

progress to deal with it, the better will be the world's future.

Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will please call the roll.

The bill clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS-CONSENT REQUEST—
S. 149

Mr. LOTT. Mr. President, there has been a lot of discussion and effort over the past couple of years put into trying to address the export administration issue. I know that Senator GRAMM and the ranking Democrats and Senator SARBANES have worked on this issue. I know there are a number of Senators who have reservations about this whole area and this particular piece of legislation.

It is my understanding that the new administration has had input and a number of previous concerns have been addressed. I understand this is an area where we need to be careful to make sure we do it in the right way and that we pay attention to very important security concerns.

I think one of the only ways, though, to have those issues properly aired and addressed, and hopefully resolved, is to begin the discussion and see if we can get a final agreement and move on this legislation.

I ask unanimous consent that the Senate turn to the consideration of calendar No. 26, S. 149, the export administration bill.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

EXPORT ADMINISTRATION ACT OF
2001—MOTION TO PROCEED

Mr. LOTT. Mr. President, I now move to proceed to S. 149, and I understand that there are some opening statements that can be made. I hope that we can work through the objections so that we can actually move to the legislation. I move to proceed to the bill at this time.

The PRESIDING OFFICER. The question is on agreeing to the motion, and it is debatable.

The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I thank the majority leader for moving to bring this bill to the floor of the Senate. As many of my colleagues know, the Congress has not reauthorized the Export Administration Act on a permanent basis since the early 1990s. As a result,

we have been in a period where we have sought to get multilateral action on export controls to protect critical national security secrets, but we have had a very difficult time having standing on those issues among our allies when we do not even have a regime in place to monitor exports coming out of the United States of America.

I think it is a terrible indictment of the Congress that for so many years we were unable to enact a bill to restore our export control authorities. I understand that these are very difficult issues, and they are difficult for a very simple reason: the Nation has apparently conflicting goals. We want to export high-tech items, we want to dominate the world in new technology, we want new innovations to occur in America, and we want to be the principal beneficiary of the technological revolution that is changing our lives and the life of every person who lives on the planet. And to do these things, we want Americans to be able to sell high-tech products on the world market.

Wages in these industries are among the highest wages in the world. They really will determine the future of economic development on the planet, and it is a very high American priority to see that we generate these new technologies, that we generate these new jobs, and that Americans be the highest paid workers on the planet.

Our problem comes in that we also have an objective of trying to prevent sensitive technologies that have defense applications from getting into the hands of people who might, at the current time or in the future, become adversaries of the United States of America. First of all, I think we have to admit to ourselves that there is an apparent conflict in these two goals and, hence, you have the difficulty in dealing with this problem.

Now, I want our colleagues to understand that, first, the Banking Committee has very large jurisdiction as it relates to national security. In fact, other than the Armed Services Committee, no committee in Congress has authorizing jurisdiction in defense that rivals the Banking Committee.

Let me give some examples. The Defense Production Act is under the exclusive jurisdiction of the Banking Committee.

The Trading with the Enemy Act is under the exclusive jurisdiction of the Banking Committee.

The International Emergency Economic Powers Act, which has frequently been used for export control purposes, is under the exclusive jurisdiction of the Banking Committee.

The Export Administration Act, which is before us today, is under the exclusive jurisdiction of the Banking Committee.

The Exon-Florio amendment, which set up the process whereby we look at

foreign ownership of defense industries, to look at the national security implications of foreign investments and mergers, is under the exclusive jurisdiction of the Banking Committee.

Sanctions bills that imposes economic sanctions against any country, whether it be the Iran-Libyan Sanctions Act, or whether it be any sanction imposed in the future, would be imposed in legislation that falls under the jurisdiction of the Banking Committee.

Quite frankly, I believe some of this dispute is about jurisdiction. I did not write the rules of the Senate, but I believe that when this jurisdiction was put under the Banking Committee, it was the right decision because the Banking Committee is basically the Banking and Economic Committee. These issues have to do with economic matters that have defense implications. I think the correct decision was made in placing these items within the jurisdiction of the Banking Committee.

We have spent 2 years exercising our responsibility in trying to come up with a workable and, I believe, if I may say so immodestly, a superior Export Administration Act. We have held extensive hearings on the Export Administration Act.

I want to show my colleagues some of the studies that have been done that we have looked at. We have had the authors of these studies appear before our committee.

The first, of course, is the now famous Cox Commission report. This was focused on China, and it was focused on the loss of American defense secrets. The Cox Commission report made a series of recommendations. Those recommendations are now embodied in the bill that is before the Senate.

Rather than trying to go through all of the elements of this lengthy report at this time, which obviously would empty the Chamber for several days as I would be standing alone talking about them, given how voluminous they are, I will share with the Senate one point that CHRIS COX made in presenting these reports to us and giving us the recommendations which we have incorporated in this bill.

And this is critically important because I have colleagues who say that now is not the time to do this bill because of our recent problem with China. I say to my colleagues, we should have done this in 1995, but given the problems we have had with China, given their irresponsible behavior, we need this bill in place now more than ever. If it was not the time to do this 3 weeks ago, it is the time to do it today. I say the time to do it was 5 years ago, and we certainly need to do it today.

CHRIS COX, in looking at the loss of technology to China, cautioned the committee on something that I think every Member of the Senate, as we

begin this debate, needs to be cautious about. What he cautioned us about was doing feel-good things, doing things where we pound our chest and act as if we are doing something, when in reality we are not achieving anything.

One of the things I am very proud to say about this bill is that there is no feel-good provision in this bill. Everything we did we did because we believed it would work, not because it simply made us feel good to place it in the bill.

The quote I want to read from CHRIS COX is the following:

We ought not to have export controls to pretend to make ourselves a safe country. We ought to have export controls that work, and you have to assume that if the Ministry of State Security in the People's Republic of China can gain access to the computers at Los Alamos, they can probably gain access to the Radio Shack in Europe.

One of the fundamental principles of this bill is that we want to focus our attention on technologies that have defense implications, that are significant, and where we have some hope of being successful in controlling those technologies. When a million copies of a computer have been manufactured, when they are sold at Radio Shack in Bonn, when there are a million distributed worldwide, there is no possibility that we can keep that computer from falling into anyone's hands who might be potentially hostile to the United States of America.

We might want to do it. We might wish we could keep an agent from a foreign country from going into Radio Shack in Bonn and buying this computer, but when there are a million copies of it worldwide, only divine intervention could keep someone who wanted that computer from having it.

So rather than waste our time and energy on products that are sold by the millions, we try to focus our attention in this bill on trying to deal with those technologies where we have some realistic hope of being successful. Our current Secretary of Defense, Donald Rumsfeld, said it best when he said we need to build higher walls around a smaller number of things, and that is what we have tried to do.

The next point that I want to raise from one of the witnesses before our committee I think reinforces what Congressman Cox said. It is from Donald Hicks, who is the former Under Secretary of Defense for Research and Engineering and chairman of the Defense Science Board Task Force on Globalization and Security. Here is what Donald Hicks said. He refers to what he calls the "utter futility of the U.S. attempt to control unilaterally technologies, products, and services that even its closest allies are releasing on to the world market."

This study in my hand is the study that was done by Under Secretary Hicks making this point.

The next quote I want to give is from John Hamre, who is the former Deputy

Secretary of Defense. We all knew him when he was the staff director of the Armed Services Committee. Here is what he says on this subject:

America needs effective export controls to protect its national security. Our current system of export controls fails that test and fails badly. In ultimately approving 99.4 percent of the requests, we are not really protecting our security. In fact, we are diverting resources from protecting the most important technology and products.

That is a critical point of this bill. When we have a system where we are approving 99.4 percent of the requests for licenses, we have a system where many things are in the system that should not be in the system. We are granting licenses on computers that are being manufactured by the millions and sold all over the world.

We try to focus our attention where it can do us the most good. Frank Carlucci, the former Secretary of Defense and former National Security Adviser, gets right to the heart of it when he says:

But we should do only that which has an effect, not that which simply makes us feel good. Many technologies are uncontrollable, given the access to the Internet. Others can and will be supplied by our competitors. Our job, your job, is to strike the right balance. Don't help our enemies. But at the same time, allow and encourage innovation and research to flourish.

We have spent 2 years looking at all of these studies, having the authors of all of these studies appear before our committee, and in each and every case their recommendation to us is quit doing things that make you feel good. Quit forcing us into a mechanism where we are having to deal with thousands of items, when 10 are really important. By dealing with thousands, we are not paying enough attention to the 10 that ultimately affect American security.

We have put together a bill that I believe dramatically improves the export control process, the export control review mechanism that is used, and greatly enhances national security. I am proud to say this bill is supported by the President. The President said in very simple terms, "I believe we've got a good bill and I urge the Senate to pass it quickly." He said this in the East Room of the White House on March 28.

The bill before the Senate has been endorsed by the Secretary of Defense, by the Secretary of State, by the President's National Security Adviser. We gave them an opportunity when the new administration came in, to take the bill we had worked on, and go through it in detail. They suggested some 21 changes. We adopted those changes. In several cases I thought the previous bill was stronger, but we adopted those changes. I think in the process, on net, we have improved the bill.

What does the bill do? The bill strengthens national security. No. 1,

and most importantly of all these other things, while it doesn't sound as robust as these other things I will mention, it is actually more important. We focus the attention of the export administration process on defense sensitive items where we have some hope of being successful.

We set up a procedure whereby the President is given tremendous powers to negotiate international agreements with our major trading partners to cooperate to try to prevent sensitive technologies from getting into potentially hostile hands.

We establish new criminal and civil penalties for knowing and willful violations. One of our problems under the current situation we face is, for example, that with the question of an illegal transfer of missile technology to China, given the laws that are in place, even if the parties are convicted, the penalties would be trivial. No one will call the penalties in this bill trivial. The penalties in this bill begin with \$5 million for a violation. In the case of multiple violations, the penalties could run into the hundreds of millions of dollars. We have tough prison sentences for knowing and willful violations. When we have those penalties, we affect people's behavior, which is what we need to do.

Again, it is very difficult to enforce these laws. It is difficult to prove intent. Knowing it is difficult to catch people, we wanted to have very severe penalties when they are apprehended, prosecuted, and convicted.

We strengthened the hand of the national security agencies by, for the first time, giving them a formal procedure by which to be involved in this process. We were very concerned that in the previous administration the Defense Department was in a position of not being in concurrence with some decisions that were being made but not having an effective way to show it did not agree. So we provided a process whereby if any member of the review panel—and we would assume in general it would be the Defense Department—objects, that individual, with the concurrence of the designated political appointee in his or her department, has the ability to object and force that decision to the next highest review level. That is a substantial strengthening, in my opinion, of the process.

We have greater predictability in the process, as well, which is important both for national security and economic reason.

I will end with this: We do have a cloture motion. At some point that petition may be filed, because it is critical to national security we get on with this process.

I conclude by talking about the balance we are trying to establish. We want a balance that allows us to provide for the national security of the United States, but on the other hand,

we want to be able to be the dominant high-tech manufacturer in the world.

Please remember, despite any feel-good speech we could make, most high-tech companies have operations worldwide, so when they are developing a new product, they can develop it in Germany or they can develop it in Dallas. If we have an export control process that is cumbersome or inefficient or costly or overly burdensome, they will develop these products in Germany and not in Dallas. That is harmful to our security, and it is harmful to people who are working in America.

This bill is good for security because it restores the expired control authority. It adopted the recommendations from the studies I referred to earlier, such as the Cox Commission and the commission studying proliferation of weapons of mass destruction. It protects sensitive U.S. goods and technologies. It strengthens the role of the national security agencies, and it toughens criminal and civil penalties.

That is how it strengthens national security, why it is good for national security.

Why is it good for trade and for job creation and for the economic development and economic dominance of the United States of America?

No. 1, it streamlines controls and procedures.

No. 2, it removes ineffective controls where we know an item is mass marketed. A million copies are sold on the world market, and an American company trying to get market share ends up, under current practices, being delayed for long periods of time to get approval to sell something that is readily available on the world market. That makes no sense and it burdens the process to such a degree that we are not paying attention to the things that are really important when we are doing those things. This bill changes that, it fixes that problem.

This bill brings certainty and transparency to the licensing process. When somebody applies, they know how the process works. They know what the timetables are. They know they are going to get an answer—yes or no. As anybody who has ever been contacted by a high-tech manufacturer knows, what they want to know is, yes or no. If the answer is no, they can deal with it. If the answer is yes, they can rejoice. What they cannot deal with is no answer, which is what the current process is producing, even though it is eventually approving 99.4 percent of the applications.

This bill seeks to restore the international cooperation that we had under the cold war export control regime, where we had multilateral agreements and where we could prevent things from being sold by one country or another to our potential adversaries. This bill, first, sets up the best system we can set up given we are acting unilaterally,

but it also gives the President strong new directive to go to England, to go to Germany, to go to Japan, and try to work out multilateral agreements, and then this bill automatically makes those binding.

Finally, it creates a framework compatible with the high-tech economy in which we live and work. We have currently set into static law the number of MTOPS, millions of theoretical operations per second, that a computer could generate as a condition for export, when we know that this number is doubling every 6 months. So what did this provision of the law do? What it did was put American producers at a disadvantage because they would have to go through our export control process, while their competitors in Germany and Japan could rush right out into the marketplace. Our producers would fool around, trying to get a Presidential decision to update the standard, generally with legions of high-tech people coming to kiss the President's ring and in some cases attend his fundraisers.

That is an unworkable system. It breeds corruption. It hurts America. It does not enhance security. So we in this bill we repeal the MTOP limit and set out a process where the focal point is not on something that is doubling every 6 months—we cannot change that, we cannot legislate it away.

I do not question the sincerity of the critics of this bill. I do not think their hearts are any less pure than mine. But I would like to say that I don't take a backseat to anybody in America in supporting national defense. I was in the House, and I helped write the budget in 1981 that rebuilt defense and helped fund Peace Through Strength that tore down the Berlin Wall. I am concerned about American security. My dad was a sergeant in the Army. I am from a part of the country that lost a war. I understand something about national security and why it is important. So while I do not doubt that I have colleagues who have national security concerns, I have those concerns as well. They are reflected in this bill and its provisions.

I believe we put together a good bill. I know that not everybody agrees with that. We got a vote of 19-1 in the Banking Committee. I have been the "1" many other times, on other committees under other circumstances, and that didn't make me any the less right that the other 19 people voted the other way. I understand that. But we have come to the point where we have to make a decision.

I urge my colleagues, let's go to the bill, let's make our cases, and I will pledge to them if they convince me that they are right—I helped my colleagues in the committee write the bill the way we wrote it because I thought it was best, but if there is a better way, I am willing to support changing it. I

cannot speak for other people. But if my colleagues can convince me there is a better way of doing it, I will do it that way.

What I do not think I can be convinced of is that the best thing to do is to do nothing, that the best thing to do is to continue to limp along without having an effective process in place. I am concerned about the potential threats we face as a nation. I think we need this bill to help meet those threats. I urge my colleagues to support the bill, but if they are not going to support the bill, tell us how they would make it better, let's look at it, let's have votes on it. Again, anybody who has a way to make it better, I am willing to support it. I do not think we have reached the perfect bill yet, but I do think we have a dramatic improvement on the status quo.

I thank my colleagues. I thank Senator ENZI and Senator JOHNSON for the great work they have done. I have never seen a Member get as involved in issues as Senator ENZI has been involved in this process. I have never seen a Member of the Senate who went to the actual meetings of these agencies and sat for hours, trying to figure out what they do and why they do it and how it works. The quality of this bill is in large part due to the work that he did and the work he did with Senator JOHNSON on the International Finance and Trade Subcommittee.

I thank Senator SARBANES. This is a bipartisan effort. Senator SARBANES and I are far apart on some kind of mythical, philosophical line. But I think the reality is that we have been very effective in legislating and we have been effective because we have tried to work on a bipartisan basis. If we can work in a bipartisan basis, it can be done.

I thank my colleagues for their leadership and their cooperation. I am hopeful we will pass this bill. I hope after the debate our colleagues who are concerned about the bill will be convinced—not necessarily to be for it—but will be convinced that maybe it is an improvement over the status quo, and maybe it is not quite as bad as they would think.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is debating the motion to proceed to S. 149.

Mr. SARBANES. I thank the Chair.

Mr. President, I urge the Senate to adopt the motion to proceed and give itself the opportunity to move to the substantive consideration of S. 149, the Export Administration Act of 2001. The adoption of this motion to proceed would enable Senators, then, to consider the bill on its merits, to offer amendments, if they have them, to

alter or change the bill in whatever direction they think is desirable. I think this is important legislation. I am frank to say I think this bill before us is well crafted and deserves the support of the Senate. But in any event, whatever your attitude on that question is, I certainly think this issue, and this legislation dealing with this issue, deserves to be considered by the Senate.

I very much hope, after we have had this opportunity for some discussion, we will be able to move ahead and consider the bill on its merits. I understand it is the leadership's intention to file a cloture motion—the leadership, as I understand it, on both sides of the aisle—in order to enable us to go to this legislation. I hope that will not be necessary. I think there is a compelling argument for taking up this bill and addressing this issue.

Let me say a few words about the bill itself. Earlier this year, I was pleased to join with my colleagues, Senator ENZI, Senator JOHNSON, and Senator GRAMM, in introducing this legislation. It was reported out of the Banking Committee on a bipartisan vote of 19-1, so there was a very strong majority within the committee. That was on March 22 that we met and marked up the bill and reported it to the floor of the Senate.

The Export Administration Act provides the President authority to control exports for reasons of national security and foreign policy. I think there is a strong national interest in Congress reauthorizing the Export Administration Act. If we do not do that by August, there will be no Export Administration Act. And, in fact, we are now working under a temporary extension of the Export Administration Act, passed in the last Congress, which will expire in August.

Before we passed that temporary extension, we were dealing under the International Economic Emergency Powers Act. Let me be very clear about this because it is very important. We need to understand what the situation has been and what the situation will be if we do not act on this legislation. The Export Administration Act has not been reauthorized since 1990, except for temporary extensions in 1993, 1994, and last year. In other words, for most of the past decade we have been operating without an Export Administration Act. We are now in the framework of a temporary extension that expires on August 20 of this year.

Without these temporary extensions—in other words, for over this past decade—the authority of the President to impose export controls has been exercised pursuant to the International Economic Emergency Powers Act—the so-called IEEPA.

In my view, it is highly desirable for the Congress to put in place a permanent statutory framework for the imposition of export controls. That is

what this bill will do. That underscores the importance of considering this legislation. Export controls should not be imposed pursuant to the emergency economic authority of the President.

One example of the reason for depending on IEEPA is that penalties that may be imposed under export controls under IEEPA are significantly less than those imposed by this legislation. In other words, reliance on IEEPA and the President's extraordinary authority under that legislation still leaves us falling short in terms of the penalties for violations of export controls for what this legislation provides.

It is ironic that this bill is being in effect contested on these national security grounds when in fact it does more to protect the national security concerns than the existing IEEPA scheme.

The IEEPA scheme is also weak in the sense we are quite worried that it will be subject to a court challenge, which in effect would make the limited penalties that it contains inapplicable. I think that has to be kept very much in mind as we consider taking up this legislation.

This legislation has been worked over very carefully. I think it represents a carefully balanced effort to provide the President authority to control exports for reasons of national security and foreign policy while at the same time responding to the need of U.S. exporters to compete in the global marketplace.

We have two major objectives we are trying to harmonize. I think this legislation does it in a balanced way.

In preparation for acting on this legislation, the Banking Committee held two hearings in this Congress. We held a number of hearings in previous Congresses and two hearings with representatives of industry groups and foreign and Defense Department officials. Extensive consultation took place with representatives of the current administration, including representatives of the Defense Department, the State Department, the intelligence agencies, the Commerce Department, and the National Security Council.

Prior to the markup of the legislation in the Banking Committee, Condoleezza Rice, Assistant to the President for National Security Affairs, sent a letter to the committee. I will quote it because I think it is important. I will quote it actually in full. The Assistant to the President for National Security Affairs in a letter to the chairman of our committee stated:

The Administration has carefully reviewed the current version of S. 149, the Export Administration Act of 2001, which provides authority for controlling exports of dual-use goods and technologies. As a result of its review, the Administration has proposed a number of changes to S. 149.

Actually a number of colleagues were involved in urging the administration

to seek such changes, including colleagues I see on the floor now and who remain, I take it, concerned about this legislation.

To go back to the letter:

The Secretary of State, Secretary of Defense, Secretary of Commerce, and I agree that these changes will strengthen the President's national security and foreign policy authorities to control dual-use exports in a balanced manner, which will permit U.S. companies to compete more effectively in the global market place. With these changes, S. 149 represents a positive step towards the reform of the U.S. export control system supported by the President. If the Committee incorporates these changes into S. 149, the Administration will support the bill. We will continue to work with the Congress to ensure that our national security needs are incorporated into a rational export control regime.

Mr. SARBANES. Mr. President, a major effort was made by the committee to work through the list of proposals by the administration. Those proposals were incorporated into the bill during the Banking Committee's markup. I thought the administration's recommendations were a balanced set of proposals. I believe they strengthen the overall bill.

Subsequent to that and subsequent to the committee reporting the bill out, the President in remarks to high-tech leaders at the White House on March 28 urged quick passage of this bill by the Senate.

In that appearance at the White House—and I will quote briefly from the President's—actually, he started off by saying to this group:

Thanks for coming. I appreciate that warm welcome. And welcome to the people's house. It's a nice place to live. And I'm glad I'm living here.

That is the President talking.

He went on and said to the high-tech group:

I've got some good news and you may have been watching the Senate Banking Committee. But after a lot of work with industry leaders and the administration and members of the Senate, the Export Administration Act—a good bill—passed the Banking Committee 19-1.

He then goes on to say that “this has been crafted as a good bill. And I urge the Senate to pass it quickly.”

Mr. President, I ask unanimous consent that these remarks of the President in a meeting with high-tech leaders be printed in the RECORD at the conclusion of my remark.

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

(See Exhibit 1.)

Mr. SARBANES. Mr. President, I commend very strongly Senator ENZI, who was chairman of the relevant subcommittee in the last Congress and chairman of the International Trade and Finance Committee, and Senator JOHNSON, who is the ranking member of that subcommittee, for their extraordinary work in developing this legislation. They worked tirelessly

both in the last Congress and again in this Congress to help bring us to this point.

