論説

アメリカの輸出法制

―殊に一九八五年の輸出管理法修正について―

越川純吉

付録　TITLE I—AMENDMENTS TO EXPORT ADMINISTRATION OF 1979
TITLE II—EXPORT PROMOTION PROGRAMS
TITLE III—NUCLEAR AGREEMENTS FOR COOPERATION

論　　説

序

一九八五年は、日米間の貿易摩擦が新聞・雑誌・テレビ・ラジオで盛に論ぜられた。そしてその議論は経済面が主である。日本では、政治と法律がそのまま直結するとは限らない。法律は、「たて前」で、政治の本音と異る。しかし、アメリカでは、経済が政治問題化すると、法律になる。法律は、アメリカの政治を示すといって過言ではない。故に、この際、アメリカの輸出法制、殊に一九八五年の法律を研究するのは、十分な意義があると思う。

一、輸出統制計画

(一)　一九四九年輸出統制法

一九四九年輸出統制法（Export Control Act of 1949）は、平和時の輸出の抑制を定めた最初の法律である。アメリカは、当時輸出促進を重要視しないで、むしろ、米ソ間の冷戦を背景に、輸出を抑制する処置として、輸出許可制をとった。同法は、不足物資の枯渇を防止することと、共産圏に対し軍事戦略物資の禁輸を目的とした。アメリカは、同盟国による輸出抑制を促進するため、対共産圏輸出統制委員会（ココム COCOM, the Coodinating Committee for Maltilateral Export Controls の略）の設立に参加した。現在その加盟国は、ベルギー、カナダ、デンマーク、フランス、西ドイツ（西ベルリンを含む）、ギリシヤ、イタリー、日本、ルクセンブルク、オランダ、ノ

ルウェー、ポルトガル、トルコ、イギリス、アメリカ合衆国の一五ケ国である。同法は、ソ連圏の輸出に対し、軍事の観点から、調査し、第二次世界大戦後の世界にわたる物資の不足を処理した。

一九六〇年代に入ると、日本や西欧諸国の経済復興によって、アメリカの物資の供給者としての地位の低下、ソ連の工業の発達が同法により妨げられなかった事情が生じ、ココム加盟国の協力が弱った状況の上に、アメリカにとって、東西貿易が重要になって来た。

(二) 一九六九年輸出管理法

一九六九年輸出管理法 (Export Administration Act of 1969) は、前述の経済社会の変化に伴い制定された。アメリカの輸出政策を自由化し、物資や技術の輸出を軍事の目的を除き許し、輸出許可制度を開放した。輸出許可の基準に関する情報を得る権利、不許可・許可遅延の理由を知る権利を輸出者に与えた。

(三) 一九七二年均等輸出機会法

次に、一九七二年均等輸出機会法 (Equal Export Opportunity Act of 1972) は、安全保障を危険にする外、外国からの入手可能な物資について抑制を撤廃した。

(四) 一九七四年輸出管理法修正

一九七四年輸出管理法修正は、具体的に供給不足の物資の供給を確保すること、過度の海外需要のためアメリカにインフレを生ずることを防ぐことを目的とした。

(五) 一九七七年輸出管理法修正

続いて、一九七七年輸出管理法修正 (Export Administration Act Amendments of 1977) は、主として外国のボイコット (foreign boycotts) を規定する。供給不足の理由に基づき特定の産品について、輸出規制を課するこ

とを法律上義務づけた。更に外国からの代替入手可能性（foreign availability）の問題についても規定した。

(六)　一九七九年輸出管理法

アメリカは、輸出を強化する必要に迫られ、輸出抑制に対する批判が出て、ここに、一九七九年輸出管理法（Export Administration Act of 1979）が誕生する。

同法は、輸出業者に対し、抑制物資リスト（CCL, Commodity Control List）の作成過程に参加すると同時に、輸出許可申請拒絶の場合担当政府機関に具体的情報による説明を求めることとした。輸出の抑制は、国家安全保障、外交政策目的の推進、物資供給不足の場合の国内経済保護などのため必要な限度に課する。

