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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
~~1. PROF note~~ 72	~~from Danzansky re: no subject (1p, partial)~~ CB 10/26/00	~~1/21/87~~	~~P-5~~
2. memo	from Bruce Smart to Carlucci re: extension of foreign controls (1p)	1/15/87	~~P-1~~ B1
3. attachment	to 1/15/87 memo from Smart to Carlucci (4pp)	n.d.	~~P-1~~ B1
~~4. memo~~ 73	~~from S. Danzansky to F. Carlucci re: extension of froeign policy controls (1p, partial)~~ CB 10/26/00	~~1/15/87~~	~~P-5~~
5. report	re: U.S. foreign policy controls of oil and gas equipment and technology exports to the Soviet Union and Afghanistan (4pp)	n.d.	~~P-1~~ B1
~~6. copy~~ 74	~~of item # 4 (1p, partial)~~	~~1/15/87~~	~~P-5~~ CB 10/26/00

COLLECTION: DANZANSKY, STEPHEN I.: Files	db
FILE FOLDER: International Trade XV. (E) ~~[6 of 9]~~ (11 of 16) ~~Box 90976~~ RAC Box 8	11/8/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

MSG FROM: NSSID --CPUA TO: NSPAB --CPUA 01/21/87 18:
To: NSPAB --CPUA

File: XV. S

NOTE FROM: STEPHEN DANZANSKY
Subject: NO SUBJECT
pls print
*** Forwarding note from NSSID --CPUA 01/16/87 17:35 ***
To: NSCLP --CPUA

*** Reply to note of 01/13/87 19:22
NOTE FROM: STEPHEN DANZANSKY
Subject: NO SUBJECT
On the matter of security controls which we discussed this afternoon, Commerce (Bruce Smart) attended a Trade Policy Review Group meeting today and passed out a paper containing legislative proposals on export controls to be made a part of the President's State of the Union legislative package. This was contrary to an agreement which we crafted between State, DOD and Commerce earlier this week whereunder all such proposals were to be made a part of our interagency review with a report due March 1. I know Commerce wasn't happy with this decision, claiming that March 1 is too late, but we have carefully crafted a compromise here and Commerce is going its own way. I called Mike Smith at USTR and told him not to send the Commerce proposals forward; that an end run was being attempted here which we could not abide. He agreed not to send it. I then spoke to Commerce and told them that I thought that they were totally out of line on this; that we had set up a process for review and that nothing would be proposed by the President by way of legislation on export controls without full interagency agreement after review of the program. I believe the action is stopped for now but we need to be attentive here so that Commerce doesn't run amok, inebriated by its recent decision on oil and gas equipment.

cc: NSLSP --CPUA

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

INFORMATION January 15, 1987

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: STEPHEN I. DANZANSKY

SUBJECT: Report on Interagency Consultations: Extension of Foreign Policy Controls

At today's interagency meeting, we requested that Bruce Smart provide you with a formal report on the consultative process including therein:

-- A summary of the meeting

-- A plan for informing the Soviets of the decision

-- A plan for informing Congress and human rights groups of the decision.

-- A draft of the press release which Commerce will use

-- Draft interagency talking points for use by all agencies in explaining the action.

The enclosed represents a response to our request and has been cleared by State and the NSC (after making several amendments incoporated in the text). Advance copies have also been sent to DOD.

I believe that this closes the loop on a most spirited issue.... I hope this somewhat bizarre exercise has not dampened your willingness to chair the interagency review of security controls. Lou and I are briefing Colin on that matter tomorrow afternoon.

Attachment
As stated

cc: Colin Powell

International Trade Danzansky

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THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER 2 LISTED ON THE WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.

LIFTING OF FOREIGN POLICY CONTROLS ON OIL AND GAS EQUIPMENT AND TECHNOLOGY EXPORTS TO THE USSR

TALKING POINTS

-- It is in the national interest that these foreign policy controls lapse on January 20 because they do not meet the criteria established by Congress.

-- Widespread foreign availability of the non-strategic oil and gas equipment and technology on which we have unilaterally placed controls has, over time, eroded the effectiveness of the controls.

