

Chapter 4: LAWS REGULATING EXPORT ACTIVITIES

Export Controls

Background

Through statute, Congress has authorized the President to control the export of various commodities. The three most significant programs for controlling different types of exports deal with nuclear materials and technology, defense articles and services, and non-military dual-use goods and technology. Under each program, licenses of various types are required before an export can be undertaken. The Nuclear Regulatory Commission is responsible for the licensing of nuclear materials and technology under the Atomic Energy Act. The Department of State is responsible for the licensing of exports of defense articles and services and maintains the Munitions Control List under the Arms Export Control Act.

Export licensing requirements for most commercial goods and technical data are authorized by the Export Administration Act under the jurisdiction of the Bureau of Industry and Security in the Department of Commerce. The three basic purposes of export controls are to protect the national security, to further U.S. foreign policy interests, and to protect commodities in short supply. The Secretary of Defense is authorized to review certain applications for national security purposes while the Secretary of State reviews specified license applications for foreign policy purposes.

The export of goods or technical data subject to the Commerce Control List (CCL) must be authorized by licenses (either individual validated licenses or bulk licenses authorizing multiple shipments) which are granted on the basis of such factors as intended end-use and the probability and likely effect of diversion to military use. Exports and reexports from a foreign country of U.S.-origin commodities and technical data or of foreign products containing U.S.-origin components or technology are also regulated.

The foreign policy export control authority was used by President Carter to embargo the export of grain to the Soviet Union after the 1979 Soviet invasion of Afghanistan. President Reagan used it again in 1981 until late 1983, following the imposition of martial law in Poland, to embargo sales by U.S. firms and their foreign subsidiaries of oil and gas transmission and refining commodities and technology for use by the Soviet Union on its natural gas pipeline to Western Europe. Crime control and detection instruments and equipment are subject to control for foreign policy reasons to countries which may engage in persistent gross violations of human rights. Certain other goods and technology are controlled to seven countries (Libya, Iran, Iraq, Syria, North Korea, Sudan, and Cuba) due to their repeated support of international terrorism.

Sanctions against international terrorism were revised and strengthened as amendments to the Export Administration Act of 1979 under the Anti-Terrorism

and Arms Export Amendments Act of 1989¹ and the National Defense Authorization Act for Fiscal Year 1991.²

The short supply control authority was used to help control raw materials prices during the Korean conflict. In 1973 President Nixon prohibited soybean exports as a response to rapidly increasing prices. The export of crude oil carried on the Trans-Alaska Pipeline is prohibited. Exports of crude oil and refined and unprocessed western red cedar harvested from Federal or state lands are subject to validated licensing requirements.

The U.S. government has employed export controls continuously since 1940. The first controls were imposed to avoid or mitigate the scarcity of various critical commodities during World War II and to assure their equitable distribution within the U.S. economy and to U.S. allies. Export controls were expected to terminate after shortages created by World War II were substantially eliminated. However, the cold war led to enactment of the Export Control Act of 1949,³ designed to control all U.S. exports to Communist countries.

The Export Control Act of 1949 provided for the control of items in short supply, for controls to further U.S. foreign policy goals, and for the examination of exports to Communist countries which might have military application. The 1949 Act, amended and extended as appropriate, remained in effect for 20 years. The 1949 Act was then replaced by the Export Administration Act of 1969,⁴ which was in turn replaced by the Export Administration Act of 1979.

The 1969 Act maintained the basic export control system set up by the Export Control Act, but called for a removal of controls on goods and technologies that were freely available from foreign sources and that were only marginally of military value. The 1969 Act was amended in 1972, 1974, and 1977.⁵

A significant expansion of controls was brought about in 1977 when Congress amended the 1969 Act to authorize the control of goods and technology exported by any person subject to the jurisdiction of the United States, thus permitting the Department of Commerce to exercise control over foreign-origin goods and technical data reexported by U.S.-owned or U.S.-controlled companies abroad. Anti-boycott policies (originally established by Congress in 1965) were also substantially strengthened in 1977.⁶

¹ Public Law 101-222, section 4, approved December 12, 1989.

