discussed and we will be able to agree upon which will improve the bill. As a part of our understanding, there will be two letters from both advocates and opponents of legislation, which the White House on a couple matters that we believe are very important but that should first be addressed by the White House, such as the deemed export rule, which is a very complex matter that we believe should properly be handled by Executive order. So with those two amendments and those two letters, I think we are in a state of agreement with regard thereto.

The only other matter, as Senator SARBANES indicated, is the question of the commission. I anticipate that we will certainly know by 12 o’clock what the situation on that will be. We will either have a vote on that or not. But if we do, I would anticipate that would be the only rollcall vote that we would have, and we would be able to proceed forthwith to final passage.

Mr. ENZI. Will the Senator yield.

Mr. SARBANES. Certainly.

Mr. ENZI. I would add my thanks and appreciation for all the hard work, particularly of Senator THOMPSON and Senator KYL and their staffs and Senator GRAMM and his staff. The meetings and the work on this did go late into the evening last night and began this morning so we could have as little interruption of our attention to the business that needs to be done by the Senate. Their cooperation, their attention to detail, and their willingness to discuss throughout the whole process the last 3 years we have been working on it is very much appreciated, particularly the hours they and their staff put in last evening and early this morning.

Mr. SARBANES. Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF MEXICO

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10:40 a.m. having arrived, the Senate will now stand in recess until the hour of 12 noon.

Thereupon, the Senate at 10:40 a.m., preceded by the Secretary of the Senate, Jon Thompkins, and the Vice President, Richard B. Cheney, proceeded to the Hall of the House of Representatives to hear the address by the President of Mexico, Vincente Fox.

(The address is printed in the Proceedings of the House of Representatives in today’s Record.)

At 12 noon, the Senate, having returned to its Chamber, reassembled when called to order by the Presiding Officer (Mr. REID).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Nevada, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCAIN. Madam President, I ask unanimous consent to the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

EXPORT ADMINISTRATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 149, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 149) to provide authority to control exports, and for other purposes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, as we debate our system of export controls in this new era, we hear an array of arguments that reflect America’s preeminence role in the world, our military and economic power, and the absence of the threat of major war that has prevailed since the demise of the Soviet Union a decade ago. We hear statements made by the President that trade is the new currency of international politics; that the strength of our economy, now more than ever, underpins our national power and global influence; and that in the brave new world of the Information Age, most technological flows are uncontrollable, or controls are meaningless due to the availability of the same technology from foreign competitors.

The business of America is business, we are told, and those of us who believe national security controls exist to protect national security, rather than simply expedite American exports, are accused of old thinking, of living in a dangerous past rather than a prosperous and peaceful present. For many, the new definition of national security—in a haunting echo of the thinking that inaugurated the last century—predicates the safety and well-being of the American people upon the free flows of trade and finance that make our economy the envy of the world, and our business leaders a dominant force in our time.

I am an advocate of free trade, and I believe economic dynamism is indeed a central pillar of national strength. But I do not believe our prosperity requires us to forego very limited and appropriate controls on goods and technology that, in the wrong hands, could be used to attack our civilian population here at home, or against American troops serving overseas. Experts agree that both rogue regimes and hostile terrorist organizations are actively seeking components for weapons of mass destruction, many of which are included in the list of goods we control under our current export licensing system.

Unlike in the Cold War era, when we created our export control regime to keep sensitive technology out of the hands of the Soviet Union, this era is characterized by an array of diverse threats emanating from both hostile nations and non-state actors. Hostile nations like Iran and North Korea are disturbingly close to developing multiple-stage ballistic missiles with the capability to target the United States. These and other nations, including Syria and Iraq, receive significant and continuing technical assistance and material support for their weapons development efforts from China and Russia, with whom much of our trade in dual-use items is conducted. The intelligence community has made startlingly clear the proliferation record of China and Russia, as well as North Korea, and the adverse consequences of their weapons development and technology transfers to American security interests.

I do not believe that S. 149 adequately addresses these threats. Unfortunately, the Senate yesterday rejected a reasonable amendment offered by Senator THOMPSON allowing the relevant national security agencies to receive a 60-day time extension to review particularly complex license applications. This reform, proposed by the Cox Commission, and a number of amendments adopted by the House Subcommittee on its markup of the Export Administration Act, properly addressed some of the deficiencies in the current version of S. 149.

S. 149 has the strong support of the business community and the Bush Administration. In the short term, proponents of this legislation are correct: loosening our export controls will assist American businesses in selling advanced products overseas. In another age, proponents of free trade in sensitive goods with potentially hostile nations were also correct in asserting the commercial value of such enterprise: Britain’s pre-World War I steel trade with Germany earned British plants substantial profits even as it allowed Germany to construct a world-class navy. Western sales of oil to Imperial Japan in the years preceding World War II similarly earned peaceful nations commercial revenues. In both cases, friendly powers were blinded by the destructive potential of such sales and embargoed them, but it was too late. Such trade inflicted an immeasurable cost on friendly nations blinded by pure faith in the market, and in the power of commerce to overcome the ambitions of hostile powers that did not share their values.
I resolutely support free trade. But I cannot with a clear conscience support passage of legislation that weakens our national security controls on sensitive exportable technologies that may be challenged, or face attack, from weapons derived from the very technologies we have willingly contributed to the world. Our peaceable intentions, our love of prosperity and stability, are not shared by those who would do America harm, and whose hostile ambitions today may well be matched tomorrow by the ability to deliver on that threat. We should make it harder, not easier, for them to do so.

Our export control regime should undergo significant reform to address the challenges and opportunities of our time. Proponents of S. 149 focus on the opportunities this legislation affords American business. I have worked with Senators THOMPSON, KYL, HELMS, and WARNER to highlight the reality that this bill does not adequately address the national security challenges we face today. National security controls cover only a tiny fraction of total American exports; the overwhelming majority of export applications for dual-use items are approved by our government; limited controls properly exist to help prevent highly sensitive technologies from falling into the wrong hands; and such safeguards are more relevant than ever in the face of the multifaceted and unconventional threats to our country unleashed by the information revolution.

A number of proponents of S. 149 argue that American companies should not be straitjacketed by U.S. national security controls even as their foreign competitors remain free to peddle similar technologies to proliferators and rogue regimes. This argument overlooks the fact that America continues to lead the technological revolution; our products are often unique when compared with those produced by businesses in France, Germany, or Japan. More fundamentally, such an approach only emboinds potential enemies who seek access to our markets in sensitive goods. In concert with friends and allies, we should endeavor to shame foreign companies who sell dangerous items to rogue buyers by making their identities public—not scramble a company's access in dangerous technologies at their expense, as if nothing more than corporate profits were at stake. We should also make it a diplomatic priority to construct a new multilateral export control regime, in concert with like-minded nations, to help close the vacuum created by the collapse of COCOM, which regulated Allied exports during the Cold War to keep critical technologies out of Soviet hands.

As a proud free-trader, I maintain that we should continue to carefully review our most sensitive exports; we can, in fact, exercise some control over their end use. I fear we shall one day reap the bitter harvest we sow in our neglect of the consequences to America's security of an overly complacent exportation. We may have to learn the hard way that winking at the proliferation threats we face today, in light of clear evidence that nations to which we export sensitive technologies continue to apply and share them with our enemies, diminishes our national security to a point for which no amount of corporate profits will compensate. I thank Senator THOMPSON for his efforts on this legislation. I do not believe that his amendment yesterday should have been defeated. I thought it was a reasonable amendment. I think it is also another example of a compelling requirement for campaign finance reform.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from South Dakota.

Mr. JOHNSTON. Madam President, S. 149 is, in fact, a balance that modernizes our export control laws to account for the geopolitical, commercial, and technological changes of this past decade.

This bill recognizes that on occasion exports must be controlled for national security and for foreign policy reasons. S. 149 substantially increases the President’s authority to impose controls when in fact they are necessary. I have great respect for the few opponents of this legislation. However, I believe it is a misstatement to suggest that this bill somehow diminishes our Nation’s ability to control technology which needs to be controlled when in fact this legislation imposes greater controls where necessary and significantly increases penalties and decreases the likelihood of sales that are inappropriate.

At the same time this legislation acknowledges that a vibrant American economy is a critical component of our national security. Senator BENNETT, our friend from Utah, spoke eloquently to this point yesterday.

Advancements in high technology allow us to “run faster” than our enemies. To foster continued advancements, we must take great care not to punish American businesses that have limited unnecessarily their marketplace, if those same products will simply be provided by our foreign competitors.

The observation is made, well, what about unique American technology? S. 149 balances our national security interests and we again with a first and foremost concern for national security—appropriately so. But it does recognize that our prosperity and our security are, in fact, interrelated.

This has been a thoroughly bipartisan process—a process, frankly, that I would like to see more often the case on the floor of this body.

I have great gratitude for the work of Chairman SARBANES, ranking member GRAMM, Senator ENZI, and others who have contributed in a constructive way to this legislation. And Senators THOMPSON and KYL have made valuable suggestions to enhance the bill. I thank them for their role and their sincere concern for our Nation’s security. I thank Senators DAYTON and ROBERTS for their constructive input on this legislation as well.

I urge the House to move expeditiously to pass the EAA so the White House can sign this bill into law. This is a high priority for the White House.

For those who may have some concern about the expertise of the vast bipartisan majority of this Senate in support of this legislation out of national security concerns, I again remind the body that this legislation not only had the overwhelming bipartisan support of thoughtful Senators on both sides of the aisle but is urgently supported by President Bush, by Secretary of Defense Rumsfeld, Secretary of State Powell, Commerce Secretary Evans, and National Security Adviser Condoleezza Rice. Certainly those in the White House have taken national security as a first and foremost concern. Any suggestion that somehow that issue has been taken lightly by the advocates of this bill is simply incorrect.

This has been, frankly, a model for how a Senate can work together for the good of our Nation. It is not a Republican bill. It is not a Democrat bill. But it is a bill put together across the aisle with the cooperation of the White House. It has been extremely gratifying, frankly, to have been so closely involved in the creation of this reauthorization.

To reject this legislation, to fall back on the Executive order, which is under legal challenge, and which extends far less authority to the White House to control the sales of high-tech items around the world, would be a tragic mistake. This Nation needs a modern dual-use technology trade regime. This legislation provides that.

Those in our Government who are given the great responsibility of national security have applauded this bill. It is the kind of balance our country needs. I believe the Senate has performed its work very ably to bring this bill to this point.

It is my hope we can conclude this debate very soon, work with our colleagues in the other body, and deliver this bill onto the desk of the President, who have and again together to pass this bill and to again have in place a strong, powerful, dual-use technology trade regime for our Nation.
Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMPSON. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1527

Mr. THOMPSON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON] proposes an amendment numbered 1527: On page 197, line 15, strike ‘‘substantially inferior’’ and insert ‘‘not of comparable quality’’.

Mr. THOMPSON. Madam President, this amendment addresses the issue of foreign availability. As all who have listened to our discussion up until now realize, one of the more important pieces of S. 149 has to do with foreign availability. Essentially, what this bill does is say if the Department of Commerce makes a determination that some item has foreign availability status, then that item is essentially decontrolled. It does not go through the licensing process anymore, the idea being that it is out there and anybody can get it, and why control it.

