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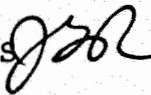
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THE WHITE HOUSE

WASHINGTON

July 10, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Enrolled Bill S. 883 -- Export
Administration Amendments Act of 1985

David Chew has asked for our comments by 5:00 p.m. today on enrolled bill S. 883, the "Export Administration Amendments Act of 1985." This is the long-awaited bill to continue the authorities of the Export Administration Act of 1979, which expired in March 1984. As you know, we have continued the authorities of that Act since they expired through the declaration of a national economic emergency under the International Emergency Economic Powers Act (IEEPA), see Executive Order 12470 (March 30, 1984). (We also continued the authorities for several shorter periods before the ultimate expiration date, as Congress let the Act expire then retroactively extended it for the brief periods it mistakenly thought were sufficient to pass a reauthorization bill.)

Congress did not simply reauthorize the Act of 1979 but amended it extensively. The end result is a compromise acceptable to all the affected agencies and departments. The compromise, however, imposes significant new restrictions on the President's authority to impose controls on exports. Most such restrictions appear in Section 105 (national security controls) and Section 108 (foreign policy controls). The President may not, under the bill, impose national security export controls on agricultural products (Section 105(g)), must not merely consider various factors before imposing foreign policy controls but actually make various determinations, Section 108(b), and must consult with and report to Congress before imposing foreign policy controls, Section 108(e). On the divisive issue of contract sanctity, the bill specifies, Section 108(l), that existing contracts may not be affected unless the President determines and certifies that "a breach of the peace" poses a direct threat to the strategic interest of the United States, and that curtailing existing contracts will be "instrumental" in remedying the situation.

These are indeed significant new restrictions on the President's authority to administer the export control program. It is important to note, however, that these restrictions only

apply to controls imposed under this Act. In particular, the President is not bound by these restrictions in imposing controls in an appropriate case under IEEPA.

A critical question from our point of view is the transition from the continuation of the export controls by Executive Order under IEEPA to the new, amended Act. When he continued the controls by Executive Order 12470, the President stated his "intention to terminate this Order upon the enactment into law of a bill reauthorizing the authorities contained in the Export Administration Act." This bill reauthorizes those authorities, albeit with changes. It would seem that the Executive Order should be terminated immediately upon signing of this bill. Failing to do so would result in two separate, concurrent export control programs, the old 1979 one, imposed under IEEPA by the Executive Order, and the new 1985 one, established by this bill. The Executive Order imposition of the 1979 controls would definitely not terminate automatically upon signing of the bill.

I alerted both OMB and Commerce to this problem, and they are now working on an Executive Order terminating Executive Order 12470, with appropriate grandfather provisions to accommodate pending cases. The bill should not be signed until that Order is also ready for signature. Since the bill must be signed by Saturday, July 13, processing of the new Executive Order should be expedited.

Attachment

THE WHITE HOUSE

WASHINGTON

July 10, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING *Original signed by RAH, for FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 883 -- Export
Administration Amendments Act of 1985

Counsel's Office has reviewed the above-referenced enrolled bill. While the bill does impose significant new restrictions on the President's authority to administer the export control program, I am in no position to second-guess the unanimous view that this is the best compromise that could be achieved. In this regard, it is important to note that the various restrictions in this bill apply only to controls imposed under the Export Administration Act of 1979. In particular, the restrictions do not apply to controls the President may impose in an appropriate case pursuant to emergency powers granted by statutes other than the Export Administration Act, or granted by the Constitution.

The authorities of the Export Administration Act, which expired by its terms in March of 1984, were continued by Executive Order 12470 (March 30, 1984), pursuant to the declaration of a national economic emergency under the International Emergency Economic Powers Act, 50 U.S.C. § 1702. That Executive Order stated the President's "intention to terminate this Order upon the enactment into law of a bill reauthorizing the authorities contained in the Export Administration Act." The Executive Order will not terminate automatically upon signing of S. 883. If a new Executive Order terminating Executive Order 12470 is not signed immediately after the signing of S. 883, there will be two concurrent and conflicting export control programs in effect: the unamended 1979 Act, by virtue of the Executive Order and the emergency declaration under IEEPA, and the new Act, as amended by S. 883. Accordingly, S. 883 should not be signed until an executive order terminating Executive Order 12470, with any appropriate grandfather provisions, is also available for the President's signature.

FFF;JGR:aea 7/10/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

July 10, 1985

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STAFF SECRETARY

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FFF;JGR:aea 7/10/85
cc: FFFielding
JGRoberts
Subj
Chron

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☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: Dave Chew☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Enrolled Bill 5.883 - Export Administration
Amendments Act of 1985

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>85.07.09</u>			<u>1 1</u>
	Referral Note:				
<u>CUAT 18</u>	<u>R</u>	<u>85.07.10</u>		<u>S</u>	<u>85.07.10</u>
	Referral Note:				<u>5pm</u>
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
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ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
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Type of Response = Initials of Signer
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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

Received

JUL 8 1985

JUL 8 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 883 - Export Administration Amendments
Act of 1985
Sponsor - Senator Heinz (R) Pennsylvania

Last Day for Action

July 13, 1985 - Saturday

Purpose

Extends the basic authorities of the Export Administration Act of 1979, which expired in March 1984, until September 30, 1989, and makes numerous substantive changes to that Act.

Agency Recommendations

Office of Management and Budget

Approval (Signing
Statement attached)

Department of State

Approval (partial Signing
Statement attached)

Department of Justice

Approval (partial Signing
Statement attached)

Department of the Treasury

Approval

Department of Agriculture

Approval

National Science Foundation

Approval

Department of Energy

Approval

Department of Commerce

No objection (partial
Signing Statement
attached)

Department of Defense

No objection (Informally)

Small Business Administration

No objection (Informally)

Office of Personnel Management

No objection (Informally)

Central Intelligence Agency

No objection

United States Trade Representative

No objection

National Security Council

No objection

WHITE HOUSE STAFFING MEMORANDUMDATE: 7/8/85 ACTION/CONCURRENCE/COMMENT DUE BY: Wed., 7/10/85, 5:00 pmSUBJECT: ENROLLED BILL S. 883 - Export Administration Amendments Act of 1985

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRIEDERSDORF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please submit your comments to my office by 5:00 pm Wednesday, July 10, on both the bill and the statement. Thank you.

RESPONSE:

1985 JUL -8 AM 7:21

David L. Chew
Staff Secretary
Ext. 2702

Discussion

The Export Administration Act of 1979 (EAA) provides the basic authority for the President to control exports for reasons of national security, foreign policy, and short supply. This Act expired in March 1984. Since that time exports have been controlled under emergency authorities of the International Emergency Economic Powers Act (IEEPA).

S. 883, which extends the EAA through September 30, 1989, is the product of protracted, often bitter debate and negotiation over the past three years by the Congress, Executive branch, and the private sector. It incorporates most of the provisions of similar legislation (H.R. 3231, S. 979), which stalled in conference during the final hours of the 98th Congress.

The enrolled bill passed both Houses of the Congress by voice vote.

Background

S. 883 represents a compromise of widely divergent views between competing interests to strengthen export controls and to ensure a minimum of constraints on the business community.

During congressional consideration of the EAA, two major conflicting perceptions made compromise difficult. These perceptions were: (1) that serious deficiencies in the export licensing program allowed the Soviets to acquire strategic U.S. technology and whittle away at our technological lead, thereby threatening national security, and (2) that the recent implementation of the export control program made U.S. exporters unreliable suppliers. There were also serious concerns among our allies about the extraterritorial extension of U.S. law.