I commend Senator GRAMM and the staff of all Senators and the committee staff for their strong efforts to develop a bipartisan consensus on this legislation.

Senator HAGEL and Senator BAYH, who have taken over these positions now in the new Congress on the subcommittee, also made constructive contributions in moving this legislation forward this year.

Let me say this about the legislation. It generally tracks the authority provided the President under the Export Administration Act, which expired in 1990, as I indicated earlier. But a significant effort was made with the excellent assistance of the legislative counsel's office to delineate these authorities in a more clear and straightforward manner.

We made a very strong effort to inject an element of clarity and directness into the statute which would make it easier for the executive branch agencies to administer the statute and for the exporters to comply with it.

The bill makes a number of significant improvements to the EAA. It provides, for the first time, a statutory basis for the resolution of interagency disputes over export license applications. The intent is to provide an orderly process for the timely resolution of disputes while allowing all interested agencies a full opportunity to express their views.

This is very important. There is an orderly process now by which disputes can be moved up the ladder in order to be resolved. So any concern that any department or agency of the Government has as they work through this interagency process can be heard and dealt with and resolved, and, if necessary, at the final level, be resolved at the Presidential level. This orderly process was an issue of great concern to the administration, to the national security community, and to industry.

I think we have reached a reasonable resolution of the issue in this bill. This was an issue on which Senator ENZI and Senator JOHNSON spent countless hours in order to try to work out arrangements that would be acceptable to all. As I have indicated, now they are acceptable to the agencies and the departments of the executive branch across the board. Not one department or agency is coming in now and telling us they think this is not a workable system under which they can operate.

The bill significantly increases both criminal and civil penalties for violations of the Export Administration Act, reflecting the seriousness of such violations.

The bill provides new authority to the President to determine that a good has mass market status in the United States and should therefore be decon-

trolled. This gets at this issue of, well, you can go out and buy a store on the market. Why are we controlling this good? But the bill retains authority for the President to set aside a mass market determination if he determines it would constitute a serious threat to national security and that continued export controls would be likely to advance the national security interests of the United States. So we retain an ultimate authority in the President with respect to this matter.

At the particular urging of Senator ENZI, the bill contains a provision that would require the President to establish a system of tiers to which countries would be assigned based on their perceived threat to U.S. national security. The intent of this provision is to provide exporters a clear guide as to the licensing requirements of an export of a particular item to a particular country.

The bill would also require that any foreign company that declined a U.S. request for a postshipment verification of an export would be denied licenses for future exports. The President would have authority to deny licenses to affiliates of the company and to the country in which the company is located as well.

You get a sense of the reach of some of these provisions in providing important protections for national security concerns.

We also included a provision in the committee to make a number of technical corrections and incorporate the suggestions made by the administration.

The bill contains a provision from the expired EAA relating to the imposition of export controls on crime control and detection instruments that inadvertently had not been included in the bill as introduced.

So, to close, let me just again underscore that this is a very carefully crafted piece of legislation. It is a very balanced piece of work. I believe that the Senate, when it finally is able to get to the substance of the bill, will provide broad support for it, just as it had broad support in the committee.

Again, I underscore that though it is asserted now that the protections are inadequate for national security and foreign policy, that runs so counter to the situation in which we find ourselves. If you compare what is in this bill with the existing arrangements, or with the previous arrangements under the EAA, this bill has done a good job of providing clarity and providing process of procedure of the arrangements to be followed, which gives to the exporters more definition and more certainty in how they can proceed, what the rules of the road are, while at the same time retaining for the administration, ultimately for the President, very significant powers in controlling exports.

As I indicated, it establishes tough new criminal and civil penalties for ex-

port control violations. It strengthens our ability to control critical technologies by building a higher fence around the truly sensitive items. That is very important. One of the things we are trying to accomplish is a focus on the truly sensitive items. It grants the President special control authorities for cases involving national security, international obligations, and international terrorism. It promotes discipline in licensing decisions by codifying the role of national security agencies in the licensing process and then streamlining licensing procedures, and it encourages U.S. participation in strong multilateral export control regimes.

We have a short timeframe to deal with this legislation this year, given that the short-term extension of the EAA expires this summer in August. We need to put in place a permanent statutory framework for the imposition of export controls. I believe this legislation is that framework. I strongly urge my colleagues to support the effort to move to this legislation and subsequently to enact it.

Mr. President, I yield the floor.

EXHIBIT 1

REMARKS BY THE PRESIDENT IN MEETING WITH HIGH-TECH LEADERS, MARCH 28, 2001

The PRESIDENT. Thanks for coming. I appreciate that warm welcome. And welcome to the people's house. It's a nice place to live. (Laughter.) And I'm glad I'm living here.

. . . As well, I've got some good news and you may have been watching the Senate Banking Committee. But after a lot of work with industry leaders and the administration and members of the Senate, the Export Administration Act—a good bill—passed the Banking Committee 19-1.

The technology that you all have helped develop obviously gives us an incredible military advantage, and that's going to be important. And it's an advantage, by the way, that we tend—want to develop, to make sure we can keep the peace, not just tomorrow, but 30 years from now. We've got to safeguard our advantages, but we've got to do so in ways that are relevant to today's technology, not that of 20 years ago.

The existing export controls forbid the sales abroad of computers with more than a certain amount of computing power. With computing power doubling every 18 months, these controls had the shelf life of sliced bread. They don't work.

So in working with the Senate, we're working to tighten the control of sensitive technology products with unique military applications, and to give our industry an equal chance in world markets. And I believe we've got a good bill. It's a bill that I heard from you all during the course of the campaign. The principles we discussed are now a part of this bill. I want to thank Senator PHIL GRAMM for his hard work in working with us and industry and some members of the Senate to make sure the bill that has been crafted is a good bill. And I urge the Senate to pass it quickly.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Alabama.

Mr. SHELBY. Mr. President, I objected to the motion earlier to proceed

to the Export Administration Act. I want to share some of my concerns in why I did that.

I, too, serve on the Banking Committee. I have been on it 15 years. I worked with Senator GRAMM, Senator SARBANES, Senator ENZI, and Senator JOHNSON. It is a great committee. It is the committee of jurisdiction for this legislation. I also happen to be chairman of the Select Committee on Intelligence. And this is why I am concerned about this piece of legislation today.

Yesterday, we in the Intelligence Committee spent 2 hours being briefed on the damage to our national security from China's seizure of sensitive technologies aboard our EP-3 reconnaissance plane, which remains, as of this hour, in Chinese custody.

Chinese technicians are picking that plane apart, and I do not believe they are looking for loose change under the seat cushions.

Yet today, right now, we are talking about moving to debate a bill that will make it easier for the Chinese, and others, to get technology like that aboard the EP-3 and other advanced technologies without any licensing or export restrictions.

I ask my colleagues: What is wrong with this picture?

I am sure the Chinese leadership can't believe its luck. The U.S. Senate, which until a few days ago was criticizing China's aggressive tactics, militaristic policies, and disdain for the rule of law, is now rushing to open the floodgates for the advanced technologies China needs to upgrade its military.

And a few days after the administration announced an unprecedented package of arms to help Taiwan defend itself, the Senate wants to sell China the very technologies that will help it to overcome Taiwan's defenses, and threaten the U.S.

The events of the last several weeks underscore a fact that has been apparent to many of us for some time: China is not our strategic partner. It is our competitor and could be our adversary.

Yet we are moving ahead on this bill today as if these events never occurred. I fear the Senate is signaling to the Chinese that whatever they do and however much we may criticize their actions, we will always put our commercial interests ahead of our national security.

We have done this in the past, and we are reaping the results today.

Equally important is the risk of advanced dual-use technologies falling into the hands of countries such as Iran, Iraq, or Libya.

While supporters emphasize the economic benefits of provisions in this bill that would ease controls on exports to large markets like Russia and China, they don't tell you that Russia and China are routinely identified by the

Director of Central Intelligence as the "key suppliers" of nuclear, biological, and chemical weapons technologies.

Although this bill may help our U.S. technology industry increase its exports in the short run, I believe its impact on our national security in the long run may be disastrous.

As a result, I cannot support proceeding to this bill at this time until the entire U.S. Government has had an opportunity to thoroughly review the legislation, take a fresh look at our overall China policy, conduct an in-depth study of our export control policies, and address the national security concerns shared by the chairmen of the national security committees in the Senate.

In addition to these governmentwide efforts, we in the Senate must do our homework. This is an extremely complex piece of legislation that raises a host of extremely complex issues. They need to be debated and looked at thoroughly.

The economic benefits of increased high technology exports are quickly apparent and relatively obvious; the national security implications are less immediate, less obvious, and often classified.

Therefore, before voting on this legislation, every Senator should have the benefit of the extensive briefings that Senators WARNER, HELMS, THOMPSON, KYL, MCCAIN, and I have had.

Should the Senate now vote to take up the EAA, I intend to join my colleagues from the other national security committees in setting forth in detail our concerns about the national security implications of this bill.

We believe the case is compelling for those who are willing to listen.

That is why I object to proceeding with the bill so soon.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise today in support of this historic legislation before the Senate. I regret that there is resistance to the motion to proceed. I believe it would be best to proceed to the consideration of this legislation by the full Senate, to debate the merits of the legislation, and, for those who object, to provide opportunities for them to offer amendments to be debated on their merits in the course of our consideration.

Whether we move forward today or are delayed a couple more days, it is important that we move ahead as expeditiously as we can on passage of the Export Administration Act reauthorization.

This legislation is the culmination of many long hours of bipartisan cooperation to modernize America's export laws to reflect our rapidly changing world. It was first put together last year, when I served as ranking member of the Subcommittee on International

Trade and Finance of the Banking Committee. Senator ENZI, my Republican colleague from Wyoming, served as chairman of that subcommittee. We were able to pass similar legislation out of the committee on a 20-0 vote. This year Senator ENZI and I have moved on to other subcommittees but have remained actively involved in this issue.

I particularly commend Senator ENZI for his continued strong leadership and the work he and his staff have put into this effort. The consequence of that work during this Congress has been the legislation before us that passed out of the Banking Committee on a bipartisan vote of 19-1 and which has the support of the President of the United States, the Secretary of Defense, the Secretary of State, the Secretary of Commerce, as well as the National Security Adviser to the President.

While there are some who raise the specter of diminished security concerns, it is interesting that, in fact, not only is there overwhelming bipartisan congressional support for this balanced piece of legislation, but the people who are most knowing or most in the position to advocate for strong national security in America, our President and Secretaries of Defense and State, are all supportive of this legislation. To raise the specter of China strikes me as something that has been thought through very carefully by our President and our defense establishment in the course of endorsing and supporting this bill.

The fact is, under this legislation, our national security would be strengthened, not diminished. Yes, sales of technology items could be made to China but only those items which our defense establishment and our President endorse as appropriate sales and which are otherwise available on the open market.

I have had the great pleasure of working on a team with Senators ENZI, GRAMM, SARBANES, and their staffs, to craft this legislation. I thank them for their professionalism and their cooperation on this effort. It is rare that legislation of this importance comes before the Senate with this level of bipartisan support, and the cooperation and support of the White House and the defense and commerce establishments in the United States. It is a rare day that legislation of such consensus comes before us. I had hoped we would not lose this opportunity to advance the interests of our national security and our economy at the same time.

I am gratified for the support of the Bush administration and their willingness to express their support for the legislation.

I also note with appreciation the role Senators GRAMM and SARBANES have played. We have had constructive participation across the board, and that spirit contributed to the construction

of the newly amended version of S. 149 that is before the Senate today.

As my colleagues know, we live in a truly global economy. America has enjoyed unprecedented growth in recent years in large part because of the expansion of our marketplace overseas. American businesses look well beyond our borders for customers, and exports play a critical role in keeping our economy strong. We have also seen enormous changes in the goods, services, and the technologies American companies produce.

Back in my home State of South Dakota, we have seen a 172-percent increase in high-tech employment over this past decade. Our workers have benefited from the good jobs and fair salaries that the high-tech sector brings. The goods, the services, and the technologies they produce are in tremendous demand throughout the world.

However, we must not be naive. Certain products and technologies can be used for the wrong purpose. But we must not allow fear to prevent us from crafting laws that face those issues head on and establish a balance between economic growth and national security, and our other needs.

The Export Administration Act is a thoughtful, balanced bill. EAA is an important step toward ensuring our continued ability to export American goods to the rest of the world. At the same time, EAA includes the necessary safeguards to ensure that our export policy protects our vital national security interests.

Since EAA's expiration in 1990, Congress has declined numerous opportunities to reauthorize the EAA. I lament those missed opportunities, and strongly urge my colleagues not to squander the opportunity before us today.

Reauthorization has become still more urgent as the courts consider the legality of our reliance on an expired EAA, and on the annual temporary extensions we provided in the underlying legal authority claimed under the International Economic Emergency Powers Act. I fear the day that one of these challenges will ultimately succeed and strip this Congress of any control over sensitive dual-use technologies. Contrary to what some of my distinguished colleagues may argue, reauthorization of the EAA in fact greatly enhances our national security.

We had a simple goal when we embarked on this effort: reduce or eliminate controls on exports with no security implications, and tighten controls on exports that raise security concerns. These principles are not controversial; yet crafting legislation that puts these principles into practice has been difficult to accomplish.

We worked very closely with concerned Senators, the national security establishment, the administration, and the impacted industries. I believe we

addressed the major concerns in a balanced manner.

We increased the penalties on export violations, so that violators of export control laws will pay a real price for breaking the law. We made realistic assessments with respect to what items should be decontrolled based on foreign availability and mass market standards.

It does us no good to be trying to limit the export of items that can be found anywhere on the open market throughout the world.

In one respect, however, I am disappointed. I am disappointed that we were forced to drop title IV, which lifted the practice of using food and medicine as a weapon against rogue nations. It is my understanding that a majority of the national farm groups believe our language could potentially delay regulatory actions with respect to the lifting of sanctions.

But as important as that legislation is, I also acknowledge that there are other forms, other vehicles, legislatively for those issues to be taken up at a time when we need to focus primarily on the export of high-technology products and the defense implications of those exports in the course of this debate. I am confident there will be other opportunities to raise the larger issue of economic sanctions on agricultural and medical products throughout the world.

My colleagues, the Export Administration Act is a good bill. It is a balanced bill. It is good for America and for Americans.

S. 149 strengthens our national security—it doesn't weaken it. To those who argue against this legislation in light of recent events with China, I respectfully refer to them to the Cox Report that specifically recommended reauthorization of the EAA as a way to strengthen our national security with respect to exports to China. The EAA is a strategic, intelligent response to the real threats that face America.

America benefits when our businesses prosper. Exporting technology has long been an American success story. The high-tech field will lead our economy into the next century. We understand, new technologies could prove dangerous in the wrong hands, and our national security depends in part on limiting access to limited specific goods, services and technologies. That is the balance we seek to strike, and I believe S. 149 does that.

That is the balance that has caused this broad-based, bipartisan support, and the support of the White House, for this effort.

I look forward to a vigorous debate of these important issues. Passage of this EAA bill will make a significant contribution to our national security and will help bring transparency to our export control system. I encourage my colleagues to join this bipartisan, balanced approach to these critical issues.

I regret that we may not proceed today on the motion. If that is the case, I have great confidence that with the cloture motion we will be back on this legislation within a very short period of time.

Again, in closing, I commend the leadership of Senator ENZI, my friend from my neighboring State of Wyoming, and his staff for the work they have devoted to this effort, as well as to Chairman GRAMM and the ranking member, Senator SARBANES, who have worked with us and with their staffs throughout this entire effort.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I support the chairman of the Intelligence Committee, who objected to proceeding at this time on this bill. First of all, I wish to state my reasons for supporting an objection to proceeding at this time.

I do not think this bill is going to be delayed indefinitely. It is not my wish to do that. I think the Export Administration Act ought to be reauthorized. I have thought that for a long time.

The question is, What is going to go in the act when we reauthorize it? We have had a vigorous bipartisan debate inside the Senate, and I would venture to say also inside the House, among our Members, as to what we ought to do about controlling or decontrolling certain sensitive items in this country. We all have the same goals, but we have markedly different views regarding certain aspects of how to achieve those goals. We now are being—after having about 24 hours' notice—asked to take up a piece of legislation which has national security implications, which is controversial, which is going to take some time in order to consider amendments which we think can benefit and strengthen the bill. It is going to take some time in that regard. It is simply not something that we should be fitting in in the middle of a week for a day, or day and a half, and either dispose of it or continue it on to another time. We ought to try to get together and set aside some time, a reasonable time—I would be in favor of a time agreement to do that—so amendments can be heard and we can debate the merits of the bill.

This is not the time to do that. It is going to take more time than what we have right now. At the outset, perhaps in some respects in a very general sense, balancing our concern over commerce with national security is what we are about. But that is not what the Export Administration is all about. That is not what export controls are all about.

It is pretty clear that what that is all about is national security. It doesn't say anything in this bill or anything in the legislation on the books now that we should engage in this balancing act

of commerce versus national security. What it says is that you protect national security. In the bill before us, the purposes are set out. The purposes of national security export controls are the following: To restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States and to stem the proliferation of weapons of mass destruction.

That is what this bill before us states is the purpose of these controls. That is with what we are dealing.

As we proceed, I hope we do not think we should strive so hard to draw a 50-50 balance with regard to the considerations involved because they are heavily weighted, to say the least, toward national security. That, of course, is the basis of our concern.

In terms of the timing, it is my understanding that a part of the administration's position is they want to draft an Executive order that will strengthen the visibility and the voice of other Federal agencies in the interagency dispute resolution process that will give the Department of Defense greater visibility and a major role in the commodity classification process and ensure that deemed exports are covered, which are not covered by this law. Those are three very important provisions that the administration says it wants to address by means of an Executive order.

I think we are entitled to see that Executive order. I believe we would want to consider whether or not to make them a part of the legislation. They are very important items, as important as several of the items that are in the legislation.

It is only proper, considering the severity of the issues with which we are dealing, that we have all of the cards on the table and that we deal with them in an appropriate manner.

Also—and the chairman of the Intelligence Committee alluded to this—this is the wrong time to bring this up for another reason. It has broad ramifications and broad applications with regard to many different items and many different countries, but this is, in many respects, a China trade bill.

Much of the impetus among the commercial world for getting this passed has to do with decontrolling previously controlled items, many of which are high-technology items, many of which have potential military application, and many of which would be going to China. They have a vast potential market. Only about 10 percent of the items we export to China are controlled items. So it is not a large part of what we are doing with them right now.

Apparently the idea is, with China's concentration on high tech and their need for our supercomputers and other sensitive matters, that trade will pick up and the desire among industry is to

more easily export without having to apply for a license, that trail of what granting a license entails. That is what this is all about.

At a time when the Chinese leadership is issuing belligerent statements with regard to our policy toward Taiwan, right after they detained 24 American crew members and, as the chairman of the Intelligence Committee pointed out, we are feverishly trying to destroy computers aboard those airplanes and other items of hardware and software, at a time when the Chinese are engaged in a rapid military buildup and have 300 missiles on their coastline that can be used against Taiwan, at a time when they are detaining Chinese American scholars against their will, I do not think this is the time to send the message to China that we are going to engage not only in business as usual but become even more liberal in our policies of sensitive exports. We had best wait until that dust settles a little bit before we take it up.

We have had a policy in this country for some time of controlling certain matters that fall into the sensitive category with regard to supercomputers, milling machinery, centrifuges, and a host of items which have dual use, both civilian and potential military use.

It has always been a concern as to how far we can go in allowing civilian trade without the items being used by the military. We find from time to time, on the rare occasions we check on them, that China has diverted from civilian to military use. The Cox Commission points out to us that they are using our high technology to benefit their military. It is not that we have to speculate about that.

This Congress has responded in various ways with regard to high-performance computers which can be used for simulation, for nuclear testing, reliability, and without actually doing the testing of the bombs. They can use computers nowadays to test the efficacy of their bombs by use of high-speed computers. So Congress in 1998, as a part of the National Defense Authorization Act, provided, with regard to these high-speed computers, that there should be a national security assessment to see to what extent we might be harming ourselves.

That act also provided for postshipment verifications for tier III countries, such as China; in other words, to see how these computers are actually being used in China.

It also required congressional review with regard to notification thresholds. We require our exporters to notify the authorities when they are doing certain things at certain levels. If the President is going to change that notification threshold, he needs to notify Congress.

The bill before us would basically do away with all of those requirements and would abrogate those requirements

that Congress set down in 1998. If we take these broad categories of items totally off the books and say there is no licensing at all, there will be no monitoring even of what is being shipped to whom. There will be no ability for a cumulative effect analysis. This particular item or that particular item does not have a serious effect but the cumulative effect of all of them might. That is a requirement of the law that has not been observed in the last decade, as far as I know.

This is going to be the basis of the discussion. That is not to say we should not reauthorize the act. That is not to say we cannot improve and close some of these openings that I believe are unfortunate and uncalled for and deleterious to those issues on which we all agree.

We hear all this talk about building bigger fences around a smaller and smaller number of items, but I do not see where the fences are. I would like to have explained to me how we are building higher fences by this act, because this is a decontrolling, in large part. There are certainly other provisions, but I see nothing where there is a tightening of the process in building higher fences. We are winding up with more openings in that fence instead of building a higher fence.

Substantively, the bill before us is a good improvement over the first draft last year. We had certain concerns about it. We had a lot of discussions about it. It was vigorously defended.

The administration has come in and just within a few days—they have two people confirmed in the Department of Defense right now. That is with what we are dealing. When we talk about the administration and all these various agencies that have a piece and a part of this as we go through the licensing process, let's keep that in mind.

It will be the better part of a year before this administration is intact because of the scandalous difficulty we have in getting people through this process in our Government. It has been going on for a long time.

A lot of these things require input of people who are appointed by the President and confirmed by the Senate. If this bill was part of the law today, as far as defense is concerned, as far as appealing something, for example, in the export control process, it would either have to be Mr. Rumsfeld or Mr. Wolfowitz because they are the only ones who fit that criteria. That is totally unworkable.

Another reason not to rush is that we do not have an administration that is fully staffed in the relevant departments.

One of the key provisions involves foreign availability, the idea if under the Secretary's determination, after consulting with others, the Secretary of Commerce determines there is foreign availability of an item, they will

lift controls, the idea being it will not do any good to try to control that.