Frankly, I think it is not a good idea. I think that foreign availability should be taken into consideration, as we always have in our export policy taken foreign availability into consideration. We do not want to try to stop the export of items that are clearly out there and with foreign availability. We do not want to try to stop the proliferation of weapons of mass destruction and things that are detrimental to our national security or things that potentially are. But, anyway, I am in the minority on that.

The administration supports this concept of foreign availability. The majority would support this concept. So that being the case, we have attempted to enter into discussions whereby, hopefully, we could convince our colleagues on the other side of this issue that there is some validity to our concern and, hopefully, the idea being that they would make some accommodation to us on this concept.

I am happy to say that we have been able to reach some accommodation on this issue that addresses some of our concerns.

This amendment that I have just offered makes an important change to the definition of ‘‘foreign availability.’’ Under S. 149, items could be decontrolled and bypass any kind of review so long as there were items available from foreign countries were not substantially inferior to U.S. items. In other words, foreign availability would kick in and the decontrol would kick in under the bill as long as countries could get things that were not substantially inferior.

Our belief is that we ought to make sure, before we decontrol our items, they can really get items that are comparable to what we have. If they can get items that are inferior to what we have, then we should still maintain controls because we have something they cannot otherwise get. And they are sensitive matters or they would not have been on the control list. So we ought to be careful about that.

So this amendment changes that standard of ‘‘not substantially inferior’’ to ensure that the items are of ‘‘comparable quality’’ to U.S. items. It is a small but significant change that ensures that we will not decontrol sensitive American technologies just because inferior items are available overseas.

So I think this strengthens this provision in an important way. It certainly does not address all of our concerns, but it does strengthen this provision in an important way to make sure if we are going to enter into this, what I consider to be a very large decontrol process, in a very dangerous time, to very dangerous countries, that we ought to at least make sure that if we are claiming they can get these items anyway, it is really the same kind of items we have, the same quality we have. I think this amendment would go a long way toward ensuring that.

I thank my colleagues on the other side of this issue for entering into real discussions with us on it. Hopefully, we have come to an agreement on this issue.

Mr. SARBANES. Madam President, I thank the Senator from Tennessee for his contribution throughout this debate. As he said, we have listened and considered carefully. I am perfectly prepared to accept this amendment. And I think introducing this quality concept about which he spoke yesterday is an important improvement and addition to this bill. I am happy to be supportive of it.

Mr. ENZI. I, too, thank the Senator from Tennessee for his cooperation and diligence in the months of working on this bill with us, and with the 59 other changes in the bill as well, and for his willingness to work with us on this change. We are happy to accept it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SARBANES. I urge adoption of the amendment.

The PRESIDING OFFICER. If not the question is on agreeing to amendment No. 1527.

The amendment (No. 1527) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. ENZI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Madam President, I suggest the absence of a quorum.

Mr. THOMPSON addressed the Chair.

Mr. SARBANES. I withhold the request.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Madam President, I suggest that while we are waiting on another Senator, who I believe has one more amendment to consider, we discuss the matters of deemed exports and commodity classification. We have had some discussions about those subjects also. If I may, I will simply relate what my understanding is with regard to those issues.

First of all, on the deemed export issue, we have had concerns on this side that the legislation did not adequately address the problem of deemed exports. As most who follow this issue know, a deemed export comes about when, in a typical situation, sensitive information is passed to a foreign national who perhaps is working at one of our National Laboratories or working in one of our businesses on sensitive information, who may or may not have a government contract, the idea being that with regard to the physical exporting of an item, that information should then be controlled when giving it to a foreign national. That should be reported. We should go through a reasonable process to make sure no damage is being done.

We learned from hearings with regard to our National Laboratories, for example, that we were woefully behind as a government from even private industry; that we were not paying attention in our National Laboratories to the deemed export requirements. There were hardly any deemed export notifications or licenses issued by our laboratories. Our laboratories contain
probably the most sensitive matters that we have in this Nation, including the maintenance of our nuclear stockpile, our Stockpile Stewardship Program, and the information concerning our most sensitive weapons.

We believed we should deal with the deemed export issue. The administration has said it would like to address this complex issue—and it is complex—through regulation rather than include it in the legislation. We have agreed that a letter will be sent to the administration from both supporters and opponents of this bill asking the administration to review existing regulations and address this issue.

Continued control of deemed exports is an essential component of our export control process. Right now there is substantial noncompliance, as I said. This letter is designed to urge the administration to develop new regulations to demonstrate understanding of and compliance with the responsibility to control deemed exports.

I understand there are some in the business community who do not like the concept of deemed exports at all. My understanding and intention, as far as this letter is concerned, is not to give the administration the option of continuing a deemed export policy or not; it is to tighten up the policy and make sure it is updated and clear in terms of what responsibilities are under that policy.

It is a reasonable request that they be given the opportunity to address it. It is a very complex issue. We don’t want to create onerous requirements. These foreign students and scientists who come to America make valuable contributions in many different ways. But we simply have to exercise common sense and protect ourselves and go through an appropriate process when it comes to deemed exports.

I am happy. I believe we have reached some agreement that we write the administration and express generally those thoughts.

Could I get an amen on that?

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, again, I appreciate the care, concern, and detail in which the Senator from Tennessee and the Senator from Arizona, and others who have participated on this, have expressed their concerns about the deemed export controls. We do recognize that the problem is not primarily in the private sector; that it is primarily in the government and education institutions. The private sector has some proprietary rights they try to preserve, but it would be a problem there, too, and we wanted it addressed in all those sectors.

Mr. THOMPSON. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I have an amendment I send to the desk and ask for its immediate consideration. The amendment is as follows:

On page 296, strike line 1 through line 7 and insert the following:

“(3) REFUSAL BY COUNTRY.—If the country in which the end-user is located refuses to allow post-shipment verification of a controlled article, the Secretary may determine 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.”

Mr. KYL. Madam President, let me explain what this amendment does and indicate to my colleagues that I believe I have the concurrence of the chairman of the committee and the ranking member of the subcommittee and have met this morning with the ranking member of the Banking Committee who worked out the language with us. In fact, much of this is his language.

This is the amendment I spoke to yesterday regarding the post-shipment verification that sometimes has to occur when we say, in the granting of an export, we will grant the license to send the item overseas but for a peaceful purpose. If the end-use is commercial purpose or research, or university, a business purpose; we don’t want you to take this item and put it in your defense facility or a nuclear weapons facility, something of that kind. We are going to verify, after we ship it, that it went to the right place.

Remember these are dual-use items. They have two different uses. They may be very useful in a private way, business way. They may also be useful in a military way. Let me give an example.

Not too long ago, some folks in Germany developed a very important medical device called the lithotriptor which, with a high-energy beam, literally zaps kidney stones so they break up into a million little pieces and surgery is not necessary to remove them. It is a very important medical treatment now for people. It is nonintrusive, no surgery, and has a great success rate.

These are very sophisticated pieces of equipment. They have some special switching components in them. It turns out that Iraq has found that those switches are useful in their nuclear weapons program. This is a good example of a dual-use item. It was not invented for defensive purposes. It is an item in it that can be used for weapons. We want to address that item to be used for that purpose.

Saddam Hussein has ordered 50 of these. I don’t think there is a need for 50 lithotriptors in Iraq, frankly. We want to be careful about the export of items that are available on the market. Any hospital can buy a lithotriptor if they have enough money. They are available. By now I am sure there are more companies than just the one German company that make them. These are items that can be acquired. They have dual-use capabilities.

In the granting of an export license on this kind of product, you have to be careful that it is not used for military purposes.

It may be that the example I used isn’t technically correct in the way the bill would work, but I think I make my point.

The bill has a provision in which says that if a company to which you sell, let’s say a company in China, uses this product improperly, or they don’t let you inspect to see where they have used it to verify that the shipment went to where it was supposed to go, then the Secretary shall cut that company off from further exports; they can’t buy anything else from the United States.

But since countries such as China have established a rather gray relationship between the Government and businesses, there also needs to be a way of making the same point with the Government of China or any other government. I am not trying to pick on China. This happen to be some very egregious examples of the Government of China right now not living up to agreements or post-shipment verification.

We need to have some kind of enforcement mechanism in a country such as China as well. I proposed that we have the same kind of provision and say if the Chinese Government won’t permit a post-shipment verification, then the Secretary shall stop such exports until they begin to comply. Well, supporters of the bill said, ‘‘That is too drastic; why don’t you say ‘may’ so that the Secretary has total discretion?’ I was willing to do that. That would have been the simplest way to solve the problem.

I am not sure if something I would like to offer in the spirit of cooperation with my friend Phil Gramm, who said, ‘‘Let’s try to work a few of these things out; since we know the bill will pass, you can make it marginally better.’’ So I went down with the language we are offering is not what I would have personally offered, but it is acceptable to him and it marginally
makes the bill better. I will read it and offer it. It is simple. It says: If the country in which the end user is located refuses to allow post-shipment verification of the 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.

That latter reference to section 211 has to do with the item subject to foreign availability. It would have been simpler to say the Secretary may deny a license for any item on the list until post-shipment verification is allowed by the end user. According to the discretion of the Secretary would have been easier. We have created jobs for lawyers now. I am not necessarily against that, but when we have terms such as this in the statute, we are going to have litigation on what it means. It would have been easier to do it the other way. But this is the language I will offer. The Secretary, at least with respect to some items on the control list, can say to a country such as China, for example: Until you are willing to allow post-shipment verification of items A and B, which you already have, then we are not going to grant a license on items X, Y, and Z. They can pick what those items are if they so choose.

In closing, I will give examples of what would happen to illustrate the need for this particular provision. In 1998, very recently, China agreed to allow post-shipment verification for all exports. They signed an agreement. But the Commerce Commission issued its report and deemed the terms of the agreement wholly inadequate, from the U.S. point of view, to ensure that these verifications really occur.

The amendment I proposed is designed to try to fill a void the Cox Commission identified in the U.S.-China agreement. For example, the Commission’s report discusses a number of weaknesses in the agreement as it relates to the export of high-performance computers. According to the report and deemed the terms of the agreement wholly inadequate, from the U.S. point of view, to ensure that these verifications really occur.

The amendment I propose is designed to try to fill a void the Commerce Commission identified in the U.S.-China agreement. For example, the Commerce Commission discusses a number of weaknesses in the agreement as it relates to the export of high-performance computers. According to the U.S. point of view, the agreement is inadequate to ensure that post-shipment verifications really occur.

The amendment I propose is designed to try to fill a void the Commerce Commission identified in the U.S.-China agreement. For example, the Commerce Commission discusses a number of weaknesses in the agreement as it relates to the export of high-performance computers. According to the U.S. point of view, the agreement is inadequate to ensure that post-shipment verifications really occur.

