

Chapter 11: LAWS REGULATING EXPORT ACTIVITIES

A. EXPORT CONTROLS

Excerpts from Export Administration Act of 1979, as amended

[50 U.S.C. App. 2410 et seq.; 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 99-633, Public Law 100-180, Public Law 100-418, Public Law 100-449 Public Law 101-222, Public Law 101-510, Public Law 102-138, and Public Law 102-182]

MULTILATERAL EXPORT CONTROL VIOLATIONS

SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

(b) SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be

identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) EXCLUSION.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(D) a system of export control documentation to verify the movement of goods and technology; and

(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

(e) DEFINITIONS.—For purposes of this section—

(1) the term “component part” means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term “finished product” means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or

components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term “sanctioned person” means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

(f) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to

counteract the effort of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) or (h), the President shall—

(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

(2) The total amount awarded in any case brought under paragraph (1) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

(l) DEFINITION.—For purposes of this section, the term “foreign person” means any person other than a United States person.

MISSILE PROLIFERATION CONTROL VIOLATIONS

SEC. 11B. (a) Violations by United States Persons.—

(1) SANCTIONS.—(A) If the President determines that a United States person knowingly—

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, section 5 or 6 of this Act, or any regulations or orders issued under any such provisions,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person, then the President shall impose the applicable sanctions described in subparagraph (B).

(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 11 of this Act.

(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

(1) SANCTIONS.—(A) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of the enactment of this section, knowingly—

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person, or if the President has made a determination with respect to a foreign

person under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.

(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(2) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Paragraph (1) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(3) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(5) WAIVER AND REPORT TO CONGRESS.—(A) In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(B) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(6) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(7) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(c) DEFINITIONS.—For purposes of this section and subsections (k) and (l)—

(1) the term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms “missile equipment or technology” and “MTCR equipment or technology” means those items listed in category I or category II of the MTCR Annex;

(6) the term “foreign person” means any person other than a United States person;

(7)(A) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term “person” means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

(8) the term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

SEC. 11C. (a) IMPOSITION OF SANCTION.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (c) if the

President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTION IS TO BE IMPOSED.—A sanction shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determination described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with

primary jurisdiction over that foreign person with respect to the imposition of a sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay the imposition of a sanction pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose the sanction unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay the imposition of the sanction for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTION.—

(1) DESCRIPTION OF SANCTION.—The sanction to be imposed pursuant to subsection (a)(1) is, except as provided in paragraph (2) of this subsection, the following:

(A) The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain a sanction under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanction would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the

sanction;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) **TERMINATION OF SANCTION.**—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) **WAIVER.**—

(1) **CRITERION FOR WAIVER.**—The President may waive the application of the sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which the sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) **NOTIFICATION OF AND REPORT TO CONGRESS.**—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) **DEFINITION OF FOREIGN PERSON.**—For purposes of this section, the term “foreign person” means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

B. EXPORT FINANCING AND PROMOTION

1. Agriculture Export Sales and Promotion

Agricultural Trade Act of 1978, as amended

[Excerpts]

[7 U.S.C. 5606 et seq.; Public Law 95-501, as amended by Public Law 101-624, Public Law 102-237, Public Law 102-511, Public Law 103-465, Public Law 104-127, and Public Law 107-171]

TITLE I—GENERAL PROVISIONS

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SEC. 106. IMPLEMENTATION OF COMMITMENTS UNDER URUGUAY ROUND AGREEMENTS.

Not later than September 30 of each year, the Secretary shall evaluate whether the obligations undertaken by foreign countries under the Uruguay Round Agreement on Agriculture are being fully implemented. If the Secretary has reason to believe (based on the evaluation) that any foreign country, by not implementing the obligations of the country, may be significantly constraining an opportunity for United States agricultural exports, the Secretary shall—

- (1) submit the evaluation to the United States Trade Representative; and
- (2) transmit a copy of the evaluation to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate.

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TITLE III—EXPORT ENHANCEMENT PROGRAM

SEC. 301. EXPORT ENHANCEMENT PROGRAM.

(a) **IN GENERAL.**—The Commodity Credit Corporation shall carry out an export enhancement program in accordance with this section to encourage the commercial sale of United States agricultural commodities in world markets at competitive prices. The program shall be carried out in a market sensitive manner. Activities under the program shall not be limited to responses to unfair trade practices.

