

19 February 1987
OCA 87-0540

MEMORANDUM FOR: Chief, Technology Transfer Assessment Center/DI
Chief, Intelligence Community Affairs/OGC

FROM: Legislation Division STAT
Office of Congressional Affairs

SUBJECT: Trade and International Economic Policy Reform
Act of 1987, H.R. 3

Attached is a copy of the portion of the above-captioned bill which deals with national security controls on exports. Because the Administration is scheduled to present its omnibus trade bill to Congress on 19 February 1987, it is uncertain at this point whether the House will mark up this bill or begin anew. However, as the House will be conducting hearings on the various proposals to revise the trade laws on 18 February 1987, I ask that you review the attachment and let me know at your earliest convenience if there are any problems.



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Attachment:
as stated

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1 change must result through convenience or increased
2 efficiency of transportation in lower prices for consum-
3 ers of petroleum products in the United States as de-
4 scribed in paragraph (2)(A)(ii) of this subsection, or

5 “(B) crude oil which is temporarily exported for
6 convenience or increased efficiency of transportation
7 across parts of an adjacent foreign country and reen-
8 ters the United States.”.

9 **SEC. 322. NATIONAL SECURITY CONTROLS.**

10 (a) **MULTIPLE LICENSE AUTHORITY.**—Section
11 4(a)(2)(A) of the Export Administration Act of 1979 (50
12 U.S.C. App. 2403(a)(2)(A)) is amended in the first sentence
13 by inserting “(except the People’s Republic of China)” after
14 “controlled countries”.

15 (b) **AUTHORITY FOR REEXPORTS.**—Section 5(a) of
16 such Act (50 U.S.C. App. 2404(a)) is amended by adding at
17 the end the following:

18 “(4) No authority or permission to reexport any goods
19 subject to the jurisdiction of the United States may be
20 required—

21 “(A) to or from any country which maintains
22 export controls on such goods cooperatively with the
23 United States pursuant to the agreement of the group
24 known as the Coordinating Committee or pursuant to
25 an agreement described in subsection (k) of this sec-

1 tion, except that the Secretary may require a license
2 for the reexport of such goods to such end users as the
3 Secretary may specify by regulation, or

4 “(B) from any country when the goods to be reex-
5 ported are incorporated in other goods and—

6 “(i) do not exceed \$10,000 in value, and

7 “(ii) do not constitute more than 20 percent
8 of the value of the goods in which they are
9 incorporated.”.

10 (c) EXPORTS OF LOW TECHNOLOGY ITEMS.—Section
11 5(b)(2) of such Act (50 U.S.C. App. 2404(b)(2)) is amended to
12 read as follows:

13 “(2) No authority or permission to export may be re-
14 quired under this section for the export to any country other
15 than a controlled country of any goods or technology which is
16 at such a level of performance characteristics that the export
17 of the goods or technology, were it made pursuant to the
18 agreement of the group known as the Coordinating Commit-
19 tee, would require only notification of participating govern-
20 ments of the Committee. The Secretary may require any
21 person exporting any such goods or technology to a country
22 other than a controlled country to notify the Department of
23 Commerce of those exports.”.

24 (d) LIST REVIEWS.—

1 (1) CONTROL LIST.—Section 5(c)(3) of such Act
2 (50 U.S.C. App. 2404(c)(3)) is amended—

3 (A) in the first sentence—

4 (i) by striking “shall review” and insert-
5 ing “shall conduct partial reviews of”; and

6 (ii) by striking “year” and inserting
7 “calendar quarter”;

8 (B) in the second sentence—

9 (i) by striking “annual” the first place it
10 appears and inserting “quarterly”; and

11 (ii) by striking “annual” the second
12 place it appears;

13 (C) in the third and fifth sentences by strik-
14 ing “such” and inserting “each”; and

15 (D) by adding at the end the following: “All
16 goods and technology on the list shall be reviewed
17 at least once each year.”.

18 (2) LIST OF MILITARILY CRITICAL TECHNOL-
19 OGIES.—Section 5(d)(5) of such Act (50 U.S.C. App.
20 2404(d)(5)) is amended in the first sentence by striking
21 “at least annually” and inserting “on an ongoing
22 basis”.

