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Guidance for Industry

The FDA published Good Guidance Practices in February 1997. This guidance was developed and issued prior to that date.

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION

A REVIEW OF FDA'S IMPLEMENTATION OF THE DRUG EXPORT AMENDMENTS OF 1986

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PUBLIC HEALTH SERVICE
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CENTER FOR BIOLOGICS EVALUATION AND RESEARCH
CENTER FOR DRUG EVALUATION AND RESEARCH
CENTER FOR VETERINARY MEDICINE

May 1990

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Division of Congressional and Public Affairs (HFB-140),
Center for Biologics Evaluation and Research,
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-295-8228.

- or -

CDER Executive Secretariat (HFD-008),
Center for Drug Evaluation and Research,
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-295-8012.

CONTENTS

1. **PURPOSE** - This document summarizes the basic requirements of the 1986 Amendments and describes the agency's current practices in implementing those requirements. This guide does not establish legal requirements binding on either the agency or the public.

2. **BACKGROUND** - The Drug Export Amendments Act of 1986 establishes three separate tracks for the export of unapproved drugs and unlicensed biological products. Under Track 1 (section 802(a)-(e) of the Federal Food, Drug, and Cosmetic Act), FDA is authorized to approve the export of new human and animal drugs and biological products that are not approved for marketing in the United States, but have the same active ingredient or ingredients as a product for which marketing approval is being sought in the United States. Export under Track 1 is limited to 21 countries that are identified in section 802(b)(4)(A) of the Act. Under Track 2, FDA is authorized to approve the export of drugs and biological products intended for the treatment of tropical diseases. Export under Track 2 is limited to countries in which the use of the drug or biological product has been determined by FDA to be safe and effective (see section 802(f)). Under Track 3, FDA is authorized to approve the export of partially processed human biological products that are intended for further manufacture in any of the 21 countries listed in section 802(b)(4)(A) (see section 351 of the Public Health Service Act). The exported biological product must be approved, or be in the process of being approved, in the country of destination.

3. **DEFINITIONS** - The following terms are defined solely for purposes of this document:

"Act" means the Federal Food, Drug, and Cosmetic Act.

"Amendments" mean the Drug Export Amendments Act of 1986 (Pub. L. 99-960), which adds section 802 to the act and amends sections 301 and 351 of the PHS Act.

"CGMP" refers to current good manufacturing practice regulations set out at 21 CFR Parts 210 and 211.

"INAD" refers to a Notice of Claimed Investigational Exemption for a New Animal Drug and includes all exemptions granted under section 512(j).

"IND" refers to an Investigational New Drug Application and includes all exemptions granted under section 505(i).

"Marketing application" refers to a new drug application (NDA), new animal drug application (NADA), supplement to an approved NDA or NADA, abbreviated new drug application (ANDA), abbreviated new animal drug application (ANADA), biological product license application (PLA), and an amendment to a PLA. "Marketing application" can also include an establishment license application where such a license is necessary to market a new biological product.

"Marketing approval" means approval to market a new drug under section 505, to market a new animal drug under section 512, or to market a biological product under section 351 of the PHS Act.

"PHS Act" means the Public Health Service Act.

"Section" refers to a section within the Act unless otherwise stated.

4. TRACK 1 - EXPORT OF FINISHED PRODUCTS TO 21 LISTED COUNTRIES

a. GENERAL - An unapproved drug product or unlicensed biological product may, upon FDA approval of an export application, be exported to any country listed in paragraph 4.d. below, if the drug meets the requirements set out in section 802(b)(1). These include the following:

(1) The product contains the same active ingredient or ingredients as a product that has an IND or INAD. The agency has deemed products to have an IND or INAD if such products are covered by an IND or INAD in the sense that they are either the subject of an active IND or INAD or the subject of a marketing application. When an export application is submitted for a variation of an approved drug, for example, a new route of administration or new strength, or for a generic copy of an approved drug, there may be no active IND/INAD because there is no requirement for one. In such a case, the agency has required that a pending supplemental marketing application or ANDA be on file;

(2) Marketing approval in the United States of the product covered by the IND/INAD is being actively pursued;

(3) FDA has not taken final action refusing to approve or license the IND/INAD product for marketing;

(4) The product complies with CGMP and is not adulterated under section 501(a)(1), (a)(2)(A), (a)(3), (c), or (d);

(5) The outside shipping package label states: "This drug may be sold or offered for sale only in the following countries: _____" with the blank space being filled by a list of the countries to which export of the product is authorized;

(6) FDA has not determined that the export of the product is contrary to the public health and safety of the United States; and

(7) The requirements of section 801(e)(1)(A)-(D) have been met.

