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EXPORT ADMINISTRATION ACT OF 1996

JUNE 27, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 361]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 361) to provide authority to control exports, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill, as amended by the Committee on International Relations, do pass.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 361, as amended, reauthorizes and reforms the Export Administration Act of 1979, the statute which governs U.S. controls of exports of dual-use goods, commodities, and technologies. In contrast to munitions which are controlled by the Department of State, dual-use goods, commodities, and technologies are civilian items that possess potential military applications.

The purposes of the bill are: (1) to adapt the dual-use export control system to the post-Cold War environment; and (2) to remove unnecessary bureaucratic and other impediments to U.S. export competitiveness.

H.R. 361 contains several provisions on import sanctions that fall within the jurisdiction of the Committee on Ways and Means.

The first two provisions (Sec. 111(d) and (e)) would recodify sanctions that previously existed in the Export Administration Act for proliferation of chemical and biological weapons, and for trade in violation of the Missile Technology Control Regime (MTCR).

25–547

Section 111(g) is a new provision which would require the Secretary of State to seek multilateral support for sanctions imposed pursuant to sec. 111(d) and (e).

Finally, Sec. 203 would add a new import sanction to a list of seven mandatory sanctions in current law for countries who engage in nuclear proliferation activities, which are defined as the transfer of nuclear weapons or nuclear components or design information to a non-nuclear-weapon state, or efforts by such state itself to acquire such items.

B. BACKGROUND AND NEED FOR LEGISLATION

On March 29, 1996, the Committee on International Relations ordered favorably reported, with an amendment, H.R. 361, a bill to reauthorize and amend the Export Administration Act (EAA) of 1979, which expired on June 30, 1994. For most of the last seventeen years, the Export Administration Act has provided the executive branch authority to control exports of dual-use items.

Since expiration of EAA, the statutory authority to control dual-use exports has derived from a state of emergency declared by the President, pursuant to his authorities under the International Emergency Economic Powers Act, so that the pertinent regulations and most enforcement powers could remain in effect.

The Export Administration Act has not been significantly rewritten since 1988, although attempts were made in the 101st, 102nd, and 103rd Congresses. The nature of threats to national security has changed since then. The end of the Cold War brought with it an end to the tight international coordination and political commitments that were embodied in the Coordinating Committee for Multilateral Controls (COCOM). Secondly, in the post-Cold War era, the capacity to build weapons of mass destruction, including nuclear, chemical and biological weapons, and the missiles to deliver them, is an increasing danger. The magnitude of the problem highlights the need to improve multilateral non-proliferation efforts that reflect the new international environment.

C. LEGISLATIVE HISTORY

H.R. 361, The Omnibus Export Administration Act of 1996, was ordered favorably reported by the Committee on International Relations on March 29, 1996. The bill was sequentially referred to the Committee on Ways and Means for consideration of provisions within its jurisdiction until June 28, 1996.

On June 27, 1996, the Full Committee met to consider provisions of H.R. 361 within its jurisdiction. The bill was ordered favorably reported by voice vote, as amended by the Committee on International Relations.

Provisions similar to the import sanction provisions included in section 203 of H.R. 361 were approved by the Committee on Ways and Means on June 15, 1994 as part of its consideration of H.R. 3937, "The Export Administration Act of 1994." (See Secs. 221 and 226 of that bill.) H.R. 3937 was approved on June 15, 1994, by the Committee by voice vote (H. Rpt. 103-531, Part 3). The bill, however, was not further considered and did not become law.

II. EXPLANATION OF PROVISIONS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS

A. Chemical and biological weapons proliferation sanctions (Sec.111(d))

Expired law

Under section 11(c) of the Export Administration Act of 1979, if the President determines that a foreign person has knowingly and materially contributed, through export of a controlled item, to the efforts of a terrorist country or certain other countries, projects and entities, to use, develop, produce, stockpile or otherwise acquire chemical or biological weapons, the President shall, for a minimum of 12 months:

(1) prohibit the person from participating in United States Government procurement contracts; and

(2) prohibit the importation into the United States of products produced by that person.

The President may waive the application of sanctions if he determines and certifies to Congress that such a waiver is important to the national security interests of the United States.

