

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RL31398>

February 2, 2009

Congressional Research Service

Report RL31398

*Export Administration Act of 2001: Side-by-Side of S. 149
and H.R. 2541*

Ian F. Fergusson, Foreign Affairs, Defense, and Trade Division

Updated April 30, 2002

Abstract. This report compares the major provisions of the Export Administration Act of 2001 (EAA); S. 149 as passed by the Senate, H.R. 2581 as amended by the House International Relations Committee, and H.R. 2581 as further amended by the House Armed Services Committee. These bills reauthorize and revamp the primary authority for controlling exports and technologies for reasons of foreign policy and national security.

WikiLeaks

Report for Congress

Received through the CRS Web

Export Administration Act of 2001: Side-by-Side of S. 149 and H.R. 2581

April 30, 2002

Ian F. Fergusson
Analyst in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

<http://wikileaks.org/wiki/CRS-RL31398>

The Export Administration Act of 2001: Side-by-Side of S. 149 and H.R. 2581

Summary

This report compares the major provisions of the Export Administration Act of 2001 (EAA); S. 149 as passed by the Senate, H.R. 2581 as amended by the House International Relations Committee, and H.R. 2581 as further amended by the House Armed Services Committee. These bills reauthorize and revamp the primary authority for controlling exports and technologies for reasons of foreign policy and national security. The Export Administration Act of 2001 was introduced in the Senate as S. 149 on January 23, 2001, by Senator Michael P. Enzi. The bill was reported out by the Senate Banking, Housing, and Urban Affairs Committee on March 22, 2001 by a vote of 19-1. After 3 days of debate, the Senate passed the measure, incorporating three amendments, on September 6, 2001. One House version of EAA (H.R. 2581), substantially similar to S. 149, was introduced by Rep. Benjamin Gilman on July 20, 2001. It was approved by the House International Relations Committee (HIRC) on August 1 by a vote of 26-7 with 35 amendments, thus significantly altering the measure. In addition, the House Permanent Select Committee on Intelligence and the House Armed Services Committee (HASC) have held hearings on H.R. 2581. The HASC marked-up and reported out the legislation with further amendments on March 6, 2002 by a vote of 44-6.

The Senate and the HASC versions of EAA contain seven titles; the HIRC version contains eight. Title I vests the authority to license exports with the Secretary of Commerce and provides for the establishment of the Commerce Control List. Title II provides for controls based on national security purposes. It authorizes the establishment of a National Security Control List. This title also authorizes the decontrol of certain items due to foreign availability or items categorized as having mass market status. Title III authorizes foreign policy based export controls, including controls to deter international terrorism. Title IV provides a review mechanism for disputed license applications. Title V authorizes U.S. participation in multilateral export control regimes and details penalties for export control violations. Title VI authorizes the establishment of an Under Secretary for Export Administration to carry out functions of the Act. This title also protects the confidentiality of license applications. Title VII in the HIRC version transfers licensing authority over commercial communications satellites from the Department of State to the Department of Commerce. Title VII of the Senate and HASC versions (Title VIII in the HIRC version) mandates the submission of an annual report to Congress and also contains several conforming amendments, including those repealing provisions related to the control of high performance computers.

This report compares the three pieces of legislation by title, highlighting significant differences. Section descriptors span all three columns and provide background where necessary. Sections added in one version without comparable provision in the other are summarized. In cases in which committee action amended the wording of existing sections, the legislative language is directly cited.

Contents

Introduction	1
Title I: General Authorities	3
Title II: National Security Export Controls	6
Title III - Foreign Policy Controls	15
Title IV - Export License and Dispute Resolution Procedures	20
Title VI - Export Control Authority and Regulations	24
Title VIII [Title VII (AS)]	27

The Export Administration Act of 2001: Side-by-Side of S. 149 and H.R. 2581

Introduction

This report compares the major provisions of the Export Administration Act of 2001; S. 149 as passed by the Senate, H.R. 2581 as amended by the House International Relations Committee, and H.R. 2581 as further amended by the House Armed Services Committee. Exports of sensitive dual-use goods and technology (i.e. items with both civilian and military applications) have been regulated by the Export Administration Act of 1979 (P.L. 96-72, 50 U.S.C. 2401 *et seq*). This Act first expired in 1989, but periodically it has been extended by Congress. During several periods when the Act has expired, the Export Administration Regulations have been maintained by authority of the International Emergency Economic Powers Act (IEEPA)(50 U.S.C. 1703(b)).

In the 107th Congress, S. 149, the Export Administration Act of 2001, to reauthorize and rewrite the EAA was introduced on January 23, 2001, by Senator Michael P. Enzi. The Senate Banking, Housing, and Urban Affairs Committee voted 19-1 to report S. 149 to the Senate on March 22, 2001. After 3 days of debate, the Senate passed the measure, incorporating three amendments, on September 6, 2001. One House version of EAA (H.R. 2581), substantially similar to S. 149, was introduced by Rep. Benjamin Gilman on July 20, 2001. It was approved by the House International Relations Committee(HIRC) on August 1 by a vote of 26-7 with 35 amendments, thus significantly altering the measure. In addition, the House Permanent Select Committee on Intelligence and the House Armed Services Committee (HASC) have held hearings on H.R. 2581. The HASC marked-up and reported out the legislation with further amendments on March 6, 2002 by a vote of 44-6.

This report compares the three pieces of legislation and the similarities and differences between them. It is arranged by title and section, which also serve as a proxy for subject matter. The section descriptors span all three columns and provide background where necessary. Sections added in one version without comparable provision in the other are summarized. In cases in which committee action amended the wording of existing sections, the legislative language is directly cited. For further information concerning the issues surrounding the Export Administration Act, please refer to the following reports: RL30169, *Export Administration Act Reauthorization*, and RL30689, *Export Administration Act: Controversy and Prospects*.

Title I: General Authorities		
S. 149 As passed by the Senate	H.R. 2581 House International Relations Committee	H.R. 2581 House Armed Services Committee
Definitions - Deemed Exports		
Does not refer to deemed exports	Sec. 2(9)(iii)- defines deemed exports to include “the release of an item to a foreign national within or outside the United States.”	
Definitions - Technology		
Sec. 2(1)(ii)-defines technology to mean “specific information that is necessary for the development, production, or use of an item, and takes the form of technical data or assistance.”	Sec. 2(1)(ii)- defines technology to mean “specific information, communicated by any means tangible or intangible, that is necessary for the design, development, production, or use of an item, including taking the form of technical data or technical assistance.”	
Sec. 101 Commerce Control List - This section authorizes the Secretary to establish a Commerce Control List of items subject to license authorization for export.		
Sec. 101(e) “The Secretary may prescribe such regulations as are necessary to carry out the provision of this Act.” Sec. 101(e)	No comparable provision	
Sec. 103 Public Information - This section directs the Secretary to keep the public informed about changes to export control policy and procedure. The House version adds national security or nonproliferation groups to the range of groups to be consulted.		
Sec. 103(b) “The Secretary shall consult regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls in order to obtain their views on United States export control policy and the foreign availability or mass-market status of controlled items.”	Sec. 103(b) “The Secretary shall consult regularly with representatives of a broad spectrum of enterprises, labor organizations, nonproliferation and national security experts and citizens interested in or affected by export controls in order to obtain their views on United States export control policy and the foreign availability or mass-market status of controlled items.”	
Sec. 105 Export Control Advisory Committees. This section authorizes the Secretary to appoint export control advisory committees with respect to any items or class of items controlled or subject to export controls. The House version directs the Secretary to seek the participation of national security and non-proliferation experts on the advisory committees.		