There were deep divisions in Congress as well as in the Administration regarding how to address these perceptions. After much internal discussion, the Administration established two basic objectives: (1) maintenance of the traditional balance between exporting and national security interests, and (2) preservation of adequate Presidential discretion to manage the export control program effectively.

The Senate and House bills in the last Congress took divergent approaches to the export control program. The House bill predominantly emphasized commercial interests, while the Senate bill placed greater emphasis on tightening controls and expanding enforcement. Both bills called for greater congressional roles in the export control program. The House bill was also used as a vehicle for South African economic sanctions as well as additional restrictions on U.S. nuclear-related exports.

Beginning in the fall of 1983, OMB (on behalf of the Administration), negotiated with the Senate to reach an understanding that would avoid a contentious floor fight and allow agreement on acceptable conference outcomes. The key issues involved were: (1) retention of some Presidential authority to break existing contracts for foreign policy purposes, (2) preservation of Presidential authority to extend our export controls extraterritorially, (3) deletion of restrictive measures regarding South Africa and nuclear-related exports, and (4) maintenance of current administrative arrangements regarding EAA enforcement and licensing.

Congress was not able to resolve these issues and the conference process collapsed during the final hours of the second session of the 98th Congress. Prior to the start of the 99th Congress, the Administration had informal discussions with both the House and Senate bill managers and indicated that, in an effort to resolve the legislative impasse and avoid prolonged use of the emergency powers, we could support passage of the new EAA if our principal objectives were addressed satisfactorily.

Although S. 883 does address the Administration's major concerns, numerous other provisions of the enrolled bill are objectionable. The more significant features of the bill are discussed below. Other provisions are summarized in the attached sectional analysis prepared by the Department of Commerce.

National Security Controls

S. 883 would make a number of changes to the national security controls provisions of the EAA designed to strengthen our ability to prevent the transfer of advanced equipment and know-how, particularly military technology, to unfriendly nations.

- The bill would grant the President authority to prohibit or curtail the transfer of items within the United States to embassies and affiliates of communist countries. This change, requested by the Administration, will help close a loophole through which sensitive items can be diverted to these countries.
- The bill would decontrol the export of low level goods and technology, such as personal computers, to countries that are members of the Coordinating Committee (COCOM), an international organization formed to control exports multilaterally for mutual security reasons. The bill would preserve U.S. licensing requirements for all other shipments of controlled items to COCOM countries, but with modifications in the licensing process designed to provide greater speed and predictability for export license applicants. S. 883 also contains provisions to improve COCOM and its ability to achieve effective multilateral controls.

- The bill would prohibit the imposition of export controls on an item solely because it contains an embedded microprocessor, if the microprocessor cannot be altered to perform a function other than that which it is performing in the item being exported. This does not preclude controls from being imposed, however, if the item itself would significantly contribute to the military potential of a controlled country.
- The bill would prohibit the President from imposing national security export controls on agricultural commodities such as grain, thus limiting the range of Presidential actions that can be taken as a response to international events. ✓
- Finally, the bill would require the Secretary of Commerce to negotiate with other countries to eliminate the foreign availability of goods which we have controlled. If after 18 months such availability is not eliminated, the goods must be decontrolled. ✓

Foreign Policy Controls

The enrolled bill contains a number of constraints on the President's authority to impose new foreign policy controls. The following two provisions are most important.

- The bill would require the President to consult with and report to Congress before imposing foreign policy controls. This may impair the President's ability to respond quickly to foreign events. ✓
- On the controversial issue of contract sanctity, the bill would prohibit foreign policy export controls from affecting contracts in existence before the controls were imposed, unless the President determines and certifies to Congress that a "breach of the peace" poses a serious and direct threat to U.S. strategic interests and that the breaking of contracts would be instrumental in remedying the threat. While more restrictive than the Administration had hoped, the "breach of the peace" language is sufficiently broad to enable the President to break existing contracts for foreign policy purposes in instances where U.S. strategic interests are at risk. ✓

The bill also reimposes foreign policy controls on non-sensitive items for export to the South African police or military, thus unnecessarily exacerbating the United States relationship with the South African Government.

Short Supply

The enrolled bill mandates a Presidential study on issues related to the export of Alaskan north slope oil. It requires

congressional approval, by joint resolution, of any recommendation for exporting such oil.

Violations and Enforcement

The enrolled bill amends the EAA regarding investigation and other enforcement authorities. It would:

- establish new statutory crimes, as requested by the Administration, for conspiring or attempting to export illegally or for possession with intent to export illegally;
- assign the U.S. Customs Service primary responsibility for overseas enforcement and investigation of violations of the EAA, thus relegating Commerce to a secondary role;
- provide Commerce with police powers for its enforcement activities under the EAA, to be exercised in accordance with guidelines approved by the Attorney General; and
- require forfeiture of items that are the subject of national security violations.

Nuclear Provisions

The enrolled bill would establish new procedures for congressional review of Nuclear Cooperation Agreements. Most notably, the bill would add to the 60-day review period currently in law a new 30-day period during which Congress may advise the President of its views whether the proposed agreement is consistent with the requirements for such agreements as stipulated in the Atomic Energy Act. These procedures allow the President, at his discretion, to decide whether or not to approve an agreement for signature before transmitting it to Congress for this new review period.

Other significant provisions of S. 883 are indicated below.

- The bill would provide contract sanctity for agricultural, forest and fishery products in short supply, which would preclude the President from effectively preventing scarce resources from flowing out of the country.
- The bill would require all proposed changes in export control regulations to be submitted to the Congress and the Technical Advisory Committees prior to publication, an unduly burdensome requirement which would impair the President's ability to respond swiftly to national security or foreign policy events. Furthermore, the bill would require national security export control regulations to be reviewed in advance by the Secretaries of Defense and State.

- The bill would authorize import sanctions for violations not only of United States national security controls, but also for violations of foreign laws or regulations which implement multilateral agreements. This authority is broader than that sought by the Administration. As Commerce notes in its enrolled bill views letter, the imposition of import sanctions for violations of U.S. controls can be a useful tool, but application of such sanctions for violations of foreign laws is "...too broad and could cause unnecessary friction between the United States and our allies." However, because action under this provision requires approval by a majority of COCOM members, it is unlikely to be used.
- Finally, the bill would repeal the authority of the Secretary of Commerce to offer the qualified general license, a license that has proved impractical and has caused confusion and delays in application processing. Instead, the bill would create new, clearer categories of licenses--distribution, comprehensive operations, project, and service supply licenses--designed to simplify and speed the export licensing process.

Authorization of Appropriations

Department of Commerce* International Trade Administration (\$ in millions)

	<u>FY 1985</u>	<u>FY 1986</u>
Export Promotion	113.3	113.3
EAA Administration	24.6	29.3
- Enforcement	(8.7)	(9.2)
- Foreign Avail.	(1.9)	(2.0)
- Other	<u>(14.0)</u>	<u>(18.1)</u>
Total	<u>137.9</u>	<u>142.6</u>

* These authorizations conform to the President's FY 1986 budget.