(b) **EXPORT BONUS.**—

(1) **IN GENERAL.**—In carrying out the program established under this section, the Commodity Credit Corporation may—

- (A) make agricultural commodities, acquired by the Commodity Credit Corporation, available to exporters, users, processors, or foreign purchasers at no cost either directly or through the issuance of commodity certificates; and
- (B) make cash payments to exporters, users, and processors.

(2) **CALCULATION OF BONUS LEVELS.**—The Commodity Credit Corporation shall—

(A) maintain an established procedure for evaluating program bonus requests, with guidelines for determining prevailing market prices for targeted commodities and destinations to be used in the calculation of acceptable bonus levels;

(B) use a clear set of established procedures for measuring transportation and incidental costs to be used in the calculation of acceptable bonus levels and for determining the amount of such costs actually incurred; and

(C) maintain consistent and effective controls and procedures for auditing and reviewing payment of bonuses and for securing refunds where appropriate.

(3) DISCLOSURE OF INFORMATION.—The Secretary may, notwithstanding the provisions of section 552 of title 5, United States Code, provide for withholding from the public the procedures and guidelines established under paragraphs (2)(A) and (B) if the Secretary determines that release of such information would adversely affect the operation of the program. Nothing in this paragraph shall be construed to authorize the withholding of information, including such procedures and guidelines, from the Congress.

(4) COMPETITIVE DISADVANTAGE.—The Secretary shall take such action as is necessary to ensure that equal treatment is provided to domestic and foreign purchasers and users of agricultural commodities in any case in which the importation of a manufactured product made, in whole or in part, from a commodity made available for export under this section would place domestic users of the commodity at a competitive disadvantage.

(5) DIFFERENT COMMODITIES.—The Commodity Credit Corporation may provide to an exporter, user, or processor, or foreign purchaser, under the program established under this section, agricultural commodities of a kind different than the agricultural commodity involved in the transaction for which assistance under this section is being provided.

(6) OTHER EXPORT PROGRAMS.—The Commodity Credit Corporation may provide bonuses under this section in conjunction with other export promotion programs conducted by the Secretary or the Commodity Credit Corporation.

(7) AVOIDANCE OF PREFERENTIAL APPLICATION.—When using the authorities of this section to promote the exporting of wheat, the Secretary shall make reasonable efforts to avoid giving a preference to one class of wheat disproportionately more than another class.

(8) DISPLACEMENT.—The Secretary shall avoid the displacement of usual marketings of United States agricultural commodities in carrying out this section.

(c) PRIORITY IN THE CASE OF LIVESTOCK.—In the case of proposals for bonuses for dairy cattle or other appropriate livestock, the Commodity Credit Corporation shall give priority to proposals that include, in connection with the purchase of the livestock, appropriate herd management training, veterinary services, nutritional

training, and other technical assistance necessary for the adaptation of the livestock to foreign environments.

(d) INAPPLICABILITY OF PRICE RESTRICTIONS.—Any price restrictions that otherwise may be applicable to dispositions of agricultural commodities owned by the Commodity Credit Corporation shall not apply to agricultural commodities provided under this section.

(e) FUNDING LEVELS.—

(1) IN GENERAL.—The Commodity Credit Corporation shall make available to carry out the program established under this section not more than—

(A) \$350,000,000 for fiscal year 1996;

(B) \$250,000,000 for fiscal year 1997;

(C) \$500,000,000 for fiscal year 1998;

(D) \$550,000,000 for fiscal year 1999;

(E) \$579,000,000 for fiscal year 2000;

(F) \$478,000,000 for fiscal year 2001; and

(G) \$478,000,000 for each of fiscal years 2002 through 2007.

(2) SET-ASIDES.—(A) For each fiscal year, the Corporation shall, to the extent practicable and subject to subparagraph (B), ensure that no less than 25 percent of the total of—

(i) the funds expended, and

(ii) the value of any commodities made available,

under this section in connection with sales of agricultural commodities to the independent states of the former Soviet Union is used to promote the export of processed and high-value United States agricultural products and that the balance of the funds expended and commodities made available under this section in connection with such sales is used to promote the export of bulk or raw United States agricultural commodities.

(B) The 25 percent requirement of subparagraph (A) shall apply for a fiscal year only to the extent that the percentage of the total of—

(i) the funds expended, and

(ii) the value of commodities made available,

for that fiscal year under this section to promote the export to all countries of processed and high-value United States agricultural products is less than 15 percent.