-- The fact that we are allowing the controls to lapse should not be misinterpreted.

-- The controls were imposed in 1978 as a response to certain Soviet human rights actions, most prominently the arrests of Anatoliy Shcharansky and Alexandr Ginzberg -- both of whom have now been released.

-- Although there were several encouraging steps in resolving divided family cases and in the release of some prominent refuseniks in 1986, Soviet human rights practices remain unsatisfactory.

-- We continue to have very serious concerns over widespread human rights violations in the Soviet Union, which have not lessened despite high profile gestures and a concerted Soviet public relations campaign to burnish their human rights image.

-- Soviet human rights behavior is one of the primary issues in our bilateral relationship. The lapsing of the controls in no way represents a lessening of our resolve to effect positive changes in that behavior.

-- Strategic U.S. technology related to oil and gas activities will continue to be subject to Commerce Department controls and review by the Defense Department for export to the Soviet Bloc; COCOM controls will continue to restrict the export of selected petroleum equipment which has a "dual" military as well as civilian industrial use.

International Trade... Danzansky

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DRAFT

CONTACT: Donald Creed, (202) 377-2253 G 87-

FOR IMMEDIATE RELEASE

U.S. WILL NOT EXTEND EXPORT CONTROLS ON OIL AND GAS EQUIPMENT TO THE USSR

The Commerce Department today announced it will end restrictions on non-strategic oil and gas equipment exports to the Soviet Union. All other foreign policy-based export controls now in effect are being extended for one year to Jan. 20, 1988.

Commerce Secretary Malcolm Baldrige said, "I am convinced despite our dissatisfaction with Soviet human rights efforts that it is no longer in our national interest to keep these unilateral foreign policy controls on exports of oil and gas equipment and technology to the Soviet Union. Other export controls on strategic products and technologies will of course continue without change."

"These foreign policy controls on oil and gas equipment and technology have lost their impact in the face of widespread foreign availability of like products, and the ~~debilitating~~ effect they had on our oil and gas industry is significant. This Administration will continue to press the Soviets for human rights progress," Baldrige said.

The oil and gas controls were unilaterally imposed in 1978 to demonstrate U.S. opposition to specific human rights violations in the Soviet Union including the Shcharansky and Ginzburg trials.

The current action should not be interpreted as a signal of satisfaction with Soviet human right practices. 1986 was one of the worst years ever in terms of the number of Jews and members of other groups who received permission to emigrate . The resolution of a few spectacular cases does not changes such realities as these.

DRAFT

The decision to extend the other foreign policy export controls after Jan. 21 was released today.

The decision also includes several new controls imposed in 1986. These are controls on certain exports to South Africa, on chemicals to Syria, and on light helicopters to Syria and the People's Democratic Republic of Yemen. These new controls and other foreign policy export controls are extended to further the following objectives:

- Human rights
- Anti-terrorism
- Sanctions against Libya
- Prohibitions on exports of U.S. chemicals intended for chemical weapons use in the Iran-Iraq War
- Regional stability
- Embargoes on exports to North Korea, Vietnam, Cambodia and Cuba
- Restrictions on trade with the Soviet Union and Afghanistan controlling U.S.-origin equipment useful in the production of trucks and vehicles for the Soviet military
- Restrictions on trade with South Africa and Namibia

This decision also renews nuclear non-proliferation restrictions to increase the difficulty of nations attempting to acquire sensitive nuclear technology or equipment.

The extension of controls followed a review of public comments on foreign policy controls, an inter-agency review, and consultations with Congress. Copies of the foreign policy report are available from the U.S. Department of Commerce, Office of Technology and Policy Analysis, Room 1634, Washington, D.C., 20230.

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DATE

File: XV (E) SDchron
0292

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 15, 1987

INFORMATION

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: STEPHEN I. DANZANSKY

SUBJECT: Extension of Foreign Policy Controls

Enclosed herewith are some excerpted materials re extension of foreign policy controls for your use in briefing the President.

