

## Calendar No. 26

107TH CONGRESS  
1ST SESSION**S. 149****[Report No. 107–10]**

To provide authority to control exports, and for other purposes.

## IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2001

Mr. ENZI (for himself, Mr. GRAMM, Mr. SARBANES, Mr. JOHNSON, Mr. HAGEL, Mr. ROBERTS, Ms. STABENOW, Mr. BAYH, Mr. BENNETT, Mr. REID, Ms. CANTWELL, Mr. BUNNING, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

APRIL 2, 2001

Reported by Mr. GRAMM, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

**A BILL**

To provide authority to control exports, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**
- 4 (a) **SHORT TITLE.**—This Act may be cited as the
- 5 **“Export Administration Act of 2001”.**

- 1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.  
 Sec. 2. Definitions.

#### TITLE I—GENERAL AUTHORITY

Sec. 101. Commerce Control List.  
 Sec. 102. Delegation of authority.  
 Sec. 103. Public information; consultation requirements.  
 Sec. 104. Right of export.  
 Sec. 105. Export control advisory committees.  
 Sec. 106. President's Technology Export Council.  
 Sec. 107. Prohibition on charging fees.

#### TITLE II—NATIONAL SECURITY EXPORT CONTROLS

##### Subtitle A—Authority and Procedures

Sec. 201. Authority for national security export controls.  
 Sec. 202. National Security Control List.  
 Sec. 203. Country tiers.  
 Sec. 204. Incorporated parts and components.  
 Sec. 205. Petition process for modifying export status.

##### Subtitle B—Foreign Availability and Mass-Market Status

Sec. 211. Determination of foreign availability and mass-market status.  
 Sec. 212. Presidential set-aside of foreign availability determination.  
 Sec. 213. Presidential set-aside of mass-market status determination.  
 Sec. 214. Office of Technology Evaluation.

#### TITLE III—FOREIGN POLICY EXPORT CONTROLS

Sec. 301. Authority for foreign policy export controls.  
 Sec. 302. Procedures for imposing controls.  
 Sec. 303. Criteria for foreign policy export controls.  
 Sec. 304. Presidential report before imposition of control.  
 Sec. 305. Imposition of controls.  
 Sec. 306. Deferral authority.  
 Sec. 307. Review, renewal, and termination.  
 Sec. 308. Termination of controls under this title.  
 Sec. 309. Compliance with international obligations.  
 Sec. 310. Designation of countries supporting international terrorism.

#### TITLE IV—EXEMPTION FOR AGRICULTURAL COMMODITIES, MEDICINE, AND MEDICAL SUPPLIES

Sec. 401. Exemption for agricultural commodities, medicine, and medical supplies.  
 Sec. 402. Termination of export controls required by law.  
 Sec. 403. Exclusions.

#### TITLE V—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

Sec. 501. Export license procedures.  
 Sec. 502. Interagency dispute resolution process.

#### TITLE VI—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT

Sec. 601. International arrangements.  
 Sec. 602. Foreign boycotts.  
 Sec. 603. Penalties.  
 Sec. 604. Multilateral export control regime violation sanctions.  
 Sec. 605. Missile proliferation control violations.  
 Sec. 606. Chemical and biological weapons proliferation sanctions.  
 Sec. 607. Enforcement.  
 Sec. 608. Administrative procedure.

#### TITLE VII—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 701. Export control authority and regulations.  
 Sec. 702. Confidentiality of information.

#### TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Annual and periodic reports.  
 Sec. 802. Technical and conforming amendments.  
 Sec. 803. Savings provisions.

### 1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AFFILIATE.**—The term “affiliate” includes  
 4 both governmental entities and commercial entities  
 5 that are controlled in fact by the government of a  
 6 country.

7 (2) **AGRICULTURE COMMODITY.**—The term “ag-  
 8 riculture commodity” means any agricultural com-  
 9 modity, food, fiber, or livestock (including livestock,  
 10 as defined in section 602(2) of the Emergency Live-  
 11 stock Feed Assistance Act of 1988 (title VI of the  
 12 Agricultural Act of 1949 (7 U.S.C. 1471(2))), and  
 13 including insects); and any product thereof.

1           ~~(3) CONTROL OR CONTROLLED.~~—The terms  
 2           “control” and “controlled” mean any requirement,  
 3           condition, authorization, or prohibition on the export  
 4           or reexport of an item.

5           ~~(4) CONTROL LIST.~~—The term “Control List”  
 6           means the Commerce Control List established under  
 7           section 101.

8           ~~(5) CONTROLLED COUNTRY.~~—The term “con-  
 9           trolled country” means a country with respect to  
 10          which exports are controlled under section 201 or  
 11          301.

12          ~~(6) CONTROLLED ITEM.~~—The term “controlled  
 13          item” means an item the export of which is con-  
 14          trolled under this Act.

15          ~~(7) COUNTRY.~~—The term “country” means a  
 16          sovereign country or an autonomous customs terri-  
 17          tory.

18          ~~(8) COUNTRY SUPPORTING INTERNATIONAL~~  
 19          ~~TERRORISM.~~—The term “country supporting inter-  
 20          national terrorism” means a country designated by  
 21          the Secretary of State pursuant to section 310.

22          ~~(9) DEPARTMENT.~~—The term “Department”  
 23          means the Department of Commerce.

24          ~~(10) EXPORT.~~—

25                 ~~(A) The term “export” means—~~

(i) an actual shipment, transfer, or transmission of an item out of the United States;

(ii) a transfer to any person of an item either within the United States or outside of the United States with the knowledge or intent that the item will be shipped, transferred, or transmitted to an unauthorized recipient outside the United States; or

(iii) a transfer of an item in the United States to an embassy or affiliate of a country, which shall be considered an export to that country.

(B) The term includes a reexport.

(11) FOREIGN AVAILABILITY STATUS.—The term “foreign availability status” means the status described in section 211(d)(1).

(12) FOREIGN PERSON.—The term “foreign person” means—

(A) an individual who is not—

(i) a United States citizen;

(ii) an alien lawfully admitted for permanent residence to the United States; or

1 (iii) a protected individual as defined  
 2 in section 274B(a)(3) of the Immigration  
 3 and Nationality Act. (8 U.S.C.  
 4 1324b(a)(3));

5 (B) any corporation, partnership, business  
 6 association, society, trust, organization, or other  
 7 nongovernmental entity created or organized  
 8 under the laws of a foreign country or that has  
 9 its principal place of business outside the  
 10 United States; and

11 (C) any governmental entity of a foreign  
 12 country.

13 (13) ITEM.—

14 (A) IN GENERAL.—The term “item”  
 15 means any good, technology, or service.

16 (B) OTHER DEFINITIONS.—In this para-  
 17 graph:

18 (i) GOOD.—The term “good” means  
 19 any article, natural or manmade substance,  
 20 material, supply or manufactured product,  
 21 including inspection and test equipment,  
 22 including source code, and excluding tech-  
 23 nical data.

24 (ii) TECHNOLOGY.—The term “tech-  
 25 nology” means specific information that is

1           necessary for the development, production,  
 2           or use of an item, and takes the form of  
 3           technical data or technical assistance.

4           (iii) SERVICE.—The term “service”  
 5           means any act of assistance, help or aid.

6           (14) MASS-MARKET STATUS.—The term “mass-  
 7           market status” means the status described in section  
 8           211(d)(2).

9           (15) MULTILATERAL EXPORT CONTROL RE-  
 10          GIME.—The term “multilateral export control re-  
 11          gime” means an international agreement or arrange-  
 12          ment among two or more countries, including the  
 13          United States, a purpose of which is to coordinate  
 14          national export control policies of its members re-  
 15          garding certain items. The term includes regimes  
 16          such as the Australia Group, the Wassenaar Ar-  
 17          rangement, the Missile Technology Control Regime  
 18          (MTCR), and the Nuclear Suppliers’ Group Dual  
 19          Use Arrangement.

20          (16) NATIONAL SECURITY CONTROL LIST.—The  
 21          term “National Security Control List” means the  
 22          list established under section 202(a).

23          (17) PERSON.—The term “person” includes—  
 24                  (A) any individual, or partnership, corpora-  
 25                  tion, business association, society, trust, organi-

1            zation, or any other group created or organized  
 2            under the laws of a country; and

3            (B) any government, or any governmental  
 4            entity, including any governmental entity oper-  
 5            ating as a business enterprise.

6            (18) REEXPORT.—The term “reexport” means  
 7            the shipment, transfer, transshipment, or diversion  
 8            of items from one foreign country to another.

9            (19) SECRETARY.—The term “Secretary”  
 10           means the Secretary of Commerce.

11           (20) UNITED STATES.—The term “United  
 12           States” means the States of the United States, the  
 13           District of Columbia, and any commonwealth, terri-  
 14           tory, dependency, or possession of the United States,  
 15           and includes the outer Continental Shelf, as defined  
 16           in section 2(a) of the Outer Continental Shelf Lands  
 17           Act (42 U.S.C. 1331(a)).

18           (21) UNITED STATES PERSON.—The term  
 19           “United States person” means—

20           (A) any United States citizen, resident, or  
 21           national (other than an individual resident out-  
 22           side the United States who is employed by a  
 23           person other than a United States person);



(B) any domestic concern (including any permanent domestic establishment of any foreign concern); and

(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations prescribed by the President.

## **TITLE I—GENERAL AUTHORITY**

### **SEC. 101. COMMERCE CONTROL LIST.**

(a) IN GENERAL.—Under such conditions as the Secretary may impose, consistent with the provisions of this Act, the Secretary—

(1) shall establish and maintain a Commerce Control List (in this Act referred to as the “Control List”) consisting of items the export of which are subject to licensing or other authorization or requirement; and

(2) may require any type of license, or other authorization, including recordkeeping and reporting, appropriate to the effective and efficient implementation of this Act with respect to the export of an item on the Control List or otherwise subject to control under title II or III of this Act.

1       (b) ~~TYPES OF LICENSE OR OTHER AUTHORIZA-~~  
 2 ~~TION.~~—The types of license or other authorization re-  
 3 ~~ferred to in subsection (a)(2) include the following:~~

4           (1) ~~SPECIFIC EXPORTS.~~—A license that author-  
 5 izes a specific export.

6           (2) ~~MULTIPLE EXPORTS.~~—A license that au-  
 7 thorizes multiple exports in lieu of a license for each  
 8 such export.

9           (3) ~~NOTIFICATION IN LIEU OF LICENSE.~~— A  
 10 notification in lieu of a license that authorizes a spe-  
 11 cific export or multiple exports subject to the condi-  
 12 tion that the exporter file with the Department ad-  
 13 vance notification of the intent to export in accord-  
 14 ance with regulations prescribed by the Secretary.

15           (4) ~~LICENSE EXCEPTION.~~—Authority to export  
 16 an item on the Control List without prior license or  
 17 notification in lieu of a license.

18       (c) ~~AFTER-MARKET SERVICE AND REPLACEMENT~~  
 19 ~~PARTS.~~—A license to export an item under this Act shall  
 20 not be required for an exporter to provide after-market  
 21 service or replacement parts, to replace on a one-for-one  
 22 basis parts that were in an item that was lawfully exported  
 23 from the United States, unless—

24           (1) the Secretary determines that such license  
 25 is required to export such parts; or

1           (2) the after-market service or replacement  
 2           parts would materially enhance the capability of an  
 3           item which was the basis for the item being con-  
 4           trolled.

5           (d) INCIDENTAL TECHNOLOGY.—A license or other  
 6           authorization to export an item under this Act includes  
 7           authorization to export technology related to the item, if  
 8           the level of the technology does not exceed the minimum  
 9           necessary to install, repair, maintain, inspect, operate, or  
 10          use the item.

11          (e) REGULATIONS.—The Secretary may prescribe  
 12          such regulations as are necessary to carry out the provi-  
 13          sions of this Act.

14   **SEC. 102. DELEGATION OF AUTHORITY.**

15          (a) IN GENERAL.—Except as provided in subsection  
 16          (b) and subject to the provisions of this Act, the President  
 17          may delegate the power, authority, and discretion con-  
 18          ferred upon the President by this Act to such depart-  
 19          ments, agencies, and officials of the Government as the  
 20          President considers appropriate.

21          (b) EXCEPTIONS.—

22                (1) DELEGATION TO APPOINTEES CONFIRMED  
 23                BY SENATE.—No authority delegated to the Presi-  
 24                dent under this Act may be delegated by the Presi-  
 25                dent to, or exercised by, any official of any depart-

1       ment or agency the head of which is not appointed  
 2       by the President, by and with the advice and consent  
 3       of the Senate.

4           (2) ~~OTHER LIMITATIONS.~~—The President may  
 5       not delegate or transfer the President’s power, au-  
 6       thority, or discretion to overrule or modify any rec-  
 7       ommendation or decision made by the Secretary, the  
 8       Secretary of Defense, or the Secretary of State  
 9       under this Act.

10 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**  
 11 **MENTS.**

12       (a) ~~PUBLIC INFORMATION.~~—The Secretary shall  
 13 keep the public fully informed of changes in export control  
 14 policy and procedures instituted in conformity with this  
 15 Act.

16       (b) ~~CONSULTATION WITH PERSONS AFFECTED.~~—  
 17 The Secretary shall consult regularly with representatives  
 18 of a broad spectrum of enterprises, labor organizations,  
 19 and citizens interested in or affected by export controls  
 20 in order to obtain their views on United States export con-  
 21 trol policy and the foreign availability or mass-market sta-  
 22 tus of controlled items.

1 **SEC. 104. RIGHT OF EXPORT.**

2 No license or other authorization to export may be  
3 required under this Act, or under regulations issued under  
4 this Act, except to carry out the provisions of this Act.

5 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

6 (a) APPOINTMENT.—Upon the Secretary's own initia-  
7 tive or upon the written request of representatives of a  
8 substantial segment of any industry which produces any  
9 items subject to export controls under this Act or under  
10 the International Emergency Economic Powers Act, or  
11 being considered for such controls, the Secretary may ap-  
12 point export control advisory committees with respect to  
13 any such items. Each such committee shall consist of rep-  
14 resentatives of United States industry and Government of-  
15 ficials, including officials from the Departments of Com-  
16 merce, Defense, and State, and other appropriate depart-  
17 ments and agencies of the Government. The Secretary  
18 shall permit the widest possible participation by the busi-  
19 ness community on the export control advisory commit-  
20 tees.

21 (b) FUNCTIONS.—

22 (1) IN GENERAL.—Export control advisory  
23 committees appointed under subsection (a) shall ad-  
24 vise and assist the Secretary, and any other depart-  
25 ment, agency, or official of the Government carrying  
26 out functions under this Act, on actions (including

1 all aspects of controls imposed or proposed) designed  
2 to carry out the provisions of this Act concerning the  
3 items with respect to which such export control advisory  
4 committees were appointed.

5 (2) OTHER CONSULTATIONS.—Nothing in paragraph  
6 (1) shall prevent the United States Government from consulting,  
7 at any time, with any person representing an industry or the general public,  
8 regardless of whether such person is a member of an  
9 export control advisory committee. Members of the  
10 public shall be given a reasonable opportunity, pursuant to regulations  
11 prescribed by the Secretary, to present information to such committees.

12 (c) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any  
13 export control advisory committee appointed under subsection (a), the Secretary may,  
14 if the Secretary determines it to be appropriate, reimburse  
15 such member for travel, subsistence, and other necessary  
16 expenses incurred by such member in connection with the  
17 duties of such member.

18 (d) CHAIRPERSON.—Each export control advisory  
19 committee appointed under subsection (a) shall elect a  
20 chairperson, and shall meet at least every 3 months at  
21 the call of the chairperson, unless the chairperson determines,  
22 in consultation with the other members of the com-

1 mittee, that such a meeting is not necessary to achieve  
2 the purposes of this section. Each such committee shall  
3 be terminated after a period of 2 years, unless extended  
4 by the Secretary for additional periods of 2 years each.  
5 The Secretary shall consult with each such committee on  
6 such termination or extension of that committee.

7 (e) ACCESS TO INFORMATION.—To facilitate the  
8 work of the export control advisory committees appointed  
9 under subsection (a), the Secretary, in conjunction with  
10 other departments and agencies participating in the ad-  
11 ministration of this Act, shall disclose to each such com-  
12 mittee adequate information, consistent with national se-  
13 curity, pertaining to the reasons for the export controls  
14 which are in effect or contemplated for the items or poli-  
15 cies for which that committee furnishes advice. Informa-  
16 tion provided by the export control advisory committees  
17 shall not be subject to disclosure under section 552 of title  
18 5, United States Code, and such information shall not be  
19 published or disclosed unless the Secretary determines  
20 that the withholding thereof is contrary to the national  
21 interest.

22 **SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.**

23 The President may establish a President's Tech-  
24 nology Export Council to advise the President on the im-  
25 plementation, operation, and effectiveness of this Act.

1 **SEC. 107. PROHIBITION ON CHARGING FEES.**

2 No fee may be charged in connection with the submis-  
 3 sion or processing of an application for an export license  
 4 under this Act.

5 **TITLE II—NATIONAL SECURITY**  
 6 **EXPORT CONTROLS**  
 7 **Subtitle A—Authority and**  
 8 **Procedures**

9 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**  
 10 **CONTROLS.**

11 ~~(a) AUTHORITY.—~~

12 ~~(1) IN GENERAL.—~~In order to carry out the  
 13 purposes set forth in subsection (b), the President  
 14 may, in accordance with the provisions of this Act,  
 15 prohibit, curtail, or require a license, or other au-  
 16 thorization for the export of any item subject to the  
 17 jurisdiction of the United States or exported by any  
 18 person subject to the jurisdiction of the United  
 19 States. The President may also require record-  
 20 keeping and reporting with respect to the export of  
 21 such item.

22 ~~(2) EXERCISE OF AUTHORITY.—~~The authority  
 23 contained in this subsection shall be exercised by the  
 24 Secretary, in consultation with the Secretary of De-  
 25 fense, the intelligence agencies, and such other de-



1       partments and agencies as the Secretary considers  
2       appropriate.

3       (b) PURPOSES.—The purposes of national security  
4       export controls are the following:

5               (1) To restrict the export of items that would  
6       contribute to the military potential of countries so as  
7       to prove detrimental to the national security of the  
8       United States, its allies or countries sharing com-  
9       mon strategic objectives with the United States.

10              (2) To stem the proliferation of weapons of  
11       mass destruction, and the means to deliver them,  
12       and other significant military capabilities by—

13                      (A) leading international efforts to control  
14       the proliferation of chemical and biological  
15       weapons, nuclear explosive devices, missile deliv-  
16       ery systems, key-enabling technologies, and  
17       other significant military capabilities;

18                      (B) controlling involvement of United  
19       States persons in, and contributions by United  
20       States persons to, foreign programs intended to  
21       develop weapons of mass destruction, missiles,  
22       and other significant military capabilities, and  
23       the means to design, test, develop, produce,  
24       stockpile, or use them; and

1           (C) implementing international treaties or  
 2           other agreements or arrangements concerning  
 3           controls on exports of designated items; reports  
 4           on the production, processing, consumption,  
 5           and exports and imports of such items; and  
 6           compliance with verification programs.

7           ~~(3) To deter acts of international terrorism.~~

8           (e) ~~END USE AND END USER CONTROLS.~~—Notwith-  
 9           standing any other provision of this title, controls may be  
 10          imposed, based on the end use or end user, on the export  
 11          of any item, that could materially contribute to the pro-  
 12          liferation of weapons of mass destruction or the means  
 13          to deliver them.

14          (d) ~~ENHANCED CONTROLS.~~—Notwithstanding any  
 15          other provisions of this title, the President may determine  
 16          that applying the provisions of section 204(b) or section  
 17          211 with respect to an item on the National Security Con-  
 18          trol List would constitute a significant threat to the na-  
 19          tional security of the United States and that such item  
 20          requires enhanced control. If the President determines  
 21          that enhanced control should apply to such item, it shall  
 22          be excluded from the provisions of section 204(b), section  
 23          211, or both, until such time as the President shall deter-  
 24          mine that such enhanced control should no longer apply

1 to such item. The President may not delegate the author-  
 2 ity provided for in this subsection.

3 **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

4 (a) **ESTABLISHMENT OF LIST.**—

5 (1) **ESTABLISHMENT.**—The Secretary shall es-  
 6 tablish and maintain a National Security Control  
 7 List as part of the Control List.

8 (2) **CONTENTS.**—The National Security Control  
 9 List shall be composed of a list of items the export  
 10 of which is controlled for national security purposes  
 11 under this title.

12 (3) **IDENTIFICATION OF ITEMS FOR NATIONAL**  
 13 **SECURITY CONTROL LIST.**—The Secretary, with the  
 14 concurrence of the Secretary of Defense and in con-  
 15 sultation with the head of any other department or  
 16 agency of the United States that the Secretary con-  
 17 siders appropriate, shall identify the items to be in-  
 18 cluded on the National Security Control List pro-  
 19 vided that the National Security Control List shall,  
 20 on the date of enactment of this Act, include all of  
 21 the items on the Commerce Control List controlled  
 22 on the day before the date of enactment of this Act  
 23 to protect the national security of the United States,  
 24 to prevent the proliferation of weapons of mass de-  
 25 struction and the means to deliver them, and to

deter acts of international terrorism. The Secretary shall periodically review and, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, adjust the National Security Control List to add items that require control under this section and to remove items that no longer warrant control under this section.