The amendment I propose is designed to try to fill a void the Commerce Commission identified in the U.S.-China agreement. For example, the Commerce Commission discusses a number of weaknesses in the agreement as it relates to the export of high-performance computers. According to the U.S. point of view, the agreement is inadequate to ensure that post-shipment verifications really occur.
September 6, 2001

Mr. SARBANES. Madam President, certainly, we have had some concern that we need to keep the business of exporting items into the Department of Commerce and they get a different classification for a commodity—in other words, something might be subject to license and they believe it should not be subject to license anymore—they can come in and get that consideration. That is appropriate. That needs to be done, but it needs to be done in a manner which protects the Government and the country's interest from a national security standpoint.

The executive branch has traditionally dealt with this issue through interagency agreements. We think they need to be updated. The existing agreement is 10 years old and needs to be updated to create an increased role for the Department of Defense and State. Both the opponents and supporters of this legislation will send a letter to the administration requesting the issuance of a new Executive order on commodity classification to ensure the participation of the National Security Agency. We believe that with regard to many of these issues, as the administration is trying to staff up and with our discussions with them and among each other, we have realized just how outdated the existing agreement is. We are going to send a letter to them to bring this to their attention further, and suggest they issue an Executive order.

We assume this will be done in an appropriate manner, and we will not take additional action. That option, of course, is always there. Pending that, we think this is an appropriate way to do it.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I thank the Senator from Tennessee again for his emphasis. I think it is important that there be updates on the different procedures, particularly the ones that are done through memos of understanding between the agencies.

We appreciate the willingness of the Senator from Tennessee to allow so that we continue to be done in that way so there is more flexibility to react to current crises under that kind of ability. We have prepared a letter to that effect, and we will be sending it.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Madam President, one final note. We have had some discussion in this Chamber, as other conversations. I think the possibility of an amendment that would create a so-called blue ribbon commission to address additional concerns as to how our export policies might be affecting national security. I believe that, for example, say, not had heard from my other colleagues on this issue, that we have not been able to reach agreement with regard to that.
(d) Definition.—In this section, the term ‘‘food’’ has the same meaning as that term has under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)). On page 318, line 2, strike ‘‘and’’. On page 319, line 3, insert after ‘‘(15)’’ the following: ‘‘a description of the assessment made pursuant to section 214, including any recommendations to ensure that the defense (including vulnerability) is sufficient to protect national security; and’’ and redesignate paragraph 15 accordingly.

On page 324, strike lines 1 through 4 and re-designate paragraphs (14) and (15) accordingly.

Beginning on page 324, line 21, strike all through page 325, line 5, and insert the following:

(j) Civil Aircraft Equipment.—Notwithstanding any other provision of law, any product that is standard equipment, certified by the Federal Aviation Administration, in civil aircraft, and is an integral part of such aircraft, shall be subject to export controls only under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act (22 U.S.C. 2778(b)).

On page 325, between lines 5 and 6, insert the following:

(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 manufacturers’ products.

On page 325, line 6, strike ‘‘(k)’’ and insert ‘‘(j)’’.

Mr. SARBANES. Madam President, the managers’ amendment consists of provisions intended to clarify, correct, and improve the bill.

Section 211: This provision amends the term ‘‘interested party’’ in Section 211 (foreign availability and mass-market process) to ensure its consistency with terms used in the rest of the bill. Sections 205, 302, and 307 all refer to ‘‘interested person(s)’’. The managers’ amendment corrects the references in Section 211 by replacing ‘‘interested party’’ with ‘‘interested person’’.

Sections 214 and 701: This provision clarifies the duties of the Office of Technology Evaluation. Section 214 of the bill establishes an Office of Technology Evaluation to analyze, monitor, and assess potential dual-use technology, and to provide assessments for use in export control policy. The managers’ amendment clarifies that when assessing the effect of foreign competition on critical US industrial sectors, the Office is to consider imports of manufactured products. Section 701 (annual report) to Congress includes a description of such assessments. The managers worked closely with Senator HOLLINGS to include this provision.

Section 311: The next provision modifies Section 311 (crime control instruments). Section 311 preserves authority contained in existing law (Section 6(n) of the Export Administration Act of 1979) to ensure that crime control and police equipment against terrorism may be exported only subject to an export license. The managers’ amendment further provides that any item or technology that the Secretary of Commerce determines is a specially designated and is especially susceptible to abuse as an instrument of torture, shall be exported only pursuant to an individual export license. In addition, the Annual Report of the Bureau of Export Administration must describe the aggregate number of licenses approved during the preceding calendar year for the export of any such items by country and control list number. This provision was included in the Managers Amendment at the request of Senators LEAHY and Breaux.

Section 401: The next provision makes a technical correction to Section 401 (export license procedures). Section 401 requires Commerce to take four actions—hold incomplete applications, refer applications to other agencies, confirm commodity classification, and return application—at the beginning of the license review process. As drafted, however, some of these actions are mutually incompatible (for example, Commerce cannot hold an incomplete application while simultaneously referring the application to another agency). The managers’ amendment revises the language to correct this inadvertent incompatibility.

Section 506: This provision amends the term ‘‘interested parties’’ in Section 506 (enforcement) to ensure its consistency with terms used in the rest of the bill. Sections 205, 302, and 307 all refer to ‘‘interested person(s)’’. The managers’ amendment corrects the references in Section 506 by replacing ‘‘interested parties’’ with ‘‘interested person’’.

Section 506: The next provision makes technical amendments to Section 506. Sections 506(h), (i), (l), and (o) all contain funding authorizations for personnel or activities of the Bureau of Export Administration. The managers’ amendment clarifies that the funding is to remain available until expended. This provision modifies a provision in Section 602 (confidentiality of information). Section 602 outlines the treatment of confidential information obtained after 1980. The managers’ amendment clarifies that the provision applies to information obtained through license applications, but to information obtained through enforcement activity or other EAA operations.

Section 602: This provision further clarifies the confidentiality of information. Section 602 provides that information obtained through licenses, classification requests, investigations, treaty, or the foreign availability/mass-market process shall be kept confidential unless its release is in the national interest. It goes on to provide penalties on violators imposed with the agreement of the violators’ employing agency; and (3) allows violators to be denied further access to confidential information and to be removed from office.

Section 603: The next provision adds a technical provision relating to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). TSRA established restrictions on sanctions dealing with agricultural commodities, medicine, and medical devices.

The managers’ amendment adds a new Section 603 that is intended to hold TSRA harmless by (1) ensuring that no authority in this Act may be exercised contrary to TSRA; (2) clarifying the limitations on national security controls; and (3) clarifying the application of TSRA procedures to foreign policy controls. Senators RONZETTI and DAYTON were instrumental in crafting this language, and worked with bill managers to perfect the text.

Section 702: This provision corrects a technical reference in Section 702 (technical and conforming amendments). As drafted, the reference would have affected the Forest Resources Conservation and Shortage Relief Act of 1990. The managers’ amendment removes the reference and thus any inadvertent impact on the Forest Resources Act.

Section 702: The next provision corrects a drafting error in Section 702 (technical and conforming amendments). Section 702(j) preserves authority contained in existing law (Section 17(c) of the Export Administration Act of 1979) to ensure that standard civil aircraft products remain subject to the Act. As drafted, Section 702(j) inadvertently departed from current law by breaking the original paragraph into subparagraphs. Because this structure could cause confusion in interpretation, the managers’ amendment returns the text to its original structure.

Section 702: This provision addresses a humanitarian issue. U.S. aircraft manufacturers cannot export critical aircraft safety parts to countries subject to the EAA. As drafted, Section 702(j) inadvertently departed from current law by breaking the original paragraph into subparagraphs. Because this structure could cause confusion in interpretation, the managers’ amendment returns the text to its original structure.

Section 702: This provision addresses a humanitarian issue. U.S. aircraft manufacturers cannot export critical aircraft safety parts to countries subject to the EAA. As drafted, Section 702(j) inadvertently departed from current law by breaking the original paragraph into subparagraphs. Because this structure could cause confusion in interpretation, the managers’ amendment returns the text to its original structure.

Section 702: This provision addresses a humanitarian issue. U.S. aircraft manufacturers cannot export critical aircraft safety parts to countries subject to the EAA. As drafted, Section 702(j) inadvertently departed from current law by breaking the original paragraph into subparagraphs. Because this structure could cause confusion in interpretation, the managers’ amendment returns the text to its original structure.
CONGRESSIONAL RECORD—SENATE
SEPTEMBER 6, 2001

BOND, MURRAY, and ROBERTS expressed particular interest in addressing this problem.

Mr. ENZI. Madam President, the managers’ amendment to S. 149 adds a new provision to address a pressing humanitarian issue: flight safety. U.S. aircraft manufacturers have sold commercial passenger aircraft internationally since the 1950s. Moreover, some European-made commercial aircraft are made with U.S. components. As a result, U.S. aircraft are used widely around the world.

The safe operation of these aircraft depends on the replacement of worn parts, repair of unsafe components, and receipt of technical bulletins and airworthiness directives. These parts, services, and information are highly specialized, and often are available only from the original manufacturer.

Over the years, several nations that operate U.S.-made aircraft, or European-made aircraft that incorporate U.S. parts, have become subject to U.S. embargo. As a result, U.S.-made aircraft items cannot be exported to those countries. This poses a significant threat to the safe operation of those airplanes. Without replacement parts, repair, and technical information, the planes literally may fall out of the sky, with terrible humanitarian implications for passengers and those on the ground. We all remember with horror the terrible 1992 crash, resulting from a failed part, of an El-Al plane into an Amsterdam apartment complex. All 4 crew and an estimated 70 Amsterdam residents were killed. The risks are real for U.S. citizens traveling to embargoed countries, or making up part of United Nations delegations. Citizens of U.S. manufacture are at risk. And not least of all, innocent citizens of embargoed countries are particularly vulnerable.

Under current law, the administration has some flexibility to allow flight safety exports to nations such as Sudan and Syria. However, exports to Iran or Iraq require a presidential waiver—a process that takes years and is rarely invoked. The difficulty of obtaining such a waiver has meant that U.S. manufacturers cannot provide critical flight safety parts or information to those nations.

The managers’ amendment addresses this humanitarian issue while retaining the integrity of the embargo. It provides that aircraft equipment exports to comply with safety requirements for commercial passenger aircraft may be authorized on a case-by-case basis. It is tightly circumscribed: it applies only to parts for civil aircraft used in commercial passenger, and it requires a case-by-case analysis.

Senators DODD, BOND, MURRAY, and ROBERTS are keenly interested in this provision and should be commended for addressing this critical humanitarian problem.

Mr. SARBANES. Madam President, this managers’ amendment has been carefully worked over. I do not think there is any matter of controversy in it. I am prepared to go to adoption of the managers’ amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreement to amendment No. 1530.

The amendment (No. 1530) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Madam President, we are prepared to go to third reading of the bill, and then there are going to be some comments. If we can go to third reading of the bill.

Mr. THOMPSON. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Madam President, I simply want to make a closing statement on this important bill. I begin by thanking the chairman of the committee, Senator SARBANES, for his leadership, and Senator JOHNSON for the work, they have done on the bill. I especially want to thank Senator ENZI for his indispensable leadership on this bill; it is no understatement to say that we would not be here today were it not for Senator ENZI’s leadership on this bill for the past two years.