第一に、資格付与付一般免許（qualified license）制を創設し、この免許を多数の品目に与え、有効免許（validated license）を要する個別品目を削減した。

第二に、免許手続の遅れをなくすため、期限を設けた。

第三に、対外政策のため統制の基準と手続上の要件とを定めた。国防省が国家安全保障のため、軍事重要技術リスト（MCTL, Militarily Critical Technologies List）を作成することを定めている（第五条(a)）。

本法は、輸出拡大の必要と輸出統制の要請との相反する目的を適当に、均衡をとろうとしているが、その均衡をとれなく、目的を果してない。(注)

〔注〕

本法及びその改正案については、一九八三年十一月二十二日、名古屋市所在県職員会館において、時事ゼミナー（Current Affairs Seminars）において報告をした際、次のレジメで説明した。越川、アメリカの貿易法制(一)中京法学第十八巻第三号（一九八四年）十一頁以下参照。

EXPORT ADMINISTRATION ACT OF 1979.

Ⅰ Introductory Structure of the Act

Ⅱ Commerce vs. Defense

Ⅲ Fighting Over Priorities

Ⅳ Commerce Controls

Ⅴ Foreign Policy

Ⅵ Enforcement

Ⅶ Proposals for Revision of Export Act

(1) Garn Bill

(2) Heinz Bili

(3) Bonker Bill

(4) Nunn, Byron & Berman-other Proposals

Ⅷ Export Administration Act Extension Cleared

セキ・アンド・ジャービス法律事務所著、田中誠一監訳、日本企業のための対米投資・取引の法と実務、東洋経済新報社昭和六〇年七月発行は SEKI & JARVIS, Current Legal Issues in United States-Japan Commercial Transactions: A Practical Analysis and Summarizaton, Draft Compilation of Articles Prepared in Connection with Legal Seminars Held in Japan in February, 1984. の全訳で、第一八章に「アメリカにおける輸出規制の現状」（三八〇頁以下）がある。

How to save the International Trading System.U. S. Congress, Joint Economic Committee. Hearings, Apr. 26, June 12, Sept. 20, 1984.

The Industrial Future of the Pacific Basin, ed. by Roger Bnjamin and Robert Kudrle, Westview Press, 1984.

Operation of the Trade Agreements Program, 36th Report, 1984. U. S. Intenrnational Trade Commission, 1985.

Uneasy Partnership: Competition and Conflict in U. S.-Japanese Trade Relations, by Stephen Cohen, 1985.

Unfair Foreign Trade Practices; Criminal Components of America's Trade Problem, U. S. House Committee on

Energy and Commerce, 1985.
U. S.-Japan Trade. U. S. Senate Committee on Finance. Hearing, March 8, 1985.

(七)　一九八五年輸出管理法修正

一九八五年七月一二日成立した輸出管理修正法は、二つの関心事すなわち通商（貿易）上の見込み増進と国家治安保護との間の均衡をとった。

本法は、ココムCOCOM諸国（日本の外、ベルギー、カナダ、デンマーク、フランス、ドイツ連邦国「西ベルリンを含む」、ギリシア、イタアリー、ルクセンブルグ、オランダ、ノルウエー、トルコ、イギリス王国、北米合衆国）の協同者に対する輸出免許要件廃止と免許手続期間の短縮によって、合衆国の競争力を増加せしめる。

