



UNITED STATES CODE ANNOTATED
TITLE 50 APPENDIX. WAR AND NATIONAL DEFENSE
EXPORT REGULATION
PUB.L. 96-72, SEPT. 29, 1979, 93 STAT. 503

Copr. © West Group 2003. No claim to Orig. U.S. Govt. Works.

Current through P.L. 108-22, approved 05-14-03

[§ 2405. 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 [section 2402(2)(B), (7), (8), or (13) of this Appendix], the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

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

(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 and any subsequent 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 [section 2409 of this Appendix], 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 counterproductive to United States foreign policy interests;

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

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

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

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

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

(A) specifying the purpose of the controls;

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

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

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

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

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

(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act [section 2411(c) of this Appendix].

(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 [section 2406(g)(3)(A) of this Appendix].

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

(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 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.A. § 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 [section 2402(13) of this Appendix].

(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 that evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985] in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (l) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act [section 2404(f)(3) of this Appendix].

(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 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 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 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) 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.

(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 [section 2402(2)(B) of this Appendix], 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 (1) of this section.

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 [section 2404(b)(2)(C) of this Appendix].

(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 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 [section 2404(b)(2)(C) of this Appendix], 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) [section 2404(b)(2)(C) of this Appendix] the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

(l) 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) of this section 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).

(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 [22 U.S.C.A. § 5601 et seq.].

(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 [sections 2401 to 2420 of this Appendix]--

(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(c) of this Act [section 2409(c) of this Appendix],

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization 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.A. § 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 and 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 other information--

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

(2) under a validated license or other authorization issued under this Act [sections 2401 to 2420 of this Appendix],

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

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

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

(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 [Aug. 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.

CREDIT(S)
1991 Main Volume

(Pub.L. 96-72, § 6, Sept. 29, 1979, 93 Stat. 513; Pub.L. 96-533, Title I, § 111, Dec. 16, 1980, 94 Stat. 3138; Pub.L. 97-145, § 6, Dec. 29, 1981, 95 Stat. 1728; Pub.L. 99-64, Title I, § 108(a) to (g)(1), (h) to (j)(1), (k), (l)(1), July 12, 1985, 99 Stat. 131 to 136; Pub.L. 99-399, § 509(b), Aug. 27, 1986, 100 Stat. 874; Pub.L. 100-418, Title II, § 2423, Aug. 23, 1988, 102 Stat. 1358; Pub.L. 101-222, § 4, Dec. 12, 1989, 103 Stat. 1897.)

2003 Electronic Update

(As amended Pub.L. 101-510, Div. A, Title XVII, § 1702(a), Nov. 5, 1990, 104 Stat. 1739; Pub.L. 102-138, Title V, § 504(b), Oct. 28, 1991, 105 Stat. 724; Pub.L. 102-182, Title III, §§ 304(b), 309(a), Dec. 4, 1991, 105 Stat. 1246, 1258; Pub.L. 103-236, Title VII, § 736, Apr. 30, 1994, 108 Stat. 506; Pub.L. 104-316, Title I, § 128(c), Oct. 19, 1996, 110 Stat. 3841; Pub.L. 105-277, Div. G, Title XIV, § 1422(b)(7), Oct. 21, 1998, 112 Stat. 2681-793.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1979 Acts. [Senate Report No. 96-169](#) and [House Conference Report No. 96- 482](#), see 1979 U.S. Code Cong. and Adm.

News, p. 1147.

1980 Acts. [House Report No. 96-884](#)(Parts I and II) and [House Conference Report No. 96-1471](#), see 1980 U.S. Code Cong. and Adm. News, p. 6540.

1981 Acts. [House Report No. 97-57](#) and [House Conference Report No. 97-401](#), see 1981 U.S. Code Cong. and Adm. News, p. 2786.

1985 Acts. [House Conference Report No. 99-180](#), see 1985 U.S. Code Cong. and Adm. News, p. 108.

1986 Acts. [House Report No. 99-494](#), [House Conference Report No. 99-783](#), and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 1865.

