

September 1989

EXPORT CONTROLS

Assessment of Commerce Department Foreign Policy Reports to Congress



Comptroller General
of the United States

B-222992

September 13, 1989

To the President of the Senate and the
Speaker of the House of Representatives

The Export Administration Act, as amended, requires us to assess each report of the Secretary of Commerce that concerns imposing, expanding or extending foreign policy export controls for compliance with the Act. This report provides our assessment of five recent reports to Congress by the Secretary of Commerce concerning foreign policy export controls. We reviewed the Secretary's reports on extending foreign policy export controls already in place, including those involving human rights, antiterrorism, and chemicals; imposing new foreign policy controls on chemicals and biological agents useful in weapons as a substitute for expiring national security controls; and expanding antiterrorism controls on trade with Syria. We also assessed the extent to which Commerce had adopted our earlier recommendations to improve reporting on foreign availability, enforcement, and economic impact.

Background

The Export Administration Act authorizes the President to establish export controls for economic, national security, and foreign policy reasons. For foreign policy controls, it provides that the President, through the Secretary of Commerce, may prohibit or curtail exports to the extent necessary to further significantly the foreign policy objectives of the United States or to fulfill its declared international obligations. However, the President's use of such controls is limited. The Act states that the President may impose, expand, or extend such controls only if he first (1) consults with Congress, (2) makes certain determinations regarding the impact, significance, and effectiveness of proposed controls, and (3) reports to Congress. The Act also requires us to assess the reports to Congress to ensure that they fully comply with the statutory reporting requirements. Our assessments are not a review of the policy, administration, or scope of the controls themselves.

Reports Comply With the Act's Reporting Requirements

Like the Commerce Department's previous reports to Congress on foreign policy export controls, the reports covered by this assessment, as specified in the law, covered each control's purpose, the probability that it will achieve this purpose, its compatibility with U.S. foreign policy objectives, the reaction of other countries to the control, its economic impact, U.S. ability to enforce the control, alternative means for achieving the stated purpose, and the foreign availability of the controlled

items. The reports recognized that foreign sources clearly exist for many of the controlled items but pointed out that the effectiveness of the controls is not thereby diminished because of their symbolic purpose—usually to distance the United States from a specific country or behavior.

The symbolic nature of foreign policy controls is particularly well illustrated by one of the reports, which imposed controls targeting Iran, Iraq, Syria and Libya regarding exports of chemicals and biological agents useful in weapons, replacing expiring national security controls. Because of widespread foreign availability, many chemicals and biological agents formerly subject to unilateral controls for national security reasons were decontrolled in February 1989. On the recommendation of the Department of State, however, the Department of Commerce moved to maintain controls on certain chemicals and biological agents because of their usefulness in the manufacture of weapons. The manner chosen to maintain these controls was to shift from a national security to a foreign policy basis. Unlike national security-based controls, the Export Administration Act permits foreign policy controls to be adopted and remain in force despite significant foreign availability so long as such availability does not render the controls ineffective in achieving their stated purpose. The stated purpose of these controls was to “publicly convey the United States’ opposition to, and therefore further distance the United States from, the development, proliferation and use of chemical and biological weapons.” Therefore, notwithstanding widespread availability, the United States is able to achieve the stated purpose of the controls.

Our review showed that the reports meet the Act’s reporting requirements. The reports also largely incorporated the changes we recommended from our earlier assessments. Specifically, we had recommended that future reports include a fuller discussion of (1) alternative means available to achieve the controls’ purposes, (2) the controls’ economic impact, and (3) difficulties in enforcing the controls.¹

We did, however, note one instance where Commerce’s reporting had not improved. In reviewing Commerce’s 1987 report on the imposition of foreign policy export controls on missile-related equipment and technology, we found that the discussion of foreign availability of controlled

¹EXPORT CONTROLS: Assessment of Commerce Department’s Foreign Policy Report to Congress (July 23, 1987, GAO/NSIAD-87-176); EXPORT CONTROLS: Assessment of Commerce Department’s Foreign Policy Report to Congress (August 19, 1986, GAO/NSIAD-86-172).

items could be improved.² We pointed out that Commerce's report focused on certain U.S. allies who were participating in an international effort to limit availability of these products. However, the report did not present information on whether other countries which also have sophisticated missile capabilities, such as the Soviet Union and the People's Republic of China, might be capable of undermining the controls. Neither did the report present any of the information compiled by Commerce's Office of Foreign Availability regarding the capability of such countries as Brazil and India to supply less sophisticated, but still useful missile-related equipment and technology.