There is probably some truth to that. It very well may be we are trying to control more than what can be controlled. The real question is not whether or not we on this side of the issue or our colleagues on the other side of the issue can sit here and determine what ought or ought not be controlled. The question is, can we come up with a procedure where on the questionable items, we know they will get full, fair, and complete consideration by people who ought to be considering the products. That is the question. We are not talking about things all over the world, through Radio Shacks around the world. Keep in mind, we are not talking about restricting any of these items from being exported. We are talking about whether we ought to have a license requirement.

Most of these items are going to be exported anyway. The difference is whether or not it will take 30 or 45 days or whatever the normal amount of time is. Sometimes goods are held up longer than that. Sometimes they are held for national security reasons and this cannot be explained to the person making the application. There is a bit of delay there. In most cases it is not a great delay.

Some say our competitors are so hot on our trail, our European allies are so close to us in technology that the month delay will mess up a large number of sales. That is not very credible as far as I am concerned. We have the lead in so many areas that going through the licensing process, if it goes through as it should and is supposed to, is not going to make the difference in terms of this commercial activity.

We need to think through the foreign availability argument. If the genie is out of the bottle and none of these things can be controlled, why do we still have restrictions on rogue nations? If we furnish Saddam with the computers, wouldn't that be better than having somebody else furnish them, if he is going to have them anyway, or the centrifuges or the milling machines—they are sensitive—that go to make nuclear items? There are certain good arguments, good reasons to be made that he will have it anyway; why not supply it with our companies so we know exactly how it works.

I find it a bit inconsistent to say none of this stuff is controllable. It is out there; you can't do anything with it. But we want to make real sure we keep these controls on rogue nations—Iran, Iraq, and the bad guys. Clearly there is a limit. Clearly there is a line. Maybe we have not drawn the line in the right place in times past. Maybe even the old end top criteria is out of date. It has been going so rapidly up it has become almost irrelevant. Many have been critical of the Clinton administration for raising it so rapidly

and now it will be done away with altogether. We are having to take a new look at that. People say you cannot regulate computing power. You have to regulate or deal with the software. You have to deal with the application being made with the use of the computer. It is a different kind of world with which we are dealing.

We have to be careful. While acknowledging that technology has greatly expanded and there are more things in the world that perhaps can't be controlled, there are still some areas where we do not want to open the floodgates. The question is, What are those areas and what kind of procedure will we have to ensure that those are not sent along with the rest? When we deal with thousands and thousands of items, it is not an easy answer.

The President, it has been pointed out, under this bill, can have a set-aside if there is a threat to national security. On this business of balancing commercial interests over national security, get a load of this: The set-aside provides the President can take this action only if there is a threat to national security, not because it has national security implications. I assume this is a direct threat. I don't know. But the President cannot do this until there is a threat to national security. Then once he makes the determination that there is a threat to national security, he has to leap more hurdles than if he were in the average track meet. If he makes the designation, he has to report to Congress and justify himself. Then under this bill he is required to pursue negotiations to try to get the countries making this available to quit making it available. He has to notify Congress about that. Then the President has to review this matter every 6 months.

Remember, this is a matter that is a threat to national security. He is required to review this every 6 months so it can be lifted if the circumstances change. He has to report that to Congress and justify not lifting it. Then the President, after having gone through all of that, if the set-aside is still standing, has to relinquish his set-aside if there is still not a high probability that there will be any changes made in terms of the foreign availability picture, and if there is no agreement under any circumstances after 18 months, the President has this authority. We make the President do a lot of things and place burdens on him to do that.

As far as mass marketing is concerned, it has to be a serious threat to national security. Foreign availability, he can set it aside with a threat to national security. For some reason, if the item in question is mass marketed, just in the United States, presumably, the President has a set-aside if there is a serious threat to national security.

We will want to debate and see whether or not we can improve that

language, whether or not we want to set that high standard for a President to stop an export, that it has to reach that extremely high standard when we know already that the Chinese are using our high technology to benefit their military.

The penalties are great in this bill. There is no question about that. But before an item has already been decontrolled, there is no danger of any penalty coming into play.

My concern is this: We have a couple of basic trends going on in this country. One is that we are moving pell-mell to decontrol. The genie is out of the bottle. There is no question about that. The last administration certainly liberalized our control procedures. The Chinese and others certainly took advantage of that. We are still moving in that direction. Perhaps we should, to one extent or another. But there is no question that using the word "decontrolling" with regard to matters of high technology, with regard to matters of dual use, with regard to matters that have military significance, we are saying, "What, me worry?" and rapidly decontrolling. This would enhance that process and take it to another level.

Mr. McCAIN. Will the Senator yield for a question?

Mr. THOMPSON. I am glad to.

Mr. McCAIN. Is there any doubt in the Senator's mind that over the past 8 years of the previous administration—is there any doubt in his mind that sensitive technology that affects American national security was transferred to China, Iraq, and other nations?

Mr. THOMPSON. No, there is no doubt in my mind, Senator.

Mr. McCAIN. So my further question is, If sensitive technology which affects American national security was transferred to China, to Iraq, and perhaps other countries, are we going in the right direction with this legislation or are we going in the opposite direction of loosening these controls, according to this legislation?

Mr. THOMPSON. There is no question that we are loosening. There is no question that it will inure to the benefit of the Chinese, who are well known to be concentrating especially on high-technology matters, building up their military, building up their missile capability—both ICBMs and shorter range missiles.

I think the best witness on this, Representative COX, has been quoted a few times. The Cox Commission stated in July 1999:

The People's Republic of China was diverting U.S. manufactured high-performance computers for unlawful military operations. Specifically, it was using American-made computers to design, model, test, and maintain advanced nuclear weapons. The commission clearly stated that the illegal diversion of high-performance computers for the benefit of the People's Republic of China military is facilitated by the lack of effective post-sale verifications of the locations and

purposes for which the computers are being used. High-performance computer diversion for PRC military use is also facilitated by the steady relaxation of U.S. export controls over the sale of high-performance computers. The committee added that U.S. origin high-performance computers have been obtained by PRC organizations involved in the research and development of missiles, satellites, spacecraft, submarines and military aircraft, just to name a few.

Mr. MCCAIN. If there is no doubt in the Senator's mind, and I think it has been clearly established in several cases—I think one was the case of Loral where the Chinese missile technology was increased through the transfer of technology—I am curious, if it is a severe problem, and obviously our relations with China have not improved recently, to say the least, our sanctions efforts against Iraq have been eroded by the disappearance or dramatic reduction in the coalition that imposed sanctions on Iraq, yet we are now trying to pass legislation in very short order that reduces these controls that inhibit our ability to examine these systems and their export to these countries.

Finally, could I ask the Senator, how much involvement have the sponsors of this legislation allowed the Senator from Tennessee and my colleague from Arizona, Senator KYL, and Senator SHELBY? Have they tried to involve you in negotiations, conversations, or amendments?

Mr. THOMPSON. We have had extensive conversations on this over the past, I guess, year and a half. My desire would be that—this has been off the table now for some time. Until yesterday, I did not know it was going to be brought back up. But now that it has been brought back up, it is back on the table, as we all knew it would be and should be, that we would sit down again on some proposed amendments to see if we could agree on some. We might be able to.

As I say, I think they have improved the bill. It is all in the eye of the beholder. The thinking was it was a bill right where it ought to be. The administration came along and made 20-some-odd suggestions. I understand they were adopted. Presumably, it is a better bill. Maybe it can be even a better bill.

Up until yesterday, the negotiations did not go the way I would have liked for them to go, frankly, but I cannot complain about not having been included in discussions. We have had a lot of discussions.

What I would like to do is address the question of the Senator, though, a little bit more directly, the other question he asked. The question is: Why? I think the answer would be that for some of these items, there is foreign availability. If they are out there and France or someone, or Russia, let's say, is supplying China with these items, why shouldn't we?

It raises a question—I did not plan on getting into the substance of the debate as much today as we will later on—as to whether or not there is a moral dimension to our foreign policy, whether or not there is a moral dimension to our export policy, whether or not, because some other entity is supplying somebody with something they should not have that hurts our national security potentially—and these items I am talking about, some of them, are serious threats to our national security, as acknowledged in the bill, if it is mass marketed—whether or not, even if they would get them, we ought to be supplying them.

I would not feel any better to find American troops shot down with technology supplied by American companies if I knew there was mass marketing of those products. In the last year, the PRC reportedly was illegally using American supercomputers to improve their nuclear programs. Just 2 months ago, we learned that Chinese technicians were installing fiberoptic cable for Iraqi air defenses, a clear violation of U.N. sanctions.

Worse yet, this assistance and technology which were provided to Chinese companies by American firms when President Clinton decontrolled this equipment over the objections of NSA in 1994 aided Saddam Hussein in his quest to shoot down American and allied pilots.

I don't know if it proved whether or not this very strand of fiberoptic was used down there or not. But what apparently is pretty clear is that we took this Chinese company from a startup and, because of business that we did with it, put it in a position where they could go down to Iraq and help Saddam Hussein better shoot down our pilots. That merits serious consideration. It does not merit a day or a day and a half of discussion in some kind of desire to balance what we are talking about with our commercial interests.

Mr. MCCAIN. May I ask a final question—and I would like to state I agree with Senator THOMPSON. This is a very serious issue. It brings into question the influence of big money and big business in American politics. But would the legislation that we are discussing have facilitated the ability of the Chinese to acquire that technology and transfer it to Iraq or would it have been made more difficult?

Mr. THOMPSON. I have not thought it through. I think after it was decontrolled in 1994, over the objections of the National Security Agency, the cat was out of the bag. I am not sure it would have made any difference.

I think the point is that what we are dealing with today would further decontrol a host of additional items that heretofore you had to have a license to get.

Some of those—I would venture to say—the large majority of those

things—would be harmless. But my concern is whether or not we have a procedure to catch the ones that are not harmless. That is what we are trying to deal with here. I hope we can move in that direction.

Mr. JOHNSON. Will the Senator yield for a question?

Mr. THOMPSON. I will be happy to.

Mr. JOHNSON. I am interested, given his remarks today, whether the Senator views President Bush's support for this legislation, support expressed by our Secretary of Defense and Secretary of State, as reflecting an inadequate consideration of the implications relative to China and inadequate consideration of the moral dimensions of our trade policy in the United States and certainly an inadequate consideration of the national security fundamentals of our Nation. Does the Senator suggest the Bush administration is in error in their support of this legislation?

Mr. THOMPSON. I would respond to the Senator that my concentration has to do with my own obligation. I respect the members of this administration who have taken a look at this in a few days, and with the few people they have had take a look at it.

I respect their opinion. I weigh it very seriously. We are another branch of Government. We have obligations also. The Senator from Texas points out that the Banking Committee has a lot of jurisdiction. That is true. The chairman of the Intelligence Committee has a lot of jurisdiction. The chairman of the Foreign Relations Committee has a lot of jurisdiction. The chairman of the Armed Services Committee has a lot of jurisdiction. They are all concerned about this. I am concerned about it.

I would like to always be in agreement with all of my friends. Sometimes it is difficult to do.

I referred to the Cox Commission report. As I say, he has been quoted in regard to this piece of legislation. I am not sure where he stands on this piece of legislation. I am sure he supports the Export Administration Act reauthorization, as I do, but it has been said that the bill addresses the major findings and recommendations of the Cox Commission report. Upon closer examination, many of the Cox Commission's conclusions are not addressed. For example, the Cox Commission recommended that the Government conduct a comprehensive review of the national security implications of exporting high-performance computers to the PRC. Yet S. 149 does away with that requirement.

The Cox Commission also recommended reestablishing higher penalties for violations, which was done, but the evidentiary standard was lowered and promotes the sale of high-performance computers to the PRC for commercial but not military purposes

provided the PRC establishes an open and transparent system to conduct on-site inspections of the end use of these machines.

This bill takes these recommendations in an opposite direction. We are going to have an opportunity to go through in detail the extent to which this comports with the recommendations of the Cox Commission.

The Rumsfeld Commission, of course, points out that one of the more serious concerns that we have had in Congress for some time is the proliferation of weapons of mass destruction. Even though it was significant to learn the extent to which some of these rogue nations have the ability, or rapidly developing the ability to hit the United States with missiles and weapons of mass destruction, and the fact that they were getting a lot of their capability from China and Russia, I think perhaps the most significant and troubling part was the fact that our intelligence was not aware of the extent of these things.

Intelligence is not perfect—nobody's intelligence and no country's intelligence. I think they do a good job on most occasions, but they were behind the curve on this.

I simply reiterate that in matters of this importance it is not something we ought to take to the floor and discuss in general terms, talk about balancing, and do in a day and a half. We need to be concerned about what else is not going to be caught by this process. We need to be concerned about the big picture, and we need to be concerned about the little details that have to do with the interagency dispute resolution.

For example, as was pointed out, if someone disagrees with a determination as to whether or not an item ought to be controlled, it can be escalated by a majority vote. But it can only be escalated by someone who has been appointed by the President and has been confirmed by the Senate.

Hopefully, we will have these Departments staffed. We have Defense, we have Commerce, and we have several other Departments that have a place in this. But they are grossly understaffed and will be for some time.

Incidentally, the process has never been taken to the President of the United States in the history of process, if you want to know about the practical application of this thing. But it looks pretty good on paper, and maybe it can work.

Do we really want to have that escalation done only by someone appointed by the President? Shouldn't he be able to delegate that somewhere for someone to handle that kind of paperwork on the thousands of the items that are going to be coming to the floor? Is the intention to make it such a high level to escalate that there will be much less escalation so that people who may

have concerns and objections will not bother under that kind of a system? I think we have seen that before.

We had extensive hearings before the Governmental Affairs Committee with our inspector general, who looked at all of this. They came to the conclusion at that time that the Defense Department was under the impression that there was inadequate input by the Defense Department.

Will this cure that? I do not know. It looks to me as if it is more difficult under this regime to raise a question. They are supposed to be included under the bill. Are they really going to have a practical voice? Those are the kinds of things we need to look at.

Again, my objection to doing this now after having learned about the consideration of it yesterday was not because I necessarily opposed the reauthorization of the Export Administration Act. I do not. The world is not going to come to an end if we don't consider this now. It has been in this condition for several years now. It can wait a little while longer until hopefully the dust settles down in terms of our relationship with some of the people to whom we are going to be sending all of these additional items. Wait until the administration becomes a little better staffed so they can deal with these things.

I respect the administration and the people handling it. I respect my colleagues who have pushed this because I think they have legitimate interests in making sure we are not unnecessarily hurt in terms of our economy.

But we have to make sure in the present environment—I read as well as anybody else about the tremendous interests out there that have been brought to bear on getting this done, and we have to make sure we listen to their legitimate points but that we don't lean too far too fast in that direction until we have thoroughly explored the alternatives. Hopefully, we will have some amendments that will improve upon this, and maybe we can even agree to some amendments.

But, again, we are on a motion to proceed right now. It has been objected to. I agree with that objection for those reasons.

This is not the kind of issue we should consider in short order and in the limited amount of time that we have now, unless we can reach some time agreement that I will agree to right now after consulting with my colleagues who have other amendments in order to have a thorough debate on this issue. It is going to come.

We cannot and will not hold this up. I know which way the wind is blowing. I can guess probably what the outcome is going to be. But hopefully it will be done after a thorough and deliberate consideration in this Chamber of all of the ramifications and with a fair consideration of some amendments.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The gentleman from Wyoming is recognized.

Mr. ENZI. Mr. President, I appreciate the comments of all the Members who preceded me. It has been a very nervous situation to have to sit through all the statements when I would like to have been contributing all along. Over 2 years of my life I have invested in extensive meetings on this bill. I figured I could wait a little longer.

I support the motion to proceed. I unequivocally support the motion to proceed. I am sincerely disappointed that we didn't get the motion to proceed. I would be happy to agree to a time agreement. What we are faced with right now is unlimited debate on whether we get to debate.

So I would like to have some kind of a time agreement, if we got passed this motion to proceed—which is unlimited debate on whether to debate—then we have unlimited debate on unlimited amendments. So there is the capability of doing extensive debate on any amendment that anybody wants with no time limits on any of those amendments or debate on the entire bill. So I would be just delighted if we could proceed and look at those amendments.

I appreciate the Senator from Tennessee's response about the extensive meetings that we had previously. I am sure he has noticed that in this bill there are extensive changes that resulted from those meetings. The most particular one is the Presidential set-aside, the Presidential set-aside that allows the President ultimate authority over every bit of national security, which is what the President should have. We did allow that in every instance. We think it is constitutional. We did not think it had to be in the bill, but it is in the bill now. We think that change alone makes the biggest difference in national security in the history of the United States, but particularly in the history of export administration.

We have some things in this bill that are absolutely crucial. We have some things that need to be done for national security. I am not talking about a balance. I am talking about basic national security, where everybody who looks at national security says we need this Export Administration Act. We do not need a temporary extension of it. We definitely do not need to be operating under the President's Executive order, the IEEPA process, in order to have some control over our national security. That is what has led to the national security problems we have had since the act expired in 1994.

These problems we are talking about in relation to China—and I am glad we are having that discussion—you will recall we said, bring this bill up any time; we do not care what kind of international crisis there has been with

China; it is a good time to discuss national security, no matter what the timing with China. We did not expect it to be quite this timely, but we are willing to work with that because we want to make sure this country's secrets are not taken.

Most of what has been referred to happened after the act expired in 1994. When it expired in 1994, we were faced with an Executive Order and the President using some of his emergency powers. What is the big difference with that? Penalties are the big difference with that. Penalties dropped down to \$10,000 a violation. On the multi-million-dollar contracts we are talking about around the world, \$10,000 is less than a contingency. It is less than the cost of an ad in many cases.

Mr. President, \$10,000 is not a penalty. It is not a deterrent.

Penalties are an important part of this act. The penalties expired in 1994. We have them under a short extension of that old bill that lacks a lot of the security we need, purely by an agreement that we would extend it until August 20 of this year. That means on August 20 of this year we are back to the same old bind where companies can violate national security for less than the cost of an ad. It should never happen in our country.

When I became chairman of the International Trade and Finance Subcommittee, with Senator JOHNSON as the ranking member, and found out that the main piece of business we had to face was this Export Administration Act, we started digging into it. We have kind of lived together for a couple years, going to meetings, meeting with anybody we possibly could who had an interest in it, trying to find out how the process worked, looking at what had happened to it before. There were 12 previous attempts to get this passed. How could something that is this important to the country not make it through on 12 successive attempts? Well, I am getting a better and better idea every day. Part of the reason is that we are so security minded we would lock up all exports in exchange for security. But that will not provide security. So we need a system that will work. Bringing everybody together on a mechanism that will work has been an interesting and difficult process.

I do thank my colleagues on the Banking Committee for their support and their recognition that this legislation is needed to strengthen our export control system. I do appreciate the support of the administration. President Bush and his team immediately realized that the reauthorization of EAA was vital to the national security and the economic interests of this country.

With the few changes that were made by the Banking Committee during markup, the bill received the written endorsement of President Bush's na-

tional security team. That includes the Secretary of State, the Secretary of Defense, and the National Security Adviser. Those are people who are in place. I know they have had advice from people who have been working on this issue for years.

On March 28, 2001, not very long ago, President Bush called the committee's action good news and urged the Senate to pass it quickly. You have heard the longer versions of that earlier in this Chamber.

Mr. JOHNSON. May I put a question to the Senator from Wyoming?

Mr. ENZI. Certainly.

Mr. JOHNSON. Given the support of this legislation by the Bush administration, including the Department of Defense, the Secretary of State, the Secretary of Commerce, it has been noted in this Chamber that somehow the Bush administration is not yet staffed up. Do you believe that the Bush administration would endorse legislation of this consequence and of this importance if they felt that somehow their counsel had been inadequate or had been short? Or do you believe that the Bush administration felt very comfortable about its familiarity with the details of this legislation in issuing its recommendation for passage?

Mr. ENZI. I am certain that the Bush administration has felt the importance of getting the EAA reauthorized. They have been looking at the documents that have been mentioned on the need for this for several years.

I was very pleased during the campaign that President Bush addressed, as part of his campaign, this Export Administration Act. He had looked at a number of the principles. In fact, on his Web site he has listed what he thought ought to be included in the Export Administration Act. It gave me a lot of confidence that he had looked at the Export Administration Act that you and I worked on because it went point by point on it. I was pleased with the diligence with which the administration and their staff spoke to me and my staff. We were able to go through a lot of the points and a lot of the questions and a lot of the past discussions and a lot of the past meetings we had had with other Members to be sure to cover as completely as possible those items of national security.

Mr. THOMPSON. Will the Senator yield for a brief question?

Mr. ENZI. I will. I was hoping to finish my statement.

Mr. THOMPSON. I am sorry.

Since my comment was referred to, I want the Senator to be aware, if he is not, that my reference was meant to be with regard to staffing, not with regard to making the recommendations that they have made. It was with regard to carrying out the bill once it has been enacted. It has to do with personnel, people appointed by the President and confirmed. My concern is, these var-

ious departments, they have a skeleton crew of people that fit that description.

So my reference to a lack of staffing has to do with their ability to effectuate the appeals process, and what have you, once this is enacted.

Mr. ENZI. I am glad the Senator raised that point because we have export security that is being executed at the moment. We do not need this bill for export security to begin. It is happening right now. The people who are in place right now are in charge of our national security under export administration. They are having to deal with inadequate legislation to be able to do what needs to be done.

So while the staff isn't there, they are still having to comply with licensing. I do not know how they are doing it except that there are still many civil service employees who have been around, and will be around, and are dealing with these problems. But the problem goes on right now. It does not matter whether this bill is in place or whether we are operating on the extension of the old one.

There are some definite improvements in this Export Administration Act that absolutely need to be in place to provide for our national security. I hope that, first of all, we do not have to continue to operate under that old Export Act, regardless of who is in place, and, secondly, that that old Export Act does not expire on August 20 without a backup bill that does something extensive such as this bill does.

I congratulate the chairman of the Banking Committee, Senator GRAMM. He has probably been more involved at a member level on this bill than perhaps any bill Banking has done. He has involved all of us in that process; at least whenever Senator JOHNSON and I have asked him to be at a meeting, he has been at the meeting. He has been willing to participate, learn the bill in tremendous detail, and work on it that way.

The same is true with Senator SARBANES. There has never been a time Senator JOHNSON or I have invited him that he did not show up to help out in the process. He has been involved with this particular bill for about 20 years and understands it to a higher level than most of the people we have run into who have been involved. His comments have been extremely valuable, and a couple of times he has even reined in my enthusiasm a little bit, making very good points that needed to be incorporated. He has been one of the Senators who contributed very much by listening to the other side in the debates to make sure we got these processes included.