~~(b) RISK ASSESSMENT.—~~

~~(1) REQUIREMENT.—In establishing and maintaining the National Security Control List, the risk factors set forth in paragraph (2) shall be considered, weighing national security concerns and economic costs.~~

~~(2) RISK FACTORS.—The risk factors referred to in paragraph (1), with respect to each item, are as follows:~~

~~(A) The characteristics of the item.~~

~~(B) The threat, if any, to the United States or the national security interest of the United States from the misuse or diversion of such item.~~

~~(C) The effectiveness of controlling the item for national security purposes of the~~

1 United States, taking into account mass-market  
 2 status, foreign availability, and other relevant  
 3 factors.

4 ~~(D)~~ The threat to the national security in-  
 5 terests of the United States if the item is not  
 6 controlled.

7 ~~(E)~~ Any other appropriate risk factors.

8 ~~(c)~~ REPORT ON CONTROL LIST.—Not later than 90  
 9 days after the date of enactment of this Act, the Secretary  
 10 shall submit a report to Congress which lists all items on  
 11 the Commerce Control List controlled on the day before  
 12 the date of enactment of this Act to protect the national  
 13 security of the United States, to prevent the proliferation  
 14 of weapons of mass destruction and the means to deliver  
 15 them, and to deter acts of international terrorism, not in-  
 16 cluded on the National Security Control List pursuant to  
 17 the provisions of this Act.

18 **SEC. 203. COUNTRY TIERS.**

19 ~~(a)~~ IN GENERAL.—

20 ~~(1)~~ ESTABLISHMENT AND ASSIGNMENT.—In  
 21 administering export controls for national security  
 22 purposes under this title, the President shall, not  
 23 later than 120 days after the date of enactment of  
 24 this Act—

1           (A) establish and maintain a country  
2           tiering system in accordance with subsection  
3           (b); and

4           (B) based on the assessments required  
5           under subsection (c), assign each country to an  
6           appropriate tier for each item or group of items  
7           the export of which is controlled for national se-  
8           curity purposes under this title.

9           (2) CONSULTATION.—The establishment and  
10          assignment of country tiers under this section shall  
11          be made after consultation with the Secretary, the  
12          Secretary of Defense, the Secretary of State, the in-  
13          telligence agencies, and such other departments and  
14          agencies as the President considers appropriate.

15          (3) REDETERMINATION AND REVIEW OF AS-  
16          SIGNMENTS.—The President may redetermine the  
17          assignment of a country to a particular tier at any  
18          time and shall review and, as the President con-  
19          siders appropriate, reassign country tiers on an on-  
20          going basis. The Secretary shall provide notice of  
21          any such reassignment to the Committee on Bank-  
22          ing, Housing, and Urban Affairs of the Senate and  
23          the Committee on International Relations of the  
24          House of Representatives.

1           (4) ~~EFFECTIVE DATE OF TIER ASSIGNMENT.—~~

2           An assignment of a country to a particular tier shall  
3           take effect on the date on which notice of the assign-  
4           ment is published in the Federal Register.

5           (b) ~~TIERS.—~~

6           (1) ~~IN GENERAL.—~~The President shall establish  
7           a country tiering system consisting of 5 tiers for  
8           purposes of this section, ranging from tier 1 through  
9           tier 5.

10          (2) ~~RANGE.—~~Countries that represent the low-  
11          est risk of diversion or misuse of an item on the Na-  
12          tional Security Control List shall be assigned to tier  
13          1. Countries that represent the highest risk of diver-  
14          sion or misuse of an item on the National Security  
15          Control List shall be assigned to tier 5.

16          (3) ~~OTHER COUNTRIES.—~~Countries that fall be-  
17          tween the lowest and highest risk to the national se-  
18          curity interest of the United States with respect to  
19          the risk of diversion or misuse of an item on the Na-  
20          tional Security Control List shall be assigned to tier  
21          2, 3, or 4, respectively, based on the assessments re-  
22          quired under subsection (c).

23          (c) ~~ASSESSMENTS.—~~The President shall make an as-  
24          sessment of each country in assigning a country tier tak-  
25          ing into consideration risk factors including the following:

1           (1) The present and potential relationship of  
2           the country with the United States.

3           (2) The present and potential relationship of  
4           the country with countries friendly to the United  
5           States and with countries hostile to the United  
6           States.

7           (3) The country's capabilities regarding chem-  
8           ical, biological, and nuclear weapons and the coun-  
9           try's membership in, and level of compliance with,  
10          relevant multilateral export control regimes.

11          (4) The country's capabilities regarding missile  
12          systems and the country's membership in, and level  
13          of compliance with, relevant multilateral export con-  
14          trol regimes.

15          (5) Whether the country, if a NATO or major  
16          non-NATO ally with whom the United States has  
17          entered into a free trade agreement as of January  
18          1, 1986, controls exports in accordance with the cri-  
19          teria and standards of a multilateral export control  
20          regime as defined in section 2(15) pursuant to an  
21          international agreement to which the United States  
22          is a party.

23          (6) The country's other military capabilities  
24          and the potential threat posed by the country to the  
25          United States or its allies.



1           (7) The effectiveness of the country's export  
2       control system.

3           (8) The level of the country's cooperation with  
4       United States export control enforcement and other  
5       efforts.

6           (9) The risk of export diversion by the country  
7       to a higher tier country.

8           (10) The designation of the country as a coun-  
9       try supporting international terrorism under section  
10      310.

11       (d) TIER APPLICATION.—The country tiering system  
12   shall be used in the determination of license requirements  
13   pursuant to section 201(a)(1).

14   **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

15       (a) EXPORT OF ITEMS CONTAINING CONTROLLED  
16   PARTS AND COMPONENTS.—Controls may not be imposed  
17   under this title or any other provision of law on an item  
18   solely because the item contains parts or components sub-  
19   ject to export controls under this title, if the parts or  
20   components—

21           (1) are essential to the functioning of the item;

22           (2) are customarily included in sales of the item  
23       in countries other than controlled countries; and

24           (3) comprise 25 percent or less of the total  
25       value of the item;

1 unless the item itself, if exported, would by virtue of the  
 2 functional characteristics of the item as a whole make a  
 3 significant contribution to the military or proliferation po-  
 4 tential of a controlled country or end user which would  
 5 prove detrimental to the national security of the United  
 6 States, or unless failure to control the item would be con-  
 7 trary to the provisions of section 201(c), section 201(d),  
 8 or section 309 of this Act.

9 (b) REEXPORTS OF FOREIGN-MADE ITEMS INCOR-  
 10 PORATING UNITED STATES CONTROLLED CONTENT.—

11 (1) IN GENERAL.—No authority or permission  
 12 may be required under this title to reexport to a  
 13 country (other than a country designated as a coun-  
 14 try supporting international terrorism pursuant to  
 15 section 310) an item that is produced in a country  
 16 other than the United States and incorporates parts  
 17 or components that are subject to the jurisdiction of  
 18 the United States, if the value of the controlled  
 19 United States content of the item produced in such  
 20 other country is 25 percent or less of the total value  
 21 of the item.

22 (2) DEFINITION OF CONTROLLED UNITED  
 23 STATES CONTENT.—For purposes of this paragraph,  
 24 the term “controlled United States content” of an  
 25 item means those parts or components that—

1           (A) are subject to the jurisdiction of the  
2           United States;

3           (B) are incorporated into the item; and

4           (C) would, at the time of the reexport, re-  
5           quire a license under this title if exported from  
6           the United States to a country to which the  
7           item is to be reexported.

8   **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**  
9           **STATUS.**

10       (a) **ESTABLISHMENT.**—The Secretary shall establish  
11       a process for interested persons to petition the Secretary  
12       to change the status of an item on the National Security  
13       Control List.

14       (b) **EVALUATIONS AND DETERMINATIONS.**—Evalua-  
15       tions and determinations with respect to a petition filed  
16       pursuant to this section shall be made in accordance with  
17       section 202.

18       **Subtitle B—Foreign Availability**  
19           **and Mass-Market Status**

20   **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND**  
21           **MASS-MARKET STATUS.**

22       (a) **IN GENERAL.**—The Secretary shall—

23           (1) on a continuing basis;

24           (2) upon a request from the Office of Tech-  
25       nology Evaluation; or

1           ~~(3)~~ upon receipt of a petition filed by an inter-  
 2       ested party,  
 3 review and determine the foreign availability and the  
 4 mass-market status of any item the export of which is con-  
 5 trolled under this title.

6       ~~(b)~~ PETITION AND CONSULTATION.—

7           ~~(1)~~ IN GENERAL.—The Secretary shall establish  
 8       a process for an interested party to petition the Sec-  
 9       retary for a determination that an item has a for-  
 10      eign availability or mass-market status. In evalu-  
 11      ating and making a determination with respect to a  
 12      petition filed under this section, the Secretary shall  
 13      consult with the Secretary of Defense, Secretary of  
 14      State, and other appropriate Government agencies  
 15      and with the Office of Technology Evaluation (estab-  
 16      lished pursuant to section 214).

17          ~~(2)~~ TIME FOR MAKING DETERMINATION.—The  
 18      Secretary shall, within 6 months after receiving a  
 19      petition described in subsection ~~(a)(3)~~, determine  
 20      whether the item that is the subject of the petition  
 21      has foreign availability or mass-market status and  
 22      shall notify the petitioner of the determination.

23          ~~(c)~~ RESULT OF DETERMINATION.—In any case in  
 24      which the Secretary determines, in accordance with proce-

1 dures and criteria which the Secretary shall by regulation  
2 establish, that an item described in subsection (a) has—

3           (1) a foreign availability status; or

4           (2) a mass-market status;

5 the Secretary shall notify the President (and other appro-  
6 priate departments and agencies) and publish the notice  
7 of the determination in the Federal Register. The Sec-  
8 retary's determination shall become final 30 days after the  
9 date the notice is published, the item shall be removed  
10 from the National Security Control List, and a license or  
11 other authorization shall not be required under this title  
12 or under section 1211 of the National Defense Authoriza-  
13 tion Act of Fiscal Year 1998 with respect to the item,  
14 unless the President makes a determination described in  
15 section 212 or 213, or takes action under section 309,  
16 with respect to the item in that 30-day period.

17       (d) CRITERIA FOR DETERMINING FOREIGN AVAIL-  
18 ABILITY AND MASS-MARKET STATUS.—

19           (1) FOREIGN AVAILABILITY STATUS.—The Sec-  
20 retary shall determine that an item has foreign  
21 availability status under this subtitle, if the item (or  
22 a substantially identical or directly competitive  
23 item)—

24           (A) is available to controlled countries  
25 from sources outside the United States, includ-

ing countries that participate with the United States in multilateral export controls;

(B) can be acquired at a price that is not excessive when compared to the price at which a controlled country could acquire such item from sources within the United States in the absence of export controls; and

(C) is available in sufficient quantity so that the requirement of a license or other authorization with respect to the export of such item is or would be ineffective.

~~(2) MASS-MARKET STATUS.—~~

~~(A) IN GENERAL.—~~In determining whether an item has mass-market status under this subtitle, the Secretary shall consider the following criteria with respect to the item (or a substantially identical or directly competitive item):

(i) The production and availability for sale in a large volume to multiple potential purchasers.

(ii) The widespread distribution through normal commercial channels, such as retail stores, direct marketing catalogues, electronic commerce, and other channels.

1                   (iii) The conduciveness to shipment  
2                   and delivery by generally accepted commer-  
3                   cial means of transport.

4                   (iv) The use for the item's normal in-  
5                   tended purpose without substantial and  
6                   specialized service provided by the manu-  
7                   facturer, distributor, or other third party.

8                   (B) DETERMINATION BY SECRETARY.—If  
9                   the Secretary finds that the item (or a substan-  
10                  tially identical or directly competitive item)  
11                  meets the criteria set forth in subparagraph  
12                  (A), the Secretary shall determine that the item  
13                  has mass-market status.

14                (3) SPECIAL RULES.—For purposes of this  
15                subtitle—

16                   (A) SUBSTANTIALLY IDENTICAL ITEM.—  
17                   The determination of whether an item in rela-  
18                   tion to another item is a substantially identical  
19                   item shall include a fair assessment of end-uses,  
20                   the properties, nature, and quality of the item.

21                   (B) DIRECTLY COMPETITIVE ITEM.—

22                   (i) IN GENERAL.—The determination  
23                   of whether an item in relation to another  
24                   item is a directly competitive item shall in-  
25                   clude a fair assessment of whether the

1 item, although not substantially identical  
 2 in its intrinsic or inherent characteristics,  
 3 is substantially equivalent for commercial  
 4 purposes and may be adapted for substan-  
 5 tially the same uses.

6 (ii) EXCEPTION.—An item is not di-  
 7 rectly competitive with a controlled item if  
 8 the item is substantially inferior to the  
 9 controlled item with respect to characteris-  
 10 ties that resulted in the export of the item  
 11 being controlled.

12 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**  
 13 **ABILITY DETERMINATION.**

14 (a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

15 (1) GENERAL CRITERIA.—

16 (A) IN GENERAL.—If the President deter-  
 17 mines that—

18 (i)(I) decontrolling or failing to con-  
 19 trol an item constitutes a threat to the na-  
 20 tional security of the United States, and  
 21 export controls on the item would advance  
 22 the national security interests of the  
 23 United States, and

24 (II) there is a high probability that  
 25 the foreign availability of an item will be



eliminated through international negotiations within a reasonable period of time taking into account the characteristics of the item; or

(ii) failure to control an item would be contrary to the provisions of section 309; the President may set aside the Secretary's determination of foreign availability status with respect to the item.

(B) NONDELEGATION.—The President may not delegate the authority provided for in this paragraph.

(2) REPORT TO CONGRESS.—The President shall promptly—

(A) report any set-aside determination described in paragraph (1), along with the specific reasons why the determination was made, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives; and

(B) publish the determination in the Federal Register.

(b) PRESIDENTIAL ACTION IN CASE OF SET-  
ASIDE.—

1           (1) IN GENERAL.—

2           (A) NEGOTIATIONS.—In any case in which  
3           export controls are maintained on an item be-  
4           cause the President has made a determination  
5           under subsection (a), the President shall ac-  
6           tively pursue negotiations with the governments  
7           of the appropriate foreign countries for the pur-  
8           pose of eliminating such availability.

9           (B) REPORT TO CONGRESS.—Not later  
10          than the date the President begins negotiations,  
11          the President shall notify in writing the Com-  
12          mittee on Banking, Housing, and Urban Affairs  
13          of the Senate and the Committee on Inter-  
14          national Relations of the House of Representa-  
15          tives that the President has begun such nego-  
16          tiations and why the President believes it is im-  
17          portant to the national security that export con-  
18          trols on the item involved be maintained.

19          (2) PERIODIC REVIEW OF DETERMINATION.—

20          The President shall review a determination described  
21          in subsection (a) at least every 6 months. Promptly  
22          after each review is completed, the Secretary shall  
23          submit to the committees of Congress referred to in  
24          paragraph (1)(B) a report on the results of the re-  
25          view, together with the status of international nego-

1       tiations to eliminate the foreign availability of the  
2       item.

3           ~~(3) EXPIRATION OF PRESIDENTIAL SET-~~  
4       ~~ASIDE.~~—A determination by the President described  
5       in subsection (a)(1)(A) shall cease to apply with re-  
6       spect to an item on the earlier of—

7           (A) the date that is 6 months after the date  
8           on which the determination is made under sub-  
9           section (a); if the President has not commenced  
10          international negotiations to eliminate the for-  
11          eign availability of the item within that 6-month  
12          period;

13          (B) the date on which the negotiations de-  
14          scribed in paragraph (1) have terminated with-  
15          out achieving an agreement to eliminate foreign  
16          availability;

17          (C) the date on which the President deter-  
18          mines that there is not a high probability of  
19          eliminating foreign availability of the item  
20          through negotiation; or

21          (D) the date that is 18 months after the  
22          date on which the determination described in  
23          subsection (a)(1)(A) is made if the President  
24          has been unable to achieve an agreement to

1 eliminate foreign availability within that 18-  
 2 month period.

3 ~~(4) ACTION ON EXPIRATION OF PRESIDENTIAL~~  
 4 ~~SET-ASIDE.~~—Upon the expiration of a Presidential  
 5 set-aside under paragraph (3) with respect to an  
 6 item, the Secretary shall not require a license or  
 7 other authorization to export the item.

8 **SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-**  
 9 **TUS DETERMINATION.**

10 ~~(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—~~

11 ~~(1) GENERAL CRITERIA.~~—If the President de-  
 12 termines that—

13 ~~(A)(i)~~ decontrolling or failing to control an  
 14 item constitutes a serious threat to the national  
 15 security of the United States; and

16 ~~(ii)~~ export controls on the item would ad-  
 17 vance the national security interests of the  
 18 United States; or

19 ~~(B)~~ failure to control an item would be  
 20 contrary to the provisions of section 309,  
 21 the President may set aside the Secretary's deter-  
 22 mination of mass-market status with respect to the  
 23 item.

1           (2) NONDELEGATION.—The President may not  
2       delegate the authority provided for in this sub-  
3       section.

4       (b) PRESIDENTIAL ACTION IN CASE OF SET-  
5       ASIDE.—

6           (1) IN GENERAL.—In any case in which export  
7       controls are maintained on an item because the  
8       President has made a determination under sub-  
9       section (a), the President shall report the determina-  
10      tion, along with the specific reasons why the deter-  
11      mination was made, to the Committee on Banking,  
12      Housing, and Urban Affairs of the Senate and the  
13      Committee on International Relations of the House  
14      of Representatives, and shall publish notice of the  
15      determination in the Federal Register not later than  
16      30 days after the Secretary publishes notice of the  
17      Secretary's determination that an item has mass-  
18      market status.

19          (2) PERIODIC REVIEW OF DETERMINATION.—  
20      The President shall review a determination made  
21      under subsection (a) at least every 6 months.  
22      Promptly after each review is completed, the Sec-  
23      retary shall submit a report on the results of the re-  
24      view to the Committee on Banking, Housing, and  
25      Urban Affairs of the Senate and the Committee on

1 International Relations of the House of Representa-  
2 tives.

3 **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

4 (a) IN GENERAL.—

5 (1) ESTABLISHMENT OF OFFICE.—The Sec-  
6 retary shall establish in the Department of Com-  
7 merce an Office of Technology Evaluation (in this  
8 subtitle referred to as the “Office”), which shall be  
9 under the direction of the Secretary. The Office  
10 shall be responsible for gathering, coordinating, and  
11 analyzing all the necessary information in order for  
12 the Secretary to make determinations of foreign  
13 availability and mass-market status under this Act.

14 (2) STAFF.—The Secretary shall ensure that  
15 the Office include persons with the training, exper-  
16 tise and experience in economic analysis, the defense  
17 industrial base, technological developments, national  
18 security, and foreign policy export controls to carry  
19 out the responsibilities set forth in subsection (b) of  
20 this section. In addition to employees of the Depart-  
21 ment of Commerce, the Secretary may accept on  
22 nonreimbursable detail to the Office, employees of  
23 the Departments of Defense, State, and Energy and  
24 other departments and agencies as appropriate.

1       (b) RESPONSIBILITIES.—The Office shall be respon-  
2 sible for—

3           (1) conducting foreign availability assessments  
4 to determine whether a controlled item is available  
5 to controlled countries and whether requiring a li-  
6 cense, or denial of a license for the export of such  
7 item, is or would be ineffective;

8           (2) conducting mass-market assessments to de-  
9 termine whether a controlled item is available to  
10 controlled countries because of the mass-market sta-  
11 tus of the item;

12           (3) monitoring and evaluating worldwide tech-  
13 nological developments in industry sectors critical to  
14 the national security interests of the United States  
15 to determine foreign availability and mass-market  
16 status of controlled items;

17           (4) monitoring and evaluating multilateral ex-  
18 port control regimes and foreign government export  
19 control policies and practices that affect the national  
20 security interests of the United States;

21           (5) conducting assessments of United States in-  
22 dustrial sectors critical to the United States defense  
23 industrial base and how the sectors are affected by  
24 technological developments, technology transfers,  
25 and foreign competition; and

1           (6) conducting assessments of the impact of  
2       United States export control policies on—

3           (A) United States industrial sectors critical  
4       to the national security interests of the United  
5       States; and

6           (B) the United States economy in general.

7       (c) ~~REPORTS TO CONGRESS.~~—The Secretary shall  
8       make available to the Committee on International Rela-  
9       tions of the House of Representatives and the Committee  
10      on Banking, Housing, and Urban Affairs of the Senate  
11      as part of the Secretary's annual report required under  
12      section 801 information on the operations of the Office;  
13      and on improvements in the Government's ability to assess  
14      foreign availability and mass-market status, during the  
15      fiscal year preceding the report, including information on  
16      the training of personnel, and the use of Commercial Serv-  
17      ice Officers of the United States and Foreign Commercial  
18      Service to assist in making determinations. The informa-  
19      tion shall also include a description of determinations  
20      made under this Act during the preceding fiscal year that  
21      foreign availability or mass-market status did or did not  
22      exist (as the case may be), together with an explanation  
23      of the determinations.