23 (e) CONTROL LIST REDUCTION.—Section 5(c) of such
24 Act (50 U.S.C. App. 2404(c)) is amended by adding at the
25 end the following:

1 “(4) The Secretary, in consultation with the Secretary
2 of Defense, shall, on the basis of subsections (b)(2), (f), (g),
3 and (m) of this section, and on the basis of such other criteria
4 and procedures as the Secretary, in consultation with the
5 Secretary of Defense, considers appropriate, identify those
6 goods subject to export controls under this section which con-
7 tribute least directly to the military potential of any con-
8 trolled country and which in the aggregate constitute ap-
9 proximately 40 percent of all goods subject to export controls
10 under this section. The goods so identified shall include all
11 medical instruments and equipment, and goods so widely
12 available to the general public in retail outlets that the export
13 controls on those goods are rendered ineffective in achieving
14 their purpose. The number of goods subject to export controls
15 under this section shall be determined on the basis of Sched-
16 ule B of the Statistical Classification of Domestic and For-
17 eign Commodities Exported by the United States (as issued
18 by the Bureau of the Census). The Secretary shall submit to
19 the Congress and to the Coordinating Committee, within 1
20 year after the date of the enactment of this subsection, a list
21 of the goods identified under the first sentence (by the Sched-
22 ule B number referred to in the third sentence), together with
23 the total number of goods subject to export controls under
24 this section. Notwithstanding any other provision of this Act,

1 of the total number of goods subject to export controls under
2 this section (as submitted under the preceding sentence)—

3 “(A) 10 percent of such goods, as identified by
4 the Secretary at the time the list is submitted, shall,
5 90 days after the date of submission of the list, no
6 longer be subject to export controls under this section
7 and shall, at the end of that 90-day period, be removed
8 from the control list;

9 “(B) an additional 10 percent of such goods, as
10 identified by the Secretary at the time the list is sub-
11 mitted, shall, 1 year after the end of the 90-day period
12 referred to in subparagraph (A), no longer be subject to
13 export controls under this section and shall, at the end
14 of that 1-year period, be removed from the control list;
15 and

16 “(C) an additional number of such goods, consti-
17 tuting approximately 20 percent of such goods, shall, 2
18 years after the end of the 90-day period referred to in
19 su^l aragraph (A), no longer be subject to export con-
20 trols under this section and shall, at the end of that 2-
21 year period, be removed from the control list,

22 except to the extent a law is enacted retaining export con-
23 trols on any goods referred to in subparagraph (A), (B), or
24 (C), as the case may be.”.

25 (f) FOREIGN AVAILABILITY.—

1 (1) AVAILABILITY IN PARTICULAR COUN-
2 TRIES.—Section 5(f) of the such Act (50 U.S.C.
3 2404(f)) is amended—

4 (A) in the first sentence of paragraph (1) by
5 inserting “including sources within any such coun-
6 try and” after “sources outside the United
7 States,”;

8 (B) in the second sentence of paragraph
9 (1)—

10 (i) by striking “controlled countries”
11 and inserting “a country to which exports
12 are controlled under this section”; and

13 (ii) by inserting “to that country” before
14 “during the period of such foreign availabil-
15 ity”;

16 (C) in paragraph (4), by inserting in the first
17 sentence “with respect to controlled countries
18 (other than the People’s Republic of China)” after
19 “maintained under this section”;

20 (D) by redesignating paragraphs (5) through
21 (7) as paragraphs (6) through (8), respectively;
22 and

23 (E) by inserting after paragraph (4) the
24 following:

1 “(5) In any case in which export controls on goods or
2 technology are maintained under this section with respect to
3 the People’s Republic of China or any other country other
4 than a controlled country notwithstanding foreign availability
5 to that country, on account of a determination of the Presi-
6 dent that the absence of the controls would prove detrimental
7 to the national security of the United States, the Secretary of
8 State shall actively pursue negotiations under subsection (k)
9 with the government of the country involved. One goal of
10 such negotiations shall be to secure the cooperation of that
11 country in imposing and enforcing export controls, compara-
12 ble to those imposed under this section, on the export of the
13 goods or technology with respect to which there is foreign
14 availability to that country. If an agreement is reached pur-
15 suant to such negotiations and the Secretary of State deter-
16 mines, 1 year after the country involved has maintained such
17 export controls, that such controls are comparable to those
18 imposed under this section, the Secretary may not, while that
19 determination is effective, require a validated license for the
20 export of the goods or technology involved to that country.”.