1988 Acts. [House Conference Report No. 100-576](#), see 1988 U.S. Code Cong. and Adm. News, p. 1547.

1989 Acts. [House Report No. 101-296](#), see 1989 U.S. Code Cong. and Adm. News, p. 1350.

1990 Acts. [House Report No. 101-665](#) and [House Conference Report No. 101- 923](#), see 1990 U.S. Code Cong. and Adm. News, p. 2931.

1991 Acts. [House Report No. 102-53](#) and [House Conference Report No. 102- 238](#), see 1991 U.S. Code Cong. and Adm. News, p. 384.

[House Report Nos. 102-223, 102-235](#)(Parts I and II), 102-336, 102-339 and [House Conference Report No. 102-391](#), see 1991 U.S. Code Cong. and Adm. News, p. 786.

1994 Acts. [Senate Report No. 103-107](#) and [House Conference Report No. 103- 482](#), see 1994 U.S. Code Cong. and Adm. News, p. 302.

1998 Acts. Statement by President, see 1998 U.S. Code Cong. and Adm. News, p. 582.

References in Text

The International Emergency Economic Powers Act, referred to in subsec. (g), is [Pub.L. 95-223, Title II](#), Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (section 1701 et seq.) of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, referred to in subsec. (m)(3)(B), is [Pub.L. 102-182, Title III](#), Dec. 4, 1991, 105 Stat. 1245, which is classified principally to chapter 65 (section 5601 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 22 and Tables.

Subsections (l) and (m) of this section, referred to in subsections. (n)(1)(A) and (r)(1), were successively redesignated as subsections (n) and (o), respectively, of this section by [Pub.L. 101-510](#), Div. A, Title XVII, § 1702(a)(1), Nov. 5, 1990, 104 Stat. 1739, then as subsections (o) and (p), respectively, of this section by [Pub.L. 102-182, Title III, § 304\(b\)](#), Dec. 4, 1991, 105 Stat. 1246, without corresponding amendments to such references.

Section 6(o)(1) of the Export Administration Act of 1979, referred to in subsec. (r)(2), is classified to subsec. (o)(1) of this section.

Codifications

[Section 1422\(b\)\(7\) of Pub.L. 105-277](#), directing amendment of "section 2405(g) of the Export Administration Act of 1979 ([50 U.S.C. App. 2405\(g\)](#))", was executed to this section as the probable intent of Congress. Such directory language probably should have read "section 6(g) of the Export Administration Act of 1979 ([50 U.S.C App. 2405\(g\)](#))" [meaning [section 6\(g\) of Pub.L. 96-72](#), Sept. 29, 1979, 93 Stat. 513].

[Section 309\(a\) of Pub.L. 102-182](#) (which repealed both [section 504\(b\) of Pub.L. 102-138](#) and the amendments which had been made to this section, effective Oct. 28, 1991, pursuant to such [section 504\(b\) of Pub. L. 102-138](#)) contained no directory language calling for the concomitant restoration of this section to its pre-[Pub.L. 102-138](#) text. Notwithstanding this lack of such directory language in [section 309\(a\) of Pub.L. 102-182](#), the amendment of this section pursuant to [section 304\(b\) of Pub.L. 102-182](#) was editorially executed, as the probable intent of Congress, to the restored text of this section as this section had read prior to the enactment of [section 504\(b\) of Pub.L. 102-138](#).

Amendments

1998 Amendments. Subsec. (g). [Pub.L. 105-277, § 1422\(b\)\(7\)](#), in the third and sixth sentences, substituted "Administrator of the Agency for International Development" for "Director of the United States International Development Cooperation Agency" and, in the fourth sentence, substituted "the Administrator" for "the Director".

1996 Amendments. Subsec. (f)(3). [Pub.L. 104-316, § 128\(c\)](#), struck out provision relating to submission of President's report to the General Accounting Office at the same time it is submitted to Congress for purposes of assessing report's compliance with the intent of this subsection.

1994 Amendments. Subsec. (j)(5). [Pub.L. 103-236, § 736](#), added par. (5).

1991 Amendments. Subsec. (m). [Pub.L. 102-182, § 304\(b\)\(2\)](#), added subsec. (m). Former subsec. (m) was redesignated (n). See Codifications note under this section.

Subsecs. (n) to (s). [Pub.L. 102-182, § 304\(b\)\(1\)](#), redesignated former subsecs. (m) to (r) as (n) to (s), respectively. See Codifications note under this section.

