Act of 1978 is principally codified at 22 U.S.C. 3201 et seq.*

### Sec. 309 Component and Other Parts of Facilities

\* \* \* \* \*

(c) The President, within not more than one hundred and twenty days after March 10, 1978, shall publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the [Nuclear Regulatory] Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

## Part II.6. CUBAN DEMOCRACY ACT OF 1992, AS AMENDED

*Note: The Cuban Democracy Act comprises Sections 1701 - 1712 of the National Defense*

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*Authorization Act for Fiscal Year 1993, Pub. L. 102-484, October 23, 1992, 106 Stat. 2575. The Cuban Democracy Act is codified at 22 U.S.C.A. 6001 - 6010. Section 1705 (22 U.S.C. 6004), as amended, lays out several provisions relevant to the Export Administration Regulations.*

**Section 1705 Support for the Cuban People**

(a) Provisions of Law Affected -- The provisions of this section apply notwithstanding any other provision of law, including section 620(a) of the Foreign Assistance Act of 1961, and notwithstanding the exercise of authorities, before the enactment of this Act, under section 5(b) of the Trading With the Enemy Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979.

(b) Donations of Food -- Nothing in this or any other Act shall prohibit donations of food to nongovernmental organizations or individuals in Cuba.

(c) Exports of Medicines and Medical Supplies -- Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted --

(1) except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act;

(2) except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(3) except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; and

(4) except in a case in which the item to be exported could be used in the production of any biotechnological product.

(d) Requirements for Certain Exports --

(1) Onsite verifications --

(A) Subject to subparagraph (B), an export may be made under subsection (c) only if the President determines that the United States Government is able to verify, by onsite inspections and other appropriate means, that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people.

(B) Subparagraph (A) does not apply to donations of non-governmental organizations in Cuba of medicines for humanitarian purposes.

(2) Licenses -- Exports permitted under subsection (c) shall be made pursuant to specific licenses issued by the United States Government.

(e) Telecommunications Services and Facilities<sup>14</sup>

(1) Telecommunications Services -- Telecommunications services between the United States and Cuba shall be permitted.

(2) Telecommunications Facilities -- Telecommunications facilities are authorized in such quantity and of such quality as may be necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(3) Licensing of Payments to Cuba

(A) The President may provide for the issuance of licenses for the full or partial payment to Cuba of amounts due Cuba as a result of the provision of telecommunications services authorized by this subsection, in a manner that is consistent with the public interest and the purposes of this title, except that this paragraph shall not require any withdrawal from any account blocked pursuant to regulations issued under section 5(b) of the Trading With the Enemy Act.

(B) If only partial payments are made to

<sup>14</sup> Subsections (5) and (6) were added by the

Cuban Liberty and Solidarity (Libertad) Act of 1996.

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Cuba under subparagraph (A), the amounts withheld from Cuba shall be deposited in an account in a banking institution in the United States. Such account shall be blocked in the same manner as any other account containing funds in which Cuba has any interest, pursuant to regulations issued under section 5(b) of the Trading With the Enemy Act.

(4) Authority of the Federal Communications Commission -- Nothing in this subsection shall be construed to supersede the authority of the Federal Communications Commission.

(5) Prohibition on Investment in Domestic Telecommunications Services -- nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of the paragraph, an “investment” in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

(6) Reports to Congress -- The President shall submit to the Congress on a semiannual basis a report detailing payments made to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection.

(f) Direct Mail Delivery to Cuba -- The United States Postal Service shall take such actions as are necessary to provide direct mail service to and from Cuba, including, in the absence of common carrier service between the two countries, the use of charter service providers.

(g) Assistance to Support Democracy in Cuba -- The United States Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

**Part II.7. TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000**

*Note: Sections 902-910 of the Trade Sanctions*

*Reform and Export Enhancement Act of 2000 (TSRA), Pub. L. 106-387, October 28, 2000, 114 Stat. 1549, codified at 22 U.S.C. 7201-7209 provide for the termination of existing unilateral agricultural and medical sanctions and also provide that the export of agricultural commodities, medicines, and medical devices to designated terrorist countries be made in accordance with the licensing regime in that Act. Section 775 of the larger Public Law that included TSRA, codified as a note to 22 U.S.C. 7201, provided additional interpretive information.*

**Sec. 775.**

For purposes of administering Title IX of this Act, the term “agricultural commodity” shall also include fertilizer and organic fertilizer, except to the extent provided pursuant to Section 904 of that title.

**Sec. 902. Definitions**

In this chapter:

(1) Agricultural commodity. The term “agricultural commodity” has the meaning given the term in section 5602 of Title 7.

(2) Agricultural program. The term “agricultural program” means--

(A) any program administered under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 *et seq.*);

(B) any program administered under section 1431 of Title 7;

(C) any program administered under the Agricultural Trade Act of 1978 (7 U.S.C. 5601 *et seq.*);

(D) The dairy export incentive program administered under section 713a-14 of Title 15;

(E) any commercial export sale of agricultural commodities; or

(F) any export financing (including credits or credit guarantees) provided by the United States Government for agricultural commodities.

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\* \* \* \* \*

(4) Medical device. The term “medical device” has the meaning given the term “device” in section 321 of Title 21.

(5) Medicine. The term “medicine” has the meaning given the term “drug” in section 321 of Title 21.

(6) Unilateral agricultural sanction. The term “unilateral agricultural sanction” means any prohibition, restriction, or condition on carrying out an agricultural program with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security, except in a case in which the United States imposes the measure pursuant to--

(A) a multilateral regime and the other member countries of that regime have agreed to impose substantially equivalent measures; or

(B) a mandatory decision of the United Nations Security Council.

(7) Unilateral medical sanction. The term “unilateral medical sanction” means any prohibition, restriction, or condition on exports of, or the provision of assistance consisting of, medicine or a medical device with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security, except in a case in which the United States imposes the measure pursuant to--

(A) a multilateral regime and the other member countries of that regime have agreed to impose substantially equivalent measures; or

(B) a mandatory decision of the United Nations Security Council.

**Sec. 903. Restriction**

(a) New sanctions. Except as provided in sections 904 and 905 of this title and notwithstanding any other provision of law, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity, unless--

(1) not later than 60 days before the sanction is proposed to be imposed, the President submits a report to Congress that--

(A) describes the activity proposed to be prohibited, restricted, or conditioned; and

(B) describes the actions by the foreign country or foreign entity that justify the sanction; and

(2) There is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1).

(b) Existing sanctions. The President shall terminate any unilateral agricultural sanction or unilateral medical sanction that is in effect as of enacted Oct. 28, 2000.

**Sec. 904. Exceptions**

Section 903 of this title shall not affect any authority or requirement to impose (or continue to impose) a sanction referred to in section 903 of this title--

(1) against a foreign country or foreign entity

(A) pursuant to a declaration of war against the country or entity;

(B) pursuant to specific statutory authorization for the use of the Armed Forces of the United States against the country or entity;

(C) against which the Armed Forces of the United States are involved in hostilities; or

(D) where imminent involvement by the Armed Forces of the United States in hostilities against the country or entity is clearly indicated by the circumstances; or

(2) To the extent that the sanction would prohibit, restrict, or condition the provision or use of any agricultural commodity, medicine, or medical device that is--

(A) controlled on the United States Munitions List established under section 2778 of this title;

(B) controlled on any control list established under

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the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or

(C) used to facilitate the design, development, or production of a chemical or biological weapons, missiles, or weapon of mass destruction.

### Sec. 905. Termination of sanctions

Any unilateral agricultural sanction or unilateral medical sanction that is imposed pursuant to the procedures described in section 903(a) of this title shall terminate not later than 2 years after the date on which the sanction became effective unless--

(1) not later than 60 days before the date of termination of the sanction, the President submits to Congress a report containing--

(A) The recommendation of the President for the continuation of the sanction for an additional period of not to exceed 2 years; and

(B) The request of the President for approval by Congress of the recommendation; and

(2) There is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1).

### Sec. 906. State sponsors of international terrorism

(a) Requirement.

(1) In general. Notwithstanding any other provision of this chapter (other than section 904 of this title) The export of agricultural commodities, medicine, or medical devices to Cuba, the Taliban or the territory of Afghanistan controlled by the Taliban, or to the government of a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 2371 of this title, section 2405(j)(1) of Title 50, Appendix, or section 2780(d) of this title, or to any other entity in such a country, shall only be made pursuant to one-year licenses issued by the United States Government for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract, except that the requirements of such one-year licenses shall be no more restrictive

than license exceptions administered by the Department of Commerce or general licenses administered by the Department of the Treasury, except that procedures shall be in place to deny licenses for exports to any entity within such country, or territory of Afghanistan controlled by the Taliban promoting international terrorism.

(2) Exception. Paragraph (1) shall not apply with respect to the export of agricultural commodities, medicine, or medical devices to the Government of Syria or to the Government of North Korea, or to any other entity in Syria or North Korea.

(b) Quarterly Reports. The applicable department or agency of the Federal Government shall submit to the appropriate congressional committees on a quarterly basis a report on any activities undertaken under subsection (a)(1) during the preceding calendar quarter.

(c) Biennial Reports. Not later than two years after the date of enactment of this Act, and every two years thereafter, the applicable department or agency of the Federal Government shall submit a report to the appropriate congressional committees on the operation of the licensing system under this section for the preceding two-year period, including

(1) The number and types of licenses applied for;

(2) The number and types of licenses approved;

(3) The average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) The extent to which the licensing procedures were effectively implemented; and

(5) a description of comments received from interested parties about the extent to which the licensing procedures were effective, after the applicable department or agency holds a public 30-day comment period.

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**Part II.8. TRADING WITH THE ENEMY ACT**

*Note: Section 5 of the Trading With the Enemy Act, Oct. 6, 1917, ch. 106, § 5, 40 Stat. 415, codified at 50 USC 4305, originated in 1917 and has been amended several times, most recently in 1994. This law provides a similar grant of broad executive authority as was provided for in the later International Emergency Economic Powers Act and used to be the primary tool for imposing economic sanctions such as those in place on Cuba.*

(a) The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this chapter so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section 4304 of this title, and to perform any act made unlawful without such license in section 4303 of this title, and to file and prosecute applications under subsection (b) of section 4310 of this title; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this chapter; and the President may exercise any power or authority conferred by this chapter through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section 4303 of this title he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b)(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise--

(A) investigate, regulate, or prohibit, any transactions

in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or



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omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term “United States” means the United States and any place subject to the jurisdiction thereof: Provided, however, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term “person” means an individual, partnership, association, or corporation.

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 4604 of this title, or under section 4605 of this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of Title 18.