21 (2) FOREIGN AVAILABILITY DETERMINA-
22 TIONS.—Section 5(f)(3) of such Act (50 U.S.C. App.
23 2404(f)(3)) is amended by inserting after the second
24 sentence the following:

1 "In a case in which an allegation is received from an export
2 license applicant, the Secretary shall respond in writing to
3 the applicant, and publish in the Federal Register, within 30
4 days after receipt of the allegation, that—

5 " (A) the foreign availability does exist and the re-
6 quirement of a validated license has been removed or
7 the applicable steps are being taken under paragraph
8 (4) or (5);

9 " (B) the foreign availability may exist but further
10 examination of the issue is necessary in order to make
11 a determination; or

12 " (C) the foreign availability does not exist.

13 In the case in which subparagraph (B) applies, the Secretary
14 shall, within 6 months after the initial response and publica-
15 tion, respond in writing to the applicant and publish in the
16 Federal Register, that—

17 " (i) the foreign availability does exist and the re-
18 quirement of a validated license has been removed or
19 the applicable steps are being taken under paragraph
20 (4) or (5); or

21 " (ii) the foreign availability does not exist.

22 In any case in which the publication is not made within that
23 6-month period, the Secretary may not require a license for
24 the export of the goods or technology with respect to which
25 the foreign availability allegation was made."

1 (3) TECHNICAL ADVISORY COMMITTEE DETER-
2 MINATIONS.—Section 5(h)(6) of such Act (50 U.S.C.
3 App. 2404(h)(6)) is amended—

4 (A) in the first sentence by striking “con-
5 trolled countries, from sources outside the United
6 States,” and inserting “a country to which ex-
7 ports are controlled under this section, from
8 sources outside the United States, including
9 sources within any such country and”;

10 (B) in subparagraph (A) by inserting “to the
11 country involved” after “goods or technology”;

12 (C) in subparagraph (B) by striking “or” and
13 inserting “in a case in which foreign availability
14 exists to controlled countries (other than the Peo-
15 ple’s Republic of China),”;

16 (D) by redesignating subparagraph (C) as
17 subparagraph (D); and

18 (E) by inserting after subparagraph (B) the
19 following:

20 “(C) negotiations in accordance with subsection
21 (f)(5) are being conducted in the case of foreign avail-
22 ability to the People’s Republic of China or any other
23 country other than a controlled country, or”.

1 (4) TECHNICAL AMENDMENT.—Section 14(a)(8)
2 of such Act (50 U.S.C. App. 2413(a)(8)) is amended by
3 striking “5(f)(5)” and inserting “5(f)(6)”.

4 (g) DEFINITION OF AVAILABILITY.—Section 5 of such
5 Act (50 U.S.C. App. 2404) is amended by adding at the end
6 the following:

7 “(r) AVAILABILITY DEFINED.—For purposes of subsec-
8 tions (d), (f), and (h) of this section, the term ‘available in fact
9 to controlled countries’ includes availability of any goods or
10 technology in any country—

11 “(1) from which the goods or technology is not re-
12 stricted for export to any controlled country; or

13 “(2) in which such export restrictions are deter-
14 mined by the Secretary of Commerce to be ineffec-
15 tive.”.

16 (h) INDUSTRY REPRESENTATIVE TO CoCOM.—Section
17 5(i) of such Act (50 U.S.C. App. 2404(i)) is amended by
18 adding at the end the following:

19 “For purposes of reviews of the list referred to in paragraph
20 (1), the President shall include as part of the United States
21 delegation to the Coordinating Committee representatives of
22 industry who are knowledgeable with respect to the items
23 being reviewed.”.