² Public Law 101-510, section 1702, approved November 5, 1990.

³ Public Law 81-11, approved February 26, 1949.

⁴ Public Law 91-184, approved December 30, 1969.

⁵ Public Law 93-500, Public Law 95-52.

⁶ Public Law 95-52, approved June 22, 1977.

EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979⁷ as reauthorized and amended in 1985 and 1988 replaced the 1969 Act as amended, which expired on September 30, 1979. The 1979 Act provides the broad and primary authority for controlling the export from the United States to potential adversary nations of civilian goods and technology which could contribute significantly to the military capability of controlled countries (consisting of Communist countries, as defined in section 620(f) of the Foreign Assistance Act of 1961) if diverted to military application (national security controls under section 5). Like the previous law, the 1979 Act also authorized the President to impose export controls for foreign policy reasons or to fulfill international obligations (foreign policy controls under section 6) and to protect the domestic economy from an excessive drain of scarce materials and to reduce the inflationary impact of foreign demand (short supply controls under section 7). The Act also continues the 1977 anti-boycott program (section 8) which prohibits U.S. persons from taking action with the intent to comply with, further, or support any foreign country boycott against any country friendly to the United States (primarily Arab states against Israel).

In its 1979 review of the Export Administration Act of 1969, the Congress made substantial changes in the statute. Separate and distinct procedures and criteria were established for imposing national security and foreign policy controls. Precise time deadlines were set for the processing of export license applications. Development of a "militarily critical technologies list" (MCTL) was mandated, both as a means of reviewing the adequacy and focus of the existing commodity control list of categories of goods and technologies subject to Commerce export controls, and as a possible means of arriving at a more limited control list containing only the most militarily significant technologies. Foreign availability of goods controlled by the United States was, for the first time, made a factor in decisions to license such items for export.

The Act also formally authorized U.S. participation in the informal multilateral export control body known as COCOM (Coordinating Committee on Multilateral Export Controls) in which the NATO countries (with the exception of Iceland) and Japan also participated. From 1950 to 1994, COCOM⁸ attempted to coordinate the export control policies of the Western allies with respect to Communist countries. Representatives of the participating governments met periodically to set guidelines for controls on exports to Communist countries. The 1979 Act directed the President to negotiate with other COCOM governments in an effort to reach

⁷ Public Law 96-72, as amended by Public Law 96-533, Public Law 97-145, Public Law 98-108, Public Law 98-207, Public Law 98-222, Public Law 99-64, Public Law 99-399, Public Law 99-441, Public Law 99-633, Public Law 100-180, Public Law 100-418, Public Law 100-449, Public Law 101-222, and Public Law 101-510, 50 U.S.C. App. 2401.

⁸ The Wassenaar Arrangement, established in 1996, is the post cold-war successor organization to COCOM and performs many of the same functions as its predecessor.

agreement on reducing the scope of export controls, holding periodic high-level meetings on COCOM policy, publishing the list of items controlled by COCOM, and introducing more effective procedures for enforcing COCOM export controls.

The 1979 Act authorized the administration of export controls until September 30, 1983. The Act was extended temporarily three times during the 98th Congress, through October 15, 1983, subsequently through February 28, 1984, and finally until March 30, 1984,⁹ while the Congress considered proposals for major changes in the law. During the lapses in authority in 1983 and after the 1979 Act terminated on March 30, 1984, and House-Senate differences could not be resolved prior to congressional adjournment on October 12, 1985, the President administered export controls under the authority of the International Emergency Economic Powers Act and Executive Order 12470 of March 30, 1984, as an interim method of control until new authority could be passed by Congress. The Export Administration Amendments Act of 1985¹⁰ which reauthorized the 1979 Act for 4 years until September 30, 1989, with comprehensive amendments, was enacted on July 12, 1985.