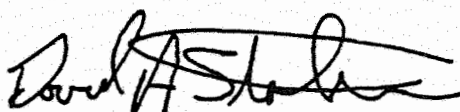
Agency Views

All of the Executive agencies that were requested to comment on the enrolled bill either recommended approval or expressed no objection to it. As explained earlier, while the Administration is satisfied with the resolution of the principal issues in the bill, a number of other problems persist, some of which are discussed in the enclosed agency views letters. OMB shares many of the agencies' concerns and has drafted the attached signing statement for your consideration, which addresses most of them. It should be noted, however, that the

Department of Justice concerns, explained in its views letter and reflected in their draft signing statement, were not incorporated because we believe the subject matter would be more appropriately dealt with in implementing regulations than in a signing statement.

Conclusion

Although the enrolled bill contains a number of undesirable provisions, we recommend signature because: (1) the bill adequately addresses the Administration's principal concerns and objectives; (2) it reflects the most favorable outcome that could be expected, given the competing interests involved in the legislative process; and (3) it is preferable to control exports under substantive legislation than to continue using the emergency powers of IEEPA for this purpose.

A handwritten signature in black ink, appearing to read "David A. Stockman", with a stylized flourish at the end.

David A. Stockman
Director

Enclosures

STATEMENT BY THE PRESIDENT

I have today signed into law S. 883, "the Export Administration Amendments Act of 1985", which amends and reauthorizes the Export Administration Act (EAA) of 1979.

Congress and the Executive branch have worked long and hard to produce the compromise contained in this complex and controversial legislation. Lengthy negotiations nearly produced a bill in the final hours of the 98th Congress. The 99th Congress took up the legislation with renewed determination. The bill I have just signed reflects that determination as well as congressional willingness to compromise to resolve difficult problems.

I believe that this new law--which reflects compromise by all concerned parties--strikes an acceptable balance between enhancing our commercial interests and protecting our national security interests.

- o To ensure national security, this law provides expanded enforcement authority, takes numerous steps to strengthen COCOM (an informal organization that provides for multilateral controls) and, by establishing new statutory crimes for illegal exports, provides enforcement officials with an effective tool to reduce illegal diversions.
- o To make our exporters more competitive, this law decontrols the exports of "low-tech" items to COCOM members, liberalizes licensing where comparable goods are widely available in the international marketplace, and provides for expanded congressional and private sector roles in the export control program.

During the congressional deliberations on the EAA, I stated that there must be adequate discretionary authority to allow the President to manage the export control program. I regret that in the new law, Congress has prescribed several new administrative arrangements and reporting

requirements that make the export control program more difficult to manage. However, I am pleased that Congress also has acknowledged the Administration's efforts to resolve issues administratively. One example of this is my recent National Security Decision Directive instructing the Commerce and Defense Departments to work together to develop licensing procedures for specific commodities and countries where there are serious threats of diversion. These procedures are now in place and are being overseen by the National Security Council.

During the EAA debate, Congress faced numerous controversial issues on which each of the competing sides had compelling arguments for its position. One such contentious issue was whether the contracts of U.S. exporters would be protected if foreign policy controls were imposed. Congress agreed to compromise language which allows the President to break existing contracts if the strategic interests of the United States are threatened. This provision will allow U.S. exporters to be perceived as more reliable suppliers, while at the same time maintaining adequate presidential authority to respond to those instances where the country's strategic interests are at risk. ✓

Another controversial issue addressed was the administrative arrangements for the enforcement of the Act. The new law grants enhanced enforcement powers to the Customs Service and the Department of Commerce by providing both agencies with police powers. In addition, the new law grants primary authority to the Customs Service to conduct investigations overseas and provides that the Commerce Department's overseas activities will relate principally to pre-licensing and post-shipment investigations. It is clear that Congress envisions significant roles for both agencies. Thus, I intend to direct both agencies to cooperate to insure effective and complementary roles in enforcement of our export control laws.

This new law also contains provisions regarding congressional procedures for reviewing nuclear cooperation agreements. It adds a 30-day consultation period to the current 60-day congressional review period. Under these new procedures, the President has the discretion to approve execution of an agreement before transmitting it for either period. If

approved for execution before the 30-day period, the agreement would not have to be resubmitted; a single submission would be legally sufficient. I expect that these new procedures for congressional review will apply to the agreement for cooperation with Finland which was transmitted on May 21, 1985.

It is clear that the new EAA involves a delicate balancing of national as well as programmatic objectives. I do want to acknowledge the invaluable role in securing final enactment of this legislation by the bill managers--Senators Jake Garn and John Heinz and Congressmen Don Bonker and Toby Roth.

SECTION-BY-SECTION ANALYSIS

OF S. 883, AS ENROLLED

TITLE I - AMENDMENTS TO EXPORT ADMINISTRATION ACT OF 1979

SECTION 101. - Short Title

This Act may be cited as the "Export Administration Amendment Act of 1985".

SECTION 102. - Findings

This Section makes a number of changes to the Findings section of the EAA, Section 2. Section 2(3) of the Act is amended to state that, while both the private sector and the Federal Government should place a high priority on exports, this priority must be consistent with the economic, security, and foreign policy objectives of the United States. By contrast, the current Act states that it is important to the national interest of the United States that the private sector and the Government place a high priority on exports, "which would strengthen the national economy." The current provision implies that top priority should be given to exports, exclusive of other concerns.

Paragraph (3) makes syntactic changes to section 2(6) of the Act. It also clarifies that uncertainty of export controls can "inhibit" rather than "curtail" United States business efforts.

Paragraph (4) finds that exports make a positive contribution to the balance of payments.

Paragraph (5) adds new findings to the Act. The first new finding notes that foreign policy controls should give special emphasis to prohibiting the export of hazardous substances.

A second new finding notes that the exporting of goods and technology which contribute to the military capability of countries whose actions are adverse to our national security interest has been detrimental to the security of the U.S. and to our allies, and has lead to increased spending in our defense budget.

Paragraph (5) also adds a finding to section 2 of the Act which focuses on the importance of eliminating foreign availability of controlled goods and technology to make export control systems as effective as possible.

Finally, a new finding notes that excessive dependence by the U.S. and our allies on the energy resources of our adversaries can be harmful to our security.

SECTION 103. - Declaration of Policy

Paragraph (1) of this section amends section 3(3) of the Act, regarding the U.S. policy of encouraging multilateral cooperation in export control policy, to state that we shall encourage observance of uniform export control policies not only with those countries with which we have defense treaties, but also with those countries with which we share "common strategic objectives."

Paragraph (2) amends paragraph 3(7) of the Act by requiring the President to make prompt efforts to negotiate the reduction or removal of export restrictions by other countries if such restrictions are harmful to the U.S.

Paragraph (3) amends paragraph 3(8) of the Act by requiring the President to make prompt efforts to encourage other countries to take immediate steps to prevent acts of international terrorism.

Paragraph (4) of this section amends paragraph 3(9) of the Act to encourage cooperation with countries with which we have "common strategic objectives" in restricting the export of items that could contribute to the military potential of our adversaries. Present law requires cooperation only with countries with which we have defense treaties.

Paragraph (5) of this section adds four new policy declarations to the Act. The first new section would declare it to be U.S. policy to sustain vigorous scientific enterprise, including the promotion of scholarly exchange.

New paragraph 3(13) declares that it is United States policy to control the export of hazardous goods that are banned or severely restricted for use in the United States.

New paragraph 3(14) states that it is U.S. policy to work with our allies in minimizing dependence on imports of energy and other critical resources from potential adversaries.