(f) EFFECT ON THIRD COUNTRIES.—It is not the purpose of the program established under this section to affect adversely the exports of fairly traded agricultural commodities.

(g) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS.—Notwithstanding any other provision of this section, the Commodity Credit Corporation shall administer and carry out the program authorized by this section in a manner consistent, as determined by the President, with the obligations undertaken by the United States set forth in the Uruguay Round Agreements.

(h) PRIORITY FUNDING FOR INTERMEDIATE PRODUCTS.—

(1) **IN GENERAL.**—Effective beginning in fiscal year 1996, and consistent, as determined by the Secretary, with the obligations and reduction commitments undertaken by the United States under the Uruguay Round Agreements, the Secretary may make available not more than \$100,000,000 for each fiscal year under this section for the sale of intermediate agricultural products in sufficient quantities to attain the volume of export sales consistent with the volume of intermediate agricultural products exported by the United States during the Uruguay Round base period years of 1986 through 1990.

(2) **ADDITIONAL ASSISTANCE.**—Notwithstanding paragraph (1), if the export sale of any intermediate agricultural product attains the volume of export sales consistent with the volume of the intermediate agricultural product exported by the United States during the Uruguay Round base period years of 1986 through 1990, the Secretary may make available additional amounts under this section for the encouragement of export sales of the intermediate agricultural product.

SEC. 302. RELIEF FROM UNFAIR TRADE PRACTICES.

(a) USE OF PROGRAMS.—

(1) **IN GENERAL.**—The Secretary may, for each article described in paragraph (2), make available some or all of the commercial export promotion programs of the Department of Agriculture and the Commodity Credit Corporation to help mitigate or offset the effects of the unfair trade practice serving as the basis for the proceeding described in paragraph (2).

(2) **COMMODITIES SPECIFIED.**—Paragraph (1) shall apply in the case of articles for which the United States has instituted, under any international trade agreement, any dispute settlement proceeding based on an unfair trade practice if such proceeding has been prevented from progressing to a decision by the refusal of the party maintaining the unfair trade practice to permit the proceeding to progress.

(b) CONSULTATIONS REQUIRED.—For any article described in subsection (a)(2), the Secretary shall—

(1) promptly consult with representatives of the industry producing such articles and other allied groups or individuals regarding specific actions or the development of an integrated marketing strategy utilizing some or all of the commercial export programs of the Department of Agriculture and the Commodity Credit Corporation to help mitigate or offset the effects of the unfair trade practice identified in subsection (a)(2); and

(2) ascertain and take into account the industry preference for the practical use of available commercial export promotion programs in implementing subsection (a)(1).

SEC. 303. EQUITABLE TREATMENT OF HIGH-VALUE AND VALUE-ADDED UNITED STATES AGRICULTURAL COMMODITIES.

In the case of any program, such as that established under section 301, operated

by the Secretary or the Commodity Credit Corporation during the fiscal years 1991 through 1995, for the purpose of discouraging unfair trade practices, the Secretary shall establish as an objective to expend annually at least 25 percent of the total funds available (or 25 percent of the value of any commodities employed) for program activities involving the export sales of high-value agricultural commodities and value-added products of United States agricultural commodities.

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TITLE IV—GENERAL PROVISIONS

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SEC. 414. TRADE CONSULTATIONS CONCERNING IMPORTS.

(a) **CONSULTATION BETWEEN AGENCIES.**—The Secretary shall require consultation between the Administrator of the Service and the heads of other appropriate agencies and offices of the Department of Agriculture, including the Administrator of the Animal and Plant Health Inspection Service, prior to relaxing or removing any restriction on the importation of any agricultural commodity into the United States.

(b) **CONSULTATION WITH TRADE REPRESENTATIVE.**—The Secretary shall consult with the United States Trade Representative prior to relaxing or removing any restriction on the importation of any agricultural commodity or a product thereof into the United States.

(c) **MONITORING COMPLIANCE WITH SANITARY AND PHYTOSANITARY MEASURES.**—The Secretary shall monitor the compliance of World Trade Organization member countries with the sanitary and phytosanitary measures of the Agreement on Agriculture of the Uruguay Round of Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade. If the Secretary has reason to believe that any country may have failed to meet the commitment on sanitary and phytosanitary measures under the Agreement in a manner that adversely impacts the exports of a United States agricultural commodity, the Secretary shall—

(1) provide such information to the United States Trade Representative of the circumstances surrounding the matter arising under this subsection; and

(2) with respect to any such circumstances that the Secretary considers to have a continuing adverse effect on United States agricultural exports, report to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate—

(A) that a country may have failed to meet the sanitary and phytosanitary commitments; and

(B) any notice given by the Secretary to the United States Trade Representative.