Explanation of provision

Section 111(d) of H.R. 361 would recodify the chemical and biological weapons sanctions that existed under section 11(c) of the Export Administration Act of 1979, as amended, which are described above.

Reason for change

The provision would reenact expired law. It is the Committee's understanding that the President would have full discretion to determine the type and volume of imports prohibited under this section.

B. Missile proliferation control violations (Sec. 111(e))

Expired law

Under Section 11(b) of the Export Administration Act, if the President determines that a foreign person knowingly engages in or facilitates, or attempts to engage in trade in violation of the Missile Technology Control Regime that substantially contributed to the design, development or production of missiles to a non-adherent country, the President shall, for two years:

(1) deny Department of Commerce export licenses for missile equipment or technology to such person;

(2) deny all Department of Commerce licenses to such person; or

(3) prohibit the importation into the United States of products produced by that foreign person.

Under Section 11(b) the severity of the sanction is tied to the type of missile technology that was transferred. The President may waive the imposition of sanctions if he determines that a waiver is essential to the national security interests of the United States.

Explanation of provision

Section 111(e) would recodify the missile proliferation control sanctions that existed under section 11(b) of the Export Administration Act of 1979, as amended.

Reason for change

The provision would reenact expired law. It is the Committee's understanding that the President would have full discretion to determine the type and volume of imports prohibited under this section.

C. Seeking multilateral support for unilateral sanctions (Sec. 111(g))

Expired law

There is no requirement in the expired law for the Administration to seek multilateral support for missile proliferation control sanctions imposed under this Act.

Explanation of provision

Section 111(g) would require that the Secretary of State seek other countries' support for sanctions imposed under this section.

Reason for change

It is the view of the Committee that a multilateral approach to trade sanctions is by far preferable to unilateral measures. The Committee expects the President to make every effort to achieve agreement among our trading partners to take strong measures to curtail missile proliferation.

D. Annual report on unilateral sanctions (Secs. 115(b) and (c))

Expired law

No provision.

Explanation of provision

Section 115(b) requires the Secretary of Commerce to include in the annual report submitted under this title a listing of U.S. unilateral controls and sanctions and their estimated economic impact. Section 115(c) requires the General Accounting Office to analyze the annual section 115(b) report and provide its own views to Congress not later than 120 days after the report is submitted.

Reason for change

These reports will help the Committee assess the economic impact of unilateral trade sanctions.

E. Sanctions under the Arms Export Control Act (Sec. 203)

Expired law

Present law does not contain import sanctions against countries or persons which engage in nuclear proliferation activities.

Section 102(B)(2) of the Arms Export Control Act (AECA) requires that if the President determines that a country: (a) has transferred a nuclear explosive device to a non-nuclear state; (b) is

a non-nuclear state and has either received a nuclear explosive device or detonated a nuclear explosive device; (c) transferred to a non-nuclear-weapon state either non-public design information or a component of a nuclear explosive device which is determined by the President to be important to, and known by the transferring country to be intended for use in the development or manufacture of any nuclear explosive device; or (d) is a non-nuclear state and sought and received such design information or component which is determined by the President to be important to, and intended for use in, the development or manufacture of any nuclear explosive device, then the President is required to impose sanctions.

The AECA requires that the President impose seven sanctions. These sanctions are: (1) termination of all but humanitarian and agricultural assistance; (2) termination of all sales of defense articles and services and U.S. Military Licenses; (3) termination of all foreign military financing; (4) denial of any credit, credit guarantees, or other financial assistance; (5) opposition to any international loans or financial assistance; (6) prohibition on U.S. bank loans or credits to the Federal government (except for agricultural commodities); and (7) use of EAA authorities to prohibit export specific goods and technology, except such prohibition shall not apply to Title V activities.

The President may delay imposition for no more than 30 days if immediate imposition would be detrimental to the national security. The President may waive sanctions invoked pursuant to triggers (c) and (d) if there would be serious adverse effect on vital U.S. interests of imposing the sanction.

The waiver pursuant to triggers (a) and (b) can only be exercised by the President if imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security, and the Congress passes a joint resolution within 30 days authorizing him to do so.

