

when such controls would result in measurable malnutrition, unless the President determines that the controls are necessary to protect the United States national security interests or that the food would not reach persons most in need.

1980—Pub. L. 96-533 required notification of certain commercial exports to be given to the Committee on Foreign Relations of the Senate and prescribed that notice be given to the committees at least 30 days before approval of the export license.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

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

EFFECTIVE DATE OF 1985 AMENDMENT

Section 108(g)(2) of Pub. L. 99-64 provided that: "The amendments made by paragraph (1) of this subsection [amending this section] shall not apply to export controls in effect under subsection (i), (j), or (k) of section 6 of the Export Administration Act of 1979 [subsec. (i), (j), or (k) of this section] (as redesignated by subsection (d) of this section) immediately before the date of the enactment of this Act [July 12, 1985], or to export controls made effective by subsection (i)(2) of this section [there is no section 108(i)(2) of Pub. L. 99-64] or by section 6(n) of the Export Administration Act of 1979 [subsec. (n) of this section] (as added by subsection (l)(1) of this section)."

Section 108(j)(2) of Pub. L. 99-64 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act [July 12, 1985]."

Section 108(l)(2) of Pub. L. 99-64 provided that: "Subsections (m) and (o) of section 6 of the Export Administration Act of 1979 [subsecs. (m) and (o) of this section], as added by paragraph (1) of this subsection, shall not apply to export controls in effect immediately before the date of the enactment of this Act [July 12, 1985], or to export controls made effective by subsection (i)(2) of this section [there is no section 108(i)(2) of Pub. L. 99-64] or by section 6(n) of the Export Administration Act of 1979 [subsec. (n) of this section] (as added by paragraph (1) of this subsection)."

DELEGATION OF FUNCTIONS

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

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

Section 7 of Pub. L. 97-145 provided that: "Notwithstanding any other provision of law, no provision of the Export Administration Act of 1979, as amended by this Act [sections 2401 to 2420 of this Appendix], or of any other Act shall be construed to prohibit the exercise of authorities contained in the Export Administration Act of 1979 to impose a total embargo in the event of

Soviet or Warsaw Pact military action against Poland."

ADMINISTRATION OF EXPORT CONTROLS ON ENCRYPTION PRODUCTS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 2170, 2407, 2410, 2410b, 2410c, 2413, 2414, 2416 of this Appendix; title 10 sections 2249a, 2327; title 12 section 95a; title 18 section 2332d; title 19 section 2462; title 22 sections 262p-4q, 2378, 2656f, 2708, 2712, 2797, 2797a, 2797b, 2798, 2799aa-1, 4305, 5605, 6461, 6713, 7205; title 26 section 901; title 28 section 1605; title 50 section 1702.

§ 2406. Short supply controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], 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.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) Monitoring

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812¹ of the Agricultural Act of 1970 [7 U.S.C. 612c-3]) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in

¹ See References in Text note below.

accordance with section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) Petitions for monitoring or controls

(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

(A) include the name of the material that is the subject of the petition,

(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

(D) provide that interested persons shall have a period of 30 days beginning on the date

of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix]. In making such determination, the Secretary shall determine whether—

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been consid-

ered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act [sections 2401 to 2420 of this Appendix], except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3)(A) and (B) of this subsection.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act [sections 2401 to 2420 of this Appendix], or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) Domestically produced crude oil

(1) Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix] and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of

petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix]; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920 [30 U.S.C. 185(u)], the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) Refined petroleum products

(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C)

of this Act [section 2402(2)(C) of this Appendix], the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act [section 2409 of this Appendix] to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) Certain petroleum products

Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) Agricultural commodities

(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such com-

modity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act [section 2402(2)(A) or (B) of this Appendix]. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix] subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act [section 2402(2)(B), (2)(C), (7), or (8) of this Appendix], the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls—

(i) which are extended under this Act [sections 2401 to 2420 of this Appendix] if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4)(A) For purposes of this paragraph, the term “joint resolution” means only a joint resolution the matter after the resolving clause of which is as follows: “That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on . . .”, with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

(D) If the committee of either House to which a joint resolution has been referred 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 or of any other joint resolution introduced with respect to the same matter.

(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30

days referred to in subparagraph (D) of paragraph (4), 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.

(h) Barter agreements

(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term “barter agreement” means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act [September 30, 1979].

(i) Unprocessed red cedar

(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (*Thuja plicata*) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act [September 30, 1979] as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harvested from

State or Federal lands may be exported from the United States.

(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act [section 2403(a)(2) of this Appendix] in lieu of validated licenses for exports under this subsection.

