

Defense shall notify the Secretary of Commerce within 15 days after receipt of an application under the preceding sentence whether the export of such biological pathogen pursuant to the license would be contrary to the national security interests of the United States.

“(b) DENIAL OF LICENSE IF CONTRARY TO NATIONAL SECURITY INTEREST.—A license described in subsection (a) shall be denied by the Secretary of Commerce if it is determined that the export of such biological pathogen to that country would be contrary to the national security interests of the United States.

“(c) IDENTIFICATION OF COUNTRIES KNOWN OR SUSPECTED TO HAVE A PROGRAM TO DEVELOP OFFENSIVE BIOLOGICAL WEAPONS.—(1) The Secretary of Defense shall determine, for the purposes of this section, those countries that are known or suspected to have a program to develop offensive biological weapons. Upon making such determination, the Secretary shall provide to the Secretary of Commerce a list of those countries.

“(2) The Secretary of Defense shall update the list under paragraph (1) on a regular basis. Whenever a country is added to or deleted from such list, the Secretary shall notify the Secretary of Commerce.

“(3) Determination under this subsection of countries that are known or suspected to have a program to develop offensive biological weapons shall be made in consultation with the Secretary of State and the intelligence community.

“(d) DEFINITION.—For purposes of this section, the term ‘class 2, class 3, or class 4 biological pathogen’ means any biological pathogen that is characterized by the Centers for Disease Control as a class 2, class 3, or class 4 biological pathogen.”

ANNUAL REPORTS ON IMPROVING EXPORT CONTROL MECHANISMS

Pub. L. 104-106, div. A, title XIII, §1324(a), (b), Feb. 10, 1996, 110 Stat. 480, 481, provided that:

“(a) JOINT REPORTS BY SECRETARIES OF STATE AND COMMERCE.—Not later than April 1 of each of 1996 and 1997, the Secretary of State and the Secretary of Commerce shall submit to Congress a joint report, prepared in consultation with the Secretary of Defense, relating to United States export-control mechanisms. Each such report shall set forth measures to be taken to strengthen United States export-control mechanisms, including—

“(1) steps being taken by each Secretary (A) to share on a regular basis the export licensing watchlist of that Secretary’s department with the other Secretary, and (B) to incorporate the export licensing watchlist data received from the other Secretary into the watchlist of that Secretary’s department;

“(2) steps being taken by each Secretary to incorporate into the watchlist of that Secretary’s department similar data from systems maintained by the Department of Defense and the United States Customs Service; and

“(3) a description of such further measures to be taken to strengthen United States export-control mechanisms as the Secretaries consider to be appropriate.

“(b) REPORTS BY INSPECTORS GENERAL.—(1) Not later than April 1 of each of 1996 and 1997, the Inspector General of the Department of State and the Inspector General of the Department of Commerce shall each submit to Congress a report providing that official’s evaluation of the effectiveness during the preceding year of the export licensing watchlist screening process of that official’s department. The reports shall be submitted in both a classified and unclassified version.

“(2) Each report of an Inspector General under paragraph (1) shall (with respect to that official’s department)—

“(A) set forth the number of export licenses granted to parties on the export licensing watchlist;

“(B) set forth the number of end-use checks performed with respect to export licenses granted to parties on the export licensing watchlist the previous year;

“(C) assess the screening process used in granting an export license when an applicant is on the export licensing watchlist; and

“(D) assess the extent to which the export licensing watchlist contains all relevant information and parties required by statute or regulation.”

STUDY ON NATIONAL SECURITY EXPORT CONTROLS

Section 2433 of Pub. L. 100-418 directed Secretary of Commerce and Secretary of Defense, not later than 60 days after Aug. 23, 1988, to enter into appropriate arrangements with National Academy of Sciences and National Academy of Engineering to conduct a comprehensive study of adequacy of current export administration system in safeguarding United States national security while maintaining United States international competitiveness and Western technological pre-eminence, further directed Academies to prepare and submit to President and Congress, not later than 18 months after entering into such arrangements, a report containing a detailed statement of findings and conclusions of Academies pursuant to such study, together with their recommendations for such legislative or regulatory reforms as they considered appropriate, and further provided for an Advisory Panel to aid in such study, as well as executive branch cooperation, and appropriations for such study.