I have had the privilege of serving in the Senate now going into my 18th year, and I have not yet seen a Senator get elected to that body who has done on this bill—in terms of being willing to meet the various agencies involved in export administration, sitting for endless hours and watching how the process works, and doing something we seldom do in this line of work: learn how the process actually works. We are often not willing to spend the time or get our hands dirty. The quality of the bill before us is due in very large part to Senator ENZI, and I want to publicly and personally thank for his leadership. It sets a new standard for what a Senator ought to be in terms of hard work behind the scenes, getting the facts, understanding the mechanism. We like to deal with theory and leave the practical matters up to somebody else. That is not the way Senator ENZI does business.

I thank our two colleagues, Senator THOMPSON and Senator KYL. Maybe people listening to this debate wonder why I would implement them, given that we have some fundamental disagreements, but good law is made by basically trying to accommodate people who do not agree with you while maintaining your principles. I think, quite frankly, they have improved the bill.

Counting the two changes that Senators SARBANES and ENZI agreed to this morning, we have made 61 changes in this bill in trying to build a consensus. I believe the product we have produced is a quality product, it will stand the test of time, and it will work.

The points I want to make are: In listening to some of the critics, one may have gotten the idea that somehow this bill lessens our commitment to national security. We have an apparent conflict in America between our desire to produce and sell items that embody high technology, and we want to produce and sell them because the country that develops new technology creates new jobs and creates the best jobs.

So, while we want to be the world leader in that technology, we have a conflicting goal in wanting to prevent would-be adversaries and dangerous people from getting technology that can be used to harm us or to harm our interests. That is what this bill is about.

Today, 99.4 percent of the applications for a license are granted. When a process is saying “yes” 99.4 percent of the time, is, it is a nonsense process.

We have about 10 times as many items on this controlled list as we should have. We need to build a higher fence around a smaller number of items, and when people knowingly violate the law and transfer this technology we ought to come down on them like a ton of bricks.

Under this bill, the penalties can run into the tens of millions of dollars and people can end up going to prison for life. Those are pretty stiff sentences. And our managers have put together an excellent bill. It represents a compromise between two competing national goals. It is legislation at its best. Many times we claim bipartisanship on bills when they really are not totally bipartisan. This bill is about as bipartisan as anything we have ever done on the Banking Committee since I have been in the Senate, and I think it represents good law.

It is supported by the President. We have some 80 Members of the Senate who have voted basically to maintain the position. I am very proud of it, and I commend it to my colleagues. This is a good bill we can be proud of.

I am ready to vote, and I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Nevada.

Mr. REID. Mr. President, we are now in agreement on the unanimous consent request I will now propose.

I ask unanimous consent that a vote on final passage of S. 149 occur at 4:00 p.m. today, with rule 12, paragraph 4 being waived; that no substitute
amendments be in order; that the committee substitute amendment be agreed to; the motion to reconsider be laid upon the table, and that the time until 4:00 p.m. be divided between the majority and minority for morning business, with the exception of 8 minutes prior to the 4:00 p.m. vote, which would allow Senators Enzi, Gramm, Saboranes, and Thompson each to have 2 minutes prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. THOMPSON. Reserving the right to object.

Mr. REID. If the Senate would withhold, our able staff indicated I misread this. It is right before my eyes, so if I could just repeat this.

The vote will occur at 4:00 p.m. today, with rule 12, paragraph 4 being waived; that no other amendments be in order; that the committee substitute, as amended, be agreed to; the motion to reconsider be laid upon the table; the time until 4:00 p.m. be divided between the majority and minority for morning business, with the final 8 minutes prior to 4:00 p.m. being allotted to Senators Enzi, Gramm, Saboranes, and Thompson each allowed to speak 2 minutes prior to the vote on the bill.

Mr. THOMPSON. Mr. President, reserving the right to object, I do believe it would be appropriate to divide the final few minutes equally between the proponents and the opponents.

Mr. REID. That would be very fine. So what we say is 4 minutes for the opposition and 4 minutes for those proponents. Passage of the legislation be divided equally.

Mr. THOMPSON. Further, I want to take a few minutes right now in morning business or as a part of this UC, either one.

Mr. REID. I say to my friend that will be certainly appropriate. We will get this unanimous consent request agreed to and the Senator can have lots of time. Senator Torricelli wants 15 minutes, but we will be glad to wait until the Senator from Tennessee has completed his statement.

Mr. THOMPSON. That is satisfactory to me.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

The committee substitute, as amended, is agreed to and the motion to reconsider is laid upon the table.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the Export Administration Act of 2001 and urge its passage.

Congress has not reauthorized the Export Administration Act on a permanent basis since 1996, and for close to a decade the export of dual-use goods—items with both civilian and possible military applications—have been governed in an ad hoc way by the president using Executive orders under the International Emergency Economic Powers Act and without a comprehensive regime in place to monitor exports.

Such an approach creates obvious problems in trying to assure that the proper balance is struck between the need for U.S. business to be competitive in the international economy and the need to prevent sensitive technologies that have military implications, improve the export control process, and enhance national security.

The major provisions of the Export Administration Act of 2001 will:

Give the President the power to establish and conduct export control policy, and to make sure that exports to Commerce to establish and maintain the Commerce Control List of items that could jeopardize U.S. national security and to oversee the licensing process for items on the Control list.

Authorize the President to impose national security controls to restrict items that would contribute to the military potential of countries in a manner detrimental to U.S. national security, directing the Secretary of Commerce, with the concurrence of the national security agencies and departments, to identify items to be included on a National Security Control List. This strengthens the hand of the national security agencies in the export licensing process by giving them for the first time a formal procedure by which to be involved in this process.

Provide specific control authority based on the end-use or end-user for any item that could contribute to the proliferation of weapons of mass destruction.

Authorize the President to set aside "foreign availability" or "mass-market" determinations in the interests of national security, and establish an Office of Technology Evaluation to gather, coordinate and analyze information necessary to make to these determinations.

Establish procedures for the referral and processing of export license applications, and establish an interagency dispute resolution process to review all export license applications that are the subject of disagreement.

Declare that the President shall seek and participate in existing multilateral export control regimes that support U.S. national security interests, and to seek to negotiate and enter into additional multilateral agreements. Given the world in which we live, these dual-use items, multilateral agreements are critical to assure that they do not fall into the wrong hands.

Establish new criminal and civil penalties for knowing and willful violations of the export procedures.

By streamlining and bringing transparency to the licensing process this legislation, then, strikes a good balance between assuring that the export licensing process is good for trade, the U.S. economy, and jobs, and national security concerns.

This legislation is supported by the President and has been endorsed by the Secretary of Defense, by the Secretary of State, and by the President's National Security Adviser. It also has the support, I believe, of the majority of my colleagues.

Mr. President, I urge the Senate to move forward with passage of the Export Administration Act.

Mr. SPECTER. Mr. President, I think it is important to state my reasons for voting against S. 149, the Export Administration Act. I do so because I think there is too much deference to commercial interests at the expense of exports which may threaten national security.

I cast my vote late in the rollcall when there were 77 votes in favor of the bill, which eventually turned out to be an 85 to 14 vote, so that I knew the bill was going to pass by overwhelming numbers.

Legislation on this subject is of great importance and is long overdue. I was tempted to vote in favor of the bill on the proposition that the best frequently is the enemy of the good. Had my vote been decisive so that it might have been a matter of having a bill which vastly improved the current situation, which is the absence of legislation. I think there is too much deference to commercial interests which may threaten national security.

I cast my vote late in the rollcall when there were 77 votes in favor of the bill, which eventually turned out to be an 85 to 14 vote, so that I knew the bill was going to pass by overwhelming numbers.

Legislation on this subject is of great importance and is long overdue. I was tempted to vote in favor of the bill on the proposition that the best frequently is the enemy of the good. Had my vote been decisive so that it might have been a matter of having a bill which vastly improved the current situation, which is the absence of legislation. I think there is too much deference to commercial interests which may threaten national security.

The major provisions of the Export Administration Act of 2001 will:

Give the President the power to establish and conduct export control policy, and to make sure that exports to Commerce to establish and maintain the Commerce Control List of items that could jeopardize U.S. national security and to oversee the licensing process for items on the Control list.

Authorize the President to impose national security controls to restrict items that would contribute to the military potential of countries in a manner detrimental to U.S. national security, directing the Secretary of Commerce, with the concurrence of the national security agencies and departments, to identify items to be included on a National Security Control List. This strengthens the hand of the national security agencies in the export licensing process by giving them for the first time a formal procedure by which to be involved in this process.

Provide specific control authority based on the end-use or end-user for any item that could contribute to the proliferation of weapons of mass destruction.

Authorize the President to set aside "foreign availability" or "mass-market" determinations in the interests of national security, and establish an Office of Technology Evaluation to gather, coordinate and analyze information necessary to make to these determinations.

Establish procedures for the referral and processing of export license applications, and establish an interagency dispute resolution process to review all export license applications that are the subject of disagreement.

Declare that the President shall seek and participate in existing multilateral export control regimes that support U.S. national security interests, and to seek to negotiate and enter into additional multilateral agreements. Given the world in which we live, these dual-use items, multilateral agreements are critical to assure that they do not fall into the wrong hands.

Establish new criminal and civil penalties for knowing and willful violations of the export procedures.

By streamlining and bringing transparency to the licensing process this legislation, then, strikes a good balance between assuring that the export licensing process is good for trade, the U.S. economy, and jobs, and national security concerns.

This legislation is supported by the President and has been endorsed by the Secretary of Defense, by the Secretary of State, and by the President's National Security Adviser. It also has the support, I believe, of the majority of my colleagues.

Mr. President, I urge the Senate to move forward with passage of the Export Administration Act.

Mr. SPECTER. Mr. President, I think it is important to state my reasons for voting against S. 149, the Export Administration Act. I do so because I think there is too much deference to commercial interests at the expense of exports which may threaten national security.

I cast my vote late in the rollcall when there were 77 votes in favor of the bill, which eventually turned out to be an 85 to 14 vote, so that I knew the bill was going to pass by overwhelming numbers.

Legislation on this subject is of great importance and is long overdue. I was tempted to vote in favor of the bill on the proposition that the best frequently is the enemy of the good. Had my vote been decisive so that it might have been a matter of having a bill which vastly improved the current situation, which is the absence of legislation. I think there is too much deference to commercial interests which may threaten national security.

I cast my vote late in the rollcall when there were 77 votes in favor of the bill, which eventually turned out to be an 85 to 14 vote, so that I knew the bill was going to pass by overwhelming numbers.

Legislation on this subject is of great importance and is long overdue. I was tempted to vote in favor of the bill on the proposition that the best frequently is the enemy of the good. Had my vote been decisive so that it might have been a matter of having a bill which vastly improved the current situation, which is the absence of legislation. I think there is too much deference to commercial interests which may threaten national security.