I have already mentioned Senator JOHNSON and his help on the subcommittee. I don't know how many panels we served on, answering questions about how this works and how it could work better. That has always

been our approach to the bill: How can we make it better? How can we improve it so that it works?

This legislation is unfinished business left from the 106th Congress. The activity Senator JOHNSON and I engaged in didn't happen this year. As soon as we got chairmanships, we started working on the bill. That was our prime emphasis for the 2 years of the last session. It took all of that time. It took all of that time to go through the process of understanding exactly how the bill works, reviewing previous failures, visiting the Department of Commerce. Of course, the Cox report we have referred to several times came out during this process.

One of the actions I took was to go over to the Intelligence Committee and read the Cox report when it was still a secret document. I am always amazed that just by being elected a Senator, one gets a top security clearance. I understand why that is and I am glad that it happens. I understand we have had a pretty good review of our background by the time we get elected, whether we want it or not. I went over and received a briefing and read the document. I wanted to be sure the ideas we were generating for solving the problem followed the direction of the people who were really concentrated on the Export Administration Act and the security of the country, particularly as it related to China.

I was convinced and am convinced that we did what can be done legislatively. There are a lot of other processes that need to go on, particularly in the executive branch, to deal with this, but that is not legislation. We deal with the legislative part.

We also lived with people from the Departments of Defense, Commerce, and State for a long time. I have to thank Dr. Hamre and Secretary Reinsch for their dedicated devotion to coming up with a solution. Both of them had worked intensively on this issue from their own positions in Defense and Commerce. Without their interaction and daily meetings and telephone calls, we would not have been able to get to the reasonable position that we have.

I was able to get some people on my staff for a very short time who had dealt with license applications. We wanted to know what the person putting in the license had to go through. Then following that, because of the concern over enforcement and particularly the postshipment verification, I brought somebody into my office who was an enforcement officer, somebody who had actually done some of these things on site, somebody who knew how to calculate old penalties under IEEPA versus the penalties under EAA as we propose it. It was fascinating, absolutely crucial to what we are doing.

Of course, this was reviewed and endorsed by the Clinton administration.

Now the Bush administration has taken a look at it, and it has been endorsed by them. We have many people from both sides of the aisle who have been looking at this, working on it, and hoping that at some point, after extensive debate and amendment, it would come to a vote.

What we are debating today is whether or not we ought to proceed. We could save a lot of time if we proceeded to offering amendments. All of those amendments won't be debated on the floor. If there are some that deal with a top secret security, those will be dealt with as we do with that kind of an amendment. If some of the discussion or parts of the discussion cannot be in the Chamber, it will be held in one of the rooms designed for that kind of discussion. We have done that before. In fact, two of the hearings we held were done under those circumstances so that the people in the intelligence community who needed to communicate some of the problems they saw could get those problems directly to us.

We invited every Member of the Senate, but we haven't had every Member of the Senate listen to it. Those of us who have attended, who have worked on this bill, think we have incorporated the solutions that were brought out in the hearings into this bill.

What happened on it last time? We ran out of time. It is pretty easy to run out of time on a bill, I am finding. This one is in trouble of running out of time. I am hoping, because we were able to bring up this version at this point in time, that that will not be the case.

We need this bill. I emphasize, the reauthorization provides authority to control exports for commercial or dual-use items. I need to mention that because we are not talking about munitions here. That is a separate process. That needs to be reviewed, too. In fact, one of the suggestions we had was that the fines in this bill should not get out ahead of the fines in the munitions bill. This is way out ahead of the fines in the munitions bill. It was our suggestion that maybe if we cut the fines back a little bit, that the munitions bill could be brought up to this so that there were sufficient fines in that bill.

At any rate, we don't want the two confused. I don't want to talk about that very much because that has been one of the difficulties with this. It gets confused with munitions and satellites. These are the dual-use items. These are items that, yes, there could possibly be a military application for them. If there is a military application that would be detrimental to the security of this country, we have put in the provision that the President of the United States can set aside any other permission, any other possibility of licensing, and protect that item. We have included that national security aspect.

It does establish the modern effective framework recognizing items available in foreign or mass markets that are not effectively controlled. It puts stronger controls over a few items, which should equal more effective controls. We are talking about building a higher fence around fewer items. I will talk about that, too.

I did have the fortunate opportunity to cochair and work with Congressman Cox on the study group to enhance multilateral export controls for U.S. national security. Together we released the study group's final report on Tuesday, April 24. That was this week. There is a need beyond the export and included in the Export Administration Act to enhance multilateral controls. What we do as a country by ourselves, if it is being done everywhere else, isn't going to cut it. We need to have everybody who has that item working with us to make sure it doesn't get in the wrong hands.

That is what the report we released on Tuesday dealt with. Mr. Cox referenced the fact that we need a commonsense export control policy. He said that we should not make the mistake of confusing a more burdensome system with the more effective system. He went on to mention that the current export control system has "an instinct for the capillary rather than the jugular." In other words, the current system often has the tendency to put the same focus and expend the same amount of energy on the more trivial items, as opposed to concentrating on the truly dangerous items. That is what we are trying to do. That is what we talk about in building higher fences around fewer things, but being able to control them. If we try to control absolutely everything and expend an equal amount of effort on each item that the United States produces, we don't stand a chance of keeping up. So this bill focuses and gets some concentration and handles the problem.

I do happen to agree with Mr. Cox that S. 149 is structured in a way that will focus on the jugular, not the capillary. As everybody is aware, Mr. COX chaired the Select Committee on U.S. National Security and Military Commercial Concerns with the People's Republic of China. I mentioned that before. It investigated several export-control-related problems concerning China and offered recommendations to improve our export control systems. He noted during his testimony before the Banking Committee last year that:

We ought not to have export controls to pretend to make ourselves safe as a country. We ought to have export controls that work.

That is what S. 149 aims to do. It will make export controls work. It will make export controls effective.

The bill would establish a strong, but flexible, export control framework that can adapt to our national security needs in today's globalized and uncertain world. Recent events tell us that

as situations change, the administration should be provided with the flexibility it needs to adapt to that change. S. 149 does not lock the U.S. into a policy position toward any particular country or any particular item. It sets the framework that the administration would carry out. The Congress would then have the appropriate oversight responsibilities.

The bill provides the President with authority to control items beyond current law. Section 201(d) of the bill—and I have mentioned this before—grants the President special control authorities for cases involving national security and international terrorism, as well as international commitments made by the United States. Section 201(c) allows controls to be imposed based on the end use or end user of an item if it could contribute to the proliferation of weapons of mass destruction.

I remind my colleagues that these two provisions could be used regardless of foreign availability or mass market status of the item.

Other national security items are also included in the bill. For example, it requires that whenever items are to be taken off the list, the Secretary of Defense concur with the decision. In addition, country tiering would be made by the President. He would be the one to determine where a country is assigned to a tier for each controlled item or group of items. The President is to take into consideration several risk factors, including the present and potential relationship of the country to the U.S. and the country's weapons of mass destruction capabilities and compliance with multilateral export control regimes. In other words, if they are cooperating with us and our allies, they will be rated better. If they are a rogue state, they will be rated terrible, and that can vary as we find out things about a country. There is no country referred to by name in this bill, and that is so that the President and the Congress have the total flexibility in dealing with any country as they become friends or as they become enemies.

Additionally, it will establish tough new criminal and civil penalties for export control violations much greater than are in the current law. Those penalties were outdated and needed to be enhanced, and they have been enhanced dramatically. These penalties will deter potential violators, rather than be computed as part of doing business.

The bill establishes a program to increase compliance with the freight-forwarding firms—the people shipping the items. This will in turn allow enforcement to detect and interdict possible illegal shipments. That is an improvement over the old system. It increases the overseas presence of enforcement agents who conduct prelicense and postshipment checks.

A very important part of the bill is its emphasis on multilateral export controls—the report that we put out this last Tuesday. Many dramatic changes have occurred over the past decade that present additional challenges to the effective control of sensitive technology. The U.S. now is rarely the only producer of militarily useful high-tech product. The effects of globalization, such as increased flows of trade, foreign investment, and international communications have contributed to the more widespread production and availability of high-tech products. The threats are now different and more diffuse. Therefore, the bill urges the administration to strengthen the existing multilateral export control regimes. Multilateral export controls are has to exercise its leadership in this area now more than ever, and the bill provides a mechanism for encouraging and, in fact, forcing that.

Our position of world leadership in stemming the transfer of weapons of mass destruction is compromised by our failure to enact a more permanent national vehicle to authorize our export control program. Passage of S. 149 will reaffirm U.S. leadership in the area of export controls. U.S. leadership in this area has been lacking in large part because of Congress' failure to reform and reauthorize EAA. If we don't have good controls in place, it is very difficult for us to talk to our allies and ask them to join us in these multilateral processes.

I look forward to the President signing this bill. It is essential that the EAA be reauthorized and reformed this year before August 20. Passage of S. 149 will advance both our national security and our economic objectives.

Is this the final answer? No. There is always going to be more work that is needed to be done on national security. Times change. We have had a drastic change in the times. The Iron Curtain came down. But this bill operates the same way. We always have to be working on it, but we have to have something in place now. We ought to be proceeding to the debate on this bill. We should be talking about those amendments that were referred to earlier and debating them now. We should be proceeding on the debate.

If we can proceed on the debate, we can reach a logical conclusion that will solve the security problems of the United States, or at least begin the process. I could answer some of the other things, and I should answer some of the other things that were mentioned. Computers is one of the items that was brought up, and it was mentioned that we are taking out a provision that has been present for a decade. Well, the way the computers operate now, as everybody in the country knows, has changed dramatically. They are not the same mechanism they once were. They are being linked in unusual

ways to provide capabilities using older machines or less capable machines than some of the brand new machines.

Another discovery: I sat by a guy on the airplane and he was talking to me about supercomputers. I had to check out what he said. He said the U.S. was no longer producing any supercomputers; that Japan is the only country producing them. Do you know that he is right? We have some special linkages of computer chips that provide as much or more capability than the supercomputer that Japan makes. But if you are talking about a single computer, Japan makes the supercomputer; we don't. That takes out some of the mechanism for measurement that we used to have. We need to have a knew measurement. That is recognized by the Department of Defense and the Department of Commerce and the Department of State and the security agencies. So that is why we have made some provisions to do something with computers.

Foreign availability: A lot of what was talked about isn't current law. The change in foreign availability is that we have a Presidential set-aside. We give the President authority to set aside in national security instances. We change the word "significant" down to "detrimental" so it would be easier. But we are talking about the President of the United States.

Who determines whether the President of the United States sets it aside for a significant security reason or a detrimental security reason? Actually, the President of the United States determines that. So whatever he says is detrimental or significant would be detrimental or significant. It is very easy for him to justify any of his actions.

We also call for multilateral controls when foreign availability is put in place so it is not just the United States saying what cannot be done, it is all of the countries that produce that product saying it cannot be so. That is the only way to solve that problem.

I have to talk a little bit about the appeals process because there is some confusion on that. I suspect a lot of the reason we are not debating this right now, why we are not proceeding to this legislation is that there is some confusion.

I have a little trouble with the suggestion that we are moving ahead too fast. We did it last year. We met extensively last year. We brought it up this year. We talked to all of the parties—all of the parties—who were willing to sit down and talk again this year. We brought it to committee. We debated it in committee. We had amendments from the President's staff. Those were circulated, and the people who were opposing our motion to proceed had meetings with the President.

When we passed it out of committee, everybody had to suspect that at the first possible moment we could bring

up this bill, particularly in light of the August 20 deadline, that we would bring it up for the security of this Nation. We wanted to bring it up as soon as possible.

This is one of those gaps in legislative time that came up. We were asked: Do you want to bring it up now, particularly in light of what has happened with China?

We said: We need to bring this up at any time we can, particularly in light of what has happened with China, both now and in the past.

We are not afraid of any amendments. There are ways that a bill can always be improved. That is why we have this legislative process in which 100 people participate. It is so everybody can have a say from their perspective. The group as a whole can determine whether that is something that needs to be a part of whatever legislation is being considered at that time.

I ask unanimous consent that, following my remarks, the summary of EAA discussions that me and my staff have had with different groups be printed in the RECORD.

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

(See Exhibit 1.)

Mr. ENZI. Mr. President, under the present appeals system, for someone to appeal a decision on licensing at the committee level, they have to talk to their boss and educate their boss enough about that particular license so their boss can file the appeal. There has to be a lot of tension, particularly in the military, of someone having to disturb somebody further up the line over a decision. Uniformly people agreed there was some difficulty with that.

We have provided for an appeal in the first round by the person sitting on that committee. He prepares the documents now. As it gets up to the decision level, then the decision has to be made by people who are in office.

Did China get our secrets? Yes, China got our secrets. Does this bill stop that? This bill stops it to the best ability I know, and it is certainly better than doing it under an Executive order, an emergency provision by the President.

This bill is needed. We should be debating it. We should be proceeding with whatever amendments are needed. The country desperately needs this bill.

Again, I thank Senator GRAMM, Senator SARBANES, and particularly my ranking member on the subcommittee, Senator JOHNSON, for all of the hours they have spent on this legislation. We are still willing to spend hours. We want to have a debate. We want to proceed.

I yield the floor.

EXHIBIT 1

SUMMARY OF EAA DISCUSSIONS, 1999-2000

Jan. 20, 1999, 10 a.m.—Subcommittee on International Trade and Finance—Hearing

on the Reauthorization of the Export Administration Act.

Jan. 28, 1999, 3:30 p.m.—Enzi staff meets with Thompson staff to discuss issues regarding reauthorization of EAA.

Feb. 8, 1999, 10 a.m.—Enzi staff meet with Gary Milhollin, Wisconsin Nuclear Arms Control Project.

Feb. 8, 1999, 2 p.m.—Enzi staff meet with NSA staff.

Feb. 9, 1999, 10 a.m.—Enzi staff meet with Senate Intelligence Committee staff member (Joan).

Mar. 16, 1999, 9:30 a.m.—Subcommittee on International Trade and Finance—Hearing on the Reauthorization of the Export Administration Act and Managing Security Risks for High Tech Exports.

Mar. 18, 1999, 3 p.m.—Enzi staff meet with WMD Commission staff.

April 14, 1999, 10 a.m.—Subcommittee on International Trade and Finance—Hearing on the Export Control Process.

April 28, 1999, 1 p.m.—Enzi staff meet with Kyl staff.

June 7, 1999, 9 a.m.—Banking staff meet with Cox Commission investigator.

June 10, 1999, 10 a.m.—Banking Committee Hearing on Export Control Issues in the Cox Report.

June 17, 1999, 10 a.m.—Banking Committee Hearing on Emerging Technology Issues and Reauthorization of the Export Administration Act.

June 22, 1999, 10:30 a.m.—Enzi meets with John Barker, State Department.

June 23, 1999, 10 a.m.—Banking Committee Hearing on Reauthorization of the Export Administration Act: Government Agency Views.

June 24, 1999, 10 a.m.—Banking Committee Hearing on Reauthorization of the Export Administration Act: Private Sector Views.

June 28, 1999, 4 p.m.—Enzi staff meet with Mack staff.

July 29, 1999, 9:30 a.m.—Enzi staff meet with Kyl staff.

June—July/Sept. 1999—Numerous meetings with Administration (BXA, State, Defense, intelligence), industry, Senators and staff to discuss draft EAA.

Sept. 16, 1999, 9 a.m.—Banking Committee staff meet with AIPAC staff.

Sept. 23, 1999, 10 a.m.—Banking Committee Votes 20-0 to Approve Export Administration Act of 1999.

Sept. 27, 1999, 11 a.m.—Banking Committee meets with DoD staff to discuss S. 1712 issues.

Oct. 6, 1999, 10 a.m.—Banking Committee meets with AIPAC staff.

Oct. 10, 1999, 10 a.m.—Enzi meets with Cochran. Cochran says he will not hold up consideration of the bill.

Oct. 20, 1999, 11:30 a.m.—Enzi meets with Kyl. Kyl says we did not listen to his staff at all when putting bill together.

Oct. 25, 1999, 4:15 p.m.—Warner meets with Gramm/Enzi. Warner staff (SASC Joan) says she has not seen the reported bill. Warner commits that his staff will review the bill and get back to us.

Oct. 28, 1999, 4 p.m.—Gramm/Enzi meet with Lott to discuss consideration of bill. Lott says window is narrow. Will consider if it will only take one or two days.

Nov. 1, 1999, 6 p.m.—Banking Committee staff meet with SFRC staff (Marshall Billingslea). He provides us with extensive list of concerns, mostly jurisdictional in nature.

Nov. 4, 1999, 3 p.m.—Banking Committee staff meet with SASC staff. SASC says they don't know how the bill will impact military

since military now incorporates more off the shelf commercial items.

Nov. 5, 1999, 1:30 p.m.—Banking Committee staff meet with SASC staff, Hamre, NSA.

Dec. 14, 1999, 11 a.m.—Banking Committee staff meet with Thompson staff (Curt Silvers introduces Chris Ford, new staff).

Fri., Jan. 21, 12:30 a.m.—Banking Committee staff to meet with Marshall Billingslea.

Wed., Feb. 2, 10 a.m.—Banking staff meets with SASC staff.

Wed., Feb. 9—Senators Warner, Helms, Shelby, and Thompson send a letter to Senator Lott expressing concerns with S. 1712 and requesting referral to the Committees on Armed Services, Foreign Relations, Governmental Affairs, and Intelligence.

Wed., Feb. 9, 3 p.m.—Senators Gramm and Enzi meet with Senator Lott in the Leader's office.

Thu., Feb. 10, 5 p.m.—Senators Gramm and Enzi meet with business community in Senator Gramm's office.

Fri., Feb. 11, 10 a.m.—Lott staff holds meeting with Gramm, Enzi, Warner, Helms, Shelby, and Thompson staff in Appropriations Committee room [3 hours].

Tue., Feb. 15, 11 a.m.—Lott staff schedules staff meeting/canceled by Lott staff.

Wed., Feb. 16, 12 p.m.—Lott staff holds second meeting with Gramm, Enzi, Warner, Helms, Shelby, Thompson and Kyl staff in Leader's office [2.5 hours].

Thu., Feb. 17, 3 p.m.—Banking staff hold informational briefing re S. 1712 for all Senate staff in Banking hearing room.

Fri., Feb. 18, 1 p.m.—Lott staff hosts third meeting with Gramm, Enzi, Warner, Helms, Shelby, Thompson, and Kyl staff in Leader's office; Gramm/Enzi staff provide document outlining provisions that may be accepted. [45 min].

Tue., Feb. 22 9:30 a.m.—Senator Lott meets with Senators Gramm, Enzi, Warner, Kyl, Shelby, and Thompson in Leader's office; Senators Gramm and Enzi identify three key issues in contention; agree to provide Managers' Amdt.

Wed., Feb. 23—Gramm and Enzi staff provide other Senators' staff.

Fri., Feb. 25—Gramm and Enzi staff provide pullout CRA00.120 regarding three issues to other senators' staff.

Fri., Feb. 25—Senator Thompson sends a letter to Senators Gramm and Enzi, cc'd to Senator Lott and the other senators, expressing "grave concerns" about S. 1712.

Mon., Feb. 28, 4 p.m.—Senator Warner holds SASC hearing on EAA; Senators Enzi and Johnson among witnesses.

Mon., Feb. 28, 6 p.m.—Warner staff host impromptu meeting with DOD and DOC officials and Enzi and Johnson staff in SASC hearing room; walk through differences [4 hours].

Tue., Feb. 29, 10 a.m.—Warner staff host meeting with DOD and DOC officials and Gramm, Enzi, Sarbanes, Johnson, Levin staff in SASC hearing room [2.5 hours].

Tue., Feb. 29—Senators Warner, Helms, Shelby, Kyl, Thompson, Roberts, Inhofe, and B. Smith send a letter to Senator Lott to express "continuing concerns" with S. 1712, stating that "even with its proposed managers' amendment" the bill fails to address concerns, and objecting to its consideration.

Tue., Feb. 29—Senators Abraham and Bennett send a letter to Senators Lott and Daschle urging that they make Senate consideration of S. 1712 a priority.

Wed., Mar. 1, 2 p.m.—Gramm, Enzi, Sarbanes, Johnson staff meet with business community in Banking hearing room.

Fri., Mar. 3, 2 p.m.—Senators Gramm and Enzi meet with Senators Warner, Helms, Kyl, and Thompson in Senator Gramm's office; walk through their concerns [3.5 hours].

Mon., Mar. 6, 11 a.m.—Senator Gramm meets with Senator Kyl in Senator Gramm's office to discuss concerns [1 hour].

Mon., Mar. 6, 1 p.m.—Senators Gramm, Enzi, Johnson, with Sarbanes staff, meet in Senator Gramm's office to discuss concerns raised [1 hour].

Mon., Mar. 6, 3:30 p.m.—Senators Gramm and Enzi meet with Senators Warner, Helms, Shelby, Kyl, and Thompson in Senator Gramm's office; finish walking through their concerns [2 hours].

Tue., Mar. 7, 8 a.m.—Senators Gramm and Enzi meet with business community in Banking hearing room to discuss ongoing member negotiations.

Tue., Mar. 7, 4:30 p.m.—Gram and Enzi staff meet with Warner, Helms, Kyl, Thompson, and Shelby staff; walk through 4-page Managers' Amendment document [1.5 hours].

Tue., Mar. 7, 5:45 p.m.—Senator Lott brings up EAA by unanimous consent (Senator Thompson raises concerns on floor but does not object).

Wed., Mar. 8, 11 a.m.—Senators Gramm and Enzi meet with Senators Warner, Helms, Shelby, Kyl, and Thompson at those senators' request. Members agree to suspend floor consideration of EAA until details agreed; Gramm/Enzi provide revised 4-page Managers' Amendment document and ask for comments by the end of the day [1 hour].

Wed., Mar. 8, 12:30 p.m.—Senator Gramm takes EAA off floor via special UC agreement among Senators Lott, Daschle, Thompson, Reid, and others.

Wed., Mar. 8, 4 p.m.—Gramm and Enzi staff provide other senators' staff with revised Managers' Amendment CRA00.262.

Thu., Mar. 9, 3 p.m.—Senator Warner gives Senators Gramm and Enzi misdated letter with attachment of proposed amendments to Managers' Amdt.

