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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	from Lou Pugliaresi thru Robert Dean to F. Carlucci re: legislative package on export controls (4pp)	2/2/87	P-1 B1 <i>Folder</i>
2. talking points	attachment to memo dated 2/2/87 (3pp)	n.d.	P-1 B1 3 <i>Folder</i>
3. memo <i>500</i>	from Alexander Platt thru S. Danzansky to C. Powell re: meeting on export control legislation (8pp) <i>(2-p memo + 4-p proposed amendments and 2-p proposal)</i>	1/30/87	P-5 open <i>Folder</i>
4. report <i>501</i>	re: Export Administration Act, proposed amendments, page 1 (1p, partial)	n.d.	P-5 open 4 <i>OS 10/26/00</i>
COLLECTION:			db
DANZANSKY, STEPHEN I.: Files			
FILE FOLDER:			11/8/94
International trade XV.(E) <i>(3 of 16)</i> (2 of 9) <i>RAC Box 8</i>			

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.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506INFORMATION

February 5, 1987

ACTION

MEMORANDUM FOR COLIN L. POWELL

THRU:

Robert Dean
ROBERT DEAN/STEPHEN I. DANZANSKY *SID*

FROM:

LOU PUGLIARESI *lp*

SUBJECT:

Interagency Agreement on Export Control
Legislative Package

The attached legislative package reflects the compromise you and Mr. Carlucci reached between Defense and Commerce on eight proposals to improve the export control program. It is now in the OMB review process for inclusion in the President's competitiveness package. Agency comments are due by COB Friday and there is every indication that all agencies will sign off and the proposals will go to the Congress in mid-February. A summary of the proposed provisions is attached (Tab I), as is the full text of the legislative proposal (Tab II).

The first meeting of the NSSD study group took place Wednesday at State. The second round begins.

Attachments

Tab I Summary of proposed legislation
Tab II Legislative package

SUMMARY
Proposed Legislation

1. Commerce will seek clarification of its authority and discretion to issue multiple licenses for appropriate products and technologies to the PRC. The Administration will not seek such authority for export of sensitive technology to the Bloc.
2. Commerce will seek clarification of its authority to prohibit or curtail sales within the U.S. to enterprises of controlled countries, including their embassies.
3. Commerce will seek a codification of West-East foreign availability definition and procedures. Commerce will still have to consult with other agencies, but time limits and more specific procedures would be mandated for determinations of foreign availability.
4. Commerce will seek provisions for expedited treatment of licenses to free world destinations in cases involving West-West foreign availability. This was the issue Defense and Commerce were initially unable to reach agreement upon. Your agreement with Secretary Weinberger was to extend the time necessary under which a license would be granted from 15 days to 20 days and Commerce was informed of (and accepts) this decision. Note that this fast track licensing procedure was for free world destinations and only applied to items and technologies that were normally available in the free world. This legislation would not diminish DOD's authority to review items and technologies destined for "high risk" free world countries.
5. The EAA provides for nine broad objectives that the U.S. should seek to accomplish COCOM negotiations. In this proposal, Commerce would add the objective of shortening the number of items on the international control list of COCOM.
- 6-7. Commerce will seek authority to deny export licenses to persons convicted of certain federal offenses, including espionage and munitions control violations
8. Commerce will seek greater authority to hold up (temporary denial order) a license application in those cases where investigations establish patterns or histories of diversion even where evidence does not demonstrate that a violation is eminent.

Finally, Commerce agreed to examine proposals (in the NSSD) to improve procedures for obtaining a Presidential override. DOD raised concerns over their ability to seek a Presidential override under current procedures. Commerce agreed, as part of the NSSD, to examine procedures to improve the process of seeking an override.

AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979, as amended, (50 U.S.C. App. 2401-2420) is further amended as follows:

SEC. 1. Multiple Validated License Authority for the People's Republic of China

(a) Section 4(a)(2)(A) (50 U.S.C. App. 2403(a)(2)(A)) is amended by changing the period to a comma at the end of the first sentence and inserting in lieu thereof the following:

"except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China."