## Part II.9. UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001 (USA PATRIOT ACT)

*Note: Only Section 221(b) of the USA PATRIOT Act, Pub. L. 107-56, October 26, 2001, codified at 22 U.S.C. 7210, is set forth below. This provision provided limits on the applicability of TSRA, which is described above.*

### Sec. 221 Trade Sanctions

(a) [see part II.7. above]

(b) Application of the Trade Sanctions Reform and

Export Enhancement Act.-- Nothing in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall limit the application or scope of any law establishing criminal or civil penalties, including any Executive order or regulations promulgated pursuant to such laws (or similar or successor laws), for the unlawful export of any agricultural commodity, medicine, or medical device to—

(1) a foreign organization, group, or person designated pursuant to Executive Order No. 12947 of January 23, 1995, as amended;

(2) a Foreign Terrorist Organization pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132);

(3) a foreign organization, group, or person designated pursuant to Executive Order No. 13244 (September 23, 2001);

(4) any narcotics trafficking entity designated pursuant to Executive Order No. 12978 (October 21, 1995) or the Foreign Narcotics Kingpin Designation Act (Public Law 106-120); or

(5) any foreign organization, group, or persons subject to any restriction for its involvement in weapons of mass destruction or missile proliferation.

## Part II.10. SECTION 1503 of PUBLIC LAW 108-11 (APRIL 16, 2003).

*Note: Pub. L. 108-11 (Apr. 16, 2003), § 1503 suspended the application of the Iraq Sanctions Act of 1990.*

SEC. 1503. The President may suspend the application of any provision of the Iraq Sanctions Act of 1990: Provided, That nothing in this section shall affect the applicability of the Iran–Iraq Arms Non–Proliferation Act of 1992 (Public Law 102–484), except that such Act shall not apply to humanitarian assistance and supplies: Provided further, That the President may make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961 or any other provision of law that applies to countries that have

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supported terrorism: Provided further, That military equipment, as defined by title XVI, section 1608(1)(A) of Public Law 102–484, shall not be exported under the authority of this section: Provided further, That section 307 of the Foreign Assistance Act of 1961 shall not apply with respect to programs of international organizations for Iraq: Provided further, That provisions of law that direct the United States Government to vote against or oppose loans or other uses of funds, including for financial or technical assistance, in international financial institutions for Iraq shall not be construed as applying to Iraq: Provided further, That the President shall submit a notification 5 days prior to exercising any of the authorities described in this section to the Committee on Appropriations of each House of the Congress, the Committee on Foreign Relations of the Senate, and the Committee on International Relations of the House of

Representatives: Provided further, That not more than 60 days after enactment of this Act and every 90 days thereafter the President shall submit a report to the Committee on Appropriations of each House of the Congress, the Committee on Foreign Relations of the Senate, and the Committee on International Relations of the House of Representatives containing a summary of all licenses approved for export to Iraq of any item on the Commerce Control List contained in the Export Administration Regulations, 15 CFR Part 774, Supplement 1, including identification of end users of such items: Provided further, That the authorities contained in this section shall expire on September 30, 2004, or on the date of enactment of a subsequent Act authorizing assistance for Iraq and that specifically amends, repeals or otherwise makes inapplicable the authorities of this section, whichever occurs first.

**PART III**  
**EXECUTIVE ORDERS AND PRESIDENTIAL DOCUMENTS**  
**THAT SERVE AS AUTHORITY**

## Legal Authority

### Part III.1. DELEGATION OF AUTHORITIES RELATING TO ENERGY POLICY AND CONSERVATION

Executive Order 11912, as amended by Executive Order 12003, Executive Order 12038, Executive Order 12156, Executive Order 12375, and Executive Order 12919

By virtue of the authority vested in me by the Constitution and the statutes of the United States of America, including the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat. 871, 42 U.S.C. 6201 et seq.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

**Section 1.** (a) The Administrator of General Services is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by Section 510 of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 915, 15 U.S.C. 2010). The Administrator shall exercise that authority to ensure that passenger automobiles acquired by all Executive agencies in each fiscal year achieve a fleet average fuel economy standard that is not less than the average fuel economy standard for automobiles manufactured for the model year which includes January 1 of each fiscal year.

(b) The Administrator of General Services shall also promulgate rules which will ensure that each class of nonpassenger automobiles acquired by all Executive agencies in each fiscal year achieves a fleet average fuel economy that is not less than the average fuel economy standard for such class, established pursuant to Section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 903, 15 U.S.C. 2002(b)), for the model year which includes January 1 of such fiscal year. Such rules shall not apply to nonpassenger automobiles intended for use in combat related missions for the Armed Forces or intended for use in law enforcement work or emergency rescue work. The Administrator may provide for granting exceptions for individual nonpassenger automobiles or categories of

nonpassenger automobiles as he determines to be appropriate in terms of energy conservation, economy, efficiency, or service.

(c) In performing these functions, the Administrator of General Services shall consult with the Secretary of Transportation and the Secretary of Energy.'

**Sec. 2.** The Secretary of Commerce is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by section 103 of the Energy Policy and Conservation Act (89 Stat. 877, 42 U.S.C. 6212). In performing each of these functions, the Secretary of Commerce shall consult with appropriate Executive agencies, as set forth in the provisions of section 5(a) of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2404(a)).

**Sec. 3.** The Administrator of the Office of Federal Procurement Policy, in the exercise of his statutory responsibility to provide overall direction of procurement policy (41 U.S.C. 405), shall, after consultation with the heads of appropriate agencies, including those responsible for developing energy conservation and efficiency standards, and to the extent he considers appropriate and with due regard to the program activities of the Executive agencies, provide policy guidance governing the application of energy conservation and efficiency standards in the Federal procurement process in accord with section 381(a)(1) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(a)(1)).

**Sec. 4.** (a) The Secretary of Energy, in consultation with the heads of appropriate agencies, is hereby authorized and directed to develop for the President's consideration, in accord with section 201 of the Energy Policy and Conservation Act (89 Stat. 890, 42 U.S.C. 6261), the energy conservation and rationing contingency plans prescribed under sections 202 and 203 of the Energy Policy and Conservation Act (89 Stat. 892, 42 U.S.C. 6262 and 6263).

(b) The Secretary of Energy shall prepare, with the assistance of the heads of appropriate agencies, for the President's consideration, the annual reports provided by section 381(c) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(c)).

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**Sec. 5.** The Secretary of State is hereby delegated the authority vested in the President by Section 252(c)(1)(A)(iii) of the Energy Policy and Conservation Act (89 Stat. 895, 42 U.S.C. 6272(c)(1)(A)(iii)).

**Sec. 6.** The Secretary of Energy is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by:

(a) Section 251 of the Energy Policy and Conservation Act (89 Stat. 894, 42 U.S.C. 6271), except the making of the findings provided by subparagraph (b)(1)(B) Thereof; however in performing these functions, the Secretary shall consult with the Secretary of Commerce with respect to the international allocation of petroleum products which are within the territorial jurisdiction of the United States; and provided that the Secretary of Commerce shall promulgate rules, pursuant to the procedures established by the Export Administration Act of 1969, as amended, to authorize the export of petroleum and petroleum products, as may be necessary for implementation of the obligations of the United States under the International Energy Program, and in accordance with the rules promulgated under Section 251 of the Energy Policy and Conservation Act by the Secretary pursuant to this subsection.

(b) Section 253(c) of the Energy Policy and Conservation Act (89 Stat. 898, 42 U.S.C. 6273);

(c) Section 254(a) of the Energy Policy and Conservation Act (89 Stat. 899, 42 U.S.C. 6274(a)), including the receipt of petitions under section 254(a)(3)(B); provided that, the authority under section 254(a) may be exercised only after consultation with the Secretary of State;

(d) Section 254(b) of the Energy Policy and Conservation Act (89 Stat. 900, 42 U.S.C. 6274(b)); provided that, in determining whether the transmittal of data would prejudice competition or violate the antitrust laws, the Secretary shall consult with the Attorney General, and in determining whether the transmittal of data would be inconsistent with national security interests, he shall consult with the Secretaries of State and Defense, and the heads of such other agencies as he deems appropriate.

(e) Section 523(a)(2)(A) of the Energy Policy and Conservation Act (89 Stat. 962, 42 U.S.C. 6393(a)(2)(A)), but only to the extent applicable to other functions delegated or assigned by this Order to the Secretary of Energy.

**Sec. 7.** [Revoked by Executive Order 12919]

**Sec. 8.** [Revoked by Executive Order 12919]

**Sec. 9.** All orders, regulations, circulars or other directives issued and all other action taken prior to the date of this order that would be valid under the authority delegated by this Order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

**Sec. 10.** (a) (1) The Secretary of Energy, hereinafter referred to as the Secretary, shall develop, with the concurrence of the Director of the Office of Management and Budget, and in consultation with the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of Veterans' Affairs, the Administrator of the Energy Research and Development Administration, the Administrator of General Services, and the heads of such other Executive agencies as he deems appropriate, the ten-year plan for energy conservation with respect to Government buildings, as provided by section 381(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6361(a)(2)).

(2) The goals established in subsection (b) shall apply to the following categories of Federally-owned buildings: (i) office buildings, (ii) hospitals, (iii) schools, (iv) prison facilities, (v) multi-family dwellings, (vi) storage facilities, and (vii) such other categories of buildings for which the Secretary determines the establishment of energy-efficiency performance goals is feasible.

(b) The Secretary shall establish requirements and procedures, which shall be observed by each agency unless a waiver is granted by the Secretary, designed to ensure that each agency to the maximum extent practicable aims to achieve the following goals:

(1) For the total of all Federally-owned existing buildings the goal shall be a reduction of 20 percent in the average annual energy use per gross square foot of floor area in 1985 from the average energy use per gross square foot of floor area in 1975. This goal shall apply to all buildings for which construction was or

## Legal Authority

design specifications were completed prior to the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(2) For the total of all Federally-owned new buildings the goal shall be a reduction of 45 percent in the average annual energy requirement per gross square foot of floor area in 1985 from the average annual energy use per gross square foot of floor area in 1975. This goal shall apply to all new buildings for which design specifications are completed after the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(c) The Secretary with the concurrence of the Director of the Office of Management and Budget, in consultation with the heads of the Executive agencies specified in subsection (a) and the Director of the National Bureau of Standards, shall establish, for purposes of developing the ten-year plan, a practical and effective method for estimating and comparing life cycle capital and operating costs for Federal buildings, including residential, commercial, and industrial type categories. Such method shall be consistent with the Office of Management and Budget Circular No. A-94, and shall be adopted and used by all agencies in developing their plans pursuant to subsection (e), annual reports pursuant to subsection (g), and budget estimates pursuant to subsection (h). For purposes of this paragraph, the term 'life cycle cost' means the total costs of owning, operating, and maintaining a building over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems.

(d) Not later than November 1, 1977, the Secretary, with the concurrence of the Director of the Office of Management and Budget, and after consultation with the Administrator of General Services and the heads of the Executive agencies specified in subsection (a) shall issue guidelines for the plans to be submitted pursuant to subsection (e).

(e) (1) The head of each Executive agency that maintains any existing building or will maintain any new building shall submit no later than six months after the issuance of guidelines pursuant to subsection (d), to the Secretary a ten-year plan designed to the maximum extent practicable to meet the goals in subsection (b) for the total of existing or new Federal buildings. Such ten-year plans shall only consider

improvements that are cost-effective consistent with the criteria established by the Director of the Office of Management and Budget (OMB Circular A-94) and the method established pursuant to subsection (c) of this Section. The plan submitted shall specify appropriate energy-saving initiatives and shall estimate the expected improvements by fiscal year in terms of specific accomplishments—energy savings and cost savings—together with the estimated costs of achieving the savings.