I cast my vote late in the rollcall when there were 77 votes in favor of the bill, which eventually turned out to be an 85 to 14 vote, so that I knew the bill was going to pass by overwhelming numbers.
Mr. JOHNSON. I am very pleased that S. 149, the Export Administration Act of 2001, passed the U.S. Senate by such an overwhelming bipartisan vote of 85–14. I cannot, and I do not, want to protect our nation from external threats, we must at the same time recognize that our security depends in large measure on a vibrant economy, and in particular on our ability to continue innovating in the high technology sector. Ensuring that American producers have the ability to participate in the global marketplace is critical to this effort.

The hard work that contributed to the overwhelming support for S. 149 cannot go unmentioned. Some of the most prominent law reforms that our export controls of dual-use items need to reflect the vast geopolitical, technological, and commercial changes that have occurred since the old law was enacted back in 1979. While we must remain committed to protect our nation from security threats, we must at the same time recognize that our security depends in large measure on a vibrant economy, and in particular on our ability to continue innovating in the high technology sector. Ensuring that American producers have the ability to participate in the global marketplace is critical to this effort.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

Some of us who oppose this bill support permanent normal trade relations with China. And, yet, we oppose this bill. We oppose it because it was never had a deleterious effect on the U.S. economy, or on U.S. competitiveness. The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.

The studies I have mentioned offered conclusions, all of which are relevant to the debate at hand. The US government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources in safeguarding easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a "leveling" of access to technologies critical to national interests. They do, however, represent the regulatory manifestation of our national security objectives and the role our moral values should play in the conduct of foreign and trade policies.
being semiconductors, computer hardware and software, simulation and surveillance devices, advanced telecommunications, and so on, are available to nearly any country that wishes to access them, ally and adversary alike. The result of these changes is an export control regime that is, to quote the Defense Science Board, “for all practical purposes ineffective at manipulating access to dual-use technology and . . . only marginally more successful in the conventional weapons arena.” This is the context within which we debate export control reform today, and these are the changes that the proposed legislation is trying to address.

The second overarching conclusion is that is that we need to put higher fences around much smaller, but more critical, sets of technologies. Because access to international framework that will technical capabilities have spread so widely and because research and development is now global in nature, it is time that we focus our efforts at export control on limited technologies that directly affect our national security. In particular, we should concentrate on protecting and developing the software and databases that sustain and strengthen our military superiority. The primary objective in the current export control regime is to prevent potential adversaries from obtaining technological components that would allow them to develop weapons systems and manage warfare in a more effective fashion. Unfortunately, this objective is still considered rational, this in spite of the radical changes that have occurred in the international political economic environment. Commercial computers that can be obtained online or through retail outlets can now perform the vast majority of battlefield applications. A compelling argument can be made that we need to concentrate on controlling the technologies that will allow advanced components to be integrated into effective systems. This should be one of our primary considerations as we reconsider export control, and this is one of the goals the proposed legislation is trying to achieve.

The final overarching conclusion is that it is time that we begin creating a new international framework that will allow more effective export control between the United States and its allies. Changes in advanced technology and the global environment has undercut or weakened existing agreements, and we must develop an international framework upon which new cooperative mechanisms can be established. In the recent past, much of this required change has been blocked by the United States, the primary reason being that its export control system is the first to sell its own weapon, the computer MTOPS being the most salient example, that are no longer relevant in the current international environment and are not adhered to by our allies. Regulatory reform in the United States must occur before new international frameworks can be established, and it is one of the goals that the proposed legislation is trying to address.

There are those among my colleagues who would argue that even if the international system has changed to this extent, and if globalization has changed the international equation, the United States has a moral obligation to limit access to certain key technologies for a specific group of countries. The example used most frequently on the Senate floor is China, but certainly other countries could be inserted in its place.

Let me state here that I would not disagree that certain countries should be singled out as potential threats to the United States. It globalization limited to the extent that it is feasible to do so. But the proposed legislation accomplishes this objective. The arguments on the Senate floor that the proposed legislation somehow diminishes our capacity to control sensitive and critical technologies is specious at best. On the contrary, many levels of restrictions remain in place to protect U.S. national security interests. What the proposed legislation does do is provide the U.S. government with the flexibility and focus to address concerns over advanced technology and adapt to changes in the current international environment.

It is time that we change our anarchistic system of export control. This legislation reflects several years of hard work on the part of my colleagues, and I believe it represents a balanced and strategic approach to the problems at hand. The legislation was voted out of the Banking Committee with bipartisan support, and this is one of the reasons that the Senate floor will attest, the legislation has the bipartisan support of most of the Members of the Senate. President Bush supports it, as does all the relevant officials in his Administration. President Clinton supported it, as did all the relevant officials in his Administration. It is supported by a broad range of organizations, many of which are led by key officials from previous Democratic and Republican Administrations.

It is time that we change our anarchistic system of export control.

However, what I find disheartening is that it disapproving that the legislation has not addressed the important issue of U.S. commercial satellites and space-related component exports. The Defense Authorization Act for FY 1999 moved the satellite licensing and export licensing of these items from the Department of Commerce to the Department of State. By doing so, communications satellite and space-related items were placed on the U.S. Munitions List, effecting a dramatic change in years of a critical component of the American space industry. It makes timely deliveries to overseas customers and our allies nearly impossible, and excludes commercial satellite sales from competitive rate financing offered by the Export-Import Bank. While our U.S. companies may find themselves hard-pressed to find international markets to provide reasonable financing for foreign customers, their competitors may not. Last year, the Aerospace Industries Association claimed satellite exports had fallen over 40 percent in the period from late 1999 to early 2001, and the committee needs to the trend to get continually worse. I certainly hope this issue is addressed in the upcoming conference.

We have examined the issue of export control many times over. It is time to recognize the importance of export control reform to the national interest of the United States and pass this legislation.

Mr. LEAHY. Mr. President, I want to express my support for S. 149, the Export Control Reform Act of 2000. I want to commend Senators SARBANES, GRAMM, JOHNSON, and ENZI for crafting a balanced, bipartisan bill that brings long-overdue clarity to the regulation of dual-use exports. This bill removes several unnecessary restrictions on exports that only hinder international trade, puts in place a system to track and license those technologies that have the potential to impact national security, and establishes realistic penalties and sanctions for violations of these restrictions.

I am pleased that the managers of the bill have accepted the amendment that Senator BIDEN and I proposed that will place controls on the export of items that are used to perpetrate acts of torture. The “torture trade” is a critical problem that has received too little attention from policymakers, the public, and the press. Too often, companies have exported items, apparently designed for security or crime control purposes, to nations that are using those items to torture people by some of the inhumane methods imaginable. Amnesty International reports that, over the past decade, more than 80 U.S. companies have been involved in the manufacture, marketing, and export of these types of items, like thumbscrews and electro-shock stun belts, which have been used to commit human rights abuses around the world.

The Leahy-Biden amendment is a modest step toward to international transparency, oversight, and accountability associated with the trade in these items. It builds on existing regulations and requires a license, subject to the approval of the Secretary of Commerce and the concurrence of the Secretary of State, before such items can be exported. It also contains an annual reporting requirement to disclose the aggregate number of licenses to export these items that were granted during the previous year.

This amendment is designed to make sure that certain goods and technologies are not used to commit acts of
torture and other human rights abuses. While our amendment moves us in the right direction, I recognize that more can and should be done. Representatives from Arizona, Mr. Kyl, for their lead-
tivities Hyde and Lantos have included
can and should be done. Representa-
tive Feingold and Senator Feingold have
right direction, I recognize that more
travesty and other human rights abuses.

I agree with the bill's proponents and
oppose the pending legislation to reau-

I commend the Senator from Ten-
nessee, Mr. Thompson, and the Senator
from Arizona, Mr. Kyl, for their lead-

I look forward to the passage of this

CONGRESSIONAL RECORD—SENATE 1635

torials to export dual-use tech-
nologies. I disagree with the conten-
tion that so many in the affected in-
dustries have advanced—that the li-
censing process puts them at a dis-

Finally, I believe that the Adminis-
tration should work with other nations
to develop strict standards of export
controls for these items. I understand
that the European Union is in the proc-

The fact is that there is a great deal
of pressure from the super computer in-
dustry to pass this legislation. I don't
say that to impugn the motives of any
Member who supports this bill, because
we are having an honest debate here
about different points of view. But I do
think it's important for the American
people to understand who some of the
people to understand who some of the

I will vote against this bill, and I
urge my colleagues to do the same.

Mr. Biden. Mr. President, it has been
16 years since the United States
Congress last enacted re-authorizing
legislation governing our controls on
the export of dual-use technology,
which may mean bar-
ring certain types of sensitive tech-

I want to reiterate my opposition to
this legislation. We can and should do
more to protect the national security interests of the United
States.

I think we have to examine closely
all sides of this issue, and again I want
to thank Senator Kyl and Senator
Thompson for the outstanding work
they have done to bring concerns about
this legislation to the fore.

The fact is that there is a great deal
of pressure from the super computer in-
dustry to pass this legislation. I don't
say that to impugn the motives of any
Member who supports this bill, because
we are having an honest debate here
about different points of view. But I do
think it's important for the American
people to understand who some of the
people to understand who some of the

I will vote against this bill, and I
urge my colleagues to do the same.

Mr. Biden. Mr. President, it has been
16 years since the United States
Congress last enacted re-authorizing
legislation governing our controls on
the export of dual-use technology,
which may mean bar-
ring certain types of sensitive tech-

I want to reiterate my opposition to
this legislation. We can and should do
more to protect the national security interests of the United
States.

I think we have to examine closely
all sides of this issue, and again I want
to thank Senator Kyl and Senator
Thompson for the outstanding work
they have done to bring concerns about
this legislation to the fore.

The fact is that there is a great deal
of pressure from the super computer in-
dustry to pass this legislation. I don't
say that to impugn the motives of any
Member who supports this bill, because
we are having an honest debate here
about different points of view. But I do
think it's important for the American
people to understand who some of the
people to understand who some of the

I will vote against this bill, and I
urge my colleagues to do the same.

Mr. Biden. Mr. President, it has been
16 years since the United States
Congress last enacted re-authorizing
legislation governing our controls on
the export of dual-use technology,
which may mean bar-
ring certain types of sensitive tech-

I want to reiterate my opposition to
this legislation. We can and should do
more to protect the national security interests of the United
States.

I think we have to examine closely
all sides of this issue, and again I want
to thank Senator Kyl and Senator
Thompson for the outstanding work
they have done to bring concerns about
this legislation to the fore.

The fact is that there is a great deal
of pressure from the super computer in-
dustry to pass this legislation. I don't
say that to impugn the motives of any
Member who supports this bill, because
we are having an honest debate here
about different points of view. But I do
think it's important for the American
people to understand who some of the
people to understand who some of the

I will vote against this bill, and I
urge my colleagues to do the same.
framework of export controls. We owe this to our friends and allies, who look to the U.S. export control system as a model in devising their own systems. And, importantly, we owe this to our national security, which is why we cannot rely on a system that metes out insufficient penalties and is based on shaky legal ground.

Export controls exist, first and foremost, for reasons of national security. The United States must not export items when the item or the end-user may contribute to the proliferation of weapons of mass destruction, strengthen the military capabilities of those who would oppose us, or otherwise endanger U.S. national security. A comprehensive export control system is just as important to preserving America’s freedom and security as a strong military.