Commerce has not improved its discussion of foreign availability regarding these controls. Its January 1989 report on extending foreign policy controls provides substantially the same information as its April 1987 report on the imposition of the controls. Commerce acknowledged that foreign availability assessments in foreign policy export control reports are not as complete as they could be but pointed out that resource limitations make it difficult to provide more comprehensive evaluations. However, we noted that Commerce did not include in its January 1989 report the relevant information on missile technology it already had available. A Commerce official responsible for these reports advised us that foreign availability will be more fully discussed in future reports.

We also noted one instance where consultation with industry was not as good as it could have been. In our 1986 review of the Commerce report on controls on light helicopters and chemicals, we observed several shortcomings in Commerce's consultation with industry and pointed out the need for more complete consultation with individual firms and appropriate advisory committees.³ The Act requires the Secretary in every possible instance to consult with and seek advice from affected U.S. industries and appropriate industry sector advisory committees before imposing foreign policy export controls.

The Commerce Department's contact with industry prior to the presentation of its February 22, 1989, report to Congress imposing controls on chemicals and biological agents was limited and much of the discussion was very general. Commerce did not directly contact individual companies. The Industry Sector Advisory Committee on Chemicals and Allied

²EXPORT CONTROLS: Assessment of Commerce Department's Report on Missile Technology Controls (May 24, 1988, GAO/NSIAD-88-159).

³EXPORT CONTROLS: Assessment of Commerce's April 1986 Report on Controls for Light Helicopters and Chemicals (September 17, 1986, GAO/C-NSIAD-86-28).

Products was informed of the proposed controls at its meeting on February 7, 1989, but no list was available at that time of exactly which chemicals would be controlled. According to a cognizant Commerce Department official, the controls were mentioned only in passing at this meeting. The controls were discussed in more detail at a meeting of the President's Export Council Subcommittee on Export Administration on February 15, but the members were not provided with a complete list of the proposed controls until the meeting was already underway. The Chairmen of the Biotechnology and Materials Technical Advisory Committees were contacted and asked to comment on the proposed controls about one week before the report to Congress was issued. According to a cognizant Commerce Department official, however, neither Committee provided any input to the Department before the report's issue date. The Materials Committee has subsequently provided some information on foreign availability of the controlled items, while the Biotechnology Committee has suggested some revisions in the regulations concerning controls in their area of interest. These revisions were under consideration as of June 1989. Overall, however, Commerce's consultations were of limited usefulness.

Commerce noted that the Department of State provided it with the proposed list of chemicals to be controlled less than two weeks before unilateral national security controls on these chemicals were to expire, leaving a very short time for industry consultation on the specific chemicals to be controlled. While we agree that there was only this two week period available after State provided the list of chemicals to be controlled, the agencies involved in implementing foreign policy controls had ample time to bring these chemicals under foreign policy control in a more deliberate manner. The law mandating the end of unilateral national security controls provided for their continuation for six months after the passage of the legislation in August 1988.

Objectives, Scope, and Methodology

We assessed Commerce reports on the extension of existing controls dated January 1988 and January 1989, its February 1989 report on the imposition of controls on chemicals and biological agents and two 1987 reports, one expanding controls on chemicals and the other expanding antiterrorism controls regarding Syria. We (1) reviewed the Act and its background to identify the requirements the Commerce reports must meet, (2) examined the reports for compliance with these requirements, (3) discussed development of the reports with the Commerce Department employees who prepared them, and (4) examined the documentation, analysis, and methodology supporting the reports. In addition to