(b) Section 4(a)(2)(B) (50 U.S.C. App. 2403(a)(2)(B)) is amended by adding before the comma following the phrase "countries other than controlled countries" the following:

"(excluding the People's Republic of China)"

SEC. 2. Domestic Sales to Commercial Entities of Controlled Countries

Section 5(a)(1) (50 U.S.C. App. 2404(a)(1)) is amended by adding the following sentence before the last sentence of the paragraph:

"The term 'affiliate' includes both governmental entities and commercial entities that are controlled in fact by controlled countries."

SEC. 3. Procedures for Determining Foreign Availability to
Controlled Countries

(a) Section 5(f) (50 U.S.C. App. 2404(f)) is amended as follows:

- (1) By adding to the heading the words "to Controlled Countries" after the word "Availability";
- (2) In paragraph (1) by inserting the word "controlled" between the word "to" and the word "countries";
- (3) In paragraph (1) by striking the words "to which exports are controlled under this section";
- (4) In paragraph (1) by striking the words "may not, after the determination is made, require" and by inserting the following in lieu thereof:

"shall submit such determination for review to the Secretary of Defense and other departments and agencies as the Secretary considers appropriate. The preceding sentence does not require the concurrence or approval of any official, department or agency to which such a determination is submitted. Within 60 days following such

submission the Secretary shall remove the requirement for";

- (5) In paragraph (2) by inserting the word "controlled" in lieu of the word "particular";
- (6) In paragraph (2) by adding the words "and procedures" after the word "exception";
- (7) In paragraph (3) by inserting after the first sentence the following:

"The Secretary shall make such a determination within 120 days of receipt of an allegation of foreign availability"; and,

- (8) By striking paragraph (7) in its entirety and substituting the following in lieu thereof:

"(7) For purposes of this subsection--

- (A) "Foreign availability" for national security-controlled goods or technology exists when the Secretary of Commerce determines that non-U.S. origin goods or technology of comparable quality are available-in-fact to a controlled country or countries in quantities

sufficient to satisfy their need so that U.S. exports of such goods or technology would not make a significant contribution to the military potential of such country or countries; and

- (B) A commodity or technology is of 'non-U.S. origin' when it is not subject to U.S. export or reexport controls, except that foreign made products of U.S. origin technology and foreign made products containing U.S. origin parts and components may be considered to be of 'non-U.S. origin' if so determined by the Secretary."

SEC. 4. Foreign Availability to Other than Controlled Countries - Expedited Licencing.

(a) Section 5 (50 U.S.C. App. 2404) is amended by adding at the end thereof the following new paragraph:

"(r) Foreign Availability to Other Than Controlled Countries. --

The Secretary shall review, on a continuing basis, the availability to countries, other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary finds that any such goods or technology from foreign sources are of similar quality and are available to such country or countries without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country or countries pursuant to the procedures set forth in section 10(o) of the Act. The Secretary may make such a foreign availability determination on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists or upon the submission of a certification by a Technical Advisory Committee of appropriate jurisdiction as to the goods or technology involved."

(b) Section 10(o) (50 U.S.C. App. 2409(o)) is amended as follows:

- (1) By adding to the heading the words "and Other Designated Countries" after the word "Committee";
- (2) In paragraph (1) by striking the comma after the word "Committee" and inserting the following in lieu thereof:

"or twenty working days after the date of formal filing of an application to export goods or technology to a country designated pursuant to subsection (r) of section 5,";

- (3) In paragraph (2) by inserting after the words "30 working days" the following:

"or 35 working days, as appropriate,"; and,

- (4) In paragraph (3) by inserting after the words "the application" the following:

",the sensitivity of the goods or technology involved".

SEC. 5. Ineffectiveness of Unilateral Controls - Negotiations
To Improve Multilateral Cooperation

Section 5(i) (50 U.S.C. App. 2404(i)) is amended as follows:

(a) By adding before the words "The President" the words "Recognizing the ineffectiveness of unilateral controls and the importance of enforcement measures to the effectiveness of multilateral controls,"; and,

(b) By adding at the end thereof the following:

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

SEC. 6. Prior Convictions

Section 11(h) (50 U.S.C. App. 2410(h)) is amended as follows:

(a) By inserting "(1)" immediately before the word "No" in the first sentence;

(b) By inserting the words "this Act, Sections 1701-1706 of Title 50, United States Code," immediately before the words "Section 793," in the first sentence of paragraph (1); and,

(c) by adding a new paragraph as follows:

"(2) The authority given the Secretary in paragraph (1) of this subsection may be extended to any person, firm, corporation or business organization related, through affiliation, ownership, control, position of responsibility or other connection in the conduct of trade or related services, to any party convicted of violating any of the statutory provisions specified in paragraph (1) of this subsection".