But export controls also exist to facilitate the free trade of goods and services, an essential building block of our international economy. The future growth of our economy and a leading global role for U.S. industry require a vital export market.

I think all of us can agree that national security considerations must always come first in devising export controls. We can all agree that such controls should not be so arbitrary as to stifle legitimate trade. We may differ, however, on how we should go about balancing these two opposing considerations.

Export controls can also serve another purpose. They can help reaffirm America’s global leadership on human rights. Let me take this opportunity to commend Senators BANES and ENZI for accepting an amendment proposed by Senator LEAHY and me in this regard. The managers’ amendment to S. 149 will tighten the controls on the export of any items expressly designed for torture or especially susceptible to use in torture.

We are talking about items such as stun guns and shock batons, leg cuffs and restraint chairs. Yes, some of these items can have legitimate law enforcement uses and are in fact employed in a manner that does not abuse human rights. That is why this amendment would continue to allow their export, but make them subject to the licensing process and require the specific concurrence of the State Department as well as the approval of the Commerce Department.

The items covered by this amendment are devices that governments around the world often use in suppressing political dissidents and ethnic opposition. This amendment requires the U.S. government to license each and every export of such items. It will help ensure that the United States does not inadvertently contribute to the torture of individuals by engaging in the unlicensed trade of items used for torture. It is my hope that the Commerce and State Departments, working together, will see to it that licensed exports of these items are permitted only to those countries whose governments carry unsatisfactory human rights records.

I once again thank Senators BANES and ENZI for accepting this amendment, and especially Senator LEAHY, who is once again a champion of human rights and with whom I am always delighted to work.

During this debate, a group of Senators, led by my good friends Senators THOMPSON and Senator KYL, has led an intense effort against S. 149. They argue that this bill fundamentally favors commercial equities over our national security interests. They are skeptical that the Commerce Department, which is responsible for cultivating U.S. business interests around the world, can play an impartial role in weighing national security considerations.

Truth be told, I have shared some of their concerns. That’s why I am pleased that the floor managers have reached a compromise with Senators THOMPSON and KYL. This compromise includes amendments to S. 149 to: 1. Enhance the discretionary authority of the Commerce Department to deny export licenses to another country when it is blocking legitimate post-shipment verifications of sensitive exports and 2. Tighten the definition of foreign availability determinations which can exempt items from export controls. These changes to S. 149 approved today offer real improvements to this bill.

I plan to vote for S. 149. On the whole, this bill takes the right steps to bring our export controls for dual-use technologies into the 21st century. Is it a perfect bill? No. The House International Relations Committee, in marking up this bill last month, appointed a bipartisan group to work in a conscientious way with all parties to resolve the differences over this legislation. These differences have cut to the very essence of how the United States plans to protect its national security in an era of rapid globalization and proliferation of technology.

My goal in this debate has been to strike the proper balance between national security and commercial interests. As we all know, the high tech industry in the United States is currently second to none. We must ensure our domestic industry remains competitive without limiting access to new markets. Considering the rate at which technology becomes obsolete, being the first to deliver a product to a market is crucial. And while we cannot completely abandon normal commerce concerns in favor of industry, we must not unnecessarily hinder the ability of our high tech companies to compete on the world stage. That is what I believe we have accomplished with this bill.

This is a complicated issue that cuts across the jurisdiction of six Senate Committees. Five Committee Chairmen with responsibility for national security matters in the U.S. Senate have continuously worked to improve this bill—myself as chairman of the Armed Services Committee, Senator SHELBY of the Intelligence Committee, Senator THOMPSON of the Governmental Affairs Committee, Senator HANSON of the Foreign Relations Committee, and Senator MCCAIN of the Commerce Committee. In addition, Senator KYL has been a leading participant in our discussions with the Banking Committee, the committee of primary jurisdiction.

The higher penalties and increased enforcement authority, the authority to require enhanced controls on items that need to be controlled for national security reasons, the requirement for the Department of Commerce to notify the Department of Defense of all commodity classifications are examples of progress made on the national security front.

I have great respect for the tireless efforts and dedication of my distinguished Banking committee colleagues, Senator GRAMM and Senator ENZI, in creating the EAA of 2001. I thank them for meeting with me and others several times over the past two years to listen to our concerns with balancing national security matters with economic interests. I hope these concerns will remain a priority for all of us.

In this year’s version of the EAA, the Banking Committee has included additional national security protections at
the urging of the administration. As the debate on these issues has shown, there were concerns about the last administration’s record in protecting some of our vital technology. A new administration is able to look at old problems with a fresh approach. It is in that context that the administration reviewed this bill at the request of myself, Senators McCain, Shelby, Throgmorton, and the National Security Advisor and three cabinet Secretaries were intimately involved in this review. As a result, the administration proposed a series of legislative changes that the Banking Committee has included in the bill that is before us.

Once these changes were made and the administration was actively engaged on the issue, the question then became a technical matter of how the administration would implement the statute. When the Senators expressing concerns about this bill were briefed on the results of the administration’s review, we were informed that an interagency agreement had been achieved on how the administration would control national security controls during the course of implementing the EAA. Under the administration’s proposal, we were informed that some national security protection that we had sought in the past would be included in the executive order that implements S. 149. Thus began a dialogue with the administration to come up with a better understanding of how this bill would be implemented.

I am satisfied with the response that the Secretary of Commerce conformed to the high national security standards that they have set for themselves. When the EAA comes up for renewal in three years time, we may have a more stringent in putting explicit national security protections in statute rather than leaving it to the discretion of the administration.

I want to thank my colleagues on the Intelligence, Foreign Relations, Commerce, and Armed Services Committees. These Members have worked over the last two years to improve this bill and ensure that our national security interests are protected. I know the job isn’t finished yet. It has just begun and I will stand with my colleagues to ensure that our export control process is designed and operated to ensure that weapons of mass destruction do not get into the wrong hands.

It is time for the Congress to act on this bill. There is a need to reauthorize the EAA. The national security protections such as the national security carve out, increased penalties for export control violations, and greater visibility for the Department of Commerce over commodity classifications are positive steps. We need to lock in these improvements and work to ensure that nonproliferation concerns are protected and strengthened and that vital technology is protected. And we need to allow our domestic industry to compete in the world market without unnecessary and outdated restrictions.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECRETARY OF COMMERCE.

Hon. John Warner,

U.S. Senate,
Washington, DC.

Dear Senator Warner: In light of our mutual interest in the Export Administration Act of 2001 (S. 149), I would like to address several issues related to S. 149 that I understand were raised in a recent discussion with Administration officials.

As you know, the Administration carefully reviewed S. 149. As a result of that review, the Administration recommended a number of amendments to the Senate Committee on Banking, Housing and Urban Affairs, which were incorporated into the bill. Accordingly, the Administration strongly supports S. 149. We believe that the bill provides the proper framework for regulating the export of sensitive items consistent with our national security interests.

For your convenience, I have enclosed an analysis that addresses in detail the issues raised by your staff.

I also understand that your staff asked about the Department’s response to a recent report by the General Accounting Office (GAO) regarding controls on exports to China, the scope of the statute to minimize proliferation. The Department will shortly issue a proposed rule amending the licensing requirements applicable to exports to Canada. This new rule will address the issue raised by the GAO.

I appreciate your continued interest in the Export Administration Act of 2001. I look forward to working on the passage of this bill to ensure that the protection of national security is given the highest priority in the dual-use export control system process.

I have any further questions, please call me or Brenda Becker, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 512-3683.

Warm regards,

Donald L. Evans.

ADMINISTRATION VIEW ON NATIONAL SECURITY ASPECTS OF S. 149

The Administration supports S. 149 because it sustains the President’s broad authorities to protect national security. S. 149 actually provides greater authority for the President to control dual-use exports than current law, the Export Administration Act of 1979 (EAA). S. 149 significantly raises the penalties for export control violations and contains other provisions that enhance the U.S. government’s ability to enforce the law effectively. Higher penalties and increased enforcement authority will deter those who might otherwise endanger U.S. national security through illicit exports.

FOREIGN AVAILABILITY/MASS MARKET AND PARTS AND COMPONENTS

The bill does give exporters the right to ask the government to determine whether items are foreign or mass market available. However, the bill also gives the President several ways to continue controls on such items, if necessary, for national security reasons. In addition, S. 149 provides more authority than the existing law to require enhanced controls on such parts and components as needed to protect national security.

ROLE OF DEPARTMENT OF DEFENSE AND OTHER AGENCIES

The bill provides a significant role for the Department of Defense in the licensing process, including:

—requiring the Secretary of Defense concurrence authority in identifying items to be controlled for national security reasons. This is a greater role than Defense has under existing law because under the national security control list under the bill is significantly greater than under current law.

—requiring the Secretary of Commerce to issue a license application if the Secretary of Defense and State for their review and recommendations. The bill also authorizes all reviewing departments, for the first time in statute, to escalate a proposed licensing decision to the President.

—requiring the Department of Commerce, for the first time in statute, to notify the Department of Defense of all commodity classification requests.

—requiring the Department of Commerce, for the first time in statute, to fully consider any intelligence information relevant to a proposed export when considering a license application.

—enabling the President to continue the longstanding procedure whereby the Office of Management and Budget ensures the concurrence of the Departments of State and Defense, and other agencies as appropriate, on regulations issued by Commerce pursuant to the act. This procedure allows the Department of State and Defense to concur on regulations affecting their interests without requiring concurrence on regulations those departments may not wish to review.

—continuing the President’s authority to require a license for transfers of items to foreign nationals within the United States and requiring State and Defense’s concurrence on such licenses.

Regarding restrictions on the President’s delegation of authority, such restrictions are
limited and apply only to those areas not appropriately delegated to any one agency. Restricting foreign policy authority to the President, in these very limited circumstances, ensures that all interests— including national security—will be fully considered.

As officials from the Departments of State and Defense testified at the House International Relations Committee on July 11, the provisions of S. 149 protect the President’s authority to safeguard U.S. national security.

**PROPOSED EXECUTIVE ORDER**

Interagency review of export license applications is conducted under Executive Order 12981, as amended. Under this executive order, the Departments of Defense, State and Energy have the right to review all license applications as submitted to the Department of Commerce. The only applications that these departments do not review are those they choose not to, such as applications to export crude oil.

S. 149 partially codifies Executive Order 12981 and provides the Administration the flexibility to structure an appeals process that will not restrict authority of both the Departments of Defense and State. For example, the current executive order establishes an assistant secretary-level interagency body to hear appeals of decisions made at lower levels. This group already is an integral part of the licensing process and the Administration plans to keep it in any new executive order promulgated after the passage of a new EAA would not alter Defense’s current ability to review and object to license applications.

S. 149 also requires Commerce, for the first time in statute, to notify Defense of all commodity classification requests Commerce receives. The Administration has committed to implement by executive order a process by which all these commodity classification requests will be reviewed by Defense, with a disciplined and transparent process for escalating and deciding disputes. The Administration will brief Congress about all of the processes provided for in S. 149 as they are implemented.

Mr. SHERRY. Mr. President, I rise today to reiterate my concerns over the Export Administration Act of 2001.