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985

The 1985 Act left intact the basic structure of U.S. national security, foreign policy, and short-supply export controls. The main goals of the 1985 Act were to improve U.S. export competitiveness and to promote national security interests through stricter controls and better enforcement.

Increased U.S. competitiveness was to be achieved by easing the total licensing burden on U.S. businesses. Export licensing requirements were eliminated in the case of certain relatively low-technology items, and the Secretary of Commerce was directed to review and revise the commodity control list at least once a year. The approval process for license applications was to be streamlined as well. The 1985 amendments also addressed the issue of foreign availability by specifying a process to provide for the review and decontrol of goods found to be widely available and unable to be brought under control.

The promotion of national security interests was to be achieved by providing stricter controls for the export of critical items and strengthening the enforcement of U.S. export controls. The 1985 Act required the United States to undertake negotiations with COCOM countries to achieve greater coordination and compliance with multilateral controls, fewer exceptions to the control list, and strengthened and uniform enforcement. It created new criminal offenses against illegal diversions and added to the broad range of sanctions against violators of U.S. export controls.

The Act also restrained the President's authority to impose new foreign policy

⁹ Public Law 98-108, approved October 1, 1983; Public Law 98-207, approved December 5, 1983; Public Law 98-222, approved February 29, 1984.

¹⁰ Public Law 99-64.

export controls, particularly to embargo agricultural exports. Additional requirements for consultations with industry and Congress prior to the imposition of foreign policy controls and greater attention to specified criteria, including the foreign availability of competing products, are to be considered prior to decisions to extend, expand, or impose export controls.

The 1985 Act also imposed limitations on, but did not entirely eliminate, the discretion of the President to impose foreign policy controls on exports subject to existing contracts. The Act prohibits controls on exports of goods or technology under existing contracts except where the President determines and certifies to the Congress that a breach of the peace poses a serious and direct threat to U.S. strategic interests and the prohibition or curtailment of such contracts would be instrumental in remedying the situation posing the direct threat.

The Act set forth stiffer penalties for violators and granted new powers for enforcement to the Department of Commerce and the U.S. Customs Service and clarified the respective roles of these agencies. Commerce retained the primary responsibility for licensing and domestic enforcement whereas Customs was given primary responsibility for enforcement at all U.S. ports of exit and entry as well as all enforcement responsibility overseas.

The Act created a new Under Secretary of Export Administration and two Assistant Secretaries in the Department of Commerce¹¹ and a new National Security Council Office in the Department of Defense. Congress also directed that an Office of Foreign Availability be established in the Department of Commerce.

OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Congressional dissatisfaction with the implementation of the Export Administration Amendments Act of 1985 led to the introduction of new legislation during both the 99th and 100th Congresses. The Omnibus Trade and Competitiveness Act of 1988¹² contained major revisions of the Export Administration Act of 1979. Like the 1985 amendments, the 1988 Act emphasized the reduction of export disincentives and the strengthening of export enforcement. A clarification of the dispute resolution process was also a part of the Act. The authorization date for the Export Administration Act was extended by 1 year to September 30, 1990.

The 1988 Act provided for the reduction of export disincentives through a streamlining of licensing requirements, control list reduction, and improved procedures for making foreign availability determinations. The 1988 Act also provided for the use of distribution licenses for multiple exports to the People's Republic of China.

¹¹ On April 18, 2002, the Department of Commerce, through an internal organizational order, changed the name of the "Bureau of Export Administration," which contained these positions, to the "Bureau of Industry and Security."

¹² Public Law 100-418, title II, subtitle D, approved August 23, 1988.

The 1988 Act provided for stronger enforcement of U.S. and multilateral export controls.

In the case of persons convicted of violations of the Export Administration Act of 1979 or the International Emergency Economic Powers Act,¹³ the Department of Commerce was authorized to bar such persons from applying for or using export licenses. Such authority was also extended to parties related through affiliation, ownership, control, or position of responsibility to any person convicted of violations.