Explanation of provision

This section would add an eighth sanction to the list of sanctions in the Arms Export Control Act. Under this section, the President would be required to prohibit the importation of specific products by persons who have engaged in sanctionable nuclear proliferation behavior.

Reason for change

It is the Committee's view that, in light of the threat posed by nuclear proliferation activities to U.S. national security, it is appropriate for the President to have discretionary authority to impose import sanctions in response to violations under this section. The Committee intends that the President would have full discretion to determine the type and volume of imports to be prohibited under this section. The Committee also intends that this authority would be used in a manner consistent with the international legal obligations of the United States. It is the Committee's view that the President must have the flexibility to tailor import restrictions imposed under this section to the circumstances of the specific case,

and with the goal of achieving international cooperation to stem the proliferation of nuclear weapons.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee in its consideration of the bill, H.R. 361:

Motion to report H.R. 361

H.R. 361 was ordered favorably reported, as amended, by voice vote, on June 26, 1996, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 361 would affect, at a de minimis level, direct spending and receipts, and would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 27, 1996.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 361, the Omnibus Export Administration Act of 1996.

Enactment of H.R. 361 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 361.

2. Bill title: Omnibus Export Administration Act of 1996.

3. Bill status: As ordered reported by the House Committee on Ways and Means on June 26, 1996.

4. Bill purpose: H.R. 361 would replace the expired Export Administration Act (EEA), thereby updating the system of export controls for dual-use technologies and commodities. Since expiration of the EEA in 1994, the President has extended export controls pursuant to his authority under the International Emergency Economic Powers Act. The Bureau of Export Administration (BXA) in the Department of Commerce currently administers the system of export controls.

Title I of H.R. 361 would require the Secretary of Commerce to establish a Commodity Control Index of all items subject to unilateral, multilateral, or short supply export controls. The title would establish procedures for including items on the control index and would provide for an export advisory committee to provide technical assistance to the BXA. The BXA also would be required to publish specific information concerning export controls, and to prepare an annual report to Congress on the status of export controls.

Title I also would establish procedures for export license applications and would require the BXA to make decisions on such applications within nine days of when the application is submitted. The BXA would be required to consult with various agencies when issuing export licenses for certain commodities. Finally, this title would enable BXA to carry out enforcement activities and would increase the fines and penalties for violations of export controls.

Title II would repeal the expiration date of the Nuclear Proliferation Prevention Act of 1994 (Public Law 103–236), thereby extending the law indefinitely. Title II also would require the Secretary of State to seek overseas support for sanctions imposed under this act.

5. Estimated cost to the Federal Government: The following table summarizes the budgetary impact of H.R. 361. Because the bill does not provide a specific authorization, the table shows two alternative authorization levels for fiscal years 1997–2000—without adjustment for anticipated inflation, and with adjustment for inflation. Outlay estimates are based on historical spending rates for this program and assume that appropriations will be provided before the start of each fiscal year.

Assuming an adjustment for inflation, CBO estimates that discretionary spending to carry out the provisions of this bill would total $170 million over the 1997–2000 period. H.R. 361 also would affect direct spending and receipts, but all such changes would be less than $500,000 for each year.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS					
Spending under current law:					
Budget authority	39	.....	.....	.....	.....
Estimated outlays	38	6	2	.....	.....

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Without Adjustment for Inflation					
Proposed changes:					
Estimated authorization level	.....	41	41	41	41
Estimated outlays	.....	35	39	41	41
Spending under H.R. 361:					
Estimated authorization level [1]	39	41	41	41	41
Estimated outlays	38	41	41	41	41
With Adjustment for Inflation					
Proposed changes:					
Estimated authorization level	.....	42	44	45	47
Estimated outlays	.....	36	42	45	47
Spending under H.R. 361:					
Estimated authorization level [1]	39	42	44	45	47
Estimated outlays	38	42	44	45	47
REVENUES AND DIRECT SPENDING					
Estimated revenues	(2)	(2)	(2)	(2)	(2)
Estimated budget authority	.....	(2)	(2)	(2)	(2)
Estimated outlays	.....	(2)	(2)	(2)	(2)

[1] The 1996 level is the amount appropriated for that year.
[2] Less than $500,000.