二、一九八五年法における主要修正

新法は、一九七九年法に対し五五修正又は追加を規定した。その主要な点は、(1)ココム諸国に対する低度技術商品輸出の無規制「埋め込みマイクロプロセッサー（an embedded microprocessor）を含む」の単なる基礎の上に規制を課することの禁止、(2)三分の一に免許手続の短縮、(3)外交政策の実現される際、契約不可侵の保証、(4)外国の入手可能性を除去すべく交渉要請、(5)分配免許に対する基準改訂、(6)ココムを強化すべく新品目追加、(7)外交政策を輸出規制に課する前に大統領に決定せしめる要請、(8)規制を課したり規則を発布する際に相談の拡大と要件の報告である。殊に契約不可侵の分野では、大統領は、合衆国の戦略利害がおびやかされる場合にのみ現存契約を破棄することが許される。本法は結局、書類作業が減少されるが、輸出管理の責任を増加しているということができる。

レーガン大統領は、一九八五年九月七日、四ケ国（日本、欧州共同体「EC」、ブラジル、韓国）五項目（日本の

たばこの製造制限および皮革輸入制限を含む）について、一九七四年通商法第三〇一条を発動し、不公正貿易を調査、対抗措置をとると発表した。さらに自由貿易を堅持し、議会の審議中の保護貿易主義法案に強く反対した。大統領が自ら右通商法を発動したのは、始めてであって、大統領の強い決意をうかがうことができる。(注)

〔注〕

U. S.-Japan Trade Ties: Tight to Tout, The Japan Times, Sep. 11, 1985, p. 14.

中日新聞、昭和六〇年九月八日第一、第二面、九月一〇日第五面の社説参照。

米通商代表部（USTR）は、一九八五年（昭和六〇年）一〇月三〇日議会に第一回年次報告「外国市場の貿易障壁」についてを提出した。これは、一九八四年成立した通商関税法第三〇三条（Section 303 of the Trade and Tariff Act of 1984）により要請されている報告である。その報告によると次の通りである。

合衆国の日本に対する取引赤字は、一九八四年三七〇億ドル（$37 billion）である。（アメリカの対日輸出二六〇億ドルである）。日本に対するアメリカの主要輸出品は、農産物と原料、アメリカに対する主要輸出は、自動車、ビディオ・カセット、（video cassette）テープ・レコーダー（tape recorders）、トラック、事務器機及び部分品である。アメリカの日本市場に対する接近強制に日本は、日本だけ自由取引方策として関税引下げや非関税障壁の除去に向けられている。(注)

〔注〕

ANNUAL REPORT ON NATIONAL TRADE ESTIMATES.

市場適応化部門選択（Market-Oriented Sector-Selective, 略称 MOSS）の交渉は市場重視型個別協議すなわ

ち個別の市場の開放をめぐる交渉で、一九八五年一月に中曽根首相とレーガン大統領の会談で始まった。主要な部門（Inital sectors）として、遠隔通信（telecommunications）、電子工学（electronics）、林産物（forest products）、医療機器・医薬品（medicalequipment and pharmaceuticals）が選ばれ、殆んど決着している。米政府は日本の市場開放を促すに、モス（MOSS）が効果あると判断して、新部門を示し解決する方向にある。

米通商代表部次席法務担当アメリア・ポルゲスは、昭和六〇年一一月一八日、日本経済新聞第一五面に「日米摩擦―法律意識の違いから」と題して「日米間の貿易摩擦の特色、とりわけその法的側面について検討したいと思う。」「九月に発表されたレーガン政権の新通商政策は、本質的に法律重視であり、対日報復法案の議会審議を通じて表明された。ひとたび経済問題が政治問題化すれば、その趣旨は法体系に盛り込まれる。経済が政治になれば政治はすぐ法律となる。」「米国人は手の込んだ通商法規の骨格をつくり、貿易を〝フェア〟か〝アンフェア〟かに類別する。アンフェアな貿易を罰し、フェアな貿易は放任するのがそのやり方である」「逆に日本の輸出業者は、自発的な輸出制限の方が反ダンピングの決定のような明確な結末より企業にとって都合のよいような時、米国の通商法規が厳格なため、自主的輸出制限による妥協で解決することがむずかしいとの不満を抱いていた。」と説いている。