In response to the sale by Toshiba Machine Company of Japan and Kongsberg Trading Company of Norway of advanced milling machinery to the Soviet Union, the Congress passed the Multilateral Export Control Enhancement Amendments Act.¹⁴ Section 2443 of that Act requires the President to impose, for a period of 3 years, a ban on U.S. government contracting with and procurement from the two cited companies and their parent companies. That section also required the President to prohibit the importation of all products produced by Toshiba Machine Company and Kongsberg Trading Company for a period of 3 years. The sanctions required by section 2443 were imposed by President Reagan on December 27, 1988¹⁵ and remained in effect until December 28, 1991.

EXPIRATION OF THE EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979 expired on September 30, 1990. The 101st Congress passed legislation (H.R. 4653) to reauthorize the Act, but the President exercised a pocket-veto in November 1990. During the 102d Congress, the House and Senate passed bills and produced a conference report reauthorizing the Export Administration Act of 1979. The conference report failed to be considered before the 102d Congress adjourned sine die. On September 30, 1990, the President began exercising the authorities provided in the International Emergency Economic Powers Act to continue in effect the existing system of export controls.

During the 103d Congress, the Export Administration Act was extended twice. On March 27, 1994, Public Law 103-10, the Export Administration Fiscal Year 1994 Authorization bill, extended the Act through June 30, 1994.¹⁶ Public Law 103-277 provided for an additional extension until August 20, 1994 as discussions between the Administration and the Congress continued on revisions to the Act.¹⁷ Because the Congress did not take final action on a revised Export Administration Act before the close of the session, the President once again used the International

¹³ Public Law 95-223, approved December 28, 1977.

¹⁴ Public Law 100-418, sections 2441-2447, approved August 23, 1988.

¹⁵ Executive Order 12661, dated December 27, 1988; "Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters."

¹⁶ Public Law 103-10, approved March 27, 1994.

¹⁷ Public Law 103-277, approved July 5, 1994.

Emergency Economic Powers Act authorities to continue the existing export control system. On August 19, 1994, President Clinton issued an executive order continuing the export control regulations provided under the Act.¹⁸ The President announced a continuation of the emergency on August 15, 1995 (60 Fed. Reg. 42,767) and again on August 14, 1996 (61 Fed. Reg. 42,527).

The President continued the national emergency on August 13, 1997 (62 Fed. Reg. 43,629) and in subsequent years. On November 13, 2000 the President signed into law an extension of the Export Administration Act of 1979 until August 20, 2001.¹⁹ Upon the expiration of this extension, the President once again issued executive orders to continue the export control system including Executive Order 13222, issued on August 10, 2004 (69 Fed. Reg. 48763).

Multiple attempts to revive the Export Administration Act were made while the President was using executive orders to continue export control regulation. In the 104th Congress, the House passed the Omnibus Export Administration Act of 1996 (H.R. 361) on July 16, 1996, after hearings and consideration by the Committee on International Relations, the Committee on Ways and Means, and by the Committee on National Security. On July 17, 1996, the bill was received by the Senate and referred to the Committee on Banking, Housing and Urban Affairs, which held a hearing but took no further action. Export control legislation (H.R. 1942) was introduced in the 105th Congress, but no action was taken. In the 106th Congress, the Export Administration Act of 1999 (S. 1712) was introduced by Senator Michael P. Enzi. On September 23, 1999 the Senate Banking Committee voted unanimously (20-0) to report this legislation to the Senate floor (S.Rept. 106-180). However, action by the Senate on S. 1712 was not taken due to the concerns of several Senators about the bill's impact on national security.

Export control legislation was again introduced in the 107th Congress. On January 23, 2001, Senator Enzi introduced the Export Administration Act of 2001 (S. 149). Hearings were held on this legislation by the Senate Banking Housing and Urban Affairs Committee in February 2001, and the measure was reported favorably for consideration by the Senate by a vote of 19-1 on March 22, 2001 (S.Rept. 107-10). The Senate debated the legislation on September 4-6, 2001, and it passed with three amendments by a vote of 85-14.