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec. 105(a) “The Secretary shall permit the widest possible participation by the business community on the export control advisory committees.”</p>	<p>Sec. 105(a) “The Secretary shall permit the widest possible participation on the export control advisory committees by nonproliferation and national security experts, and by the business community.”</p>	
<p align="center">Title II: National Security Export Controls</p>		
<p>Sec. 201(a) Authorizes the President to prohibit, to curtail, or to require a license for the export of any item for national security purposes. Sec. 201 (a)(2) authorizes the Secretary to exercise these authorities, but the bills differ on the extent to which the Secretary must consult or seek concurrence with other agencies in the exercise of his authority.</p>		
<p>Sec. 201(a)(2) EXERCISE OF AUTHORITY- “The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, the intelligence agencies, and such other departments and agencies as the Secretary considers appropriate.”</p>	<p>Sec. 201(a)(2) “EXERCISE OF AUTHORITY- The authority contained in this subsection shall be exercised by the Secretary, with the concurrence of the Secretary of Defense and in consultation with the Secretary of State, the intelligence agencies, and the heads of such other departments and agencies as the Secretary considers appropriate.”</p>	
<p>Sec. 201(b) Purposes of National Security Controls- This section enunciates the purpose of national security controls. The language differs between the bills in purpose (1) and (3). The HASC version contains a different standard in determining the items that can be controlled under national security controls and a more detailed version of the purpose of anti-terrorism controls.</p>		
<p>Sec. 201(b)(1) “To restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States, its allies or countries sharing common strategic objectives with the United States.”</p>	<p>Sec. 201(b)(1) “To restrict the export of items that could contribute to the military potential of countries so as to prove detrimental to the national security of the United States, its allies or countries sharing common strategic objectives with the United States.”</p>	
<p>Section 201(b)(3) “To deter acts of international terrorism”</p>	<p>Section 201(b)(3) “To restrict the export of items that could contribute to acts of international terrorism so as to prove detrimental to the national security of the United States, its allies, or countries sharing common strategic objectives with the United States.”</p>	

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec. 201(c) End Use and End User Controls. This section authorizes the imposition of controls of any item that could contribute to the proliferation of weapons of mass destruction based on the end-use or end-user of that item. However, the House versions mandate a presumption of denial for certain end-use or end-users.</p>		
<p>(c) “END USE AND END USER CONTROLS- Notwithstanding any other provision of this title, controls may be imposed, based on the end use or end user, on the export of any item, that could contribute to the proliferation of weapons of mass destruction or the means to deliver them.”</p> <p>http://wikileaks.org/wiki/CRS-RL31389</p>	<p>(c) “END USE AND END USER CONTROLS-</p> <p>(1) GENERAL AUTHORITY- (A) Notwithstanding any other provision of this Act, controls may be imposed, based on the end use or end user, on the export of any item, that could contribute to the proliferation of weapons of mass destruction or the means to deliver them.</p> <p>(B) The President shall seek to strengthen multilateral cooperation to identify more effectively end users of concern.</p> <p>(C) The Secretary shall establish and maintain a database listing end users of concern and develop a procedure by which exporters can utilize such database to screen prospective end users.</p> <p>(2) PRESUMPTION OF DENIAL OF CERTAIN LICENSES- Notwithstanding any other provision of this Act, there shall be a presumption of denial for the export of an item if the Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, determines that there is a significant risk that--</p> <p>(A) the end user designated to receive such item is involved in a program or activity for the design, development, manufacture, stockpiling, testing, or other acquisition of a weapon of mass destruction or the means to deliver such a weapon and is in a country that is not an adherent to a multilateral export control regime controlling such weapon or means of delivery, unless the Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, and in consultation with the intelligence agencies and the head of any other department or agency of the United States that the Secretary considers appropriate, determines that such export would not make a material contribution to such program or activity; or</p> <p>(B) the export of such item would otherwise contribute to the military capabilities of a country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally.</p> <p>(3) DEFINITION- For purposes of this subsection, an ‘adherent to a multilateral export control regime’ is--(A) a country that is a member of a multilateral export control regime; (B) a country that, pursuant to an international understanding to which the United States is a party, controls exports in accordance with relevant criteria and standards of a multilateral export control regime; or</p> <p>(C) a major non-NATO ally that, pursuant to its national legislation, controls exports in accordance with such criteria and standards.”</p>	

<p align="center">S. 149 As passed by the Senate</p>	<p align="center">H.R. 2581 House International Relations Committee</p>	<p align="center">H.R. 2581 House Armed Services Committee</p>
<p>Sec. 201(d) Enhanced Control - This section authorizes the President to impose controls on an item that may be subject to decontrol under Sec. 204 (Incorporated Parts and Components) or Sec 211 (Foreign Availability and Mass Market Determination). The House and Senate versions employ a different threshold for determining whether an item could be controlled under this provision. The House version also authorizes the President to add items to the NSCL and allows him to require a license for items controlled under this provision.</p>		
<p>(d) “ENHANCED CONTROLS- IN GENERAL- Notwithstanding any other provisions of this title, the President may determine that applying the provisions of section 204 or 211 with respect to an item on the National Security Control List would constitute a significant threat to the national security of the United States and that such item requires enhanced control. If the President determines that enhanced control should apply to such item, the item may be excluded from the provisions of section 204, section 211, or both, until such time as the President shall determine that such enhanced control should no longer apply to such item. The President may not delegate the authority provided for in this subsection. (2) REPORT TO CONGRESS- The President shall promptly report any determination described in paragraph (1), along with the specific reasons for the determination, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.”</p>	<p>(d) “ENHANCED CONTROL- (1) IN GENERAL- Notwithstanding any other provision of this title, the President may determine that applying the provisions of section 204 or 211 with respect to an item on the National Security Control List could constitute a threat to the national security of the United States and that such item requires enhanced control, including the requirement for a license for such item. If the President determines that enhanced control should apply to such item, the item may be excluded from the provisions of sections 204 or 211, or both, until such time as the President determines that enhanced control should no longer apply to such item. (2) CONTROL OF ITEMS- Notwithstanding any other provision of this Act, the President may identify items to be included on the National Security Control List, and any such item shall be included on that list. (3) NONDELEGATION- The President may not delegate the authority provided under paragraphs (1) and (2). (4) REPORT TO CONGRESS- The President shall promptly report any determination described in paragraph (1) or any items included on the National Security Control List under paragraph (2), along with the specific reasons for that determination or inclusion (as the case may be), to the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.”</p>	