(b) ACTIVE PURSUIT - The manufacturer of the product covered by the IND/INAD must be actively pursuing marketing approval of its product in the United States. In applying this requirement, the agency has generally sought to determine whether the applicant has shown the degree of attention and continuous directed effort that may reasonably be expected from, and is ordinarily exercised by, a person before approval or licensing of a drug, such as the preparation for and the conduct of preclinical or clinical investigations, the analysis of the results of such investigations, conferences on such investigations with government officials, and the preparation of an application for approval or licensing of the drug.

(1) The Investigational Stage

In instances in which there was no marketing application on file, the agency has determined "active pursuit" based on the status of an active IND/INAD. The agency has considered the following factors:

For a human drug or biological product:

(a) Whether the IND is on clinical hold.

(b) Whether the IND has been inactivated, withdrawn, or terminated.

(c) Whether annual reports for the IND are current.

For an animal drug:

(a) Whether the INAD contains evidence that FDA and the firm are corresponding, that protocol submissions and trial notifications have been made, and that there has not been a considerable lapse of time since the firm's last submission.

(b) Whether the INAD has been terminated.

(2) The Approval Stage

In instances in which there was a marketing application on file, the agency has determined active pursuit based on the activity of the marketing application, without regard to the status of an active IND or INAD. The agency has considered the following factors in determining "active pursuit" in the context of a marketing application:

(a) Whether the marketing application has been withdrawn, and not resubmitted.

(b) Whether the applicant has made timely responses to FDA requests for information or action. FDA will notify the applicant if the supporting IND, INAD, or marketing application is not considered active for purposes of approving an export application.

The agency has informed potential applicants that it will not necessarily require that the export applicant be the holder of the application that supports the finding of "active pursuit." When the export applicant is not the holder of the supporting application, a release from confidentiality may be required from the holder of the supporting application to permit FDA to evaluate the drug export application.

c. RELATIONSHIP OF THE IND OR INAD TO THE TRACK 1 EXPORT DRUG - The Amendments require that the exported drug product contain the same active ingredient as the IND/INAD drug product. The agency has generally taken the position that a salt, ester, or other derivative of an ingredient is not considered the same ingredient, and would expect to do so in applying this provision. The agency will not ordinarily examine differences in inactive ingredients.

d. COUNTRIES TO WHICH AN UNAPPROVED DRUG MAY BE EXPORTED - Under Track 1, export is limited to the 21 countries listed in section 802(b)(4)(A). The applicant must identify the countries to which the drug will be exported. The agency has required that the applicant submit documentation to show that the drug is approved in the countries of destination. FDA may approve a drug for export to a listed country in which the drug is not approved for use, only if that drug is to be re-exported to another listed country where the drug is approved. The listed countries are as follows:

Australia
Austria
Belgium
Canada

Denmark
Federal Republic of Germany
Finland
France
Iceland
Ireland
Italy
Japan
Luxembourg
The Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
The United Kingdom

e. CGMP - The export product must be manufactured and held in compliance with CGMP. The agency will not ordinarily conduct a CGMP inspection to confirm the applicant's certification of CGMP compliance. Compliance with CGMP will usually be determined based upon previous CGMP inspections of the facilities involved. If there has been no recent CGMP inspection, or if there is reason to be concerned about the facility's compliance with CGMP, an inspection may be conducted to verify compliance. If no CGMP inspection has ever been made of the facilities involved, FDA may request that the applicant agree not to export its product until a satisfactory inspection has been conducted. In such case, the inspection will be scheduled and conducted expeditiously. If the applicant does not delay shipment, FDA will endeavor to schedule an inspection so that approval, disapproval, or withdrawal of an approval may take place in a timely manner.

f. ENVIRONMENTAL CONSIDERATIONS - Under FDA's National Environmental Policy Act (NEPA) regulations, the approval of an application to export an unapproved drug or unlicensed biological product is the type of action which requires the submission of an environmental assessment under 21 CFR 25.22. The environmental assessment must comply with the requirements of 21 CFR 25.31a.

g. CONTENTS OF APPLICATION - FDA has developed checklists for the content of Track 1 applications. Interested persons should contact the appropriate reviewing office for specific information on the contents of the application. Review offices are listed in section 7 of this document.

h. APPLICATION TIMEFRAMES - Any person who wishes to export a drug under Track 1 must file the export application at least 90 days before the planned export date. Within 10 days of the date of submission of the Track 1 application, FDA will publish a notice in the Federal Register, which identifies the applicant, the drug proposed for export, and the countries to which it is to be exported.