DELEGATION OF AUTHORITY UNDER SECTION 1322(c) OF PUBLIC LAW 104-106

Determination of President of the United States, No. 97-39, Sept. 30, 1997, 62 F.R. 52477, provided:

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of Defense the duties and responsibilities vested in the President by section 1322(c) of the National Defense Authorization Act for Fiscal Year 1996 (“the Act”) (Public Law 104-106, 110 Stat. 478-479 (1996)) [set out as a note above].

The reporting requirement delegated by this memorandum may be redelegated not lower than the Under Secretary level. The Department of Defense shall obtain concurrence on the report from the following agencies: the Department of Commerce, the Department of State, the Department of the Treasury, and the Director of Central Intelligence on behalf of the intelligence community prior to submission to the Congress.

Any reference in this memorandum to the provisions of any Act shall be deemed to be a reference to such Act or its provisions as may be amended from time to time.

The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 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. 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 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 [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 the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989 [Dec. 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 re-

scinded 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.

(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.

(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 (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 [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) 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. 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)¹ 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 [section 2409(e) 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. 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

¹ See References in Text note below.

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)² of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term “joint resolution” means a joint resolution the

matter after the resolving clause of which is as follows: “That the Congress, having received on a determination of the President under section 6(o)(1)² 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.

(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)-(g)(1), (h)-(j)(1), (k), (l)(1), July 12, 1985, 99 Stat. 131-136; Pub. L. 99-399, title V, § 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; 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; Pub. L. 108-458, title VII, § 7102(c)(1), Dec. 17, 2004, 118 Stat. 3776.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (g), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. 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 title III of Pub. L. 102-182, Dec. 4, 1991, 105 Stat. 1245, which is classified principally to chapter 65 (§ 5601 et seq.) of Title 22, Foreign Relations and Intercourse. 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 subsecs. (n)(1)(A) and (r)(1), were successively redesignated as subsections (n) and (o), respectively, of this

² See References in Text note below.

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), which was classified to subsec. (o)(1) of this section, was redesignated successively as section 6(q)(1) by Pub. L. 101-510, div. A, title XVII, §1702(a)(1), Nov. 5, 1990, 104 Stat. 1739, then as section 6(r)(1) by Pub. L. 102-182, title III, §304(b), Dec. 4, 1991, 105 Stat. 1246, without a corresponding amendment to such reference.

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.

AMENDMENTS

2004—Subsec. (j)(5), (6), Pub. L. 108-458 added par. (5) and redesignated former par. (5) as (6).

1998—Subsec. (g), Pub. L. 105-277, which directed amendment of “Section 2405(g) of the Export Administration Act of 1979” by substituting “Administrator of the Agency for International Development” for “Director of the United States International Development Cooperation Agency” in two places and substituting “Administrator” for “Director” in the fourth sentence, was executed to subsec. (g) of this section, which is section 6 of the Export Administration Act of 1979, to reflect the probable intent of Congress.

1996—Subsec. (f)(3), Pub. L. 104-316 struck out after first sentence “Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report’s full compliance with the intent of this subsection.”

1994—Subsec. (j)(5), Pub. L. 103-236 added par. (5).

1991—Subsecs. (m) to (s), Pub. L. 102-182, §304(b), added subsec. (m) and redesignated former subsecs. (m) to (r) as (n) to (s), respectively.

Pub. L. 102-138, which made an amendment similar to that made by Pub. L. 102-182, §304(b), by adding a subsec. (m) and redesignating former subsecs. (m) to (r) as (n) to (s), respectively, was repealed by Pub. L. 102-182, §309(a).

1990—Subsecs. (k) to (r), Pub. L. 101-510 added subsecs. (k) and (l) and redesignated former subsecs. (k) to (p) as (m) to (r), respectively.

1989—Subsec. (j), Pub. L. 101-222 amended subsec. (j) generally, substituting pars. (1) to (4) for former pars. (1) and (2).

1988—Subsec. (a)(6), Pub. L. 100-418, §2423(a), added par. (6).

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

1986—Subsec. (j)(1), Pub. L. 99-399 substituted “\$1,000,000” for “\$7,000,000”.

1985—Subsec. (a)(1), Pub. L. 99-64, §108(a)(1), substituted “(8), or (13)” for “or (8)”, and inserted “, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative,” after “in consultation with the Secretary of State”.

Subsec. (a)(2), Pub. L. 99-64, §108(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3), Pub. L. 99-64, §108(a)(2), (4), redesignated par. (2) as (3) and substituted “subsections (b) and (f)” for “subsections (b) and (e)”. Former par. (3) redesignated (4).