The House version of the Export Administration Act, H.R. 2581, was introduced on July 20, 2001 by Representative Benjamin Gilman. On August 1, the House International Relations Committee passed the legislation with 35 amendments. The House Armed Services Committee (HASC) and the House Permanent Select Committee on Intelligence (HPSCI) received H.R. 2581 through sequential referral. On March 6, 2002, HASC further amended H.R. 2581 and reported out the legislation by a vote of 44-6 (H.Rept. 107-297). The legislation received no further consideration in the 107th Congress. In the 108th Congress, Representative Dreier introduced EAA legislation (H.R. 55), but no action was taken on it.

¹⁸ Executive Order 12924, dated August 19, 1994; "Continuation of Export Control Regulations."

¹⁹ Public Law 106-508.

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY 1998

Among the range of products subject to export controls, recent congressional attention has been focused upon the foreign sale of high performance computers (HPCs). The National Defense Authorization Act for FY 1998²⁰ (NDAA98), passed by the 105th Congress, imposed special conditions on the export of HPCs. The benchmark used for gauging HPC computing performance is the standard known as millions of theoretical operations per second (MTOPS). Section 1211(a) of the NDAA98 requires exporters to provide prior notification to the Secretary of Commerce before exporting HPCs above the MTOPS threshold to Tier III²¹ countries. Under this provision of NDAA98, exports of these HPCs are subject to the approval of the Secretaries of Commerce, Defense, Energy, and State. Section 1213 imposes post-shipment verification requirements for these HPCs, and section 1211(d) requires the President to notify Congress of any adjustment in the MTOPS threshold levels.

Each version of Export Administration Act in the 107th Congress provided for the repeal of NDAA98 export control provisions. Repeal of these provisions would not remove MTOPS as a regulatory standard, but would remove the statutory requirement to use MTOPS. The President would still be able to modify MTOPS thresholds or implement a new standard for control. In May 2003, the House defeated an amendment to the 2004 National Defense Authorization Act that would have repealed the NDAA 98 provisions.

Export Promotion of Goods and Services

EXPORT ENHANCEMENT ACT OF 1988

The Export Enhancement Act, enacted under title XXIII of the Omnibus Trade and Competitiveness Act of 1988,²² includes provisions which establish in statute the United States and Foreign Commercial Service in the International Trade Administration of the Department of Commerce. The basic purpose of the Service is to promote the export of U.S. goods and services, particularly by small- and medium-sized businesses, and to promote and protect U.S. business interests abroad. Section 2306 requires the Service to make a special effort to encourage U.S. exports of goods and services to Japan, South Korea, and Taiwan.

²⁰ Public law 105-85, section 1211, approved November 18, 1997.

²¹ For HPCs, the Commerce Department organized countries of destination into 4 tiers with increasing levels of export control. These range from a no-license policy for HPC exports to Tier 1 countries to the virtual embargo for exports to Tier 4 countries. Tier 3 countries were subject to a dual control system distinguishing between civilian and military end-users and end-uses until 2000.

²² Public Law 100-418, approved August 23, 1988, 15 U.S.C. 4721 et seq.

Section 2303 authorizes the Secretary of Commerce to establish a market development cooperator program in the International Trade Administration to develop, maintain, and expand foreign markets for U.S. non-agricultural goods and services. The program is implemented through contracts with non-profit industry organizations, trade associations, state departments of trade and their regional associations, and private industry firms or groups of firms (all referred to as "cooperators"). The Secretary was also directed to establish, as part of the program, a partnership program with cooperators under which cooperators may detail individuals to the Service for 1 to 2 years. This program is modeled after a similar program established by the Foreign Agricultural Service in the late 1950's to develop overseas commercial market opportunities for American agricultural exports.