SEC. 7. Issuance of Temporary Denial Orders

Section 13(d) (50 U.S.C. App. 2412(d)) is amended as follows:

(a) By inserting in the first sentence of paragraph (1) the words ", or otherwise to facilitate enforcement of this Act," following the words "under this Act,";

(b) By substituting for the number "60" wherever it appears in the second sentence of paragraph (1), the number "180";

(c) By inserting in the first sentence of paragraph (2) the words "or the need to facilitate enforcement of this Act" following the word "violation"; and,

(c) By inserting in the last sentence of paragraph (2) the words ", or otherwise to facilitate enforcement of this Act" before the period.

SECTION-BY-SECTION

ANALYSIS

SEC. 1.

Section 1 amends section 4 of the Export Administration Act of 1979 to make clear that the Department of Commerce may establish appropriate validated multiple licenses for exports to consignees in the People's Republic of China (PRC). Current law authorizes the Department to establish four specific types of validated licenses authorizing multiple exports. Two of these licenses - the distribution license and the comprehensive operations license - may not be made available for exports to any controlled country. Since multiple licenses allow U.S. firms to be more competitive, they should be made available to the PRC, when the availability of such license is consistent with U.S. national security interests. This amendment will permit the Department of Commerce to provide for a type of distribution license or comprehensive operations license for exports of appropriate goods and technology to approved consignees in the PRC.

SEC. 2.

Section 2 amends section 5(a) of the EAA to provide clear authority to curtail sales in the U.S. of national security

controlled items to commercial entities controlled in fact by governments of controlled countries.

In the 1985 amendments to the EAA, Congress added a provision to section 5 that explicitly provided the authority to prohibit or curtail sales within the U.S. to embassies of controlled countries and their "affiliates". In order to assure that the term "affiliates" is not limited to governmental entities, this amendment defines that term to include commercial entities that are controlled in fact by controlled countries. By doing so, the amendment provides clear authority to curtail sales in the United States that present a risk of diversion of national security controlled items.

SEC. 3.

Section 3 makes several changes in section 5(f), the provision dealing with the assessment of foreign availability to controlled countries. The purpose of the amendment is to provide a structure and appropriate time frames for the foreign availability decision-making process, which presently is lacking under the law. It reaffirms the need to consult with other agencies on foreign availability determinations, but makes clear that the Secretary of Commerce does not need the approval of other agencies in making a determination. It requires that assessments of foreign availability be completed in 120-days. It provides for a 60-day grace period after a positive foreign availability finding is made

to allow time for consultations with other agencies, negotiations with COCOM for decontrol or for referral to the President to continue controls notwithstanding foreign availability. It also codifies, with minor changes, the definition of "foreign availability" contained in the Export Administration Regulations.

SEC. 4.

Section 4 adds to section 5 of the EAA a new paragraph which provides that when a product or technology similar to a U.S. product or technology is available to a free world country or countries without effective restrictions, the product or technology found to be so available will be presumed to qualify for a U.S. export license for shipment to that free world country or countries. A license will be deemed issued with respect to national security based controls after 20 working days (with a 15 day extension possible), unless the license application is denied upon a showing of an unacceptable risk of diversion to a controlled country.

A license would continue to be required. Without the licensing requirement, the U.S. Government would lose the ability to review the reliability of an end user in cases involving sophisticated technology which, while available in the West, we would not want diverted to the Bloc Countries. The provision for presumption of licensability in the West/West context underscores that what is at issue is whether an unacceptable risk of diversion

exists. The 20 day processing deadline would provide more predictability to exporters in the licensing process.

This section also amends section 10(o) of the EAA to expand the administrative procedure currently available to COCOM countries to include, with the time limits noted above, exports to other free world countries when a finding of foreign availability is made.

SEC. 5.