New paragraph 3(15) states that it is the policy of the United States, in light of the KAL massacre, to continue to object to granting exceptions in COCOM for exports to the Soviet Union.

SECTION 104. - General Provisions

Paragraph (a) of this section amends section 4(a)(2) of the Act by deleting reference to the qualified general license. This change was requested by the Administration because this license proved to be impracticable in its administration, has caused confusion in the business community and delays in processing applications.

Paragraph (a) also specifies certain types of multiple license procedures that the Secretary may establish in order to enhance our export control system. These licenses include the Distribution License, Comprehensive Operations License, Project License, and Service Supply License. The new Comprehensive Operations License would authorize multiple shipments of technology and related goods from a U.S. company to and among its foreign subsidiaries, affiliates, joint venturers, and licensees.

The amendment specifies that the Distribution License cannot be used for exports to controlled countries, for example the PRC. The Statement of Managers, however, specifies that this change does not limit the Secretary's general authority to establish other bulk licensing procedures to any geographic location, if he determines that it would make for a more effective and efficient system for exporting.

Paragraph (b) of this section makes a changes to subsections (b) of section 4 of the Act. The change modifies subsection (b) of the Act by striking the word "commodity" from the term "commodity control list". This deletion, requested by the Administration, clarifies that controls are imposed not only on commodities but also on the technology.

Paragraph (c) amends subsection (c) of section 4, which deals with foreign availability, by: (1) modifying the foreign availability test of the Act from "significant" quantities to quantities "sufficient... to render the controls ineffective in achieving their purposes", and (2) adding a requirement that the Departments of Commerce and Defense cooperate in gathering information relating to foreign availability and establish and maintain a jointly-operated computer system for that purpose.

Paragraph (d) of this section amends section 4(f) of the Act by including labor organizations and citizens interested in export controls, in addition to the business sector (as currently provided in the Act), as those persons or entities that the Secretary shall keep regularly apprised of changes in export control policy and procedures.

SECTION 105. - National Security Controls.

Paragraph (a) of this section grants authority to the President to prohibit transfers of goods or technology within the United States to embassies and affiliates of controlled countries. This authority was requested by the Administration because sales within the U.S. to embassies may be rendering national security controls ineffective.

Paragraph (a) also deletes subsection 5(a)(2)(B) of the Act. This subsection, which pertains to the manner in which an applicant is to be informed of the denial of an application, is reinserted in the licensing procedures section of the Act, Section 10, because it more logically belongs there.

Paragraph (b) make two changes to the national security section of the EAA. First, it defines "controlled countries" as those countries set forth in section 620(f) of the Foreign Assistance Act (communist countries). Present law had moved away from requiring that controls on a country be based solely on its communist or non-communist status. The amendment permits the President to add or delete countries from the list after taking into account a number of factors specified in the amendment.

The second amendment made by paragraph (b) decontrols exports to COCOM countries of goods or technology if the item is at a level of performance that the same export to a controlled country would require only notification of other COCOM partners (AEN level).

Paragraph (c) of this section deletes the word "commodity" in the first sentence in section 5(c)(1) of the Act. This clarifies that controls are imposed not only on commodities, but also on technology.

Paragraph (c) also requires an annual review of the Control List, with a view toward eliminating from the list items that should no longer be controlled for national security purposes. The legislative history recognizes that current COCOM practice provides for a triennial review of the multilateral list and, therefore, expects the annual review to cover at least one-third of the CCL.

Paragraph (d) of section 105 amends section 5(e) of the Act by deleting the qualified general license, and by restating that, to the maximum extent possible, multiple export licensing procedures, such as the distribution and comprehensive operations licenses, should be used in lieu of individual validated licenses in approving exports pursuant to section 5 of the Act.

Paragraph (d) also adds a new requirement to section 5(e) of the Act to provide that the Secretary of Commerce should periodically review the special licensing procedures in order to reduce or eliminate unnecessary requirements. This change should increase the use of these special licensing procedures.

Finally, paragraph (d) mandates that a validated license cannot be required for replacement parts which are expected to replace on a one-for-one basis parts that were in goods lawfully exported from the United States.

Section 105(e) amends section 5(g) of the Act concerning indexing by adding that the anticipated military needs of controlled countries are to be included as one criterion in indexing regulations established by the Secretary.

Paragraph 105(f) makes various amendments and additions to section 5(i) of the Act intended to strengthen the language concerning U.S. negotiating objectives with COCOM countries. The President is urged, among other matters: to negotiate to make COCOM function more effectively in controlling export trade; to improve the international control list and to coordinate the systems of export control documents; to negotiate agreements to establish uniform and adequate criminal and civil penalties to deter export control violations; to negotiate agreements for on-sight inspections by COCOM partners to insure that end-users are using imported items for their stated end-use; and, to strengthen COCOM so that it will function in a manner that better protects the national security of all participating countries.

Paragraph (g) amends section 5(j) to require a pre-licensing report to the Secretary of Commerce of any agreement that calls for the export of technical data by a U.S. firm to the government of a controlled country. Educational institutions are exempt from this requirement.

Paragraph 105(h) amends section 5(k) of the Act, which relates to negotiations with other countries, by including countries other than our COCOM partners. It adds that if agreements are reached with these countries that are comparable to our COCOM agreements, exports to the countries will be treated in the same manner as exports to COCOM partners.

Paragraph 105(i) amends section 5(l) to require the Secretary to deny future exports to a party who has diverted to an unauthorized use or consignee goods exported to a controlled country. An "unauthorized use" means use in the design, production or maintenance of a military item.

Paragraph 105(j) adds five new subsections to section 5 of the Act. First, a new subsection 5(m) is added to the Act to provide that a good containing an embedded microprocessor may be controlled because the function of the good would make a significant contribution to the military capability of a potential adversary, but not solely because the good contains a microprocessor. Second, a new subsection 5(n) is added to the Act that requires the Secretary and the Commissioner of Customs to provide assistance to manufacturers and exporters in developing security systems to prevent violations of export controls. A new subsection 5(o) is added to the Act which requires all agencies involved in export licensing to maintain records of their advice,

recommendations or decisions in connection with their processing of export license applications. A new subsection (p) creates in DOD a National Security Control Office under the direction of the Under Secretary of Defense for Policy. Finally, a new subsection (q) excludes agricultural products from national security controls.

SECTION 106. - Militarily Critical Technologies

Section 106 amends section 5(d) of the Act concerning the development of the Militarily Critical Technologies List (MCTL). The amendment made by this section authorize the Secretary of Defense to add to the MCTL certain keystone equipment that would give insight into the design and manufacture of a U.S. military system. The amendment requires integration with all deliberate speed of MCTL items on to the control list, with resolution by the President of any disputes between the Secretaries of Commerce and Defense. Foreign availability shall be taken into account when placing MCTL items on the control list. The amendment requires a joint report to Congress by the Departments of Commerce and Defense on the integration process within one year of enactment. The Secretary of Defense shall establish procedures for an annual review to remove from the MCTL any item that is no longer militarily critical. The amendment also requires reduction of controls on products of militarily critical technologies as controls on the technology itself become adequate. Finally, the amendment requires a report to Congress by the Secretary of Defense on efforts to assess the impact on the military capabilities of control countries on the transfer of goods on the MCTL.

SECTION 107. - Foreign Availability

Paragraph 107(a) amends section 5(f)(1) of the Act by specifying the Defense Department as an agency that should be consulted when foreign availability determinations are being made concerning items controlled for national security purposes.