SEC. 415. TECHNICAL ASSISTANCE IN TRADE NEGOTIATIONS.

The Secretary shall provide technical services to the United States Trade Representative on matters pertaining to agricultural trade and with respect to international negotiations on issues related to agricultural trade.

Section 1123 of the Food Security Act of 1985

[7 U.S.C. 1736r; Public Law 99-198, as amended by Public Law 104-127]

SEC. 1123. TRADE NEGOTIATIONS POLICY.

(a) FINDINGS.—Congress finds that—

(1) on a level playing field, United States producers are the most competitive suppliers of agricultural products in the world;

(2) exports of United States agricultural products accounted for \$54,000,000,000 in 1995, contributing a net \$24,000,000,000 to the merchandise trade balance of the United States and supporting approximately 1,000,000 jobs;

(3) increased agricultural exports are critical to the future of the farm, rural, and overall United States economy, but the opportunities for increased agricultural exports are limited by the unfair subsidies of the competitors of the United States, and a variety of tariff and nontariff barriers to highly competitive United States agricultural products;

(4) international negotiations can play a key role in breaking down barriers to United States agricultural exports;

(5) the Uruguay Round Agreement on Agriculture made significant progress in the attainment of increased market access opportunities for United States exports of agricultural products, for the first time—

(A) restraining foreign trade-distorting domestic support and export subsidy programs; and

(B) developing common rules for the application of sanitary and phytosanitary restrictions;

that should result in increased exports of United States agricultural products, jobs, and income growth in the United States;

(6) the Uruguay Round Agreement on Agriculture did not succeed in completely eliminating trade distorting domestic support and export subsidies by—

(A) allowing the European Union to continue unreasonable levels of spending on export subsidies; and

(B) failing to discipline monopolistic state trading entities, such as the Canadian Wheat Board, that use nontransparent and discriminatory pricing as a hidden de facto export subsidy;

(7) during the period 1996 through 2002, there will be several opportunities for the United States to negotiate fairer trade in agricultural products, including further negotiations under the World Trade Organization, and steps toward possible free trade agreements of the Americas and Asian-Pacific Economic Cooperation (APEC); and

(8) the United States should aggressively use these opportunities to achieve more open and fair opportunities for trade in agricultural products.

(b) GOALS OF THE UNITED STATES IN AGRICULTURAL TRADE NEGOTIATIONS.—
The objectives of the United States with respect to future negotiations on agricultural trade include—

- (1) increasing opportunities for United States exports of agricultural products by eliminating tariff and nontariff barriers to trade;
- (2) leveling the playing field for United States producers of agricultural products by limiting per unit domestic production supports to levels that are no greater than those available in the United States;
- (3) ending the practice of export dumping by eliminating all trade distorting export subsidies and disciplining state trading entities so that they do not (except in cases of bona fide food aid) sell in foreign markets at prices below domestic market prices or prices below their full costs of acquiring and delivering agricultural products to the foreign markets; and
- (4) encouraging government policies that avoid price-depressing surpluses.

2. Export Promotion of Goods and Services

Sections 2303, 2306, and 2312 of the Export Enhancement Act of 1988, as amended

[15 U.S.C. 4723, 4726, 4732; Public Law 100-418, as amended by Public Law 102-240, Public Law 102-429, Public Law 102-549, Public Law 103-392, and Public Law 106-158]

SEC. 2303. MARKET DEVELOPMENT COOPERATOR PROGRAM.

(a) AUTHORITY OF SECRETARY OF COMMERCE.—In order to promote further the exportation of goods and services from the United States, the Secretary of Commerce is authorized to establish, in the International Trade Administration of the Department of Commerce, a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

(b) IMPLEMENTATION OF THE PROGRAM.—The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

- (1) nonprofit industry organizations,
- (2) trade associations,
- (3) State departments of trade and their regional associations, including centers for international trade development, and
- (4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

(in this section referred to as “cooperators”) to engage in activities in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a). The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the

cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

(c) COOPERATOR PARTNERSHIP PROGRAM.—

(1) IN GENERAL.—(A) As part of the Market Development Cooperator Program established under subsection (a), the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a).