There is little doubt that this bill will pass. The writing is on the wall. However, with all due respect to the administration and to my colleagues on the Banking Committee, I have and will continue to oppose S. 149.

Neither I nor Senators THOMPSON, KYL, HELMS or MCCAIN desire to impede American business entities in their pursuit of new markets. I for one tend to agree with President Calvin Coolidge, who said that, “The chief business of the American people is business.” Every Senator here today is an advocate for enhanced trade and for helping American workers to export its goods and services. Exports bring prosperity to this Nation’s companies and work to its citizens. If my advocacy for the U.S. technology industry were the sole basis upon which my decision on this legislation was to be based, I could easily change my past position and support passage of the Export Administration Act, or EAA as it is known. However, the other basis upon which the EAA should be measured is its effect upon the national security of the United States.

Earlier this summer, I was inspired when I listened as one of my colleagues, who had not previously supported my position on the EAA, publicly and emphatically stated, and I paraphrase, that when it comes to the difficult question of protecting trade or preserving national security, we must err on the side of national security.

That balance is the crux of this week’s debate. We should not support a measure that could, as written, result in harm to Americans by technology developed and sold by Americans.

The pending bill addresses the control of “dual use” technology, that is, technology that has both commercial and military applications. Most commonly, this technology entails a licensing process for the export of most dual use technologies. Rather than prohibit exports outright, we generally ensure that we can determine which countries are receiving technology in exporting so that we can measure whether technology is being put to military use. The EAA also regulates which countries will be permitted to import U.S. dual-use technologies. Generally, U.S. companies are not permitted to export dual use products to countries like Iran and Iraq.

This bill is an attempt to rewrite our export control laws to make them more rational. I too believe that this nation needs new export laws to meet today’s trade realities. However, this effort must not open the floodgates for our dual use technology to be exported, without the ability for the U.S. Government to follow where that technology goes and its ultimate application.

For an export control regime to function properly, it must provide for a balancing of the commercial benefits involved—which are generally obvious, easily-quantified, concentrated, and immediate—with the national security concerns, which are typically shrouded in secrecy, difficult to quantify, diffuse, and long-term in nature. In this equation, national security can easily get the short end of the stick.

Not everything is shrouded in secrecy. In accordance with Section 721 of the 1997 Intelligence Authorization Act, twice a year the Director of Central Intelligence submits a report on trends in the proliferation of weapons of mass destruction. The report is unclassified. The report identifies key suppliers of dual use missile, nuclear, and conventional arms technologies, as well as dual-use biotechnology and chemical technology. Nations such as China are identified as key suppliers. They export their technology to the likes of Iraq, Iran, Libya, Syria, Sudan, Pakistan and India. The report received last winter detailed a continuing and significant problem.

Regarding Iran, the report states, and I quote:

Iraq has expanded its efforts to seek considerable dual use, weapon materials, equipment, and expertise from abroad—primarily from entities in Russia and Western Europe—possibly for civilian use. We should note that this equipment and knowledge could be applied to Iran’s biological warfare program. Outside assistance is both important and difficult to prevent, given the dual-use nature of the materials, the equipment being sought, and the many legitimate end uses for these items.

Regarding Iraq, the report indicates that Saddam Hussein is utilizing all means to acquire dual-use technology. The report states:

Iraq has attempted to purchase numerous dual-use items for, or under the guise of, legitimate civilian use. This equipment, in no small part, could be diverted for weapons of mass destruction purposes. In addition, Iraq appears to be installing or repairing dual-use equipment at chemical weapons related facilities.

With respect to India, “India continues to rely on foreign assistance for key missile and dual-use technologies where it still lacks engineering or production expertise in ballistic missile development.” The report goes on to cite Russia and Western Europe as the primary conduits of India’s missile related technology.

As stated in the Report, Pakistan received significant assistance from Communist China for its ballistic missile program in the early part of last year. The administration was forced to impose sanctions on the China Metallurgical Equipment Corporation for selling missile technology to Pakistan. The corporate entity in Pakistan that received the technology was also sanctioned. I know this has been and continues to be an issue of great concern to Senator THOMPSON. I commend him for his efforts to publicize Communist China’s blatant disregard for its pledge not to support foreign nuclear missile programs.

The report did contain one note of optimism, which I believe is also directly applicable to today’s debate. Nations such as Libya and Iran continued to attempt to acquire needed materials for their weapons of mass destruction in Western Europe. They had some success in the first half of 2000, but the CIA report states that, “Increasingly rigorous and effective export controls and cooperation among supplier countries have led the other foreign MD programs to look elsewhere for many controlled dual-use goods.” The point is, that while we cannot stop all proliferation, a rigorous export control regime can be effective in diffusing the weapons of destruction and potentially threatening dual-use technology.

Mr. President, the problem is real. I believe it is a significant statement
when the Chairmen and now Ranking Members of the Senate Armed Services Committee, the Foreign Relations Committee, the Intelligence Committee, the Committee on Governmental Affairs and the Subcommittee on Technology, Terrorism and Government Information, have serious issues with the protections this legislation provides our national security. I am deeply disappointed that the Bush administration was not able to support reasonable amendments which would address the national security equities which we have highlighted. I am concerned that the interests of the high tech business community have replaced reasonable consideration of our dual use export control regime.

Technologies which are exported today can and will have to be dealt with by this Nation’s national security apparatus. Consequently, I urge my colleagues to support the amendments of Senators THOMPSON, Kyl, HELMS, and others, which will strengthen S. 199 with respect to national security. They are only a handful of the changes which should be made to this bill but they will serve to give the Defense Department and the State Department a more level playing field in the export control process from which to protect national security.

There is a proper balance between promoting business and preserving the national security. This bill does not strike that balance. As a conference, I am hopeful that in conference, I can work with the members of the House, especially Chairman HUNDR and continue these efforts to the balance in favor of national security.

Mr. President, I ask unanimous consent to print in the RECORD entitled “Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 January through 30 June 2000.”

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNCLASSIFIED REPORT TO CONGRESS ON THE ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS, 1 JANUARY THROUGH 30 JUNE 2000

The Director of Central Intelligence (DCI) hereby reports in response to a Congressionally directed action in Section 721 of the FY 97 Intelligence Authorization Act, which requires:

“(a) Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Director of Central Intelligence shall submit to Congress a report on:

(1) the acquisition by foreign countries during the preceding 6 months of dual-use and other technology useful for the development of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) and advanced conventional munitions; and

(2) trends in the acquisition of such technology by such countries.”

At the DCI’s request, the DCI Nonproliferation Center (NPC) drafted this report and coordinated it throughout the Intelligence Community. As directed by Section 721, subsection (b) of the Act, it is unclassified. As such, the report does not present the details of the nonproliferation experiments, equipment and weapons of mass destruction and advanced conventional munitions programs that are available in other classified reports and briefings for Congress.

ACQUISITION BY COUNTRY

As required by Section 721 of the FY 97 Intelligence Authorization Act, the following are summaries by country of acquisition actions (sales, transfers, and deliveries) related to weapons of mass destruction (WMD) and advanced conventional weapons (ACW) that occurred from 1 January through 30 June 2000. We excluded countries that already have substantial WMD programs, such as China and Russia, as well as countries that demonstrated little WMD acquisition activity of concern.

Iran

Iran remains one of the most active countries seeking to acquire WMD and ACW technology. Since coming to power, Tehran is intent on developing an indigenous capability to produce various types of weapons—chemical, biological, and nuclear—and their delivery systems. Over the reporting period, the evidence indicates reflections of determined Iranian efforts to acquire WMD- and ACW-related equipment, materials, and technology focused primarily on entities in Russia, China, North Korea, and Western Europe.

Iran, a Chemical Weapons Convention (CWC) party, already has manufactured and stockpiled several thousand tons of chemical weapons, including blister, blood, and choking agents, and the bombs and artillery shells for delivering them. During the first half of 2000, Tehran continued to seek production technology, training, expertise, equipment, and chemicals that could be used for a precursor chemical warfare (CW) program from entities in Russia and China.

Tehran expanded its efforts to seek considerable dual-use biotechnical materials, equipment, and expertise from abroad—primarily from entities in Russia and Western Europe. We judge that this equipment and know-how could be applied to Iran’s biological warfare (BW) program. Iran probably began its offensive BW program during the Iran-Iraq war, and it may have some limited capability for BW deployment. Outside assistance is both important and difficult to prevent, given the dual-use nature of the materials, the equipment being sought, and the many legitimate end uses for these items.

Iran sought nuclear-related equipment, materials, and nuclear expertise from a variety of sources, especially in Russia. Work continues on the construction of a 1,000-megawatt nuclear power reactor at Bushehr that will be subject to International Atomic Energy Agency (IAEA) safeguards. In addition, Russian entities continued to interact with Iranian research centers on various aspects of nuclear livings, help augment its nuclear technology infrastructure, which in turn would be useful in supporting nuclear weapons research and development. In addition, Iran has not been adverse to negotiating for its nuclear weapons research and development program.

Beginning in January 1998, the Russian Government took a number of steps to increase the weight of its role in dealing with Iran and other states of proliferation concern. In 1999, it pushed a new export control law through the Duma. Russian officials, however, fears of possessing these controls and did so in some cases. The Russian Government, moreover, failed to enforce its export controls as already occurred concerning Iran.

China pledged in October 1997 not to engage in any new nuclear cooperation with Iran but said it would complete cooperation on two nuclear projects: a small research reactor and a zirconium production facility at Esfahan that Iran will use to produce cladding for reactor fuel. As a party to the Nuclear Nonproliferation Treaty (NPT), Iran is required to apply IAEA safeguards to nuclear fuel, but safeguards are not required for the zirconium plant or its products.

Iran claims that it is attempting to establish fuel-cycle capabilities to support its civilian energy program. In that guise, it seeks to obtain turnkey facilities, such as a uranium enrichment plant, which could be used in any number of ways to support fissile material production needed for a nuclear weapon. We suspect that Tehran most likely is interested in developing fissile material and technology for weapons development as part of its overall nuclear weapons program.

During the first half of 2000, entities in Russia, North Korea, and China continued to supply the largest amount of ballistic missile—related goods, technology, and expertise to Iran. Tehran is using this assistance to support current production programs and to achieve its goal of becoming self-sufficient in the production of missiles. Iran already is producing Scud short-range ballistic missiles (SRBMs) and has built and publicly displayed prototypes for the Shahab-3 medium-range ballistic missile (MRBM). In addition, Iran’s Defense Minister in 1999 publicly acknowledged the development of a Shahab-4, originally calling it a modified version of the Shahab-3 but later categorizing it as solely a space launch vehicle with no military applications. Iran’s Defense Minister also has acknowledged a threat that Iran would use these missiles if it was not satisfied that development had not yet begun. Such statements, made against the backdrop of sustained cooperation with Russian, North Korean, and Chinese entities, strongly suggest that Tehran intends to develop a longer range ballistic missile capability.