Within 30 days of the date a complete application (i.e., one containing all required information except the certification described in paragraph (h)(2) below) is submitted, FDA will approve, conditionally approve, or disapprove the application:

(1) FDA will approve an application if it meets all pertinent requirements.

(2) FDA will conditionally approve an application if it meets all pertinent requirements other than the applicant's certification that the drug has been approved and has not been withdrawn from sale in the country to which it is to be exported. When such certification is submitted, FDA will grant final approval within 5 days of the submission of the certification.

(3) FDA will disapprove an application that does not meet all pertinent requirements. FDA will send written notice of the disapproval to the applicant. The notice will enumerate the deficiencies in the application, and give the applicant 60 days to correct the deficiencies.

If the holder of an approved export application wishes to export the drug to additional listed countries, the holder must file an amendment to the application at least 30 days prior to the planned export date. FDA will approve or disapprove the amendment within 15 days of receiving it.

i. REPORTS -

(1) The holder of an export application approved under Track 1 must report to FDA the following: (a) any withdrawal of the drug's approval by the importing country; (b) any withdrawal of the drug from sale in the importing country by the foreign distributor; (c) any withdrawal of the IND, INAD, or application for marketing approval of the drug in the United States; and (d) any receipt of credible information that the drug is being exported from a listed country to a country not listed. All required reports must be sent to the office that approved the original application within 15 days of the occurrence of the event or, in the case of information on export to an unlisted country, within 15 days of the receipt of the information.

(2) The holder of the approved export application must report annually to FDA the actions taken during the previous year in pursuit of marketing approval under section 802(c)(2). All required reports should be sent to the office that approved the original application.

5. TRACK 2 - DRUGS FOR TREATMENT OF TROPICAL DISEASE

a. GENERAL - An unapproved drug or unlicensed biological product may, upon FDA approval of an export application, be exported to any country in which the agency has determined, based on credible scientific evidence, that the product is safe and effective for the treatment of a tropical disease. As in the case of Track 1, the product exported under Track II must also:

(1) Comply with CGMP and with section 501(a)(1), (a)(2)(A), (a)(3), (c), and (d);

(2) Bear on the outside shipping package an appropriate label stating: "This drug may be sold or offered for sale only in the following countries: _____" with the blank space filled with a list of the countries to which export of the drug is authorized; and

(3) Comply with the requirements of section 801(d)(1)(A)-(D).

The drug may not be exported if it is the subject of a notice by FDA that the export of the drug is contrary to the public health and safety of the United States.

Unlike Track 1, there is no requirement that the drug contain the same active ingredient as a drug covered by an IND or INAD and for which marketing approval in the United States is being actively sought.

b. THE CLASS OF "TROPICAL DISEASE" DRUGS - The legislative history indicates that Congress drafted this provision to enable the export of drugs intended for diseases and conditions in developing countries which do not exist to a significant extent in the United States. This was intended to enable the export of drugs that are unlikely candidates for approval in this country because there is not a significant market for the drugs in this country. Thus, the agency would expect an applicant seeking export under Track 2 to demonstrate that its drug is intended for the treatment of diseases or conditions that occur to a greater extent in the tropics than in the United States or have significantly greater health implications in the tropics than in temperate zones. Parasitic infestations such as intestinal nematodes (hookworm ascariasis), trypanosomiasis, leishmaniasis, schistosomiasis, malaria, amebiasis, and filariasis, as well as some microbial infections such as cholera and leprosy, are examples of diseases or conditions that are likely to be considered to fall within the class of tropical diseases.

c. CREDIBLE SCIENTIFIC EVIDENCE - There must be credible scientific evidence, including clinical investigations, that the drug is safe and effective *for its intended use in the country to which it is to be exported.* Thus, the agency would expect the applicant to provide information regarding the needs of, and expected conditions for use within, the country to which the drug is to be exported.

Although the applicant may not be required, in all instances, to provide the same quality and quantity of evidence as required for approval or licensing for marketing in the United States, the agency anticipates that approval under Track 2 will ordinarily be based on data from at least two well-controlled clinical investigations. The investigations will not necessarily have to meet the full requirements for detail and documentation required for approval of a United States marketing application. Studies reported in the scientific literature, which would not ordinarily provide sufficient detail to serve, in and of themselves, as a basis for approval of an application for domestic marketing, may provide support for the applicant's demonstration of "credible" scientific evidence.

d. APPLICATION - An application must describe the drug, identify the countries to which export is requested, identify the establishments in which the drug is manufactured, certify that the drug will not be exported to a country for which FDA cannot determine the safe and effective use of the drug, and demonstrate that all other pertinent requirements of the Act have been met. No time limit is specified in the Act for review and approval or disapproval of the application.