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Presumption of Denial on Certain Licenses - The House versions of the legislation mandate that the export of certain items requiring a license carry a presumption of denial .The House versions differ on the threshold for determining the threat of an item.</p>		
<p>No Corresponding Provision</p> <p>http://wikileaks.org/wiki/CRS-RL313966</p>	<p>Sec. 201(e) Requires a presumption of denial for the export of any item requiring a license on the NSCL if there is a significant risk that -</p> <p>“(A) such item would contribute to the nuclear, chemical, or biological weapons capabilities of such country, or the capabilities of such country to deliver such weapons;</p> <p>(B) such item would otherwise contribute to the military capabilities of such country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally;</p> <p>(C) such item would likely be used or diverted to a use or destination not authorized by the license or U.S. policy;</p> <p>(D) the export of such item would otherwise materially and adversely affect the national security interests of the United States.”</p>	<p>Sec. 201(e) Requires a presumption of denial for the export of any item requiring a license on the NSCL if there is a significant risk that -</p> <p>“(A) such item could contribute to the nuclear, chemical, or biological weapons capabilities of such country, or the capabilities of such country to deliver such weapons;</p> <p>(B) such item could otherwise contribute to the military capabilities of such country so as to undermine regional stability or otherwise prove detrimental to the national security of the United States, a NATO ally, or major non-NATO ally;</p> <p>(C) such item could likely be used or diverted to a use or destination not authorized by the license or U.S. policy;</p> <p>(D) the export of such item could otherwise materially and adversely affect the national security interests of the United States.”</p>
<p>Sec. 202 National Security Control List - This section directs the Secretary to maintain a National Security Control List (NSCL) composed of items controlled for national security purposes as a subset of the Commerce Control List. Section 202(3)(a) provides for identification of items on the NSCL. The HASC version also provides statutory authority for the maintenance of the Militarily Critical Technologies List in Sec. 202(a)(4)</p>		

<p align="center">S. 149 As passed by the Senate</p>	<p align="center">H.R. 2581 House International Relations Committee</p>	<p align="center">H.R. 2581 House Armed Services Committee</p>
<p>Sec. 202(a)(3) “ Identification of items for the NSCL shall be made by the Secretary, with the concurrence of the Secretary of Defense, and in consultation with other departments or agencies that the Secretary considers appropriate.” - NSCL includes all items controlled on the current Commerce Control List. - the Secretary shall review the NSCL on a continuing basis, and with the concurrence of the Secretary of Defense, and in consultation with other departments or agencies that the Secretary considers appropriate, adjust the NSCL to add or remove items from the list.</p>	<p>Sec. 202(a)(3) “Identification of items for the NSCL shall be made by the Secretary, with the concurrence of the Secretary of Defense, the Secretary of State, and in consultation with other departments or agencies that the Secretary considers appropriate.” - NSCL includes all items controlled by the current Commerce Control List. - the Secretary shall review the NSCL on a continuing basis, and with the concurrence of the Secretary of Defense, and the Secretary of State, and in consultation with other departments or agencies that the Secretary considers appropriate, adjust the NSCL to add or remove items from the list.</p>	
<p>No comparable provision</p> <p>http://wikileaks.org/wiki/CRS-7-386</p>	<p>No comparable provision</p>	<p>Sec 202(a)(4) Militarily Critical Technologies List (MCTL)- (A) Established as part of the NSCL. (B) composed of items that are, or could be, “critical to the United States military maintaining or advancing its qualitative advantage and superiority relative to other countries or potential adversaries.” (C) Secretary of Defense vested with sole authority to add or remove any item from MCTL. (D) Licensing of MCTL items must receive expressed consent of the Secretary of Defense, except if overruled by the President in interagency dispute resolution procedures. (D)Secretary of Defense shall report yearly to the Senate and House Armed Services Committee on the MCTL.</p>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec. 203 Country Tiers - Directs the President to establish a country tiering system of at least 3 tiers and assign each country to an appropriate tier for each controlled item or group of items; provides for consultation between the President, the Secretary, SecDef, SecState, the intelligence community, and other agencies the President considers appropriate. The HASC version contains language prohibiting the President from delegating authority to establish the country tier system.</p>		
<p>No comparable provision</p>	<p>No comparable provision</p>	<p>Sec 203(a)(4) The President may not delegate the authorities to establish the country tier system.</p>
<p>Section 203(c) Assessments This section provides several risk factors for the President to consider in assigning each country to a tier. The House versions modify two risk factors and add a third. All 11 are listed for context. (1) “The present and potential relationship of the country with the United States.” (2) “ The present and potential relationship of the country with countries friendly to the United States, and with countries hostile to the United States.”</p>		
<p>3) “The country’s capabilities regarding chemical, biological, and nuclear weapons and the country’s membership in, and level of compliance with, relevant multilateral export control regimes.” 4) “The country’s capabilities regarding missile systems and the country’s membership in, and level of compliance with, relevant multilateral export control regimes.”</p>	<p>3) “The country’s goals, capabilities, and intentions regarding chemical, biological, and nuclear weapons and the country’s membership in or adherence to, and level of compliance with, relevant multilateral export control regimes.” 4) “The country’s capabilities regarding missile systems and the country’s membership in or adherence to, and level of compliance with, relevant multilateral export control regime”</p>	
<p>(5) “Whether the country, if a NATO or major non-NATO ally with whom the United States has entered into a free trade agreement as of January 1, 1986, controls exports in accordance with the criteria and standards of a multilateral export control regime as defined in section 2(14) pursuant to an international agreement to which the United States is a party.” (6) “The country’s other military capabilities and the potential threat posed by the country to the United States or its allies.” (7) “The effectiveness of the country’s export control system.” (8) “The level of the country’s cooperation with United States export control enforcement and other efforts.” (9) “The risk of export diversion by the country to a higher tier country.” (10) “The designation of the country as a country supporting international terrorism under section 310.”</p>		
		<p>(11) “The extent to which the country, pursuant to its laws, regulations, and practices, controls items consistent with the criteria and standards or relevant multilateral export control regimes.”</p>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>No comparable provision</p> <p style="text-align: center;">http://wikileaks.org/wiki/CRS-RL31398</p>		<p>Section 206 Congressional Review and Report (a) directs the Secretary to inform the appropriate committees (House Armed Services and International Relations; Senate Banking, Housing and Urban Affairs, Armed Services and Foreign Relations) at least 30 days before changing the status of an item on the NSCL. (b) Upon request of the chairman or ranking member of the committees, directs the Secretary to provide a clear description of the proposed change, the reasons justifying the change, and the national security assessment of the Secretary of Defense. (c) This assessment, prepared in consultation with the Secretary of State and Director of Central Intelligence (DCI), shall report on the impact of the proposed change on U.S. national security, its armed forces and intelligence community, and the cumulative effects such decontrols could have on U.S national security, and on the military potential, proliferation activities, and support for international terrorism by countries that may receive the items due to decontrol.</p>
<p>Sec. 211 Determination of Foreign Availability and Mass Market Status</p>		
<p>Sec 211(a) Both versions of this section directs the Secretary to review the mass market and foreign availability status of any item on the NSCL. The Senate and the HIRC version also allow the Secretary to make status determinations, however the HASC version removes the ability of the Secretary sole authority to make such determinations.</p>		