Section 5(i) of the EAA establishes specific objectives for U.S. negotiations with COCOM governments. This amendment sets out in the preamble of section 5(i) that such negotiations should be conducted in the context of the following principles: that unilateral controls are ineffective and that enforcement is important to effective multilateral controls. This amendment also adds additional negotiating objectives. It states that negotiations should enhance cooperation among COCOM governments in reaching and implementing agreements with non-COCOM countries in restricting exports to controlled countries. It calls for ongoing cooperation within COCOM to obtain such agreements. Finally, it calls for removal of items from the International Control List (ICL) where such agreements are not reached or where controls on specific ICL items no longer meet the common strategic objectives of the members.

SEC. 6.

Section 11(h) of the EAA authorizes the Secretary of Commerce to bar persons convicted of violating specified laws, including the Arms Export Control Act, from applying for or using export licenses under the EAA. Section 11(h), however, does not include in its coverage the Export Administration Act, the principal statute which authorizes export controls and their enforcement, or the International Emergency Economic Powers Act (IEEPA), the statute which may be used to control and enforce exports in times of national emergency.

To correct this anomaly, the amendment adds the EAA and IEEPA to the statutes specified in Section 11(h). An amendment of this nature will place the EAA and IEEPA on an equal footing with the other specified statutes, and will allow the Secretary to deny export privileges to any person convicted of violating one of those laws solely on the basis of that conviction.

This section also amends section 11(h) of the EAA to make clear that the Secretary may deny export privileges to those parties who are related to any person or organization denied privileges pursuant to a section 11(h). This would include parties related to a denied party by ownership, affiliation, control, position of responsibility or other connection in the conduct of trade or related services. This prevents a denied party from circumventing a denial order by continuing to engage in export trade by using

persons over whom he exercises control. In addition, this amendment makes it clear that the Secretary may revoke the outstanding licenses of any such related party.

SEC. 7.

The EAA was amended in 1985 to provide that a temporary denial order could be issued by the Department of Commerce only where necessary to prevent an "imminent" violation. The 1985 amendments also provided that a temporary denial order could be effective for no more than 60 days, although it could be renewed for additional 60-day periods. The "imminent" violation standard has limited the Department's ability to obtain a temporary denial order in instances where such an order would serve legitimate preventive enforcement purposes, such as where an indictment has been handed down or where, for a variety of reasons, documentary evidence that a violation is "imminent" cannot be obtained. (For example, the sometimes lengthy process for obtaining evidence from foreign jurisdictions.) This section amends the EAA to provide that a temporary denial order can be obtained not only to prevent an imminent violation, but also where necessary to facilitate enforcement of the Act.

Further, limiting temporary denial orders to periods of 60-days has limited the preventive enforcement benefits of such orders. This time period is often inadequate to allow for completion of investigations, including the completion of documentation

necessary to institute formal charges, particularly when the suspected violation occurs overseas. Extending the effective period of temporary denial orders to 180 days will facilitate the real preventive enforcement benefits of such orders without unduly prejudicing parties temporarily denied export privileges, since the EAA would still provide for an appeal to an administrative law judge at any time. This amendment, while providing a longer effective period continues to provide a specific time limit on temporary denial orders.

International Trade... Danzansky

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AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979, as amended, (50 U.S.C. App 2401-2420) is further amended as follows:

SEC. 1. Multiple Validated License Authority for the Peoples' Republic of China

(a) Section 4(a)(2)(A) is amended by changing the period to a comma at the end of the first sentence and inserting in lieu thereof the following:

"except that the Secretary may establish a type of distribution license appropriate for consignees in the Peoples' Republic of China."

(b) Section 4(a)(2)(B) is amended by adding before the comma following the phrase "countries other than controlled countries" the following:

"(excluding the Peoples' Republic of China)"

SEC. 2. Domestic Sales to Commercial Entities of Controlled Countries

Section 5(a)(1) is amended by adding the following sentence before the last sentence of the paragraph:

"The term 'affiliate' includes both governmental entities and commercial entities that are controlled in fact by controlled countries."