(2) The plans submitted shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with over 30,000 gross square feet of space owned and maintained by Executive agencies. Further, the second annual report submitted under subsection (g)(2) of this Section shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with more than 5,000 but not more than 30,000 gross square feet of space. The purpose of such preliminary energy audits shall be to identify the type, size, energy use level and major energy using systems of existing Federal buildings.

(3) The Secretary shall evaluate agency plans relative to the guidelines established pursuant to subsection (d) for such plans and relative to the cost estimating method established pursuant to subsection (c). Plans determined to be deficient by the Secretary will be returned to the submitting agency head for revision and resubmission within 60 days.

(4) The head of any Executive agency submitting a plan, should he disagree with the Secretary's determination with respect to that plan, may appeal to the Director of the Office of Management and Budget for resolution of the disagreement.

(f) The head of each agency submitting a plan or revised plan determined not deficient by the Secretary or, on appeal, by the Director of the Office of Management and Budget, shall implement the plan in accord with approved budget estimates.

(g)(1) Each Executive agency shall submit to the Secretary an overall plan for conserving fuel and energy in all operations of the agency. This overall plan shall be in addition to and include any ten-year plan for energy conservation in Government buildings submitted in accord with Subsection (e).

(2) By July 1 of each year, each Executive agency shall submit a report to the Secretary on progress made toward achieving the goals established in the overall

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plan required by paragraph (1) of this subsection. The annual report shall include quantitative measures and accomplishment with respect to energy saving actions taken, the cost of these actions, the energy saved, the costs saved, and other benefits realized.

(3) The Secretary shall prepare a consolidated annual report on Federal government progress toward achieving the goals, including aggregate quantitative measures of accomplishment as well as suggested revisions to the ten-year plan, and submit the report to the President by August 15 of each year.

(h) Each agency required to submit a plan shall submit to the Director of the Office of Management and Budget with the agency's annual budget submission, and in accordance with procedures and requirements that the Director shall establish, estimates for implementation of the agency's plan. The Director of the Office of Management and Budget shall consult with the Secretary about the agency budget estimates.

(i) Each agency shall program its proposed energy conservation improvements of buildings so as to give the highest priority to the most cost-effective projects.

(j) No agency of the Federal government may enter into a lease or a commitment to lease a building the construction of which has not commenced by the effective date of this Order unless the building will likely meet or exceed the general goal set forth in subsection (b)(2).

(k) The provisions of this Section do not apply to housing units repossessed by the Federal Government.

GERALD R. FORD  
THE WHITE HOUSE, April 13, 1976.

## Part III.2. ADMINISTRATION OF THE EXPORT ADMINISTRATION ACT OF 1969, AS AMENDED

Executive Order 12002, as amended

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<sup>15</sup> Executive Order 12755 of March 12, 1991 (56 Fed. Reg. 11057, March 15, 1991) amended section 3 of Executive Order 12002 by modifying the composition of the Export Administration Review Board and inserting "concerns about the nonproliferation of armaments" in the

by Executive Order 12755<sup>15</sup> and Executive Order 13286<sup>16</sup>

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

**Section 1.** Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

**Sec. 2.** (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act, which directs that every reasonable effort be made to secure the removal or reduction of assistance by foreign countries to international terrorists through cooperation and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

**Sec. 3.** The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as its members, the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, and the Secretary of Defense. The Secretary of Energy, the Secretary of Homeland Security, and the Director of the United States Arms Control and Disarmament Agency shall be members of the Board, and shall participate in meetings that consider issues involving nonproliferation of armaments and other issues within their respective statutory authority and policy-making authorities.

third sentence of section 4.

<sup>16</sup> Executive Order 13286 of February 28, 2003 (68 Fed. Reg. 10619, March 5, 2003) added a reference to the Secretary of Homeland Security in Section 3.

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The Chairman of the Joint Chiefs of Staff and the Director of the Central Intelligence shall be non-voting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

**Sec. 4.** The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, concerns about the nonproliferation of armaments, and the domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

**Sec. 5.** The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

**Sec. 6.** All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked administratively or legislatively, shall remain in full force and effect under this Order until amended, modified, or terminated by proper authority. The

revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

**Sec. 7.** Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

THE WHITE HOUSE

Jimmy Carter  
July 7, 1977

## Part III.3. FUNCTIONS RELATING TO NUCLEAR NON-PROLIFERATION

Executive Order 12058

By virtue of the authority vested in me by the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 120, 22 U.S.C. 3201) and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

**Section 1.** *Department of Energy.* The following functions vested in the President by the Nuclear Non-Proliferation Act of 1978 (92 Stat. 120, 22 U.S.C. 3201), hereinafter referred to as the 1954 Act, are delegated or assigned to the Secretary of Energy;

(a) That function vested by Section 402(b) of the Act (92 Stat. 145, 42 U.S.C. 2153a).

(b) Those functions vested by Sections 131a(2)(G), 131b(1), and 131f(2) of the 1954 Act (92 Stat. 127, 42 U.S.C. 2160).

(c) That function vested by Section 131f(1)(A)(ii) of the 1954 Act to the extent it relates to the preparation of a detailed generic plan.

**Sec. 2.** *Department of State.* The Secretary of State shall be responsible for performing the following functions vested in the President:



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(a) Those functions vested by Sections 104(a), 104(d), 105, 403, 404, 407, and 501 of the Act (92 Stat. 122, 123, 123, 146, 147, 148, and 148, 22 U.S.C. 3223(a), 3223(d), 3224, and 42 U.S.C. 2153b, 2153c, 2153e, and 22 U.S.C. 3261).

(b) That function vested by Section 128a(2) of the 1954 Act (92 Stat. 137, 42 U.S.C. 2157(a)(2)).

(c) That function vested by Section 601 of the Act to the extent it relates to the preparation of an annual report.

(d) The preparation of timely information and recommendations related to the President's functions vested by Sections 126, 128b, and 129 of the 1954 Act (92 Stat. 131, 137, and 138 42 U.S.C. 2155, 2157, and 2158).

(e) That function vested by Section 131c of the 1954 Act (92 Stat. 129, 42 U.S.C. 2160(c)); except that, the Secretary shall not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President.

**Sec. 3. *Department of Commerce.*** The Secretary of Commerce shall be responsible for performing the function vested in the President by Section 309(c) of the Act (92 Stat. 141, 42 U.S.C. 2139a).

**Sec. 4. *Coordination.*** In performing the functions assigned to them by this Order, the Secretary of Energy and the Secretary of State shall consult and coordinate their actions with each other and with the heads of other concerned agencies.

**Sec. 5. *General Provisions.*** (a) Executive Order No. 11902 of February 2, 1976, entitled "Procedures for an Export Licensing Policy as to Nuclear Materials and Equipment," is revoked.

(b) The performance of functions under either the Act or the 1954 Act shall not be delayed pending the development of procedures, even though as many as 120 days are allowed for establishing them. Except where it would be inconsistent to do so, such functions shall be carried out in accordance with procedures similar to those in effect immediately prior to the effective date of the Act.  
Jimmy Carter

THE WHITE HOUSE  
May 11, 1978

## Part III.4. ADMINISTRATION OF THE EXPORT ADMINISTRATION ACT OF 1979

Executive Order 12214

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96-72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

**1-101.** Except as provided in Section 1-102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96-72; 50 U.S.C. App. 2401 et seq.), are delegated to the Secretary of Commerce.

**1-102.** (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i) and 6(g) of the Act are delegated to the Secretary of State.

**1-103.** All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued or otherwise taken under, or continued in existence by, Section 21 of the Act or Executive Order No. 12002, and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.

**1-104.** Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

THE WHITE HOUSE  
Jimmy Carter  
May 2, 1980

## Legal Authority

### Part III.5. ADMINISTRATION OF PROLIFERATION SANCTIONS, MIDDLE EAST ARMS CONTROL AND RELATED CONGRESSIONAL REPORTING RESPONSIBILITIES

#### Executive Order 12851

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code; sections 1701-1703 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510 (50 U.S.C. App. 2402 note, 2405, 2410b; 22 U.S.C. 2797-2797c); sections 303, 324, and 401-405 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102-138; sections 305-308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Public Law 102-182 (50 U.S.C. App. 2410c; 22 U.S.C. 2798, 5604-5606); sections 241 and 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190; and section 1364 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, I hereby order as follows:

**Section 1.** *Chemical and Biological Weapons Proliferation and Use Sanctions.* (a) Chemical and Biological Weapons Proliferation. The authority and duties vested in me by section 81 of the Arms Export Control Act, as amended (“AECA”) (22 U.S.C. 2798), and section 11C of the Export Administration Act of 1979, as amended (“EAA”) (50 U.S.C. App. 2410c), are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to deny certain United States Government contracts, as provided in section 81(c)(1)(A) of the AECA and section 11C(c)(1)(A) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, as well as the authority and duties vested in me to make the determinations provided for in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA are delegated to the Secretary of Defense. The Secretary of Defense shall notify the Secretary of the Treasury of determinations made pursuant to section 81(c)(2) of the AECA and section 11(c)(2) of the EAA.

(2) The authority and duties vested in me to prohibit certain imports as provided in section 81(c)(1)(B) of the AECA and section 11C(c)(1)(B) of the EAA,

pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, and the obligation to implement the exceptions provided in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA, insofar as the exceptions affect imports of goods into the United States, are delegated to the Secretary of the Treasury.

(b) Chemical and Biological Weapons Use. The authority and duties vested in me by sections 306-308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5604-5606) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to restrict certain imports as provided in section 307(b)(2)(D), pursuant to a determination made by the Secretary of State under section 307(b)(1), are delegated to the Secretary of the Treasury.

(2) The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 307(d)(1)(A)(ii).

(3) The authority and duties vested in me to prohibit certain exports as provided in section 307(a)(5) and section 307(b)(2)(C), pursuant to a determination made by the Secretary of State under section 306(a)(1) and section 307(b)(1), are delegated to the Secretary of Commerce.

(c) Coordination Among Agencies. The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency group prior to any determination to exercise the prohibition authority delegated hereby.

**Sec. 2.** *Missile Proliferation Sanctions.* (a) Arms Export Control Act. The authority and duties vested in me by sections 72-73 of the AECA (22 U.S.C. 2797a-2797b) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me by section 72(a)(1) To make determinations with respect to violations by United States persons of the EAA are delegated to the Secretary of Commerce.

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(2) The authority and duties vested in me to deny certain United States Government contracts as provided in sections 73(a)(2)(A)(i) and 73(a)(2)(B)(i), pursuant to a determination made by the Secretary of State under section 73(a)(1), as well as the authority and duties vested in me to make the findings provided in sections 72(c), 73(f), and 73(g)(1), are delegated to the Secretary of Defense. The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, any waivers based upon findings made pursuant to sections 72(c) and 73(f).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 73(a)(2)(C), pursuant to a determination made by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 73(g), are delegated to the Secretary of the Treasury.