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec. 211(a) “IN GENERAL- The Secretary shall-- (1) on a continuing basis, (2) upon a request from the Office of Technology Evaluation, or (3) upon receipt of a petition filed by an interested person, review and determine the foreign availability and the mass-market status of any item the export of which is controlled under this title.”</p>		<p>Sec. 211(a) “IN GENERAL- The Secretary shall-- (1) on a continuing basis, (2) upon a request from the Office of Technology Evaluation established pursuant to section 214, or (3) upon receipt of a petition filed by an interested person, review the foreign availability and the mass-market status of any item the export of which is controlled under this title.”</p>
<p>Petitions and Consultations- The HASC version mandates that foreign availability and mass market determinations must be receive the concurrence of the Secretary of State and the Secretary of Defense.</p>		
<p>No Comparable Provision</p>		<p>Sec. 211(b)(2) “TIME FOR MAKING DETERMINATION The Secretary, with the concurrence of the Secretary of Defense and the Secretary of State, shall, within 6 months after receiving a petition described in subsection (a)(3), determine in accordance with subsection (c) whether the item that is the subject of the petition has foreign availability or mass-market status and shall notify the petitioner of the determination.”</p>
<p>Sec. 211(d) Criteria for establishing mass-market and foreign availability status. These criteria define mass market and foreign availability for each version of the bill. The HASC version generally adopts a more restrictive definition of mass market and foreign availability, in part, by removing references to “substantially identical” or “directly competitive” items.</p>		

<http://wikileaks.org/wiki/CRS-1031398>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec. 211(d)(1) “FOREIGN AVAILABILITY STATUS- The Secretary shall determine that an item has foreign availability status under this subtitle, if the item (or a substantially identical or directly competitive item)--</p> <p>(A) is available to controlled countries from sources outside the United States, including countries that participate with the United States in multilateral export controls;</p> <p>(B) can be acquired at a price that is not excessive when compared to the price at which a controlled country could acquire such item from sources within the United States in the absence of export controls; and</p> <p>(C) is available in sufficient quantity so that the requirement of a license or other authorization with respect to the export of such item is or would be ineffective.”</p> <p>http://wikileaks.org/wiki/CRS-RL3139</p>		<p>Sec. 211(d)(1) “FOREIGN AVAILABILITY STATUS- An item has foreign availability status under this subtitle only if the item--</p> <p>(A) is available to controlled countries without restriction from sources outside the United States, more than one of which are countries that participate with the United States in multilateral export control regimes as members; and</p> <p>(B) is available in significant quantity and comparable quality to the item produced in the United States so that the requirement of a license or other authorization with respect to the export of the item is or would be ineffective.”</p> <p>(ii) EXCEPTION- An item is not directly competitive with a controlled item if the item is not of comparable quality to the controlled item with respect to characteristics that resulted in the export of the item being controlled.”</p>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec 211(d)(2) "MASS - MARKET STATUS</p> <p>(A) IN GENERAL- In determining whether an item has mass-market status under this subtitle, the Secretary shall consider the following criteria with respect to the item (or a substantially identical or directly competitive item):</p> <p>(i) The production and availability for sale in a large volume to multiple potential purchasers.</p> <p>(ii) The widespread distribution through normal commercial channels, such as retail stores, direct marketing catalogues, electronic commerce, and other channels.</p> <p>(iii) The conduciveness to shipment and delivery by generally accepted commercial means of transport.</p> <p>(iv) The use for the item's normal intended purpose without substantial and specialized service provided by the manufacturer, distributor, or other third party.</p> <p>(B) DETERMINATION BY SECRETARY- If the Secretary finds that the item (or a substantially identical or directly competitive item) meets the criteria set forth in subparagraph (A), the Secretary shall determine that the item has mass-market status.</p> <p>(3) SPECIAL RULES- For purposes of this subtitle-</p> <p>(A) SUBSTANTIALLY IDENTICAL ITEM- The determination of whether an item in relation to another item is a substantially identical item shall include a fair assessment of end-uses, the properties, nature, and quality of the item.</p> <p>(B) DIRECTLY COMPETITIVE ITEM-</p> <p>(i) IN GENERAL- The determination of whether an item in relation to another item is a directly competitive item shall include a fair assessment of whether the item, although not substantially identical in its intrinsic or inherent characteristics, is substantially equivalent for commercial purposes and may be adapted for substantially the same uses.</p> <p>(ii) EXCEPTION- An item is not directly competitive with a controlled item if the item is not of comparable quality to the controlled item with respect to characteristics that resulted in the export of the item being controlled.</p>		<p>Sec 211(d)(2) "MASS-MARKET STATUS-</p> <p>An item has mass-market status under this subtitle only if the following criteria are met:</p> <p>(A) The item is produced in a large volume and is available for sale to multiple potential purchasers.</p> <p>(B) The item is widely distributed through normal commercial channels, such as retail stores, direct marketing catalogues, electronic commerce, and other channels.</p> <p>(C) The item is conducive to shipment and delivery by generally accepted commercial means of transport.</p> <p>(D) The item can be used for its normal intended purpose without substantial and specialized service provided by the manufacturer, distributor, or other third party.</p>
<p>Sec. 214 Office of Technology Evaluation. This section establishes the Office of Technology Evaluation in the Department of Commerce to make foreign availability and mass market determinations, monitor worldwide technological developments and conduct assessment of U.S. export control policy. Sec. 214(b)(5) is slightly different between the Senate and House versions. The House version removes "imports of manufactured goods as an assessment to be conducted by the Office.</p>		

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec. 214(b)(5) “conduct[s] assessments of United States industrial sectors critical to the United States defense industrial base and how the sectors are affected by technological developments, technology transfers, and foreign competition, including imports of manufactured goods.”</p>	<p>Sec. 214(b)(5) “conduct[s] assessments of United States industrial sectors critical to the United States defense industrial base and how the sectors are affected by technological developments, technology transfers, and foreign competition;”</p>	
<p>EXPORTS OF HIGH PERFORMANCE COMPUTING TECHNOLOGY - This section was added in the HASC version as an alternative to the provisions in the Senate and HIRC language to repeal provisions the National Defense Authorization Act of 1998 related to high performance computers (HPC).</p>		
<p>No comparable provision</p> <p>http://wikileaks.org/wiki/CRS-131308</p>	<p>SEC. 221 “EXPORTS OF HIGH PERFORMANCE COMPUTING TECHNOLOGY.</p> <p>(a) JOINT PROCESS- The Secretary, the Secretary of State, the Secretary of Defense, and the Secretary of Energy shall jointly develop and implement a process that would permit the United States to monitor effectively the export of high performance computing technology to countries of proliferation concern. Such a process shall include, at a minimum, the following:</p> <p>(1) A definition of high performance computing technology and any associated performance metrics.</p> <p>(2) The ability to assess the proposed export of high performance computing technology prior to its export and possibly require a license for such export to end users or end uses of concern.</p>	