Paragraph (b) of this section amends subsection (f)(3) of section 5 of the Act by requiring the Secretary to accept the representation of applicants concerning foreign availability that are made in writing and supported by reasonable evidence, unless these representations are contradicted by the Secretary's independent evaluation of scientific or physical examinations, expert opinion, or intelligence information. In making foreign availability determinations, the Secretary may consider factors such as cost, reliability, availability and reliability of spare parts,

durability, quality of end products produced by the item proposed for export, and scale of production.

Paragraph (c) of this section amends section 5(f)(4) of the Act by requiring the President, in instances where foreign availability is determined to exist, to pursue actively negotiations with appropriate foreign government in order to eliminate that availability. This section further provides that if, within 6 months, the negotiations have not eliminated successfully the availability of the product from foreign sources, a validated license for its export can no longer be required. The President may extend the 6 month negotiating period for an additional 12 months if he certifies to the Congress that the negotiations are progressing and that the absence of export controls would prove detrimental to U.S. national security interests.

Sections (d) and (e) of this section amend section 5(f) of the Act by establishing in the Department of Commerce an Office of Foreign Availability to gather and analyze the necessary information for the Secretary to make determinations of foreign availability. Further, the section requires that the Office report to Congress on its activities on a biennial basis, and requires that, within six months of enactment, regulations be issued on foreign availability determinations.

Sections 107(f), (g) and (h) amend section 5(h) of the Act by providing that when Technical Advisory Committees (TACs) certify foreign availability to the Secretary and to the Congress, the Secretary has 90 days to investigate and report to the TACs and the Congress that: (a) a validated licensing requirement has been removed because of the existence of foreign availability; (b) negotiations are being conducted to eliminate foreign availability; or (c) the Secretary's investigations has determined that foreign availability does not exist. In any case in which negotiations are being pursued, the foreign availability must be eliminated within 6 months for the validated licensing requirement to remain in effect, unless the President extends the negotiating period for an additional 12 month period. Section (f) also includes the intelligence community as a part of TACs established under the Act.

Paragraphs (i) and (j) amend various subsections in sections 4 and 5 of the Act to make the test for foreign availability consistent throughout the Act. The new test is whether items are available in "sufficient quantities and comparable quality so as to render the controls ineffective in achieving their purposes."

SECTION 108. - Foreign Policy Controls

Paragraph (a) amends section 6(a) of the Act to make conforming changes due to renumbering by paragraph (d) of the bill. This paragraph also requires Commerce to consult with DOD, Agriculture, Treasury and the USTR when imposing foreign policy controls.

Paragraph (b) of section 108 amends section 6(b) of the Act by requiring that the President make certain determinations before imposing, expanding, or extending foreign policy controls. Present laws only requires that certain criteria be considered when imposing, expanding or extending foreign policy export controls. The President must determine that: the controls are likely to achieve their intended foreign policy purpose in light of factors such as foreign availability; the controls are compatible with overall U.S. foreign policy objectives toward a country upon which the controls are imposed; the reaction of other countries to the control is not likely to render the controls ineffective in achieving their intended purpose; the effect of the proposed control on U.S. export performance does not exceed the benefit to United States foreign policy objectives; and the U.S. has the ability to enforce effectively the proposed controls. The amendments made by this paragraph also allow the President to continue to consider the criteria set forth in this change in order to extend export controls in effect on the date of enactment of the Export Administration Amendment Act of 1985.

Paragraph (c) amends section 6(c) of the Act by requiring the Secretary to consult with affected U.S. industries and appropriate advisory committees, specifically the ISACs, in every possible instance when imposing foreign policy controls.

Paragraph (d) of section 108 amends section 6 by inserting a new subsection (d) that requires the President, at his earliest appropriate opportunity, to consult with other countries when imposing foreign policy export controls.

Paragraph (d) also redesignates subsections (d) through (k) of the Act as subsections (e) through (l), respectively. This is necessary because of the new subsection (d).

Paragraph (e) amends section 6(f) of the Act, as redesignated, by requiring that foreign policy export controls can be imposed, expanded or extended 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. This paragraph further amends the Act by requiring the President to submit to the Congress a detailed report of the controls before the controls are imposed, expanded or extended. In addition to a written report, the section requires annual testimony by the Secretary of Commerce on foreign policy controls.

Section 109(f) amends section 6(g) of the Act, as redesignated, by inserting a new sentence that states that this section does not authorize export controls on donations of articles that are intended to meet basic human needs. This change includes, but is not limited to, donations of food, medicine, clothing and shelter materials, and basic household supplies. Also included are educational supplies and exports to enhance food production at the local level such as seeds, tools, small scale irrigation pumps, and agricultural materials and machinery suitable to small scale farm operations.

Paragraph (g) of this section amends section 6(h) of the Act, as redesignated, by requiring that foreign availability be taken into account when extending foreign policy controls. If negotiations cannot eliminate foreign availability within six months, export licenses must be issued. Export licenses may be denied if the Secretary determines that the foreign policy control would continue to be effective in achieving its intended purpose despite the existence of foreign availability. Exempt from this new foreign availability requirement are controls imposed to meet international obligations, to combat acts of international terrorism or to prevent human rights violations.

Paragraph (h) amends section 6(i) of the Act by renumbering paragraphs to conform with changes made by this section.

Paragraph (i) amends section 6(j), as redesignated, by requiring that a country cannot be removed from the list of terrorist supporting countries until the President certifies to Congress that the country has not provided support for terrorist groups during the preceding six months, and the country has provided assurances that it will not support acts of terrorism in the future. The provision that redesignated Iraq as a country that supports international terrorism was deleted at the Conference held on June 25, 1985. In its stead, the Statement of Managers includes a letter from Secretary of State Schultz to Congressman Berman which provides that, if evidence is uncovered that Iraq is engaged in or supporting terrorism, the State Department will once again place Iraq on the list of countries supporting terrorism.

Paragraph (j) of section 108 amends section 6(k) of the Act, as redesignated, by providing that disputes between the Secretaries of Commerce and State on items subject to control for human rights purposes, or on applications for licenses to export such items, shall be referred to the President for his resolution.

Paragraph (k) of this section amends section 6(l) of the Act, as redesignated, by renaming the "commodity control list" as the "control list".

Paragraph (1) of section 108 adds three new provisions to section 6 of the Act. The first new provision calls for contract sanctity when imposing foreign policy controls unless the President determines, and certifies to the Congress, that a breach of the peace exists which poses a serious and direct threat to the strategic interest of the United States. The President must also determine and certify that the abrogation of contracts would be instrumental in remedying the situation posing the direct threat, and that the controls will continue for only so long as that threat exists.

The second addition to section 6 reimposes foreign policy controls on exports of non-sensitive items to the South African police or military.

The final addition to section 6 is a provision which permits the President to impose foreign policy controls, notwithstanding limitations contained in subsection (c) relating to consultation with industry, subsection (d) relating to consultation with foreign governments, subsection (e) relating to negotiations, subsection (g) relating to the exclusion for medicine and medical supplies, subsection (h) relating to foreign availability, and subsection (m) relating to contract sanctity, if the President requests the Congress to approve the imposition of such controls, and within 30 days of the President's request, Congress approves the controls by joint resolution.