このような日米摩擦を法律意識の違いから処理しようとする説明態度は面白い。日本では貿易問題を経済の面より把握し、法律面より処理しようとすることは殆んどなく、従って貿易法制を取扱った研究は、貿易経済を扱った研究に比し、極端に少ない。その上アメリカで経済問題が政治問題になれば、法律問題になるというのも面白い。日本では、「本音」と「建前」とがあり（例として、公職選挙法の連座制）、貿易についても、貿易法制は建前で、貿易経済は本音である。貿易法制は、一応整っておればよく、貿易経済が企業にとってよければよいと考えている。政治が法になるとは、考えられないのである。

〔注〕

上院の共和、民主両党有力議員が一九八五年一一月二〇日「一九八五年貿易強化法案」を上院財務委員会に提出（中日新聞同月二一日夕刊第四面）。

結び

輸出管理法は、大統領が外交政策、国家安全保障、供給不足などを理由として輸出制限を命令できる法律といえよう。今まで(1)カーター大統領（Cater President）が一九七九年ソ連のアフガニスタン侵略を理由に穀物を禁輸し、(2)レーガン大統領（Reagan President）が一九八二年対ソパイプラインを禁輸したことがある。アメリカの輸出法制は、他の英米法制と同じく理解しにくい。ただ、輸出法制は、輸出の規制と国防との異る二つの目的を追求するより国防は、国家安全保障法にゆずり、輸出法制は経済上の貿易に限定する方がよいだろう。二兎を追う者は一兎をも得ないからである。議会の法律案並びに成立した法律を研究することによって、アメリカの政治が理解できるので、今日日本でも貿易の研究には、経済議論の外にアメリカ貿易法制を研究することが必要である。アメリカ政府は、モス（MOSS）の新部門を求めてくる方向にある。その上、日米貿易委員会で外国人弁護士の活動自由化・ワイン関税の引き下げ・米国製自動車部品の輸入拡大・ソーダ灰の輸入促進・農産物十三品目輸入自由化が議題になっておる。日本政府として、これら日米通商協議に入る際、アメリカの貿易法制がどうなっているかを知っておく実際上の必要がある。アメリカの輸出法制の研究は、輸出法理・アメリカの政治の理解、更に日米貿易の実務上重要である。

附記―本稿は一九八五年十二月一八日中京大学英米法研究会で左記のレジメで発表し、それに加筆したものである。

（昭和六一年一月二七日稿了）

Export Law

Especially,
Export Administration Amendments
Act of 1985

Dec. 18, 1985
at Anglo American
Study Meeting

by Junkichi Koshikawa

I. Export Controls Program

Export Control Act of 1949
Export Administration Act of 1969
Export Administration Act of 1979
Export Administration Amendments Act of 1985
(1) promoting commercial prospect
(2) safeguarding national security

II. Major Changes in the Act of 1985

(1) Licensing Requirements for Cocom Countries Liberalized
(2) Processing Deadlines Shortened
(3) Third Country Negotiations
(4) Foreign Availability Provisions
(5) Classification Requests
(6) Foreign Policy Controls
(7) Enforcement Provisions Strengthened

付 録

TITLE I – AMENDMENTS TO EXPORT ADMINISTRATION ACT OF 1979

TITLE II – EXPORT PROMOTION PROGRAMS

SEC. 201. REQUIREMENT OF PRIOR AUTHORIZATION
SEC. 202. AUTHORIZATION OF APPROPRIATIONS
SEC. 203. BARTER ARRANGEMENTS

TITLE III – NUCLEAR AGREEMENTS FOR COOPERATION

SEC. 301. AGREEMENTS FOR COOPERATION

次に、第一〇八条・第一一三条・第一一六条・第一一九条・第一二〇一条の正文を示す。

SEC. 108. FOREIGN POLICY CONTROLS

(a) AUTHORITY. – Section 6(a) (50 U.S.C. App. 2405(a) is amended –

(1) in paragraph (1) –

(A) by striking out "or (8)" and inserting in lieu thereof "(8), or (13)"; and

(B) by inserting in the second sentence after "Secretary of State" the following: ", the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative,";

(2) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

(3) by inserting after paragraph (1) the following new paragraph:

"(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity."; and

(4) in paragraph (3), as redesignated by paragraph (2) of this subsection, by striking out "(e)" and inserting in lieu thereof "(f)".