Tab A is an outline of the authority and processes for extending foreign policy controls. Tab B is a memo from me to Fritz setting forth the statutory criteria for extension of political controls. The rest of the material (Tab C) is simply the legal authority for delegating these decisions to the Secretary of Commerce.

At our behest, Commerce is chairing a meeting this morning to review agency positions. State/Commerce/Treasury will argue for lifting; DOD may propose a delay of 6 months, arguing that a more forthcoming Soviet stance on humanitarian policies is required. Per your guidance, NSC will not take a position, but will seek to insure that proper interagency procedures are followed. In addition, we will insure that a game plan is developed including:

1. Commerce send paper over to NSC summarizing positions and indicating decision.

2. Talking points developed for common use (must avoid leaks to media demonstrating internal disagreements).

3. Congressional game plan.

4. Plan for notifying/handling with the Soviets.

Ty Cobb concurs.

Attachments

Tab A	Outline
Tab B	Memo to Ermarth
Tab C	Background Info

International Trade ... Danzansky

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EXTENSION OF FOREIGN POLICY CONTROLS

AUTHORITY

- Unless extended, foreign policy controls lapse annually.
- The authority to extend foreign policy controls is delegated by Executive Order to the Secretary of Commerce (Executive Order 12214, May 2, 1980, Section 1-101. See Attachment I)
- Authority to extend is exercised with the concurrence of the Secretary of State. Disagreements must be decided by the President. (Section 6 (1) of the Act.)
- Failure on the part of the Secretary of State to affirmatively recommend extension would result in lapse of the controls.

CONSULTATIONS

- Such authority shall be exercised by the Secretary of Commerce, 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 of Commerce considers appropriate. (Export Admininistration Act of 1979, as amended, Section 6 (a)(1). See Attachment II.)

PROCESS

- Foreign policy controls shall expire on January 20, 1987, unless extended by the Department of Commerce. (Section 6 (a)(3) of the Act, date changed through Administration action. See Attachment II)
- Controls can only be extended 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. (Section 6 (f)(1) of the Act. See Attachment II.)
- In consulting with Congress, the Secretary of Commerce must submit to Congress a report outlining the purpose, effectiveness and impact of the controls to be extended, including the economic costs to industry and the foreign availability of products similar to those subject to control. (Section 6 (f)(2) of the Act. See Attachment II.)
- The Secretary shall also 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 foreign policy controls. (Section 6 (f)(5) of the Act. See Attachment II.)

DOC/ITA

January 9, 1987

Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

SEC. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

Jimmy Carter

THE WHITE HOUSE,
July 7, 1977.

III. Administration of the Export Administration Act of 1979

Executive Order 12214

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96-72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

1-101. Except as provided in Section 1-102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96-72; 50 U.S.C. App. 2401 *et seq.*), are delegated to the Secretary of Commerce.

1-102. (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i) and 6(g) of the Act are delegated to the Secretary of State.

1-103. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued or otherwise taken under, or continued in existence by, Section 21 of the Act or Executive Order No. 12002, and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.

1-104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

Jimmy Carter

THE WHITE HOUSE,
May 2, 1980.

IV. Termination of Emergency Authority for Export Controls

Executive Order 12525

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 assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

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

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

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

FOREIGN POLICY CONTROLS

Sec. 6. (a) Authority.--(1) In order to carry out the policy set forth in paragraph (2)(B), (7), [~~or (8)~~] (8) or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and 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.

[~~(2)~~] (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 [~~(e)~~] (f). Any such extension shall not be for a period of more than one year.

[~~(3)~~] (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.

[~~(4)~~] (5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

[~~(b) Criteria.--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.~~]

(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, 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, 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.]~~

(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 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.

[(d)] (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.

[~~(e) Notification to Congress.--The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying--~~

~~(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and~~

~~(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.~~

~~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. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.~~]

(f) Consultation with the Congress.--(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on 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 Presdient 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. 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.

(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.

(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.

[~~(f)~~] (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 humand 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 Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director 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 Director of the United States International Development Cooperation Agency, 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. [~~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.~~] 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. 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.