SECTION 109. - Petitions for Monitoring or Short Supply Controls

This section amends section 7(c) of the EAA. The amendment establishes a petitioning procedure to determine if metallic materials capable of being recycled should be monitored or controlled. The petitioning procedure is essentially the same as that contained in the existing section 7(c) of the Act. However, the Secretary may impose monitoring or controls only after making certain determinations, such as: (1) there has been a significant increase in exports in relation to domestic supply; (2) there has been a significant increase in domestic price relative to demand; and, (3) a domestic price increase or shortage has significantly adversely affected the economy or any sector thereof.

SECTION 110. - Short Supply Controls

Paragraph (a) amends section 7(d) of the Act concerning the export of Alaskan crude oil by providing that the Congress must approve by joint resolution the Presidential report recommending the export of Alaskan North Slope crude oil, prior to any export of the crude oil. Legislative veto provisions such as the one

contained in existing section 7(d) were declared unconstitutional by the Supreme Court decision in INS v. Chadha, 103 S. Ct. 2764 (1983).

Paragraph (b) amends section 7(e) of the Act by eliminating the 30-day Congressional review period for any export license application that would result in the export of 250,000 barrels or more of refined petroleum products to one country in any fiscal year during periods when short supply controls are not in effect on the product to be exported. Reporting is necessary only when short supply controls are imposed on refined petroleum products.

Paragraph (c) of section 110 amends section 7(i) of the Act by making several technical changes to the export controls on unprocessed western red cedar logs. The paragraph also amends section 7(i) by indicating that, to the maximum extent possible, multiple validated export licenses should be used in lieu of individual validated licences for exports of unprocessed western red cedar. Finally, the paragraph amends section 7(i) by clarifying the definition of unprocessed western red cedar.

Paragraph (d) amends section 7(g) of the EAA by allowing the imposition of foreign policy or short supply export controls on agricultural products for a period of up to 60 days. For the controls to remain in effect for longer than 60 days, Congress must adopt a joint resolution approving the controls. The provision would not apply to controls that are extended after being approved by Congress or to controls that are part of a total embargo.

Paragraph (e) amends section 7 of the Act by deleting subsection (j), relating to the export of horses by sea for slaughter. Section 125 of this bill inserts the provision in the Act of March 3, 1891. Paragraph (e) also provides contract sanctity for any contract involving forest, fishery or agricultural products when short supply controls are imposed.

SECTION 111. - Licensing Procedures

Paragraph (a) of section 111 amends section 10 by reducing the time periods available for processing export license applications. All time limits are reduced by one-third for non-COCOM licensing; COCOM licenses are now handled by a new subsection (o). Under this new arrangement for non-COCOM licenses, the Commerce Department is given 60 days to process license applications that do not require interagency review. The time period other agencies have to review license applications is reduced from 30 to 20 days with an additional 20 days if requested.

Paragraph (b) amends various subsections of the license processing provisions of section 10 of the Act to conform those subsections with the new licensing requirement for export to COCOM countries. (See new subsection (o) described below)

Paragraph (c) amends section 10(f) by requiring the Secretary to notify an export license applicant in writing of questions or concerns raised by other agencies during the review process. An applicant is given 30 days to respond to the questions or concerns and, if the applicant, within 15 days of receiving the Secretary's notice, requests an opportunity to meet with officials who have raised the questions or concerns, he shall be given such an opportunity.

Paragraph (d) amends section 10(f) to provide an exporter 30 days to respond to a notification of the proposed denial of an export license application before the application is formally denied. The paragraph also inserts in section 10 of the Act certain license procedures, which previously had been in section 5 of the Act, that relate to the manner in which an applicant is to be informed of the denial of an application.

Paragraph (e) adds several new requirements to those already existing in section 10 of the Act. The new subsection (k) provides that an application may not be returned to an exporter without action simply because the requirements for the application change after it is submitted; however, the Secretary may require additional information from the applicant.

The new subsection (l) of section 10 of the Act requires the Secretary of Commerce to respond, within 10 working days, to an exporter's written request for advice on the proper classification of goods or technology on the control list. This new subsection also requires the Secretary to respond, within 30 days of receipt, to a written request for information about the applicability of export license requirements to proposed export transactions.

A new subsection (m) is added to section 10 which requires that the Secretary, not later than 120 days from the day of enactment of the subsection, develop and transmit to Congress a plan to assist small businesses in export license matters. The plan will include measures to assist small businesses in handling export licensing matters, such as proposals for seminars and conferences and the availability of informational brochures.

A new subsection (n) is added to the Act requiring, six months after the day of enactment, quarterly reports to Congress on applications that took, or are taking, longer to process than the statutorily established time limits. The provision sets forth various pieces of statistical data that shall be reported to the

Congress concerning the types of cases that have gone beyond the statutory time, and the number of days it has taken to process the license application.

A new subsection (o) provides that, if the Secretary does not inform an applicant within 15 working days after receipt of an export license application for an export to a COCOM country of the disposition of the application, or inform the applicant that more time is necessary to consider it, a license automatically will become effective commencing on the sixteenth day. If the Secretary notifies the applicant that more time is necessary to consider an application for export to a COCOM country, an additional 15 working day period will be available for the Secretary to take action. At the end of this second 15-day period, absent denial of the license application, a license automatically will become effective commencing on the thirty-first day. These new licensing requirements for exports to COCOM countries will take effect within 4 months following the enactment of the Export Administration Amendments Act of 1985.

SECTION 112. - Violations

Paragraph (a) amends section 11 of the Act by including "conspiring" or "attempting" to violate the Export Administration Act in the category of violations subject to the punishments described in section 11(a) and 11(b)(1) of the Act.

Paragraph (b) simplifies the showing that the Government must make to prove a willful violation of section 11(b)(1) of the Act. The amended version will require the Government to either show that the goods are destined for a controlled country, or show that the defendant knew that the goods were for the benefit of a country to which exports are controlled for national security or foreign policy purposes.

Paragraph (b) also provides statutory authority to punish the person in possession of goods or technologies that are intercepted by law enforcement officials, before an illegal export occurs, if the person intends to export the goods or technology contrary to law or has reason to believe that the goods would be so exported.

Paragraph (b) adds a new paragraph to the Act that reaffirms the current regulatory authority of the Secretary to define by regulation violations of the Act.

Paragraph (c) provides that no exception may be made to a denial of export privileges unless the Committee on Foreign Affairs in the House, and Committee on Banking in the Senate are first consulted.

Paragraph (d) provides that property or proceeds that are forfeited by violators of national security controls shall be deposited into the general receipts of the Department of Treasury.

Paragraph (e) inserts a new criminal forfeiture provision that requires the forfeiture of goods or tangible items that are the subject of a national security export control violation and property that is used to facilitate the commission of such a violation. The forfeiture provision would also reach the property constituting or derived from, directly or indirectly, any proceeds obtained as a result of the violation. This amendment would enable prosecutors to recoup the gain violators may otherwise be able to shelter.

Paragraph (d) also adds a new section (h) to section 11 of the Act. Under this amendment, at the discretion of the Secretary of Commerce, persons convicted of espionage or under certain sections of the Arms Export Control Act could be banned from applying for or using export licenses for a period up to 10 years from the date of conviction.

Paragraph (f) makes conforming changes to section 11(i) of the Act due to additions and deletions in this bill.

SECTION 113. - Enforcement

Paragraph (a) of section 113 provides statutory authority for the Commission of Customs to make such investigations outside the United States as he deems appropriate. The amendment allows Commerce to conduct, outside the U.S., pre-license investigations and post-shipment verifications. Paragraph (a)(5) grants Customs the police powers necessary to carry out their investigations.