(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(5) As used in this subsection, the term “unprocessed western red cedar” means red cedar timber which has not been processed into—

(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) Effect of controls on existing contracts

The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term “contract to export” includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

(k) Oil exports for use by United States military facilities

For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act [sections 2401 to 2420 of this Appendix], shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

(Pub. L. 96-72, § 7, Sept. 29, 1979, 93 Stat. 515; Pub. L. 99-64, title I, §§ 109, 110, July 12, 1985, 99 Stat. 137, 139; Pub. L. 100-180, div. A, title XII, § 1246, Dec. 4, 1987, 101 Stat. 1165; Pub. L. 100-418, title II, § 2424(a), Aug. 23, 1988, 102 Stat. 1359; Pub. L. 100-449, title III, § 305(a), Sept. 28, 1988, 102 Stat. 1876.)

REFERENCES IN TEXT

Section 812 of the Agricultural Act of 1970, referred to in subsec. (b)(1), which was classified to section 612c-3 of Title 7, Agriculture, was repealed by Pub. L. 101-624, title XV, § 1578, Nov. 28, 1990, 104 Stat. 3702.

Section 7(g)(3) of the Export Administration Act of 1979, referred to in subsec. (g)(4)(A), is classified to subsec. (g)(3) of this section.

Section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (g)(4)(E), is section 601(b)(4) of Pub. L. 94-329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and is not classified to the Code.

PRIOR PROVISIONS

A prior section 2406, Pub. L. 91-184, § 7, Dec. 30, 1969, 83 Stat. 845; Pub. L. 95-52, title I, §§ 113(a), 114, title II, § 201(c), June 22, 1977, 91 Stat. 241, 246, setting forth enforcement procedures applicable to the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (d)(1). Pub. L. 100-449 struck out “or” before “(B)” and inserted “, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code” after “reenters the United States”.

Subsec. (d)(4). Pub. L. 100-418 struck out par. (4) which provided that notwithstanding section 2419 of this Appendix, the provisions of this subsection expire Sept. 30, 1990.

1987—Subsec. (k). Pub. L. 100-180 added subsec. (k).

1985—Subsec. (c). Pub. L. 99-64, § 109, amended subsec. (c) generally to require the Secretary to make and publish certain determinations of private petitions as well as on self-initiated motions before imposing monitoring or controls or both on exports of metallic materials capable of being recycled, to require that each petition filed requesting the imposition of monitoring, controls, or both, on metallic materials capable of being recycled indicate that each of the criteria in par. (3)(A) is satisfied, to require the Secretary to publish certain determinations, including findings of fact in support of the determinations, before deciding whether to impose monitoring, controls, or both on exports of such material, including whether there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand, and whether exports of such material are as important as any other cause of the domestic price increase or shortage relative to demand, to allow the Secretary to impose monitoring, controls, or both, on a temporary basis after a petition is filed if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of the Act, but before the Secretary makes a determination under par. (3) only if failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, requires that if the Secretary determines, on his initiative, to monitor, control, or both, the export of such material, the Secretary shall publish the reasons for such determination in accordance with par. (3)(A) and (B), requires that exports of material be as important as any other cause of the increased domestic prices or shortage, and sets a standard under which exports need not be the sole or principal cause of the price rise or domestic shortage in order for exports of the material to be controlled or monitored.

Subsec. (d)(1). Pub. L. 99-64, § 110(a)(1), substituted “subject to paragraph (2) of this subsection” for “unless the requirements of paragraph (2) of this subsection are met”.

Subsec. (d)(2)(A). Pub. L. 99-64, §110(a)(2), substituted “the President so recommends to the Congress after making and publishing” for “the President makes and publishes” in the provisions preceding cl. (i).

Subsec. (d)(2)(B). Pub. L. 99-64, §110(a)(3), substituted “includes such findings in his recommendation” for “reports such findings” and “after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law” for “thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings”.

Subsec. (d)(4). Pub. L. 99-64, §110(a)(4), added par. (4).

Subsec. (e)(1). Pub. L. 99-64, §110(b), substituted “In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no” for “No”.

Subsec. (g)(3). Pub. L. 99-64, §110(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House 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.”

Subsec. (g)(4), (5). Pub. L. 99-64, §110(d), added pars. (4) and (5).

Subsec. (i)(1). Pub. L. 99-64, §110(c)(1), inserted “harvested from State or Federal lands” after “red cedar logs” in concluding provision.

Subsec. (i)(2). Pub. L. 99-64, §110(c)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (i)(3), (4). Pub. L. 99-64, §110(c)(2), redesignated former pars. (2) and (3) as (3) and (4), respectively. Former pars. (3) and (4) redesignated (4) and (5), respectively.

Subsec. (i)(5). Pub. L. 99-64, §110(c)(2), redesignated former par. (4) as (5).

Subsec. (i)(5)(A). Pub. L. 99-64, §110(c)(4), amended subpar. (A) generally, substituting “lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better” for “lumber without wane”.