Thu., Mar. 9—Senators Warner, Helms, Shelby, Kyl, and Thompson send another letter to Senator Lott expressing "continuing concerns" with S. 1712 and objecting to moving to its consideration.

Fri., Mar. 10, 12 p.m.—Senator Gramm meets with Senator Warner (other senators represented by staff); gives him Gramm/Enzi final response document; asks for final decision from senators.

Week of Mar. 13–17—Gramm/Enzi staff wait for response re 3/10 document.

Thu., Mar. 16—Senator Gramm schedules members' meeting for 10 a.m. Fri. 17th to get response to 3/10 document; postpones to following week after being told that Kyl/Helms/Shelby not in town and Warner and his staff both "unable to attend."

Mon., Mar. 20—Senator Gramm schedules members' meeting for 2 p.m. Tues. 21st to get response to 3/10 document; postpones to later same week after being told that Shelby not back til Tues. night and that the senators first need to meet to confer.

Week of Mar. 20–23—Gramm/Enzi staff continue to wait for response re 3/10 document.

Tue., Mar. 21—Senator Warner announces sudden SASC hearing for Thurs. 23d; cites "considerable differences" remaining between Banking and other senators.

Wed., Mar. 22, 1 p.m.—House International Relations Subcommittee on Economic Policy reluctantly removes Senators Gramm and Enzi from their witness list, and instead holds hearing solely with industry witnesses; hints at marking up narrow EAA bills.

Wed., Mar. 22—[Other senators apparently hold meeting to confer].

Thu., Mar. 23, 10 a.m.—Senator Warner holds second SASC hearing, at which he presses GAO witness to say S. 1712 "must" be strengthened, and states that "the four chairmen have not received some legislative language which we feel is essential to making our decisions on this."

Thu., Mar. 23—Senator Reid gives floor statement urging Senate passage of S. 1712, noting that its sponsors "tried to move a bill . . . but frankly, the majority is unable to join with us to allow us to move this bill forward."

Fri., Mar. 24—Two weeks from the date on which they gave the other seniors their final offer, Senators GRAMM and ENZI receive a letter dated March 23 from Senators WARNER, HELMS, SHELBY, KYL, and THOMPSON. The letter stated:

"As you know, on March 6 [sic], 2000, we provided you with a package describing the issues that we consider critical to reaching an agreement on the proposed reauthorization of S. 1712 [sic], the Export Administration Act. We were disappointed that you were only able to agree to at most four of the eighteen issues we identified, and were unable to agree to some issues on which we believed we had previously reached agreement in principle. Accordingly, we cannot agree at this time to return the bill to the Senate floor under the terms of the unanimous consent agreement filed on March 8.

"There are important issues remaining to be resolved, and we feel that negotiations should continue in order to for there being hope for achieving an Export Administration Act that successfully balances the needs of industry and national security."

Week of Mar. 27–31—Gramm/Enzi staff do not hear from other senators' staff.

Week of Apr. 3—Gramm/Enzi staff do not hear from other senators' staff.

Tues., Apr. 4—Senator MCCAIN holds hearing on S. 1712, at which he expresses concern that the bill does not adequately protect national security. Senators THOMPSON and ENZI testify.

Tues., April 11—Gramm staff call the staff of other senators to alert them that Senator LOTT planned to make a pro forma effort to bring up S. 1712 by UC on Wed., at which point Senator GRAMM would object pursuant to the gentleman's agreement made with the other senators on Mar. 8; and that Senators LOTT and GRAMM then would file a cloture on a motion to proceed to S. 1712.

Wed., Apr. 12—At Senator LOTT's request, Senators GRAMM and ENZI give Senator LOTT two cloture petitions (one on a motion to proceed to S. 1712, and one on S. 1712); both were signed by 16 Republicans representing a broad diversity of states and of Senate Committees (including SASC, SFRC, SGAC, and SCST).

Wed., Apr. 12—Senator THOMPSON holds SGAC hearing on multilateral export controls.

Apr., May—Gramm/Enzi staff do not hear from other senators' staff.

Thurs., May 25—Senators THOMPSON and TORRICELLI hold a press conference on S. 2645. According to press reports, Senator THOMPSON said that in his opinion, legislation to reauthorize the Export Administration Act is probably dead as a stand-alone measure in 2000; when asked whether he was partly responsible, he replied, "Let's just say that truth and justice were served".

Fri., May 26—Senator THOMPSON holds SGAC hearing on mass market/foreign availability; no Administration witnesses are invited.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. I thank the Chair.

Mr. President, what is the time arrangement? Is Senator ENZI controlling time?

The PRESIDING OFFICER. There is no control of time.

Mr. HAGEL. Mr. President, I rise this afternoon to support the Export Administration Act of 2001. I support the effort to move this debate along for all the reasons my distinguished colleagues have mentioned.

I am an original cosponsor of this bill. I have participated in a number of the hearings over the last 2 years, so I have some sense of the thoughtfulness and the depth of the hearings, the testimony taken and the analysis given to this bill. I do want to make some brief comments, but as I lead into those comments, I want to make a couple of general observations.

First, Senator ENZI said a few minutes ago that the previous administration supported this bill and the current administration supports this bill. The current administration consists of Vice President CHENEY, who has some practical and working knowledge of national security as he served with great distinction in the House of Representatives, was the No. 2 Republican there for years, and he was our Secretary of Defense at a very critical time in the history of this country.

Secretary of State Powell supports this bill. Secretary of State Powell's entire life has been about national security as he served as National Security Adviser to President Reagan, as he served as Chairman of the Joint Chiefs of Staff under Presidents Reagan and Bush; two tours in Vietnam, decorated. I do not think there is a question about whether Secretary Powell or Vice President CHENEY would risk national security for the dynamics of any legislation, but yet they strongly support this bill.

Our current Secretary of Defense, Don Rumsfeld—we all recall that Secretary Rumsfeld is on his second tour of duty as Secretary of Defense. I ask the same question about Secretary Rumsfeld: Would he, in fact, be supporting a bill that would jeopardize the national security interests of this country? I do not think so, nor do I think President Clinton would have risked the national security interests of this country, nor do I believe President Bush would risk the national security interests of this country.

So this talk about national security not being well thought through and not being advanced and prioritized, that somehow we are selling out to big business and commercial interests, with all due respect, that is nonsense. That is complete fabrication.

Senator ENZI talked a bit about the current law, the current rules, restrictions, and regulations that we are dealing with today. Does it enhance our national security? Is it relevant to today's challenges? No, it is not. This update, this new bill makes our export control regime relevant to the challenges of a very complicated new world.

America is faced with a very challenging dilemma. We live in an unpredictable and dangerous world. Part of our dilemma is a result of the fact that America leads the world in products and technologies that can be used for the best possible technologies, ends, and purposes and also the worst technologies, ends, and purposes.

Again, there is no higher interest for America than our national security interest. We all agree America's national security interest is its most fundamental interest, so let's not cloud this debate about that.

While always putting our national security first, our responsibility and challenge is to develop a workable and relevant balance that allows America's economic and trade interests to be protected as well. That is the challenge. In fact, our economic and trade interests are very much integral and part of our national security interest. They are not separate. You do not deal with trade and economic interests in this vacuum and national security interest in this vacuum. It doesn't work that way.

The Export Administration Act of 2001 is a very important piece of legislation. It represents an effort to deal with this balance, to come to grips with the realities of this balance: How do we ensure we continue to sustain our economic growth and yet ensure, as best we can, that Saddam Hussein and other dangerous tyrants on the world stage do not gain access to our technologies that could aid in advancing their weapons programs, detrimental to our national security interests and the national interests of the world.

We will begin to build a missile defense system in the near future because of the real and growing threat posed by infant ballistic missile programs in other nations. The world's collective failure to prevent nuclear proliferation is a constant threat to civilization. We need an export control regime that recognizes the real threats to this Nation, to our allies, to all the world and, at the same time, recognizes the utter futility of trying to control everything.

This bill is based on the premise we need to build a higher fence around a smaller number of items, just as Senator ENZI said a few minutes ago. In the 1970s, you could track high-performance computers worldwide because there were fewer of them, less sophisticated, less powerful, easy to do in a bipolar world—the Soviet Union and the

United States. Today, computers with nearly unlimited power, far more powerful than anything we saw in the 1970s or the 1980s, with far more capacity and capability, are available at Radio Shack. Are we going to shut down Radio Shack? Let's get real with a sense of economic sense in how we deal with this.

Many components manufactured and sold in the United States are reproduced by foreign competitors with little lapse of time or effort. The world is simply too integrated. Some may not like that, but it is a fact of life. Capabilities abroad advanced so far to put the old system in jeopardy are not working, and we are dealing now with an old system that, in fact, is not effective. It is no longer relevant to today's global economy and national security interests and world threats.

Our exports must recognize the realities of today's worldwide interconnections. The President of the United States, Secretaries of Commerce and Defense, our entire intelligence community, and our business community can all work within this legislative structure to provide a flexible export regime and continue to protect our national security interests. This bill establishes a system which meets both our security and commercial concerns.

Only a control regime that raises the fence on the most critical dual-use technologies makes any sense. Our dilemma on exporting technology can only be solved by making control of critical technology a critical issue. Exporters and national security officials need clarity.

We should not treat exporters as unpatriotic or unconcerned about proliferation or our national security interests. I have heard in the Senate over the last year not so veiled charges to that point. I have heard in the Senate things such as the almighty dollar is most important for many of the corporations of America. My goodness, what are we saying?

I come from the business world. I am a businessman personally offended by that kind of statement. I don't know one businessman—there may be a businessman out there—I do not know one responsible corporate citizen in this country who would say to me privately or publicly that the interests of his or her company are more important than the national security interests of this country. It isn't true. Be careful about throwing around loose language, saying many of America's companies and corporations are more concerned about their bottom line than the national security interests of this country. That is not correct.

This legislation provides a structure that will allow our exporters to be partners in the overall objective of helping to prevent weapons development by the world's most dangerous and irresponsible dictators. We need to

work more closely with our allies to continue to enhance multilateral controls and reporting on the movement of sophisticated technologies.

America continues to provide the leadership and the negotiating process, as we have from the beginning, for more effective, multilateral controls. This bill ensures continued U.S. participation in multilateral export control regimes that support U.S. national security objectives. The United States will continue to exercise its leadership in export controls worldwide under this bill.

In conclusion, I acknowledge Chairman GRAMM and Senators ENZI, SARBANES, and JOHNSON. These four have worked tirelessly, effectively, over the last 2 years to bring together a responsible, relevant piece of legislation of which we can be proud, and I am proud of being part of it. They have developed a commonsense and strong proposal for improving the current system. I look forward to continuing to work with them to get this legislation enacted so we can update America's approach to export controls for this hopeful new world where all 6 billion people reside together. That is doable. Let's get on with the work at hand.

I yield the floor.

Mr. JOHNSON. I ask unanimous consent to have printed in the RECORD a document I received from the White House and their Office of Management and Budget, a statement of administration policy expressing support for S. 149 and also clarifying that there is minimal pay-go consequence to this legislation.

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

STATEMENT OF ADMINISTRATION POLICY

The Administration supports S. 149, as reported by the Senate Banking Committee. The bill provides authority for controlling exports of dual-use goods and technologies. The Administration believes that S. 149 would allow the United States to successfully meet its national security and foreign policy objectives without impairing the ability of U.S. companies to compete effectively in the global marketplace. As reported, S. 149 includes a number of changes that the Administration sought to strengthen the President's national security and foreign policy authorities to control dual-use exports. The Administration will continue to work with Congress to ensure that our national security needs are incorporated into a rational export control system.

PAY-AS-YOU-GO SCORING

S. 149 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimates is that the PAYGO effect of this bill is minimal. Final scoring of this legislation may deviate from this estimate.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first, I express regret the Senate is being asked

to take up this legislation at this time. As pointed out earlier, the Export Administration Act, which this bill reauthorizes, with changes, has not been reauthorized for over a decade. It is not as if there is an emergency to do it this week. We have lived without a reauthorized bill for over 10 years.

What we have done is reauthorized it on a year-to-year basis from time to time—most recently, last year. I believe it is in October that reauthorization runs out, so we have to take some action before that time. I believe we should. I believe the Senate should act on this legislation before that time. I suspect there will be some amendments offered. I suspect there will be a heated debate.

But at the end of the day, in one form or another, the bill will pass and the Export Administration Act will be reauthorized as significantly modified. President Bush, when campaigning, campaigned on that promise, and he has made good on that promise by supporting this legislation. I appreciate that effort on his behalf. But I think it would be wrong to suggest that it was the administration that requested the bill be considered at this time.

The administration was asked by a group of Senators who have expertise in national security matters to evaluate the bill that is before us. In less than a 2-week period that evaluation was complete, and it was done largely by people about whom Senator THOMPSON was talking this morning, who are not new additions to this administration. Meeting this morning with Secretary Rumsfeld, we found that there are only two confirmed positions in the Defense Department—Secretary Rumsfeld and the No. 2 person in the Defense Department, Secretary Wolfowitz. That is it. So it is not as if a new Bush team has evaluated this legislation, has had the time to give it the kind of critical look I had hoped it would be able to do.

Mr. JOHNSON. Will the Senator yield for a question?

Mr. KYL. I would like to continue making a point. The Senator has had quite a bit of time. I will note, however, I have heard the questions of my colleague. The question is the same: Essentially, as a good Republican, why wouldn't you support the Republican administration with all its expertise on this? I guess part of my answer is if the Senator from South Dakota is willing to abide by the expertise and recommendations of this administration on all matters from here on, I would almost be persuaded to sit down and to pocket his votes on the tax cuts, education bill, all the defense matters that come before us, and everything else.

The fact is, reasonable people can differ. The Senator from South Dakota can agree with the administration on some things and disagree with them on others, just as people on this side of

the aisle can do. So it is no great argument to say if you belong to the party of the President, you have to walk in lockstep with the President or somehow there is a suggestion that your position is tainted.

But let me go on with my point.

Mr. JOHNSON. If I might respond?

Mr. KYL. I will be happy to yield for a moment.

Mr. JOHNSON. I will be very brief. I appreciate the Senator's thoughtful remarks. I do not want to delay his proceeding with those.

The question is not whether the Senator supports the White House on each and every issue. The question simply is, Does the Senator support the administration and Colin Powell and the defense establishment of this administration on this specific issue?

The point the President has made is that he wished this legislation would be brought up in a very timely, very expeditious manner. The question is not whether he supports the President—of either of our parties, all the time. Certainly we do not. The question is whether there was a disagreement with the defense establishment of this administration on this specific issue.

Mr. KYL. I appreciate the question being reasked by the Senator from South Dakota, and my answer is as I indicated and as I will continue to demonstrate in my remarks. I think it would be a mistake for us to take the position on either side that this is an all-or-nothing proposition. It is not.

I respect, for example, the work of Senator ENZI from Wyoming, a member of the Banking Committee, who has worked very hard on this issue, and in good faith, and his chairman, Senator GRAMM. There is no one in this body for whom I have greater respect than Senator GRAMM, the chairman of the committee. Because they are putting this legislation forward at this time, and some other Senators disagree on national security grounds as to whether it is exactly the right bill to be passing at this time, I would think it absolutely appalling that anyone would question in any way their commitment to national security because that would simply be wrong.

By the same token, it would be wrong for anyone to question the sincerity or the knowledge of those who may oppose every jot and tittle of this legislation on the grounds that they are somehow either not in synchronization with the administration, not in favor of free trade, or somehow caught in cold war legislation, or something of that sort.

Anytime you get that kind of personal suggestion in a debate, it lowers the tone of the debate and is not productive to a rational and constructive solution to the problem.

What is the problem? We need to reauthorize the law in a way that prop-

erly melds both the trade and national security ramifications. There are those in this body with a great deal of expertise in national security matters who have come to the conclusion that the bill that came out of the Banking Committee would in some respects be inimical to national security and have asked for an opportunity, a greater opportunity, to try to work out some of the differences they have with the sponsors of the bill.

These are not people without expertise. We are talking about committee chairmen of every committee in this body that has jurisdiction over national security matters; specifically, Senator JOHN WARNER, chairman of the Armed Services Committee, who I believe is going to be here within the hour to speak to the issue; Senator SHELBY, who is chairman of the Intelligence Committee on which I sit; Senator THOMPSON, who chairs the Governmental Affairs Committee, the committee that had the jurisdiction to look into Chinese espionage and other matters; Senator MCCAIN, chairman of the Commerce Committee and also a member of the Armed Services Committee; and Senator HELMS, chairman of the Foreign Relations Committee. All of these Senators have extensive experience in matters relating to our national security.

I have not added up the combined years of wisdom represented by them, but it is not inconsiderable. They have all raised a red flag. None of them has said they are opposed to reauthorization of an Export Administration Act. All of them assume we are going to do this. But all would like to do so in a way that accommodates both interests. These Senators simply are not of the view that we have had the opportunity to do that yet.

I spoke to the issue of timing a moment ago. There is another reason I think it is unfortunate that the legislation is brought up right now. Not only is it not critical that it be done this week or even this month, I am fearful that having this kind of debate at this time could very well send the wrong signal to China. China is very much in the news today. It holds our reconnaissance aircraft. It improperly held American crewmen for 11 days. Its pilot wrongly and accidentally endangered the lives of our crew members, in the process of which he lost his own life. China has been making extraordinarily belligerent comments in recent months. It has continued to hold and has arrested people, some of whom are U.S. citizens or relatives of U.S. citizens, without much explanation, and it has acted very negatively to the U.S. response to these actions.

This is all in the context of a buildup of military might across from Taiwan, accompanied by threats that if Taiwan does not negotiate its return as a province to mainland China, there is a possibility that China would use force

against Taiwan to achieve that reunification.

This is all quite troubling, and it is a circumstance that requires great care on the part of the United States. We want to live in peace with China. We expect we are going to be able to do that for decades and decades. We would like very much to have good trading relationships with China. But we also understand that there are some tensions in our relationship.

Part of the reason for these tensions is, I suspect, misunderstanding between the leaders of our two countries—misunderstandings, frankly, between the peoples of our two countries. It is frequently said we just do not understand the Chinese well enough and we do not deal with them very well as a result. I suspect the converse is true as well. So there is a great deal of talk about sending messages. I think it is important for us not to send the wrong messages.

I think in this regard the President was masterful in his handling of what was a serious crisis. A country was improperly holding U.S. citizens. The President, in a very understated but very firm way, was able to effect the return of our people and I hope not send any negative messages and in fact send some pretty positive messages, at least designed to elicit cooperation from China.

He was very sensitive, in other words, to the notion of what kind of messages were being sent. He sent another message when he decided to sell defensive arms to Taiwan—arms necessary for Taiwan's defense in the face of an attack by the PRC. That has grated on the PRC. And they reacted publicly to it. But he was very candid and clear about obligations of the United States in this regard. Again, he sent the right message: We mean you no harm. Obviously, we want to avoid conflict.

The best way to do that is to ensure that Taiwan can defend itself because, obviously, we wouldn't want the PRC to be tempted to engage in any kind of belligerent activity toward Taiwan.

Messages that are sent are very important. My fear is that by acting on this legislation at this time, whatever we end up doing, we are going to end up sending the wrong message. To the extent that this debate boils down to a question of whether or not those who are in favor of enhancing trade prevail over those who are involved in trying to preserve our national security—a very false dichotomy—but to the extent that is the way it is played—and it will be played that way by the media—we send a very bad message to our friends in China. It is a message that trade trumps national security. That is wrong. It would be an incorrect interpretation. But that is a message that I guarantee you will be in the headlines and in the papers to the extent that people pay attention to this debate.

I am trying to bend over backwards not to characterize it that way. The people who are sponsoring this bill are very interested in national security, and they believe they have crafted a bill that meets national security requirements, as does the administration.

There are others who very much believe in free trade and expanding our trade with China but who believe there are additional changes that need to be effected in this legislation and that it can best be done before the bill is brought to the floor for the amendment process.

It will be a wrong message, but it will be, nonetheless, a message that will be delivered, and I guarantee you that the longer this debate goes on the more of us are going to be called by the talk shows. They are going to call, for example, the Senator from Wyoming and myself. They are going to say: Will the two of you debate trade versus national security? Both of us are going to say that we really do not want to debate this issue in those terms because that is a false dichotomy. But that is the way it is going to be interpreted. It would be the wrong message at this crucial time in our sensitive relations with China. China represents only something like 1 percent of our trade and much less than that relates to dual technology.

In some sense, this whole question about what kind of export controls to put on dual technology items is much overblown. It is not nearly as important as a lot of people would have us believe. We are not talking about an amount of trade that is going to affect the U.S. economy, or even any specific segment of our economy. We are talking about a very small number of items.

I happen to agree with the authors of the bill that there are many items that can be decontrolled. That is the word we use. It is now possible because of the evolution in technology to take items that were at one time deemed to be sophisticated off the list because they are simply no longer state of the art, and they are no longer all that useful if applied to military weaponry.

That is one of the features of the bill that I think is good. I think we all agree with that. But I also think it would be a big mistake to assume that just because the cold war is over there is no longer any concern or shouldn't be any concern on our part and any justification on national security grounds for controlling the exports of technologies which have dual uses; that is to say, both civilian uses and military uses. It would be just as wrong to characterize the proponents of this legislation as believing in that.

There is a middle ground. I think one of the problems with the legislation that has not been adequately addressed is the fact that a new regime has been

introduced. The regime is that if these items are readily available, either domestically or on the foreign market, then they are no longer subject to the same kinds of stringent controls that they were before. That something has a dual application to both civilian use and military use, by definition virtually everything that we are concerned about will, therefore, have applicability because it will be available either in the United States or on the foreign market for civilian uses, and, therefore, for military uses as well.

That is the definition of dual-use technology, and that is the concern we have. The mere fact that something is available to be purchased in the United States or abroad for civilian purposes doesn't necessarily mean we should forget about any kind of restrictions with respect to its export, irrespective of whether its export might result in its use in military equipment that could be used against the United States. It doesn't mean that at all.

Yet because of provisions of this bill, it is going to be very difficult to regulate the export of items which one can argue are available either in the United States or abroad.

Why is that argument so important?

When it comes to U.S. military equipment, we have always had superior technology, and while it is possible that a particular item might be available in another country—I am just speaking hypothetically. But let's say the French manufacture it, the Israelis manufacture it, and maybe the Germans manufacture it as well as the United States. It doesn't necessarily stand true that all of those items are equal and that purchasers of those items are indiscriminate with respect to from whom they buy it. If that were the case, it wouldn't much matter unless the U.S. products were a whole lot cheaper. These other countries are going to be able to export their products, in any event.