24      (d) ~~SHARING OF INFORMATION.~~—Each department  
25      or agency of the United States, including any intelligence



1 agency, and all contractors with any such department or  
 2 agency, shall, consistent with the need to protect intel-  
 3 ligence sources and methods, furnish information to the  
 4 Office concerning foreign availability and the mass-market  
 5 status of items subject to export controls under this Act.

## 6 **TITLE III—FOREIGN POLICY**

### 7 **EXPORT CONTROLS**

#### 8 **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**

#### 9 **TROLS.**

##### 10 **(a) AUTHORITY.—**

11 (1) **IN GENERAL.**—In order to carry out the  
 12 purposes set forth in subsection (b), the President  
 13 may, in accordance with the provisions of this Act,  
 14 prohibit, curtail, or require a license, other author-  
 15 ization, recordkeeping, or reporting for the export of  
 16 any item subject to the jurisdiction of the United  
 17 States or exported by any person subject to the ju-  
 18 risdiction of the United States.

19 (2) **EXERCISE OF AUTHORITY.**—The authority  
 20 contained in this subsection shall be exercised by the  
 21 Secretary, in consultation with the Secretary of  
 22 State and such other departments and agencies as  
 23 the Secretary considers appropriate.

24 (b) **PURPOSES.**—The purposes of foreign policy ex-  
 25 port controls are the following:

1           (1) To promote the foreign policy objectives of  
 2           the United States, consistent with the purposes of  
 3           this section and the provisions of this Act.

4           (2) To promote international peace, stability,  
 5           and respect for fundamental human rights.

6           (3) To use export controls to deter and punish  
 7           acts of international terrorism and to encourage  
 8           other countries to take immediate steps to prevent  
 9           the use of their territories or resources to aid, en-  
 10          courage, or give sanctuary to those persons involved  
 11          in directing, supporting, or participating in acts of  
 12          international terrorism.

13          (c) EXCEPTION.—The President may not control  
 14          under this title the export from a foreign country (whether  
 15          or not by a United States person) of any item produced  
 16          or originating in a foreign country that contains parts or  
 17          components produced or originating in the United States.

18          (d) CONTRACT SANCTITY.—

19               (1) IN GENERAL.—The President may not pro-  
 20               hibit the export of any item under this title if that  
 21               item is to be exported—

22                       (A) in performance of a binding contract,  
 23                       agreement, or other contractual commitment  
 24                       entered into before the date on which the Presi-  
 25                       dent reports to Congress the President's inten-

tion to impose controls on that item under this title; or

(B) under a license or other authorization issued under this Act before the earlier of the date on which the control is initially imposed or the date on which the President reports to Congress the President's intention to impose controls under this title.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply in any case in which the President determines and certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that—

(A) there is a serious threat to a foreign policy interest of the United States;

(B) the prohibition of exports under each binding contract, agreement, commitment, license, or authorization will be instrumental in remedying the situation posing the serious threat; and

(C) the export controls will be in effect only as long as the serious threat exists.

**SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.**

(a) NOTICE.—

1           (1) INTENT TO IMPOSE FOREIGN POLICY EX-  
 2           PORT CONTROL.—Except as provided in section 306,  
 3           not later than 45 days before imposing or imple-  
 4           menting an export control under this title, the Presi-  
 5           dent shall publish in the Federal Register—

6                     (A) a notice of intent to do so; and

7                     (B) provide for a period of not less than  
 8           30 days for any interested person to submit  
 9           comments on the export control proposed under  
 10          this title.

11          (2) PURPOSES OF NOTICE.—The purposes of  
 12          the notice are—

13                    (A) to provide an opportunity for the for-  
 14           mulation of an effective export control policy  
 15           under this title that advances United States  
 16           economic and foreign policy interests; and

17                    (B) to provide an opportunity for negotia-  
 18           tions to achieve the purposes set forth in sec-  
 19           tion 301(b).

20          (b) NEGOTIATIONS.—During the 45-day period that  
 21          begins on the date of notice described in subsection (a),  
 22          the President may negotiate with the government of the  
 23          foreign country against which the export control is pro-  
 24          posed in order to resolve the reasons underlying the pro-  
 25          posed export control.

1       ~~(c) CONSULTATION.—~~

2               ~~(1) REQUIREMENT.—~~The President shall con-  
 3       sult with the Committee on Banking, Housing, and  
 4       Urban Affairs of the Senate and the Committee on  
 5       International Relations of the House of Representa-  
 6       tives regarding any export control proposed under  
 7       this title and the efforts to achieve or increase multi-  
 8       lateral cooperation on the issues or problems under-  
 9       lying the proposed export control.

10              ~~(2) CLASSIFIED CONSULTATION.—~~The con-  
 11       sultations described in paragraph ~~(1)~~ may be con-  
 12       ducted on a classified basis if the Secretary con-  
 13       siders it necessary.

14   **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**  
 15       **TROLS.**

16       Each export control imposed by the President under  
 17       this title shall—

18              ~~(1)~~ have clearly stated and specific United  
 19       States foreign policy objectives;

20              ~~(2)~~ have objective standards for evaluating the  
 21       success or failure of the export control;

22              ~~(3)~~ include an assessment by the President  
 23       that—

1           (A) the export control is likely to achieve  
 2           such objectives and the expected time for  
 3           achieving the objectives; and

4           (B) the achievement of the objectives of  
 5           the export control outweighs any potential costs  
 6           of the export control to other United States  
 7           economic, foreign policy, humanitarian, or na-  
 8           tional security interests;

9           (4) be targeted narrowly; and

10          (5) seek to minimize any adverse impact on the  
 11          humanitarian activities of United States and foreign  
 12          nongovernmental organizations in the country sub-  
 13          ject to the export control.

14   **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**  
 15           **CONTROL.**

16          (a) **REQUIREMENT.**—Before imposing an export con-  
 17          trol under this title, the President shall submit to the  
 18          Committee on Banking, Housing, and Urban Affairs of  
 19          the Senate and the Committee on International Relations  
 20          of the House of Representatives a report on the proposed  
 21          export control. The report may be provided on a classified  
 22          basis if the Secretary considers it necessary.

23          (b) **CONTENT.**—The report shall contain a descrip-  
 24          tion and assessment of each of the criteria described in

1 section 303. In addition, the report shall contain a descrip-  
2 tion and assessment of—

3           (1) any diplomatic and other steps that the  
4           United States has taken to accomplish the intended  
5           objective of the proposed export control;

6           (2) unilateral export controls imposed, and  
7           other measures taken, by other countries to achieve  
8           the intended objective of the proposed export con-  
9           trol;

10           (3) the likelihood of multilateral adoption of  
11           comparable export controls;

12           (4) alternative measures to promote the same  
13           objectives and the likelihood of their potential suc-  
14           cess;

15           (5) any United States obligations under inter-  
16           national trade agreements, treaties, or other inter-  
17           national arrangements, with which the proposed ex-  
18           port control may conflict;

19           (6) the likelihood that the proposed export con-  
20           trol could lead to retaliation against United States  
21           interests;

22           (7) the likely economic impact of the proposed  
23           export control on the United States economy, United  
24           States international trade and investment, and

1 United States agricultural interests, commercial in-  
 2 terests, and employment; and

3 (8) a conclusion that the probable achievement  
 4 of the objectives of the proposed export control out-  
 5 weighs any likely costs to United States economic,  
 6 foreign policy, humanitarian, or national security in-  
 7 terests, including any potential harm to the United  
 8 States agricultural and business firms and to the  
 9 international reputation of the United States as a  
 10 reliable supplier of goods, services, or technology.

11 **SEC. 305. IMPOSITION OF CONTROLS.**

12 The President may impose an export control under  
 13 this title after the submission of the report required under  
 14 section 304 and publication in the Federal Register of a  
 15 notice of the imposition of the export control .

16 **SEC. 306. DEFERRAL AUTHORITY.**

17 (a) **AUTHORITY.**—The President may defer compli-  
 18 ance with any requirement contained in section 302(a),  
 19 304, or 305 in the case of a proposed export control if—

20 (1) the President determines that a deferral of  
 21 compliance with the requirement is in the national  
 22 interest of the United States; and

23 (2) the requirement is satisfied not later than  
 24 60 days after the date on which the export control  
 25 is imposed under this title.



1       (b) ~~TERMINATION OF CONTROL.~~—An export control  
 2 with respect to which a deferral has been made under sub-  
 3 section (a) shall terminate 60 days after the date the ex-  
 4 port control is imposed unless all requirements have been  
 5 satisfied before the expiration of the 60-day period.

6 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

7       (a) ~~RENEWAL AND TERMINATION.~~—

8           (1) ~~IN GENERAL.~~—Any export control imposed  
 9 under this title shall terminate on March 31 of each  
 10 renewal year unless the President renews the export  
 11 control on or before such date. For purposes of this  
 12 section, the term “renewal year” means 2003 and  
 13 every 2 years thereafter.

14          (2) ~~EXCEPTION.~~—This section shall not apply  
 15 to an export control imposed under this title that—

16               (A) is required by law;

17               (B) is targeted against any country des-  
 18 ignated as a country supporting international  
 19 terrorism pursuant to section 310; or

20               (C) has been in effect for less than 1 year  
 21 as of February 1 of a renewal year.

22       (b) ~~REVIEW.~~—

23           (1) ~~IN GENERAL.~~—Not later than February 1  
 24 of each renewal year, the President shall review all  
 25 export controls in effect under this title.

1           ~~(2) CONSULTATION.—~~

2           (A) REQUIREMENT.—Before completing a  
3 review under paragraph (1), the President shall  
4 consult with the Committee on Banking, Hous-  
5 ing, and Urban Affairs of the Senate and the  
6 Committee on International Relations of the  
7 House of Representative regarding each export  
8 control that is being reviewed.

9           ~~(B) CLASSIFIED CONSULTATION.—~~The  
10 consultations may be conducted on a classified  
11 basis if the Secretary considers it necessary.

12          ~~(3) PUBLIC COMMENT.—~~In conducting the re-  
13 view of each export control under paragraph (1), the  
14 President shall provide a period of not less than 30  
15 days for any interested person to submit comments  
16 on renewal of the export control. The President shall  
17 publish notice of the opportunity for public comment  
18 in the Federal Register not less than 45 days before  
19 the review is required to be completed.

20          ~~(c) REPORT TO CONGRESS.—~~

21          (1) REQUIREMENT.—Before renewing an export  
22 control imposed under this title, the President shall  
23 submit to the committees of Congress referred to in  
24 subsection (b)(2)(A) a report on each export control  
25 that the President intends to renew.

1           (2) FORM AND CONTENT OF REPORT.—The re-  
 2       port may be provided on a classified basis if the Sec-  
 3       retary considers it necessary. Each report shall con-  
 4       tain the following:

5           (A) A clearly stated explanation of the spe-  
 6       cific United States foreign policy objective that  
 7       the existing export control was intended to  
 8       achieve.

9           (B) An assessment of—

10           (i) the extent to which the existing ex-  
 11       port control achieved its objectives before  
 12       renewal based on the objective criteria es-  
 13       tablished for evaluating the export control;  
 14       and

15           (ii) the reasons why the existing ex-  
 16       port control has failed to fully achieve its  
 17       objectives and, if renewed, how the export  
 18       control will achieve that objective before  
 19       the next renewal year.

20           (C) An updated description and assess-  
 21       ment of—

22           (i) each of the criteria described in  
 23       section 303, and

1 (ii) each matter required to be re-  
 2 ported under section 304(b) (1) through  
 3 (8).

4 ~~(3) RENEWAL OF EXPORT CONTROL.—~~The  
 5 President may renew an export control under this  
 6 title after submission of the report described in  
 7 paragraph (2) and publication of notice of renewal  
 8 in the Federal Register.

9 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

10 (a) ~~IN GENERAL.—~~Notwithstanding any other provi-  
 11 sion of law, the President—

12 ~~(1)~~ shall terminate any export control imposed  
 13 under this title if the President determines that the  
 14 control has substantially achieved the objective for  
 15 which it was imposed; and

16 ~~(2)~~ may terminate any export control imposed  
 17 under this title that is not required by law at any  
 18 time.

19 (b) ~~EXCEPTION.—~~Paragraphs (1) and (2) of sub-  
 20 section (a) do not apply to any export control imposed  
 21 under this title that is targeted against any country des-  
 22 ignated as a country supporting international terrorism  
 23 pursuant to section 310.

24 (c) ~~EFFECTIVE DATE OF TERMINATION.—~~The termi-  
 25 nation of an export control pursuant to this section shall

1 take effect on the date notice of the termination is pub-  
2 lished in the Federal Register.

3 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**  
4 **TIONS.**

5 Notwithstanding any other provision of this Act set-  
6 ting forth limitations on authority to control exports and  
7 except as provided in section 304, the President may im-  
8 pose controls on exports to a particular country or coun-  
9 tries in order to fulfill obligations or commitments of the  
10 United States under resolutions of the United Nations and  
11 under treaties, or other international agreements and ar-  
12 rangements, to which the United States is a party.

13 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**  
14 **INTERNATIONAL TERRORISM.**

15 (a) **LICENSE REQUIRED.**—A license shall be required  
16 for the export of an item to a country if the Secretary  
17 of State has determined that—

18 (1) the government of such country has repeat-  
19 edly provided support for acts of international ter-  
20 rorism; and

21 (2) the export of the item could make a signifi-  
22 cant contribution to the military potential of such  
23 country, including its military logistics capability, or  
24 could enhance the ability of such country to support  
25 acts of international terrorism.

1       (b) NOTIFICATION.—The Secretary and the Sec-  
 2 retary of State shall notify the Committee on International  
 3 Relations of the House of Representatives and the Com-  
 4 mittee on Banking, Housing, and Urban Affairs and the  
 5 Committee on Foreign Relations of the Senate at least 30  
 6 days before issuing any license required by subsection (a).

7       (c) DETERMINATIONS REGARDING REPEATED SUP-  
 8 PORT.—Each determination of the Secretary of State  
 9 under subsection (a)(1), including each determination in  
 10 effect on the date of the enactment of the Antiterrorism  
 11 and Arms Export Amendments Act of 1989, shall be pub-  
 12 lished in the Federal Register.

13       (d) LIMITATIONS ON RESCINDING DETERMINA-  
 14 TION.—A determination made by the Secretary of State  
 15 under subsection (a)(1) may not be rescinded unless the  
 16 President submits to the Speaker of the House of Rep-  
 17 resentatives and the Chairman of the Committee on Bank-  
 18 ing, Housing, and Urban Affairs and the Chairman of the  
 19 Committee on Foreign Relations of the Senate—

20               (1) before the proposed rescission would take  
 21 effect, a report certifying that—

22                       (A) there has been a fundamental change  
 23 in the leadership and policies of the government  
 24 of the country concerned;

1           (B) that government is not supporting acts  
2           of international terrorism; and

3           (C) that government has provided assur-  
4           ances that it will not support acts of inter-  
5           national terrorism in the future; or

6           (2) at least 45 days before the proposed rescis-  
7           sion would take effect, a report justifying the rescis-  
8           sion and certifying that—

9           (A) the government concerned has not pro-  
10          vided any support for international terrorism  
11          during the preceding 6-month period; and

12          (B) the government concerned has pro-  
13          vided assurances that it will not support acts of  
14          international terrorism in the future.

15          (c) INFORMATION TO BE INCLUDED IN NOTIFICA-  
16          TION.—The Secretary and the Secretary of State shall in-  
17          clude in the notification required by subsection (b)—

18               (1) a detailed description of the item to be of-  
19               fered, including a brief description of the capabilities  
20               of any item for which a license to export is sought;

21               (2) the reasons why the foreign country or  
22               international organization to which the export or  
23               transfer is proposed to be made needs the item  
24               which is the subject of such export or transfer and

1 a description of the manner in which such country  
2 or organization intends to use the item;

3 ~~(3)~~ the reasons why the proposed export or  
4 transfer is in the national interest of the United  
5 States;

6 ~~(4)~~ an analysis of the impact of the proposed  
7 export or transfer on the military capabilities of the  
8 foreign country or international organization to  
9 which such export or transfer would be made;

10 ~~(5)~~ an analysis of the manner in which the pro-  
11 posed export would affect the relative military  
12 strengths of countries in the region to which the  
13 item which is the subject of such export would be de-  
14 livered and whether other countries in the region  
15 have comparable kinds and amounts of the item; and

16 ~~(6)~~ an analysis of the impact of the proposed  
17 export or transfer on the United States relations  
18 with the countries in the region to which the item  
19 which is the subject of such export would be deliv-  
20 ered.



1 **TITLE IV—EXEMPTION FOR AG-**  
 2 **RICULTURAL COMMODITIES,**  
 3 **MEDICINE, AND MEDICAL**  
 4 **SUPPLIES**

5 **SEC. 401. EXEMPTION FOR AGRICULTURAL COMMODITIES,**  
 6 **MEDICINE, AND MEDICAL SUPPLIES.**

7 Notwithstanding any other provision of law, the ex-  
 8 port controls imposed on items under title III shall not  
 9 apply to agricultural commodities, medicine, and medical  
 10 supplies.

11 **SEC. 402. TERMINATION OF EXPORT CONTROLS REQUIRED**  
 12 **BY LAW.**

13 Notwithstanding any other provision of law, the  
 14 President shall terminate any export control mandated by  
 15 law on agricultural commodities, medicine, and medical  
 16 supplies upon the date of enactment of this Act except  
 17 for a control that is specifically reimposed by law.

18 **SEC. 403. EXCLUSIONS.**

19 Sections 401 and 402 do not apply to the following:

20 (1) The export of agricultural commodities,  
 21 medicine, and medical supplies that are subject to  
 22 national security export controls under title II or are  
 23 listed on the United States Munitions List estab-  
 24 lished under section 38 of the Arms Export Control  
 25 Act (22 U.S.C. 2778).

1           (2) The export of agricultural commodities,  
 2           medicine, and medical supplies to a country against  
 3           which an embargo is in effect under the Trading  
 4           With the Enemy Act.

5 **TITLE V—PROCEDURES FOR EX-**  
 6 **PORT LICENSES AND INTER-**  
 7 **AGENCY DISPUTE RESOLU-**  
 8 **TION**

9 **SEC. 501. EXPORT LICENSE PROCEDURES.**

10       (a) RESPONSIBILITY OF THE SECRETARY.—

11           (1) IN GENERAL.—All applications for a license  
 12           or other authorization to export a controlled item  
 13           shall be filed in such manner and include such infor-  
 14           mation as the Secretary may, by regulation, pre-  
 15           scribe.

16           (2) PROCEDURES.—In guidance and regulations  
 17           that implement this section, the Secretary shall de-  
 18           scribe the procedures required by this section, the  
 19           responsibilities of the Secretary and of other depart-  
 20           ments and agencies in reviewing applications, the  
 21           rights of the applicant, and other relevant matters  
 22           affecting the review of license applications.

23           (3) CALCULATION OF PROCESSING TIMES.—In  
 24           calculating the processing times set forth in this  
 25           title, the Secretary shall use calendar days, except

1 that if the final day for a required action falls on a  
 2 weekend or holiday, that action shall be taken no  
 3 later than the following business day.

4 (4) CRITERIA FOR EVALUATING APPLICA-  
 5 TIONS.—In determining whether to grant an appli-  
 6 cation to export a controlled item under this Act, the  
 7 following criteria shall be considered:

8 (A) The characteristics of the controlled  
 9 item.

10 (B) The threat to—

11 (i) the national security interests of  
 12 the United States from items controlled  
 13 under title II of this Act; or

14 (ii) the foreign policy of the United  
 15 States from items controlled under title III  
 16 of this Act.

17 (C) The country tier designation of the  
 18 country to which a controlled item is to be ex-  
 19 ported pursuant to section 203.

20 (D) The risk of export diversion or misuse  
 21 by—

22 (i) the exporter;

23 (ii) the method of export;

24 (iii) the end-user;

1                   (iv) the country where the end-user is  
2                   located; and

3                   (v) the end-use.

4                   (E) Risk mitigating factors including, but  
5                   not limited to—

6                   (i) changing the characteristics of the  
7                   controlled item;

8                   (ii) after-market monitoring by the ex-  
9                   porter; and

10                  (iii) post-shipment verification.

11                  (b) INITIAL SCREENING.—

12                   (1) UPON RECEIPT OF APPLICATION.—Upon re-  
13                   ceipt of an export license application, the Secretary  
14                   shall enter and maintain in the records of the De-  
15                   partment information regarding the receipt and sta-  
16                   tus of the application.

17                   (2) INITIAL PROCEDURES.—

18                   (A) IN GENERAL.—Not later than 9 days  
19                   after receiving any license application, the Sec-  
20                   retary shall—

21                   (i) contact the applicant if the appli-  
22                   cation is improperly completed or if addi-  
23                   tional information is required; and hold the  
24                   application for a reasonable time while the  
25                   applicant provides the necessary correc-

1           tions or information, and such time shall  
2           not be included in calculating the time pe-  
3           riods prescribed in this title;

4           (ii) refer the application, through the  
5           use of a common data base or other  
6           means, and all information submitted by  
7           the applicant, and all necessary rec-  
8           ommendations and analyses by the Sec-  
9           retary to the Secretary of Defense, the  
10          Secretary of State, and the heads of and  
11          other departments and agencies the Sec-  
12          retary considers appropriate;

13          (iii) ensure that the classification stat-  
14          ed on the application for the export items  
15          is correct; and

16          (iv) return the application if a license  
17          is not required.