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>No comparable provision</p> <p style="text-align: center;">http://wikileaks.org/wiki/CRS-RL31398</p>		<p>(3) The use of post-shipment verifications and other procedures to monitor end uses and end users in order to ensure that exports of high performance computing technology are not being used by countries of proliferation concern in a manner detrimental to the national security of the United States.</p> <p>(b) REPORT TO CONGRESS- The President shall submit to the Congress, not later than 180 days after the date of the enactment of this Act, a report describing the process developed under subsection (a).</p> <p>(c) IMPLEMENTATION- The process developed under subsection (a) shall first become effective 60 days after the end of the 180-day period described in subsection (b).</p> <p>(d) REPEAL OF CERTAIN EXPORT CONTROLS- Subtitle B of title XII of division A of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note) is repealed, effective 60 days after the end of the 180-day period described in subsection (b).</p> <p>(e) INCLUSION OF ITEMS IN DEFINITION- The definition of 'high performance computing technology' under subsection (a)(1) shall include computer hardware, software, technical data, and source codes.</p> <p>(f) END USE REVIEW-</p> <p>(1) NOTIFICATION- Any United States person that exports a computer with a dollar value of over \$250,000, or any equivalent metric developed pursuant to subsection (a), shall, not less than 10 days before the item is exported, provide to the Secretary a 1-page notification described in paragraph (2) with</p>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>No comparable provision</p> <p style="text-align: center;">http://wikileaks.org/wiki/CRS-RL31398</p>		<p>(2) CONTENT- A notification under paragraph (1) with respect to a proposed export shall include the following:</p> <p>(A) A detailed description of the item to be exported.</p> <p>(B) Performance measures of the item to be exported.</p> <p>(C) The quantity and dollar value of the item to be exported.</p> <p>(D) The name, address, and telephone number of the end user of the exported item.</p> <p>(E) The end uses of the exported item.</p> <p>(3) INTERAGENCY REVIEW- Within 24 hours after receiving a notification under paragraph (1), the Secretary shall refer the notification to the Director of Central Intelligence (in this subsection referred to as the `Director') and the Secretary of Defense. The Director and the Secretary of Defense shall review the notification to determine whether the end user or any end use of the item to be exported--</p> <p>(A) could threaten the national security of the United States;</p> <p>(B) could contribute to the proliferation of weapons of mass destruction or the means to deliver them; or</p> <p>(C) could assist foreign terrorist organizations in performing acts of international terrorism.”</p> <p>(4) DETERMINATION- “Within 7 calendar days after receiving a notification under paragraph (3), the Director and the Secretary of Defense shall inform the Secretary of any determinations they made under paragraph (3) with respect to the notification. If the Director or the Secretary of Defense determines that a proposed export meets any of the criteria set forth in subparagraphs (A),</p>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>No comparable provision</p>	<p>5) REPORT- The Secretary, with the concurrence of the Secretary of Defense and the Director, shall report annually to the Congress on the implementation of this subsection. The report shall contain the number and type of determinations made by the Director and the Secretary of Defense under paragraph (3). (6) EFFECTIVE DATE- This subsection shall take effect 90 days after the date of the enactment of this Act.”</p>	
<p>Sec. 301(b) Purposes of Foreign Policy Export Controls. The HIRC version added provisions related test articles for human subjects and the export of banned or regulated goods as purposes of foreign policy export controls.</p>		
<p>No comparable provision</p>	<p>Sec. 301(b)(4) “To control the export of test articles intended for clinical investigation involving human subjects so as to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.” Sec. 301(b)(5) “To control the export of goods and substances which are banned, severely restricted, highly regulated, or never regulated for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.”</p>	
<p>Sec. 301(d) Contract sanctity- Limits contract sanctity to commitments made or licenses authorized previous to the date in which the President reports to Congress the President’s intention to impose controls.</p>	<p>Sec. 301(d) Contract sanctity- Limits contract sanctity provision to contracts or license authorizations entered before the earlier of notice in the Federal Register or report to Congress by the President to impose controls.</p>	
<p>Sec.304 Presidential Reporting Requirement. Before imposing foreign policy export controls, the President must report on the control to HIRC and BHUA including an assessment of 8 factors. The eighth factor is worded slightly differently between the versions.</p>		

http://wikileaks.org/wiki/CRS-16-31308

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec 304(b)(8) “a conclusion that the probable achievement of the objectives of the proposed export controls outweighs any likely costs to U.S. economic, foreign policy, humanitarian, or national security interests, including any potential harm to United States agricultural and business firms and to the international reputation of the United States as a reliable supplier of goods, services, or technology.”</p>	<p>Sec. 304 (b)(8) “whether the proposed export control outweighs any likely costs to United States economic, foreign policy, humanitarian, or national security interests, including any potential harm to the United States agricultural and business firms and to the international reputation of the United States as a reliable supplier of goods, services, or technology.”</p>	
<p>Section 308 (c) - Termination of Controls</p>		
<p>Sec 308(c) The termination of a foreign policy based export control takes place on the date of Federal Register notice.</p>	<p>Sec 308(c) The termination of a foreign policy based export control takes place effect 30 days after the President has consulted with the HIRC and SFRC on the foreign policy implications of such termination.</p>	
<p>Sec 309 Compliance with International Obligations- The House versions require the President to impose controls on certain items to adhere to international obligations. The House version also removes Senate language citing the Presidential reporting requirement before the imposition of control under Sec. 309.</p>		
<p>“Notwithstanding any other provision of this Act setting forth limitations on authority to control exports and except as provided in section 304, the President may impose controls on exports to a particular country or countries-- (1) of items listed on the control list of a multilateral export control regime, as defined in section 2(14); or (2) in order to fulfill obligations or commitments of the United States under resolutions of the United Nations and under treaties, or other international agreements and arrangements, to which the United States is a party.”</p>	<p>“Notwithstanding any other provision of this Act setting forth limitations on authority to control exports, the President shall impose controls on exports to a particular country or countries-- (1) of items listed on the control list of a multilateral export control regime; or (2) in order to fulfill obligations or commitments of the United States under resolutions of the United Nations and under treaties, or other international agreements and arrangements, to which the United States is a party.”</p>	
<p>Section 310 Designation of Countries Supporting International Terrorism- Requires licenses for exports to countries the governments of which the Secretary of State has determined to have repeatedly provided support to international terrorism. The HASC version adds a consultation requirement for the Secretary of Defense and Secretary of State.</p>		