SEC. 3. Procedures for Determining Foreign Availability to
Controlled Countries

(a) Section 5(f) is amended as follows:

- (1) By adding to the heading the words "to Controlled Countries" after the word "Availability";
- (2) In paragraph (1) by inserting the word "controlled" between the word "to" and the word "countries";
- (3) In paragraph (1) by striking the words "to which exports are controlled under this section";
- (4) In paragraph (1) by striking the words "may not, after the determination is made, require" and by inserting the following in lieu thereof:

"shall submit such determination for review to the Secretary of Defense and other departments and agencies as the Secretary considers appropriate. The preceding sentence does not require the concurrence or approval of any official, department or agency to which such a determination is submitted. Within 60 days following such submission the Secretary shall remove the requirement for";

- (5) In paragraph (2) by inserting the word "controlled" in lieu of the word "particular";
- (6) In paragraph (2) by adding the words "and procedures" after the word "exception";
- (7) In paragraph (3) by inserting after the first sentence the following:

"The Secretary shall make such a determination within 120 days of receipt of an allegation of foreign availability"; and,

- (8) By striking paragraph (7) in its entirety and substituting the following in lieu thereof:

"(7) For purposes of this subsection--

- (A) "Foreign availability" for national security-controlled goods or technology exists when the Secretary of Commerce determines that non-U.S. origin goods or technology of comparable quality are available-in-fact to a controlled country or countries in quantities sufficient to satisfy their need so that U.S. exports of such goods or technology would not make a significant contribution to the

military potential of such country or countries; and

- (B) A commodity or technology is of 'non-U.S. origin' when it is not subject to U.S. export or reexport controls, except that foreign made products of U.S. origin technology and foreign made products containing U.S. origin parts and components may be considered to be of 'non-U.S. origin' if so determined by the Secretary."

SEC. 4. Foreign Availability to Other than Controlled Countries - Expedited Licencing.

(a) Section 5 is amended by adding at the end thereof the following new paragraph:

"(r) Foreign Availability to Other Than Controlled Countries. --

The Secretary shall review, on a continuing basis, the availability to countries, other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary finds that any such goods or technology from foreign sources are of similar quality and are available to such country or countries without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country or countries pursuant to the procedures set forth in section 10(o) of the Act. The Secretary may make such a foreign availability determination on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists or upon the submission of a certification by a Technical Advisory Committee of appropriate jurisdiction as to the goods or technology involved."

(b) Section 10(o) is amended as follows:

- (1) By adding to the heading the words "and Other Designated Countries" after the word "Committee";
- (2) In paragraph (1) by striking the comma after the word "Committee" and inserting the following in lieu thereof:

"or the export of goods or technology to a country designated pursuant to subsection (r) of section 5,"; and,

- (3) In paragraph (3) by inserting after the words "the application" the following words ",the sensitivity of the goods or technology involved".

SEC. 5. Ineffectiveness of Unilateral Controls - Negotiations
To Improve Multilateral Cooperation

Section 5(i) is amended as follows:

(a) By adding before the words "The President" the words "Recognizing the ineffectiveness of unilateral controls and the importance of enforcement measures to the effectiveness of multilateral controls,"; and,

(b) By adding at the end thereof the following:

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

SEC. 6. Prior Convictions

Section 11(h) is amended as follows:

(a) By inserting "(1)" immediately before the word "No" in the first sentence;

(b) By inserting the words "this Act, Sections 1701-1706 of Title 50, United States Code," immediately before the words "Section 793," in the first sentence of paragraph (1); and,

(c) by adding a new paragraph as follows:

"(2) The authority given the Secretary in paragraph (1) of this subsection may be extended to any person, firm, corporation or business organization related, through affiliation, ownership, control, position of responsibility or other connection in the conduct of trade or related services, to any party convicted of violating any of the statutory provisions specified in paragraph (1) of this subsection".

SEC. 7. Issuance of Temporary Denial Orders

Section 13(d) is amended as follows:

(a) By inserting in the first sentence of paragraph (1) the words ", or otherwise to facilitate enforcement of this Act," following the words "under this Act,";

(b) By substituting for the number "60" wherever it appears in the second sentence of paragraph (1), the number "180";

(c) By inserting in the first sentence of paragraph (2) the words "or the need to facilitate enforcement of this Act" following the word "violation"; and,

(c) By inserting in the last sentence of paragraph (2) the words ", or otherwise to facilitate enforcement of this Act" before the period.