Paragraph (a)(5) also gives Commerce the authority to search, detain (after search) and seize items. Commerce authority to search and seize at ports must be conducted in concurrence with Customs. Commerce is also given authority to execute a warrant, make arrests without a warrant, and carry firearms.

The police powers given to Commerce by this Act are to be exercised in accordance with guidelines approved by the Attorney General. The guidelines are to be issued within 120 days of enactment of this Act. The Statement of Managers provides that Customs should consult with the Attorney General regarding the exercise of its police powers.

The bill limits Customs to spending no more than \$12 million in FY 1985 and \$14 million in FY 1986 in enforcement of the EAA.

Regulations by Commerce, with the concurrence of Treasury, must be published within 90 days of enactment on EAA enforcement responsibilities.

Finally, Commerce and Customs shall exchange any licensing or enforcement information which is necessary to facilitate enforcement efforts and licensing decisions.

SECTION 114. - Administrative Procedures

This section amends section 13 of the Act by establishing certain administrative procedures to be followed for imposing civil penalties or temporary denial orders under the Act. Hearings are to be held in accordance with sections 556 and 557 of the Administrative Procedures Act. It also requires that hearings involving civil penalties or TDOs be held before an administrative law judge (ALJ). The section also allows appeals to an ALJ of licensing determinations on the limited issue of whether an item is on the CCL. Finally, the section provides that any person who, for at least 2 of the 10 years immediately preceding the date of enactment, has served as as a hearing commissioner in Commerce shall be considered qualified for selection to the ALJ position.

SECTION 115. - Annual Report

This section amends section 14 of the Act by requiring that the Secretary include in each annual report a listing of export licenses approved under the Act to controlled countries. The listing shall include the type of item exported and the dollar amount of the transaction. Information in the report shall conform with the confidentiality provisions of subsection 12(c) of the Act. The Secretary shall also report on the extent of injury and job displacement caused by exports to proscribed countries.

SECTION 116. - Under Secretary of Commerce for Export Administration; Regulations

This section requires the President to appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions under the EAA currently delegated to the Assistant Secretary for Trade Administration. Two Assistant Secretaries shall be designated by the President, by and with the advice and consent of the Senate, to assist the Under Secretary. The effective date of the provision is delayed until October 1, 1986.

This section also amends section 15 of the Act by requiring that any regulation issued to carry out national security controls, or the distribution license program, may be issued only after submission of the regulations to the Secretaries of State and Defense for their consideration. This paragraph is intended to ensure that the Secretaries of Defense and State, and other appropriate agencies, have prompt access to such regulations.

Section 116 also adds a requirement that all changes to the export control regulations must be submitted to the Congress before publication. It also requires coordination with the TACs on all changes prior to publication.

SECTION 117. - Definitions

This section amends section 16 of the Act to clarify the definition of the terms "good" and "technology" and to add a definition of the terms "United States" and "export".

SECTION 118. - Effect on Other Acts

This section provides that nothing contained in the Act shall affect provisions in the last sentence in section 812 of the Agricultural Act of 1970. The provision provides for contract sanctity for agricultural commodities if contracts are entered into before the President announces export controls and if delivery is to occur within 270 days after the day that controls are imposed. Excepted from this contract sanctity provision are instances when the President declares a national emergency or when the Congress declares war.

SECTION 119. - Authorization of Appropriations

This section amends section 18 of the Act to authorize \$24,600,000 for FY 1985 and \$29,382,000 for FY 1986. In FY 1986, \$9,243,000 is available for enforcement; \$2,000,000 is available for foreign availability; and, \$18,139,000 is available for all other matters (including \$500,000 for short supply).

SECTION 120. - Termination of Authority

This section amends section 20 of the Act to extend the Act until September 30, 1989.

SECTION 121. - Import Sanctions

This section amends the Trade Expansion Act of 1962 to give the President discretionary authority to bar imports to the U.S., not only from a person who violates U.S. national security export controls, but also from a person who violates any regulation issued pursuant to a multilateral export control agreement to which the U.S. is a party. In the latter case, the U.S. could, for example, impose import sanctions against a French company if France failed to enforce a French law that implements COCOM regulations against this French company in connection with a transaction having no connection to the United States.

SECTION 122. - Hours of Office of Export Administration

This section amends the Act by requiring the Secretary of Commerce to modify the office hours of the Office of Export Administration in order to accommodate the normal business hours for exporters throughout the continental United States.

SECTION 123. - Technical Amendment

This section makes a technical amendment to section 3B(e) of the Arms Export Control Act and the Mineral Leasing Act made necessary by other amendments in this bill.

SECTION 124. - Amendment to the Foreign Assistance Act of 1961

This section amends section 502B of the Foreign Assistance Act to require the President to submit to the Senate Committee on Banking, Housing, and Urban Affairs certain certifications with respect to exports of crime control equipment controlled under the Export Administration Act. Under current law, that certification need only be made to the Foreign Relations Committee in the Senate.

SECTION 125. - Export of Horses

This section places the provision deleted by section 110(e) of this bill in the Act of March 3, 1891. This amendment continues the prohibition on the export by sea of horses unless the Secretary of Commerce, in consultation with Secretary of Agriculture, determines that no horse in such a consignment is being exported for purposes of slaughter.

SECTION 126. - Alaskan Oil Study .

This section requires the President to submit to Congress, nine months after enactment of the Act, a comprehensive study concerning possible changes in the existing restrictions on Alaskan North Slope crude oil. This study should include possible changes in export restrictions which will permit export at free market levels of 50,000, 100,000, 200,000, and 500,000 barrels a day of Alaskan North Slope crude oil.

TITLE II - EXPORT PROMOTION PROGRAM

SECTIONS 201 and 202. - Authorization

These sections authorize the Department of Commerce to expend, in FY's 1985 and 1986, \$113,273,000 to carry out export promotion programs.

SECTION 203. - Barter Arrangement

This section requires the Secretaries of Energy and Agriculture to submit to Congress, within 90 days of enactment, a report on the status of the federal programs relating to barter or exchange. The President is authorized to barter stocks of agricultural products for petroleum and petroleum products and for other products vital to the national interest.

TITLE III - NUCLEAR AGREEMENTS OF COOPERATION

SECTION 301. - Notification of and Consultation with Congress

The amendment requires the President to submit a nuclear cooperative agreement to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs along with his Nuclear Proliferation Assessment Statement. The President must consult with the Committees for a period of not less than 30 days of continuous session concerning the consistency of the terms of the proposed agreement with the requirements of the Nuclear Non-Proliferation Act (NNPA). During the subsequent sixty day period, the Committees must hold hearings on the proposed agreement.

The section establishes a "two track" system for consideration by Congress of nuclear cooperative agreements during the 60-day review period. Congress must pass a joint resolution of disapproval to prevent from coming into force a nuclear

cooperation agreement for which the President has not waived any of the provisions required by the NNPA or a joint resolution of approval to bring into force a nuclear cooperation agreement for which any requirement of the NNPA has been waived by the President. The time period during which an agreement for cooperation is referred to the Congress carries over from the first session of a Congress to its second session.


The State Department negotiated with the managers of the bill a statement that the initial 30 day consultation period will not occur before the President formally sends the agreement to the Congress for its consideration, thus clarifying that the President is not expected to return to the negotiating table to make further changes in a cooperation agreement based on comments received from Congress during the first 30 days.