1 **SEC. 323. ENFORCEMENT.**

2 Section 12(a)(2)(B) of the Export Administration Act of
3 1979 (50 U.S.C. App. 2411(a)(2)(B)) is amended by adding
4 at the end the following: "The Customs Service may not
5 seize or detain for more than 10 days any shipment of goods
6 or technology which the Secretary has determined are eligi-
7 ble for export under a general license under section 4(a)(3).".

8 **SEC. 324. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) **IN GENERAL.**—Section 18(b) of the Export Admin-
10 istration Act of 1979 (50 U.S.C. App. 2417(b)) is amended to
11 read as follows:

12 "(b) **AUTHORIZATION.**—There are authorized to be ap-
13 propriated to the Department of Commerce to carry out the
14 purposes of this Act—

15 "(1) \$40,935,000 for the fiscal year 1987, of
16 which \$12,746,000 shall be available only for enforce-
17 ment, \$2,000,000 shall be available only for foreign
18 availability assessments under subsections (f) and (h)(6)
19 of section 5, and \$26,189,000 shall be available for all
20 other activities under this Act;

21 "(2) \$40,935,000 for the fiscal year 1988, of
22 which \$12,746,000 shall be available only for enforce-
23 ment, \$2,000,000 shall be available only for foreign
24 availability assessments under subsections (f) and (h)(6)
25 of section 5, and \$26,189,000 shall be available for all

1 “(3) such additional amounts for each of the fiscal
2 years 1987 and 1988 as may be necessary for in-
3 creases in salary, pay, retirement, other employee ben-
4 efits authorized by law, and other nondiscretionary
5 costs.”.

6 (b) **ENFORCEMENT ACTIVITIES OF THE CUSTOMS**
7 **SERVICE.**—Section 12(a)(6) of the Export Administration
8 Act of 1979 (50 U.S.C. App. 2411(a)(6)) is amended by strik-
9 ing “\$12,000,000 in the fiscal year 1985 and not more than
10 \$14,000,000 in the fiscal year 1986” and inserting
11 “\$14,000,000 in the fiscal year 1987 and not more than
12 \$14,000,000 in the fiscal year 1988”.

13 (c) **EFFECTIVE DATE.**—The amendments made by this
14 section shall take effect on October 1, 1986.

15 **SEC. 325. GAO REPORT.**

16 The Comptroller General of the United States shall con-
17 duct an evaluation of activities of the Department of Defense
18 conducted pursuant to the Presidential Directive of January
19 4, 1985, regarding the review of export license applications,
20 under the Export Administration Act of 1979, for the export
21 of goods and technology to countries other than controlled
22 countries. One purpose of the evaluation is to determine if
23 Department of Defense activities provide information about
24 the diversion of United States technology from sources out-
25 side the United States to controlled countries that would not

1 otherwise be available to other agencies with enforcement
2 responsibilities under that Act. The evaluation shall include a
3 review of all Department of Defense activities in determining
4 export control policy, making foreign availability determina-
5 tions, and reviewing the control list, and the relationship be-
6 tween the Department of Defense and other agencies respon-
7 sible for implementing the Export Administration Act of
8 1979. In conducting the evaluation, the Comptroller General
9 shall make a special effort to gather information from United
10 States exporters, particularly those that have had applica-
11 tions for proposed exports to countries other than controlled
12 countries reviewed by the Department of Defense. The
13 Comptroller General shall submit a report on the evaluation
14 to the Congress not later than 6 months after the date of the
15 enactment of this Act. If necessary, the report may be sub-
16 mitted on a classified basis.

17 **Subtitle C—Debt, Development, and**
18 **World Growth**

19 **SEC. 331. INTERNATIONAL NEGOTIATIONS.**

20 (a) **MULTILATERAL NEGOTIATIONS.**—The President
21 and the Secretary of the Treasury shall take the necessary
22 steps to continue ongoing negotiations with West Germany,
23 the United Kingdom, France, and Japan, as well as to initi-
24 ate negotiations with other countries through appropriate
25 multilateral organizations, including the Organization for