e. ENVIRONMENTAL CONSIDERATIONS - Under FDA's NEPA regulations, the approval of an application to export an unapproved drug or unlicensed biological product is the type of action which requires the submission of an environmental assessment under 21 CFR 25.22. The environmental assessment must comply with the requirements of 21 CFR 25.31a. Applicants may be required to submit data in their environmental assessment on the consequences of the export of the drug on the importing country's environment.

f. REPORTS REQUIRED TO CONTINUE THE EXPORT OF A TRACK 2 DRUG FOR A TROPICAL DISEASE - The holder of an approved export application for the export of a drug under Track 2 must report to FDA: (1) any information concerning the export of such drug from a country approved to import the drug from the United States to any other country; and (2) any adverse reactions to the exported drug. Applicants should view the adverse drug experience reporting requirements set forth in 21 CFR 314.80 as a guide in assessing their responsibilities under Track 2. Details of reporting requirements should be discussed with the appropriate reviewing office.

6. TRACK 3 - EXPORT OF A PARTIALLY PROCESSED BIOLOGICAL PRODUCT

a. GENERAL - A partially processed biological product, which is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man, may, upon FDA approval of an export application, be exported to any of the 21 countries listed in section 802(b)(4)(A) of the Act if it meets the following requirements:

(1) It is in compliance with CGMP;

(2) Its outside shipping package bears a label stating: "This product may be sold or offered for sale only in the following countries:_____" with the blank space being filled by a list of the countries to which export of the product is authorized;

(3) It is not intended for sale in the United States;

(4) It is intended for further manufacture into a final dosage form in the importing country; and

(5) It is approved in the country to which it is to be exported, or such approval is being sought.

FDA will not approve the export of a partially processed biological product if it determines that prohibiting export is necessary for the protection of the public health in the United States or in the country to which the product is to be exported.

b. PRODUCTS NOT IN A FORM APPLICABLE TO HUMAN USE - Export under Track 3 is limited to products not in a form applicable to the prevention, treatment, or cure of human diseases and injuries. In applying this standard, the agency has sought to determine whether the product to be exported requires purification, inactivation, fractionation, or significant chemical modification before it can be used in the formulation of a final product. The agency has required that the applicant provide sufficient information to allow the agency to make this determination. The agency has not allowed a finished bulk product that can be formulated into a finished dosage form through manufacturing steps not involving purification, inactivation, fractionation, or significant chemical modification to be exported under Track 3. Products for which such processes are not required prior to final product formulation may be eligible for export under the provisions of Track 1.

c. CGMP - The partially processed biological product must be in compliance with CGMP. The agency will not ordinarily conduct a CGMP inspection to determine compliance. Compliance with CGMP will usually be determined based upon previous CGMP inspections of the facilities involved. If there has been no recent CGMP inspection, or if there is reason to be concerned about

the facility's compliance with CGMP, an inspection may be conducted to verify compliance.

d. EXPORT APPROVAL PROCESS - FDA will promptly review and act on each complete application.

e. ENVIRONMENTAL CONSIDERATIONS - Under FDA's NEPA regulations, the approval of an application to export a partially processed biological product is the type of action which requires the submission of an environmental assessment under 21 CFR 25.22. The environmental assessment must comply with the requirements of 21 CFR 25.31a.

f. CONTENTS OF APPLICATION - FDA has developed a checklist for the content of Track 3 applications. Interested persons should contact the Center for Biologics Evaluation and Research (address in section 7 below).

g. REPORTING REQUIREMENTS - The Amendments provide no reporting requirements for Track 3. The agency will inform the public in a timely manner of any reporting requirements established for products approved under Track 3.

REVIEW OFFICES

Persons desiring more specific information should contact the offices listed below. Areas of responsibility are determined by the type of product that is to be exported, and not the track under which the product is to be exported. For example, Center for Biologics Evaluation and Research personnel would be contacted regarding export of biological products under Tracks 1, 2, and 3.

FDA is also making available checklists containing detailed information on the contents of export applications under Tracks 1 and 3. These checklists are intended to help applicants in completing applications. They are based on the type and quantum of information the reviewing divisions have found to be sufficient in the past. These checklists are not, nor are they intended to function as, legal requirements, and neither FDA nor applicants are bound by the checklist's contents. Copies of checklists may be obtained from the offices listed below. (Send a self-addressed adhesive label to assist FDA in processing your request.)

For information about the export of a human drug, contact:

Division of Drug Labeling Compliance (HFD-310),
Center for Drug Evaluation and Research,
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-295-8073.

For information about the export of biological products, contact:

Division of Inspections and Surveillance (HFB-124),
Center for Biologics Evaluation and Research,
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-295-8191.