CRS-18

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>No comparable provision</p>		<p>Sec. 310(a)(2) “Requires the Secretary of State to consult with the Secretary of Defense as to whether a proposed export could make a significant contribution to the military potential of the country and its ability to support acts of international terrorism.”</p>
<p>Section 311 Crime Control Instruments - Although the Senate and House versions of the legislation both require the licensing of exports of crime control instruments, the two provisions contain numerous differences. Both exempt NATO and non-NATO allies from licensing requirements, but the Senate version also allows the President to exempt other countries. The Senate version also gives the President the authority to override a final determination by the Secretary. The House version contains a presumption of denial for licenses to countries engaged in acts of torture, and contains a prohibition on export of certain items.</p>		

<http://wikileaks.org/wiki/CRS-18-3389>

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>(a) "IN GENERAL- In order to promote respect for fundamental human rights, crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to an individual export license. Notwithstanding any other provision of this Act--</p> <p>(1) any determination by the Secretary of what goods or technology shall be included on the list established pursuant to this subsection as a result of the export restrictions imposed by this section shall be made with the concurrence of the Secretary of State, and (2) any determination by the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendation of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 401 of this Act, except that, if the Secretary does not agree with the Secretary of State with respect to any determination under paragraph (1) or (2), the matter shall be referred to the President for resolution.</p>	<p>(a) "IN GENERAL- Crime control and detection instruments and equipment shall not be approved for export by the Secretary except pursuant to an individual export license.</p> <p>(b) IMPLEMENTATION- Notwithstanding any other provision of this Act--</p> <p>(1) any determination by the Secretary of what goods or technology shall be included on the list established pursuant to this subsection as a result of the export restrictions imposed by this section shall be made with the concurrence of the Secretary of State; and</p> <p>(2) any determination by the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 401 of this Act.</p> <p>(c) LIMITATION-</p> <p>(1) IN GENERAL- Notwithstanding subsection (b), the Secretary shall not approve the export to a country of crime control and detection instruments and equipment especially susceptible to abuse as implements of torture if the government of such country, or any group supported by or acting on behalf of such government, has repeatedly engaged in acts of torture unless the Secretary, with the concurrence of the Secretary of State, determines that the end user of the instruments or equipment proposed for export has not been engaged in acts of torture.</p> <p>(1) IN GENERAL- Notwithstanding subsection (b), the Secretary shall not approve the export to a country of crime control and detection instruments and equipment especially susceptible to abuse as implements of torture if the government of such country, or any group supported by or acting on behalf of such government, has repeatedly engaged in acts of torture unless the Secretary, with the concurrence of the Secretary of State, determines that the end user of the instruments or equipment proposed for export has not been engaged in acts of torture.</p>	

<p align="center">S. 149 As passed by the Senate</p>	<p align="center">H.R. 2581 House International Relations Committee</p>	<p align="center">H.R. 2581 House Armed Services Committee</p>
<p>“ (b) EXCEPTION- Except as herein provided, the provisions of this section shall not apply with respect to exports to countries that are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this section and section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304). The provisions of subsection (a) shall apply with respect to exports of any of the items identified in subsection (c) designed solely for signal, flare, or saluting use.</p> <p>“(c) REPORT- Notwithstanding the provisions of section 602 or any other confidentiality requirements, the Secretary shall include in the annual report submitted to Congress pursuant to section 701 a report describing the aggregate number of licenses approved during the preceding calendar year for the export of any items listed in the following paragraphs identified by country and control list number:</p> <p>(1) Serrated thumbcuffs, leg irons, thumbscrews, and electro-shock stun belts.</p> <p>(2) Leg cuffs, thumbcuffs, shackle boards, restraint chairs, straitjackets, and plastic handcuffs.</p> <p>(3) Stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, other than equipment used exclusively to treat or tranquilize animals and arms</p> <p>(4) Technology exclusively for the development or production of electro-shock devices.”</p>	<p>(2) “LIST- The Secretary shall establish and maintain a list of crime control and detection instruments and equipment especially susceptible to abuse as implements of torture for purposes of paragraph (1), and shall publish such list in the Federal Register.</p> <p>(d) EXCEPTION- Subsection (a) shall not apply to exports to countries that are NATO or are major non-NATO allies.</p> <p>(e) PROHIBITION- Notwithstanding any other provision of this section, including subsection (d), the export to any country of leg irons, saps, blackjacks, electroshock stun belts, thumb cuffs, and items specially designed as implements of torture, as determined by the Secretary, including components produced for incorporation into these items and the technology used for the development or production of these items, shall be prohibited.</p> <p>(f) DEFINITION- For purposes of this section, the term `acts of torture' means acts committed by a person acting under the color of law that are specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within the custody or physical control of the person performing the acts.”</p>	

CRS-21

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>“(5) Pepper gas weapons and saps. (6) Any other item or technology the Secretary determines is a specially designed instrument of torture or is especially susceptible to abuse as an instrument of torture.”</p>		
<p>No Comparable Provision</p>	<p>Sec. 312 Measures to Protect the Public Health. This provision requires a license for the export of test articles or experimental drugs intended for clinical investigations on human subjects. The section list criteria and information required for a license, required reports to be furnished to Congress by the President, and countries exempted from this provision.</p>	
<p>No Comparable Provision</p>	<p>Sec. 313 Promotion of Safe Environments. This provision authorizes the President to prohibit the export of pesticides for human health or environment reasons. It also requires the President to report to Congress on the scope of exports of chemicals and pesticides banned or highly regulated by the United States or by international conventions. It also requires the GAO to evaluate the current U.S. system of pesticide export regulations, compare it with other OECD countries, and to suggest improvements.</p>	