1990 Amendments. Subsecs. (k), (l). [Pub.L. 101-510, § 1702\(a\)\(2\)](#), added subsecs. (k) and (l). Former subsecs. (k) and (l) redesignated (m) and (n).

Subsecs. (m) to (r). [Pub.L. 101-510, § 1702\(a\)\(1\)](#), redesignated subsecs. (k) through (p) as subsecs. (m) through (r).

1989 Amendments. Subsec. (j). [Pub.L. 101-222](#) redesignated provisions contained in former par. (1) as pars. (1) and (2) and former par. (2) as (4) and, in par. (4) as so redesignated, redesignated former subpars. (A) and (B) as subpar. (B), requiring that report be submitted at least 45 days rather than 30 days prior to rescission, and added subpar. (A) requiring an additional report; and added par. (3).

1988 Amendments. Subsec. (a)(6). [Pub.L. 100-418, § 2423\(a\)](#), added par. (6).

Subsec. (p). [Pub.L. 100-418, § 2423\(b\)](#), added subsec. (p).

1986 Amendments. Subsec. (j)(1). [Pub.L. 99-399](#) substituted "\$1,000,000" for "\$7,000,000".

1985 Amendments. Subsec. (a)(1). [Pub.L. 99-64, § 108\(a\)\(1\)\(A\)](#), substituted "(8), or (13)" for "or (8)" following "In order to carry out the policy set forth in paragraph (2)(B), (7),".

[Pub.L. 99-64, § 108\(a\)\(1\)\(B\)](#), inserted ", the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative," following "in consultation with the Secretary of State".

Subsec. (a)(2). [Pub.L. 99-64, § 108\(a\)\(3\)](#), added par. (2). Former par. (2) was redesignated (3).

Subsec. (a)(3). [Pub.L. 99-64, § 108\(a\)\(2\)](#), redesignated par. (2) as (3). Former par. (3) was redesignated (4).

[Pub.L. 99-64, § 108\(a\)\(4\)](#), substituted "subsections (b) and (f)" for "subsections (b) and (e)".

Subsec. (a)(4), (5). [Pub.L. 99-64, § 108\(a\)\(2\)](#), redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (b). [Pub.L. 99-64, § 108\(b\)](#), recast and restated existing provisions, dividing them into par. (1), consisting of subpars. (A) to (E), and par. (2), generally placing additional constraints on the President's authority to impose new foreign

policy controls.

Subsec. (c). [Pub.L. 99-64, § 108\(c\)](#), substituted provisions directing the Secretary in every possible instance, to consult with and seek advice from affected United States industries and appropriate advisory committees established under [section 2155 of Title 19](#) before imposing any export control under this section and further directing that such consultation and advice be with respect to the criteria set forth in subsection (b)(1) of this section and such other matters as the Secretary considers appropriate, for former provisions which had directed only that the Secretary, before imposing export controls under this section, consult with such affected United States industries as the Secretary considered appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considered appropriate.

Subsec. (d). [Pub.L. 99-64, § 108\(d\)\(2\)](#), added subsec. (d). Former subsec. (d) was redesignated (e).

Subsec. (e). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (d) as (e). Former subsec. (e) was redesignated (f).

Subsec. (f). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (e) as (f). Former subsec. (f) was redesignated (g).

[Pub.L. 99-64, § 108\(e\)](#), completely revised and expanded the provisions of former subsec. (e), as redesignated subsec. (f), substituted "Consultation with the Congress" for "Notification to Congress" as the subsection heading, and in text generally made consultation with the Congress mandatory and not merely discretionary before the President imposes, expands, or extends export controls.

Subsec. (g). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (f) as (g). Former subsec. (g) was redesignated (h).

[Pub.L. 99-64, § 108\(f\)\(1\)](#), added sentence directing that this section does not authorize export controls on donations of goods that are intended to meet basic human needs.

[Pub.L. 99-64, § 108\(f\)\(2\)](#), substituted "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" for "This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981" and added: "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."

Subsec. (h). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (g) as (h). Former subsec. (h) was redesignated (i).