18          (B) REFERRAL NOT REQUIRED.—In the  
19          event that the head of a department or agency  
20          determines that certain types of applications  
21          need not be referred to the department or agen-  
22          cy, such department or agency head shall notify  
23          the Secretary of the specific types of such appli-  
24          cations that the department or agency does not  
25          wish to review.

1           ~~(3) WITHDRAWAL OF APPLICATION.~~—An appli-  
 2           cant may, by written notice to the Secretary, with-  
 3           draw an application at any time before final action.

4           ~~(c) ACTION BY OTHER DEPARTMENTS AND AGEN-~~  
 5           ~~CIES.~~—

6           ~~(1) REFERRAL TO OTHER AGENCIES.~~—The Sec-  
 7           retary shall promptly refer a license application to  
 8           the departments and agencies under subsection (b)  
 9           to make recommendations and provide information  
 10          to the Secretary.

11          ~~(2) RESPONSIBILITY OF REFERRAL DEPART-~~  
 12          ~~MENTS AND AGENCIES.~~—The Secretary of Defense,  
 13          the Secretary of State, and the heads of other re-  
 14          viewing departments and agencies shall take all nec-  
 15          essary actions in a prompt and responsible manner  
 16          on an application. Each department or agency re-  
 17          viewing an application under this section shall estab-  
 18          lish and maintain records properly identifying and  
 19          monitoring the status of the matter referred to the  
 20          department or agency.

21          ~~(3) ADDITIONAL INFORMATION REQUESTS.~~—  
 22          Each department or agency to which a license appli-  
 23          cation is referred shall specify to the Secretary any  
 24          information that is not in the application that would  
 25          be required for the department or agency to make

1 a determination with respect to the application, and  
2 the Secretary shall promptly request such informa-  
3 tion from the applicant. The time that may elapse  
4 between the date the information is requested by  
5 that department or agency and the date the infor-  
6 mation is received by that department or agency  
7 shall not be included in calculating the time periods  
8 prescribed in this title.

9 (4) ~~TIME PERIOD FOR ACTION BY REFERRAL~~  
10 ~~DEPARTMENTS AND AGENCIES.~~—Within 30 days  
11 after the Secretary refers an application under this  
12 section, each department or agency to which an ap-  
13 plication has been referred shall provide the Sec-  
14 retary with a recommendation either to approve the  
15 license or to deny the license. A recommendation  
16 that the Secretary deny a license shall include a  
17 statement of reasons for the recommendation that  
18 are consistent with the provisions of this title, and  
19 shall cite both the specific statutory and regulatory  
20 basis for the recommendation. A department or  
21 agency that fails to provide a recommendation in ac-  
22 cordance with this paragraph within that 30-day pe-  
23 riod shall be deemed to have no objection to the de-  
24 cision of the Secretary on the application.

1       (d) ACTION BY THE SECRETARY.—Not later than 30  
 2 days after the date the application is referred, the Sec-  
 3 retary shall—

4           (1) if there is agreement among the referral de-  
 5 partments and agencies to issue or deny the  
 6 license—

7           (A) issue the license and ensure all appro-  
 8 priate personnel in the Department (including  
 9 the Office of Export Enforcement) are notified  
 10 of all approved license applications; or

11           (B) notify the applicant of the intention to  
 12 deny the license; or

13           (2) if there is no agreement among the referral  
 14 departments and agencies, notify the applicant that  
 15 the application is subject to the interagency dispute  
 16 resolution process provided for in section 502.

17       (e) CONSEQUENCES OF APPLICATION DENIAL.—

18           (1) IN GENERAL.—If a determination is made  
 19 to deny a license, the applicant shall be informed in  
 20 writing by the Secretary of—

21           (A) the determination;

22           (B) the specific statutory and regulatory  
 23 bases for the proposed denial;

24           (C) what, if any, modifications to, or re-  
 25 strictions on, the items for which the license



1 was sought would allow such export to be com-  
 2 patible with export controls imposed under this  
 3 Act, and which officer or employee of the De-  
 4 partment would be in a position to discuss  
 5 modifications or restrictions with the applicant  
 6 and the specific statutory and regulatory bases  
 7 for imposing such modifications or restrictions;

8 (D) to the extent consistent with the na-  
 9 tional security and foreign policy interests of  
 10 the United States; the specific considerations  
 11 that led to the determination to deny the appli-  
 12 cation; and

13 (E) the availability of appeal procedures.

14 (2) PERIOD FOR APPLICANT TO RESPOND.—

15 The applicant shall have 20 days from the date of  
 16 the notice of intent to deny the application to re-  
 17 spond in a manner that addresses and corrects the  
 18 reasons for the denial. If the applicant does not ade-  
 19 quately address or correct the reasons for denial or  
 20 does not respond, the license shall be denied. If the  
 21 applicant does address or correct the reasons for de-  
 22 nial, the application shall receive consideration in a  
 23 timely manner.

24 (f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

1           (1) IN GENERAL.—The Secretary shall establish  
2           appropriate procedures for an applicant to appeal to  
3           the Secretary the denial of an application or other  
4           administrative action under this Act. In any case in  
5           which the Secretary proposes to reverse the decision  
6           with respect to the application, the appeal under this  
7           subsection shall be handled in accordance with the  
8           interagency dispute resolution process provided for  
9           in section 502(b)(3).

10           (2) ENFORCEMENT OF TIME LIMITS.—

11           (A) IN GENERAL.—In any case in which  
12           an action prescribed in this section is not taken  
13           on an application within the time period estab-  
14           lished by this section (except in the case of a  
15           time period extended under subsection (g) of  
16           which the applicant is notified), the applicant  
17           may file a petition with the Secretary request-  
18           ing compliance with the requirements of this  
19           section. When such petition is filed, the Sec-  
20           retary shall take immediate steps to correct the  
21           situation giving rise to the petition and shall  
22           immediately notify the applicant of such steps.

23           (B) BRINGING COURT ACTION.—If, within  
24           20 days after a petition is filed under subpara-  
25           graph (A), the processing of the application has

not been brought into conformity with the requirements of this section, or the processing of the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for an order requiring compliance with the time periods required by this section.

~~(g)~~ EXCEPTIONS FROM REQUIRED TIME PERIODS.—

The following actions related to processing an application shall not be included in calculating the time periods prescribed in this section:

~~(1)~~ AGREEMENT OF THE APPLICANT.—Delays

upon which the Secretary and the applicant mutually agree.

~~(2)~~ PRELICENSE CHECKS.—A prelicense check

(for a period not to exceed 60 days) that may be required to establish the identity and reliability of the recipient of items controlled under this Act, if—

~~(A)~~ the need for the prelicense check is de-

termined by the Secretary or by another department or agency in any case in which the request for the prelicense check is made by such department or agency;

1           (B) the request for the prelicense check is  
 2           initiated by the Secretary within 5 days after  
 3           the determination that the prelicense check is  
 4           required; and

5           (C) the analysis of the result of the  
 6           prelicense check is completed by the Secretary  
 7           within 5 days.

8           (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-  
 9           MENT ASSURANCES.—Any request by the Secretary  
 10          or another department or agency for government-to-  
 11          government assurances of suitable end-uses of items  
 12          approved for export, when failure to obtain such as-  
 13          surances would result in rejection of the application;  
 14          if—

15          (A) the request for such assurances is sent  
 16          to the Secretary of State within 5 days after  
 17          the determination that the assurances are re-  
 18          quired;

19          (B) the Secretary of State initiates the re-  
 20          quest of the relevant government within 10  
 21          days thereafter; and

22          (C) the license is issued within 5 days  
 23          after the Secretary receives the requested assur-  
 24          ances.

1           (4) EXCEPTION.—Whenever a prelicense check  
 2           described in paragraph (2) or assurances described  
 3           in paragraph (3) are not requested within the time  
 4           periods set forth therein, then the time expended for  
 5           such prelicense check or assurances shall be included  
 6           in calculating the time periods established by this  
 7           section.

8           (5) MULTILATERAL REVIEW.—Multilateral re-  
 9           view of a license application to the extent that such  
 10          multilateral review is required by a relevant multilat-  
 11          eral regime.

12          (6) CONGRESSIONAL NOTIFICATION.—Such  
 13          time as is required for mandatory congressional noti-  
 14          fications under this Act.

15          (7) CONSULTATIONS.—Consultation with for-  
 16          eign governments, if such consultation is provided  
 17          for by a relevant multilateral regime as a pre-  
 18          condition for approving a license.

19          (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-  
 20          IES.—

21               (1) CLASSIFICATION REQUESTS.—In any case  
 22               in which the Secretary receives a written request  
 23               asking for the proper classification of an item on the  
 24               Control List or the applicability of licensing require-  
 25               ments under this title, the Secretary shall promptly

1        notify the Secretary of Defense and other depart-  
 2        ments and agencies the Secretary considers appro-  
 3        priate. The Secretary shall, within 14 days after re-  
 4        ceiving the request, inform the person making the  
 5        request of the proper classification.

6            ~~(2) OTHER INQUIRIES.—~~In any case in which  
 7        the Secretary receives a written request for informa-  
 8        tion under this Act, the Secretary shall, within 30  
 9        days after receiving the request, reply with that in-  
 10       formation to the person making the request.

11    **SEC. 502. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

12        ~~(a) IN GENERAL.—~~All license applications on which  
 13        agreement cannot be reached shall be referred to the inter-  
 14        agency dispute resolution process for decision.

15        ~~(b) INTERAGENCY DISPUTE RESOLUTION PROC-~~  
 16        ~~ESS.—~~

17            ~~(1) INITIAL RESOLUTION.—~~The Secretary shall  
 18        establish, select the chairperson of, and determine  
 19        procedures for an interagency committee to review  
 20        initially all license applications described in sub-  
 21        section (a) with respect to which the Secretary and  
 22        any of the referral departments and agencies are not  
 23        in agreement. The chairperson shall consider the po-  
 24        sitions of all the referral departments and agencies  
 25        (which shall be included in the minutes described in

1 subsection (c)(2)) and make a decision on the license  
 2 application, including appropriate revisions or condi-  
 3 tions thereto.

4 (2) INTELLIGENCE COMMUNITY.—The analytic  
 5 product of the intelligence community should be fully  
 6 considered with respect to any proposed license  
 7 under this title.

8 (3) FURTHER RESOLUTION.—The President  
 9 shall establish additional levels for review or appeal  
 10 of any matter that cannot be resolved pursuant to  
 11 the process described in paragraph (1). Each such  
 12 review shall—

13 (A) provide for decision-making based on  
 14 the majority vote of the participating depart-  
 15 ments and agencies;

16 (B) provide that a department or agency  
 17 that fails to take a timely position, citing the  
 18 specific statutory and regulatory bases for a de-  
 19 nial, shall be deemed to have no objection to the  
 20 pending decision;

21 (C) provide that any decision of an inter-  
 22 agency committee established under paragraph  
 23 (1) or interagency dispute resolution process es-  
 24 tablished under this paragraph may be esca-  
 25 lated to the next higher level of review at the

request of any representative of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary.

(c) FINAL ACTION.—

(1) IN GENERAL.—Once a final decision is made under subsection (b), the Secretary shall promptly—

(A) issue the license and ensure that all appropriate personnel in the Department (including the Office of Export Enforcement) are notified of all approved license applications; or

(B) notify the applicant of the intention to deny the application.

(2) MINUTES.—The interagency committee and each level of the interagency dispute resolution process shall keep reasonably detailed minutes of all meetings. On each matter before the interagency committee or before any other level of the interagency dispute resolution process in which members disagree, each member shall clearly state the reasons



1 for the member's position and the reasons shall be  
 2 entered in the minutes.

3 **TITLE VI—INTERNATIONAL AR-**  
 4 **RANGEMENTS; FOREIGN BOY-**  
 5 **COTTS; SANCTIONS; AND EN-**  
 6 **FORCEMENT**

7 **SEC. 601. INTERNATIONAL ARRANGEMENTS.**

8 (a) **MULTILATERAL EXPORT CONTROL REGIMES.—**

9 (1) **POLICY.**—It is the policy of the United  
 10 States to seek multilateral arrangements that sup-  
 11 port the national security objectives of the United  
 12 States (as described in title II) and that establish  
 13 fairer and more predictable competitive opportunities  
 14 for United States exporters.

15 (2) **PARTICIPATION IN EXISTING REGIMES.—**

16 Congress encourages the United States to continue  
 17 its active participation in and to strengthen existing  
 18 multilateral export control regimes.

19 (3) **PARTICIPATION IN NEW REGIMES.**—It is the

20 policy of the United States to participate in addi-  
 21 tional multilateral export control regimes if such  
 22 participation would serve the national security inter-  
 23 ests of the United States.

24 (b) **ANNUAL REPORT ON MULTILATERAL EXPORT**

25 **CONTROL REGIMES.**—Not later than February 1 of each

1 year, the President shall submit to the Committee on  
 2 Banking, Housing, and Urban Affairs of the Senate and  
 3 the Committee on International Relations of the House  
 4 of Representatives a report evaluating the effectiveness of  
 5 each multilateral export control regime, including an as-  
 6 sessment of the steps undertaken pursuant to subsections  
 7 (c) and (d). The report, or any part of this report, may  
 8 be submitted in classified form to the extent the Secretary  
 9 considers necessary.

10       (c) STANDARDS FOR MULTILATERAL EXPORT CON-  
 11 TROL REGIMES.—The President shall take steps to estab-  
 12 lish the following features in any multilateral export con-  
 13 trol regime in which the United States is participating or  
 14 may participate:

15           (1) FULL MEMBERSHIP.—All supplier countries  
 16 are members of the regime, and the policies and ac-  
 17 tivities of the members are consistent with the objec-  
 18 tives and membership criteria of the multilateral ex-  
 19 port control regime.

20           (2) EFFECTIVE ENFORCEMENT AND COMPLI-  
 21 ANCE.—The regime promotes enforcement and com-  
 22 pliance with the regime's rules and guidelines.

23           (3) PUBLIC UNDERSTANDING.—The regime  
 24 makes an effort to enhance public understanding of

1 the purpose and procedures of the multilateral ex-  
 2 port control regime.

3 (4) ~~EFFECTIVE IMPLEMENTATION PROCE-~~  
 4 ~~DURES.~~—The multilateral export control regime has  
 5 procedures for the implementation of its rules and  
 6 guidelines through uniform and consistent interpre-  
 7 tations of its export controls.

8 (5) ~~ENHANCED COOPERATION WITH REGIME~~  
 9 ~~NONMEMBERS.~~—There is agreement among the  
 10 members of the multilateral export control regime  
 11 to—

12 (A) cooperate with governments outside  
 13 the regime to restrict the export of items con-  
 14 trolled by such regime; and

15 (B) establish an ongoing mechanism in the  
 16 regime to coordinate planning and implementa-  
 17 tion of export control measures related to such  
 18 cooperation.

19 (6) ~~PERIODIC HIGH-LEVEL MEETINGS.~~—There  
 20 are regular periodic meetings of high-level represent-  
 21 atives of the governments of members of the multi-  
 22 lateral export control regime for the purpose of co-  
 23 ordinating export control policies and issuing policy  
 24 guidance to members of the regime.

1           (7) COMMON LIST OF CONTROLLED ITEMS.—

2           There is agreement on a common list of items con-  
3           trolled by the multilateral export control regime.

4           (8) REGULAR UPDATES OF COMMON LIST.—

5           There is a procedure for removing items from the  
6           list of controlled items when the control of such  
7           items no longer serves the objectives of the members  
8           of the multilateral export control regime.

9           (9) TREATMENT OF CERTAIN COUNTRIES.—

10          There is agreement to prevent the export or diver-  
11          sion of the most sensitive items to countries whose  
12          activities are threatening to the national security of  
13          the United States or its allies.

14          (10) HARMONIZATION OF LICENSE APPROVAL  
15          PROCEDURES.—There is harmonization among the  
16          members of the regime of their national export li-  
17          cense approval procedures and practices.

18          (11) UNDERCUTTING.—There is a limit with re-  
19          spect to when members of a multilateral export con-  
20          trol regime—

21                 (A) grant export licenses for any item that  
22                 is substantially identical to or directly competi-  
23                 tive with an item controlled pursuant to the re-  
24                 gime, where the United States has denied an  
25                 export license for such item, or

1           (B) approve exports to a particular end  
2           user to which the United States has denied ex-  
3           port license for a similar item.

4           (d) STANDARDS FOR NATIONAL EXPORT CONTROL  
5           SYSTEMS.—The President shall take steps to attain the  
6           cooperation of members of each regime in implementing  
7           effective national export control systems containing the  
8           following features:

9           (1) EXPORT CONTROL LAW.—Enforcement au-  
10          thority, civil and criminal penalties, and statutes of  
11          limitations are sufficient to deter potential violations  
12          and punish violators under the member's export con-  
13          trol law.

14          (2) LICENSE APPROVAL PROCESS.—The system  
15          for evaluating export license applications includes  
16          sufficient technical expertise to assess the licensing  
17          status of exports and ensure the reliability of end  
18          users.

19          (3) ENFORCEMENT.—The enforcement mecha-  
20          nism provides authority for trained enforcement offi-  
21          cers to investigate and prevent illegal exports.

22          (4) DOCUMENTATION.—There is a system of  
23          export control documentation and verification with  
24          respect to controlled items.

1           ~~(5) INFORMATION.—~~There are procedures for  
 2           the coordination and exchange of information con-  
 3           cerning licensing, end users, and enforcement with  
 4           other members of the multilateral export control re-  
 5           gime.

6           ~~(6) RESOURCES.—~~The member has devoted  
 7           adequate resources to administer effectively the au-  
 8           thorities, systems, mechanisms, and procedures de-  
 9           scribed in paragraphs ~~(1)~~ through ~~(5)~~.

10          ~~(c) OBJECTIVES REGARDING MULTILATERAL EX-~~  
 11          ~~PORT CONTROL REGIMES.—~~The President shall seek to  
 12          achieve the following objectives with regard to multilateral  
 13          export control regimes:

14                 ~~(1) STRENGTHEN EXISTING REGIMES.—~~  
 15          Strengthen existing multilateral export control  
 16          regimes—

17                         ~~(A)~~ by creating a requirement to share in-  
 18                         formation about export license applications  
 19                         among members before a member approves an  
 20                         export license; and

21                         ~~(B)~~ harmonizing national export license  
 22                         approval procedures and practices, including  
 23                         the elimination of undercutting.

1           (2) REVIEW AND UPDATE.—Review and update  
2           multilateral regime export control lists with other  
3           members, taking into account—

4                   (A) national security concerns;

5                   (B) the controllability of items; and

6                   (C) the costs and benefits of controls.

7           (3) ENCOURAGE COMPLIANCE BY NONMEM-  
8           BERS.—Encourage nonmembers of the multilateral  
9           export control regime—

10                   (A) to strengthen their national export  
11           control regimes and improve enforcement;

12                   (B) to adhere to the appropriate multilat-  
13           eral export control regime; and

14                   (C) not to undermine an existing multilat-  
15           eral export control regime by exporting con-  
16           trolled items in a manner inconsistent with the  
17           guidelines of the regime.

18           (f) TRANSPARENCY OF MULTILATERAL EXPORT  
19           CONTROL REGIMES.—

20                   (1) PUBLICATION OF INFORMATION ON EACH  
21           EXISTING REGIME.—Not later than 120 days after  
22           the date of enactment of this Act, the Secretary  
23           shall, for each multilateral export control regime (to  
24           the extent that it is not inconsistent with the ar-  
25           rangements of that regime or with the national in-

1       terest), publish in the Federal Register and post on  
2       the Department of Commerce website the following  
3       information with respect to the regime:

4               (A) The purposes of the regime.

5               (B) The members of the regime.

6               (C) The export licensing policy of the re-  
7       gime.

8               (D) The items that are subject to export  
9       controls under the regime, together with all  
10      public notes, understandings, and other aspects  
11      of the agreement of the regime, and all changes  
12      thereto.

13              (E) Any countries, end uses, or end users  
14      that are subject to the export controls of the re-  
15      gime.

16              (F) Rules of interpretation.

17              (G) Major policy actions.

18              (H) The rules and procedures of the re-  
19      gime for establishing and modifying any matter  
20      described in subparagraphs (A) through (G)  
21      and for reviewing export license applications.

22       (2) NEW REGIMES.—Not later than 60 days  
23      after the United States joins or organizes a new  
24      multilateral export control regime, the Secretary  
25      shall, to the extent not inconsistent with arrange-



ments under the regime or with the national interest, publish in the Federal Register and post on the Department of Commerce website the information described in subparagraphs (A) through (H) of paragraph (1) with respect to the regime.

~~(3)~~ PUBLICATION OF CHANGES.—Not later than 60 days after a multilateral export control regime adopts any change in the information published under this subsection, the Secretary shall, to the extent not inconsistent with the arrangements under the regime or the national interest, publish such changes in the Federal Register and post such changes on the Department of Commerce website.