<http://wikilexks.org/wiki/CRS-21308>

Title IV - Export License and Dispute Resolution Procedures		
S. 149 As passed by the Senate	H.R. 2581 House International Relations Committee	H.R. 2581 House Armed Services Committee
<p>Sec 401 Export License Procedures. This section outlines the export license application process. In the application review process, the House versions allows for certain derogations from processing time periods. The House versions also alter certain procedures in the classification process to allow for appeal of a decision of the Secretary of Commerce by the Secretary of State or Secretary of Defense.</p>		
<p>Sec.401(g) “Exceptions from Required Time Periods. (1) Agreement of the Applicant - Delays upon which the Secretary and the applicant mutually agree.”</p>	<p>Sec 401(g)(1) “Agreement of the Applicant; Complexity of Analyses, National Security Impact - (A) Agreement of the Applicant - Delays upon which the Secretary and the applicant mutually agree. (B) COMPLEXITY OF ANALYSIS- A reviewing department or agency requires more time due to the complexity of the analysis, if the additional time is not more than 60 days. (C) NATIONAL SECURITY IMPACT- A reviewing department or agency requires additional time because of the potential impact on the national security or foreign policy interests of the United States, if the additional time is not more than 60 days. (8) INTELLIGENCE AGENCIES- Delays necessary to obtain information or assessments from intelligence agencies.”</p>	
<p>Sec 401(h) “Classification Requests (1) In any case in which the Secretary receives a written request asking for the proper classification of an item on the Control List or the applicability of licensing requirements under this title, the Secretary shall promptly notify the Secretary of Defense and the head of any department or agency the Secretary considers appropriate. The Secretary shall, within 14 days after receiving the request, inform the person making the request of the proper classification.”</p>	<p>Sec 401(h)(1) “CLASSIFICATION REQUEST- (A) NOTIFICATION OF OTHER AGENCIES- In any case in which the Secretary receives a written request asking for the proper classification of an item on the Control List or the applicability of licensing requirements under this title, the Secretary shall promptly notify the Secretary of Defense, the Secretary of State, and the head of any other department or agency of the United States that the Secretary considers appropriate, of the request. (B) DETERMINATION; RESOLUTION OF DISPUTES- The Secretary shall make the determination regarding proper classification within 14 days after receiving the request and inform the person making the request of such determination. If an objection is raised by the Secretary of State or the Secretary of Defense regarding the Secretary's determination within that time period, the disagreement shall be resolved through the interagency resolution process described in section 402, except that any such disagreement shall be resolved within 60 days.”</p>	
<p>Sec. 402 Interagency Dispute Resolution Process. The HASC version of the modifies the initial phase of the dispute resolution process to require consensus of all agencies, and mandates denial of license applications that do not receive consensus. All three versions directs the Secretary to establish further review and appeal procedures, yet each prescribes different criteria for undertaking that appeal.</p>		

<p>S. 149 As passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Sec (402)(b)(1) “INITIAL RESOLUTION- The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications described in subsection (a) with respect to which the Secretary and any of the referral departments and agencies are not in agreement. The chairperson shall consider the positions of all the referral departments and agencies (which shall be included in the minutes described in subsection (c)(2)) and make a decision on the license application, including appropriate revisions or conditions thereto.”</p>		<p>Sec (402)(b)(1) “INITIAL RESOLUTION- The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications described in subsection (a) with respect to which the Secretary and any of the referral departments and agencies are not in agreement. The committee shall consider the positions of all the referral departments and agencies (which shall be included in the minutes described in subsection (c)(2)) and make a decision on the license application, including appropriate revisions or conditions thereto, except that any decision of the committee is not valid unless it is unanimous. If such a unanimous decision is not reached, the license at issue shall be denied, unless the matter is appealed under paragraph (3).”</p>

<http://wikileaks.org/wiki/CRS-RL31398>

<p align="center">S. 149 As passed by the Senate</p>	<p align="center">H.R. 2581 House International Relations Committee</p>	<p align="center">H.R. 2581 House Armed Services Committee</p>
<p>Sec 402(b)(3) - Further Resolution. “(3) FURTHER RESOLUTION- The President shall establish additional levels for review or appeal of any matter that cannot be resolved pursuant to the process described in paragraph (1). Each such review shall– (A) provide for decision-making based on the majority vote of the participating departments and agencies; (B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases for a position, shall be deemed to have no objection to the pending decision; (C) provide that any decision of an interagency committee established under paragraph (1) or interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; (D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary.”</p>	<p>Sec 402(b)(3) “FURTHER RESOLUTION- The President shall establish additional levels for review or appeal of any matter that cannot be resolved pursuant to the process described in paragraph (1). Each such review shall ensure that matters are resolved or referred to the President not later than 90 days after the completed license application is referred by the Secretary.”</p>	<p>Sec 402(b)(3) “FURTHER RESOLUTION- The President shall establish additional levels for review or appeal of any matter that cannot be resolved pursuant to the process described in paragraph (1). Each such review shall– (A) provide for decision-making based on the concurrence of the participating departments and agencies; (B) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases for a position, shall be deemed to have no objection to the pending decision; (C) provide that any decision of an interagency committee established under paragraph (1) or interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and (D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary. If concurrence of the participating departments and agencies is not reached at a level of review established under this paragraph, the license at issue shall be denied unless the matter is escalated to the next higher level of review or the President determines otherwise.”</p>
<p>Sec 506 Post-Shipment Verifications. The House versions expand the targets for post-shipment verifications and contains broader mandates for denying licenses to end-users and to countries where post-shipment verifications have been refused.</p>		

<p align="center">S. 149 As passed by the Senate</p>	<p align="center">H.R. 2581 House International Relations Committee</p>	<p align="center">H.R. 2581 House Armed Services Committee</p>
<p>Sec 506(f) "POST-SHIPMENT VERIFICATION- The Secretary shall target post-shipment verifications to exports involving the greatest risk to national security."</p>	<p>Sec 506(f) "POST-SHIPMENT VERIFICATION (1) FOR CERTAIN EXPORTS AND COUNTRIES- The Secretary shall target post-shipment verifications-- (A) to exports involving the greatest risk to national security; and (B) to those countries identified by the Director of Central Intelligence in the most recent report that was submitted to Congress under section 721 of the Intelligence Authorization Act for Fiscal Year 1997 on the acquisition and supply by foreign countries of dual-use items and other technology useful for the development or production of weapons of mass destruction. (2) CONDUCT OF VERIFICATIONS- The Secretary may, with the concurrence of the Secretary of State-- (A) utilize embassy personnel to conduct post-shipment verifications; and (B) establish guidelines and regulations allowing United States persons to conduct those verifications."</p>	
<p>Sec 506(g) (3) "REFUSAL BY COUNTRY- If the country in which the end-user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a license for the export of that item, any substantially identical or directly competitive item or class of items, any item that the Secretary determines to be of equal or greater sensitivity than the controlled item, or any controlled item for which a determination has not been made pursuant to section 211 to all end-users in that country until such post-shipment verification is allowed."</p>	<p>Sec 506(g)(3) "REFUSAL BY COUNTRY- (A) If a country with which the United States has entered into an agreement providing for post-shipment verifications repeatedly obstructs or otherwise denies the post-shipment verification of controlled items, the Secretary shall deny a license for the export of those items or any substantially identical or directly competitive items or class of items to all end users in that country until such post-shipment verification is allowed. (B) If the country in which an end user is located refuses to allow post-shipment verification of a controlled item, whether or not the United States has an agreement with that country providing for post-shipment verifications, the Secretary may deny a license for the export of that item or any substantially identical or directly competitive item or class of items to all end users in that country until such post-shipment verification is allowed." ("repeatedly" is struck from the HASC version)</p>	
<p>Sec. 506(p) Expiration of the Act</p>		

<p align="center">S. 149 As passed by the Senate</p>	<p align="center">H.R. 2581 House International Relations Committee</p>	<p align="center">H.R. 2581 House Armed Services Committee</p>
<p>Sec 506 (p)(2) "LIMITATION- The authority granted by this Act shall terminate on September 30, 2004, unless the President carries out the following duties: (A) Provides to Congress a detailed report on-- (i) the implementation and operation of this Act; and (ii) the operation of United States export controls in general. (B)(i) Provides to Congress legislative reform proposals in connection with the report described in subparagraph (A); or (ii) certifies to Congress that no legislative reforms are necessary in connection with such report."</p>	<p>Sec 506 (p)(2) "TERMINATION- The authority granted by this Act shall terminate on December 31, 2005."</p>	