In order to facilitate exporting by U.S. businesses, section 2304 requires the Secretary to provide assistance for trade shows in the United States which bring together representatives of U.S. businesses seeking to export goods or services, particularly participation by small businesses, and representatives of foreign companies or governments seeking to buy such U.S. goods or services. Sections 2312 and 2313 added to the Act made by title II of the Export Enhancement Act of 1992²³ expanded export promotion efforts. Section 2312 establishes in statute the Trade Promotion Coordinating Committee (TPCC) and directs it to coordinate the export promotion and export financing activities of the Federal Government and to develop a government-wide strategic plan for carrying out Federal export promotion and financing programs, including establishment of priorities. The Chair of the TPCC must submit an annual report to the Congress on the strategic plan developed. Section 2313 states the U.S. policy to foster the export of U.S. environmental technologies, goods, and services, and establishes the Environmental Trade Promotion Working Group within the TPCC for this purpose.

The Jobs Through Export Expansion Act of 1994 amended section 2313 to provide for the establishment of an environmental technologies trade advisory committee, including representatives of the private sector and the states, to advise the TPCC working group. The amendment also requires the working group to develop export plans for five priority countries and the placement of environmental technology specialists in each of the priority countries.²⁴

FAIR TRADE IN AUTO PARTS ACT OF 1988

The Fair Trade in Auto Parts Act of 1988, sections 2121-2125 of the Omnibus Trade and Competitiveness Act of 1988,²⁵ required the Secretary of Commerce to establish an initiative to increase the sale of U.S.-made auto parts and accessories to Japanese markets, including to U.S. subsidiaries of Japanese firms. The Secretary

²³ Public Law 102-429, approved October 21, 1992.

²⁴ Public Law 103-392, approved October 22, 1994, 15 U.S.C. 4701 note.

²⁵ Public Law 100-418, approved August 23, 1988, 15 U.S.C. 4701.

also was required to establish a Special Advisory Committee to advise and assist the Secretary in carrying out the initiative to increase U.S. auto parts sales in Japanese markets. The authorities granted under sections 2121-2125 expired on December 31, 1998.

In response to low sales of U.S. auto parts and accessories to Japanese auto firms based both in Japan and in the United States, Congress adopted the Fair Trade in Auto Parts Act of 1988. This action followed negotiations in 1986-87 between the U.S. and Japanese governments aimed at improving U.S. access to the Japanese auto parts markets. The provision was intended to provide for a longer-term effort to increase data collection, information exchange, and generally improved U.S. market access in the Japanese auto parts sector.²⁶ The U.S.-Japan Automotive Agreement expired on December 31, 2000.

Agricultural Export Sales and Promotion

To help finance sales of U.S. farm commodities abroad, the U.S. Department of Agriculture (USDA) administers several sales and credit programs. These include the concessional sales program under the authority of the Agricultural Trade Development and Assistance Act of 1954, as amended, commonly known as Public Law 480,²⁷ and the commercial programs of the Commodity Credit Corporation (CCC).

PUBLIC LAW 480

Public Law 480 was reauthorized through the end of 2007 by the Farm Security and Rural Investment Act of 2002.²⁸ Title I of Public Law 480 authorizes sales of U.S. agricultural commodities to developing countries or private entities for dollars on credit terms or for local currencies. Credit is provided at concessional interest rates for repayment periods up to 30 years. The Secretary of Agriculture may allow a grace period of up to 5 years before repayment must begin. Title II authorizes donations of U.S. agricultural commodities for emergency humanitarian relief and for development projects. Title II is implemented primarily through U.S. private voluntary organizations or cooperatives and the United Nations World Food Program. Title III authorizes donations to governments of least developed countries for direct feeding programs, emergency food reserves, and recipient government sales which are used to finance economic development activities. As a result of reforms made by Public Law 104-127, USDA is responsible for administering title I, while the U.S. Agency for International Development (USAID) is responsible for administering titles II and III.

²⁶ Market Oriented Sector Specific Talks on Transportation Machinery, initiated on August 26, 1986 and concluded on August 18, 1987.