THE WHITE HOUSE

WASHINGTON

July 12, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 883 -- Export Administration
Amendments Act of 1985; Signing Statement;
Message to Congress; and Executive Order:
Termination of Emergency Authority for Export
Controls

Counsel's Office has reviewed the above-referenced enrolled bill; signing statement; message to Congress; and executive order, and finds no objection to them from a legal perspective.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: P. Chew☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Enrolled Bill 5883 - Export Administration amend-
ments Act of 1985; signing stmt; message to
Congress; Exec. Order - Termination of Emergency
Authority - for Export Controls

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>85.07.12</u>			<u>1 1</u>
	Referral Note:				
<u>CUAT 18</u>	<u>R</u>	<u>85.07.12</u>		<u>S</u>	<u>85.07.12</u> <u>9am</u>
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	Referral Note:				

ACTION CODES:

A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

A - Answered
 B - Non-Special Referral
 C - Completed
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FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUMDATE: 7/12/85 ACTION/CONCURRENCE/COMMENT DUE BY: TODAY 9:00 a.m.SUBJECT: ENROLLED BILL S.883 - EXPORT ADMINISTRATION AMENDMENTS ACT OF 198
SIGNING STATEMENT; MESSAGE TO CONGRESS; EXECUTIVE ORDER -
TERMINATION OF EMERGENCY AUTHORITY FOR EXPORT CONTROLS

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input type="checkbox"/>	<input type="checkbox"/>
FRIEDERSDORF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	CLERK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

If you have any comments to make on the attached, please give them to my office no later than 9:00 a.m. TODAY. Thank you.

RESPONSE:

1985 JUL 12 AM 8:21

David L. Chew
Staff Secretary
Ext. 2702

STATEMENT BY THE PRESIDENT

I have signed into law S. 883, the "Export Administration Amendments Act of 1985," which amends and reauthorizes the Export Administration Act (EAA) of 1979.

The Congress and the Executive branch have worked long and hard to produce the compromise contained in this complex and controversial legislation. Lengthy negotiations nearly produced a bill in the final hours of the 98th Congress. The 99th Congress took up the legislation with renewed determination. The bill I have signed reflects that determination as well as congressional willingness to compromise to resolve difficult problems.

I believe that this new law -- which reflects compromise by all concerned parties -- strikes an acceptable balance between enhancing our commercial interests and protecting our national security interests.

- o To ensure national security, this law provides expanded enforcement authority, takes numerous steps to strengthen COCOM (an informal organization that provides for multilateral controls), and, by establishing new statutory crimes for illegal exports, provides enforcement officials with an effective tool to reduce illegal diversions.
- o To make our exporters more competitive, this law decontrols the exports of "low-tech" items to COCOM members, liberalizes licensing where comparable goods are widely available in the international marketplace, and provides for expanded congressional and private sector roles in the export control program.

During the congressional deliberations on the EAA, I stated that there must be adequate discretionary authority to allow the President to manage the export control program. I regret that in the new law the Congress has prescribed several

new administrative arrangements and reporting requirements that make the export control program more difficult to manage. However, I am pleased that the Congress also has acknowledged the Administration's efforts to resolve issues administratively. One example of this is my recent instruction to the Commerce and Defense Departments to work together to develop licensing procedures for specific commodities and countries. These procedures are now in place and are being overseen by the National Security Council.

During the EAA debate, the Congress faced numerous controversial issues on which each of the competing sides had compelling arguments for its position. One such contentious issue was whether the contracts of U.S. exporters would be protected if foreign policy controls were imposed. The Congress agreed to compromise language that allows the President to break existing contracts if the strategic interests of the United States are threatened. This provision will allow U.S. exporters to be perceived as more reliable suppliers, while at the same time maintaining adequate presidential authority to respond to those instances where the country's strategic interests are at risk.

Another controversial issue addressed was the administrative arrangements for the enforcement of the Act. The new law grants enhanced enforcement powers to the Customs Service and the Department of Commerce by providing both agencies with police powers. In addition, the new law grants primary authority to the Customs Service to conduct investigations overseas and provides that the Commerce Department's overseas activities will relate principally to pre-licensing and post-shipment investigations. It is clear that the Congress envisions significant roles for both agencies. Thus, I intend to direct both agencies to cooperate to insure effective and complementary roles in enforcement of our export control laws.

This new law also contains provisions regarding congressional procedures for reviewing nuclear cooperation agreements. It adds a 30-day consultation period to the current 60-day congressional review period. Under these new procedures, the President has the discretion to approve execution of an agreement before transmitting it for either period. If approved for execution before the 30-day period, the agreement would not have to be resubmitted; a single submission would be legally sufficient. I expect that these new procedures for congressional review will apply to the agreement for cooperation with Finland, which I transmitted to the Congress on May 21, 1985.

It is clear that the new EAA involves a delicate balancing of national as well as programmatic objectives. I do want to acknowledge the invaluable role in securing final enactment of this legislation by the bill managers -- Senators Jake Garn and John Heinz and Representatives Don Bonker and Toby Roth.

EXECUTIVE ORDER

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TERMINATION OF EMERGENCY AUTHORITY FOR EXPORT CONTROLS

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) (hereinafter referred to as "IEEPA"), 22 U.S.C. 287c, and the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.) (hereinafter referred to as "the Act"), it is hereby ordered as follows:

Section 1. In view of the extension by Public Law 99-64 (July 12, 1985) of the authorities contained in the Act, Executive Order No. 12470 of March 30, 1984, which continued in effect export control regulations under IEEPA, is revoked, and the declaration of economic emergency is rescinded.

Sec. 2. The revocation of Executive Order No. 12470 shall not affect any violation of any rules, regulations, orders, licenses, and other forms of administrative action under that Order that occurred during the period that Order was in effect. All rules and regulations issued or continued in effect under the authority of the IEEPA and that Order, including those published in Title 15, Chapter III, Subchapter C, of the Code of Federal Regulations, Parts 368 to 399 inclusive, and all orders, regulations, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, shall remain in full force and effect, as if issued, taken or continued in effect pursuant to and as authorized by the Act or by other appropriate authority until amended or revoked by the proper authority. Nothing in this Order shall affect the continued applicability of the provision for the administration of the Act and delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, and Executive Order No. 12214 of May 2, 1980.

Sec. 3. All rules, regulations, orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant to the authority of the IEEPA and Executive Order No. 12470 relating to the administration of Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) shall remain in full force and effect until amended or revoked under proper authority.

Sec. 4. This Order shall take effect immediately.

THE WHITE HOUSE,

July 12, 1985.

TO THE CONGRESS OF THE UNITED STATES:

This report is submitted pursuant to Section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703) and Section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)) to account for government expenditures attributable to the national economic emergency that I declared following the lapse of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.) (EAA), on March 30, 1984. On that date, I issued Executive Order No. 12470 to continue in effect the system of controls that had been established under the EAA. In view of the extension by Public Law 99-64 (July 12, 1985) of the authorities contained in the EAA, this emergency authority is no longer needed. Accordingly, I have today issued Executive Order No. 12525, a copy of which is attached, rescinding the declaration of an economic emergency and revoking Executive Order No. 12470.

The export controls were not significantly expanded during the emergency period, and the administration of the system of controls continued in the normal course. Accordingly, the government spent no funds over and above what would have been spent had the EAA remained in force without interruption.

THE WHITE HOUSE,

July 12, 1985.