SECTION-BY-SECTION
ANALYSIS

SEC. 1.

Section 1 amends section 4 of the Export Administration Act of 1979 to make clear that the Department of Commerce may establish appropriate validated multiple licenses for exports to consignees in the Peoples' Republic of China (PRC). Current law authorizes the Department to establish four specific types of validated licenses authorizing multiple exports. Two of these licenses - the distribution license and the comprehensive operations license - may not be made available for exports to any controlled country. Since multiple licenses allow U.S. firms to be more competitive, they should be made available to the PRC, when the availability of such license is consistent with U.S. national security interests. This amendment will permit the Department of Commerce to provide for a type of distribution license or comprehensive operations license for exports of appropriate goods and technology to approved consignees in the PRC.

SEC. 2.

Section 2 amends section 5(a) of the EAA to provide clear authority to curtail sales in the U.S. of national security

controlled items to commercial entities controlled in fact by governments of controlled countries.

In the 1985 amendments to the EAA, Congress added a provision to section 5 that explicitly provided the authority to prohibit or curtail sales within the U.S. to embassies of controlled countries and their "affiliates". In order to assure that the term "affiliates" is not limited to governmental entities, this amendment defines that term to include commercial entities that are controlled in fact by controlled countries. By doing so, the amendment provides clear authority to curtail sales in the United States that present a risk of diversion of national security controlled items.

SEC. 3.

Section 3 makes several changes in section 5(f), the provision dealing with the assessment of foreign availability to controlled countries. The purpose of the amendment is to provide a structure and appropriate time frames for the foreign availability decision-making process, which presently is lacking under the law. It reaffirms the need to consult with other agencies on foreign availability determinations, but makes clear that the Secretary of Commerce does not need the approval of other agencies in making a determination. It requires that assessments of foreign availability be completed in 120-days. It provides for a 60-day grace period after a positive foreign availability finding is made

to allow time for consultations with other agencies, negotiations with COCOM for decontrol or for referral to the President to continue controls notwithstanding foreign availability. It also codifies, with minor changes, the definition of "foreign availability" contained in the Export Administration Regulations.

SEC. 4.

Section 4 adds to section 5 of the EAA a new paragraph which provides that when a product or technology similar to a U.S. product or technology is available to a free world country or countries without effective restrictions, the product or technology found to be so available will be presumed to qualify for a U.S. export license for shipment to that free world country or countries. A license will be deemed issued with respect to national security based controls after 15 working days (with a 15 day extension possible), unless the license application is denied upon a showing of an unacceptable risk of diversion to a controlled country.

A license would continue to be required. Without the licensing requirement, the U.S. Government would lose the ability to review the reliability of an end user in cases involving sophisticated technology which, while available in the West, we would not want diverted to the Bloc Countries. The provision for presumption of licenseability in the West/West context underscores that what is at issue is whether an unacceptable risk of diversion

exists. The 15 day processing deadline would provide more predictability to exporters in the licensing process.

This section also amends section 10(o) of the EAA to expand the 15-day administrative procedure currently available to COCOM countries to include exports to other free world countries when a finding of foreign availability is made.

SEC. 5.

Section 5(i) of the EAA establishes specific objectives for U.S. negotiations with COCOM governments. This amendment sets out in the preamble of section 5(i) that such negotiations should be conducted in the context of the following principles: that unilateral controls are ineffective and that enforcement is important to effective multilateral controls. This amendment also adds additional negotiating objectives. It states that negotiations should enhance cooperation among COCOM governments in reaching and implementing agreements with non-COCOM countries in restricting exports to controlled countries. It calls for ongoing cooperation within COCOM to obtain such agreements. Finally, it calls for removal of items from the International Control List (ICL) where such agreements are not reached or where controls on specific ICL items no longer meet the common strategic objectives of the members.

SEC. 6.

Section 11(h) of the EAA authorizes the Secretary of Commerce to bar persons convicted of violating specified laws, including the Arms Export Control Act, from applying for or using export licenses under the EAA. Section 11(h), however, does not include in its coverage the Export Administration Act, the principal statute which authorizes export controls and their enforcement, or the International Emergency Economic Powers Act (IEEPA), the statute which may be used to control and enforce exports in times of national emergency.