For information about the export of an unapproved new animal drug, contact:

Office of New Animal Drug Evaluation (HFV-100),
Center for Veterinary Medicine,
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-443-4313.

For information about this document, contact:

Steve Unger,
Division of Regulatory Affairs (HFD-362),
Center for Drug Evaluation and Research,
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-295-8046.

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A Review of FDA's Implementation of
The Drug Export Amendments of 1986

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Page i --

Division of Congressional Public Affairs (HFM-11),
Center for Biologic Evaluation and Research,
Food and Drug Administration,
1401 Rockville Pike,
Suite 200 North,
Rockville, MD 20852,
(301-594-1800)

-or-

CDER Executive Secretariat (HFD-8),
Center for Drug Evaluation and Research,
Food and Drug Administration,
7520 Standish Place,
Rockville, MD 20855,
(301-594-1012)

Page 8 --

For information about the export a human drug, contact:

Division of Drug Labeling Compliance (HFD-310),
Center for Drug Evaluation and Research,
Food and Drug Administration,
7520 Standish Place,
Rockville, MD 20857,
(301-594-0063)

For information about the export of biological products, contact:

Division of Inspections and Surveillance (HFM-660),
Center for Biologic Evaluation and Research,
Food and Drug Administration,
1401 Rockville Pike,
Suite 200 North,
Rockville, Maryland 20852,
(301)594-1070

For information about the export of an unapproved new aminal drug, contact:

Office of New Animal Drug Evaluation (HFV-100),
Center for Veterinary Medicine,
Food and Drug Administration,
7500 Standish Place,
Rockville, MD 20855,
(301-594-1620)

For information about this document, contact:

Division of Drug Labeling Compliance (HFD-310),
Center for Drug Evaluation and Research,
Food and Drug Administration,
7520 Standish Place,
Rockville, Maryland 20855,
(301-594-0063)

CHAPTER 1A
FOOD AND DRUG EXPORT REFORM

SEC. 2101. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.-This chapter may be cited as the "FDA Export Reform and Enhancement Act of 1996".

(b) REFERENCE.-Wherever in this chapter (other than in section 2104) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act. (21 U.S.C. 321 et seq.)

SEC. 2102. EXPORT OF DRUGS AND DEVICES.

(a) IMPORTS FOR EXPORT.-Section 801 (21 U.S.C. 381) is amended-

(1) in subsection (d), by adding at the end thereof the following:

"(3) No component of a drug, no component part or accessory of a device which is ready or suitable for use for health-related purposes, and no food additive, color additive, or dietary supplement, including a product in bulk form, shall be excluded from importation into the United States under subsection (a) if-

"(A) the importer of such article of a drug or device or importer of the food additive, color additive, or dietary supplement submits a statement to the Secretary, at the time of initial importation, that such article of a drug or device, food additive, color additive, or dietary supplement is intended to be incorporated by the initial owner or consignee into a drug, biological product, device, food, food additive, color additive, or dietary supplement that will be exported by such owner or consignee from the United States in accordance with section 801(e) or 802 or section 351(h) of the Public Health Service Act;

"(B) the initial owner or consignee responsible for such imported article maintains records that identify the use of such imported article and upon request of the Secretary submits a report that provides an accounting of the exportation or the disposition of the imported article, including portions that have been destroyed, and the manner in which such person complied with the requirements of this paragraph; and

"(C) any imported component, part, or accessory of a drug or device and any food additive, color additive, or dietary supplement not incorporated as described in subparagraph (A) is destroyed or exported by the owner or consignee."

"(4) The importation into the United States of blood, blood components, source plasma, or source leukocytes or of a component, accessory, or part thereof is not permitted pursuant to paragraph (3) unless the importation complies with section 351(a) of the Public Health Service Act or the Secretary permits the importation under appropriate circumstances and conditions, as determined by the Secretary. The importation of tissue or a component or part of tissue is not permitted pursuant to paragraph (3) unless the importation complies with section 361 of the Public Health Service Act.";

(b) EXPORT OF CERTAIN PRODUCTS.-Section 801 (21 U.S.C. 381) is amended-

(1) in subsection (e)(1), by striking the second sentence;

(2) in subsection (e)(2)-

(A) by striking "the Secretary" and inserting "either (i) the Secretary"; and

(B) by inserting before the period at the end thereof the following: "or (ii) the device is eligible for export under section 802"; and

(3) in subsection (e), by adding at the end thereof the following:;

"(3) A new animal drug that requires approval under section 512 shall not be exported pursuant to paragraph (1) if such drug has been banned in the United States.