Subsec. (j). Pub. L. 99-64, §110(e), added subsec. (j) and struck out former subsec. (j) which related to the export of horses. See section 466c of Title 46, Appendix, Shipping.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see

section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of Title 19, Customs Duties.

REGULATIONS

Section 19(b)(2) of Pub. L. 96-72 provided that: “Regulations implementing the provisions of section 7(c) of this Act [subsec. (c) of this section] shall be issued and take effect not later than January 1, 1980.”

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, with exception of functions conferred upon President under subsec. (d)(2) of this section which were reserved to President.

ADEQUACY OF EXISTING STATUTORY RESTRICTIONS ON EXPORT OF CRUDE OIL PRODUCED IN CONTIGUOUS UNITED STATES IN PROTECTING ENERGY AND NATIONAL SECURITY INTEREST AND AMERICAN CONSUMER; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES

Section 2424(b) of Pub. L. 100-418 directed Secretary of Commerce, in consultation with Secretary of Energy, to submit to Congress not later than 12 months after Aug. 23, 1988, a report containing results of a comprehensive review undertaken to assess whether existing statutory restrictions on export of crude oil produced in contiguous United States were adequate to protect energy and national security interests of United States and American consumers, taking into account such things as adequacy of domestic supplies of crude oil and refined petroleum products in meeting national security as well as consumer needs in the United States generally and on West Coast particularly, and further provided for public hearing and comment on this review as well as consultation with other Federal agencies and committees of Congress.

MONITORING OF WOOD EXPORTS

Section 2432 of Pub. L. 100-418 directed Secretary of Commerce, for a period of 2 years beginning on Aug. 23, 1988, to monitor exports of processed and unprocessed wood to all countries of the Pacific Rim, and to include results of such monitoring in monthly reports to Congress, setting forth, with respect to each item monitored, actual exports, destination by country, and domestic and worldwide price, supply, and demand.

UNPROCESSED RED CEDAR EXEMPT FROM EXPORT REGULATIONS

Pub. L. 98-411, title V, §514, Aug. 30, 1984, 98 Stat. 1575, provided that: “None of the funds appropriated or made available by this Act [Pub. L. 98-411] may be used to enforce or give effect to any restriction on the export of unprocessed western red cedar harvested from State lands pursuant to a harvesting contract entered into prior to October 1, 1979.”

Pub. L. 96-126, title III, §308, Nov. 27, 1979, 93 Stat. 980, provided that: “Notwithstanding the provisions of any other law, the State of Alaska is exempted from application of the provisions of section 7(i) of the Export Administration Act of 1979 (Public Law 96-72) [subsec. (i) of this section].”

In making continuing appropriations for fiscal year 1981, Pub. L. 96-536, §§101(o), 102, Dec. 16, 1980, 94 Stat. 3169, as amended by Pub. L. 97-12, §401, June 5, 1981, 95 Stat. 95, provided in part for the period Dec. 15, 1980, to Sept. 30, 1981: “such amounts as may be necessary for programs, projects, and activities provided for in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1981 (H.R. 7584), to the extent and in the manner provided for in such Act as enacted by the Congress.” H.R. 7584, which was enacted by the Congress and vetoed by the President Dec. 13, 1980, contained a section 610 that read: “None of the funds appropriated or made available by this Act may be used to enforce or give effect

to the quantitative restrictions required to be imposed by subsection 7(i)(1) of the Export Administration Act of 1979 (Public Law 96-72) [subsec. (i)(1) of this section] in any way which would make such restrictions applicable to the export of: (a) up to ninety million board feet (computed without regard to exports or export authorizations made prior to the effective date of this Act) of unprocessed western red cedar harvested from State or Federal lands pursuant to a harvesting contract entered into prior to October 1, 1979, or any extension thereof; or (b) lumber of American Lumber Standards Grades of Number 3 dimensions or better, of Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better." Continuing appropriations for fiscal year 1982 were made, subject to specified provisions and under the authority and conditions provided in the above cited appropriation Act for fiscal 1981, as follows: For the period Oct. 1, 1981, to Dec. 15, 1981, by Pub. L. 97-51, §§101(a)(1), (4), 102, Oct. 1, 1981, 95 Stat. 958, 959, 961, as amended by Pub. L. 97-85, Nov. 23, 1981, 95 Stat. 1098; and for the period Dec. 15, 1981, to Sept. 30, 1982, by Pub. L. 97-92, §§101(h), 102, Dec. 15, 1981, 95 Stat. 1190, 1193, as amended by Pub. L. 97-161, Mar. 31, 1982, 96 Stat. 22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2405, 2413, 2414 of this Appendix; title 7 section 1736f-1; title 16 sections 620c, 620j; title 26 section 993.

§ 2407. Foreign boycotts

(a) Prohibitions and exceptions

(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act [section 2402(5)(A) or (B) of this Appendix], the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country