To correct this anomaly, the amendment adds the EAA and IEEPA to the statutes specified in Section 11(h). An amendment of this nature will place the EAA and IEEPA on an equal footing with the other specified statutes, and will allow the Secretary to deny export privileges to any person convicted of violating one of those laws solely on the basis of that conviction.

This section also amends section 11(h) of the EAA to make clear that the Secretary may deny export privileges to those parties who are related to any person or organization denied privileges pursuant to a section 11(h). This would include parties related to a denied party by ownership, affiliation, control, position of responsibility or other connection in the conduct of trade or related services. This prevents a denied party from circumventing a denial order by continuing to engage in export trade by using

persons over whom he exercises control. In addition, this amendment makes it clear that the Secretary may revoke the outstanding licenses of any such related party.

SEC. 7.

The EAA was amended in 1985 to provide that a temporary denial order could be issued by the Department of Commerce only where necessary to prevent an "imminent" violation. The 1985 amendments also provided that a temporary denial order could be effective for no more than 60 days, although it could be renewed for additional 60-day periods. The "imminent" violation standard has limited the Department's ability to obtain a temporary denial order in instances where such an order would serve legitimate preventive enforcement purposes, such as where an indictment has been handed down or where, for a variety of reasons, documentary evidence that a violation is "imminent" cannot be obtained. (For example, the reluctance of foreign governments to make evidence available.) This section amends the EAA to provide that a temporary denial order can be obtained not only to prevent an imminent violation, but also where necessary to facilitate enforcement of the Act.

Further, limiting temporary denial orders to periods of 60-days has limited the preventive enforcement benefits of such orders. This time period is often inadequate to allow for completion of investigations, including the completion of documentation

necessary to institute formal charges, particularly when the suspected violation occurs overseas. Extending the effective period of temporary denial orders to 180 days will facilitate the real preventive enforcement benefits of such orders without unduly prejudicing parties temporarily denied export privileges, since the EAA would still provide for an appeal to an administrative law judge at any time. This amendment, while providing a longer effective period continues to provide a specific time limit on temporary denial orders.

RONALD W. REAGAN LIBRARY

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

Fils: ~~Support~~
Central
Meeting

min to / list } for policy
with Sec

needed to know
not m/L central list

(1) write up those agreed

(2)

Sensational campaign started
on class as PR.

Further also relevant,
likely passing

9 proposals
1 dropped
1 passed

(1) no admit # 1 but
as soon as Sensational
campaign

(2) # 2 agreed.

(3) # 3 dropped

(4) # 4 - Did ~~disappear~~ disappear.
4 language by DD -

1891
1446

445

5. DD - changes.
ATL language by DD -
repeated by Carrero
ATL language repeated.

Agreed!
#6. ~~DD~~ DD
wants to add high
bars in all the
Carrero cup 04

7. ~~DD~~ DD suggests
reducing permit for permits
~~under~~ under license
can be checked for violation
of FAR -

#8. Agreed

#9. Agreed - Carrero copy

Comoro Proposal

I Clarify DoD authority and discretion to create multiple licenses for users in controlled countries.

Multiple:

- Distributors
- Comprehensive Operators

- * Project
- * Service Supply

DoD:

Resolution: reduce list of controlled items to PRS
com reps instructed to seek rapid liberalization -

II Clarify authority to prohibit sales w/in US. to commercial enterprises controlled.

#. 1985 Act - allowed authority to prohibit sales to embassies

~~III~~

~~III~~
~~III~~

Coord. of West-East foreign availability Procedures

-- principle structure and time frames for decision when "foreign availability" is found

-- ~~ass~~ "foreign avail." assessment 120 days

-- DoC consult - 60 days

- 1) negot. w/rocom
- 2) Referral to President to continue restrictions

-- Definition of "FA"

- DoD
- 1) DoD review mandatory
 - 2) State negotiates - to remove
 - 3) Drumming - retaliation. Expedite

~~IV~~
~~IV~~

Coord. of West / West

-- where FA exist - presumption:

-- increase issues after 15 days unless risk of diversion.

ITEM RETURNED
TO NISC
SECRETARIAT
IN APRIL 1987

Log #

I-06007/87