The truth is that in most cases, even when U.S. products are more expensive—in some cases much more expensive—they are the items that are sought because other countries understand that for various reasons the U.S. product is superior. Some of these products have intelligence components associated with them. They know that in certain cases other countries have certain capabilities with respect to that equipment that makes their use suspect. Not so with the United States. They know they can buy these products from the United States and have no worry about being compromised through their use. They cannot be so sure with respect to the very same item that they might buy from someone else.

Just because an item is available someplace else doesn't necessarily mean that it is comparable, or that the United States should allow our product

to be exported even when we know that its use will be embedded in military equipment and it could be used against the United States in the future.

That is part of the problem. While the legislation itself grants to the President, and only the President, the ability to waive certain of these requirements, even the President is limited. He can only do it three times. He can only do it for 6 months at a time, and after 18 months even he can't control the item or require an export license for it.

There are some significant concerns that I think we have to be aware of before we just necessarily assume that because we are all for free trade—and most of us are for free trade—therefore, we ought to adopt this legislation.

The very fact that the President just this week announced the arms sales to Taiwan because of the threat that China poses to Taiwan should give us some pause. China is the same country which bought fiberoptic-cable technology items from American companies and then was found to have helped the Iraqis imbed those fiberoptic cables in Iraqi air defenses causing the United States enough concern that in February the President ordered U.S. jets—and British jets accompanied ours—to carry out airstrikes against those very same Iraqi air defense systems. It was because of the upgrade through the installation of the fiberoptic cable provided and installed by China.

Fiberoptic cable is a dual-use item, and it is of considerable strategic importance. Its export to China is permissible under Senate bill S. 149. Let there be no mistake, fiberoptic cable not only increases the amount of data that can be transmitted, virtually exponentially, but it is also extraordinarily difficult to intercept signals in fiberoptic cable as opposed to, for example, through microwave transmissions or through regular copper wire.

This is an item that is in clear use all over the United States. You can buy it on the market. But when it is applied to certain kinds of military uses, such as military equipment, it can become very dangerous to the United States. We have actually taken action against it for that very reason.

Why should we liberalize its export to countries? If Iraq could have gotten that equipment and China could have gotten that equipment from anywhere else in the world, why didn't they? They buy it from the United States because we have the best products. If we deny that for military use to countries in the world that we do not want to have it, then they are going to have to accept an inferior product, one which presumably, at least, hopefully, we would be able to deal with much better than our own particular product.

Let me try to also put in perspective what all the bill relates to. There are literally thousands of items on the list

of dual-technology materials or services that could be, in effect, decontrolled through this legislation. I certainly do not have time to go through all of them. Let me give you some ideas of what some of these are. I have a very lengthy report which, given the time, I will be happy to go through in some detail because I think it is most illustrative in relation to those who believe there is not much of a problem. One of my colleagues said that you can buy it all from Radio Shack. The truth is, you cannot buy all this from Radio Shack. Yet it has enough availability to escape the requirements of an export license.

We talked about the Chinese company that helped Iraq outfit its air defenses with fiberoptic equipment. This results in high-speed switching and routing. That equipment is all provided by U.S. companies which, by the way, would like to sell some additional items, various communications technology, to the very same Chinese firm that provided this technology to Iraq. Is that what we want to be doing? I am not so sure. I think we want to think about this very carefully.

We ought to have the ability to deny an export license for this kind of dual-use technology to a company such as the Chinese company that bought it in this case. Yet under this bill these technologies would be determined to have foreign availability because of their marketing abroad, and they would meet the mass market criteria in the bill. Therefore, unless the President himself exercised the authority that I talked about, they would be eligible for export.

That is a very recent example. Let's go back to look at some other examples. There were news stories at the time of ball-bearing grinders purchased from the United States. Since then, there have been quite a few public reports, although much of it is classified. But the fact is, in the 1970s the Soviet Union purchased ball-bearing grinders from the United States ostensibly for its use in civil industry. It used them, in fact, to produce pin-sized bearings for use in the SS-18 guidance system.

The SS-18 is the most fearsome weapon on the Earth today—a nuclear-tipped intercontinental ballistic missile. These ball bearings are crucial to produce the guidance system capable of ensuring the very high degree of accuracy which this missile possesses. Those are the missiles that could incinerate every American living today. The guidance systems are perfected because of the ball bearings produced by equipment that the United States sent.

These precision machine tools and ball bearings are controlled by the Commerce Department under the authorities granted by the Export Administration Act. But under the legislation pending here, these items would be available to foreign sources. The bill

prohibits export controls on them unless the President is able to set aside the determination. And he can only do that for 6 months at a time.

Submarines have to be quiet in order to be effective. The advantage of United States submarines is that they are the quietest submarines in the world. The other side cannot detect them, and we can pretty much go where we want to at will.

The dual-use technology control list contains numerous technologies that can be used to make submarines quieter. This technology is, to some extent, available from foreign suppliers. Its export should be regulated to prevent nations such as China from freely purchasing it from American companies.

While foreign submarine manufacturers such as Russia and Sweden have made great strides in submarine technology, we think U.S. technology is superior, and it is unique to U.S. submarines, and, if nothing else, its export could compromise the vital capability of U.S. submarines.

There are those in Government who also like to talk about something a lot more mundane. I am choosing examples almost at random, but this caught my eye: a variety of devices that can be used to torture prisoners.

We are now talking human rights, folks. These devices that can be used to torture prisoners—some of which are as mundane as electric prods and shock batons and shackles, and so on—are controlled for export due to human rights considerations. You can get these on the open market. If you are a bad guy, and you go shopping for them, you can find them somewhere in the world.

Should the United States be selling them to countries that we know engage in human rights abuses? That is the kind of consideration that distinguishes America from many of the rest of the nations of the world. We just do not sell equipment and items to other countries that we know will be used to hurt people improperly, even though that equipment can be obtained from other places.

It is perhaps a small point, but I think it makes a big difference. Even if people can buy something from someplace else, it is not necessarily a good idea for the United States to be selling it, again, partially because of the signals that we send.

I may, if I have a little time later, also discuss in greater detail about technology that relates to the production of nuclear weapons, nuclear reactors, tritium plants, fissile material, liquid and solid propellant rocket engines, chemical and biological processing equipment, encryption software, flow-forming machines for a variety of production applications. All of these are items that are on the dual-use control list.

I am going to talk a bit about maraging steel and gas centrifuges in

just a moment. But suffice it to say, on this list there is page after page after page of items that have dual uses; that is to say, perfectly permissible civilian uses and also very sophisticated and, in some cases, very dangerous military uses.

The question is, just because you can buy them for civilian purposes, should the United States be allowing the export of these items, without some control, to nations of the world that we believe would or could use them against us?

In some cases, we use the export control regime for the purpose of not prohibiting the export but providing some conditions on it or limiting it in some way. Part of the ability to calibrate what we allow to be exported is lost as a result of the specifics of this legislation.

I am sure my colleagues would agree with me—those who are supporting this legislation—that in some cases we may want to ultimately grant the export license but to have certain conditions on them.

One of the conditions we have had in the past, for example, has to do with who the end user is. There are some fairly well-known cases of situations in which we thought that the end user was a civilian entity, and it turned out not to be the case. I have in mind two cases. One of the cases is where McDonnell Douglas—a very prominent company; a company that was formerly in my State, as a matter of fact—thought it was selling machine tools for the manufacture of civilian aircraft, and it turned out it went to China for the production of military aircraft.

We also had some very sophisticated computers that we did not want to go to a military end user in China. It went, I think, to a research institute. But it ended up in the wrong hands. My recollection is, in that case, because of some limitations we had put on the export license, we were able to pull it back.

There are cases where if you have some ability to regulate the specifics of how the license is granted, you can actually prevent items from falling into the wrong hands.

I haven't talked about computers yet. We know that high-performance computers are one of the main areas of contention here because the evolution of the technology is so rapid now that something that was really leading edge a year or 18 months ago is relatively passe today, overtaken by much more high speed and capable computers. U.S. computer technology exceeds that of all foreign competitors, yet our manufacturers argue for more and more liberal ability to export, to the point that the Clinton administration, for all practical purposes, eliminated controls on high-performance computers without any compelling evidence that reasonably comparable foreign systems

were seriously sought by foreign customers.

That brings up another question. There isn't any real definition in this bill of what we mean by "availability." It is a very subjective term. One wonders why or how it is that we are going to judge something to be available. If the market that they really want to buy from is the U.S. market, then maybe the availability of a so-called comparable foreign product isn't as great as we might think it to be. That is an element that needs a further look.

There is a very interesting example that was pointed out by Gary Milhollin of the Wisconsin Project on Nuclear Arms Control. He noted that high-precision electronic switches needed to detonate nuclear weapons would be decontrolled under the act because of their civil application in medical instruments. I believe this device is used in the lithotripters, the equipment now that can actually blast apart gall stones so you don't have to painfully extract them from an individual. They are blasted apart and taken out like little bits of sand. The electronics of that are the very same electronics that are used in the nuclear detonation components of weapons.

Similarly, he points out that glass and carbon fibers are used in ballistic and cruise missile construction as well as in the enrichment of uranium for nuclear weapons and that they could be decontrolled because of their use in the manufacture of skis and tennis rackets and boats and golf clubs. We have heard recent reports in the news about the possibility that different countries—Iraq comes to mind—might be buying some of these items off the shelf in fairly huge quantities. Everyone asks: Why would they be buying so many of those? The speculation is, of course, that it just might be because they want to apply them to one of their military uses.

I mentioned maraging steel before. This is a very special kind of steel that is used in the manufacture of solid rocket motor cases, propellant tanks, and interstages for missiles as well as in the enrichment of uranium. It would be decontrolled because its application in commercial rocketry and also the fact that in many forums it is available in other countries. There are many other items.

I will summarize a couple: Corrosion resistant valves used in the enrichment of uranium for nuclear weapons; they are also used in the commercial paper, energy, and cryogenic industries. This is a list of pretty deadly serious military applications of items that nonetheless would be decontrolled under this legislation because of their applicability to civilian uses as well.

I talked in the beginning about a concern I had that this legislation is being debated at the wrong time. I

hope I am not, by articulating this list of items—and again, we can talk about a lot more—leaving the impression that there is no role for the approach of this legislation to get rid of a lot of items on the list that have both civilian and military applications. The legislation moves in the right direction because there are a lot of items that don't need to have this kind of regulation. There are some that do. The question is, have we discriminated properly in drawing the dividing line between those that do and those that do not?

There is another provision of this bill that has to do with another way we can judge whether or not something would be automatically exempt from the export control regime. It has to do with how much value an embedded component has. On the surface, you would say, what difference should that make? If you have a very highly classified component and it represents only, let's say, 10 percent of the cost of an item, simply because it is only 10 percent of the cost of the overall item, should that mean that the entire item is decontrolled and another country has the ability, then, to reverse engineer the entire component so that it can take out the part that is highly classified?

That is what this legislation allows. It says that if only a certain percentage of the value is in this very highly controlled component, you can go ahead and sell it. There is sort of a presumption that it can't be all that big a deal if it is only a small percentage of value—10 or 25 percent. A case that I don't think is included in this legislation, because of action that the Congress took last year to take it out of the Commerce Department and put it back with the State Department, but which obviously we had to act on or it would have been, is the case of rocket motors. I shouldn't say rocket motors, rather, the so-called kick motors that are in many cases embedded in satellites. These are very highly classified items. We take a satellite that we want to launch, and when it is kicked into its final orbit by this little motor, it can actually perform the way we want it to perform.

In the case of China, for example, the Chinese have made it a condition for some companies doing business in China that those companies allow China to launch a certain percentage of the satellites that they want to launch. So those companies, in order to do business in China, have to agree to that, and they have. These satellites are supposed to be under the control of Americans at all times because they are very sophisticated. We don't want them to fall into the wrong hands and to be reverse engineered. We don't want our technology to be stolen from them. That certainly applies to an item such as the kick motor embedded in the satellite.

We recall that a couple years ago there was a great deal of evidence of

the fact that certain American companies had allowed satellite launches in China without adequate security, the result of which was that we believe there was some compromise of American technology by the Chinese. It is not only the kick motors. There are other components, too. Had Congress not acted last year to retrieve those satellite items from the Commerce Department and put them back on what was called the munitions list, where the State Department would have the authority to require license, we wouldn't have had the same degree of control over them that we do today. This is the kind of thing that can happen.

Again, the timing is wrong here because we are forced to talk about situations involving China over and over and over again. I don't particularly care to do that. This is a time when it would be nice if we could kind of lower the rhetoric and try to develop a relationship with China which very clearly states our goals and tries to deal with China in a way that doesn't result in more belligerency on their part.

By the authors of the legislation being insistent on bringing it up now, some of us have no choice but to use examples that are, unfortunately, very real examples of where we believe that sensitive technology has been either sold to or acquired by China in ways that this legislation would not prevent. I wish we didn't need to talk about that at this time, but since they are very real examples, we will talk about them. Again, I hope the message isn't misunderstood. This is not about either having trade or national security. The authors of this legislation agree with me and I with them that we can do both. We have to do both. We will do both. But this will be portrayed as trade trumping national security. That would be a mistake.

With the indulgence of my colleagues, I will continue now to discuss some of this other technology that I mentioned would be impacted by this legislation. I talked before about maraging steel. Here are some of the countries where this product is of particular interest. This, again, is the high-alloy steel that has very high yield strength. Pakistan has used it for uranium enrichment centrifuges; India for its polar satellite launch vehicle; Russia and Iran, special alloys for missiles.

I talked before about the bearings and gas centrifuge. There are military applications for high uranium production, and there is some evidence that China has sold this technology to Pakistan for the production of nuclear weapons in Pakistan. The centrifugal isotope separation plant, equipment and components, the military applications: Russia's uranium isotope separation plant has played a significant role in warhead production. The plant is

primarily a centrifuge enrichment facility, and it has produced about 40 percent of the Soviet Union's enrichment uranium. I talked about explosive detonators earlier.

Aluminum alloys is another very interesting case. This is obviously very useful in rocket technology and missile technology for casings. China has developed a welded aluminum alloy used in the design of the torpedo hull. It manufactures aluminum alloy casings. India is manufacturing heavy-duty aluminum alloy extruded composition and has conducted studies on this that are very significant relating to its satellite launch vehicle.

All of these are items that would be impacted by this legislation. The ceramic composite materials are a new and increasingly important kind of material because they don't conduct electricity. Therefore, they have some very unique military applications. They have been used in ballistic missiles and reentry vehicle antenna windows, for example. They are produced, by the way, by companies in France, Germany, India, Japan, Russia, as well as the United States.

Laminates: Again, missile parts are often made from these other kinds of materials. Composite structures and laminates are materials used in rocket systems, including ballistic missiles and space vehicles, and they are produced in a whole variety of countries, including the United States.

There are military applications to something called crucibles. These are used to melt and reduce and cast uranium and plutonium for nuclear explosive devices. I realize when I read these, people may say: Wait a minute; we are not talking about just putting these things on the open market. What I am saying, folks, is they would be items that are no longer controlled under the dual technology control regime under the old Export Administration Act, which everybody would like to see reauthorized, with some changes. Because of the liberalization under this act, these items, in effect, become decontrolled.

In the early 1990s, for example, the U.S. was licensed to sell a significant volume of this equipment for making crucibles for high-performance furnace systems. It found its way to Iraq and to Iraq's nuclear missile and chemical weapons program, and for its nuclear weapons design and research center. This particular item at that time, because of a law that existed, was stopped by Presidential order. That would not be possible today if this legislation were to pass.

Guidance sets for missiles—you might think this is pretty technical stuff that we should not be selling on the open market. But there are items here that have dual uses. So ballistic missile guidance sets are often built to fit into a particular missile to be used

in a hostile environment, and it would perform with a high degree of accuracy. It could have both civilian and military uses. They are produced in a whole variety of countries, in addition to the U.S.

There are services as well as products—and I will not go into all of these. We are not just talking about the military applications of specific pieces of equipment. We are also talking about certain kinds of services showing people how to do certain kinds of things.

We talked about propulsion systems and components. Here are some of the military applications of that. On one occasion, they were disguised as automotive spare parts on the airwaves of a certain country and were destined for Libya. This was very recently, by the way. Some of the paperwork indicated that the seized shipments had already reached Libya, I might add.

The China Aerospace Science and Technology Corporation, which was sanctioned by the U.S. in August of 1993 for missile proliferation activities, designed and researched propulsion systems, among other things. Russia aided Iran with the design of guidance and propulsion systems, some of which found their way into the Shahab 3 and Shahab 4 ballistic missiles for Iran. There are a variety of examples that I can give you.

Reentry vehicles—we are familiar with those—for both commercial and military applications. These, too, would be subject to the provisions of this legislation.

And I hate to talk about China again, and I wish we didn't have this debate right now. Chinese engineers were arrested for trying to steal some blueprints from a plant in the Ukraine. Yet these very items would be subject to sale because they are produced by a variety of countries and have dual applications.

Without getting into a lot of detail, I will indicate the nature of some of these other activities or products. Propellant additives, propellant control systems, propellant production equipment, radar software—you can easily understand why that could be a dual item—radiation-hardened computers. The applications here for military use are obvious.

Ramjet engines: The military applications there, I think, are fairly obvious; rocket motor mounts and sounding rockets as well. These all have to do with space, and also aircraft, such as airborne radar, navigational systems, depleted uranium, fly-by-wire flight control. Obviously, that is the way our commercial aircraft is now designed. It is also a very important military design. We have various kinds of noise reduction and acoustic mounts and valves and other kinds of things that are used in quieting for the Navy, primarily.

Precision tracking systems: We are all familiar with how we are able both

in civilian and military applications to precisely track using the global system. Yet many of those items would also be covered by this legislation and no longer require license: side-looking airborne radar, sonar signal processing equipment, underwater breathing apparatus, wind tunnel applications.

Mr. ENZI. Will the Senator yield for a question?

Mr. KYL. Yes.

Mr. ENZI. Mr. President, is the Senator aware that we are not doing away with the control list and any item on the list continues to stay on the list unless it goes through the process? Is the Senator aware that we have added country tiering so that rogue states are taken care of that way?

Mr. KYL. Yes. Is China defined as a rogue state in the legislation?

Mr. ENZI. It could be.

Mr. KYL. But it is not.

Mr. ENZI. It doesn't say any particular state.

Mr. KYL. I answer the Senator that I am aware that the items are not automatically decontrolled. But by virtue of what I talked about before—and I think the Senator was here—because of availability for commercial purposes, the items will also be available under the dual technology regime that is contemplated by the legislation.

Mr. SARBANES. If the Senator will yield, the legislation specifically gives the President the authority to continue to control any item. I don't think the items the Senator is listing would be mass market items under this legislation. But even if one or a few were to be sold classified, the President has the authority under this legislation to deny that category and to continue to control the item.

Mr. KYL. First of all—

Mr. SARBANES. I don't understand.

Mr. KYL. Does my colleague want an answer to his question?

Mr. SARBANES. There are examples that happened under the previous regime. This bill will actually improve the regime.

Mr. KYL. The Senator has mischaracterized what I said. I pointed out a couple of instances in which these items got into the wrong hands in the past. But under the previous law, we had the ability to pull them back. I did cite some examples. We would not have that authority under the legislation as the Senator has written it. Moreover, I am perfectly aware that many of these items would not necessarily be mass marketed. Yet every one of them would be subject to the definition of availability, foreign availability, or U.S. availability.

That is precisely why I picked these items because under any reasonable definition, you would have to say, yes, those are available someplace. Now, if the Senator is telling me some of those look serious and I don't think we would want to consider them available, then I

say we have to be more careful about how we draft this legislation.

On that point I agree with the Senator, but as to the first point, the Senator raised the suggestion—I heard it made several times: The President has the authority to waive this. No, the President does not have the authority to waive this. The authority is very constricted. The President, and only the President—as if he did not have anything else to do—can three times for 6 months only, for a total of 18 months, waive the applicability of that section.

Mr. GRAMM. That is not right.

Mr. KYL. That is absolutely correct, and I would be happy to cite the provision of the legislation. To think it is going to work very well—

Mr. SARBANES. Would the Senator do that for us?

Mr. KYL. To think it would work very well to have a regime in place where the President is going to have to continually be waiving its requirements I think is going at it the wrong way.

Therefore, while it is important for any President to have a waiver component—we frequently have national security waivers of one kind or another—if you set up the presumption that it is going to be sold and require only the President to stop it, you are going to be putting a pretty big burden on him. In the past, the presumption has been effectively the other way. Part of this is due to the fact that there is no really clear way of defining availability. I talked to that before the Senator arrived.

Mr. President, my colleague from Wyoming may wish to join in this. If so, that is perfectly fine with me. I stand corrected. The authorization for this current extension of the EAA runs through a date in August—August 31?

Mr. ENZI. August 20.

Mr. KYL. Not October. We will either have to pass a resolution extending the date beyond that, which I presume would be relatively easy to do, or act on the reauthorization of the EAA in some form prior to that time.

Frankly, that is fine with me. As I have said now several times, the effort of the Banking Committee to rewrite this legislation in light of changed circumstances in the last decade is a laudable effort, and there are a lot of changes that need to be made in the legislation. There is no argument about that. That, frankly, is what President Bush campaigned on and what he said he was for. That is perfectly appropriate.

We are talking about details. It is evident that reasonable people—or at least I hope the chairmen of these committees would be deemed to be reasonable; certainly my friends in this administration are extraordinarily competent on these matters. I believe with a little bit of time reasonable people

will be able to resolve whatever differences exist. I know some are not quite that sanguine about those prospects.

I also am aware of the fact that the administration has an idea which is a good one. That is, not everything in this regard ought to be put in the legislation itself, which can become relatively inflexible. As we have seen, it is a little bit harder to change than an administrative action. Therefore, the administration has in mind developing an Executive order that would implement this legislation and related legislation in such a way as to provide the President with a little more flexibility to handle particularly those situations that arise very quickly.

The shelf life of some of the equipment we are talking about is very short, and therefore sometimes there may be a need to act with alacrity. Under the provisions of the bill, it may be too slow, though they intend to speed it up.

There are also intelligence considerations which I cannot go into at this point, but they, too, can be dealt with by means of an Executive order.