(b) CRITERIA. – Section 6(b) is amended to read as follows:

"(b) CRITERIA. – (1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that –

"(A) such controls the likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

"(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

"(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

"(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

"(E) the United States has the ability to enforce the proposed controls effectively.

"(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls."

(c) CONSULTATION WITH INDUSTRY. – Section 6(c) is amended to read as follows:

"(c) CONSULTATION WITH INDUSTRY. – The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.".

(d) CONSULTATION WITH OTHER COUNTRIES. – Section 6 is amended –

(1) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d) CONSULTATION WITH OTHER COUNTRIES. – When imposing export controls under this section, the President shall, at the earliest appropriate opportunity; consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.".

(e) CONSULTATION WITH THE CONGRESS. – Section 6(f), as redesignated by subsection (d) of this section, is amended to

read as follows:

"(f) CONSULTATION WITH THE CONGRESS. – (1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report –

"(A) specifying the purpose of the controls;

"(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

"(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

"(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

"(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

"(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.

"(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

"(5) In addition to any written report required under this section, the Secretary, not less frequently than annually, shall present

in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.".

(f) EXCLUSION OF CERTAIN ITEMS FROM FOREIGN POLICY CONTROLS. – Section 6(g), as redesignated by subsection (d) of this section, is amended –

(1) by inserting after the first sentence the following: "This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs."; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.".

(g) FOREIGN AVAILABILITY. –

(1) IN GENERAL – Section 6(h), as redesignated by subsection (d) of this section, is amended –

(A) by inserting "(1)" immediately before the first sentence; and

(B) by adding at the end of the following:

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

"(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside

the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (*l*) of this section if the Secretary determines that such action is appropriate.

"(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.".

(2) AMENDMENTS NOT APPLICABLE TO CERTAIN EXISTING CONTROLS. – The amendments made by paragraph (1) of this subsection shall not apply to export controls in effect under subsection (i), (j), or (k) of section 6 of the Export Administration Act of 1979 (as redesignated by subsection (d) of this section) immediately before the date of the enactment of this Act, or to export controls made effective by subsection (i)(2) of this section or by section 6(n) of the Export Administration Act of 1979 (as added by subsection (*l*)(1) of this section).

(h) INTERNATIONAL OBLIGATIONS. – Section 6(i), as redesignated by subsection (d) of this section, is amended by striking out "(f), and (g)" and inserting in lieu thereof "(e), (g), and (h)".

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM. – Section 6(j), as redesignated by subsection (d) of this section, is amended to read as follows:

"(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM. – (1) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

"(A) Such country has repeatedly provided support for acts of international terrorism.

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

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

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

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

(j) CRIME CONTROL INSTRUMENTS. –

(1) CONCURRENCE OF SECRETARY OF STATE. – Section 6(k)(1), as redesignated by subsection (d) of this section, is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this Act –

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

"(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.".

(2) APPLICABILITY OF AMENDMENT. – The amendment made by paragraph (1) of this subsection shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act.

(k) CONTROL LIST. – Section 6(*l*), as redesignated by subsection (d) of this section, is amended –

(1) in the first sentence by striking out "commodity"; and

(2) by amending the second sentence to read as follows: "The Secretary shall clearly identify on the control list which goods or technology, and which countries of destinations, are subject to which types of controls under this section.".