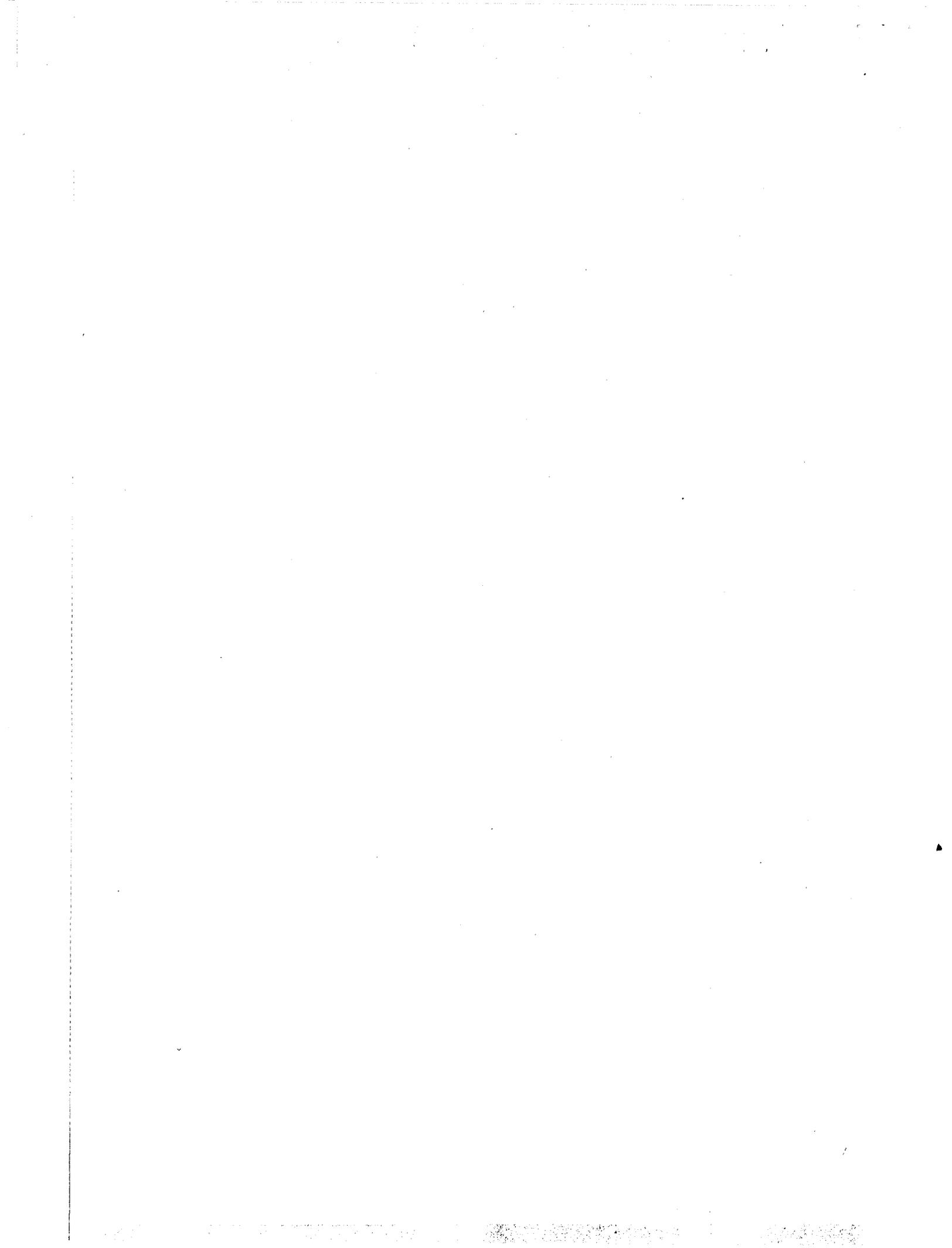
assessing each of the reports for compliance with the Act, we also determined the extent to which they presented all the information available to Commerce so as to enhance their completeness and utility to the Congress.

Our review was conducted in accordance with generally accepted government auditing standards between May and June 1989. We reviewed the report's contents with senior Commerce officials responsible for export controls and considered their comments as appropriate.

We are providing copies of this report to appropriate House and Senate Committees; the Secretaries of Commerce and State; the Director, Office of Management and Budget; and other interested parties.

This report was prepared under the direction of Allan I. Mendelowitz, Director, Trade, Energy and Finance Issues. Other major contributors were Steven Sternlieb, Evaluator-in-Charge, and Michael McAtee, Evaluator.


for Charles A. Bowsher
Comptroller General
of the United States



Requests for copies of GAO reports should be sent to:

**U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877**

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use \$300

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100