Subsec. (h)(1). [Pub.L. 99-64, § 108\(g\)\(1\)\(A\)](#), designated existing provisions as par. (1).

Subsec. (h)(2) to (4). [Pub.L. 99-64, § 108\(g\)\(1\)\(B\)](#), added pars. (2), (3), and (4).

Subsec. (i). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (h) as (i). Former subsec. (i) was redesignated (j).

[Pub.L. 99-64, § 108\(h\)](#), substituted "(e), (g), and (h)" for "(f), and (g)".

Subsec. (j). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (i) as (j). Former subsec. (j) was redesignated (k).

[Pub.L. 99-64, § 108\(i\)](#), designated the existing sentence as par. (1) and former pars. (1) and (2) thereof as subpars. (A) and (B), and added par. (2).

Subsec. (k). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (j) as (k). Former subsec. (k) was redesignated (l).

Subsec. (k)(1). [Pub.L. 99-64, § 108\(j\)\(1\)](#), added sentence relating to the concurrence of the Secretary of State.

Subsec. (l). [Pub.L. 99-64, § 108\(d\)\(1\)](#), redesignated former subsec. (k) as (l).

[Pub.L. 99-64, § 108\(k\)\(1\)](#), substituted reference to "the control list" for existing reference to "the commodity control list" after "The Secretary shall establish and maintain, as part of".

[Pub.L. 99-64, § 108\(k\)\(2\)](#), substituted "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" for "Such goods or technology shall be clearly identified as subject to controls under this section".

Subsecs. (m) to (o). [Pub.L. 99-64, § 108\(l\)\(1\)](#), added subsecs. (m), (n), and (o).

1981 Amendments. Subsec. (f). [Pub.L. 97-145](#) added provisions restricting the imposition of export controls on food when such controls would result in measurable malnutrition, unless the President determines that the controls are necessary to protect the United States national security interests or that the food would not reach persons most in need.

1980 Amendments. [Pub.L. 96-533](#) required notification of certain commercial exports to be given to the Committee on Foreign Relations of the Senate and prescribed that notice be given to the committees at least 30 days before approval of the export license.

Effective and Applicability Provisions

1998 Acts. Amendment by [section 1422\(b\)\(7\) of Pub.L. 105-277](#) shall take effect on the earlier of April 1, 1999 or the date of abolition of the United States International Development Cooperation Agency pursuant to the reorganization plan described in section 6601 of Title 22, see [section 1401 of Pub.L. 105-277](#), set out as a note under section 6561 of Title 22.

1996 Acts. Amendment by [Pub.L. 104-316](#) effective Oct. 19, 1996, see [section 101\(e\) of Pub.L. 104-316](#), set out as a note under section 130c of Title 2, The Congress.

1985 Acts. [Section 108\(g\)\(2\) of Pub.L. 99-64](#) provided that: "The amendments made by paragraph (1) of this subsection [enacting subsec. (h)(2), (3), and (4) of this section] shall not apply to export controls in effect under subsection (i), (j), or (k) of section 6 of the Export Administration Act of 1979 (as redesignated by subsection (d) of this section) [subsecs. (i), (j), or (k) of this section] immediately before the date of the enactment of this Act [July 12, 1985], or to export controls made effective by subsection (i)(2) of this section [there is no [section 108\(i\)\(2\) of Pub.L. 99-64](#)] or by section 6(n) of the Export Administration Act of 1979 [subsec. (n) of this section] (as added by subsection (l)(1) of this section)."

[Section 108\(j\)\(2\) of Pub.L. 99-64](#) provided that: "The amendment made by paragraph (1) of this subsection [amending subsec. (k)(1) of this section] shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act [July 12, 1985]."

[Section 108\(l\)\(2\) of Pub.L. 99-64](#) provided that: "Subsections (m) and (o) of section 6 of the Export Administration Act of 1979 [subsecs. (m) and (o) of this section], as added by paragraph (1) of this subsection, shall not apply to export controls in effect immediately before the date of the enactment of this Act [July 12, 1985], or to export controls made effective by subsection (i)(2) of this section [there is no [section 108\(i\)\(2\) of Pub.L. 99-64](#)] or by section 6(n) of the Export Administration Act of 1979 [subsec. (n) of this section] (as added by paragraph (1) of this subsection)."

