

58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1997, see Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1999, see Ex. Ord. No. 13062, §1(m), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2001, see Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§ 2402. Congressional declaration of policy

The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the

export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to

further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

(Pub. L. 96-72, § 3, Sept. 29, 1979, 93 Stat. 504; Pub. L. 99-64, title I, § 103, July 12, 1985, 99 Stat. 121; Pub. L. 103-199, title II, § 201(b)(2), Dec. 17, 1993, 107 Stat. 2321.)

PRIOR PROVISIONS

A prior section 2402, Pub. L. 91-184, § 3, Dec. 30, 1969, 83 Stat. 841; Pub. L. 92-412, title I, § 103, Aug. 29, 1972, 86 Stat. 644; Pub. L. 93-500, §§ 2, 4(b), (c), 11, Oct. 29, 1974, 88 Stat. 1552, 1553, 1556; Pub. L. 95-52, title I, § 115, title II, § 202, June 22, 1977, 91 Stat. 241, 247, setting forth declaration of policy of Congress with respect to the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1993—Par. (15). Pub. L. 103-199 struck out par. (15) which read as follows: “It is the policy of the United States, particularly in light of the Soviet massacre of innocent men, women, and children aboard Korean Air Lines flight 7, to continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics, subject to periodic review by the President.”

1985—Par. (3). Pub. L. 99-64, § 103(1), inserted “or common strategic objectives” after “defense treaty commitments”.

Par. (7). Pub. L. 99-64, § 103(2), substituted “the President shall make reasonable and prompt efforts” for “the President shall make every reasonable effort”, and “imposing export controls” for “resorting to the imposition of controls on exports from the United States”.

Par. (8). Pub. L. 99-64, § 103(3), substituted “the President shall make reasonable and prompt efforts” for “the President shall make every reasonable effort”, and “imposing export controls” for “resorting to the imposition of export controls”.

Par. (9). Pub. L. 99-64, § 103(4), inserted “or common strategic objectives” after “commitments” in two places, and inserted “, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States”.

Pars. (12) to (15). Pub. L. 99-64, § 103(5), added pars. (12) to (15).

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

POLICY REGARDING KAL

Section 201(b)(1) of Pub. L. 103-199 provided that: “The Congress finds that—

“(A) President Yeltsin should be commended for meeting personally with representatives of the families of the victims of the shootdown of Korean Airlines (KAL) Flight 7;

“(B) President Yeltsin’s Government has met on two separate occasions with United States Government and family members to answer questions associated with the shootdown and has arranged for the families to interview Russians involved in the incident or the search and rescue operations that followed;

“(C) President Yeltsin’s Government has also cooperated fully with the International Civil Aviation Organization (ICAO) to allow it to complete its investigation of the incident and has provided numerous materials requested by the ICAO, including radar data and so-called ‘black boxes’, the digital flight data and cockpit voice recorders from the flight;

“(D) the Export Administration Act of 1979 [sections 2401 to 2420 of this Appendix] continues to state that the United States should continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics in light of the KAL tragedy, even though the ‘no exceptions’ policy was rescinded by President Bush in 1990;

“(E) the Government of the United States is seeking compensation from the Russian Government on behalf of the families of the KAL victims, and the Congress expects the Administration to continue to pursue issues related to the shootdown, including that of compensation, with officials at the highest level of the Russian Government; and

“(F) in view of the cooperation provided by President Yeltsin and his government regarding the KAL incident and these other developments, it is appropriate to remove such language from the Export Administration Act of 1979.”

POLICY ON MISSILE TECHNOLOGY CONTROL

Pub. L. 101-510, div. A, title XVII, § 1701, Nov. 5, 1990, 104 Stat. 1738, provided that: “It should be the policy of the United States to take all appropriate measures—

“(1) to discourage the proliferation, development, and production of the weapons, material, and technology necessary to produce or acquire missiles that can deliver weapons of mass destruction;

“(2) to discourage countries and private persons in other countries from aiding and abetting any states from acquiring such weapons, material, and technology;

“(3) to strengthen United States and existing multilateral export controls to prohibit the flow of materials, equipment, and technology that would assist countries in acquiring the ability to produce or acquire missiles that can deliver weapons of mass destruction, including missiles, warheads and weaponization technology, targeting technology, test and evaluation technology, and range and weapons effect measurement technology; and

“(4) with respect to the Missile Technology Control Regime (‘MTCR’) and its participating governments—

“(A) to improve enforcement and seek a common and stricter interpretation among MTCR members of MTCR principles;

“(B) to increase the number of countries that adhere to the MTCR; and

“(C) to increase information sharing among United States agencies and among governments on missile technology transfer, including export licensing, and enforcement activities.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2403, 2404, 2405, 2406, 2407, 2409, 2413 of this Appendix; title 10 section 2410i; title 26 sections 943, 993; title 42 section 6212.

§ 2403. General provisions

(a) Types of licenses

Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act [sections 2401 to 2420 of this Appendix], the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act [sections 2401 to 2420 of this Appendix]. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act [section 2404(d) of this Appendix] which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled

countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act [section 2411(a) of this Appendix] and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act [sections 2401 to 2420 of this Appendix].

(b) Control list

The Secretary shall establish and maintain a list (hereinafter in this Act [sections 2401 to 2420 of this Appendix] referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act [sections 2401 to 2420 of this Appendix].

(c) Foreign availability

In accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix], the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States so as to render the controls ineffective in achieving their purposes, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) Right of export

No authority or permission to export may be required under this Act [sections 2401 to 2420 of this Appendix], or under regulations issued under this Act [sections 2401 to 2420 of this Appendix], except to carry out the policies set