(*l*) ADDITIONAL PROVISIONS ON FOREIGN POLICY CONTROLS. –

(1) CONTRACT SANCTITY, EXTENSION OF CERTAIN CONTROLS, AND EXPANDED AUTHORITY. – Section 6 is amended by adding at the end the following:

"(m) EFFECT ON EXISTING CONTRACTS AND LICENSES. – The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other infomation –

"(1) In performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology,

or other information, or

"(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that –

"(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

"(B) the prohibition or curtailmentr of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

"(C) the export controls will continue only so long as the direct threat persists.

"(n) EXTENSION OF CERTAIN CONTROLS. – Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

"(o) EXPANDED AUTHORITY TO IMPOSE CONTROLS. – (1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs to the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

"(2) For purposes of this subsection, the term 'joint resolution' means a joint resolution the matter after the resolving clause of which is as follows: 'That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.', with the date of the receipt of the determination and report inserted in the blank.

"(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either

House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.".

(2) APPLICABILITY OF AMENDMENTS. – Subsections (m) and (o) of section 6 of the Export Administration Act of 1979, 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, or to export controls made effective by subsection (i)(2) of this section or by section 6(n) of the Export Administration Act of 1979 (as added by paragraph (1) of this subsection).

SEC. 113. ENFORCEMENT

(a) GENERAL AUTHORITY. – Section 12(a) (50 U.S.C. App. 2411(a)) is amended –

(1) by inserting "(1)" immediately before the first sentence;

(2) by striking out "such investigations and" and inserting in lieu thereof "such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may";

(3) by striking out "the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and" and inserting in lieu thereof "a district court of the United States,";

(4) by adding at the end of the following new sentence: "In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act."; and

(5) by adding at the end the following new paragraphs:

"(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

"(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

"(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

"(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

"(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

"(iv) Make arrests without warrant for any violation of this Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws.

"(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

"(B) The Secretary may designated any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

"(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

"(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

"(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

"(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

"(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

"(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than $12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986.

"(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

"(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.".

(b) CONFIDENTIALITY. – Section 12(c)(3) is amended –

(1) by striking out "Departments or agencies which obtain" and inserting in lieu thereof "Any department or agency which obtains";

(2) by inserting ", including information pertaining to any investigation," after "enforcement of this Act";

(3) by striking out "the department" and inserting in lieu thereof "each department"; and

(4) by adding at the end the following: "The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.".

SEC. 116. UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION; REGULATIONS

(a) IN GENERAL – Section 15 (50 U.S.C. App. 2414) is amended to read as follows:

"ADMINISTRATIVE AND REGULATORY AUTHORITY

"SEC. 15. (a) UNDER SECRETARY OF COMMERCE. – The President shall appoint, by and with the advice and consent of the Senate, an Urban Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985, and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

"(b) ISSUANCE OF REGULATIONS. – The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section 4(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, and such 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 regulations are submitted.

"(c) AMENDMENTS TO REGULATIONS. – If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.".

(b) PAY FOR THE UNDER SECRETARY. – Section 5314 of title 5, United States Code, is amended by inserting "Under Secretary of Commerce for Export Administration," after "Under Secretary of Commerce for Economic Affairs,".

(c) PAY FOR THE ASSISTANT SECRETARIES. – Section 5315 of such title is amended by striking out

"Assistant Secretaries of Commerce (8)."

"Assistant Secretaries of Commerce (8)."
and inserting in lieu thereof
"Assistant Secretaries of Commerce (11).".

(d) EFFECTIVE DATE. – The provisions of section 15(a) of the Export Administration Act of 1979, as amended by subsection (a) of this section, and the amendments made by subsections (b) and (c) of this section shall take effect on October 1, 1986.

(e) BUDGET ACT. – Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this section shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.