The costs of this bill fall primarily within budget function 370.

6. Basis of estimate: For purposes of this estimate, CBO assumes that the bill is enacted by the end of fiscal year 1996, that amounts of the estimated authorization levels are appropriated prior to the start of each fiscal year, and that outlays follow historical spending rates for BXA programs.

Spending subject to appropriations

In the absence of a specific authorization of appropriations for BXA to carry out the provisions of this bill, CBO has estimated the amounts necessary to implement H.R. 361. We based our estimate on the amount of money that BXA currently uses to administer export controls plus the amount needed to administer any new tasks required by H.R. 361.

For 1996, appropriations totaled $39 million, of which an estimated $37 million will be used to administer export controls. Based on information from BXA, CBO estimates that BXA would require an additional $2 million a year to carry out the tasks required by H.R. 361 that are not being done under current law. These amounts would be spent primarily to support at least one export officer in Beijing, China and to comply with the expanded reporting requirements of the bill. Therefore, CBO estimates that implementation of H.R. 361 would result in total costs to the BXA of about $41 million in fiscal year 1997 and subsequent years, assuming no adjustment for inflation. Costs adjusted for inflation would be higher in each year.

H.R. 361 would require the BXA to consult with various agencies when issuing licenses for certain commodities. These agencies already provide information to BXA under current law and executive order and, hence, the additional cost to the government of implementing these provisions of the bill would not be significant. The bill also would require the Secretary of State to seek international support for sanctions imposed under the bill and would require the

Department of Defense to assess the impact of export controls on national security. Based on information from these agencies, CBO estimates that the additional cost to the federal government of implementing these provisions of the bill would not be significant.

Revenues and direct spending

Section 110 of the bill would increase the maximum civil and criminal penalties for violations of export control regulations and statutes. CBO expects that receipts would increase as a result of the penalty changes, but that the increase would be less than $500,000 annually because the maximum penalties are rarely assessed, even under current law. Payments of criminal fines are deposited in the Crime Victims Fund and are spent without the need for appropriations action, in the following year.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. H.R. 361 would increase fines and penalties for violations of export controls. Any increase in fine collections and civil penalties would be classified as a change in governmental receipts and would count for pay-as-you-go-scoring. CBO estimates that the increase in fine collections would not be significant. Criminal fines would be deposited in the Crime Victims Fund and spent in the following year. The increase in direct spending would be the same as the amount of fines collected with a one-year lag. Therefore, additional direct spending would also be negligible. The following table summarizes the pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	0	0	0

8. Estimated impact on State, local, and tribal governments: Section 4 of Public Law 104–4 excludes from application of the act legislative provisions that are necessary for the national security. CBO has determined that all provisions of H.R. 361 either fit within this exclusion or codify existing federal requirements, and thus do not constitute new intergovernmental mandates.

9. Estimated impact on the private sector: CBO has determined that all provisions of H.R. 361 either fit within the national security exclusion of Public Law 104–4 or codify existing federal requirements, and thus do not constitute new private-sector mandates.

10. Previous CBO estimate: On April 18, 1996, CBO provided a cost estimate for H.R. 361, the Omnibus Export Administration Act of 1996, as ordered reported by the House Committee on International Relations on March 29, 1996. The bills are identical as are the cost estimates.

11. Estimate prepared by: Federal Cost Estimate: Rachel Forward, Sunita D'Monte and Stephanie Weiner. State and Local Government Impact: Pepper Santalucia. Private Sector Impact: Amy Downs.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 2(l)(3)(A) of the rule XI of the Rules of the House of Representatives, the Committee concludes that the action taken in this legislation is appropriate given its oversight of international trade matters.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE GOVERNMENT OPERATIONS COMMITTEE

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings and recommendations have been submitted to this Committee by the Committee on Government Operations with respect to the provisions contained in H.R. 361.

C. INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 361 are not expected to have any inflationary impact on the economy.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of such provisions of the bill as fall within the jurisdiction of this committee pursuant to clause 1(s) of rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on International Relations are shown in the report filed by that committee (Rept. 104–605, Part 1).

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