Change of Name

Committee on Foreign Affairs of the House of Representatives changed to the Committee on International Relations of the House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Delegation of Functions

The functions conferred upon the President under this section were delegated to the Secretary of Commerce by [Ex. Ord. No. 12214](#), May 2, 1980, [45 F.R. 29783](#), set out as a note under 2403 of this Appendix, with the exception of the functions conferred upon the President under subsec. (g) of this section which were delegated to the Secretary of State and the functions conferred upon the President under subsec. (k) of this section which were reserved to the President.

Delegation of Functions

Authority and duties vested in the President by the amendment to this section by [section 1702\(a\) of Pub.L. 101-510](#) delegated to the Secretary of Commerce, such authority to be exercised in consultation with appropriate officials, and to

include the authority to redelegate, see [Memorandum of President, June 25, 1991, 56 F.R. 31041](#), set out as a note under section 2797 of Title 22, Foreign Relations and Intercourse.

Repeals

[Pub.L. 102-138, Title V, § 504\(b\)](#), Oct. 28, 1991, 105 Stat. 724, amending this section, was repealed by [Pub.L. 102-182, Title III, § 309\(a\)](#), Dec. 4, 1991, 105 Stat. 1258.

Prior Provisions

A prior section 2405, [Pub.L. 91-184, § 6](#), Dec. 30, 1969, 83 Stat. 844; [Pub.L. 95-52, Title I, §§ 103\(d\), 112, Title II, § 203\(a\)](#), June 22, 1977, 91 Stat. 237, 240, 247; [Pub.L. 95-223, Title III, § 301\(b\)\(2\)](#), Dec. 28, 1977, 91 Stat. 1629, setting forth provisions respecting violations and penalties, expired on Sept. 30, 1979.

Exercise of Statutory Authorities Respecting Imposition of Total Embargo in Event of Soviet or Warsaw Pact Military Action in Poland

[Section 7 of Pub.L. 97-145](#) provided that: "Notwithstanding any other provision of law, no provision of the Export Administration Act of 1979, as amended by this Act [see Short-Title notes set out under section 2401 of this Appendix], or of any other Act shall be construed to prohibit the exercise of authorities contained in the Export Administration Act of 1979 to impose a total embargo in the event of Soviet or Warsaw Pact military action against Poland."

Self-Defense in Accordance With International Law

Use by any government of armed force in exercise of self-defense in accordance with international agreements and international law not to be considered an act of international terrorism for purposes of amendment of this section by [Pub.L. 101-222](#), see [section 10 of Pub.L. 101-222](#).

CROSS REFERENCES

Countries supporting terrorism--

- Acquisition of real property by missions of, see [22 USCA § 4305](#).
- Annual reports to Congress on, see [22 USCA § 2656f](#).
- Contracts with firms owned or controlled by, see [10 USCA § 2327](#).
- Control of security services performed for, see [22 USCA § 2712](#).
- Denial of tax credits with respect to payments to, see [26 USCA § 901](#).
- Financial transactions and prohibitions on assistance, see [18 USCA § 2332d](#).
- Prohibition on assistance to those that provide military equipment to terrorist states, see [22 USCA § 2378](#).
- Prohibition on financial assistance, see [10 USCA § 2249a](#).

Jurisdiction for lawsuits against terrorist states, see [28 USCA § 1605](#).

Opposition to assistance by international financial institutions to terrorist states, see [22 USCA § 262p-4q](#).

FEDERAL SENTENCING GUIDELINES

See [Federal Sentencing Guidelines § 2M5.1](#), 18 USCA.

LIBRARY REFERENCES

Administrative Law

Secrecy of certain inventions, and licenses to export and file applications in foreign countries, see [37 CFR § 5.1](#) et seq.

American Digest System

Power to regulate foreign commerce generally, see Commerce [§ 1](#) et seq.

Restrictions on foreign trade under emergency powers, see War and National Emergency [§§ 501 to 514](#).

Encyclopedias

Power to regulate foreign commerce generally, see C.J.S. Commerce § 5 et seq.

Restrictions on foreign trade under emergency powers, see C.J.S. War and National Defense §§ 200-201.