(b) **Export Administration Act.** The authority and duties vested in me by section 11B of the EAA (50 U.S.C. App. 2401b) are delegated to the Secretary of Commerce, except that:

(1) The authority and duties vested in me by sections 11B(a)(1)(A) (insofar as such section authorizes determinations with respect to violations by United States persons of the AECA), 11B(b)(1) (insofar as such section authorizes determinations regarding activities by foreign persons), and 11B(b)(5) are delegated to the Secretary of State.

(2) The authority and duties vested in me to make the findings provided in sections 11B(a)(3), 11B(b)(6), and 11B(b)(7)(A) are delegated to the Secretary of Defense. The Secretary of Commerce shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(a)(3). The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(b)(6).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 11B(b)(1), pursuant to a determination by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 11B(b)(7), are delegated to the Secretary of the Treasury.

(c) **Reporting Requirements.** The authority and duties vested in me to make certain reports to the Congress as provided in section 1097 of the National

Defense Authorization Act for Fiscal Years 1992 and 1993 and section 1364 of the National Defense Authorization Act for Fiscal Year 1993 are delegated to the Secretary of State.

(d) **Coordination Among Agencies.** The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise prohibition authority delegated hereby.

**Sec. 3. *Arms Control in the Middle East.*** The certification and reporting functions vested in me by sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

**Sec. 4. *China and Weapons Proliferation.*** The reporting functions regarding China and weapons proliferation vested in me by sections 303(a)(2) and 324 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

**Sec. 5. *Arrow Tactical Anti-Missile Program.*** The authority and duties vested in me to make certain certifications as provided by section 241(b)(3)(C) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 are delegated to the Secretary of State.

**Sec. 6. *Delegations.*** The functions delegated herein may be redelegated as appropriate. Regulations necessary to carry out the functions delegated herein may be issued as appropriate.

**Sec. 7. *Priority.*** This order supersedes the Memorandum of the President, "Delegation of Authority Regarding Missile Technology Proliferation," June 25, 1991. To the extent that this

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order is inconsistent with any provisions of any prior Executive order or Presidential memorandum, this order shall control.

THE WHITE HOUSE  
William J. Clinton  
June 11, 1993.

## Part III.6. IMPLEMENTATION OF THE CUBAN DEMOCRACY ACT

Executive Order 12854

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trading with the Enemy Act, as amended (50 U.S.C. App. 1-6, 7-39, 41-44), the Cuban Democracy Act of 1992 (Public Law 102-484, sections 1701-1712, October 23, 1992, 106 Stat. 2575) (the “Act”), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

**Section 1.** *Implementation of the Act.* All agencies are hereby directed to take all appropriate measures within their authority, including the promulgation of rules and regulations, to carry out the provisions of the Act.

**Sec. 2.** *Functions of the Department of State.* The Secretary of State shall be responsible for implementing sections 1704, 1707, and 1708 of the Act. Responsibility for transmitting the certification required by section 1707 and the report required by section 1708 of the Act is delegated to the Secretary of State.

**Sec. 3.** *Functions of the Department of the Treasury.* Except as provided in section 4 of this order, the Secretary of the Treasury shall be responsible for implementing sections 1705(b)-(e) and 1706 of the Act, to the extent that these sections pertain to transactions with Cuba.

**Sec. 4.** *Functions of the Department of Commerce.* The Secretary of Commerce shall be responsible for implementing sections 1705(b)-(e) of the Act, to the extent that these sections pertain to the exportation to

Cuba from the United States or from a third country of goods and technology subject to the jurisdiction of the Department of Commerce.

**Sec. 5.** *Consultation.* In consultation with the Secretary of State, the Secretary of the Treasury and the Secretary of Commerce are hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Act and this order.

**Sec. 6.** Nothing in this order shall be deemed to affect any functions vested by law in the Federal Communications Commission.

**Sec. 7.** *Effective Date.* This order shall be effective immediately.

WILLIAM J. CLINTON  
THE WHITE HOUSE  
July 4, 1993.

## Part III.7. PROHIBITING CERTAIN TRANSACTIONS WITH RESPECT TO RWANDA AND DELEGATING AUTHORITY WITH RESPECT TO OTHER UNITED NATIONS ARMS EMBARGOES

Executive Order 12918

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 918 of May 17, 1994, it is hereby ordered as follows:

**Section 1.** *Arms Embargo.* The following activities are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order:

(a) The sale or supply to Rwanda from the

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territory of the United States by any person, or by any United States person in any foreign country or other location, or using any U.S.-registered vessel or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, irrespective of origin. This prohibition does not apply to activities related to the United Nations Assistance Mission for Rwanda or the United Nations Observer Mission Uganda-Rwanda or other entities permitted to have such items by United Nations Security Council; and

(b) Any willful evasion or attempt to violate or evade any of the prohibitions set forth in this order, by any person.

**Sec. 2. Definitions.** For purposes of this order, the term:

(a) “Person” means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(b) “United States person” means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

**Sec. 3. Responsibilities.** The functions and responsibilities for the enforcement of the foregoing prohibitions are delegated as follows:

(a) The Secretary of State is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and other authorities available to the Secretary of State, as may be necessary to carry out the purpose of this order, relating to arms and related materiel of a type enumerated on the United States Munitions List (22 C.F.R. Part 121). The Secretary of State may redelegate any of these functions to other officers and agencies of the United States Government; and

(b) The Secretary of Commerce, in consultation

with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and other authorities available to the Secretary of Commerce, as may be necessary to carry out the purpose of this order, relating to arms and related materiel identified in the Export Administration Regulations (15 C.F.R. Parts 730-799). The Secretary of Commerce may redelegate any of these functions to other officers and agencies of the United States Government.

**Sec. 4. Authorization.** All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

**Sec. 5. Delegation of Authority.** The Secretary of State and the Secretary of Commerce in consultation with the Secretary of State are hereby authorized to promulgate rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and not otherwise delegated by Executive order, as may be necessary to carry out the purpose of implementing any other arms embargo mandated by resolution of the United Nations Security Council, consistent with the allocation of functions delegated under section 3 of this order. The Secretary of State or the Secretary of Commerce may redelegate any of these functions to other officers and agencies of the United States Government.

**Sec. 6. Judicial Review.** Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 7. Effective Date.** This order shall take effect at 11:59 p.m. eastern day-light time on May 26, 1994.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
May 26, 1994.

## Legal Authority

### Part III.8. PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Executive Order 12938, as amended  
by Executive Orders 13094 and 13128 and 13382<sup>17</sup>

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), the Arms Export Control Act, as amended (22 U.S.C. 2751 et seq.), Executive Order Nos. 12851 and 12924, and section 301 of title 3, United States Code.

**I, William J. Clinton**, President of the United States of America, find that the proliferation of nuclear, biological, and chemical weapons (“weapons of mass destruction”) and of the means of delivering such weapons, constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

**Section 1. *International Negotiations.*** It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of weapons of mass destruction and the means of delivering such weapons. Accordingly, the Secretary of States shall cooperate in and lead multilateral efforts to stop the proliferation of weapons of mass destruction and their means of delivery.

**Sec. 2. *Imposition of Controls.*** As provided herein, the Secretary of State and the Secretary of Commerce shall use their respective authorities, including the Arms Export Control Act and the International Emergency Economic Powers Act, to control any exports, to the extent they are not already controlled by the Department of Energy and the

Nuclear Regulatory Commission, that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use weapons of mass destruction or their means of delivery. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this order.

**Sec. 3. *Department of Commerce Controls.*** (a) The Secretary of Commerce shall prohibit the export of any goods, technology, or services subject to the Secretary's export jurisdiction that the Secretary of Commerce determines, in consultation with the Secretary of State, the Secretary of Defense, and other appropriate officials, would assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use weapons of mass destruction or their means of delivery. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this section.

(b) Subsection (a) of this section will not apply to exports relating to a particular category of weapons of mass destruction (i.e., nuclear, chemical, or biological weapons) if their destination is a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of that category of weapons of mass destruction-related goods (including delivery systems) and technology, or maintains domestic export controls comparable to controls that are imposed by the United States with respect to that category of goods and technology, or that are otherwise deemed adequate by the Secretary of State.

(c) The Secretary of Commerce shall require validated licenses to implement this order and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.

<sup>17</sup> Executive Order 13094 of July 28, 1998 (63 Fed. Reg. 40803, July 30, 1998), also titled “Proliferation of Weapons of Mass Destruction,” amended section 4 of Executive Order 12938 to expand the scope of measures that may be taken against foreign persons. Executive Order 13128 of June 25, 1999 (64 Fed. Reg. 34703), titled “Implementation of the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act,” added subsection (e) To section 3 of Executive Order

12938. Executive Order 13382 of June 28, 2005 (70 Fed. Reg. 38567, July 1, 2005), titled “Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters” revised Section 4(a) of this order to alter the standard under which foreign persons can be sanctioned. The national emergency declared in Executive Order 12938 has been continued by annual notices of the President, the most recent being the Notice of November 8, 2016, (81 Fed. Reg. 79379, November 10, 2016)

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(d) The Secretary of Commerce, in consultation with the Secretary of State, shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to continue to regulate the activities of United States persons in order to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction or their means of delivery, as provided in the Export Administration Regulations, set forth in Title 15, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 768 to 799 inclusive.

(e) The Secretary of Commerce shall impose and enforce such restrictions on the importation of chemicals into the United States as may be necessary to carry out the requirements of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

### **Sec. 4. Measures Against Foreign Persons.**

(a) Determination by Secretary of State; Imposition of Measures. Except to the extent provided in section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), where applicable, if the Secretary of State, in consultation with the Secretary of the Treasury, determines that a foreign person, on or after November 16, 1990, the effective date of Executive Order 12735, the predecessor order to Executive Order 12938, has engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by any person or foreign country of proliferation concern, the measures set forth in subsections (b), (c), and (d) of this section shall be imposed on that foreign person to the extent determined by the Secretary of State, in consultation with the implementing agency and other relevant agencies. Nothing in this section is intended to preclude the imposition on that foreign person of other measures or sanctions available under this order or under other authorities.

(b) Procurement Ban. No department or agency of the United States Government may procure,

or enter into any contract for the procurement of, any goods, technology, or services from any foreign person described in subsection (a) of this section.

(c) Assistance Ban. No department or agency of the United States Government may provide any assistance to any foreign person described in subsection (a) of this section, and no such foreign person shall be eligible to participate in any assistance program of the United States Government.

(d) Import Ban. The Secretary of the Treasury shall prohibit the importation into the United States of goods, technology, or services produced or provided by any foreign person described in subsection (a) of this section, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(e) Termination. Sanctions pursuant to this section may be terminated or not imposed against a foreign person if the Secretary of State determines that there is reliable evidence that such foreign person has ceased all activities referred to in subsection (a) of this section.

(f) Exceptions. Departments and agencies of the United States Government, acting in consultation with the Secretary of State, may, by license, regulation, order, directive, exception, or otherwise, provide for:

(i) Procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements; intelligence requirements; sole source suppliers, spare parts, components, routine servicing and maintenance of products for the United States Government; and medical and humanitarian items; and

(ii) Performance pursuant to contracts in force on the effective date of this order under appropriate circumstances.