"(4)(A) Any person who exports a drug, animal drug, or device may request that the Secretary-

"(i) certify in writing that the exported drug, animal drug, or device meets the requirements of paragraph (1) or section 802; or

"(ii) certify in writing that the drug, animal drug, or device being exported meets the applicable requirements of this Act upon a showing that the drug or device meets the applicable requirements of this Act.

The Secretary shall issue such a certification within 20 days of the receipt of a request for such certification.

"(B) If the Secretary issues a written export certification within the 20 days prescribed by subparagraph (A), a fee for such certification may be charged but shall not exceed $175 for each certification. Fees collected for a fiscal year pursuant to this subparagraph shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration and shall be available in accordance with appropriations Acts until expended without fiscal year limitation. Such fees shall be collected in each fiscal year in an amount equal to the amount specified in appropriations Acts for such fiscal year and shall only be collected and available for the costs of the Food and Drug Administration.".

(c) LABELING OF EXPORTED DRUGS.-Section 801 (21 U.S.C. 381) is amended by adding at the end the following:

"(f)(1) If a drug being exported in accordance with subsection (e) is being exported to a country that has different or additional labeling requirements or conditions for use and such country requires the drug to be labeled in accordance with those requirements or uses, such drug may be labeled in accordance with such requirements and conditions for use in the country to which such drug is being exported if it also is labeled in accordance with the requirements of this Act.

"(2) If, pursuant to paragraph (1), the labeling of an exported drug includes conditions for use that have not been approved under this Act, the labeling must state that such conditions for use have not been approved under this Act.".

(d) EXPORT OF CERTAIN UNAPPROVED DRUGS AND DEVICES.-

(1) AMENDMENT.-Section 802 (21 U.S.C. 382) is amended to read as follows:

"EXPORTS OF CERTAIN UNAPPROVED PRODUCTS

"SEC. 802. (a) A drug or device-

"(1) which, in the case of a drug-

"(A)(i) requires approval by the Secretary under section 505 before such drug may be introduced or delivered for introduction into interstate commerce; or

"(ii) requires licensing by the Secretary under section 351 of the Public Health Service Act or by the Secretary of Agriculture under the Act of March 4, 1913 (known as the

Virus-Serum Toxin Act) before it may be introduced or delivered for introduction into interstate commerce;

"(B) does not have such approval or license; and

"(C) is not exempt from such sections or Act; and

"(2) which, in the case of a device-

"(A) does not comply with an applicable requirement under section 514 or 515;

"(B) under section 520(g) is exempt from either such section; or

"(C) is a banned device under section 516,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug or device is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) or section 801(e)(2). If a drug or device described in paragraphs (1) and (2) may be exported under subsection (b) and if an application for such drug or device under section 505 or 515 or section 351 of the Public Health Service Act was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug will be exported of such disapproval.

"(b)(1)(A) A drug or device described in subsection (a) may be exported to any country, if the drug or device complies with the laws of that country and has valid marketing authorization by the appropriate authority-

"(i) in Australia, Canada, Israel, Japan, New Zealand, Switzerland, or South Africa; or

"(ii) in the European Union or a country in the European Economic Area (the countries in the European Union and the European Free Trade Association) if the drug or device is marketed in that country or the drug or device is authorized for general marketing in the European Economic Area.

"(B) The Secretary may designate an additional country to be included in the list of countries described in clauses (i) and (ii) of subparagraph (A) if all of the following requirements are met in such country:

"(i) Statutory or regulatory requirements which require the review of drugs and devices for safety and effectiveness by an entity of the government of such country and which authorize the approval of only those drugs and devices which have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs and devices on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs and devices.

"(ii) Statutory or regulatory requirements that the methods used in, and the facilities and controls used for-

"(I) the manufacture, processing, and packing of drugs in the country are adequate to preserve their identity, quality, purity, and strength; and

"(II) the manufacture, preproduction design validation, packing, storage, and installation of a device are adequate to assure that the device will be safe and effective.

"(iii) Statutory or regulatory requirements for the reporting of adverse reactions to drugs and devices and procedures to withdraw approval and remove drugs and devices found not to be safe or effective.

"(iv) Statutory or regulatory requirements that the labeling and promotion of drugs and devices must be in accordance with the approval of the drug or device.

"(v) The valid marketing authorization system in such country or countries is equivalent to the systems in the countries described in clauses (i) and (ii) of subparagraph (A).

The Secretary shall not delegate the authority granted under this subparagraph.

"(C) An appropriate country official, manufacturer, or exporter may request the Secretary to take action under subparagraph (B) to designate an additional country or countries to be added to the list of countries described in clauses (i) and (ii) of subparagraph (A) by submitting documentation to the Secretary in support of such designation. Any person other than a country requesting such designation shall include, along with the request, a letter from the country indicating the desire of such country to be designated.

