

103^D CONGRESS
2^D SESSION

S. 1820

To amend the Export Administration Act of 1979 with respect to export controls on computers.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 25), 1994

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Export Administration Act of 1979 with respect to export controls on computers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Computer Equipment
5 and Technology Export Control Reform Act”.

6 **SEC. 2. ANNUAL REVIEW OF CONTROLS ON COMPUTERS.**

7 Section 4 of the Export Administration Act of 1979
8 (50 U.S.C. App. 2403) is amended by adding at the end
9 the following new subsection:

1 “(h) REVIEW OF EXPORT CONTROLS ON COMPUTER
2 EQUIPMENT AND TECHNOLOGY.—

3 “(1) IN GENERAL.—In order to ensure that re-
4 quirements of validated licenses and other licenses
5 authorizing multiple exports are periodically removed
6 as computer equipment, computer communications
7 and networking equipment, computer software, and
8 related technology, that are subject to such require-
9 ments become obsolete with respect to the specific
10 objectives of the export controls requiring such li-
11 censes, the Secretary shall conduct periodic reviews
12 of such controls. The Secretary shall complete such
13 a review not later than 6 months after the date of
14 the enactment of this subsection, and not later than
15 the end of each 1-year period thereafter.

16 “(2) REVIEW ELEMENTS.—In conducting each
17 review under paragraph (1), the Secretary shall do
18 the following with respect to the export controls re-
19 quiring a license described in paragraph (1):

20 “(A) OBJECTIVES OF CONTROL.—The Sec-
21 retary shall identify the specific objectives of
22 the export controls, for the 12-month period be-
23 ginning on the date on which the review is com-
24 pleted, for each country for which a validated li-
25 cense is required. When an objective of an ex-

1 port control is to defer the development of a
2 specific capability in such country, the Sec-
3 retary shall specify for what period of time the
4 controls are expected to defer such capability.

5 “(B) QUANTITY AND PERFORMANCE.—The
6 Secretary shall estimate, for the 12-month pe-
7 riod described in subparagraph (A), the quan-
8 tity and performance (measured in Composite
9 Theoretical Performance or other relevant per-
10 formance metrics) of computer systems that
11 must be obtained by each country for which a
12 validated license is required in order to defeat
13 the objectives of the export controls.

14 “(C) AVAILABILITY TO CONTROLLED DES-
15 TINATIONS.—The Secretary shall evaluate the
16 effectiveness of the export controls in achieving
17 their specific objectives, including explicit de-
18 scriptions of the availability, during the 12-
19 month period described in subparagraph (A), to
20 controlled countries of computer equipment,
21 computer communications and networking
22 equipment, computer software, and related
23 technology on which the export controls are in
24 effect—

1 “(i) from sources that do not control
2 the export of such items, and from sources
3 from which no effective export controls on
4 such items exist;

5 “(ii) as a result of actual or potential
6 diversion, including potential diversion of
7 software over international computer or
8 telephone networks;

9 “(iii) as a result of export license au-
10 thorizations from countries other than the
11 United States;

12 “(iv) as a result of indigenous produc-
13 tion in controlled countries; and

14 “(v) as a result of United States regu-
15 lations permitting exports to such coun-
16 tries of items with minimal United States
17 content by value.

18 “(D) ECONOMIC IMPACT.—The Secretary
19 shall evaluate the economic impact, during the
20 12-month period described in subparagraph
21 (A), of the export controls on exporting compa-
22 nies, including estimates of lost sales, loss in
23 market share, and administrative overhead.

24 “(3) INCREASE IN THRESHOLDS.—After com-
25 pleting each review under this subsection, the Sec-

1 retary shall increase, if warranted by the findings of
2 the review, the following export control thresholds,
3 consistent with the obligations of the United States
4 under bilateral and multilateral agreements:

5 “(A) The performance levels at which com-
6 puter systems are eligible for delivery under a
7 distribution license.

8 “(B) The performance levels at which com-
9 puter systems may be shipped under a general
10 license to countries other than controlled coun-
11 tries.

12 “(C) The performance levels defining a
13 ‘supercomputer’.

14 “(D) The performance levels at which a
15 validated license is required for the export to a
16 controlled country of computer systems and pe-
17 riipherals, software, parts, and communications
18 equipment normally supplied with such com-
19 puter systems.

20 In any recommendation or publication for such in-
21 crease, the Secretary shall include the specific ra-
22 tionale for the increase.

23 “(4) DEFAULT PROVISIONS.—If on the date by
24 which a review under this subsection must be com-
25 pleted, the review is not completed or a report on

1 the review has not been transmitted to the Congress
2 under paragraph (5), the performance levels de-
3 scribed in paragraph (3) then in effect, stated in
4 terms of Composite Theoretical Performance or
5 other relevant performance metrics, shall double, ef-
6 fective 90 days from that date. No change in regula-
7 tions or notice in the Federal Register shall be re-
8 quired to implement such increase in performance
9 levels.

10 “(5) REPORT.—The Secretary shall transmit to
11 the Congress and to the Computer Systems Tech-
12 nical Advisory Committee (or successor technical ad-
13 visory committee) a report on the findings of each
14 review conducted under this subsection, addressing
15 each requirement set forth in paragraph (2). Within
16 60 days thereafter, the Computer Systems Technical
17 Advisory Committee (or successor technical advisory
18 committee) shall transmit to the Congress a concise
19 statement specifying its concurrence or
20 nonconcurrence with each matter contained in the
21 Secretary’s report, along with specific reasons for
22 such concurrence or nonconcurrence.