(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law administered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)) and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

(2) QUALIFICATIONS OF PARTICIPANTS.—In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

(3) EXPENSES OF THE PROGRAM.—(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual's salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

(d) BUDGET ACT.—Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

SEC. 2306. UNITED STATES AND FOREIGN COMMERCIAL SERVICE PACIFIC RIM INITIATIVE.

(a) IN GENERAL.—In order to encourage the export of United States goods and services to Japan, South Korea, and Taiwan, the United States and Foreign Commercial Service shall make a special effort to—

(1) identify United States goods and services which are not being exported to the markets of Japan, South Korea, and Taiwan but which could be exported to

these markets under competitive market conditions;

(2) identify and notify United States persons who sell or provide such goods or services of potential opportunities identified under paragraph (1);

(3) present, periodically, a list of the goods and services identified under paragraph (1), together with a list of any impediments to the export of such goods and services, to appropriate authorities in Japan, South Korea, and Taiwan, with a view toward liberalizing markets to such goods and services;

(4) facilitate the entrance into such markets by United States persons identified and notified under paragraph (2); and

(5) monitor and evaluate the results of efforts to increase the sale of goods and services in such markets.

(b) **REPORTS TO THE CONGRESS.**—The Secretary of Commerce shall report periodically to the Congress on activities carried out under subsection (a).

(c) **DEFINITION.**—As used in this section, the term “United States person” means—

(1) a United States citizen; or

(2) a corporation, partnership, or other association created under the laws of the United States or any State (including the District of Columbia or any commonwealth, territory, or possession of the United States).

SEC. 2312. TRADE PROMOTION COORDINATING COMMITTEE.

(a) **ESTABLISHMENT AND PURPOSE.**—The President shall establish the Trade Promotion Coordinating Committee (hereafter in this section referred to as the “TPCC”). The purpose of the TPCC shall be—

(1) to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and

(2) to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs.

(b) **DUTIES.**—The TPCC shall—

(1) coordinate the development of the trade promotion policies and programs of the United States Government;

(2) provide a central source of information for the business community on Federal export promotion and export financing programs;

(3) coordinate official trade promotion efforts to ensure better delivery of services to United States businesses, including—

(A) information and counseling on United States export promotion and export financing programs and opportunities in foreign markets;

(B) representation of United States business interests abroad; and

(C) assistance with foreign business contacts and projects;

(4) prevent unnecessary duplication in Federal export promotion and export financing activities;

(5) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations to the President based on its assessment; and

(6) carry out such other duties as are deemed to be appropriate consistent with the purpose of the TPCC.

(c) STRATEGIC PLAN.—To carry out subsection (b), the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall—

(1) establish a set of priorities for Federal activities in support of United States exports and explain the rationale for the priorities;

(2) review current Federal programs designed to promote the sale of United States exports in light of the priorities established under paragraph (1) and develop a plan to bring such activities into line with the priorities and to improve coordination of such activities;

(3) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(4) propose to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (2) and eliminates funding for the areas of overlap and duplication identified under paragraph (3); and

(5) review efforts by the States (as defined in section 2301(i)) to promote United States exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data; and

(6) reflect the recommendations of the United States National Tourism Organization to the degree considered appropriate by the TPCC.

(d) MEMBERSHIP.—

(1) IN GENERAL.—Members of the TPCC shall include representatives from—

(A) the Department of Commerce;

(B) the Department of State;

(C) the Department of the Treasury;

(D) the Department of Agriculture;

(E) the Department of Energy;

(F) the Department of Transportation;

(G) the Office of the United States Trade Representative;

(H) the Small Business Administration;

(I) the Agency for International Development;

(J) the Trade and Development Program;

(K) the Overseas Private Investment Corporation;

(L) the Export-Import Bank of the United States; and

(M) at the discretion of the President, such other departments or agencies as may be necessary.

(2) CHAIRPERSON.—The Secretary of Commerce shall serve as the chairperson of the TPCC.

(e) MEMBER QUALIFICATIONS.—Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as

alternates designated by any members unable to attend a meeting of the TPCC, shall be individuals who exercise significant decisionmaking authority in their respective departments or agencies.

(f) REPORT TO THE CONGRESS.—The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than March 30 of each year, a report describing —

(1) the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan, and any revisions thereto; and

(2) the implementation of sections 303 and 304 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.