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

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

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6

nths after the date of the enactment of the Export ministration Amendments Act of 1985 in the case of export ontrols in effect on such date of enactment, the President's fforts 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[2] follow the procedures set forth in section 5(f)(3) of this Act.

[~~(h)~~] (i) International Obligations.--The provisions of subsections (b), (c), (d), [~~(f)~~] (e), (g) and [~~(g)~~] (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.

[~~(i)~~] (j) Countries Supporting International Terrorism.--(1) 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 any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

[~~(1)~~] (A) Such country has repeatedly provided support for acts of international terrorism.

[~~(2)~~] (B) Such exports would make a significant contibution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, at least 30 days before the proposed recission would take effect, submits to the Congress a report justifying the rescission and certifying that--

(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

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

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

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

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

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

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

(m) 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,

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.

(n) 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, 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.

(o) Expanded Authority to Impose Controls.--(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m), of this section, the

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

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution 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) 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.

SHORT SUPPLY CONTROLS

Sec. 7. (a) Authority.--(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

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

SD chron

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 12, 1987

MEMORANDUM FOR FRITZ ERMARTH

FROM: STEPHEN I. DANZANSKY

SUBJECT: Export Control Criteria -- Political Controls

In our conversation on Friday, I mentioned to you that the 1985 amendments to the Export Administration Act of 1979 embraced stricter standards for imposition or continuation of foreign policy controls upon U.S. exports. A principal Congressional objective in structuring the foreign policy control provisions of the 1985 Act has been to curtail the power of the President to impose or maintain such controls. To that end, section 108(b) provides that the President may impose, extend or expand those controls ONLY IF he determines that the statutory review criteria are satisfied. The criteria are:

Act §108(b)(1), codified as, 50 U.S.C. App. §2405(b)(1). The proposed foreign policy export controls

(i) are likely to achieve the intended foreign policy purpose in light of other factors including foreign availability of the goods in question, and the foreign policy objectives cannot be achieved by other means;

(ii) are compatible with the foreign policy objectives of the United States;

(iii) are not likely to provoke a reaction among other countries that will render the proposed controls ineffective, or harm other United States foreign policy objectives;

(iv) will produce foreign policy benefits that outweigh any harm to United States export performance and/or to individual United States firms and their employees; and

(v) can be effectively enforced by the United States.

These were changed from previous standards but, equally important, the earlier Act only required Presidential "consideration" of the standards, not a mandatory "finding." Under the 1985 law, however, the President must consult with Congress and submit a report specifying:

-- the purpose for the proposed controls;

-- the basis for the determinations made under the statutory review criteria;

-- the plans for consulting with appropriate members of industry and with foreign nations (particularly COCOM);

-- the alternatives attempted to achieve the intended foreign policy objectives;

-- the foreign availability of the goods to which the proposed controls will apply and efforts made to eliminate such foreign availability.

Hope this has been helpful as background.

Export Controls

NATIONAL SECURITY COUNCIL

January 16, 1987

NOTE FOR GENE McALLISTER

FROM: STEVE DANZANSKY

The attached statement for the State of the Union on export controls has interagency clearance.

Attachment
As stated

COMPETITIVENESS: NATIONAL SECURITY AND EXPORT CONTROLS

The vigor of science and technology in the West and the economic vitality of our free society in comparison with the Soviet Bloc are sources of strength for us in our continuing effort to defend our hard won freedoms at a cost society can bear. We benefit from our open society's free and rapid exchange of scientific information and from the free competition in industry that drives the development of new technology. The Soviet Union lacks these advantages and seeks to compensate for them not only by directing a greater share of its economy to the development and production of military equipment, but also by aggressively attempting to acquire Western technology for its military programs.

When we came to office six years ago, we were faced with a growing loss of technology to the Soviet Union at a time when we had only begun our effort to re-build America's military strength. These Soviet efforts made the job of restoring our security more difficult and more expensive. We determined that this situation had to change. That is why we redoubled our efforts to prevent Soviet theft and purchases of our advanced technology. Our efforts have paid off. It is now much harder for the Soviets to buy and steal our technology and products to use against us.