23 “(6) HEARINGS.—The Secretary shall conduct
24 public hearings not less than once each year in order
25 to solicit information from all interested parties on

1 all matters to be addressed in each review conducted
2 under this subsection.”.

3 **SEC. 3. DE MINIMUS DECONTROL OF COMPUTER SYSTEMS.**

4 Section 4 of the Export Administration Act of 1979
5 (50 U.S.C. App. 2403) is amended by adding at the end
6 the following new subsection:

7 “(i) REMOVAL OF CONTROLS ON COMPUTER SYS-
8 TEMS VALUED AT LESS THAN \$5,000.—

9 “(1) IN GENERAL.—No validated license shall
10 be required under this Act for the export or reexport
11 to any controlled country of any digital computer
12 having a net value of less than \$5,000.

13 “(2) DEFINITION OF NET VALUE.—As used in
14 paragraph (1), the ‘net value’ of a digital computer
15 means the actual selling price of the computer, less
16 transport charges, to the customer abroad, or the
17 current market price of the computer to the same
18 type of customer in the United States.

19 “(3) NO QUANTITY LIMIT.—No limit may be
20 placed under this Act on the number of computer
21 systems to which paragraph (1) applies that may be
22 exported or reexported at any one time or on the
23 number of shipments of such computer systems to
24 any controlled country or end-user in a controlled
25 country.”.

1 **SEC. 4. DECONTROL OF MASS-MARKET COMPUTER EQUIP-**
2 **MENT.**

3 Section 4 of the Export Administration Act of 1979
4 (50 U.S.C. App. 2403) is amended by adding at the end
5 the following new subsection:

6 “(j) REMOVAL OF CONTROLS ON MASS-MARKET
7 COMPUTER EQUIPMENT.—

8 “(1) MASS-MARKET COMPUTER EQUIPMENT DE-
9 FINED.—For purposes of this subsection, the term
10 ‘mass-market computer equipment’ means any com-
11 puter system, computer networking equipment, pe-
12 ripheral to a computer system, part or subassembly
13 of a computer system, or combination thereof, on
14 which export controls are in effect under this Act,
15 and which will have been installed for end-use out-
16 side the United States in a quantity exceeding
17 100,000 units over a 12-month period, as deter-
18 mined under paragraph (2).

19 “(2) ANTICIPATORY REVIEW OF MASS-MARKET
20 COMPUTER EQUIPMENT.—Not later than—

21 “(A) 6 months after the date of the enact-
22 ment of this subsection, and

23 “(B) the end of each 1-year period occur-
24 ring thereafter,

25 the Secretary shall, in consultation with the Com-
26 puter Systems Technical Advisory Committee (or

1 successor technical advisory committee), industry
2 groups, and computer equipment producers, identify
3 those items (including computer systems differen-
4 tiated in terms of Composite Theoretical Perform-
5 ance) that will be installed for end-use outside the
6 United States in a quantity exceeding 100,000 units
7 during the 12-month period beginning on the appli-
8 cable date described in subparagraph (A) or (B). Es-
9 timates of numbers of items installed shall be based
10 on reliable estimates provided by producers of such
11 items.

12 “(3) ACTION BY THE SECRETARY.—Not later
13 than 30 days after an item is determined by the Sec-
14 retary under paragraph (2) to be mass-market com-
15 puter equipment, the Secretary shall either—

16 “(A) eliminate export controls on such
17 equipment and publish a notice of such action
18 in the Federal Register; or

19 “(B) in the case of an item controlled
20 under the terms of an export control regime in
21 which the United States participates with 1 or
22 more other countries, propose the elimination of
23 controls on such equipment in accordance with
24 the procedures of the appropriate regime and

1 publish a notice of such proposal in the Federal
2 Register.”.

3 **SEC. 5. IDENTIFICATION OF PROLIFERATION END-USERS.**

4 Section 4 of the Export Administration Act of 1979
5 (50 U.S.C. App. 2403) is amended by adding at the end
6 the following new subsection:

7 “(k) IDENTIFICATION OF PROLIFERATION
8 ENDUSERS.—

9 “(1) PROLIFERATION ENDUSER DEFINED.—For
10 purposes of this subsection, the term ‘proliferation
11 enduser’ means any entity that is engaged, directly
12 or indirectly, in the design, development, or produc-
13 tion of nuclear, chemical, or biological weapons or
14 missiles and is located in a country that is not party
15 to a bilateral or multilateral agreement the purpose
16 of which is to limit the spread of such weapons and
17 activities and to which the United States is a party.

18 “(2) PUBLICATION OF PROLIFERATION
19 ENDUSERS.—The Secretary shall, within 10 days
20 after communicating to any United States exporter
21 (including by denying an export license to such ex-
22 porter) that any entity has been identified as a pro-
23 liferation enduser, publish in the Federal Register
24 the name and specific validated license requirements
25 for exports to such proliferation enduser. If such

1 publication is not made, such entity shall be deemed
2 not to be a proliferation enduser and exports or re-
3 exports to such entity shall not require an individual
4 validated license solely because of activities described
5 in paragraph (1).”.

○