Iran continues to acquire conventional weapons and production technologies from Russia and China. During the first half of 2000, Iran received five Mi-171 utility helicopters from Russia under a 1999 contract, and it began licensed production of Russian Konkurs (AT-5) antitank guided missiles. Iran also claims to be producing a new maneuverable surface-to-air missile known as Mishrak, which resembles the MANPAD system. Tehran also has been able to keep operational at least part of its existing fleet of Western-origin aircraft and helicopters supplied before the Revolution and continues to develop limited capabilities to produce armor, artillery, tactical missiles, munitions, and aircraft with foreign origins.

Iraq

Since Operation Desert Fox in December 1998, Baghdad has refused to allow United Nations’ inspectors into Iraq as required by Security Council Resolution 687. In spite of ongoing UN efforts to establish a follow-on
Iraq continues to pursue development of SRBM systems that are not prohibited by the 1991 UN sanctions, to support the longer-range systems. Authorized pursuit of UN-permitted missiles continues to allow Baghdad to develop technological improvements that could be applied to a longer-range missile program. We believe that development of the liquid-propellant Al-Samoud SRBM probably is mature enough that a low-level operational capability could be achieved in the near term. The solid-propellant missile development program now may be receiving a higher priority, and development of the Ababil-100 SRBM and possibly longer-range systems may be moving ahead rapidly. If economic sanctions against Iraq were lifted, Baghdad probably would increase its attempts to acquire missile-related items from foreign sources, regardless of any future UN monitoring and continuing restrictions on long-range ballistic missile programs. Iraq probably retains a small, covert force of Scud-type missiles.

North Korea

Pyongyang continues to acquire raw materials from out-of-country entities needed for its WMD and ballistic missile programs. During this time frame, North Korea continued procurement of raw materials and components for its ballistic missile programs from various foreign sources, especially through firms in China. We assess the North Korean capability of producing and delivering via munitions a wide variety of chemical and biological agents.

During the first half of 2000, Pyongyang continued to acquire technology worldwide that could have applications in its nuclear program, but we do not know of any procurement directly linked to the nuclear weapons program. We assess that North Korea has produced enough plutonium for at least one, and possibly two, nuclear weapons. The United States and North Korea are nearing completion of an agreement preventing North Korea from diverting spent fuel from the Yongbyon complex for long-term storage and ultimate shipment out of the North in accordance with the 1994 Framework Agreement. This agreement contains enough plutonium for several more weapons.

North Korea continues to seek conventional arms. It signed a contract with Russia during this reporting period.

Syria

Syria continues to acquire CW—mainly from Russia and other FSU suppliers—although at a reduced level from the early 1990s. During the past few years, Syria has received Kornet-E (AT-14), Metis-M (AT-13), Konkurs (AT-5), and Bastion-M (AT-10B) missile systems, guided-missile rocket launchers, and small arms, according to Russian press reports. Damascus has expressed interest in acquiring Russian Su-27 and MiG-29 fighters and air defense systems, but its outstanding debt to Moscow and inability to fund large purchases have hampered negotiations, according to press reports.

Syria continues to seek ACW—mainly from Russia and other FSU suppliers—although at a reduced level from the early 1990s. During the past few years, Syria has received Kornet-E (AT-14), Metis-M (AT-13), Konkurs (AT-5), and Bastion-M (AT-10B) missile systems, guided-missile rocket launchers, and small arms, according to Russian press reports. Damascus has expressed interest in acquiring Russian Su-27 and MiG-29 fighters and air defense systems, but its outstanding debt to Moscow and inability to fund large purchases have hampered negotiations, according to press reports.

Sudan

During the reporting period, Sudan sought to acquire a variety of military equipment from various sources. Khartoum is seeking older, less expensive weapons that nonetheless are advanced compared with the capabilities of the weapons possessed by its opponents and their supporters in neighboring countries in the long-running civil war.

In the WMD arena, Khartoum has been developing the capability to produce chemical weapons for many years. In this pursuit, it has obtained help from entities in other countries, principally Iraq. Given its history in developing chemical weapons and its close relationship with Iraq, Sudan may be interested in a BW program as well.

India

India continues to seek nuclear weapons development capability, for which its underground nuclear tests in May 1998 were a significant step in the arms race.
milestone. The acquisition of foreign equipment could benefit New Delhi in its efforts to develop and produce more sophisticated nuclear weapons. India obtained some foreign assistance for its civilian nuclear power program during the first half of 2000, primarily from France.

India continues to rely on foreign assistance for key missile and dual-use technologies, where it still lacks engineering or production expertise in ballistic missile development. Russia and Western Europe remained the primary conduits of missile-related technology transfers during the first half of 2000. New Delhi Flight-tested three short-range ballistic missiles in January and June 2000—the Prithvi–II in February and June, and the Dhanush in April.

India continues across-the-board modernization of its armed forces through ACW, mostly from Russia, although many of its key programs have been plagued by delays. During the reporting period, New Delhi continued negotiations with Moscow for 310 T-90S main battle tanks. A-50 Airborne Early Warning and Control Aircraft, are nearing completion. Russia agreed to supply SRBMs. Pakistan's development of the two-stage Shaheen–II MRBM also requires continued Chinese assistance. In addition, firms had supplied CW-related production facilities—would need improvement. In February 2000, Sergey Ivanov, Secretary of Russia's Security Council, said that during 1998–99 the Russian Government continued to supply a variety of ballistic missile-related goods and technical know-how to countries such as Iran, India, China, and Pakistan. Pakistan continues to acquire missiles in gaining technology and materials from Russian entities accelerated Iranian development of the Shahab-3 MRBM, which was first flight-tested in July 1998. Russia entities during the first six months of 2000 have provided substantial missile-related technology, training, and expertise to Iran that almost certainly will continue to accelerate Iranian efforts to develop new ballistic missile systems.

Russia also remained a key supplier for nuclear programs in Iran, primarily focused on the Bushehr Nuclear Power Plant project. With respect to Iran's nuclear infrastructure, Russian assistance enhances Iran's ability to develop and pursue a nuclear weapons option. In addition, Russia supplied India with material for its civilian nuclear program during this reporting period. President Putin in May amended the presidential decree on nuclear exports to allow the export in exceptional cases of nuclear materials, technology, and equipment to Iran. The IAEA safeguards, according to press reports, the move could clear the way for expanding nuclear exports to certain countries that do not have full-scope safeguards, such as India. During the first half of 2000, Russian entities remained a significant source of dual-use technology, chemicals, production technology, and equipment for Iran. Russia's biological and chemical expertise make it a potential target for Iraqis seeking technical information and training on BW- and CW-agents and production facilities.
TREND\S

As in previous reports, countries determined to maintain WMD and missile programs over the long term have been placing significant emphasis on insulating their programs against interdiction and disruption, as well as trying to reduce their dependence on imports by developing indigenous production capabilities. Although these capabilities may not always be a good substitute for foreign imports—particularly for more advanced technologies—in many cases they may prove to be adequate. In addition, as their domestic capabilities grow, traditional recipients of WMD and missile technology could emerge as new suppliers of technology and expertise. Many of these countries—such as India, Iran and Pakistan—do not adhere to the export restraints embodied in such supplier groups as the Nuclear Suppliers Group and the Missile Technology Control Regime.

Some countries of proliferation concern are continuing efforts to develop indigenous designs for advanced conventional weapons and expand production capabilities, although most of these programs usually rely heavily on foreign technical assistance. Many of these countries—unable to obtain newer or more advanced arms—are pursuing upgrade programs for existing inventories.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now be in a period for morning business.

The Senator from Tennessee.

NATIONAL SECURITY

Mr. THOMPSON. Mr. President, before my colleague from Texas leaves the Chamber, I want to congratulate him on what I consider to be another major achievement of his career. He can add this legislation to the long list of legislation he has either been primarily responsible for or on which he has been responsible for. While we have disagreements on the legislation, this is something I have seen him work tirelessly on for at least a couple of years now, and certainly Senator ENZI carried a large share of the work, as Senator GRAMM said.

This is another one of those instances where Senator GRAMM took an issue like a dog taking to a bone and did not turn it loose until he got it done. I must say it is another impressive performance, and I want to congratulate my good friend for having another important legislative victory to his long legacy.

I want to discuss the legislation for a minute in response to my good friend. We talked of two goals. This bill has been put to bed now, as it were. We are going to be voting on it shortly. We have made some modest improvement to it. The Senators opposite are correct in saying we have been talking about this a long time.

We do not know whether we can take credit for 59 changes or not. They say 59 changes have been made, but I guess we can take credit for some changes that have been made along the way to improve the bill.

We still have problems with the basic concept, and right before we go off into this good night, we need to lodge at least one summary statement with regard to the nature of our concern and where we hopefully will go from here.

The nature of our concern simply is this: It is a more dangerous world out there than ever before, and we have to be more careful than ever we do not export dangerous items to dangerous people that will turn around and hurt this country. The risk of that is greater than ever before.

We do not have two equal goals of trade and commerce on the one hand and national security on the other. The interest of national security dwarfs the interest of trade and commerce, although they are discussed in this Chamber somehow in equipoise. That is not the case. It should not be the case. It is not even set out that way in the legislation. The Senators opposite are correct in saying: We will raise the penalty for your conduct, but we will make your conduct legal. That is not very effective in terms of export control, to say the least.

Finally, when I hear the proponents of this legislation say 99.6 percent of these exports are approved anyway, they are arguing against themselves. They use it to make the point this is kind of a foolish process anyway. So if the great majority of them are going to be approved, why even have the process? I assume that is the logical conclusion of their position.

My question is: What about the .4 percent that do not get approved? Why don't we have to look at the body of exports taking place in order to determine what that .4 is? Or if we didn't have a process, would that .4 be more like 3.4 if people knew there wasn't such a process, as in the importation of high tech items from China and Russia that may find their way to Iran and Iraq. So that is what we ought to be doing if we are concerned about trade in this country. So those two goals are not equal.

We need to understand what we are doing once again on these issues. Call it a balance, if you will. No matter how you weigh the factors involved, we are giving the Secretary of Commerce and those within the department responsibility that is national security. That is not supposed to be his job. We are once again giving the Commerce Department, which we greatly criticized during the Clinton administration for some of their laxness, the life or death decision making power in terms of these regulations or policies, in many important instances—not all instances, not always unilaterally, but many of them in some very important areas. We are deregulating entire categories of exports.

Foreign availability has always been something we considered in terms of whether or not we would export something or grant a license for something, and I think properly so. We do not want to foolishly try to control things not controllable. So foreign availability ought to be a consideration. We are moving light-years away from that, letting someone over at the Department of Commerce categorize entire areas of foreign availability that takes it totally out of the licensing process, so you do not have a license, and our Government cannot keep up with what is being exported to China or Russia. That is a major move. It is not a good move.

With regard to the enhanced penalties, what sanction is there to be imposed upon an exporter when he is not even required to have a license? It is saying: We will raise the penalty for your conduct, but we will make your conduct legal. That is not very effective in terms of export control, to say the least.

Finally, when I hear the proponents of this legislation say 99.6 percent of these exports are approved anyway, they are arguing against themselves. They use it to make the point this is kind of a foolish process anyway. So if the great majority of them are going to be approved, why even have the process? I assume that is the logical conclusion of their position.