"(2) A drug described in subsection (a) may be directly exported to a country which is not listed in clause (i) or (ii) of paragraph (1)(A) if-

"(A) the drug complies with the laws of that country and has valid marketing authorization by the responsible authority in that country; and

"(B) the Secretary determines that all of the following requirements are met in that country:

"(i) Statutory or regulatory requirements which require the review of drugs for safety and effectiveness by an entity of the government of such country and which authorize the approval of only those drugs which have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs.

"(ii) Statutory or regulatory requirements that the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country are adequate to preserve their identity, quality, purity, and strength.

"(iii) Statutory or regulatory requirements for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective.

"(iv) Statutory or regulatory requirements that the labeling and promotion of drugs must be in accordance with the approval of the drug.

"(3) The exporter of a drug described in subsection (a) which would not meet the conditions for approval under this Act or conditions for approval of a country described in clause (i) or (ii) of paragraph (1)(A) may petition the Secretary for authorization to export such drug to a country which is not described in clause (i) or (ii) of paragraph (1)(A) or which is not described in paragraph (2). The Secretary shall permit such export if-

"(A) the person exporting the drug-

"(i) certifies that the drug would not meet the conditions for approval under this Act or the conditions for approval of a country described in clause (i) or (ii) of paragraph (1)(A); and

"(ii) provides the Secretary with credible scientific evidence, acceptable to the Secretary, that the drug would be safe and effective under the conditions of use in the country to which it is being exported; and

"(B) the appropriate health authority in the country to which the drug is being exported-

"(i) requests approval of the export of the drug to such country;

"(ii) certifies that the health authority understands that the drug is not approved under this Act or in a country described in clause (i) or (ii) of paragraph (1)(A); and

"(iii) concurs that the scientific evidence provided pursuant to subparagraph (A) is credible scientific evidence that the drug would be reasonably safe and effective in such country.

The Secretary shall take action on a request for export of a drug under this paragraph within 60 days of receiving such request.

"(c) A drug or device intended for investigational use in any country described in clause (i) or (ii) of subsection (b)(1)(A) may be exported in accordance with the laws of that country and shall be exempt from regulation under section 505(i) or 520(g).

"(d) A drug or device intended for formulation, filling, packaging, labeling, or further processing in anticipation of market authorization in any country described in clause (i) or (ii) of subsection (b)(1)(A) may be exported for use in accordance with the laws of that country.

"(e)(1) A drug or device which is used in the diagnosis, prevention, or treatment of a tropical disease or another disease not of significant prevalence in the United States and which does not otherwise qualify for export under this section shall, upon approval of an application, be permitted to be exported if the Secretary finds that the drug or device will not expose patients in such country to an unreasonable risk of illness or injury and the probable benefit to health from the use of the drug or device (under conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling of the drug or device) outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available drug or device treatment.

"(2) The holder of an approved application for the export of a drug or device under this subsection shall report to the Secretary-

"(A) the receipt of any credible information indicating that the drug or device is being or may have been exported from a country for which the Secretary made a finding under paragraph (1)(A) to a country for which the Secretary cannot make such a finding; and

"(B) the receipt of any information indicating adverse reactions to such drug.

"(3)(A) If the Secretary determines that-

"(i) a drug or device for which an application is approved under paragraph (1) does not continue to meet the requirements of such paragraph; or

"(ii) the holder of an approved application under paragraph (1) has not made the report required by paragraph (2),

the Secretary may, after providing the holder of the application an opportunity for an informal hearing, withdraw the approved application.

"(B) If the Secretary determines that the holder of an approved application under paragraph (1) or an importer is exporting a drug or device from the United States to an importer and such importer is exporting the drug or device to a country for which the Secretary cannot make a finding under paragraph (1) and such export presents an imminent hazard, the Secretary shall immediately prohibit the export of the drug or device to such importer, provide the person exporting the drug or device from the United States prompt notice of the prohibition, and afford such person an opportunity for an expedited hearing.