**Sec. 5. Sanctions Against Foreign Countries.** (a) In addition to the sanctions imposed on foreign countries as provided in the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, sanctions also shall be imposed on a foreign country as specified in subsection (b) of this section, if

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the Secretary of State determines that the foreign country has, on or after the effective date of this order or its predecessor, Executive Order No. 12735 of November 16, 1990, (1) used chemical or biological weapons in violation of international law; (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, stockpiled, or otherwise acquired chemical or biological weapons in violation of international law.

(b) The following sanctions shall be imposed on any foreign country identified in subsection (a)(1) of this section unless the Secretary of State determines, on grounds of significant foreign policy or national security, that any individual sanction should not be applied. The sanctions specified in this section may be made applicable to the countries identified in subsections (a)(2) or (a)(3) when the Secretary of State determines that such action will further the objective of this order pertaining to proliferation. The sanctions specified in subsection (b)(2) below shall be imposed with the concurrence of the Secretary of the Treasury.

(1) *Foreign Assistance.* No assistance shall be provided to that country under the Foreign Assistance Act of 1961, or any successor act, or the Arms Export Control Act, other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) *Multilateral Development Bank Assistance.* The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(3) *Denial of Credit or Other Financial Assistance.* The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(4) *Prohibition of Arms Sales.* The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(5) *Exports of National Security-Sensitive Goods and Technology.* No exports shall be permitted of any goods or technologies controlled for national security reasons under the Export Administration

Regulations.

(6) *Further Export Restrictions.* The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services (excluding agricultural commodities and products otherwise subject to control).

(7) *Import Restrictions.* Restrictions shall be imposed on the importation into the United States of articles (that may include petroleum or any petroleum product) That are the growth, product, or manufacture of that country.

(8) *Landing Rights.* At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(10))).

**Sec. 6. Duration.** Any sanctions imposed pursuant to sections 4 or 5 of this order shall remain in force until the Secretary of State determines that lifting any sanction is in the foreign policy or national security interests of the United States or, as to sanctions under section 4 of this order, until the Secretary has made the determination under section 4(e).

**Sec. 7. Implementation.** The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce are hereby authorized and directed to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. These actions, and in particular those in sections 4 and 5 of this order, shall be made in consultation with the Secretary of Defense and, as appropriate, other agency heads and shall be implemented in accordance with procedures established pursuant to Executive Order No. 12851. The Secretary concerned may redelegate any of these functions to other officers in agencies of the Federal Government. All heads of departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations.

**Sec. 8. Preservation of Authorities.** Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or



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continued in effect heretofore or hereafter under the authority of the International Economic Emergency Powers Act, the Export Administration Act, the Arms Export Control Act, the Nuclear Non-proliferation Act, Executive Order No. 12730 of September 30, 1990, Executive Order No. 12735 of November 16, 1990, Executive Order No. 12924 of August 18, 1994, and Executive Order No. 12930 of September 29, 1994.

**Sec. 9. *Judicial Review.*** This order is not intended to create, nor does it create, and right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

**Sec. 10. *Revocation of Executive Order Nos. 12735 and 12930.*** Executive Order No. 12735 of November 16, 1990, and Executive Order No. 12930 of September 29, 1994, are hereby revoked.

**Sec. 11. *Effective Date.*** This order is effective immediately.

This order shall be transmitted to the Congress and published in the *Federal Register*.

THE WHITE HOUSE  
William J. Clinton  
November 14, 1994

### **PRESIDENTIAL NOTICE OF NOVEMBER 12, 2019 – CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION<sup>18</sup>**

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, by Executive Order 13094, the President amended Executive Order 12938 to respond more effectively to the worldwide threat of proliferation activities related to weapons of mass destruction. On June 28, 2005, by Executive Order

13382, the President, among other things, further amended Executive Order 12938 to improve our ability to combat proliferation activities related to weapons of mass destruction. The proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 12938 with respect to the proliferation of weapons of mass destruction and the means of delivering such weapons must continue beyond November 14, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended by Executive Orders 13094 and 13382.

This notice shall be published in the Federal Register and transmitted to the Congress.

This notice shall be published in the Federal Register and transmitted to the Congress.

DONALD TRUMP  
THE WHITE HOUSE  
November 12, 2019

83 FR 56253

### **Part III.9. PROHIBITING TRANSACTIONS WITH TERRORISTS WHO THREATEN TO DISRUPT THE MIDDLE EAST PEACE PROCESS**

*Note: This Executive Order was revoked in 2019 but was related to the designation of Specially Designated Terrorists, specifically identified in an annex to the order. When the order was revoked, all currently blocked persons under the order became instead blocked under amended Executive Order 13224.*

Executive Order 12947, which was revoked by Executive Order 13886, as it had been amended by

<sup>18</sup> Notices such as this one have been issued on

an annual basis since 1995.

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Executive Order 13099, Executive Order 13372<sup>19</sup>

By the Authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

**Section 1.** Except to the extent provided in section 203(b)(3) and (4) of IEEPA (50 U.S.C. 1702(b)(3) and (4)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

- (a) all property and interests in property of:
  - (i) the persons listed in the Annex to this order;
  - (ii) foreign persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, because they are found:
    - (A) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or
    - (B) to assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence; and
  - (iii) persons determined by the Secretary of the Treasury, in coordination with the Secretary

of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any of the foregoing persons, that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of United States persons, are blocked;

(b) any transaction or dealing by United States persons or within the United States in property or interests in property of the persons designated in or pursuant to this order is prohibited, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons;

(c) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order, is prohibited.

**Sec. 2.** For the purposes of this order:

- (a) The term “person” means an individual or entity;
- (b) the term “entity” means a partnership, association, corporation, or other organization, group, or subgroup;
- (c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and
- (d) the term “foreign person” means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States) or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

**Sec. 3.** I hereby determine that the making of

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<sup>19</sup> Executive Order 12947 was revoked by Executive Order 13886 of September 9, 2019 (84 FR 48041 (September 12, 2019)). Persons designated by Executive Order 12947 were previously referred to as Specially Designated Terrorists (SDT), but have now been re-designated as Specially Designated Global Terrorists under

Executive Order 13224. Executive Order 13099 of August 20, 1998 (63 FR 45167, August 25, 1998) amended the Annex to Executive Order 12947, which listed designated persons. Executive Order 13372 amended Section 3 of this order.

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donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1.

**Sec. 4.** (a) The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, the Attorney General, is hereby authorized to take such actions including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA as may be necessary to carry out the purpose of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Any investigation emanating from a possible violation of this order, or of any license, order, or regulation issued pursuant to this order, shall first be coordinated with the Federal Bureau of Investigation (FBI), and any matter involving evidence of a criminal violation shall be referred to the FBI for further investigation. The FBI shall timely notify the Department of the Treasury of any action it takes on such referrals.

**Sec. 5.** Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or

employees, or any other persons.

**Sec. 6.** (a) This order is effective at 12:01 a.m., eastern standard time on January 24, 1995.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
January 23, 1995.

## Part III.10. ADMINISTRATION OF EXPORT CONTROLS

Executive Order 12981, as amended  
by Executive Orders 13020, 13026 and 13117<sup>20</sup>

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (the “Act”), and in order to take additional steps with respect to the national emergency described and declared in Executive Order No. 12924 of August 19, 1994,<sup>21</sup> and continued on August 15, 1995, I, WILLIAM J. CLINTON, President of the United States of America, find that it is necessary for the procedures set forth below to apply to export license applications submitted under the Act and the Export Administration Regulations (15 C.F.R. Part 730 *et seq.*) (“the Regulations”) or under any renewal of, or successor to, the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*) (“the Export Administration Act”), and the Regulations. Accordingly, it is hereby ordered as follows:

<sup>20</sup> Executive Order 13020 of October 12, 1996 (61 Fed. Reg. 54079, October 17, 1996), titled “Amendment to Executive Order 12981,” amended sections 5(a)(3)(B) and 5(b)(1) of Executive Order 12981 to include special procedures for the processing of applications for the export of any commercial communication satellites and any hot-section technologies for the development, production, and overhaul of commercial aircraft engines transferred from the United States Munitions List to the Commerce Control List in October 1996. Executive Order 13026 of November 15, 1996 (61 Fed. Reg. 58767, November 19, 1996), titled “Administration of Export Controls on Encryption Products,” added a new section 6 to Executive Order

12981, and renumbered previous sections 6 and 7 as sections 7 and 8, respectively. Executive Order 13026 is also reprinted in its entirety below. Executive Order 13117 of March 31, 1999 (64 Fed. Reg. 16591, April 5, 1999) deleted references to the Arms Control and Disarmament Agency throughout Executive Order 12981.

<sup>21</sup> Executive Order 12924 continued the Export Administration Regulations in effect during a temporary lapse of the EAA. In 2001, after the EAA was temporarily reauthorized by Congress, Executive Order 12924 was revoked as unnecessary and the emergency it declared was cancelled by Executive Order 13206. This action did not affect any measures taken while the order was in effect.

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**Section 1. License Review.** To the extent permitted by law and consistent with Executive Order No. 12924 of August 19, 1994, the power, authority, and discretion conferred upon the Secretary of Commerce (“the Secretary”) under the Export Administration Act to require, review, and make final determinations with regard to export licenses, documentation, and other forms of information submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations, with the power of successive redelegation, shall continue. The Departments of State, Defense, and Energy each shall have the authority to review any export license application submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations. The Secretary may refer license applications to other United States Government departments or agencies for review as appropriate. In the event that a department or agency determines that certain types of applications need not be referred to it, such department or agency shall notify the Department of Commerce as to the specific types of such applications that it does not wish to review. All departments or agencies shall promptly respond, on a case-by-case basis, to requests from other departments or agencies for historical information relating to past license applications.

**Sec. 2. Determinations.** (a) All license applications submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, shall be resolved or referred to the President no later than 90 calendar days after registration of the completed license application.

(b) The following actions related to processing a license application submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations shall not be counted in calculating the time periods prescribed in this order:

(1) *Agreement of the Applicant.* Delays upon which the Secretary and the applicant mutually agree.

(2) *Preliminary Checks.* Preliminary checks through government channels that may be required to establish the identity and reliability of the recipient of items controlled under the Act and the Regulations or

any renewal of, or successor to, the Export Administration Act and the Regulations, provided that:

(A) The need for such preliminary check is established by the Secretary, or by another department or agency if the request for preliminary check is made by such department or agency;

(B) The Secretary requests the preliminary check within 5 days of the determination that it is necessary; and

(C) The Secretary completes the analysis of the result of the preliminary check within 5 days.

(3) *Requests for Government-To-Government Assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, when failure to obtain such assurances would result in rejection of the application, provided that:

(A) The request for such assurances is sent to the Secretary of State within 5 days of the determination that the assurances are required;

(B) The Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(C) The license is issued within 5 days of the Secretary's receipt of the requested assurances. Whenever such preliminary checks and assurances are not requested within the time periods set forth above, they must be accomplished within the time periods established by this section.