This achieved, we must now consolidate our efforts with initiatives at home and abroad to regulate strategic trade in a way that defends our security, reduces the Administrative burdens, promotes real competitiveness in free world trade and strengthens enforcement of international export controls.

I have directed my Cabinet to provide me with recommendations by March 1 to maintain the strength of America's high tech industries and to ensure that our export control system encourages exports without sacrificing national security.

export controls

0292

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 15, 1987

INFORMATION

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: STEPHEN I. DANZANSKY

SUBJECT: Extension of Foreign Policy Controls

Enclosed herewith are some excerpted materials re extension of foreign policy controls for your use in briefing the President.

Tab A is an outline of the authority and processes for extending foreign policy controls. Tab B is a memo from me to Fritz setting forth the statutory criteria for extension of political controls. The rest of the material (Tab C) is simply the legal authority for delegating these decisions to the Secretary of Commerce.

At our behest, Commerce is chairing a meeting this morning to review agency positions. State/Commerce/Treasury will argue for lifting; DOD may propose a delay of 6 months, arguing that a more forthcoming Soviet stance on humanitarian policies is required. Per your guidance, NSC will not take a position, but will seek to insure that proper interagency procedures are followed. In addition, we will insure that a game plan is developed including:

1. Commerce send paper over to NSC summarizing positions and indicating decision.

2. Talking points developed for common use (must avoid leaks to media demonstrating internal disagreements).

3. Congressional game plan.

4. Plan for notifying/handling with the Soviets.

Ty Cobb concurs.

Attachmens

Tab A	Outline
Tab B	Memo to Ermarth
Tab C	Background Info

EXTENSION OF FOREIGN POLICY CONTROLS

AUTHORITY

- o Unless extended, foreign policy controls lapse annually.
- o The authority to extend foreign policy controls is delegated by Executive Order to the Secretary of Commerce (Executive Order 12214, May 2, 1980, Section 1-101. See Attacnment I)
- o Authority to extend is exercised with the concurrence of the Secretary of State. Disagreements must be decided by the President. (Section 6 (l) of the Act.)
- o Failure on the part of the Secretary of State to affirmatively recommend extension would result in lapse of the controls.

CONSULTATIONS

- o Such authority shall be exercised by the Secretary of Commerce, 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 of Commerce considers appropriate. (Export Admininistration Act of 1979, as amended, Section 6 (a)(1). See Attachment II.)

PROCESS

- o Foreign policy controls shall expire on January 20, 1987, unless extended by the Department of Commerce. (Section 6 (a)(3) of the Act, date changed through Administration action. See Attachment II)
- o Controls can only be extended 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. (Section 6 (f)(1) of the Act. See Attachment II.)
- o In consulting with Congress, the Secretary of Commerce must submit to Congress a report outlining the purpose, effectiveness and impact of the controls to be extended, including the economic costs to industry and the foreign availability of products similar to those subject to control. (Section 6 (f)(2) of the Act. See Attachment II.)
- o The Secretary shall also 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 foreign policy controls. (Section 6 (f)(5) of the Act. See Attachment II.)

DOC/ITA

January 9, 1987

SD chron

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 12, 1987

MEMORANDUM FOR FRITZ ERMARTH

FROM: STEPHEN I. DANZANSKY

SUBJECT: Export Control Criteria -- Political Controls

In our conversation on Friday, I mentioned to you that the 1985 amendments to the Export Administration Act of 1979 embraced stricter standards for imposition or continuation of foreign policy controls upon U.S. exports. A principal Congressional objective in structuring the foreign policy control provisions of the 1985 Act has been to curtail the power of the President to impose or maintain such controls. To that end, section 108(b) provides that the President may impose, extend or expand those controls ONLY IF he determines that the statutory review criteria are satisfied. The criteria are:

> Act §108(b)(1), <u>codified as</u>, 50 U.S.C. App. §2405(b)(1). The proposed foreign policy export controls
>
> (i) are likely to achieve the intended foreign policy purpose in light of other factors including foreign availability of the goods in question, and the foreign policy objectives cannot be achieved by other means;
>
> (ii) are compatible with the foreign policy objectives of the United States;
>
> (iii) are not likely to provoke a reaction among other countries that will render the proposed controls ineffective, or harm other United States foreign policy objectives;
>
> (iv) will produce foreign policy benefits that outweigh any harm to United States export performance and/or to individual United States firms and their employees; and
>
> (v) can be effectively enforced by the United States.