SEC. 119. AUTHORIZATION OF APPROPRIATIONS

Section 18 (50 U.S.C. App. 2417) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION. – (1) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if –

"(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

"(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

"(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

"(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

"(b) AUTHORIZATION. – There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act –

"(1) $24,600,000 for the fiscal year 1985, of which $8,712,000 shall be available only for enforcement, $1,851,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and $14,037,000 shall be available for all other activities under this Act;

"(2) $29,382,000 for the fiscal year 1986, of which $9,243,000 shall be available only for enforcement, $2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and $18,139,000 shall be available for all other activities under this Act; and

"(3) such additional amounts for each of the fiscal year 1985 and 1986 as may be necessary for increases in salary, pays, retirement, other employee benefits authorized by law, and other non-discretionary costs.".

SEC. 301. AGREEMENTS FOR COOPERATION

(a) NOTIFICATION OF AND CONSULTATION WITH THE CONGRESS; HEARINGS. – Section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is amended –

(1) in subsection a. by inserting after "Assessment Statement" the following: "(A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B)";

(2) in subsection b. by inserting before "the President" the following: "the President has submitted text of the proposed agreement for cooperation, together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and"; and

(3) in subsection d. by inserting before the sentence which begins "Any such proposed agreement" the following: "During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved."

(b) CONGRESSIONAL REVIEW OF AGREEMENTS. – Subsection d. of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) is amended –

(1) by striking out "adopts a concurrent resolution" and inserting in lieu thereof "adopts, and there is enacted, a joint resolution";

(2) by striking out the period at the end of the first proviso and inserting in lieu thereof ": Provided further, That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement."; and

(3) by striking out "130 of this Act for the consideration of Presidential submissions" and inserting in lieu thereof "130 i. of this Act".

(c) PROCEDURES FOR CONSIDERATION OF AGREEMENTS. –

(1) TECHNICAL CHANGES. – Section 130 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2159(a)) is amended –

(A) in the first sentence –

(i) by striking out "123 d.,"; and

(ii) by striking out ", and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate,"; and

(B) in the proviso, by striking out "and if, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution".

(2) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS. – Section 130 of the Atomic Energy Act of 1954 is amended –

(A) by amending subsection g. –

(i) by redesignating paragraphs (1) and (2) as clauses (A) and (B);

(ii) by striking out "g. For" and inserting in lieu thereof "g. (1) Except as provided in paragraph (2), for"; and

(iii) by adding at the end thereof the following new paragraph:

"(2) For purposes of this section insofar as it applies to section 123 –

(A) continuity of session is broken only by an adjournment of Congress sine die at he end of a Congress; and

"(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the

computation of any period of time in which Congress is in continuous session."; and

(B) by adding at the end thereof the following new subsection;

"i. (1) For the purposes of this subsection, the term 'joint resolution' means a joint resolution, the matter after the resolving clause of which is as follows: That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on .', with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

"(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123 d., a joint resolution with respect to such agreement for cooperation 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 an agreement for cooperation 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.

"(3) All joint resolution introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91 c., 144 b., or 144 c., the Committee on Armed Services.

"(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction, 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; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

"(5) A joint resolution under this subsection 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 subsection, 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 subsection 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.

"(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, the House receives a joint resolution with respect to the same matter from the other House, then –

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

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

(d) APPLICABILITY OF AMENDMENTS. – The amendments made by this section shall apply to any agreement for cooperation which is entered into after the date of the enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

DANTE B. FASCELL,
DON BONKER,
DAN MICA,
H.L. BERMAN,
TOBY ROTH,
DOUGLAS BEREUTER,

Solely for consideration of sections 113(a)(5) and 114 of the House amendment and modifications committed to conference:

PETER W. RODINO, Jr.
BILL HUGHES,
BILL MCCOLLUM,

Solely for consideration of section 126 and title II of the House amendment and modifications committed to conference:

JOHN D. DINGELL,

AL SWIFT,
JAMES T. BROYHILL,
Managers on the Part of the House,

JAKE GARN,
JOHN HEINZ,
WILLIAM PROXMIRE,
Managers on the Part of the Senate.