~~(g)~~ SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL SYSTEMS.—The Secretary is encouraged to continue to—

(1) participate in training of, and provide training to, officials of other countries on the principles and procedures for implementing effective export controls; and

(2) participate in any such training provided by other departments and agencies of the United States.

1 **SEC. 602. FOREIGN BOYCOTTS.**

2 (a) PURPOSES.—The purposes of this section are as  
3 follows:

4 (1) To counteract restrictive trade practices or  
5 boycotts fostered or imposed by foreign countries  
6 against other countries friendly to the United States  
7 or against any United States person.

8 (2) To encourage and, in specified cases, re-  
9 quire United States persons engaged in the export of  
10 items to refuse to take actions, including furnishing  
11 information or entering into or implementing agree-  
12 ments, which have the effect of furthering or sup-  
13 porting the restrictive trade practices or boycotts  
14 fostered or imposed by any foreign country against  
15 a country friendly to the United States or against  
16 any United States person.

17 (b) PROHIBITIONS AND EXCEPTIONS.—

18 (1) PROHIBITIONS.—In order to carry out the  
19 purposes set forth in subsection (a), the President  
20 shall issue regulations prohibiting any United States  
21 person, with respect to that person's activities in the  
22 interstate or foreign commerce of the United States,  
23 from taking or knowingly agreeing to take any of  
24 the following actions with intent to comply with, fur-  
25 ther, or support any boycott fostered or imposed by  
26 a foreign country against a country that is friendly

1 to the United States and is not itself the object of  
2 any form of boycott pursuant to United States law  
3 or regulation.

4 (A) Refusing, or requiring any other per-  
5 son to refuse, to do business with or in the boy-  
6 cotted country, with any business concern orga-  
7 nized under the laws of the boycotted country,  
8 with any national or resident of the boycotted  
9 country, or with any other person, pursuant to  
10 an agreement with, or requirement of, or a re-  
11 quest from or on behalf of the boycotting coun-  
12 try (subject to the condition that the intent re-  
13 quired to be associated with such an act in  
14 order to constitute a violation of the prohibition  
15 is not indicated solely by the mere absence of  
16 a business relationship with or in the boycotted  
17 country, with any business concern organized  
18 under the laws of the boycotted country, with  
19 any national or resident of the boycotted coun-  
20 try, or with any other person).

21 (B) Refusing, or requiring any other per-  
22 son to refuse, to employ or otherwise discrimi-  
23 nate against any United States person on the  
24 basis of the race, religion, sex, or national ori-

1       gin of that person or of any owner, officer, di-  
2       rector, or employee of such person.

3               (C) ~~Furnishing~~ information with respect to  
4       the race, religion, sex, or national origin of any  
5       United States person or of any owner, officer,  
6       director, or employee of such person.

7               (D) ~~Furnishing~~ information (other than  
8       furnishing normal business information in a  
9       commercial context, as defined by the Sec-  
10      retary) about whether any person has, has had,  
11      or proposes to have any business relationship  
12      (including a relationship by way of sale, pur-  
13      chase, legal or commercial representation, ship-  
14      ping or other transport, insurance, investment,  
15      or supply) with or in the boycotted country,  
16      with any business concern organized under the  
17      laws of the boycotted country, with any national  
18      or resident of the boycotted country, or with  
19      any other person that is known or believed to  
20      be restricted from having any business relation-  
21      ship with or in the boycotting country.

22              (E) ~~Furnishing~~ information about whether  
23      any person is a member of, has made a con-  
24      tribution to, or is otherwise associated with or  
25      involved in the activities of any charitable or

1           fraternal organization which supports the boy-  
 2           cotted country.

3           ~~(F) Paying, honoring, confirming, or other-~~  
 4           ~~wise implementing a letter of credit which con-~~  
 5           ~~tains any condition or requirement the compli-~~  
 6           ~~ance with which is prohibited by regulations~~  
 7           ~~issued pursuant to this paragraph, and no~~  
 8           ~~United States person shall, as a result of the~~  
 9           ~~application of this paragraph, be obligated to~~  
 10          ~~pay or otherwise honor or implement such letter~~  
 11          ~~of credit.~~

12          ~~(2) EXCEPTIONS.—~~Regulations issued pursuant  
 13          to paragraph ~~(1)~~ shall provide exceptions for—

14               ~~(A) compliance, or agreement to comply,~~  
 15               ~~with requirements—~~

16                       (i) prohibiting the import of items  
 17                       from the boycotted country or items pro-  
 18                       duced or provided, by any business concern  
 19                       organized under the laws of the boycotted  
 20                       country or by nationals or residents of the  
 21                       boycotted country; or

22                       (ii) prohibiting the shipment of items  
 23                       to the boycotting country on a carrier of  
 24                       the boycotted country or by a route other

1           than that prescribed by the boycotting  
2           country or the recipient of the shipment;

3           (B) compliance, or agreement to comply,  
4           with import and shipping document require-  
5           ments with respect to the country of origin, the  
6           name of the carrier and route of shipment, the  
7           name of the supplier of the shipment, or the  
8           name of the provider of other services, except  
9           that, for purposes of applying any exception  
10          under this subparagraph, no information know-  
11          ingly furnished or conveyed in response to such  
12          requirements may be stated in negative, black-  
13          listing, or similar exclusionary terms, other  
14          than with respect to carriers or route of ship-  
15          ment as may be permitted by such regulations  
16          in order to comply with precautionary require-  
17          ments protecting against war risks and confis-  
18          cation;

19          (C) compliance, or agreement to comply, in  
20          the normal course of business with the unilat-  
21          eral and specific selection by a boycotting coun-  
22          try, or a national or resident thereof, or car-  
23          riers, insurers, suppliers of services to be per-  
24          formed within the boycotting country, or spe-  
25          cific items which, in the normal course of busi-

1           ness, are identifiable by source when imported  
2           into the boycotting country;

3           (D) compliance, or agreement to comply,  
4           with export requirements of the boycotting  
5           country relating to shipment or transshipment  
6           of exports to the boycotted country, to any busi-  
7           ness concern of or organized under the laws of  
8           the boycotted country, or to any national or  
9           resident of the boycotted country;

10          (E) compliance by an individual, or agree-  
11          ment by an individual to comply, with the immi-  
12          gration or passport requirements of any country  
13          with respect to such individual or any member  
14          of such individual's family or with requests for  
15          information regarding requirements of employ-  
16          ment of such individual within the boycotting  
17          country; and

18          (F) compliance by a United States person  
19          resident in a foreign country, or agreement by  
20          such a person to comply, with the laws of the  
21          country with respect to the person's activities  
22          exclusively therein, and such regulations may  
23          contain exceptions for such resident complying  
24          with the laws or regulations of the foreign coun-  
25          try governing imports into such country of

1           trademarked, trade-named, or similarly specifi-  
 2           cally identifiable products, or components of  
 3           products for such person's own use, including  
 4           the performance of contractual services within  
 5           that country.

6           ~~(3) LIMITATION ON EXCEPTIONS.—~~Regulations  
 7           issued pursuant to paragraphs ~~(2)(C)~~ and ~~(2)(F)~~  
 8           shall not provide exceptions from paragraphs ~~(1)(B)~~  
 9           and ~~(1)(C)~~.

10          ~~(4) ANTITRUST AND CIVIL RIGHTS LAWS NOT~~  
 11          ~~AFFECTED.—~~Nothing in this subsection may be con-  
 12          strued to supersede or limit the operation of the  
 13          antitrust or civil rights laws of the United States.

14          ~~(5) EVASION.—~~This section applies to any  
 15          transaction or activity undertaken by or through a  
 16          United States person or any other person with in-  
 17          tent to evade the provisions of this section or the  
 18          regulations issued pursuant to this subsection. The  
 19          regulations issued pursuant to this section shall ex-  
 20          pressly provide that the exceptions set forth in para-  
 21          graph ~~(2)~~ do not permit activities or agreements (ex-  
 22          pressed or implied by a course of conduct, including  
 23          a pattern of responses) that are otherwise prohib-  
 24          ited, pursuant to the intent of such exceptions.

25          ~~(c) ADDITIONAL REGULATIONS AND REPORTS.—~~



1           (1) REGULATIONS.—In addition to the regula-  
 2           tions issued pursuant to subsection (b), regulations  
 3           issued pursuant to title III shall implement the pur-  
 4           poses set forth in subsection (a).

5           (2) REPORTS BY UNITED STATES PERSONS.—  
 6           The regulations shall require that any United States  
 7           person receiving a request to furnish information;  
 8           enter into or implement an agreement, or take any  
 9           other action referred to in subsection (a) shall report  
 10          that request to the Secretary, together with any  
 11          other information concerning the request that the  
 12          Secretary determines appropriate. The person shall  
 13          also submit to the Secretary a statement regarding  
 14          whether the person intends to comply, and whether  
 15          the person has complied, with the request. Any re-  
 16          port filed pursuant to this paragraph shall be made  
 17          available promptly for public inspection and copying,  
 18          except that information regarding the quantity, de-  
 19          scription, and value of any item to which such report  
 20          relates may be treated as confidential if the Sec-  
 21          retary determines that disclosure of that information  
 22          would place the United States person involved at a  
 23          competitive disadvantage. The Secretary shall peri-  
 24          odically transmit summaries of the information con-  
 25          tained in the reports to the Secretary of State for

1 such action as the Secretary of State, in consultation  
 2 with the Secretary, considers appropriate to carry  
 3 out the purposes set forth in subsection (a).

4 (d) **PREEMPTION.**—The provisions of this section and  
 5 the regulations issued under this section shall preempt any  
 6 law, rule, or regulation that—

7 (1) is a law, rule, or regulation of any of the  
 8 several States or the District of Columbia, or any of  
 9 the territories or possessions of the United States,  
 10 or of any governmental subdivision thereof; and

11 (2) pertains to participation in, compliance  
 12 with, implementation of, or the furnishing of infor-  
 13 mation regarding restrictive trade practices or boy-  
 14 cotts fostered or imposed by foreign countries  
 15 against other countries.

16 **SEC. 603. PENALTIES.**

17 (a) **CRIMINAL PENALTIES.**—

18 (1) **VIOLATIONS BY AN INDIVIDUAL.**—Any indi-  
 19 vidual who knowingly violates, conspires to violate,  
 20 or attempts to violate any provision of this Act or  
 21 any regulation, license, or order issued under this  
 22 Act shall be fined up to 10 times the value of the  
 23 exports involved or \$1,000,000, whichever is greater,  
 24 imprisoned for not more than 10 years, or both, for  
 25 each violation, except that the term of imprisonment

1       may be increased to life for multiple violations or ag-  
 2       gravated circumstances.

3           ~~(2) VIOLATIONS BY A PERSON OTHER THAN AN~~  
 4       ~~INDIVIDUAL.—Any person other than an individual~~  
 5       ~~who knowingly violates, conspires to violate, or at-~~  
 6       ~~tempts to violate any provision of this Act or any~~  
 7       ~~regulation, license, or order issued under this Act~~  
 8       ~~shall be fined up to 10 times the value of the exports~~  
 9       ~~involved or \$10,000,000, whichever is greater, for~~  
 10      ~~each violation.~~

11      ~~(b) FORFEITURE OF PROPERTY INTEREST AND PRO-~~  
 12      ~~CEEDS.—~~

13           ~~(1) FORFEITURE.—Any person who is convicted~~  
 14      ~~under paragraph (1) or (2) of subsection (a) shall,~~  
 15      ~~in addition to any other penalty, forfeit to the~~  
 16      ~~United States—~~

17           ~~(A) any of that person's security or other~~  
 18      ~~interest in, claim against, or property or con-~~  
 19      ~~tractual rights of any kind in the tangible items~~  
 20      ~~that were the subject of the violation;~~

21           ~~(B) any of that person's security or other~~  
 22      ~~interest in, claim against, or property or con-~~  
 23      ~~tractual rights of any kind in the tangible prop-~~  
 24      ~~erty that was used in the export or attempt to~~  
 25      ~~export that was the subject of the violation; and~~

1           (C) any of that person's property consti-  
 2           tuting, or derived from, any proceeds obtained  
 3           directly or indirectly as a result of the violation.

4           (2) PROCEDURES.—The procedures in any for-  
 5           feiture under this subsection, and the duties and au-  
 6           thority of the courts of the United States and the  
 7           Attorney General with respect to any forfeiture ac-  
 8           tion under this subsection, or with respect to any  
 9           property that may be subject to forfeiture under this  
 10          subsection, shall be governed by the provisions of  
 11          chapter 46 of title 18, United States Code, to the  
 12          same extent as property subject to forfeiture under  
 13          that chapter.

14          (e) CIVIL PENALTIES; ADMINISTRATIVE SANC-  
 15          TIONS.—

16          (1) CIVIL PENALTIES.—The Secretary may im-  
 17          pose a civil penalty of up to \$1,000,000 for each vio-  
 18          lation of a provision of this Act or any regulation,  
 19          license, or order issued under this Act. A civil pen-  
 20          alty under this paragraph may be in addition to, or  
 21          in lieu of, any other liability or penalty which may  
 22          be imposed for such a violation.

23          (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-  
 24          retary may deny the export privileges of any person,  
 25          including the suspension or revocation of the author-

1       ity of such person to export or receive United  
 2       States-origin items subject to this Act, for a viola-  
 3       tion of a provision of this Act or any regulation, li-  
 4       cense, or order issued under this Act.

5           (3) EXCLUSION FROM PRACTICE.—The Sec-  
 6       retary may exclude any person acting as an attor-  
 7       ney, accountant, consultant, freight forwarder, or in  
 8       any other representative capacity from participating  
 9       before the Department with respect to a license ap-  
 10      plication or any other matter under this Act.

11      (d) PAYMENT OF CIVIL PENALTIES.—

12           (1) PAYMENT AS CONDITION OF FURTHER EX-  
 13      PORT PRIVILEGES.—The payment of a civil penalty  
 14      imposed under subsection (c) may be made a condi-  
 15      tion for the granting, restoration, or continuing va-  
 16      lidity of any export license, permission, or privilege  
 17      granted or to be granted to the person upon whom  
 18      such penalty is imposed. The period for which the  
 19      payment of a penalty may be made such a condition  
 20      may not exceed 1 year after the date on which the  
 21      payment is due.

22           (2) DEFERRAL OR SUSPENSION.—

23           (A) IN GENERAL.—The payment of a civil  
 24      penalty imposed under subsection (c) may be  
 25      deferred or suspended in whole or in part for a

period no longer than any probation period (which may exceed 1 year) that may be imposed upon the person on whom the penalty is imposed.

(B) NO BAR TO COLLECTION OF PENALTY.—A deferral or suspension under subparagraph (A) shall not operate as a bar to the collection of the penalty concerned in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(3) TREATMENT OF PAYMENTS.—Any amount paid in satisfaction of a civil penalty imposed under subsection (c) shall be covered into the Treasury as miscellaneous receipts except as set forth in section 607(h).

(c) REFUNDS.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, refund any civil penalty imposed under subsection (c) on the ground of a material error of fact or law in imposition of the penalty.

(B) LIMITATION.—A civil penalty may not be refunded under subparagraph (A) later than 2 years after payment of the penalty.

1           ~~(2) PROHIBITION ON ACTIONS FOR REFUND.—~~

2           ~~Notwithstanding section 1346(a) of title 28, United~~  
 3           ~~States Code, no action for the refund of any civil~~  
 4           ~~penalty referred to in paragraph (1) may be main-~~  
 5           ~~tained in any court.~~

6           ~~(f) EFFECT OF OTHER CONVICTIONS.—~~

7           ~~(1) DENIAL OF EXPORT PRIVILEGES.—Any per-~~  
 8           ~~son convicted of a violation of—~~

9                   ~~(A) a provision of this Act or the Export~~  
 10           ~~Administration Act of 1979,~~

11                   ~~(B) a provision of the International Emer-~~  
 12           ~~gency Economic Powers Act (50 U.S.C. 1701 et~~  
 13           ~~seq.);~~

14                   ~~(C) section 793, 794, or 798 of title 18,~~  
 15           ~~United States Code,~~

16                   ~~(D) section 4(b) of the Internal Security~~  
 17           ~~Act of 1950 (50 U.S.C. 783(b));~~

18                   ~~(E) section 38 of the Arms Export Control~~  
 19           ~~Act (22 U.S.C. 2778);~~

20                   ~~(F) section 16 of the Trading with the~~  
 21           ~~Enemy Act (50 U.S.C. App. 16);~~

22                   ~~(G) any regulation, license, or order issued~~  
 23           ~~under any provision of law listed in subpara-~~  
 24           ~~graph (A), (B), (C), (D), (E), or (F);~~

1           ~~(H)~~ section 371 or 1001 of title 18, United  
 2           States Code, if in connection with the export of  
 3           controlled items under this Act or any regula-  
 4           tion, license, or order issued under the Inter-  
 5           national Emergency Economic Powers Act, or  
 6           the export of items controlled under the Arms  
 7           Export Control Act,

8           ~~(I)~~ section 175 of title 18, United States  
 9           Code,

10          ~~(J)~~ a provision of the Atomic Energy Act  
 11          (42 U.S.C. 201 et seq.),

12          ~~(K)~~ section 831 of title 18, United States  
 13          Code, or

14          ~~(L)~~ section 2332a of title 18, United  
 15          States Code,

16          may, at the discretion of the Secretary, be denied ex-  
 17          port privileges under this Act for a period not to ex-  
 18          ceed 10 years from the date of the conviction. The  
 19          Secretary may also revoke any export license under  
 20          this Act in which such person had an interest at the  
 21          time of the conviction.

22          ~~(2) RELATED PERSONS.—~~The Secretary may  
 23          exercise the authority under paragraph (1) with re-  
 24          spect to any person related through affiliation, own-  
 25          ership, control, or position of responsibility to a per-



son convicted of any violation of a law set forth in paragraph (1) upon a showing of such relationship with the convicted person. The Secretary shall make such showing only after providing notice and opportunity for a hearing.

~~(g)~~ STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a proceeding in which a civil penalty or other administrative sanction (other than a temporary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) EXCEPTION.—

(A) TOLLING.—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

1                   (B) DURATION.—The tolling of the limita-  
 2                   tion with respect to a defendant under subpara-  
 3                   graph (A) as a result of a criminal indictment  
 4                   shall continue for a period of 6 months from  
 5                   the date on which the conviction of the defend-  
 6                   ant becomes final, the indictment against the  
 7                   defendant is dismissed, or the criminal action  
 8                   has concluded.

9                   (h) VIOLATIONS DEFINED BY REGULATION.—Noth-  
 10                  ing in this section shall limit the authority of the Secretary  
 11                  to define by regulation violations under this Act.

12                  (i) CONSTRUCTION.—Nothing in subsection (e), (d),  
 13                  (e), (f), or (g) limits—

14                   (1) the availability of other administrative or  
 15                   judicial remedies with respect to a violation of a pro-  
 16                   vision of this Act, or any regulation, order, or license  
 17                   issued under this Act;

18                   (2) the authority to compromise and settle ad-  
 19                   ministrative proceedings brought with respect to any  
 20                   such violation; or

21                   (3) the authority to compromise, remit, or miti-  
 22                   gate seizures and forfeitures pursuant to section  
 23                   1(b) of title VI of the Act of June 15, 1917 (22  
 24                   U.S.C. 401(b)).

1 **SEC. 604. MULTILATERAL EXPORT CONTROL REGIME VIO-**  
2 **LATION SANCTIONS.**

3 (a) IMPOSITION OF SANCTIONS.—

4 (1) IN GENERAL.—The President, subject to  
5 subsection (c), shall apply sanctions under sub-  
6 section (b) for a period of not less than 2 years and  
7 not more than 5 years, if the President determines  
8 that—

9 (A) a foreign person has violated any regu-  
10 lation issued by a country to control exports for  
11 national security purposes pursuant to a multi-  
12 lateral export control regime; and

13 (B) such violation has substantially aided a  
14 country in—

15 (i) acquiring military significant capa-  
16 bilities or weapons, if the country is an ac-  
17 tual or potential adversary of the United  
18 States;

19 (ii) acquiring nuclear weapons pro-  
20 vided such country is other than the de-  
21 clared nuclear states of the People's Re-  
22 public of China, the Republic of France,  
23 the Russian Federation, the United King-  
24 dom, and the United States;

25 (iii) acquiring biological or chemical  
26 weapons; or

1                   ~~(iv) acquiring missiles.~~

2                   ~~(2) NOTIFICATION OF CONGRESS.—The Presi-~~  
3           ~~dent shall notify Congress of each action taken~~  
4           ~~under this section.~~

5           ~~(b) APPLICABILITY AND FORMS OF SANCTIONS.—~~  
6           ~~The sanctions referred to in subsection (a) shall apply to~~  
7           ~~the foreign person committing the violation, as well as to~~  
8           ~~any parent, affiliate, subsidiary, and successor entity of~~  
9           ~~the foreign person, and, except as provided in subsection~~  
10          ~~(c), are as follows:~~

11                  ~~(1) A prohibition on contracting with, and the~~  
12                  ~~procurement of products and services from, a sanc-~~  
13                  ~~tioned person, by any department, agency, or instru-~~  
14                  ~~mentality of the United States Government.~~

15                  ~~(2) A prohibition on the importation into the~~  
16                  ~~United States of all items produced by a sanctioned~~  
17                  ~~person.~~

18           ~~(c) EXCEPTIONS.—The President shall not apply~~  
19          ~~sanctions under this section—~~

20                  ~~(1) in the case of procurement of defense~~  
21                  ~~items—~~

22                          ~~(A) under existing contracts or sub-~~  
23                          ~~contracts, including the exercise of options for~~  
24                          ~~production quantities to satisfy United States~~  
25                          ~~operational military requirements;~~

1           ~~(B)~~ if the President determines that the  
2 foreign person or other entity to which the  
3 sanctions would otherwise be applied is a sole  
4 source supplier of essential defense items and  
5 no alternative supplier can be identified; or

6           ~~(C)~~ if the President determines that such  
7 items are essential to the national security  
8 under defense coproduction agreements;

9           ~~(2)~~ in any case in which such sanctions would  
10 violate United States international obligations in-  
11 cluding treaties, agreements, or understandings; or

12           ~~(3)~~ to—

13           ~~(A)~~ items provided under contracts or  
14 other binding agreements (as such terms are  
15 defined by the President in regulations) entered  
16 into before the date on which the President no-  
17 tifies Congress of the intention to impose the  
18 sanctions;

19           ~~(B)~~ after-market service and replacement  
20 parts including upgrades;

21           ~~(C)~~ component parts, but not finished  
22 products; essential to United States products or  
23 productions; or

24           ~~(D)~~ information and technology.