I applaud those members of the administration who raised this as a possible way of dealing with some of these issues. The fact is they have not had time to do this, and I fully appreciate that. Those of us who have concerns about the legislation would very much appreciate the opportunity to await the drafting of that order. As I said, I suspect that will remove many of the concerns some of us have just about the bill itself.

That said, I go back to the point I made in the beginning, which is, this is the wrong time to bring up this legislation.

I also, again with some trepidation, make the following point: Some of my colleagues have said: Look, bringing it up now actually helps you because you are able to talk about a situation that has rubbed the American public pretty raw these days, and that is a belligerent and overly hostile China. In fact, China has obtained a lot of its technology in the past, not all of it properly so, as pointed out before. So actually this is a good time to bring this up because you will be at your strongest in arguing we should not be passing this legislation right now when it could only make it easier for China to obtain this equipment.

At the same time, some of these folks say: Look, this legislation is actually tighter; it is more strict; it is more conservative than ever in the past. We are actually tightening the law; we are enhancing national security. Mr. President, you cannot have it both ways. It is my view the legislation is not tight enough, that it could result in technological acquisition by countries that would use that technology against the United States and that we do not want

to do that; there are ways to prevent that.

Our argument is over some relatively narrow points. If we appreciate that, then we can also appreciate that it is possible to come together on those, come to closure on those without necessarily engaging in a great long public debate which I really do not think serves anybody's purpose at this point in time, especially given the circumstances that exist with respect to our current relationship with China.

My hope is the authors of the legislation on this Thursday afternoon will say, all right, let's talk about this for a little bit, get a date certain to bring up the legislation, and see what additional fixes are needed, if necessary, and get additional amendments that might be offered so we can persuade colleagues, if there are certain changes to make, we can do that and take it up at a time when perhaps nerves are not quite as raw.

Frankly, I fully expect the administration to engage at that point in time because they have a great deal of expertise and they are all people whom I know people on this side of the aisle respect a great deal. So we will be taking their views very much into consideration.

That is my hope. I hope our leadership will focus on elements of this President's agenda of which everybody on our side of the aisle is very much in favor, including this tax cut and education proposals.

By virtue of the fact I had to be on the floor, I missed discussion of the tax proposals that I very much hoped to attend because we are trying to put together the final package that will effectuate President Bush's campaign promise of tax relief for all Americans. I hope we can take that up next week. If not, we will take up education reforms next week and take the tax bill up the week after that.

If we are stuck debating the Export Administration Act, all of that gets delayed. That is not good for the American people. My hope is the authors of the legislation will be willing to work with us and defer this until we take care of these other items that are a little bit more important, in my view, and then come back to this with plenty of time to do it prior to the time the authorization expires. If need be, we can clearly do a temporary resolution extending the time of the EAA until we are able to act upon it later this year.

With that, I relinquish the floor at this time.

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from Wyoming.

Mr. ENZI. Mr. President, I need to answer some of the items that have been raised. I appreciate the Senator correcting the date on which the present extension of the EAA runs out. I know that confusion came from me. I am involved in another bill with a sun-

set at a later date, and I mentioned the wrong date. August 20 is the drop-dead date on the Export Administration Act.

Can we extend it again? It was extended last time under a unanimous consent agreement in both Houses. That won't necessarily happen again. Unanimous consent is not the easiest thing to get. We were running out of time under appropriations last time and believed that was an appropriate action to take. However, it is not necessarily the same action that will be taken again.

We are running out of time to solve the export administration problem. Education will be coming to the floor. I am on the Health, Education, Labor, and Pensions Committee. We did the education bill. It actually went through committee faster than any other ESEA bill of which I am aware. Normally it takes a couple of weeks for debate. It went through the committee in 2 days. Normally the bills come out of that committee along party lines. It came out unanimously. There are still details on which to work.

I think we will have an Elementary and Secondary Education Act reauthorized shortly. I would not want to stand in its way. However, it is not ready or we would be debating that now. There are still details being worked out.

That leaves a window. It was mentioned that taxes need to be debated. I am one of the proponents of the tax cut and have been working steadily to get that and would not stand in the way of a tax cut. However, the tax cut isn't ready for floor debate. It will be.

Education will be ready. Taxes will be ready. And then something else extremely important to this country—appropriations will come out. We have to pass 13 appropriations bills. That is supposed to be over by October 1, but that usually takes us well into October, sometimes into November. That is past October 20, without an opportunity to do this extensive debate that is purported to be needed.

One of the things we have done is killed 4 hours—not really “killed” because everybody needed to make their statement and get their stance out on the Export Administration Act. I am glad we have done that. From this point forward, the time we are taking is time we could actually be debating these amendments.

I have had some Members on the other side say, we know what will happen to those amendments. That is how education works around here. If you don't have the majority of the vote, you lose on your amendment. There is a point to which people see amendments as being reasonable and helping national security, but there is a point where they see it as stopping all trade.

There is a balance. We still intend to be a country that has a good econ-

omy—not just a country that is militarily capable of being the best in the world. This bill has been a deliberate and timely attempt to reach that kind of situation.

What we need is the amendment suggestions through the debate process. I submitted the list earlier. It is in the RECORD. You can look at all the meetings we have had—probably not all of them, but the ones we recorded as having. Those produced the suggestions in this bill.

Now a perfect bill will prevent any law from being in place. There isn't such a thing as a perfect bill. When I was legislating on the State level, as well as here, I had a pretty good idea when I was holding hearings on a bill that there was somebody in the audience who knew a loophole to that bill and they were not about to share it until they had taken advantage of it. However, we hope to catch as many of those as possible when it is being considered. That is why we have 100 people, we have 100 different opinions—at least 100 different opinions from 100 different perspectives contributing to a bill.

When we debate whether we go ahead and debate, we are not making any progress toward a final solution.

On the China issue, there probably isn't a time that could be more sensitive. But the ones who are talking about greater security than what this bill provides would have it to their advantage to talk about it because of the timing of the situation with China.

We don't have any problem debating it. We don't have any problem considering amendments to this bill, even in light of the China situation. The reason we don't is that we are sure we have addressed those issues. If we missed something, we need to know about it and take action.

Everybody keeps saying there are a very small number of items that need to be regulated. How do we go about doing that? Give me a suggestion if you have one other than the way we are doing it.

There was a comment that there is a new regime, that we are talking about things readily available in either foreign or mass markets; that these other countries have access to all of those things and we will give up all of our control. Not true. We have tried to address keeping control in every possible way. There still will be a control list. We didn't get rid of the control list. The wording in the bill says any item that is controlled now will continue to be controlled until the committee makes a decision otherwise. So if it is controlled now—and a bunch of the items mentioned were controlled and were against the law, but they were done anyway.

How did somebody get away with that? I imagine things will still be done illegally no matter what kind of bill we

pass because we don't handle ethics and morals; we just handle the law.

One of the problems we have under the law is, for about a 6-year period we did not have sufficient findings to get anybody's attention of the fines and penalties and prevention, more so than beating somebody up after it happens—although that has to be there for the bad actors.

We have a number in this bill that will get people's attention. For those people who are talking about this bill not having enough security, the last version, the one we could have done at the end of last year, had penalties that were twice as big, but we were asked to reduce those to get them more reasonable, to make it closer to what the munitions list has. If anything ought to have fines and penalties to get the attention of people, it ought to be the munitions list. We would not agree to go to that low a level.

In fact, there is even jail time involved in this one. I think some of the those things are needed to keep people's attention. So we have tightened up the bill.

We talked a little bit about Iraq. We have to trust that the administration will rate Iraq as one of those countries that should get a very poor rating under the tier system—the worst. I suspect they will. I will not dictate which ones ought to be the bad guys and which ones ought to be the good guys. I have been contacted by a number of countries that wanted to be specifically mentioned in the bill as one of the good guys. I said: No, the administration makes that decision based on your relationship with the United States and your involvement in making and selling weapons of mass destruction. We have some criteria by which you are considered a good country. I have no doubt the administration will adequately do that rating on those countries.

That is something brand new, too. We did not have the tier system before. Now we have a tier system so countries that are adverse countries will not get items. We have a control list so that items we do not want people to get they cannot get. So some countries are going to be prohibited both for being on the control list and being a country to which we will not sell that kind of item. I do not know how you could make it tighter than that.

Then—and this was at the suggestion of the people who are asking we not be allowed to go ahead and debate this motion—that the President be able to have total control over absolutely any item that can be sold. This is a Presidential enhanced control. Yes, it says the President has to do it. We know the President will get a suggestion from somebody along with all the backup reasoning on why it ought to happen. Some of those decisions will be pretty pro forma. I do not think we are talk-

ing about a huge expenditure of time on the President's part. On those items that are really a national security issue, I hope the President is personally and timely involved.

But the President can control absolutely everything. How much documentation, how much review does he have to do? That is for a little transparency, so we know what is being controlled. But the President is the ultimate authority on all of it. We have given him that constitutional right. We have now put it in writing.

We also have some extra control authority, which are on page 183 of this little document that is on every single desk for the end use and end user controls. And then the most important paragraph, the enhanced controls. So if somebody has a suggestion on how to make it tighter than that and still be able to sell to our allies the things that we want our allies to have that would be beneficial to them and to us, tell me how to do that; present an amendment.

Of course, we cannot present an amendment until we get past this debate about how long we are going to debate about whether we get to debate.

I have been here before on this bill. I have to say it is a lot easier to defeat a bill than it is to pass a bill—I noticed that through my legislative career, as well as my senatorial career—because if you create a little confusion, confusion goes a long way.

We have heard a lot of confusion. I think we can address everything that has been mentioned to this point. We can show where it has been covered in the bill. But it is easier to defeat a bill. I have to say in the Senate it is even easier than that because we have this thing called filibuster and that is where you stop the motion to proceed and have people debate on whether to debate for a long period of time.

I understand the other side understands how many people there are who have been working on this bill, been involved in this bill, who will vote for this bill. If we file cloture, we will get cloture. It is just a long process and a way of delaying it. But it is a route that can be taken.

We had the signatures for that last year but ran out of time. I only mention this time again to get back to the original point, which is August 20 is when the bill runs out. If we have not solved it by that time, we may not be able to solve it. So I ask that we get past this motion to proceed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, reluctantly I rise to differ with my good friend from Wyoming. I come from the perspective of chairing the Readiness Subcommittee of the Senate Armed Services Committee. I have looked carefully at some of the problems over the last 8 years in a couple of respects.

First of all, we are dramatically and grossly underfunded in most of our accounts for our military relative to the threat that is out there. We have gone through a difficult time with China and hopefully it is coming to an end now. If we go back to 1995 when we started getting some of the very first comments made by the Chinese that have been very threatening to the United States, it was during the elections not long ago in Taiwan when the Chinese were demonstrating their missiles in the Taiwan Strait and the statement was made "we are not concerned about the United States coming to the aid of Taipei because they would rather defend Los Angeles." That is at least an indirect threat.

Most recently there have been statements made from more than one high Chinese official saying war with America is inevitable. Over the last 8 years, we found that half of our nuclear secrets—we had a total of 16—were compromised during the Clinton administration, 8 of them were compromised prior to the Clinton administration. We found out in 1999 that way back in 1995 the other 8 nuclear compromises took place. There was an informant who came in, in 1995, and informed us these compromises had taken place. This was covered up, I am sorry to say, by the administration until the Cox report discovered it and released it in 1999, 4 years later.

We look at those things that have taken place, the transfer of technology to the Chinese, and we now see a massive military buildup by the Chinese. This is the same country that is saying war with America is inevitable. We know they made some purchases of SU27s and SU30s. They will have aircraft that is better and more modern air-to-air aircraft than anything we have in our arsenal, including the F-15. We are looking at a percentage of their budget that is going now to buildups. We also know they have virtually all—at least those 16—of our nuclear secrets.

We have been facing also, during the Clinton administration, the signing of waivers. In order to make it easier to transfer technology, they took the waiver process out of the State Department and put it into the Commerce Department, only to reverse that later on when we found out that many of the transfers had taken place.

We remember regretfully the time President Clinton signed a waiver to allow the transfer of guidance technology that was produced by the Loral Corporation. That is something that would be very dangerous for the other side to have.

Considering what little we do have left in terms of technology, I cannot imagine a worse time in our Nation's history to be making it easier to transfer technology from a pure national security standpoint than right now. So I

am hoping my colleagues will look at what has happened over the last 8 years, look at what has happened over the last 2 weeks, and come to the conclusion that maybe this is a good idea for sometime in the future. It is not a good idea for this time.

I yield the floor.

Mr. ENZI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. THOMPSON. Mr. President, we have had considerable discussion about the President's authority under this proposed legislation. The point has been made that we have a fail-safe provision—that the President can always intervene and stop some item from being exported that should not be exported. But I think if you examine the legislation, you would have to conclude that through this legislation the drafters have made it difficult for the President to intervene and step in under those circumstances even in matters that constitute a threat to the national security.

If you look at section 212, which gives the President the right to set aside the foreign availability status—as you recall, under this legislation, something that heretofore has been controlled required a license. If there is a determination made by the Commerce Secretary that it is a matter of foreign availability under the criterion that they come up with, it will be decontrolled. They will be able to send it to China, Russia, or any of the other what have been tier III countries in times past. But there is a provision in here that the President can step in and exercise a set-aside.

Here is what the set-aside language says. It says if the President determines that decontrolling or failing to control an item constitutes a threat to the national security of the United States, and export controls an item which advances the national security interests of the United States—I will skip some of what I don't think are particularly pertinent provisions—it says the President may set aside the Secretary's determination of foreign availability.

Then it goes on to say that the President may not delegate the authority provided in this paragraph.

In the first place, we make it so that the President and only the President must deal with this matter, considering all the matters that he has to deal with, especially as I would again point out while he is trying to build his administration and while he is trying to get his people in place.

Then the act goes on to say that the President shall promptly, if the President chooses to use their nondelegation authority, notify the Congress. He shall promptly report any set-aside determination as described along with any specific reasons for the determination to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations in the House.

In other words, if the President chooses to intervene for reasons of a threat to national security, he must justify that to the Banking Committee and to the Committee on International Relations in the House. Then he must publish the determination in the Federal Registry.

That is not all the President has to do. Then the President has to engage in negotiations with foreign powers. It says in any case in which the export controls are maintained on an item because the President has made a determination under subsection (a), the President shall actively pursue negotiations with the governments of appropriate foreign countries for the purpose of eliminating such availability.

It may be a desirable thing. It might have been a desirable thing to negotiate with foreign countries even before somebody wanted to export something under this act to get them to try to do the right thing. But do we want to require the President to enter into negotiations with foreign countries? I assume we can do that under the separation of powers doctrine, if we choose to do so. But it is a rather significant step—all, again, under the rubric of the conditions that the President must comply with if he is going to step in and exercise this authority that we say he has to stop something from being sent abroad that constitutes a threat to the national security of this country.

That is not all the President has to do. It says he then has to report to Congress. Not later than the date the President begins negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Development of the Senate and the Committee on International Relations in the House of Representatives that the President has begun such negotiations, and why the President believes it is important to the national security that the export controls on the items involved be maintained.

Again, the President is required not only to enter into negotiations but to justify to the Senate Banking Committee and to the International Relations House Committee as to why he thinks this is important. But that is not all that we impose on the President if he wants to intercede on behalf of national security because of a threat to the Nation.

There is a periodic review of determination provision. It says the following:

The President shall review a determination described in subsection (a) at least every six months.

Here he has made this determination that this item constitutes a threat to the national security, and now he must review it every 6 months. Promptly after each review is completed, the Secretary shall submit to the committees of Congress a report on the results of the review together with the status of international negotiations to eliminate the foreign availability of the item.

Again, the President has to make the review every 6 months. Then the Secretary has to go back to the committee and give them a report about the review, and then the status of negotiations. The President, through his representative, has to give the committee a status of these negotiations that have been imposed on the President.

But that is not all we require the President to do in order to intervene on behalf of national security.

There is an expiration of Presidential set-aside time. It says the determination by the President described in subsection et cetera shall cease to apply with respect to an item on the earlier date—that is 6 months after the date on which the determination has been made—or if the President has not commenced international negotiations to eliminate the foreign availability of the item within that 6-month period; B, the date on which the negotiations described in paragraph 1 have terminated without achieving an agreement to eliminate foreign availability; C, the date on which the President determined that there is not a high probability of eliminating foreign availability on the item through negotiation; or D, the date is 18 months after the date on which the determination described in subsection et cetera is made if the President has been unable to achieve an agreement to eliminate foreign availability within that 18-month period.

In other words, after setting up all of these obligations on the President, in order for him to intervene on behalf of national security because of a direct threat to this country, the determination that has been made will go away and the thing can still be shipped unless he complies with the provisions I just read—if at the outside it is an 18-month time period, unless he can report back that they have concluded their negotiations successfully.

So then it says:

Action On Expiration Of Presidential Set-Aside.

Upon the expiration of a Presidential set-aside under paragraph (3) with respect to an item, the Secretary shall not require a license or other authorization to export the item.

Then we get to the final point. If the President, after going through this process, has not followed each of these items in any way, then the item is still

shipped even though he originally made a determination that it constituted a threat to national security.

My point is this. I do not particularly object to any particular provision. I have not thought about it enough, quite frankly. I did not realize yesterday we were going to be having this debate in this much detail. But my point is this. Clearly, we are making it kind of tough on the President to intervene on behalf of national security, even when there is a threat to the national security of the United States.

He is going to look at this—and somebody on his behalf, hopefully, will look at it beforehand—and look at the onerous requirements, including entering into negotiations with foreign countries, reporting requirements time after time to congressional committees and certifications, in effect, as to what they are doing, giving up-to-date reports on how negotiations are going.

The President has to make the determination himself because under the act you cannot delegate. He has to do it himself. This is a burden on the President. While it is true that the President, under some circumstances, can intervene on behalf of national security, it is not an easy path for the President to take. That has to do with regard to matters of foreign availability status.

There is another section—I am not going to put you through the entire section 213, but there is another section called the “Presidential Set-Aside Of Mass-Market Status Determination.” So even though there is a determination that an item is mass marketed in this country:

If the President determines that—

And I am reading from the provision—

decontrolling or failing to control an item constitutes a serious threat to the national security of the United States, and export controls on the item would advance the national security interests of the United States, or [et cetera] the President may set aside the Secretary's determination of mass-market status with respect to the item.

Why it requires a threat to national security under the foreign availability set-aside, and a serious threat to the national security for the mass-market status determination, I do not know. But there is that distinction.

So here, even more than was applicable in the preceding discussion we had, it focuses our attention on a matter where the President of the United States could make a determination that something is a serious threat to the national security and still “[i]n any case in which export controls are maintained on an item . . . the President shall promptly report the determination.”

He must give reasons for the determination to the committees that I just mentioned and “shall publish notice of

the determinations in the Federal Register not later than 30 days after the Secretary publishes notice of the Secretary's determination that an item has mass-market status.”

The President shall review a determination made under subsection (a) at least every 6 months.

Here is a President who has made a determination that something is a serious threat to the national security of our country, and we, as a Congress, require him to review that because we want to make sure the President did not make a mistake and say something was a serious national security threat when it was not, presumably. He is required to review it every 6 months. I quote:

Promptly after each review is completed, the Secretary shall submit a report on the results of the review to the Committee on Banking, Housing, Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

So, again, my point is not that there is anything intrinsically wrong with any particular part of what I just read. It is that clearly this legislation is designed to make things more easily subject to export. It is clearly designed to decontrol even to the point where we give the President authority to step in. We are setting up several steps for the President to go through over a period of time before he can do that.

So I want to make sure anyone who might be listening to this understands that, yes, the President can step in under some circumstances with regard to certain determinations but that he cannot snap his fingers, and he cannot pick up the phone, he cannot write out a memo; he has to go through a procedure that is a long-drawn-out procedure involving several steps if he wants to do that.

One of the things we are going to have to ask ourselves when we deal with this in a little bit more detail is whether or not, in matters involving a serious threat to this country, it is so important for us to lower the export standards that we are not willing to give the President a little more leeway, that maybe even if he justifies it to Congress and we do not agree with him, are we not willing to give the President perhaps a little more leeway in making a determination that under the words of the statute is a serious threat to our national security?

That is a serious question. That is one question that we are going to have to answer. That gets back to why we are in this Chamber today. We are still on a motion to proceed today. That is why we do not believe it is appropriate to notify us 24 hours in advance, and to try to push for a resolution of this matter in such a short timeframe, when amendments have not been fully drafted, when the Executive order that the administration is working on has not been drafted.

These are serious matters, serious questions. I may be overly concerned about what I just talked about. I am not sure. I have not had a chance to really digest it. All I know is that it is not enough to say that the President can step in and, lickety-split, there is no problem; he has taken care of the problem. It is not that simple at all.

Mr. KYL. Will the Senator from Tennessee yield for a question?

Mr. THOMPSON. I am delighted to yield.

Mr. KYL. Apart from the steps the President has to take if he is going to obtain this national security waiver, so that the item would be controlled, how long does that order last? And isn't there a limitation so that he can only issue that three times, for 6 months at a time, after which the President no longer has any control? In other words, the longest period of time he can control an item is 18 months. And after that, even the President has no authority.

Mr. THOMPSON. That gets back to the provisions in subsection (3) (A) (B) (C) and (D) on pages 200 and 201 in the document I think we are all looking at. It talks about the expiration of the Presidential set-aside. It says: “A determination by the President described in subsection (a)(1)(A)(i) or (ii) shall cease to apply with respect to an item. . . .” and it sets up conditions under which it ceases to apply with respect to the earlier of several dates. The Senator is right, there is an 18-month maximum period.

If some of these things happen earlier than 18 months, it would cease to apply then, as I understand it.

Mr. ENZI. Will the Senator yield for a question?

Mr. THOMPSON. Yes, I will.

Mr. ENZI. I am beginning to see the problem. We have ignored page 183 which is the section that, when we went through those extensive negotiations, we added that supersedes all of these 18-month, 6-month paragraphs about which we have been talking. Those are options. But undoubtedly the option the President would take would be the one on page 183, which allows the President to override anything in section 204, which are provisions that deal with components we have heard about earlier, and 211, which is the foreign availability and mass market status determination. This is a much easier section for him to use.

It does mention significant threat, but the President gets to determine significant threat. Nobody has the right anywhere in this bill to override whatever the President thinks. There is a reporting requirement, but that is all it is. He reports to the committees that have some jurisdiction on foreign availability and mass marketing. It doesn't say that the committee can challenge anything he says.