<http://wikileaks.org/wiki/CRS-103304>

Title VI - Export Control Authority and Regulations		
S.149 As Passed by the Senate	H.R. 2581 House International Relations Committee	H.R. 2581 House Armed Services Committee
Deemed Export Regulations		
No Comparable Provision	<p>“Sec 601(c)(3)(c) ISSUANCE OF REGULATIONS- (3) REGULATIONS ON EXPORTS TO FOREIGN NATIONALS- The Secretary, with the concurrence of the Secretary of State and the Secretary of Defense, shall issue regulations to govern the release of technology to a foreign national within the United States and to establish appropriate procedures and entities to ensure compliance with those regulations.”</p>	
<p>Sec 602(2) Exemption from Disclosure</p> <p>(2) INFORMATION OBTAINED AFTER JUNE 30, 1980- Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under this Act, under the Export Administration Act of 1979 after June 30, 1980, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), may be withheld from disclosure only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with an application for an export license or other export authorization (or recordkeeping or reporting requirement), (enforcement activity, or other operations) under the Export Administration Act of 1979, under this Act, or under the Export Administration Regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706). [House versions omit enforcement activity, or other operations.]</p>		
<p>Sec 602 (d)(3) Civil Penalties</p> <p>(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS- The Secretary may impose a civil penalty of not more than \$5,000 for each violation of paragraph (1), except that no civil penalty may be imposed on an officer or employee of the United States, or any department or agency thereof, without the concurrence of the department or agency employing such officer or employee. Sections 503 (e), (g), (h), and (i) and 507 (a), (b), and (c) shall apply to actions to impose civil penalties under this paragraph. At the request of the Secretary, a department or agency employing an officer or employee found (determined) to have violated paragraph (1) shall deny that officer or employee access to information exempt from disclosure under this section. Any officer or employee who commits a violation of paragraph (1) may also be removed from office or employment by the employing agency. House versions replace “found” with “determined.”</p>		

<p>S.149 As Passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>Agricultural Commodities, Medicine, Medical Devices. This provision of the Senate bill precludes applicability of the Act on food, agricultural commodities, medicines, and medical devices to remain consistent with the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387).</p>		
<p>Sec. 603 Agricultural Commodities, Medicine, Medical Devices. APPLICABILITY OF TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000- Nothing in this Act authorizes the exercise of authority contrary to the provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Public Law 106-387; 114 Stat. 1549, 549A-45) applicable to exports of agricultural commodities, medicine, or medical devices. b) TITLE II LIMITATION- Title II does not authorize export controls on food. (c) TITLE III LIMITATION- Except as set forth in section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, title III does not authorize export controls on agricultural commodities, medicine, or medical devices unless the procedures set forth in section 903 of such Act are complied with. (d) DEFINITION- In this section, the term `food' has the same meaning as that term has under section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)).</p>	<p>No Comparable Provision</p>	

Title VII - Exports of Satellites		
S.149 As Passed by the Senate	H.R. 2581 House International Relations Committee	H.R. 2581 House Armed Services Committee
<p>No Comparable Provision</p> <p style="font-size: small; text-align: center;">http://wikileaks.org/wiki/CRS-RL31398</p>	<p>Title VII- Export of Satellites - This provision would transfer jurisdiction for licenses of commercial communications satellites to the Commerce Department from the State Department and details export licensing procedures including, (a) referral by the Secretary to SecDef and SecState and other agencies, (b) required consultations with the intelligence community, (c) time periods for referrals, and an (d) interagency dispute resolution process. Sec. 704 Provides that certain defense services or technical assistance provided in connexion with satellite launches from, or by nationals of the PRC remain subject to State Department jurisdiction.</p>	<p>Deletes Title VII</p>
Title VIII [Title VII (Senate- HASC)]		
<p>Sec 801 (701) Annual Report - This section describes reporting elements to be included in the Annual Report on the administration of the Act. Reporting element (15) is different in the two versions.</p>		
<p>(15) “a description of the assessment made pursuant to section 214, including any recommendations to ensure that the defense industrial base (including manufacturing) is sufficient to protect national security.” (refers to assessments made by the Office of Technology Assessment.)</p>	<p>(15) “an analysis and risk assessment of dual-use United States-origin items useful for the development or production of weapons of mass destruction acquired by countries identified by the Director of the Central Intelligence in the most recent report submitted to Congress under section 721 of the Intelligence Authorization Act for Fiscal Year 1997.”</p>	
<p>No comparable provision</p>	<p>Sec 802(702) This section provides that the Act does not alter or affect any provision of the Arms Export Control Act (AECA) or authority delegated to the Secretary of State by the President under the AECA.</p>	
<p>No comparable provision</p>	<p>Sec 803(703) This section amends the North Korea Threat Reduction Act of 1999 (NKTRA) by requiring that any cooperative arrangement, license, or approval for the transfer of nuclear material, facilities, components, or technology must be approved by a joint resolution passed by both Houses of congress. Sec. 804(704) provides for expedited procedures for this joint resolution.</p>	

<p>S.149 As Passed by the Senate</p>	<p>H.R. 2581 House International Relations Committee</p>	<p>H.R. 2581 House Armed Services Committee</p>
<p>No comparable provision</p>	<p>Sec 805 (705) This section directs the Office of Foreign Assets Control, Department of the Treasury, to implement the recommendations of the Judicial Review Commission on foreign asset control to expand and enhance the transparency of its operations and decisionmaking process including the publication of proposed regulations on sanctions and the provision of interpretations and guidance to accompany such regulations.</p>	
<p>No comparable provision</p>	<p>Sec 806 (706) Requires the mandatory automatic filing under the automated export system (AES) of certain export license applications. Directs SecState to conclude an information sharing arrangement with the U.S. Customs Services and the Census Bureau to coordinate information collected by all three agencies. Provides for increased criminal penalties for failure to file or delay in filing of export license applications, and provides for civil penalties for failure to file or delay in filing. Provides for criminal and civil penalties for knowingly failing to file or filing misleading or false export information on a Shipper's Export Declaration or through the AES.</p>	
<p>Civil Aircraft Safety - The Senate version includes this provision that allows the export of items or technology to insure flight safety requirement of commercial passenger aircraft.</p>		
<p>Sec. 702(k) "CIVIL AIRCRAFT SAFETY- Notwithstanding any other provision of law, the Secretary may authorize, on a case-by-case basis, exports and reexports of civil aircraft equipment and technology that are necessary for compliance with flight safety requirements for commercial passenger aircraft. Flight safety requirements are defined as airworthiness directives issued by the Federal Aviation Administration (FAA) or equipment manufacturers' maintenance instructions or bulletins approved or accepted by the FAA for the continued airworthiness of the manufacturer's products."</p>	<p>No comparable provision</p>	

http://www.gao.gov/aias/aias31398