1       (d) ~~EXCLUSION.~~—The President shall not apply  
2 sanctions under this section to a parent, affiliate, sub-  
3 sidiary, and successor entity of a foreign person if the  
4 President determines that—

5           (1) the parent, affiliate, subsidiary, or successor  
6 entity (as the case may be) has not knowingly vio-  
7 lated the export control regulation violated by the  
8 foreign person; and

9           (2) the government of the country with jurisdic-  
10 tion over the parent, affiliate, subsidiary, or suc-  
11 cessor entity had in effect, at the time of the viola-  
12 tion by the foreign person, an effective export con-  
13 trol system consistent with principles set forth in  
14 section 601(b)(2).

15       (e) ~~SUBSEQUENT MODIFICATIONS OF SANCTIONS.~~—  
16 The President may, after consultation with the Committee  
17 on Banking, Housing, and Urban Affairs of the Senate  
18 and the Committee on International Relations of the  
19 House of Representatives, limit the scope of sanctions ap-  
20 plied to a parent, affiliate, subsidiary, or successor entity  
21 of the foreign person determined to have committed the  
22 violation on account of which the sanctions were imposed;  
23 if the President determines that—

24           (1) the parent, affiliate, subsidiary, or successor  
25 entity (as the case may be) has not, on the basis of

1 evidence available to the United States, itself vio-  
 2 lated the export control regulation involved, either  
 3 directly or through a course of conduct;

4 (2) the government with jurisdiction over the  
 5 parent, affiliate, subsidiary, or successor entity has  
 6 improved its export control system as measured by  
 7 the criteria set forth in section 601(b)(2); and

8 (3) the parent, affiliate, subsidiary, or successor  
 9 entity, has instituted improvements in internal con-  
 10 trols sufficient to detect and prevent violations of  
 11 the multilateral export control regime.

12 **SEC. 605. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

13 (a) VIOLATIONS BY UNITED STATES PERSONS.—

14 (1) SANCTIONS.—

15 (A) IN GENERAL.—If the President deter-  
 16 mines that a United States person knowingly—

17 (i) exports, transfers, or otherwise en-  
 18 gages in the trade of any item on the  
 19 MTCR Annex, in violation of the provi-  
 20 sions of section 38 (22 U.S.C. 2778) or  
 21 chapter 7 of the Arms Export Control Act,  
 22 title II or III of this Act, or any regula-  
 23 tions or orders issued under any such pro-  
 24 visions;

1                   (ii) conspires to or attempts to engage  
2                   in such export, transfer, or trade, or

3                   (iii) facilitates such export, transfer,  
4                   or trade by any other person;

5                   then the President shall impose the applicable  
6                   sanctions described in subparagraph (B).

7                   (B) ~~SANCTIONS DESCRIBED.~~—The sanc-  
8                   tions which apply to a United States person  
9                   under subparagraph (A) are the following:

10                   (i) If the item on the MTCR Annex  
11                   involved in the export, transfer, or trade is  
12                   missile equipment or technology within cat-  
13                   egory II of the MTCR Annex, then the  
14                   President shall deny to such United States  
15                   person, for a period of 2 years, licenses for  
16                   the transfer of missile equipment or tech-  
17                   nology controlled under this Act.

18                   (ii) If the item on the MTCR Annex  
19                   involved in the export, transfer, or trade is  
20                   missile equipment or technology within cat-  
21                   egory I of the MTCR Annex, then the  
22                   President shall deny to such United States  
23                   person, for a period of not less than 2  
24                   years, all licenses for items the export of  
25                   which is controlled under this Act.



1           (2) DISCRETIONARY SANCTIONS.—In the case  
 2           of any determination referred to in paragraph (1),  
 3           the Secretary may pursue any other appropriate  
 4           penalties under section 603.

5           (3) WAIVER.—The President may waive the im-  
 6           position of sanctions under paragraph (1) on a per-  
 7           son with respect to an item if the President certifies  
 8           to Congress that—

9                   (A) the item is essential to the national se-  
 10                  curity of the United States; and

11                  (B) such person is a sole source supplier of  
 12                  the item; the item is not available from any al-  
 13                  ternative reliable supplier; and the need for the  
 14                  item cannot be met in a timely manner by im-  
 15                  proved manufacturing processes or technological  
 16                  developments.

17           (b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-  
 18           NOLOGY BY FOREIGN PERSONS.—

19           (1) SANCTIONS.—

20                   (A) IN GENERAL.—Subject to paragraphs  
 21                  (3) through (7), if the President determines  
 22                  that a foreign person, after the date of enact-  
 23                  ment of this section, knowingly—

24                          (i) exports, transfers, or otherwise en-  
 25                          gages in the trade of any MTCR equip-

1           ment or technology that contributes to the  
 2           design, development, or production of mis-  
 3           siles in a country that is not an MTCR ad-  
 4           herent and would be, if it were United  
 5           States-origin equipment or technology,  
 6           subject to the jurisdiction of the United  
 7           States under this Act,

8                   (ii) conspires to or attempts to engage  
 9                   in such export, transfer, or trade, or

10                   (iii) facilitates such export, transfer,  
 11                   or trade by any other person,

12           or if the President has made a determination  
 13           with respect to a foreign person under section  
 14           73(a) of the Arms Export Control Act, then the  
 15           President shall impose on that foreign person  
 16           the applicable sanctions under subparagraph  
 17           (B).

18                   (B) SANCTIONS DESCRIBED.—The sanc-  
 19                   tions which apply to a foreign person under  
 20                   subparagraph (A) are the following:

21                   (i) If the item involved in the export,  
 22                   transfer, or trade is within category II of  
 23                   the MTCR Annex, then the President shall  
 24                   deny, for a period of 2 years, licenses for  
 25                   the transfer to such foreign person of mis-

1           sile equipment or technology the export of  
2           which is controlled under this Act.

3           (ii) If the item involved in the export,  
4           transfer, or trade is within category I of  
5           the MTCR Annex, then the President shall  
6           deny, for a period of not less than 2 years,  
7           licenses for the transfer to such foreign  
8           person of items the export of which is con-  
9           trolled under this Act.

10          (iii) If, in addition to actions taken  
11          under clauses (i) and (ii), the President de-  
12          termines that the export, transfer, or trade  
13          has substantially contributed to the design,  
14          development, or production of missiles in a  
15          country that is not an MTCR adherent,  
16          then the President shall prohibit, for a pe-  
17          riod of not less than 2 years, the importa-  
18          tion into the United States of products  
19          produced by that foreign person.

20          (2) ~~INAPPLICABILITY WITH RESPECT TO MTCR~~  
21          ~~ADHERENTS.~~—Paragraph (1) does not apply with  
22          respect to—

23                (A) any export, transfer, or trading activ-  
24                ity that is authorized by the laws of an MTCR

1           adherent, if such authorization is not obtained  
2           by misrepresentation or fraud; or

3           ~~(B) any export, transfer, or trade of an~~  
4           ~~item to an end user in a country that is an~~  
5           ~~MTCR adherent.~~

6           ~~(3) EFFECT OF ENFORCEMENT ACTIONS BY~~  
7           ~~MTCR ADHERENTS.—~~Sanctions set forth in para-  
8           graph (1) may not be imposed under this subsection  
9           on a person with respect to acts described in such  
10          paragraph or, if such sanctions are in effect against  
11          a person on account of such acts, such sanctions  
12          shall be terminated, if an MTCR adherent is taking  
13          judicial or other enforcement action against that  
14          person with respect to such acts, or that person has  
15          been found by the government of an MTCR adher-  
16          ent to be innocent of wrongdoing with respect to  
17          such acts.

18          ~~(4) ADVISORY OPINIONS.—~~The Secretary, in  
19          consultation with the Secretary of State and the  
20          Secretary of Defense, may, upon the request of any  
21          person, issue an advisory opinion to that person as  
22          to whether a proposed activity by that person would  
23          subject that person to sanctions under this sub-  
24          section. Any person who relies in good faith on such  
25          an advisory opinion which states that the proposed

1 activity would not subject a person to such sanc-  
 2 tions, and any person who thereafter engages in  
 3 such activity, may not be made subject to such sanc-  
 4 tions on account of such activity.

5 (5) WAIVER AND REPORT TO CONGRESS.—

6 (A) WAIVER.—In any case other than one  
 7 in which an advisory opinion has been issued  
 8 under paragraph (4) stating that a proposed ac-  
 9 tivity would not subject a person to sanctions  
 10 under this subsection, the President may waive  
 11 the application of paragraph (1) to a foreign  
 12 person if the President determines that such  
 13 waiver is essential to the national security of  
 14 the United States.

15 (B) REPORT TO CONGRESS.—In the event  
 16 that the President decides to apply the waiver  
 17 described in subparagraph (A), the President  
 18 shall so notify Congress not less than 20 work-  
 19 ing days before issuing the waiver. Such notifi-  
 20 cation shall include a report fully articulating  
 21 the rationale and circumstances which led the  
 22 President to apply the waiver.

23 (6) ADDITIONAL WAIVER.—The President may  
 24 waive the imposition of sanctions under paragraph

1       ~~(1)~~ on a person with respect to a product or service  
2       if the President certifies to the Congress that—

3               ~~(A)~~ the product or service is essential to  
4       the national security of the United States; and

5               ~~(B)~~ such person is a sole source supplier of  
6       the product or service; the product or service is  
7       not available from any alternative reliable sup-  
8       plier; and the need for the product or service  
9       cannot be met in a timely manner by improved  
10      manufacturing processes or technological devel-  
11      opments.

12      ~~(7)~~ EXCEPTIONS.—The President shall not  
13      apply the sanction under this subsection prohibiting  
14      the importation of the products of a foreign  
15      person—

16              ~~(A)~~ in the case of procurement of defense  
17      articles or defense services—

18                      ~~(i)~~ under existing contracts or sub-  
19                      contracts; including the exercise of options  
20                      for production quantities to satisfy require-  
21                      ments essential to the national security of  
22                      the United States;

23                      ~~(ii)~~ if the President determines that  
24                      the person to which the sanctions would be  
25                      applied is a sole source supplier of the de-

1           fense articles and services; that the defense  
2           articles or services are essential to the na-  
3           tional security of the United States; and  
4           that alternative sources are not readily or  
5           reasonably available; or

6                 (iii) if the President determines that  
7           such articles or services are essential to the  
8           national security of the United States  
9           under defense coproduction agreements or  
10          NATO Programs of Cooperation;

11          (B) to products or services provided under  
12          contracts entered into before the date on which  
13          the President publishes his intention to impose  
14          the sanctions; or

15          (C) to—

16                 (i) spare parts;

17                 (ii) component parts; but not finished  
18           products; essential to United States prod-  
19           ucts or production;

20                 (iii) routine services and maintenance  
21           of products; to the extent that alternative  
22           sources are not readily or reasonably avail-  
23           able; or

1                   (iv) information and technology essen-  
 2                   tial to United States products or produc-  
 3                   tion.

4       (c) DEFINITIONS.—In this section:

5           (1) MISSILE.—The term “missile” means a cat-  
 6           egory I system as defined in the MTCR Annex, and  
 7           any other unmanned delivery system of similar capa-  
 8           bility, as well as the specially designed production  
 9           facilities for these systems.

10          (2) MISSILE TECHNOLOGY CONTROL REGIME;  
 11          MTCR.—The term “Missile Technology Control Re-  
 12          gime” or “MTCR” means the policy statement, be-  
 13          tween the United States, the United Kingdom, the  
 14          Federal Republic of Germany, France, Italy, Can-  
 15          ada, and Japan, announced on April 16, 1987, to re-  
 16          strict sensitive missile-relevant transfers based on  
 17          the MTCR Annex, and any amendments thereto.

18          (3) MTCR ADHERENT.—The term “MTCR ad-  
 19          herent” means a country that participates in the  
 20          MTCR or that, pursuant to an international under-  
 21          standing to which the United States is a party, con-  
 22          trols MTCR equipment or technology in accordance  
 23          with the criteria and standards set forth in the  
 24          MTCR.



1           (4) ~~MTCR ANNEX.~~—The term “MTCR Annex”  
 2       means the Guidelines and Equipment and Tech-  
 3       nology Annex of the MTCR, and any amendments  
 4       thereto.

5           (5) ~~MISSILE EQUIPMENT OR TECHNOLOGY;~~  
 6       ~~MTCR EQUIPMENT OR TECHNOLOGY.~~—The terms  
 7       “missile equipment or technology” and “MTCR  
 8       equipment or technology” mean those items listed in  
 9       category I or category II of the MTCR Annex.

10          (6) ~~FOREIGN PERSON.~~—The term “foreign per-  
 11       son” means any person other than a United States  
 12       person.

13          (7) ~~PERSON.~~—

14               (A) ~~IN GENERAL.~~—The term “person”  
 15       means a natural person as well as a corpora-  
 16       tion, business association, partnership, society,  
 17       trust, any other nongovernmental entity, orga-  
 18       nization, or group, and any governmental entity  
 19       operating as a business enterprise, and any suc-  
 20       cessor of any such entity.

21               (B) ~~IDENTIFICATION IN CERTAIN CASES.~~—

22       In the case of countries where it may be impos-  
 23       sible to identify a specific governmental entity  
 24       referred to in subparagraph (A), the term “per-  
 25       son” means—

1 (i) all activities of that government re-  
 2 lating to the development or production of  
 3 any missile equipment or technology; and

4 (ii) all activities of that government  
 5 affecting the development or production of  
 6 aircraft, electronics, and space systems or  
 7 equipment.

8 (8) OTHERWISE ENGAGED IN THE TRADE OF.—

9 The term “otherwise engaged in the trade of”  
 10 means, with respect to a particular export or trans-  
 11 fer, to be a freight forwarder or designated export-  
 12 ing agent, or a consignee or end user of the item to  
 13 be exported or transferred.

14 **SEC. 606. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**  
 15 **LIFERATION SANCTIONS.**

16 (a) IMPOSITION OF SANCTIONS.—

17 (1) DETERMINATION BY THE PRESIDENT.—Ex-  
 18 cept as provided in subsection (b)(2), the President  
 19 shall impose both of the sanctions described in sub-  
 20 section (c) if the President determines that a foreign  
 21 person, on or after the date of enactment of this sec-  
 22 tion, has knowingly and materially contributed—

23 (A) through the export from the United  
 24 States of any item that is subject to the juris-  
 25 diction of the United States under this Act, or

1           ~~(B)~~ through the export from any other  
 2           country of any item that would be, if it were a  
 3           United States item, subject to the jurisdiction  
 4           of the United States under this Act,  
 5           to the efforts by any foreign country, project, or en-  
 6           tity described in paragraph ~~(2)~~ to use, develop,  
 7           produce, stockpile, or otherwise acquire chemical or  
 8           biological weapons.

9           ~~(2) COUNTRIES, PROJECTS, OR ENTITIES RE-~~  
 10          ~~CEIVING ASSISTANCE.—~~Paragraph ~~(1)~~ applies in the  
 11          case of—

12           ~~(A)~~ any foreign country that the President  
 13           determines has, at any time after the date of  
 14           enactment of this Act—

15                   ~~(i)~~ used chemical or biological weap-  
 16                   ons in violation of international law;

17                   ~~(ii)~~ used lethal chemical or biological  
 18                   weapons against its own nationals; or

19                   ~~(iii)~~ made substantial preparations to  
 20                   engage in the activities described in clause  
 21                   ~~(i)~~ or ~~(ii)~~;

22           ~~(B)~~ any foreign country whose government  
 23           is determined for purposes of section 310 to be  
 24           a government that has repeatedly provided sup-  
 25           port for acts of international terrorism; or

1           ~~(C) any other foreign country, project, or~~  
 2           entity designated by the President for purposes  
 3           of this section.

4           ~~(3) PERSONS AGAINST WHICH SANCTIONS ARE~~  
 5           TO BE IMPOSED.—Sanctions shall be imposed pursu-  
 6           ant to paragraph ~~(1)~~ on—

7           ~~(A) the foreign person with respect to~~  
 8           which the President makes the determination  
 9           described in that paragraph;

10          ~~(B) any successor entity to that foreign~~  
 11          person;

12          ~~(C) any foreign person that is a parent or~~  
 13          subsidiary of that foreign person if that parent  
 14          or subsidiary knowingly assisted in the activities  
 15          which were the basis of that determination; and

16          ~~(D) any foreign person that is an affiliate~~  
 17          of that foreign person if that affiliate knowingly  
 18          assisted in the activities which were the basis of  
 19          that determination and if that affiliate is con-  
 20          trolled in fact by that foreign person.

21          ~~(b) CONSULTATIONS WITH AND ACTIONS BY FOR-~~  
 22          EIGN GOVERNMENT OF JURISDICTION.—

23          ~~(1) CONSULTATIONS.~~—If the President makes  
 24          the determinations described in subsection ~~(a)(1)~~  
 25          with respect to a foreign person, Congress urges the

1 President to initiate consultations immediately with  
2 the government with primary jurisdiction over that  
3 foreign person with respect to the imposition of  
4 sanctions pursuant to this section.

5 (2) ACTIONS BY GOVERNMENT OF JURISDIC-  
6 TION.—In order to pursue such consultations with  
7 that government, the President may delay imposition  
8 of sanctions pursuant to this section for a period of  
9 up to 90 days. Following the consultations, the  
10 President shall impose sanctions unless the Presi-  
11 dent determines and certifies to Congress that gov-  
12 ernment has taken specific and effective actions, in-  
13 cluding appropriate penalties, to terminate the in-  
14 volvement of the foreign person in the activities de-  
15 scribed in subsection (a)(1). The President may  
16 delay imposition of sanctions for an additional pe-  
17 riod of up to 90 days if the President determines  
18 and certifies to Congress that government is in the  
19 process of taking the actions described in the pre-  
20 ceeding sentence.

21 (3) REPORT TO CONGRESS.—The President  
22 shall report to Congress, not later than 90 days  
23 after making a determination under subsection  
24 (a)(1), on the status of consultations with the appro-  
25 priate government under this subsection, and the

1 basis for any determination under paragraph (2) of  
 2 this subsection that such government has taken spe-  
 3 cific corrective actions.

4 ~~(c) SANCTIONS.—~~

5 (1) DESCRIPTION OF SANCTIONS.—The sanc-  
 6 tions to be imposed pursuant to subsection (a)(1)  
 7 are, except as provided in paragraph (2) of this sub-  
 8 section, the following:

9 (A) PROCUREMENT SANCTION.—The  
 10 United States Government shall not procure, or  
 11 enter into any contract for the procurement of,  
 12 any goods or services from any person described  
 13 in subsection (a)(3).

14 (B) IMPORT SANCTIONS.—The importation  
 15 into the United States of products produced by  
 16 any person described in subsection (a)(3) shall  
 17 be prohibited.

18 ~~(2) EXCEPTIONS.—~~The President shall not be  
 19 required to apply or maintain sanctions under this  
 20 section—

21 ~~(A) in the case of procurement of defense~~  
 22 ~~articles or defense services—~~

23 ~~(i) under existing contracts or sub-~~  
 24 ~~contracts, including the exercise of options~~

1 for production quantities to satisfy United  
2 States operational military requirements;

3 (ii) if the President determines that  
4 the person or other entity to which the  
5 sanctions would otherwise be applied is a  
6 sole source supplier of the defense articles  
7 or services; that the defense articles or  
8 services are essential; and that alternative  
9 sources are not readily or reasonably avail-  
10 able; or

11 (iii) if the President determines that  
12 such articles or services are essential to the  
13 national security under defense coproduc-  
14 tion agreements;

15 (B) to products or services provided under  
16 contracts entered into before the date on which  
17 the President publishes his intention to impose  
18 sanctions;

19 (C) to—

20 (i) spare parts,

21 (ii) component parts, but not finished  
22 products; essential to United States prod-  
23 ucts or production; or

24 (iii) routine servicing and mainte-  
25 nance of products; to the extent that alter-

1           native sources are not readily or reason-  
2           ably available;

3           ~~(D)~~ to information and technology essen-  
4           tial to United States products or production; or  
5           ~~(E)~~ to medical or other humanitarian  
6           items.