²⁷ Public Law 83-480, approved July 10, 1954, 7 U.S.C. 1701-1736d.

²⁸ Public Law 107-171, approved May 2, 2002.

EXPORT CREDIT GUARANTEE AND EXPORT PROMOTION PROGRAMS

USDA, using the resources of the Commodity Credit Corporation (CCC), offers both commercial credit and export promotion programs designed to maintain and expand overseas markets for U.S. farm products.

In operating two export credit guarantee programs, the CCC guarantees U.S. banks against defaults on payments due from foreign banks on the agricultural export sales they finance. Guarantees are made against political risks such as warfare, expropriation, exchange controls, and other foreign government actions, and against economic risks such as a foreign bank failure or a country's debt repayment problems. The U.S. banks deal directly with foreign purchasers to set loan repayment terms and interest rates, but must meet certain requirements to qualify for CCC guarantees.

The GSM-102 program guarantees credits for up to 3 years for commercial export sales of U.S. agricultural commodities from privately owned stocks. The GSM-103 program guarantees credits for longer periods of 3 to 10 years. The Farm Security and Rural Investment Act of 2002 ("the farm bill") authorized the CCC to make available \$5.5 billion in credit guarantees for each fiscal year 2002 through 2007. The Secretary of Agriculture is given flexibility to allocate these funds between short-term (up to 3 years) and intermediate-term (3 to 10 years) guarantees. In addition, the farm bill authorizes another \$1 billion of export credit guarantees or direct credits for fiscal years 2002 through 2007 for countries that are classified as "emerging markets." Emerging markets are countries taking steps toward a market-oriented economy and have potential to become viable commercial markets for U.S. agricultural exports.²⁹

Title III of the Agricultural Trade Act of 1978, as amended by the Uruguay Round Trade Agreements Act of 1994³⁰ and the 2002 farm bill,³¹ authorizes the export enhancement program (EEP).

The EEP was first established by the Congress in the Food Security Act of 1985³² (the 1985 farm bill) to counter foreign exporters' use of subsidies as a means of increasing their agricultural exports. The Uruguay Round Agreements Act revised the definition of the EEP "to encourage the commercial sale of U.S. agricultural commodities in world markets at competitive prices." The Uruguay Round Agreements Act also provided that EEP would be "carried out in a market sensitive manner" and "not limited to responses to unfair trade practices."³³ Under EEP, the CCC makes cash bonuses available to private U.S. exporters on a bid basis to compensate them for making competitively-priced sales in overseas markets. The

²⁹ Public Law 107-171, approved May 2, 2002.

³⁰ Public Law 103-465, approved December 8, 1994, 19 U.S.C. 3501 note.

³¹ Public Law 107-171, approved May 2, 2002.

³² Public Law 99-198, approved December 23, 1985.

³³ Public Law 103-465, approved December 8, 1994, 7 U.S.C. 5601 note.

2002 farm bill reauthorized EEP for fiscal years 2002 through 2007 and set the annual maximum spending level at \$478 million. However, the FY2003 omnibus appropriations legislation limits EEP spending in fiscal year 2002 to \$28 million.³⁴

The CCC also administers the market access program (MAP) in order to “encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program.” The MAP was established under the 1996 farm bill as the successor to the market promotion program (MPP) authorized by the 1990 farm bill. MPP had replaced the targeted export assistance program (TEA) of the Food Security Act of 1985. Unlike the TEA, priority is no longer accorded to exports which encounter unfair trade practices or barriers in foreign markets.

The 2002 farm bill also authorizes the foreign market development program (FMDP) through 2007. Prior to its authorization in the 1996 farm bill, FMDP was funded through appropriations for USDA’s Foreign Agricultural Service. While MAP promotes primarily exports of high value agricultural products, including branded products, FMDP promotes exports of bulk agricultural commodities.

³⁴ Public Law 108-7, approved February 20, 2003.