"(f) A drug or device may not be exported under this section-

"(1) if the drug or device is not manufactured, processed, packaged, and held in substantial conformity with current good manufacturing practice requirements or does not meet international standards as certified by an international standards organization recognized

by the Secretary;

"(2) if the drug or device is adulterated under clause (1), (2)(A), or (3) of section 501(a) or subsection (c) or (d) of section 501;

"(3) if the requirements of subparagraphs (A) through (D) of section 801(e)(1) have not been met;

"(4)(A) if the drug or device is the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the probability of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States and the only means of limiting the hazard is to prohibit the export of the drug or device; or

"(B) if the drug or device presents an imminent hazard to the public health of the country to which the drug or device would be exported;

"(5) if the drug or device is not labeled-

"(A) in accordance with the requirements and conditions for use in-

"(i) the country in which the drug or device received valid marketing authorization under subsection (b); and

"(ii) the country to which the drug or device would be exported; and

"(B) in the language and units of measurement of the country to which the drug or device would be exported or in the language designated by such country; or

"(6) if the drug or device is not promoted in accordance with the labeling requirements set forth in paragraph (5).

In making a finding under paragraph (4)(B), (5), or (6) the Secretary shall consult with the appropriate public health official in the affected country.

"(g) The exporter of a drug or device exported under subsection (b)(1) shall provide a simple notification to the Secretary identifying the drug or device when the exporter first begins to export such drug or device to any country listed in clause (i) or (ii) of subsection (b)(1)(A). When an exporter of a drug or device first begins to export a drug or device to a country which is not listed in clause (i) or (ii) of subsection (b)(1)A), the exporter shall provide a simple notification to the Secretary identifying the drug or device and the country to which such drug or device is being exported. Any exporter of a drug or device shall maintain records of all drugs or devices exported and the countries to which they were exported.

"(h) For purposes of this section-

"(1) a reference to the Secretary shall in the case of a biological product which is required to be licensed under the Act of March 4, 1913 (37 Stat. 832-833) (commonly known as the Virus-Serum Toxin Act) be considered to be a reference to the Secretary of Agriculture, and

"(2) the term 'drug' includes drugs for human use as well as biologicals under section 351 of the Public Health Service Act or the Act of March 4, 1913 (37 Stat. 832-833) (commonly known as the Virus-Serum Toxin Act).".

(2) CONFORMING AMENDMENTS.-Section 351(h) of the Public Health Service Act (42 U.S.C. 262(h)) is amended by striking "802(b)(A)" and inserting "802(b)(1)" and by striking "802(b)(4)" and inserting "802(b)(1)".

SEC. 2103. PROHIBITED ACT.

Section 301 (21 U.S.C. 331) is amended-

(1) by redesignating the second subsection (u) as subsection (v); and

(2) by adding at the end thereof the following:

"(w) The making of a knowingly false statement in any record or report required or requested under subparagraph (A) or (B) of section 801(d)(3), the failure to submit or maintain records as required by sections 801(d)(3)(A) and 801(d)(3)(B), the release into interstate commerce of any article imported into the United States under section 801(d)(3) or any finished product made from such article (except for export in accordance with section 801(e) or 802 or section 351(h) of the Public Health Service Act), or the failure to export or destroy any component, part or accessory not incorporated into a drug, biological product or device that will be exported in accordance with section 801(e) or 802 or section 351(h) of the Public Health Service Act.".

SEC. 2104. PARTIALLY PROCESSED BIOLOGICAL PRODUCTS.

Subsection (h) of section 351 of the Public Health Service Act (42 U.S.C. 262) is amended to read as follows:

"(h) A partially processed biological product which-

"(1) is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

"(2) is not intended for sale in the United States; and

"(3) is intended for further manufacture into final dosage form outside the United States,

shall be subject to no restriction on the export of the product under this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) if the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice requirements or meets international manufacturing standards as certified by an international standards organization recognized by the Secretary and meets the requirements of section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e))."

SEC. 2105. (a) IN GENERAL.-Any owner on the date of enactment of this Act of the right to market a nonsteroidal antiinflammatory drug that-

(1) contains a previously patented active agent;

(2) has been reviewed by the Federal Food and Drug Administration for a period of more than 120 months as a new drug application; and

(3) was approved as safe and effective by the Federal Food and Drug Administration on October 29, 1992,

shall be entitled, for the 2-year period beginning on October 29, 1997, to exclude others from making, using, offering for sale, selling, or importing into the United States such active agent, in accordance with section 154(a)(1) of title 35, United States Code.

(b) INFRINGEMENT.-Section 271 of title 35, United States Code shall apply to the infringement of the entitlement provided under subsection (a). No application described in section 271(e)(2)(A) of title 35, United States Code, regardless of purpose, may be submitted prior to the expiration of the entitlement provided under subsection (a).

(c) NOTIFICATION.-Not later than 30 days after the date of the enactment of this Act, any owner granted an entitlement under subsection (a) shall notify the Commissioner of Patents and Trademarks and the Secretary for Health and Human Services of such

entitlement. Not later than 7 days after the receipt of such notice, the Commissioner and the Secretary shall publish an appropriate notice of the receipt of such notice.