(4) *Multilateral Reviews.* Multilateral review of a license application as provided for under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, as long as multilateral review is required by the relevant multilateral regime.

(5) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant multilateral regime or bilateral arrangement as a precondition for approving a license.

**Sec. 3. Initial Processing.** Within 9 days of registration of any license application, the Secretary shall, as appropriate:

(a) request additional information from the applicant. The time required for the applicant to supply the additional information shall not be counted in calculating the time periods prescribed in this

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section.

(b) refer the application and pertinent information to agencies or departments as stipulated in section 1 of this order, and forward to the agencies any relevant information submitted by the applicant that could not be reduced to electronic form.

(c) assure that the stated classification on the application is correct; return the application if a license is not required; and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intention to deny the applications.

**Sec. 4. Department or Agency Review.** (a) Each reviewing department or agency shall specify to the Secretary, within 10 days of receipt of a referral as specified in subsection 3(b), any information not in the application that would be required to make a determination, and the Secretary shall promptly request such information from the applicant. If, after receipt of the information so specified or other new information, a reviewing department or agency concludes that additional information would be required to make a determination, it shall promptly specify that additional information to the Secretary, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by the reviewing department or agency and the date the information is received by the reviewing department or agency shall not be counted in calculating the time periods prescribed in this order. Such information specified by reviewing departments or agencies is in addition to any information that may be requested by the Department of Commerce on its own initiative during the first 9 days after registration of an application.

(b) Within 30 days of receipt of a referral and all required information, a department or agency shall provide the Secretary with a recommendation either to approve or deny the license application. As appropriate, such recommendation may be with the benefit of consultation and discussions in interagency groups established to provide expertise and coordinate interagency consultation. A recommendation that the Secretary deny a license shall include a statement of the reasons for such recommendation that are consistent with the provisions of the Act and the

Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations and shall cite both the statutory and the regulatory bases for the recommendation to deny. A department or agency that fails to provide a recommendation within 30 days with a statement of reasons and the statutory and regulatory bases shall be deemed to have no objection to the decision of the Secretary.

**Sec. 5. Interagency Dispute Resolution.** (a) *Committees.* (1)(A) *Export Administration Review Board.* The Export Administration Review Board ("the Board"), which was established by Executive Order No. 11533 of June 4, 1970, and continued in Executive Order No. 12002 of July 7, 1977, is hereby continued. The Board shall have as its members, the Secretary, who shall be Chair of the Board, the Secretary of State, the Secretary of Defense and the Secretary of Energy. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be nonvoting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any member department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the departments or agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(B) The Secretary may, from time to time, refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, the domestic economy, and concerns about the proliferation of armaments, weapons of mass destruction, missile delivery systems, and advanced conventional weapons and shall make recommendations thereon to the Secretary.

(2) *Advisory Committee on Export Policy.* An Advisory Committee on Export Policy ("ACEP") is established and shall have as its members the Assistant Secretary of Commerce for Export

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Administration, who shall be Chair of the ACEP, and Assistant Secretary-level representatives of the Departments of State, Defense, and Energy. Appropriate representatives of the Joint Chiefs of Staff and of the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the ACEP. Representatives of the departments or agencies shall be the appropriate Assistant Secretary or equivalent (or appropriate acting Assistant Secretary or equivalent in lieu of the Assistant Secretary or equivalent) of the concerned department or agency, or appropriate Deputy Assistant Secretary or equivalent (or the appropriate acting Deputy Assistant Secretary or equivalent in lieu of the Deputy Assistant Secretary or equivalent) of the concerned department or agency. Regardless of the department or agency representative's rank, such representative shall speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent of such department or agency. The ACEP may invite Assistant Secretary-level representatives of other United States Government departments or agencies, other than the departments and agencies represented by the ACEP members, to participate in the activities of the ACEP when matters of interest to such departments or agencies are under consideration.

(3)(A) *Operating Committee.* An Operating Committee ("OC") of the ACEP is established. The Secretary shall appoint its Chair, who shall also serve as Executive Secretary of the ACEP. Its other members shall be representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy. The appropriate representatives of the Joint Chiefs of Staff and the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the OC. The OC may invite representatives of other United States Government departments or agencies, other than the departments and agencies represented by the OC members, to participate in the activities of the OC when matters of interest to such departments or agencies are under consideration.

(B) The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. However, for license applications concerning commercial communication

satellites and hot-section technologies for the development, production, and overhaul of commercial aircraft engines that are transferred from the United States Munitions List to the Commerce Control List pursuant to regulations issued by the Departments of Commerce and State after the date of this order, the Chair of the OC shall inform reviewing departments and agencies of the majority vote decision of the OC. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC, or the majority vote decision of the OC in cases concerning the commercial communication satellites and hot-section technologies described above, to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision (or the majority vote decision in the case of license applications concerning the commercial communication satellites and hot-section technologies described above) will be final.

(b) *Resolution Procedures.* (1) If any department or agency disagrees with a licensing determination of the Department of Commerce made through the Chair of the OC (or a majority vote decision of the OC in the case of license applications concerning the commercial communication satellites and the hot-section technologies described in section 5(a)(3)(B)), it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President, by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same 5-day period, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.

(2) The Board shall review all departments'

## Legal Authority

and agencies' information and recommendations, and such other export control matters as may be appropriate. The Secretary shall inform the reviewing departments and agencies of the majority vote of the Board within 11 days from the date of receiving notice of appeal. Within 5 days of the decision, any department or agency dissenting from the majority vote decision of the Board may appeal the decision by submitting a letter from the head of the dissenting department or agency to the President. In the absence of a timely appeal, the majority vote decision of the Board shall be final.

**Sec. 6. *Encryption Products.*** In conducting the license review described in section 1 above, with respect to export controls of encryption products that are or would be, on November 15, 1996, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.*, but that subsequently are placed on the Commerce Control List in the Export Administration Regulations, the Departments of State, Defense, Energy, and Justice shall have the opportunity to review any export license application submitted to the Department of Commerce. The Department of Justice shall, with respect to such encryption products, be a voting member of the Export Administration Review Board described in section 5(a)(1) of this order and of the Advisory Committee on Export Policy described in section 5(a)(2) of this order. The Department of Justice shall be a full member of the Operating Committee of the ACEP described in section 5(a)(3) of this order, and of any other committees and consultation groups reviewing export controls with respect to such encryption products.

**Sec. 7.** The license review process in this order shall take effect beginning with those license applications registered by the Secretary 60 days after the date of this order and shall continue in effect to the extent not inconsistent with any renewal of the Export Administration Act, or with any successor to that Act.

**Sec. 8. *Judicial Review.*** This order is intended

only to improve the internal management of the executive branch and is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE

William J. Clinton

December 5, 1995.

## Part III.11. ADMINISTRATION OF EXPORT CONTROLS ON ENCRYPTION PRODUCTS

### Executive Order 13026

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and in order to take additional steps with respect to the national emergency described and declared in Executive Order No. 12924 of August 19, 1994,<sup>22</sup> and continued on August 15, 1995 and on August 14, 1996, I, WILLIAM J. CLINTON, President of the United States of America, have decided that the provisions set forth below shall apply to administration of the export control system maintained by the Export Administration Regulations, 15 C.F.R. Part 730 *et seq.* ("the EAR"). Accordingly, it is hereby ordered as follows:

**Section 1. *Treatment of Encryption Products.*** In order to provide for appropriate controls on the export and foreign dissemination of encryption products, export controls of encryption products that are or would be, on this date, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.* ("the AECA"), but that subsequently are placed on the Commerce Control List in the EAR, shall be subject to the following conditions:

<sup>22</sup> Executive Order 12924 continued the Export Administration Regulations in effect during a temporary lapse of the EAA. In 2001, after the EAA was temporarily reauthorized by Congress, Executive Order 12924 was

revoked as unnecessary and the emergency it declared was cancelled by Executive Order 13206. This action did not affect any measures taken while the order was in effect.

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(a) I have determined that the export of encryption products described in this section could harm national security and foreign policy interests even where comparable products are or appear to be available from sources outside the United States, and that facts and questions concerning the foreign availability of such encryption products cannot be made subject to public disclosure or judicial review without revealing or implicating classified information that could harm United States national security and foreign policy interests. Accordingly, sections 4(c) and 6(h)(2)-(4) of the Export Administration Act of 1979 (“the EAA”), 50 U.S.C. App. 2403(c) and 2405(h)(2)-(4), as amended and as continued in effect by Executive Order 12924 of August 19, 1994, and by notices of August 15, 1995, and August 14, 1996, all other analogous provisions of the EAA relating to foreign availability, and the regulations in the EAR relating to such EAA provisions, shall not be applicable with respect to export controls on such encryption products. Notwithstanding this, the Secretary of Commerce (“Secretary”) may, in his discretion, consider the foreign availability of comparable encryption products in determining whether to issue a license in a particular case or to remove controls on particular products, but is not required to issue licenses in particular cases or to remove controls on particular products based on such consideration;

(b) Executive Order 12981, as amended by Executive Order 13020 of October 12, 1996, is further amended as follows:

(1) A new section 6 is added to read as follows: “*Encryption Products.* In conducting the license review described in section 1 above, with respect to export controls of encryption products that are or would be, on November 15, 1996, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.*, but that subsequently are placed on the Commerce Control List in the Export Administration Regulations, the Departments of State, Defense, Energy, and Justice and the Arms Control and Disarmament Agency shall have the opportunity to review any export license application submitted to the Department of Commerce. The Department of Justice shall, with respect to such encryption products, be a voting member of the Export Administration Review Board

described in section 5(a)(1) of this order and of the Advisory Committee on Export Policy described in section 5(a)(2) of this order. The Department of Justice shall be a full member of the Operating Committee of the ACEP described in section 5(a)(3) of this order, and of any other committees and consultation groups reviewing export controls with respect to such encryption products.”

(2) Sections 6 and 7 of Executive Order 12981 of December 5, 1995, are renumbered as new sections 7 and 8, respectively.

(c) Because the export of encryption software, like the export of other encryption products described in this section, must be controlled because of such software’s functional capacity, rather than because of any possible informational value of such software, such software shall not be considered or treated as “technology,” as that term is defined in section 16 of the EAA (50 U.S.C. App. 2415) and in the EAR (61 Fed. Reg. 12714, March 25, 1996);

(d) With respect to encryption products described in this section, the Secretary shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to control the export of assistance (including training) To foreign persons in the same manner and to the same extent as the export of such assistance is controlled under the AECA, as amended by section 151 of Public Law 104-164;

(e) Appropriate controls on the export and foreign dissemination of encryption products described in this section may include, but are not limited to, measures that promote the use of strong encryption products and the development of a key recovery management infrastructure; and

(f) Regulation of encryption products described in this section shall be subject to such further conditions as the President may direct.

**Sec. 2. *Effective Date.*** The provisions described section 1 shall take effect as soon as any encryption products described in section 1 are placed on the Commerce Control List in the EAR.