There is no recourse for the Congress other than knowing that he did it, and

we asked for the transparency through the process. That paragraph overrides, at your request, the sections on foreign availability and mass marketing. I was hoping that had taken care of the problem and was of the understanding that that did eliminate the problem.

Mr. THOMPSON. This is very good, if I may respond. We did indeed talk about this. I was interested to see whether or not it was your view that this provision you just described did in effect override what I just read. If so—and I ask the Senator if he will agree with me—are these pages I have been discussing with regard to criteria for Presidential set-aside under 212—does that not make those requirements under 212 superfluous or irrelevant, and in what case would 212 apply when the enhanced controls provision would not apply?

Mr. ENZI. We had the language in section 212 in the versions when we were discussing it before. The President could use that. It is a mechanism. We thought that that provided Presidential control, even before we had our discussions. But we were specifically asked for sections 204 and 211, that we do something that was more overriding and more comprehensive, and we did.

Mr. THOMPSON. But 212 is not discretionary. The language of 212, and in certain important respects, requires the President to do certain things—the President shall actively pursue negotiations, et cetera. So if the language remains there, it is mandatory language, and it seems there might be some inconsistency there. I am wondering whether or not one of the things we might talk about is maybe paring this thing down a little bit in terms of some of this language in that it does appear—if my friend agrees that the enhanced control provisions are overriding. It does appear that this language would be superfluous and, if it remains, would be contradictory. I am wondering if perhaps that would be the basis of some discussion.

Mr. ENZI. It wasn't our intent to make it contradictory, but it was language that was already in there. The request was to override those sections, and we did that by putting in another one. Perhaps there could be a way to address this.

Mr. THOMPSON. With all due respect, I suggest there is more to it than that. It is not a matter of shortening it or making it more difficult. We have one provision here that says the President can intervene and override, in effect, if he goes through several steps, including negotiating with foreign countries. Then we have another provision—although the standard is a little bit different—that lets him do the same thing without going through all those steps.

Mr. ENZI. The criteria you mentioned of foreign availability is current law. That is what the President is forced to do at the moment.

Mr. THOMPSON. I am not saying I necessarily object to any portion of this. I am saying there is an inconsistency here.

Mr. ENZI. We were trying to get the administration, whatever administration it was, to work more on multilateral controls because everybody agrees that multilateral controls have more impact than unilateral controls. That is why we were encouraging the President to negotiate with the other governments to get them to fall in line on the controls so that we would have an effective multilateral control process as well. That was covered in the report we put out last Tuesday.

Mr. THOMPSON. Well, I understand it might be desirable for the President to do that. For my part, I would rather leave it up to the President to decide when he wants to negotiate with foreign leaders on these matters.

I will also suggest that when the President makes the determination under this enhanced control provision, that you just pointed out, that an item on one of these lists would constitute a significant threat to the national security, he ought to be given quite a bit of leeway. It might be a good idea to negotiate with foreign leaders; it might be a good idea to do a lot of things. We have to ask ourselves how many hoops we want the President to jump through if, in fact, he makes a determination that it constitutes a significant threat to national security.

I am not trying to negotiate the details of the bill with my friend today. This is one of the benefits of discussing this today and one of the reasons we are not ready to put a bill to bed. I don't claim to have all the answers to it. I haven't had a chance to think all the details through. But I believe we really need to ask ourselves how many hoops we want the President to have to jump through before he can exercise some authority when he makes a determination that there is a significant threat to the national security.

All these requirements I read a while ago having to do with the President negotiating, with reporting to Congress, having the thing expire—it even expires under that set of provisions—that is greatly different from the enhanced control provision that doesn't put any of those requirements on him if he determines that there is a significant threat to national security.

We don't want a court 2 years from now having to be the one to decide what we meant when we drafted this legislation. We need to decide here in this Chamber, after thorough debate and consideration, just exactly how that ought to be worded and whether or not we want to have what appears to me to be inconsistent provisions in the legislation.

I thank my friend for his comments. It is the basis for some discussion, as far as I am concerned, in an attempt to

reach some resolution. I was not aware we were going to debate all the details. I welcomed the opportunity to have done that. The issue before us today is whether or not this is the right time, in the midst of everything that is going on in the country right now and everything that is happening internationally, to choose to signal to the world that we want to liberalize our export policies with regard to dual-use, high-tech, military-related items when we know the primary beneficiary of it is going to be China.

It is not a good time, and that is the reason I join my colleagues in opposing the motion to proceed. I do look forward, when we have had a chance to draft our amendments and hopefully have had a chance to look at the administration's Executive order that is supposed to fill in some of the areas that are a little bit sparse, to coming up with an Export Administration Act that is reauthorized but one that does what the Export Administration Act was designed to do—not to balance commerce with national security but to protect national security and do those things that are reasonable.

Nobody is intent on trying to protect things that are unprotectable. Nobody is intent on basing the legislation on yesterday's technology. Everybody knows that the world has changed. But that does not mean we should, without very careful consideration, change a policy we have had in this country for decades in terms of controlling those kinds of items and go to something that might sound reasonable and logical: The genie is out of the bottle; they can get it anywhere else; our friends will sell it to them; we might as well sell it to them. I am not there yet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I wonder if the Senator from Wyoming might respond to a question I have. As I read the bill, the section that he cited before, which relates to an override of sections 204 and 211, does not apply to section 213. Section 212 has to do with foreign availability, 204 deals with incorporated parts and components. The mass marketing section is 213.

As I read the President's authority under enhanced controls in that section the Senator referred to, on page 183, it deals with sections 204 and 211 only.

Mr. ENZI. Section 211 covers both foreign availability and mass market status. You are talking about the set-aside of the mass market status.

Mr. KYL. So the significant threat override authority would apply to any of the three items that we just talked about—mass marketing, foreign availability, or component parts; is that correct?

Mr. ENZI. Yes.

Mr. KYL. I thank the Senator.

Mr. ENZI. We are hoping that adequate information will be given to the Senate for their oversight and their understanding of what is going on. We have always wanted that.

Mr. KYL. I thank the Senator for his information.

Mr. McCAIN. Mr. President, I join Senators THOMPSON, SHELBY, KYL, and other members in objecting to the rushed consideration of the Export Administration Act of 2001.

This legislation, which governs the exports of sensitive technology to overseas buyers, has critical ramifications for American national security. Republicans in Congress rightly raised grave concerns over the Clinton Administration's export control policies, which had the appearance of being linked to campaign donations, and which we know improperly enhanced Chinese and Iraqi military capabilities. This Republican Congress, and our Republican Administration, must ensure that our national security controls on sensitive exports prevent powerful technology from falling into the hands of those who would do America harm.

This bill does not yet meet that threshold. Since the beginning of this year, six Senators, including Senator KYL and the Chairmen of the Armed Services, Foreign Relations, Intelligence, Governmental Affairs, and Commerce Committees, have sought and continue to hope to work with the sponsors of this bill, and with the Bush Administration, to ensure that S. 149 strikes the proper balance between our country's commercial and national security concerns.

I will save my specific, technical concerns about this legislation for the full floor debate on this measure, whenever it should occur. At this time, let me say that the bill's restrictions on presidential authority to regulate national-security related exports, the enhanced role given the Secretary of Commerce in the national security decision-making process, and the liberalization of exports of all goods, however dangerous to U.S. security interests, that may be otherwise available for sale in the United States or overseas pose problems that need to be resolved before the Senate can properly address this legislation.

As Chairman of the Commerce Committee, and as a strong supporter of free trade, it comes as no surprise to me that American businesses dominate world markets and have propelled the Information Age. Unlike businesses, however, we in this body have responsibility not only for the prosperity of this country, but also for its security in an uncertain and hostile world.

Let's be clear, far less than 1 percent of total U.S. exports fall under the jurisdiction of the EAA. Within that small proportion of exports that are sensitive, we have an obligation to ensure that these goods are appropriately

controlled so that the peace and prosperity we enjoy are not threatened.

Have no doubt, our enemies, be they foreign nations or terrorist groups, have no qualms whatsoever with buying dual-use American products and putting them to military use. In this time of peace, let us work to sustain the dynamism of our economy while safeguarding our people by striking the right balance between the commercial and national security provisions in this bill. We have much work to do. That is why I join my distinguished colleagues in objecting to consideration of this measure until we have had the chance to prepare amendments and continue our work with the Administration to improve the bill.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I don't want to interrupt the flow of debate. I have a matter I would like to discuss that doesn't pertain to the matter before us. I see my good friend from Virginia. He may want to comment on this debate. If that is the case, then I will yield for this discussion to go forward, since I don't want to necessarily interrupt the flow.

Mr. WARNER. Mr. President, I have joined my colleagues for the purpose of contributing to the debate at hand. I think maybe I need 10, 12 minutes. Much material has already been covered. I don't wish to be redundant, but there are some points I would like to make.

Mr. DODD. I am happy to yield to my colleague from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I reflected, as I approached the Chamber, that in my 23 years in the Senate, I don't know if I have ever opposed my leader on a motion to proceed. But, reluctantly, I do so this time because of my fervent belief that the views I have and share with a number of my colleagues are in the best interests of our Nation's security. With that in mind, I have tried for over 2 years to work with my distinguished colleagues, who have been speaking for some time, to resolve disputes within this legislation.

These disputes 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—most particularly technology related to weapons of mass destruction.

On many occasions over the past year, I have joined others and have thought that we were close to obtaining a resolution on how to proceed on this bill. But each time, details have derailed us, regrettably, and those details indeed have overwhelmed the ability to compromise. I say "details," but I think they are very important points.

My goal has been to strike, together with others, the proper balance be-

tween national security and commercial interests. This is a complicated issue that cuts across the jurisdiction of six committees. Five committee chairmen with the responsibility for national security matters in this country are together on this issue. I think that carries a subtle message in and of itself.

We have continuously expressed opposition to this bill in a respectful manner. I will not list the others because they are in the RECORD in the course of this debate. In addition, Senator KYL, although not a chairman, has taken a leading role. He has sort of been the "Paul Revere." Each time this matter is approaching, he sounds that alarm and we respond.

This is an effort that requires careful thought and deliberate action. All of our committees should be united in an effort to reform our export control laws. If we do not obtain that type of unanimity—and I say this respectfully to my good friend from Wyoming and my good friend from Texas—we could be doing a disservice to our country.

At the present time, I believe it is premature to move this bill through the Senate, for two very good reasons: First, we need to give the administration, our new President, sufficient time to provide Congress with the promised details on how it plans to implement this legislation. I know full well that it has been stated—and I believe it is factually correct—that the administration has contributed a number of suggestions—which I think is 21—in the Banking Committee. The distinguished manager of the bill is present, and they have incorporated all of those. But when I look at it and listen and talk with the administration, those areas in which we have special concern are to be brought forth in an Executive order.

Very simply, we are just saying allow time for the administration to do the Executive order. Otherwise, we risk spending a lot of time on the floor with amendments if we should go ahead with the bill and proceed in addressing issues that may be better left to the discretion of the executive branch.

Secondly, moving this bill at this time without establishing consensus sends a wrong signal and could complicate a very difficult and tenuous policy toward China, which is still evolving. I cannot think, therefore of a worse time to pass legislation that could result in an increase of exports of high technology to China. I think we should listen carefully to the people in this Nation on this issue. This China policy is not just reserved to the bureaucrats in Washington—I say that respectfully—the executive branch and the Congress. The people of this Nation have very deep-rooted concerns about our relationship with China, and this subject goes to the very heart of those relationships.

I have serious reservations about bringing up the bill at this time, as I

said. We are still awaiting specifics from the administration on how it will implement this bill. We need to give the administration enough time to respond to our inquiries and deliver on their promises of additional information.

The administration reviewed this bill at the request of myself, Senators MCCAIN, SHELBY, THOMPSON, HELMS, and KYL. We had one meeting with the National Security Adviser on this issue. While the review was conducted without the benefit of working level political officials in place with responsibility for export control issues, I am confident the administration did the best it could given the timeframes and the people with whom they had to do the job.

Based on this review, the administration came up with a series of legislative changes that the Banking Committee included in its bill. This was a positive step, and I commend them. I support it, although I would have preferred this review take place with the benefit of the full administration package; that is, these amendments that have been adopted, together with other commitments that they have made to Congress on other issues.

More remains to be done. We have not received specific comments or recommendations from the Department of Defense. That input, in my judgment, is critical. The Banking Committee's bill, including the changes made to the bill at the request of the administration, provides for even less protection for national security than changes proposed to us by the last administration.

When the National Security Committee chairmen of the Senate were briefed on the results of the administration review, we were informed at that time that an interagency agreement had been reached on how the administration would enhance national security controls during implementation of the bill. We were then informed that the national security protections that we have sought would be included in an Executive order that would implement S. 149.

Despite several inquiries on the part of my staff and others to get the information that we sought, we have not been able to get any specifics on what is in this interagency agreement or what might be in the Executive order.

This information is critical in helping this Senator, and I think to not only the team we have put together, but many others, in order to make an informed judgment on this important piece of legislation.

Therefore, I most respectfully urge our majority leader and sponsors of the bill to wait until we have more information from the administration about how it intends to implement the national security protections.

Many of my concerns, as well as those of my colleagues, may be allevi-

ated by the details of the administration's implementation plan.

If, however, we do not get an answer from the administration in a reasonable amount of time, I urge the majority leader to chair a working group of interested members to work to clear as many amendments as possible prior to taking the legislation up on the floor, so as not to waste a great deal of time.

At this time, in the absence of additional information from the administration, I have fundamental concerns with this bill. This bill continues the trend of dismantling our export control structure. During the height of the cold war, this Nation had a carefully formulated and carefully crafted export control process. There was a consensus—both here at home and with our allies—that we needed to protect our Nation's technology. The bottom line: It must never be used against us.

This consensus has broken down with the end of the cold war. Technology is proliferating, and this bill will continue that trend. If our pilots are shot down over Iraq or put in harms' way due to enhanced communications and computing technologies that enhance Iraqi air defense capabilities, we need look no further than to the lack of will and leadership over the last decade to control this technology. While this proliferation of technology may be inevitable, we need to understand the implications of any decision that leads to freer trade in advance technology. With that understanding, we then must do whatever it takes to protect our soldiers, sailors, airmen and marines as they face these new threats.

Since the fall of the Berlin Wall, we have witnessed a slow demise of the cold war consensus on export controls. I make three observations:

First, we have seen a dramatic liberalization—primarily through Executive orders of successive Presidents—of export controls. We are only controlling about 6 percent of what we controlled during the height of the cold war.

Second, because of the decline in defense R&D, technology innovation is primarily advancing in the commercial rather than the defense sector. This makes dual use export controls covered by the EAA even more critical in protecting our national security.

Finally, as a result of both of these developments, we are witnessing the global spread of advanced technology that was once solely in the military realm. This threat will require a significant investment in defense capability to counter.

Simply put, our export control policy has gotten out of balance. The Export Administration Act before the Senate, as currently drafted, tips the balance even further toward meeting commercial needs versus national security needs. There is a predominant emphasis in this bill on export decontrol, without, in my judgment, an adequate

assessment of the national security impact of that decontrol. The bill now gives the Commerce Department the predominant role. I believe that this must be brought back into balance with enhanced DOD authorities and discretion. As now drawn, this bill also unnecessarily limits the President's discretion to control items for legitimate national security reasons.

At a minimum, we must address in this bill:

No. 1, the need to protect militarily sensitive technology. DOD and the intelligence community need to be able to protect sensitive technology from falling into the hands of potential adversaries. Technologies which, if proliferated, would undermine U.S. military superiority must be controlled. The national security agencies must be able to block any decontrol or export that might harm national security now or in the future. For example, hot section engine technology and other technologies that DOD and the intelligence community consider critical need to be protected.

No. 2, the need to enhance the role of the Secretary of Defense and the intelligence community in the export control process, given the limited amount of items we are now controlling, and provide for a workable national security waiver for the President. At a minimum, the concurrence of the Secretary of Defense should be required in matters relating to which products should be controlled, the process for reviewing export licenses, the rules for any interagency dispute process, and regulations implementing dual use export controls; and

No. 3, the need to ensure that the national security impacts of any proposed decontrol are well understood and articulated before decontrols are allowed to proceed. This assessment should be based on how this technology can be used as part of, or to develop, a foreign military or intelligence system or capability. Ongoing assessments need to be made to assess the cumulative impact of decontrols and the proliferation of technology.

This last point is critical. Congress needs to look at the impact on national security of export decontrol and the global diffusion of technology. We need to assess the degree of technology proliferation that is occurring and the risk that our adversaries will use this technology to gain some type of asymmetric advantage over our forces. Global technology proliferation could put at risk our military superiority. Future historians may look back on the rapid decontrol and leakage of western technology as the biggest national security lapse of the post-cold-war period.

I also want to ensure that unnecessary restraints on the ability of the private sector to compete in the global marketplace are removed. It is in our

interest that U.S. businesses are able to maintain their commercial and technological edge over foreign competitors. However, when hard decisions must be made, national security must always be the paramount consideration.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Connecticut.

Mr. DODD. Mr. President, I came to speak on an education matter, but I have enjoyed the last 45 minutes. I thank my colleagues from Tennessee, Virginia, and Arizona. I serve on the Banking Committee and have great respect for my colleague from Wyoming who chairs the subcommittee that deals with these issues.

The committee had extensive hearings going back into last year. The Senator from Wyoming deserves a great deal of credit—I know my colleagues share these views—for his tireless efforts to bring forth a bill that reflects not only the desires of exporters, but also takes into consideration the very important national security issues that our colleagues from Virginia, Tennessee, and Arizona have raised this afternoon.

The committee sent out this bill in March after seven different hearings with extensive testimony. I have been supportive of this effort.

I say to my colleague from Virginia, that he raises some very good points. This is not a debate that is going to attract nightly news attention. It can get rather detailed, as the Senator from Tennessee pointed out when he started talking about various provisions and what is intended by them.

As I listened, I clearly heard the spirit with which my colleagues raised these concerns, and they are concerns to which we should all pay attention. I know my colleague from Wyoming does. I, for one, thank them. I do not know what is going to happen with the debate. I hope my colleagues can address some of these concerns. Some amendments may be necessary. I suspect they will get broad-based support.

So, I came over to give a speech about education and I got educated, myself. I thank my colleagues, and I appreciate the points they raise. They are very valuable. The point raised about China is worthy of valuable note.

Mr. WARNER. Mr. President, I thank the Senator for his courtesies as always. It is a very simple equation. The bill got the attention of the administration. It is a new administration. Secretary Rumsfeld, for example, has in place today only three persons who have reached the full confirmation process and are now sworn into office. Six more have been processed by the advise-and-consent procedures of my committee and will come before the full Senate next week.

The administration is struggling to put together this highly technical re-

sponse. I think they should be given a reasonable period of time before we plow into a legislative process in this Chamber.

Mr. President, I thank my colleague.

Mr. DODD. Mr. President, I thank my good friend and colleague from Virginia.

Mr. President, I am not going to take much time. I see my good friend from West Virginia who always has worthwhile information to share with this body. I see my colleague from Louisiana is here as well.

I ask unanimous consent to speak as in morning business.

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

EDUCATION

Mr. DODD. Mr. President, I am here to continue to raise my voice and express concerns about the forthcoming debate regarding elementary and secondary education.

During almost my entire service in the Senate, I have been fortunate to serve on what now is called the Health, Education, Labor, and Pensions Committee.

I have had the privilege of serving with many wonderful Members, Democrats and Republicans, over the years, who have dedicated themselves to improving the quality of public education in America: Senator Pell, Senator Stafford, Senator KENNEDY, the present ranking member, Senator JEFFORDS, the present chairperson of the committee. Each of them deeply committed to seeing to it that this Nation provides our children the best educational opportunities possible. I believe that the Members of the Committee, today, are anxious to continue that tradition.

I do not know exactly when this matter will come before the Senate for consideration, but I am troubled that during the process of negotiation, while we are trying to work out our differences, not all the issues are on the table for discussion.

It has been most worthwhile for us to deal with the issues of accountability. Our colleague from New Mexico, Senator BINGAMAN, has for years championed the cause of the accountability of our schools across America, both as a Member of this body, and earlier as a Member of the other body. He brings to this debate years of experience and knowledge and I am particularly grateful to him for his help.

Over the years, we typically have passed education bills that enjoyed broad support, 90 or 95 votes, to support our elementary and secondary schools. I enjoyed being part of those truly bipartisan efforts.

Every day, about 50 million children attend public schools in the United States. Many of them, through Title I of the Elementary and Secondary Edu-

cation Act, depend on Congress to provide them with resources that they need to help them get the education they need and deserve. Yet, we spend only about 2 cents of every Federal dollar on public education. In my view, we have not been a very good partner with our local communities in helping to improve the quality of education. Another—probably surprising—fact is that the Federal government contributes only about 7 cents to every dollar spent on education. Our small towns, cities, counties, and States provide the other 93 cents education.

So, for all we talk about what needs to be done about public education, we really haven't put our money—your money—where our mouth is. A couple weeks ago, we debated the budget of our country. The great debate was over the size of the tax cut that the President has proposed. Virtually every Member, in fact, virtually everyone I know, believes that a tax cut makes sense given the budget surpluses projected.

But how much of a tax cut? The President wants \$1.6 trillion, based on ten-year economic projections. I don't know of a single economist worth his or her salt who believes that we can project with any degree of certainty what America's and the world's economic situation will be a decade from now. Yet the President of the United States and those who support him on this matter want to spend \$1.6 trillion of this budget over the next 10 years on a tax cut. And, Mr. President, \$680 billion of that \$1.6 trillion, will go to individuals who presently earn more than \$300,000 a year. Over that same period, the President would increase spending on education by \$42 billion, or about one-sixteenth of what he would spend on tax cuts for the wealthy.

I think in that context that we really ought to do better than spending only 2 percent of our budget to support America's educational. The administration and others say that full funding for title I of ESEA, which provides Federal dollars to the most needy school districts in America, is just too costly; that full funding for special education is just too costly; that we just can't afford it. But, we can afford \$680 billion for a tax cut for people who make more than \$300,000 a year which by the way is about twice as much as the Federal, State, and local governments combined spend on education in this country.

I represent the most affluent State in America on a per capita income basis. Some of my constituents want a tax cut. I have represented my State for more than two decades in the U.S. Congress. I am home almost every weekend. I have a fairly good idea of how people in Connecticut feel on issues.

On this issue, the overwhelming majority of my constituents, including those from the most affluent communities, tell me that we don't need this