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), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “When imposing, expanding, or extending export controls under this section, the President shall consider—

“(1) the probability that such controls will 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;

“(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

“(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

“(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

“(5) the ability of the United States to enforce the proposed controls effectively; and

“(6) the foreign policy consequences of not imposing controls.”

Subsec. (c), Pub. L. 99-64, §108(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.”

Subsec. (d), Pub. L. 99-64, §108(d)(2), added subsec. (d). Former subsec. (d) redesignated (e).

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

Subsec. (f), Pub. L. 99-64, §108(d)(1), (e), redesignated former subsec. (e) as (f), amended subsec. (f) generally, substituting “Consultation with Congress” for “Notification to Congress” in heading, and in text making consultation with the Congress mandatory and not merely discretionary before the President imposes, expands, or extends export controls. Former subsec. (f) redesignated (g).

Subsec. (g), Pub. L. 99-64, §108(d)(1), (f), redesignated former subsec. (f) as (g), inserted sentence directing that this section does not authorize export controls on donations of goods that are intended to meet basic human needs, and 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 inserted: “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(g)(1), designated existing provisions as par. (1) and added pars. (2) to (4).

Pub. L. 99-64, §108(d)(1), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i), Pub. L. 99-64, §108(d)(1), (h), redesignated former subsec. (h) as (i) and substituted “(e), (g), and (h)” for “(f), and (g)”. Former subsec. (i) redesignated (j).

Subsec. (j), Pub. L. 99-64, §108(d)(1), (i), redesignated former subsec. (i) as (j), amended subsec. (j) generally, designating the existing sentence as par. (1) and former pars. (1) and (2) thereof as subpars. (A) and (B), and adding par. (2). Former subsec. (j) redesignated (k).

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

Subsec. (k)(1). Pub. L. 99-64, §108(j)(1), inserted sentence relating to the concurrence of the Secretary of State.

Subsec. (l). Pub. L. 99-64, §108(d)(1), (k), redesignated former subsec. (k) as (l), substituted reference to “the control list” for existing reference to “the commodity control list” after “The Secretary shall establish and maintain, as part of”, and 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) to (o).

1981—Subsec. (f). Pub. L. 97-145 inserted 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—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.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States International Development Cooperation Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1401 of Pub. L. 105-277, set out as an Effective Date note under section 6561 of Title 22.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-64, title I, §108(g)(2), July 12, 1985, 99 Stat. 135, provided that: “The amendments made by paragraph (1) of this subsection [amending 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 [subsec. (i), (j), or (k) of this section] (as redesignated by subsection (d) 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).”

Pub. L. 99-64, title I, §108(j)(2), July 12, 1985, 99 Stat. 136, provided that: “The amendment made by paragraph (1) of this subsection [amending 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].”

Pub. L. 99-64, title I, §108(l)(2), July 12, 1985, 99 Stat. 137, 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).”

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-458, title VII, §7102(c)(2), Dec. 17, 2004, 118 Stat. 3777, provided that: “Nothing in this subsection [amending this section and enacting provisions set out as a note under this section] or the amendments made by this subsection shall be construed as affecting any determination made by the Secretary of State pursuant to section 6(j) of the Export Administration Act of 1979 [50 U.S.C. App. 2405(j)] with respect to a country prior to the date of enactment of this Act [Dec. 17, 2004].”

DELEGATION OF FUNCTIONS

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

IMPLEMENTATION

Pub. L. 108-458, title VII, §7102(c)(3), Dec. 17, 2004, 118 Stat. 3777, provided that: “The President shall implement the amendments made by paragraph (1) [amending this section] by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).”

EXERCISE OF STATUTORY AUTHORITIES RESPECTING IMPOSITION OF TOTAL EMBARGO IN EVENT OF SOVIET OR WARSAW PACT MILITARY ACTION IN POLAND

Pub. L. 97-145, §7, Dec. 29, 1981, 95 Stat. 1729, provided that: “Notwithstanding any other provision of law, no provision of the Export Administration Act of 1979, as amended by this Act [sections 2401 to 2420 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.”

ADMINISTRATION OF EXPORT CONTROLS ON ENCRYPTION PRODUCTS

For provision that subsec. (h)(2) to (4) of this section is not applicable with respect to export controls on encryption products, see Ex. Ord. No. 13026, §1(a), set out as a note under section 2403 of this Appendix.

§ 2406. Short supply controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], 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 [section 2402(2)(C) of this Appendix], 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 [section