**Sec. 3. *Judicial Review.*** This order is intended only to improve the internal management of the executive branch and to ensure the implementation of



## Legal Authority

appropriate controls on the export and foreign dissemination of encryption products. It is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE  
William J. Clinton  
November 15, 1996.

### Part III.12. CONTINUATION OF EXPORT CONTROL REGULATIONS

*Note: Most of the Export Administration Act of 1979 was repealed by the Export Control Reform Act of 2018.*

Executive Order 13222, as amended  
by Executive Order 13637<sup>23</sup>

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to section 203 of the International Emergency Economic Powers Act (“Act”) (50 U.S.C. 1702), I, GEORGE W. BUSH, President of the United States of America, find that the unrestricted access of foreign parties to U.S. goods and technology and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency with respect to that threat.

Accordingly, in order (a) To exercise the necessary vigilance over exports and activities affecting the national security of the United States; (b) To further significantly the foreign policy of the United States, including its policy with respect to cooperation by U.S. persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) To protect the domestic economy from the excessive

drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

**Section 1.** To the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, and the provisions for administration of the Export Administration Act of 1979, as amended, shall be carried out under this order so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the Export Administration Act of 1979, as amended. The delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, as amended by Executive Order No. 12755 of March 12, 1991 and Executive Order 13026 of November 15, 1996; Executive Order No. 12214 of May 2, 1980; Executive Order No. 12735 of November 16, 1990; and Executive Order No. 12851 of June 11, 1993, shall be incorporated in this order and shall apply to the exercise of authorities under this order. All actions under this order shall be in accordance with Presidential directives relating to the export control system heretofore issued and not revoked.

**Sec. 2.** All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Subtitle B, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 730 through 774, and all orders, regulations, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect as if issued or taken pursuant to this order, except that the provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

**Sec. 3.** Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect

<sup>23</sup> Executive Order 13637 of March 8, 2013 (78 Fed. Reg. 16127, March 13, 2013), titled “Administration of Reformed Export Controls,” added new sections 4 and 5

to Executive Order 13222, and renumbered previous section 4 as section 6.

## Legal Authority

until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative actions issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).

**Sec. 4.** The Secretary of Commerce shall, to the extent required as a matter of statute or regulation, establish appropriate procedures for when Congress is to be notified of the export of firearms that are subject to the jurisdiction of the Department of Commerce under the Export Administration Regulations and that are controlled for purposes of permanent import by the Attorney General under section 38(a) of the Arms Export Control Act (22 U.S.C. 2778(a)) and appropriate procedures for when Congress is to be notified of the export of Major Defense Equipment controlled for purposes of permanent export under the jurisdiction of the Department of Commerce.

**Sec. 5.** (a) The Secretary of State is hereby authorized to take such actions and to employ those powers granted to the President by the Act as may be necessary to license or otherwise approve the export, reexport, or transfer of items subject to the jurisdiction of the Department of Commerce as agreed to by the Secretary of State and the Secretary of Commerce.

(b) Notwithstanding subsection (a) of this section, items licensed or otherwise approved by the Secretary of State pursuant to this section remain subject to the jurisdiction of the Department of Commerce.

**Sec. 6.** This order shall be effective as of midnight between August 20, 2001 and August 21, 2001, and shall remain in effect until terminated.

THE WHITE HOUSE  
GEORGE W. BUSH  
*August 17, 2001.*

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<sup>24</sup> Notices like this have been issued on an annual basis since 2002. This notice was issued immediately prior to the passage of the Export Control Reform Act of 2018. Subsequent notices have not been

## PRESIDENTIAL NOTICE OF AUGUST 8, 2018 - CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO EXPORT CONTROL REGULATIONS<sup>24</sup>

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 et seq.). Because the Congress has not renewed the Export Administration Act, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the Federal Register and transmitted to the Congress.

DONALD TRUMP  
THE WHITE HOUSE  
*August 8, 2018.*

83 FR 39871

## Part III.13. BLOCKING PROPERTY AND PROHIBITING TRANSACTIONS WITH PERSONS WHO COMMIT, THREATEN TO COMMIT, OR SUPPORT TERRORISM

*Note: This Executive Order concerns the designation of Specially Designated Global Terrorists and what were previously designated as Specially Designated Terrorists in Executive Order 12947.*

Executive Order 13224, as amended by Executive Orders 13284, 13372, and 13886<sup>25</sup>

included in the EAR.

<sup>25</sup> Persons designated under Executive Order 13224 are generally referred to as Specially Designated Global Terrorists (SDGT). Executive Order 13284 added

## Legal Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein, and UNSCR 1363 of July 30, 2001, establishing a mechanism to monitor the implementation of UNSCR 1333,

I, GEORGE W. BUSH, President of the United States of America, find that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, acts recognized and condemned in UNSCR 1368 of September 12, 2001, and UNSCR 1269 of October 19, 1999, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and in furtherance of my proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat. I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists. I also find that a need exists for further consultation and cooperation with, and sharing of information by, United States and foreign financial institutions as an additional tool to enable the United States to combat the financing of terrorism.

I hereby order:

### Section 1.

references to the Secretary of Homeland Security in this Order. The Annex to Executive Order 13224 designating the foreign persons whose property and interests in property are blocked is not reproduced; Executive Order 13372 (70 FR 8499, February 18, 2005) amended the first

(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

- (i) persons listed in the Annex to this order;
- (ii) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security:

- (A) To have committed or have attempted to commit, to pose a significant risk of committing, or to have participated in training to commit acts of terrorism that threaten the security of United States nationals or the national security, foreign policy, or economy of the United States; or

- (B) To be a leader of an entity:

- (1) listed in the Annex to this order;

or

- (2) whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to this order;

- (iii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General:

- (A) To be owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order;

- (B) To own or control, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order;

- (C) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an act of terrorism as defined in section 3(d) of this order, or any person whose property and interests in property are blocked pursuant to this order;

- (D) To have participated in training related to terrorism provided by any person whose

sentence of Section 4 of Executive Order 13224. Executive Order 13886 (84 FR 48041, September 12, 2019) replaced Section 1 and changed a reference in Section 5 of Executive Order 13224.

## Legal Authority

property and interests in property are blocked pursuant to this order;

(E) To be a leader or official of an entity whose property and interests in property are blocked pursuant to:

(1) a determination by the Secretary of the Treasury pursuant to this order; or

(2) subsection (a)(iv) of this section; or

(F) To have attempted or conspired to engage in any of the activities described in subsections (a)(iii)(A) Through (E) of this section;

(iv) persons whose property and interests in property were blocked pursuant to Executive Order 12947, as amended, on or after January 23, 1995, and remained blocked immediately prior to the effective date of this order.

(b) The Secretary of the Treasury is hereby authorized to prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States, of a correspondent account or payable-through account of any foreign financial institution that the Secretary of the Treasury, in consultation with the Secretary of State, has determined, on or after the effective date of this order, has knowingly conducted or facilitated any significant transaction on behalf of any person whose property and interests in property are blocked pursuant to this order.

(c) The prohibitions in subsections (a) and (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.<sup>7</sup>

**Sec. 2.** Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in

the Annex to this order or determined to be subject to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(c) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 3.** For purposes of this order:

(a) The term “person” means an individual or entity;

(b) The term “entity” means a partnership, association, corporation, or other organization, group, or subgroup;

(c) The term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) The term “terrorism” means an activity that—  
(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended—

(A) To intimidate or coerce a civilian population;

(B) To influence the policy of a government by intimidation or coercion; or

(C) To affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

**Sec. 4.** I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, any persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export

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Enhancement Act of 2000 (title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

**Sec. 5.** With respect to those persons designated pursuant to subsection 1(a)(iii) of this order, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under IEEPA and UNPA if the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

**Sec. 6.** The Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

**Sec. 7.** The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

<sup>26</sup> Executive Order 13460 of February 13, 2008 amended Section 3(a)(iv) of this order. The scope of the emergency

**Sec. 8.** Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

**Sec. 9.** Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees or any other person.

**Sec. 10.** For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

**Sec. 11.** (a) This order is effective at 12:01 a.m. eastern daylight time on September 24, 2001.

(b) This order shall be transmitted to the Congress and published in the *Federal Register*.

GEORGE W. BUSH  
THE WHITE HOUSE,

## PART III.14. BLOCKING PROPERTY OF CERTAIN PERSONS AND PROHIBITING THE EXPORT OF CERTAIN GOODS TO SYRIA

Executive Order 13338,  
as amended by Executive Order 13460<sup>26</sup>

*Note: Section 2 and 8 of E.O. 13338 concern the Department of Transportation, so are not set forth below.*

declared in this Executive Order was expanded upon by Executive Order 13572 of April 29, 2011.

## Legal Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108-175 (SAA), and section 301 of title 3, United States Code, I, GEORGE W. BUSH, President of the United States of America, hereby determine that the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency to deal with that threat. To address that threat, and to implement the SAA, I hereby order the following:

**Section 1.** (a) The Secretary of State shall not permit the exportation or reexportation to Syria of any item on the United States Munitions List (22 C.F.R. part 121).

(b) Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to the provisions of this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this order,

(i) The Secretary of Commerce shall not permit the exportation or reexportation to Syria of any item on the Commerce Control List (15 C.F.R. part 774); and

(ii) with the exception of food and medicine, the Secretary of Commerce shall not permit the exportation or reexportation to Syria of any product of the United States not included in section 1(b)(i) of this order.

(c) No other agency of the United States Government shall permit the exportation or reexportation to Syria of any product of the United States, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this

order.

\* \* \* \* \*

**Sec. 3.** (a) Except to the extent provided in section 203(b)(1), (3), and (4) of the IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), and the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106-387) (TSRA), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) To be or to have been directing or otherwise significantly contributing to the Government of Syria's provision of safe haven to or other support for any person whose property or interests in property are blocked under United States law for terrorism-related reasons, including, but not limited to, Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, the Popular Front for the Liberation of Palestine- General Command, and any persons designated pursuant to Executive Order 13224 of September 23, 2001;

(ii) To be or to have been directing or otherwise significantly contributing to the Government of Syria's military or security presence in Lebanon;

(iii) To be or to have been directing or otherwise significantly contributing to the Government of Syria's pursuit of the development and production of chemical, biological, or nuclear weapons and medium- and long-range surface-to-surface missiles;

(iv) To be or to have been responsible for or otherwise significantly contributing to actions taken or decisions made by the Government of Syria that have the purpose or effect of undermining efforts to stabilize Iraq or of allowing the use of Syrian territory or facilities to undermine efforts to stabilize Iraq; or

(v) To be owned or controlled by, or acting or

## Legal Authority

purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this order.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to,

(i) The making of any contribution of funds, goods, or services by, to, or for the benefit of any person whose property or interests in property are blocked pursuant to this order; and

(ii) The receipt of any contribution or provision of funds, goods, or services from any such person.

**Sec. 4.** (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this order is prohibited.

**Sec. 5.** I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of the IEEPA (50 U.S.C. 1702(b)(2)) would seriously impair the ability to deal with the national emergency declared in this order, and hereby prohibit,

(i) The exportation or reexportation of such donated articles to Syria as provided in section 1(b) of this order; and

(ii) The making of such donations by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 3 of this order.