These were changed from previous standards but, equally important, the earlier Act only required Presidential "consideration" of the standards, not a mandatory "finding." Under the 1985 law, however, the President must consult with Congress and submit a report specifying:

-- the purpose for the proposed controls;

-- the basis for the determinations made under the statutory review criteria;

-- the plans for consulting with appropriate members of industry and with foreign nations (particularly COCOM);

-- the alternatives attempted to achieve the intended foreign policy objectives;

-- the foreign availability of the goods to which the proposed controls will apply and efforts made to eliminate such foreign availability.

Hope this has been helpful as background.

Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

SEC. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

Jimmy Carter

THE WHITE HOUSE,
July 7, 1977.

III. Administration of the Export Administration Act of 1979

*

Executive Order 12214

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96-72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

1-101. Except as provided in Section 1-102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96-72; 50 U.S.C. App. 2401 *et seq.*), are delegated to the Secretary of Commerce.

1-102. (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i) and 6(g) of the Act are delegated to the Secretary of State.

1-103. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued or otherwise taken under, or continued in existence by, Section 21 of the Act or Executive Order No. 12002, and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.

1-104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

Jimmy Carter

THE WHITE HOUSE,
May 2, 1980.

IV. Termination of Emergency Authority for Export Controls

Executive Order 12525

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 assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

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

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

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

FOREIGN POLICY CONTROLS

Sec. 6. (a) Authority.--(1) In order to carry out the policy set forth in paragraph (2)(B), (7), [~~or (8)~~] (8) or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and 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.

[~~(2)~~] (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 [~~(e)~~] (f). Any such extension shall not be for a period of more than one year.

[~~(3)~~] (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.

[~~(4)~~] (5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

[~~(b) Criteria.--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.~~]

 CRITERIA

(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, 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, 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.~~]

(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 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.

[(d)] (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.

[~~(e) Notification to Congress.--The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying--~~

~~(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and~~

~~(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.~~

~~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. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.~~]

(f) Consultation with the Congress.--(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on 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 Presdient 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 (i);

(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. 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.

(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.

(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.

[~~(f)~~] (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 humand 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 Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director 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 Director of the United States International Development Cooperation Agency, 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. [~~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.~~] 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. 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.

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

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

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6

nths after the date of the enactment of the Export ministration Amendments Act of 1985 in the case of export ontrols 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 (1) 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[2] follow the procedures set forth in section 5(f)(3) of this Act.

[~~(h)~~] (i) International Obligations.--The provisions of subsections (b), (c), (d), [~~(f)~~] (e), (g) and [~~(g)~~] (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.

[~~(i)~~] (j) Countries Supporting International Terrorism.--(1) 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 any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

[~~(1)~~] (A) Such country has repeatedly provided support for acts of international terrorism.

[~~(2)~~] (B) Such exports would make a significant contibution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, at least 30 days before the proposed recission would take effect, submits to the Congress a report justifying the rescission and certifying that--

(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

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

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

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (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, 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 Organizations or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

~~[(k)]~~ (1) Control List.-- The Secretary shall establish and maintain, as part of the ~~{commodity}~~-control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. ~~[Such goods or technology shall be clearly identified as subject to controls under this section.]~~ The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods or technology comparable to those controlled for export from the United States under this section.

(m) 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,

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.

(n) 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, 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.

(o) Expanded Authority to Impose Controls.--(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m), of this section, the

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

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution 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) 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.

SHORT SUPPLY CONTROLS

Sec. 7. (a) Authority.--(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

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