Forms

6A Fed. Proc. Forms L Ed, Contempt § 16:71.

Law Review and Journal Commentaries

[Regulation of the export of pharmaceuticals to developing countries. Nancy E. Pirt, 25 Duq.L.Rev. 255 \(1987\).](#)

NOTES OF DECISIONS

Constitutionality 1

Hazardous substances 3

Hazardous wastes 4

Indictment 2

Informational matter 6

Medicine and medical supplies 5

Terrorism 7

1. Constitutionality

This section prescribing punishment for willfully exporting foods contrary to any provision of section 2401 et seq. of this Appendix with knowledge that such exports will be used for the benefit of any communist-dominated nation is not unconstitutionally vague on theory that reasonable men could differ as to which countries are "communist-dominated" or that the phrase "for the benefit of" fails to set standards apprising an individual that his conduct might be criminal, and this section was not unconstitutional as applied to defendants charged in connection with exports allegedly destined for Hungary and East Germany. [U. S. v. Brumage, E.D.N.Y.1974, 377 F.Supp. 144.](#)

2. Indictment

Computer software encryption regulations issued by Bureau of Export Administration (BXA) were directed quite specifically and "by their terms" to entire field of applied scientific research and discourse and, thus, were subject to facial prior restraint analysis, even though export of commercial cryptographic software program may not have been undertaken for expressive reasons; activity is often undertaken by scientists for purely expressive reasons. [Bernstein v. U.S. Dept. of State, N.D.Cal.1997, 974 F.Supp. 1288, affirmed 176 F.3d 1132, rehearing granted, opinion withdrawn 192 F.3d 1308.](#)

Indictment charging defendant with exporting certain technological equipment to restricted countries without obtaining a validated license was not required to state as an essential element of the offense that such equipment would make a significant contribution to the military potential of another country. [U.S. v. Moller-Butcher, D.C.Mass.1983, 560 F.Supp. 550.](#)

3. Hazardous substances

Section 2401 et seq. of this Appendix provide authority for the President to control the export of hazardous substances in pursuit of the foreign policy of the United States, and in the exercise of such authority, he is not formally bound by the factors for his consideration set forth in this section. 1980 (Counsel-Inf. Op.) 4B Op. O.L.C. 568.

4. Hazardous wastes

Section 2401 et seq. of this Appendix is sufficiently flexible to authorize the President to impose controls on the export of hazardous wastes. 1980 (Counsel-Inf.Op.) 4B Op. O.L.C. 797.

5. Medicine and medical supplies

Congress intended the exclusion in § 6(f) [now g] of the Export Administration Act of 1979 for medicine and medical supplies to be absolute, and did not intend to limit such exclusion by imposing a strict standard of human need. 1980 (Counsel-Inf. Op.) 4B Op. O.L.C. 809.

6. Informational matter

Computer software encryption products were within scope of Export Administration Act (EAA) as items controlled for foreign policy or national security reasons and, thus, those products did not fall within exemption from International Emergency Economic Powers Act (IEEPA) for informational materials. [Bernstein v. U.S. Dept. of State, N.D.Cal.1997, 974 F.Supp. 1288](#), affirmed [176 F.3d 1132](#), rehearing granted, opinion withdrawn [192 F.3d 1308](#).

7. Terrorism

Former hostages established a prima facie case of tortious injury against Iran, actionable under exception to the Foreign Sovereign Immunities Act (FSIA), where evidence showed: (1) that they were injured by acts of torture and hostage-taking; (2) that the acts were perpetrated by a group receiving material support from Iran; (3) that the provision of material support was engaged in by Iranian officials, employees, or agents acting within the scope of their office, employment, or agency; (4) that at the time of the acts, Iran was designated as a state sponsor of terrorism by the Department of State; (5) that the claimants or victims were U.S. nationals at the time the acts occurred; and (6) that similar acts conducted by officials, employees, or agents of the U.S. while acting within the scope of his or her office, employment, or agency, would also be actionable. [Cicippio v. Islamic Republic of Iran, D.D.C.1998, 18 F.Supp.2d 62](#).

50 App. U.S.C.A. § 2405

50 App. USCA § 2405

END OF DOCUMENT