7       ~~(d)~~ TERMINATION OF SANCTIONS.—The sanctions  
8 imposed pursuant to this section shall apply for a period  
9 of at least 12 months following the imposition of sanctions  
10 and shall cease to apply thereafter only if the President  
11 determines and certifies to the Congress that reliable in-  
12 formation indicates that the foreign person with respect  
13 to which the determination was made under subsection  
14 ~~(a)(1)~~ has ceased to aid or abet any foreign government,  
15 project, or entity in its efforts to acquire chemical or bio-  
16 logical weapons capability as described in that subsection.

17       ~~(e)~~ WAIVER.—

18           ~~(1)~~ CRITERION FOR WAIVER.—The President  
19 may waive the application of any sanction imposed  
20 on any person pursuant to this section, after the end  
21 of the 12-month period beginning on the date on  
22 which that sanction was imposed on that person, if  
23 the President determines and certifies to Congress  
24 that such waiver is important to the national secu-  
25 rity interests of the United States.



1           ~~(2) NOTIFICATION OF AND REPORT TO CON-~~  
 2           ~~GRESS.—If the President decides to exercise the~~  
 3           ~~waiver authority provided in paragraph (1), the~~  
 4           ~~President shall so notify the Congress not less than~~  
 5           ~~20 days before the waiver takes effect. Such notifica-~~  
 6           ~~tion shall include a report fully articulating the ra-~~  
 7           ~~tionale and circumstances which led the President to~~  
 8           ~~exercise the waiver authority.~~

9           ~~(f) DEFINITION OF FOREIGN PERSON.—For the pur-~~  
 10          ~~poses of this section, the term “foreign person” means—~~

11           ~~(1) an individual who is not a citizen of the~~  
 12           ~~United States or an alien admitted for permanent~~  
 13           ~~residence to the United States; or~~

14           ~~(2) a corporation, partnership, or other entity~~  
 15           ~~which is created or organized under the laws of a~~  
 16           ~~foreign country or which has its principal place of~~  
 17           ~~business outside the United States.~~

18   **SEC. 607. ENFORCEMENT.**

19          ~~(a) GENERAL AUTHORITY AND DESIGNATION.—~~

20           ~~(1) POLICY GUIDANCE ON ENFORCEMENT.—~~

21          ~~The Secretary, in consultation with the Secretary of~~  
 22          ~~the Treasury and the heads of other departments~~  
 23          ~~and agencies that the Secretary considers appro-~~  
 24          ~~priate, shall be responsible for providing policy guid-~~  
 25          ~~ance on the enforcement of this Act.~~

1           (2) GENERAL AUTHORITIES.—

2           (A) EXERCISE OF AUTHORITY.—To the ex-  
3           tent necessary or appropriate to the enforce-  
4           ment of this Act, officers or employees of the  
5           Department designated by the Secretary, offi-  
6           cers and employees of the United States Cus-  
7           toms Service designated by the Commissioner of  
8           Customs, and officers and employees of any  
9           other department or agency designated by the  
10          head of a department or agency exercising func-  
11          tions under this Act, may exercise the enforce-  
12          ment authority under paragraph (3).

13          (B) CUSTOMS SERVICE.—In carrying out  
14          enforcement authority under paragraph (3), the  
15          Commissioner of Customs and employees of the  
16          United States Customs Services designated by  
17          the Commissioner may make investigations  
18          within or outside the United States and at  
19          ports of entry into or exit from the United  
20          States where officers of the United States Cus-  
21          toms Service are authorized by law to carry out  
22          law enforcement responsibilities. Subject to  
23          paragraph (3), the United States Customs  
24          Service is authorized, in the enforcement of this  
25          Act, to search, detain (after search), and seize

1 commodities or technology at the ports of entry  
2 into or exit from the United States where offi-  
3 cers of the United States Customs Service are  
4 authorized by law to conduct searches, deten-  
5 tions, and seizures, and at the places outside  
6 the United States where the United States Cus-  
7 toms Service, pursuant to agreement or other  
8 arrangement with other countries, is authorized  
9 to perform enforcement activities.

10 (C) OTHER EMPLOYEES.—In carrying out  
11 enforcement authority under paragraph (3), the  
12 Secretary and officers and employees of the De-  
13 partment designated by the Secretary may  
14 make investigations within the United States,  
15 and may conduct, outside the United States,  
16 pre-license and post-shipment verifications of  
17 controlled items and investigations in the en-  
18 forcement of section 602. The Secretary and of-  
19 ficers and employees of the Department des-  
20 ignated by the Secretary are authorized to  
21 search, detain (after search), and seize items at  
22 places within the United States other than  
23 ports referred to in subparagraph (B). The  
24 search, detention (after search), or seizure of  
25 items at the ports and places referred to in sub-

1 paragraph (B) may be conducted by officers  
 2 and employees of the Department only with the  
 3 concurrence of the Commissioner of Customs or  
 4 a person designated by the Commissioner.

5 (D) AGREEMENTS AND ARRANGEMENTS.—

6 The Secretary and the Commissioner of Cus-  
 7 toms may enter into agreements and arrange-  
 8 ments for the enforcement of this Act, including  
 9 foreign investigations and information ex-  
 10 change.

11 (3) SPECIFIC AUTHORITIES.—

12 (A) ACTIONS BY ANY DESIGNATED PER-  
 13 SONNEL.—Any officer or employee designated  
 14 under paragraph (2), in carrying out the en-  
 15 forcement authority under this Act, may do the  
 16 following:

17 (i) Make investigations of, obtain in-  
 18 formation from, make inspection of any  
 19 books, records, or reports (including any  
 20 writings required to be kept by the Sec-  
 21 retary), premises, or property of, and take  
 22 the sworn testimony of, any person.

23 (ii) Administer oaths or affirmations,  
 24 and by subpoena require any person to ap-  
 25 pear and testify or to appear and produce

1 books, records, and other writings, or both.

2 In the case of contumacy by, or refusal to

3 obey a subpoena issued to, any such per-

4 son, a district court of the United States,

5 on request of the Attorney General and

6 after notice to any such person and a hear-

7 ing, shall have jurisdiction to issue an

8 order requiring such person to appear and

9 give testimony or to appear and produce

10 books, records, and other writings, or both.

11 Any failure to obey such order of the court

12 may be punished by such court as a con-

13 tempt thereof. The attendance of witnesses

14 and the production of documents provided

15 for in this clause may be required from

16 any State, the District of Columbia, or in

17 any territory of the United States at any

18 designated place. Witnesses subpoenaed

19 under this subsection shall be paid the

20 same fees and mileage allowance as paid

21 witnesses in the district courts of the

22 United States.

23 (B) ACTIONS BY OFFICE OF EXPORT EN-

24 FORCEMENT AND CUSTOMS SERVICE PER-

25 SONNEL.—

1           (i) OFFICE OF EXPORT ENFORCE-  
2           MENT AND CUSTOMS SERVICE PER-  
3           SONNEL.—Any officer or employee of the  
4           Office of Export Enforcement of the De-  
5           partment of Commerce (in this Act re-  
6           ferred to as “OEE”) who is designated by  
7           the Secretary under paragraph (2); and  
8           any officer or employee of the United  
9           States Customs Service who is designated  
10          by the Commissioner of Customs under  
11          paragraph (2); may do the following in  
12          carrying out the enforcement authority  
13          under this Act:

14               (I) Execute any warrant or other  
15               process issued by a court or officer of  
16               competent jurisdiction with respect to  
17               the enforcement of this Act.

18               (II) Make arrests without war-  
19               rant for any violation of this Act com-  
20               mitted in his or her presence or view,  
21               or if the officer or employee has prob-  
22               able cause to believe that the person  
23               to be arrested has committed, is com-  
24               mitting, or is about to commit such a  
25               violation.

1                   (III) ~~Carry firearms.~~

2                   (ii) ~~OEE PERSONNEL.~~—Any officer  
3                   and employee of the ~~OEE~~ designated by  
4                   the Secretary under paragraph (2) shall  
5                   exercise the authority set forth in clause (i)  
6                   pursuant to guidelines approved by the At-  
7                   torney General.

8                   (C) ~~OTHER ACTIONS BY CUSTOMS SERVICE~~  
9                   ~~PERSONNEL.~~—Any officer or employee of the  
10                  United States Customs Service designated by  
11                  the Commissioner of Customs under paragraph  
12                  (2) may do the following in carrying out the en-  
13                  forcement authority under this Act:

14                 (i) Stop, search, and examine a vehi-  
15                 cle, vessel, aircraft, or person on which or  
16                 whom the officer or employee has reason-  
17                 able cause to suspect there is any item  
18                 that has been, is being, or is about to be  
19                 exported from or transited through the  
20                 United States in violation of this Act.

21                 (ii) Detain and search any package or  
22                 container in which the officer or employee  
23                 has reasonable cause to suspect there is  
24                 any item that has been, is being, or is  
25                 about to be exported from or transited

1 through the United States in violation of  
2 this Act.

3 (iii) ~~Detain (after search) or seize any~~  
4 ~~item, for purposes of securing for trial or~~  
5 ~~forfeiture to the United States, on or~~  
6 ~~about such vehicle, vessel, aircraft, or per-~~  
7 ~~son or in such package or container, if the~~  
8 ~~officer or employee has probable cause to~~  
9 ~~believe the item has been, is being, or is~~  
10 ~~about to be exported from or transited~~  
11 ~~through the United States in violation of~~  
12 ~~this Act.~~

13 (4) ~~OTHER AUTHORITIES NOT AFFECTED.—~~The  
14 ~~authorities conferred by this section are in addition~~  
15 ~~to any authorities conferred under other laws.~~

16 (b) ~~FORFEITURE.—~~

17 (1) ~~IN GENERAL.—~~Any tangible items lawfully  
18 ~~seized under subsection (a) by designated officers or~~  
19 ~~employees shall be subject to forfeiture to the United~~  
20 ~~States.~~

21 (2) ~~APPLICABLE LAWS.—~~Those provisions of  
22 ~~law relating to—~~

23 (A) ~~the seizure, summary and judicial for-~~  
24 ~~feiture, and condemnation of property for viola-~~  
25 ~~tions of the customs laws;~~



1                   (B) the disposition of such property or the  
2                   proceeds from the sale thereof;

3                   (C) the remission or mitigation of such for-  
4                   feitures; and

5                   (D) the compromise of claims,  
6                   shall apply to seizures and forfeitures incurred, or  
7                   alleged to have been incurred, under the provisions  
8                   of this subsection, insofar as applicable and not in-  
9                   consistent with this Act.

10                  (3) FORFEITURES UNDER CUSTOMS LAWS.—

11                  Duties that are imposed upon the customs officer or  
12                  any other person with respect to the seizure and for-  
13                  feiture of property under the customs laws may be  
14                  performed with respect to seizures and forfeitures of  
15                  property under this subsection by the Secretary or  
16                  any officer or employee of the Department that may  
17                  be authorized or designated for that purpose by the  
18                  Secretary, or, upon the request of the Secretary, by  
19                  any other agency that has authority to manage and  
20                  dispose of seized property.

21                  (c) REFERRAL OF CASES.—All cases involving viola-  
22                  tions of this Act shall be referred to the Secretary for pur-  
23                  poses of determining civil penalties and administrative  
24                  sanctions under section 603 or to the Attorney General

1 for criminal action in accordance with this Act or to both  
 2 the Secretary and the Attorney General.

3 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

4 (1) USE OF FUNDS.—With respect to any un-  
 5 derecover investigative operation conducted by the  
 6 OEE that is necessary for the detection and pros-  
 7 ecution of violations of this Act—

8 (A) funds made available for export en-  
 9 forcement under this Act may be used to pur-  
 10 chase property, buildings, and other facilities,  
 11 and to lease equipment, conveyances, and space  
 12 within the United States, without regard to sec-  
 13 tions 1341 and 3324 of title 31, United States  
 14 Code, the third undesignated paragraph under  
 15 the heading of “miscellaneous” of the Act of  
 16 March 3, 1877, (40 U.S.C. 34), sections  
 17 3732(a) and 3741 of the Revised Statutes of  
 18 the United States (41 U.S.C. 11(a) and 22),  
 19 subsections (a) and (c) of section 304 of the  
 20 Federal Property and Administrative Services  
 21 Act of 1949 (41 U.S.C. 254 (a) and (c)), and  
 22 section 305 of the Federal Property and Ad-  
 23 ministrative Services Act of 1949 (41 U.S.C.  
 24 255);

1           ~~(B)~~ funds made available for export en-  
2           forcement under this Act may be used to estab-  
3           lish or to acquire proprietary corporations or  
4           business entities as part of an undercover oper-  
5           ation, and to operate such corporations or busi-  
6           ness entities on a commercial basis, without re-  
7           gard to sections ~~1341~~, ~~3324~~, and 9102 of title  
8           31, United States Code;

9           ~~(C)~~ funds made available for export en-  
10          forcement under this Act and the proceeds from  
11          undercover operations may be deposited in  
12          banks or other financial institutions without re-  
13          gard to the provisions of section 648 of title 18,  
14          United States Code, and section ~~3302~~ of title  
15          31, United States Code; and

16          ~~(D)~~ the proceeds from undercover oper-  
17          ations may be used to offset necessary and rea-  
18          sonable expenses incurred in such operations  
19          without regard to the provisions of section ~~3302~~  
20          of title 31, United States Code,

21          if the Director of OEE (or an officer or employee  
22          designated by the Director) certifies, in writing, that  
23          the action authorized by subparagraph (A), (B), (C),  
24          or ~~(D)~~ for which the funds would be used is nec-  
25          essary for the conduct of the undercover operation.

1           (2) DISPOSITION OF BUSINESS ENTITIES.—If a  
2       corporation or business entity established or ac-  
3       quired as part of an undercover operation has a net  
4       value of more than \$250,000 and is to be liquidated,  
5       sold, or otherwise disposed of, the Director of OEE  
6       shall report the circumstances to the Secretary and  
7       the Comptroller General of the United States as  
8       much in advance of such disposition as the Director  
9       of the OEE (or the Director's designee) determines  
10      is practicable. The proceeds of the liquidation, sale,  
11      or other disposition, after obligations incurred by the  
12      corporation or business enterprise are met, shall be  
13      deposited in the Treasury of the United States as  
14      miscellaneous receipts. Any property or equipment  
15      purchased pursuant to paragraph (1) may be re-  
16      tained for subsequent use in undercover operations  
17      under this section. When such property or equip-  
18      ment is no longer needed, it shall be considered sur-  
19      plus and disposed of as surplus government prop-  
20      erty.

21           (3) DEPOSIT OF PROCEEDS.—As soon as the  
22      proceeds from an OEE undercover investigative op-  
23      eration with respect to which an action is authorized  
24      and carried out under this subsection are no longer  
25      needed for the conduct of such operation, the pro-

ceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) AUDIT AND REPORT.—

(A) AUDIT.—The Director of OEE shall conduct a detailed financial audit of each closed OEE undercover investigative operation and shall submit the results of the audit in writing to the Secretary. Not later than 180 days after an undercover operation is closed, the Secretary shall submit to Congress a report on the results of the audit.

(B) REPORT.—The Secretary shall submit annually to Congress a report, which may be included in the annual report under section 801, specifying the following information:

(i) The number of undercover investigative operations pending as of the end of the period for which such report is submitted.

(ii) The number of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted.

(iii) The number of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect to the operation.

(5) DEFINITIONS.—For purposes of paragraph

(4)—

(A) the term “closed”, with respect to an undercover investigative operation, refers to the earliest point in time at which all criminal proceedings (other than appeals) pursuant to the investigative operation are concluded, or covert activities pursuant to such operation are concluded, whichever occurs later; and

(B) the terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation conducted by the OEE—

(i) in which the gross receipts (excluding interest earned) exceed \$25,000, or expenditures (other than expenditures for salaries of employees) exceed \$75,000, and

1                   (ii) which is exempt from section ~~3302~~  
 2                   or 9102 of title 31, United States Code,  
 3                   except that clauses (i) and (ii) shall not  
 4                   apply with respect to the report to Con-  
 5                   gress required by paragraph (4)(B).

6       (c) WIRETAPS.—

7           (1) AUTHORITY.—Interceptions of communica-  
 8           tions in accordance with section 2516 of title 18,  
 9           United States Code, are authorized to further the  
 10          enforcement of this Act.

11          (2) CONFORMING AMENDMENT.—Section  
 12          2516(1) of title 18, United States Code, is amended  
 13          by adding at the end the following:

14               “(q)(i) any violation of, or conspiracy to  
 15               violate, the Export Administration Act of 2001  
 16               or the Export Administration Act of 1979.”.

17       (f) POST-SHIPMENT VERIFICATION.—

18           (1) IN GENERAL.—The Secretary shall target  
 19           post-shipment verifications to exports involving the  
 20           greatest risk to national security including, but not  
 21           limited to, exports of high performance computers.

22           (2) REPEAL.—Section 1213 of the National  
 23           Defense Authorization Act for Fiscal Year 1998 is  
 24           repealed.

1       (g) REFUSAL TO ALLOW POST-SHIPMENT  
2 VERIFICATION.—

3           (1) IN GENERAL.—If an end-user refuses to  
4 allow post-shipment verification of a controlled item;  
5 the Secretary shall deny a license for the export of  
6 any controlled item to such end-user until such post-  
7 shipment verification occurs.

8           (2) RELATED PERSONS.—The Secretary may  
9 exercise the authority under paragraph (1) with re-  
10 spect to any person related through affiliation, own-  
11 ership, control, or position of responsibility, to any  
12 end-user refusing to allow post-shipment verification  
13 of a controlled item.

14          (3) REFUSAL BY COUNTRY.—If the country in  
15 which the end-user is located refuses to allow post-  
16 shipment verification of a controlled item, the Sec-  
17 retary may deny a license for the export of that item  
18 or any substantially identical or directly competitive  
19 item or class of items to all end-users in that coun-  
20 try until such post-shipment verification is allowed.

21       (h) AWARD OF COMPENSATION; PATRIOT PROVI-  
22 SION.—

23           (1) IN GENERAL.—If—

24               (A) any person, who is not an employee or  
25 officer of the United States, furnishes to a



1 United States attorney, to the Secretary of the  
 2 Treasury or the Secretary, or to appropriate of-  
 3 ficials in the Department of the Treasury or the  
 4 Department of Commerce, original information  
 5 concerning a violation of this Act or any regula-  
 6 tion, order, or license issued under this Act,  
 7 which is being, or has been, perpetrated or con-  
 8 templated by any other person and in which the  
 9 person furnishing the information has not par-  
 10 ticipated, and

11 (B) such information leads to the recovery  
 12 of any criminal fine, civil penalty, or forfeiture;  
 13 the Secretary and the Commissioner of Customs,  
 14 may, in the sole discretion of the Secretary or the  
 15 Commissioner, award and pay an amount that does  
 16 not exceed 25 percent of the net amount recovered.

17 (2) DOLLAR LIMITATION.—The amount award-  
 18 ed and paid to any person under this section may  
 19 not exceed \$250,000 for any case.

20 (3) SOURCE OF PAYMENT.—The amount paid  
 21 under this section shall be paid out of any penalties,  
 22 forfeitures, or appropriated funds.

23 (i) FREIGHT FORWARDERS BEST PRACTICES PRO-  
 24 GRAM AUTHORIZATION.—There is authorized to be appro-  
 25 priated for the Department of Commerce \$2,500,000 and

1 such sums as may be necessary to hire 20 additional em-  
2 ployees to assist United States freight forwarders and  
3 other interested parties in developing and implementing,  
4 on a voluntary basis, a “best practices” program to ensure  
5 that exports of controlled items are undertaken in compli-  
6 ance with this Act.

7 ~~(j) END-USE VERIFICATION AUTHORIZATION.—~~

8 ~~(1) IN GENERAL.—~~There is authorized to be  
9 appropriated for the Department of Commerce  
10 \$4,500,000 and such sums as may be necessary to  
11 hire 10 additional overseas investigators to be posted  
12 in the People’s Republic of China, the Russian Fed-  
13 eration, the Hong Kong Special Administrative Re-  
14 gion, the Republic of India, Singapore, Egypt, and  
15 Taiwan, or any other place the Secretary deems ap-  
16 propriate, for the purpose of verifying the end use  
17 of high-risk, dual-use technology.

18 ~~(2) REPORT.—~~Not later than 2 years after the  
19 date of enactment of this Act and annually there-  
20 after, the Department shall, in its annual report to  
21 Congress on export controls, include a report on the  
22 effectiveness of the end-use verification activities au-  
23 thorized under subsection (a). The report shall in-  
24 clude the following information:

1           (A) The activities of the overseas investiga-  
2           tors of the Department.

3           (B) The types of goods and technologies  
4           that were subject to end-use verification.

5           (C) The ability of the Department's inves-  
6           tigators to detect the illegal transfer of high  
7           risk, dual-use goods and technologies.