**Sec. 6.** For purposes of this order:

(a) The term “person” means an individual or entity;

(b) The term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term “Government of Syria” means the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities; and

(e) The term “product of the United States” means: for the purposes of subsection 1(b), any item subject to the Export Administration Regulations (15 C.F.R. parts 730-774); and for the purposes of subsection 1(c), any item subject to the export licensing jurisdiction of any other United States Government agency.

**Sec. 7.** With respect to the prohibitions contained in section 1 of this order, consistent with subsection 5(b) of the SAA, I hereby determine that it is in the national security interest of the United States to waive, and hereby waive application of subsection 5(a)(1) and subsection 5(a)(2)(A) of the SAA so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce's General Order No. 2 to Supplement No. 1, 15 C.F.R. part 736, as issued consistent with this order and as may be amended pursuant to the provisions of this order and in a manner consistent with the SAA. This waiver is made pursuant to the SAA only to the extent that regulation of such exports or reexports would not otherwise fall within my constitutional authority to conduct the Nation's foreign affairs and protect national security.

\* \* \* \* \*

**Sec. 9.** I hereby direct the Secretary of State to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out subsection 1(a) of this order. I hereby direct the Secretary of Commerce, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out subsection 1(b) of this order. I direct the Secretary of Transportation, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out section 2 of this order. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA as may be necessary to carry out sections 3, 4, and 5 of this order. The Secretaries of State, Commerce, Transportation, and the Treasury

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may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of State, in consultation with the Secretaries of Commerce, Transportation, and the Treasury, as appropriate, is authorized to exercise the functions and authorities conferred upon the President in subsection 5(b) of the SAA and to redelegate these functions and authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretaries of State, Commerce, Transportation, and the Treasury in a timely manner of the measures taken.

**Sec. 10.** This order is not intended to create, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

**Sec. 11.** For those persons whose property or interests in property are blocked pursuant to section 3 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

**Sec. 12.** The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA, 50 U.S.C. 1641(c), and section 204(c) of the IEEPA, 50 U.S.C. 1703(c).

**Sec. 13.** (a) This order is effective at 12:01 eastern daylight time on May 12, 2004.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH  
THE WHITE HOUSE,  
May 11, 2004.

## Part III.15. ADMINISTRATION OF REFORMED EXPORT CONTROLS

### Executive Order 13637

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 et seq.) (the “Act”), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. Delegation of Functions.** The following functions conferred upon the President by the Act, and related laws, are delegated as follows:

(a) Those under section 3 of the Act (22 U.S.C. 2753), with the exception of subsections (a)(1), (b), (c)(3), (c)(4), and (f) (22 U.S.C. 2753(a)(1), (b), (c)(3), (c)(4), and (f)), to the Secretary of State. The Secretary of State, in the implementation of the delegated functions under sections 3(a) and (d) of the Act (22 U.S.C. 2753(a) and (d)), is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under section 3(a)(1) of the Act (22 U.S.C. 2753(a)(1)), whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under section 5 (22 U.S.C. 2755) To the Secretary of State.

(c) Those under section 21 of the Act (22 U.S.C. 2761), with the exception of the last sentence of subsection (d) and all of subsection (i) (22 U.S.C. 2761(d) and (i)), to the Secretary of Defense.

(d) Those under sections 22(a), 29, 30, and 30A of the Act (22 U.S.C. 2762(a), 2769, 2770, and 2770a) To the Secretary of Defense.

(e) Those under section 23 of the Act (22 U.S.C. 2763), and under section 7069 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Public Law 112-74, Division I) and any subsequently enacted provision of law that is the same or substantially the same, to the Secretary of Defense to be exercised in consultation with the Secretary of State and, other than the last



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sentence of section 23(a) (22 U.S.C. 2763(a)), in consultation with the Secretary of the Treasury, except that the President shall determine any rate of interest to be charged that is less than the market rate of interest.

(f) Those under sections 24 and 27 of the Act (22 U.S.C. 2764 and 2767) To the Secretary of Defense. The Secretary of Defense shall consult with the Secretary of State and the Secretary of the Treasury in implementing the delegated functions under section 24 (22 U.S.C. 2764) and with the Secretary of State in implementing the delegated functions under section 27 (22 U.S.C. 2767).

(g) Those under section 25 of the Act (22 U.S.C. 2765) To the Secretary of State. The Secretary of Defense shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that section.

(h) Those under section 34 of the Act (22 U.S.C. 2774) To the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security or financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

### The President

(i) Those under section 35(a) of the Act (22 U.S.C. 2775(a)) To the Secretary of State.

(j) Those under sections 36(a) and 36(b)(1) of the Act (22 U.S.C. 2776(a) and (b)(1)), except with respect to the certification of an emergency as provided by subsection (b)(1) (22 U.S.C. 2776(b)(1)), to the Secretary of Defense. The Secretary of Defense, in the implementation of the delegated functions under sections 36(a) and (b)(1) (22 U.S.C. 2776(a) and (b)(1)), shall consult with the Secretary of State. With respect to those functions under sections 36(a)(5) and (6) (22 U.S.C. 2776(a)(5) and (6)), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under section 36(b)(1) with respect to the certification of an emergency as provided by subsection (b)(1) and under sections 36(c) and (d) of the Act (22 U.S.C. 2776(b)(1), (c), and (d)) To the

Secretary of State.

(l) Those under section 36(f)(1) of the Act (22 U.S.C. 2776(f)(1)) To the Secretary of Defense.

(m) Those under sections 36(f)(2) and (f)(3) of the Act (22 U.S.C. 2776(f)(2) and (f)(3)) To the Secretary of State.

(n) Those under section 38 of the Act (22 U.S.C. 2778) To:

(i) The Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items that shall be considered as defense articles and defense services subject to export control under section 38 (22 U.S.C. 2778) shall have the concurrence of the Secretary of Defense. The authority to undertake activities to ensure compliance with established export conditions may be redelegated to the Secretary of Defense, or to the head of another executive department or agency as appropriate, who shall exercise such functions in consultation with the Secretary of State;

(ii) The Attorney General, to the extent they relate to the control of the permanent import of defense articles and defense services. In carrying out such functions, the Attorney General shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations, including changes in designations, by the Attorney General of items or categories of items that shall be considered as defense articles and defense services subject to permanent import control under section 38 of the Act (22 U.S.C. 2778) shall be made with the concurrence of the Secretary of State and the Secretary of Defense and with notice to the Secretary of Commerce; and

(iii) The Department of State for the registration and licensing of those persons who engage in the business of brokering activities with respect to defense articles or defense services controlled either for purposes of export by the Department of State or for purposes of permanent import by the Department of Justice.

(o) Those under section 39(b) of the Act (22 U.S.C. 2779(b)) To the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under section 22 of the Act (22 U.S.C. 2762).

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(p) Those under the portion of section 40A of the Act added by Public Law 104-164 (22 U.S.C. 2785), to the Secretary of State insofar as they relate to commercial exports licensed under the Act, and to the Secretary of Defense insofar as they relate to defense articles and defense services sold, leased, or transferred under the Foreign Military Sales Program.

(q) Those under the portion of section 40A of the Act added by the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (22 U.S.C. 2781), to the Secretary of State.

(r) Those under sections 42(c) and (f) of the Act (22 U.S.C. 2791(c) and (f)) To the Secretary of Defense. The Secretary of Defense shall obtain the concurrence of the Secretary of State and the Secretary of Commerce on any determination considered under the authority of section 42(c) of the Act (22 U.S.C. 2791(c)).

(s) Those under section 52(b) of the Act (22 U.S.C. 2795a(b)) To the Secretary of Defense.

(t) Those under sections 61 and 62(a) of the Act (22 U.S.C. 2796 and 2796a(a)) To the Secretary of Defense.

(u) Those under section 2(b)(6) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(6)) To the Secretary of State.

### Sec. 2. Coordination.

(a) In addition to the specific provisions of section 1 of this order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this order, shall consult with each other and with the heads of other executive departments and agencies on matters pertaining to their responsibilities.

(b) Under the direction of the President and in accordance with section 2(b) of the Act (22 U.S.C. 2752(b)), the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount

thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

**Sec. 3. Allocation of Funds.** Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

**Sec. 4. Revocation.** Executive Order 11958 of January 18, 1977, as amended, is revoked; except that, to the extent consistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken, or entered into under the provisions of Executive Order 11958, as amended, and not revoked, superseded, or otherwise made inapplicable, shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

**Sec. 5.** Delegation of Functions under the International Emergency Economic Powers Act. [amends Executive Order 13222, as explained above]

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### Sec. 6. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) The authority granted by law to an agency, or the head thereof; or

(ii) The functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,  
Washington, March 8, 2013.

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### **PART III.16. SUSPENDING THE IRAQ SANCTIONS ACT, MAKING INAPPLICABLE CERTAIN STATUTORY PROVISIONS RELATED TO IRAQ, AND DELEGATING AUTHORITIES, UNDER THE WARTIME SUPPLEMENTAL APPROPRIATIONS ACT, 2003**

Presidential Determination No. 2003-23

Memorandum for the Secretary of State [and] the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and the laws of the United States, including sections 1503 and 1504 of the Emergency Wartime Supplemental Act, 2003, Public Law 108-11 (the “Act”), and section 301 of title 3, United States Code, I hereby:

(1) suspend the application of all of the provisions, other than section 586E, of the Iraq Sanctions Act of 1990, Public Law 101-513, and

(2) make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961, Public Law 87-195, as amended (the “FAA”), and any other provision of law that applies to countries that have supported terrorism.

In addition, I delegate the functions and authorities conferred upon the President by:

(1) section 1503 of the Act to submit reports to the designated committees of the Congress to the Secretary of Commerce, or until such time as the principal licensing responsibility for the export to Iraq of items on the Commerce Control List has reverted to the Department of Commerce, to the Secretary of the Treasury; and,

(2) section 1504 of the Act to the Secretary of State. The functions and authorities delegated herein may be further delegated and redelegated to the extent consistent with applicable law.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.

GEORGE W. BUSH  
THE WHITE HOUSE  
May 7, 2003

### **Part III.17. PRESIDENTIAL DETERMINATION ON SANCTIONS AGAINST NORTH KOREA FOR DETONATION OF A NUCLEAR EXPLOSIVE DEVICE**

Presidential Determination No. 2007-7, December 7, 2006

Memorandum for the Secretary of State  
In accordance with section 102(b) (1) of the Arms Export Control Act and section 129 of the Atomic Energy Act, I hereby determine that North Korea, a non-nuclear-weapon state, detonated a nuclear explosive device on October 9, 2006. The relevant agencies and instrumentalities of the United States Government are hereby directed to take the necessary actions to impose on North Korea the sanctions described in section 102(b) (2) of the Arms Export Control Act, as amended (22 U.S.C. 2799aa-1), and section 129 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2158). You are authorized and directed to transmit this determination to the appropriate committees of the Congress and to arrange for its publication in the Federal Register.

THE WHITE HOUSE,  
Washington, December 7, 2006.