8           (3) ENHANCEMENTS.—In addition to the au-  
9           thorization provided in paragraph (1), there is au-  
10          thorized to be appropriated for the Department of  
11          Commerce \$5,000,000 to enhance its program for  
12          verifying the end use of items subject to controls  
13          under this Act.

14          (k) ENHANCED COOPERATION WITH UNITED  
15          STATES CUSTOMS SERVICE.—Consistent with the pur-  
16          poses of this Act, the Secretary is authorized to undertake,  
17          in cooperation with the United States Customs Service,  
18          such measures as may be necessary or required to enhance  
19          the ability of the United States to detect unlawful exports  
20          and to enforce violations of this Act.

21          (l) REFERENCE TO ENFORCEMENT.—For purposes  
22          of this section, a reference to the enforcement of this Act  
23          or to a violation of this Act includes a reference to the  
24          enforcement or a violation of any regulation, license, or  
25          order issued under this Act.

1       (m) AUTHORIZATION FOR EXPORT LICENSING AND  
 2 ENFORCEMENT COMPUTER SYSTEM.—There is author-  
 3 ized to be appropriated for the Department \$5,000,000  
 4 and such other sums as may be necessary for planning,  
 5 design, and procurement of a computer system to replace  
 6 the Department’s primary export licensing and computer  
 7 enforcement system.

8       (n) AUTHORIZATION FOR BUREAU OF EXPORT AD-  
 9 MINISTRATION.—The Secretary may authorize, without  
 10 fiscal year limitation, the expenditure of funds transferred  
 11 to, paid to, received by, or made available to the Bureau  
 12 of Export Administration as a reimbursement in accord-  
 13 ance with section 9703 of title 31, United States Code  
 14 (as added by Public Law 102–393). The Secretary may  
 15 also authorize, without fiscal year limitation, the expendi-  
 16 ture of funds transferred to, paid to, received by, or made  
 17 available to the Bureau of Export Administration as a re-  
 18 imbursement from the Department of Justice Assets For-  
 19 feiture Fund in accordance with section 524 of title 28,  
 20 United States Code.

21       (o) AMENDMENTS TO TITLE 31.—

22               (1) Section 9703(a) of title 31, United States  
 23 Code (as added by Public Law 102–393) is amended  
 24 by striking “or the United States Coast Guard” and  
 25 inserting “, the United States Coast Guard, or the

1 Bureau of Export Administration of the Department  
2 of Commerce”.

3 ~~(2) Section 9703(a)(2)(B)(i) of title 31, United~~  
4 ~~States Code is amended (as added by Public Law~~  
5 ~~102-393)—~~

6 (A) by striking “or” at the end of sub-  
7 clause (I);

8 (B) by inserting “or” at the end of sub-  
9 clause (II); and

10 (C) by inserting at the end, the following  
11 new subclause:

12 “(III) a violation of the Export  
13 Administration Act of 1979, the Ex-  
14 port Administration Act of 2001, or  
15 any regulation, license, or order issued  
16 under those Acts;”.

17 ~~(3) Section 9703(p)(1) of title 31, United~~  
18 ~~States Code (as added by Public Law 102-393) is~~  
19 ~~amended by adding at the end the following: “In ad-~~  
20 ~~dition, for purposes of this section, the Bureau of~~  
21 ~~Export Administration of the Department of Com-~~  
22 ~~merce shall be considered to be a Department of the~~  
23 ~~Treasury law enforcement organization.”.~~

24 ~~(p) AUTHORIZATION FOR LICENSE REVIEW OFFI-~~  
25 ~~CERS.—~~

1           (1) IN GENERAL.—There is authorized to be  
 2           appropriated to the Department of Commerce  
 3           ~~\$2,000,000~~ to hire additional license review officers.

4           (2) TRAINING.—There is authorized to be ap-  
 5           propriated to the Department of Commerce  
 6           ~~\$2,000,000~~ to conduct professional training of li-  
 7           cense review officers, auditors, and investigators  
 8           conducting post-shipment verification checks. These  
 9           funds shall be used to—

10                   (A) train and certify, through a formal  
 11                   program, new employees entering these posi-  
 12                   tions for the first time; and

13                   (B) the ongoing professional training of ex-  
 14                   perienced employees on an as needed basis.

15           (c) AUTHORIZATION.—There are authorized to be ap-  
 16           propriated to the Department of Commerce to carry out  
 17           the purposes of this Act—

18                   (1) ~~\$72,000,000~~ for the fiscal year 2002, of  
 19                   which no less than ~~\$27,701,000~~ shall be used for  
 20                   compliance and enforcement activities;

21                   (2) ~~\$73,000,000~~ for the fiscal year 2003, of  
 22                   which no less than ~~\$28,312,000~~ shall be used for  
 23                   compliance and enforcement activities;

1           ~~(3)~~ \$74,000,000 for the fiscal year 2004, of  
 2           which no less than \$28,939,000 shall be used for  
 3           compliance and enforcement activities;

4           ~~(4)~~ \$76,000,000 for the fiscal year 2005, of  
 5           which no less than \$29,582,000 shall be used for  
 6           compliance and enforcement activities; and

7           ~~(5)~~ such additional amounts, for each such fis-  
 8           cal year, as may be necessary for increases in salary,  
 9           pay, retirement, other employee benefits authorized  
 10          by law, and other nondiscretionary costs.

11 **SEC. 608. ADMINISTRATIVE PROCEDURE.**

12          ~~(a) EXEMPTIONS FROM ADMINISTRATIVE PROCE-~~  
 13 ~~DURE.—~~Except as provided in this section, the functions  
 14 exercised under this Act are excluded from the operation  
 15 of sections ~~551~~, ~~553~~ through ~~559~~, and ~~701~~ through ~~706~~  
 16 of title 5, United States Code.

17          ~~(b) PROCEDURES RELATING TO CIVIL PENALTIES~~  
 18 ~~AND SANCTIONS.—~~

19           ~~(1) ADMINISTRATIVE PROCEDURES.—~~Any ad-  
 20 ministrative sanction imposed under section ~~603~~  
 21 may be imposed only after notice and opportunity  
 22 for an agency hearing on the record in accordance  
 23 with sections ~~554~~ through ~~557~~ of title 5, United  
 24 States Code. The imposition of any such administra-  
 25 tive sanction shall be subject to judicial review in ac-

1 cordance with sections 701 through 706 of title 5,  
 2 United States Code.

3 ~~(2) AVAILABILITY OF CHARGING LETTER.—Any~~  
 4 charging letter or other document initiating adminis-  
 5 trative proceedings for the imposition of sanctions  
 6 for violations of the regulations issued under section  
 7 602 shall be made available for public inspection and  
 8 copying.

9 ~~(c) COLLECTION.—If any person fails to pay a civil~~  
 10 penalty imposed under section 602, the Secretary may ask  
 11 the Attorney General to commence a civil action in an ap-  
 12 propriate district court of the United States to recover the  
 13 amount imposed (plus interest at currently prevailing  
 14 rates from the date of the final order). No such action  
 15 may be commenced more than 5 years after the order im-  
 16 posing the civil penalty becomes final. In such an action,  
 17 the validity, amount, and appropriateness of such penalty  
 18 shall not be subject to review.

19 ~~(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—~~

20 ~~(1) GROUNDS FOR IMPOSITION.—In any case in~~  
 21 which there is reasonable cause to believe that a per-  
 22 son is engaged in or is about to engage in any act  
 23 or practice which constitutes or would constitute a  
 24 violation of this Act, or any regulation, order, or li-  
 25 cense issued under this Act, including any diversion



1 of goods or technology from an authorized end use  
2 or end user, and in any case in which a criminal in-  
3 dictment has been returned against a person alleging  
4 a violation of this Act or any of the statutes listed  
5 in section 603, the Secretary may, without a hear-  
6 ing, issue an order temporarily denying that person's  
7 United States export privileges (hereafter in this  
8 subsection referred to as a "temporary denial  
9 order"). A temporary denial order shall be effective  
10 for such period (not in excess of 180 days) as the  
11 Secretary specifies in the order, but may be renewed  
12 by the Secretary, following notice and an oppor-  
13 tunity for a hearing, for additional periods of not  
14 more than 180 days each.

15 (2) ADMINISTRATIVE APPEALS.—The person or  
16 persons subject to the issuance or renewal of a tem-  
17 porary denial order may appeal the issuance or re-  
18 newal of the temporary denial order, supported by  
19 briefs and other material, to an administrative law  
20 judge who shall, within 15 working days after the  
21 appeal is filed, issue a decision affirming, modifying,  
22 or vacating the temporary denial order. The tem-  
23 porary denial order shall be affirmed if it is shown  
24 that—

1           (A) there is reasonable cause to believe  
 2           that the person subject to the order is engaged  
 3           in or is about to engage in any act or practice  
 4           that constitutes or would constitute a violation  
 5           of this Act, or any regulation, order, or license  
 6           issued under this Act; or

7           (B) a criminal indictment has been re-  
 8           turned against the person subject to the order  
 9           alleging a violation of this Act or any of the  
 10          statutes listed in section 603.

11       The decision of the administrative law judge shall be  
 12       final unless, within 10 working days after the date  
 13       of the administrative law judge's decision, an appeal  
 14       is filed with the Secretary. On appeal, the Secretary  
 15       shall either affirm, modify, reverse, or vacate the de-  
 16       cision of the administrative law judge by written  
 17       order within 10 working days after receiving the ap-  
 18       peal. The written order of the Secretary shall be  
 19       final and is not subject to judicial review, except as  
 20       provided in paragraph (3). The materials submitted  
 21       to the administrative law judge and the Secretary  
 22       shall constitute the administrative record for pur-  
 23       poses of review by the court.

24           (3) COURT APPEALS.—An order of the Sec-  
 25       retary affirming, in whole or in part, the issuance or

1 renewal of a temporary denial order may, within 15  
2 days after the order is issued, be appealed by a per-  
3 son subject to the order to the United States Court  
4 of Appeals for the District of Columbia Circuit,  
5 which shall have the jurisdiction of the appeal. The  
6 court may review only those issues necessary to de-  
7 termine whether the issuance of the temporary de-  
8 nial order was based on reasonable cause to believe  
9 that the person subject to the order was engaged  
10 in or was about to engage in any act or practice  
11 that constitutes or would constitute a violation of  
12 this title, or any regulation, order, or license issued  
13 under this Act, or whether a criminal indictment has  
14 been returned against the person subject to the  
15 order alleging a violation of this Act or of any of  
16 the statutes listed in section 603. The court shall  
17 vacate the Secretary's order if the court finds that  
18 the Secretary's order is arbitrary, capricious, an  
19 abuse of discretion, or otherwise not in accordance  
20 with law.

21 (c) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-  
22 MATION.—Any classified information that is included in  
23 the administrative record that is subject to review pursu-  
24 ant to subsection (b)(1) or (d)(3) may be reviewed by the  
25 court only on an ex parte basis and in camera.

1     **TITLE VII—EXPORT CONTROL**  
 2     **AUTHORITY AND REGULATIONS**

3     **SEC. 701. EXPORT CONTROL AUTHORITY AND REGULA-**  
 4             **TIONS.**

5         ~~(a) EXPORT CONTROL AUTHORITY.—~~

6             ~~(1) IN GENERAL.—Unless otherwise reserved to~~  
 7             ~~the President or a department (other than the De-~~  
 8             ~~partment) or agency of the United States, all power,~~  
 9             ~~authority, and discretion conferred by this Act shall~~  
 10            ~~be exercised by the Secretary.~~

11            ~~(2) DELEGATION OF FUNCTIONS OF THE SEC-~~  
 12            ~~RETARY.—The Secretary may delegate any function~~  
 13            ~~under this Act, unless otherwise provided, to the~~  
 14            ~~Under Secretary of Commerce for Export Adminis-~~  
 15            ~~tration or to any other officer of the Department.~~

16         ~~(b) UNDER SECRETARY OF COMMERCE; ASSISTANT~~  
 17         ~~SECRETARIES.—~~

18            ~~(1) UNDER SECRETARY OF COMMERCE.—There~~  
 19            ~~shall be within the Department an Under Secretary~~  
 20            ~~of Commerce for Export Administration (in this sec-~~  
 21            ~~tion referred to as the “Under Secretary”) who shall~~  
 22            ~~be appointed by the President, by and with the ad-~~  
 23            ~~vice and consent of the Senate. The Under Secretary~~  
 24            ~~shall carry out all functions of the Secretary under~~

1 this Act and other provisions of law relating to na-  
2 tional security, as the Secretary may delegate.

3 ~~(2) ADDITIONAL ASSISTANT SECRETARIES.—In~~  
4 addition to the number of Assistant Secretaries oth-  
5 erwise authorized for the Department of Commerce,  
6 there shall be within the Department of Commerce  
7 the following Assistant Secretaries of Commerce:

8 (A) An Assistant Secretary for Export Ad-  
9 ministration who shall be appointed by the  
10 President, by and with the advice and consent  
11 of the Senate, and who shall assist the Sec-  
12 retary and the Under Secretary in carrying out  
13 functions relating to export listing and licens-  
14 ing.

15 (B) An Assistant Secretary for Export En-  
16 forcement who shall be appointed by the Presi-  
17 dent, by and with the advice and consent of the  
18 Senate, and who shall assist the Secretary and  
19 the Under Secretary in carrying out functions  
20 relating to export enforcement.

21 ~~(c) ISSUANCE OF REGULATIONS.—~~

22 ~~(1) IN GENERAL.—The President and the Sec-~~  
23 retary may issue such regulations as are necessary  
24 to carry out this Act. Any such regulations the pur-  
25 pose of which is to carry out title II or title III may

1 be issued only after the regulations are submitted  
2 for review to such departments or agencies as the  
3 President considers appropriate. The Secretary shall  
4 consult with the appropriate export control advisory  
5 committee appointed under section 105(f) in formu-  
6 lating regulations under this title. The second sen-  
7 tence of this subsection does not require the concur-  
8 rence or approval of any official, department, or  
9 agency to which such regulations are submitted.

10 (2) AMENDMENTS TO REGULATIONS.—If the  
11 Secretary proposes to amend regulations issued  
12 under this Act, the Secretary shall report to the  
13 Committee on Banking, Housing, and Urban Affairs  
14 of the Senate and the Committee on International  
15 Relations of the House of Representatives on the in-  
16 tent and rationale of such amendments. Such report  
17 shall evaluate the cost and burden to the United  
18 States exporters of the proposed amendments in re-  
19 lation to any enhancement of licensing objectives.  
20 The Secretary shall consult with the appropriate ex-  
21 port control advisory committees appointed under  
22 section 105(f) in amending regulations issued under  
23 this Act.

24 **SEC. 702. CONFIDENTIALITY OF INFORMATION.**

25 (a) EXEMPTIONS FROM DISCLOSURE.—

1           ~~(1)~~ INFORMATION OBTAINED ON OR BEFORE  
2           JUNE 30, 1980.—Except as otherwise provided by the  
3           third sentence of section 602(c)(2), information ob-  
4           tained under the Export Administration Act of  
5           1979, or any predecessor statute, on or before June  
6           30, 1980, which is deemed confidential, including  
7           Shipper's Export Declarations, or with respect to  
8           which a request for confidential treatment is made  
9           by the person furnishing such information, shall not  
10          be subject to disclosure under section 552 of title 5,  
11          United States Code, and such information shall not  
12          be published or disclosed, unless the Secretary deter-  
13          mines that the withholding thereof is contrary to the  
14          national interest.

15          ~~(2)~~ INFORMATION OBTAINED AFTER JUNE 30,  
16          1980.—Except as otherwise provided by the third  
17          sentence of section 13(b)(2) of the Export Adminis-  
18          tration Act of 1979, information obtained under this  
19          Act, under the Export Administration Act of 1979  
20          after June 30, 1980, or under the Export Adminis-  
21          tration regulations as maintained and amended  
22          under the authority of the International Emergency  
23          Economic Powers Act (50 U.S.C. 1706), may be  
24          withheld from disclosure only to the extent permitted  
25          by statute, except that information submitted, ob-

1       tained, or considered in connection with an applica-  
2       tion for an export license or other export authoriza-  
3       tion (or recordkeeping or reporting requirement)  
4       under the Export Administration Act of 1979, under  
5       this Act, or under the Export Administration regula-  
6       tions as maintained and amended under the author-  
7       ity of the International Emergency Economic Pow-  
8       ers Act (50 U.S.C. 1706), including—

9               (A) the export license or other export au-  
10              thorization itself,

11             (B) classification requests described in sec-  
12              tion 501(h),

13             (C) information or evidence obtained in the  
14              course of any investigation,

15             (D) information obtained or furnished  
16              under title VII in connection with any inter-  
17              national agreement, treaty, or other obligation,  
18              and

19             (E) information obtained in making the  
20              determinations set forth in section 211 of this  
21              Act,

22       and information obtained in any investigation of an  
23       alleged violation of section 602 of this Act except for  
24       information required to be disclosed by section  
25       602(c)(2) or 606(b)(2) of this Act, shall be withheld



1 from public disclosure and shall not be subject to  
2 disclosure under section 552 of title 5, United States  
3 Code, unless the release of such information is deter-  
4 mined by the Secretary to be in the national inter-  
5 est.

6 ~~(b) INFORMATION TO CONGRESS AND GAO.—~~

7 ~~(1) IN GENERAL.—~~Nothing in this title shall be  
8 construed as authorizing the withholding of informa-  
9 tion from Congress or from the General Accounting  
10 Office.

11 ~~(2) AVAILABILITY TO THE CONGRESS—~~

12 ~~(A) IN GENERAL.—~~Any information ob-  
13 tained at any time under this title or under any  
14 predecessor Act regarding the control of ex-  
15 ports, including any report or license applica-  
16 tion required under this title, shall be made  
17 available to any committee or subcommittee of  
18 Congress of appropriate jurisdiction upon the  
19 request of the chairman or ranking minority  
20 member of such committee or subcommittee.

21 ~~(B) PROHIBITION ON FURTHER DISCLO-~~  
22 ~~SURE.—~~No committee, subcommittee, or Mem-  
23 ber of Congress shall disclose any information  
24 obtained under this Act or any predecessor Act  
25 regarding the control of exports which is sub-

mitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

~~(3) AVAILABILITY TO THE GAO.—~~

~~(A) IN GENERAL.—~~Notwithstanding subsection (a), information described in paragraph ~~(2)~~ shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

~~(B) PROHIBITION ON FURTHER DISCLOSURES.—~~No officer or employee of the General Accounting Office shall disclose, except to Congress in accordance with this paragraph, any such information which is submitted on a con-

1           fidential basis and from which any individual  
2           can be identified.

3       (c) ~~INFORMATION EXCHANGE.~~—Notwithstanding  
4 subsection (a), the Secretary and the Commissioner of  
5 Customs shall exchange licensing and enforcement infor-  
6 mation with each other as necessary to facilitate enforce-  
7 ment efforts and effective license decisions.

8       (d) ~~PENALTIES FOR DISCLOSURE OF CONFIDENTIAL~~  
9 ~~INFORMATION.~~—

10           (1) ~~DISCLOSURE PROHIBITED.~~—No officer or  
11 employee of the United States, or any department or  
12 agency thereof, may publish, divulge, disclose, or  
13 make known in any manner or to any extent not au-  
14 thorized by law any information that—

15           (A) the officer or employee obtains in the  
16 course of his or her employment or official du-  
17 ties or by reason of any examination or inves-  
18 tigation made by, or report or record made to  
19 or filed with, such department or agency, or of-  
20 ficer or employee thereof; and

21           (B) is exempt from disclosure under this  
22 section.

23       (2) ~~CRIMINAL PENALTIES.~~—Any such officer or  
24 employee who knowingly violates paragraph (1) shall  
25 be fined not more than \$50,000, imprisoned not

more than 1 year, or both, for each violation of paragraph (1). Any such officer or employee may also be removed from office or employment.

(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The Secretary may impose a civil penalty of not more than \$5,000 for each violation of paragraph (1). Any officer or employee who commits such violation may also be removed from office or employment for the violation of paragraph (1). Subsections 603 (e), (g), (h), and (i) and 606 (a), (b), and (c) shall apply to violations described in this paragraph.

## **TITLE VIII—MISCELLANEOUS PROVISIONS**

### **SEC. 801. ANNUAL AND PERIODIC REPORTS.**

(a) ANNUAL REPORT.—Not later than February 1 of each year, the Secretary shall submit to Congress a report on the administration of this Act during the fiscal year ending September 30 of the preceding calendar year. All Federal agencies shall cooperate fully with the Secretary in providing information for each such report.

(b) REPORT ELEMENTS.—Each such report shall include in detail—

(1) a description of the implementation of the export control policies established by this Act, in-

1 including any delegations of authority by the President  
2 and any other changes in the exercise of delegated  
3 authority;

4 (2) a description of the changes to and the  
5 year-end status of country tiering and the Control  
6 List;

7 (3) a description of the petitions filed and the  
8 determinations made with respect to foreign avail-  
9 ability and mass-market status; the set-asides of for-  
10 eign availability and mass-market status determina-  
11 tions; and negotiations to eliminate foreign avail-  
12 ability;

13 (4) a description of the regulations issued under  
14 this Act;

15 (5) a description of organizational and proce-  
16 dural changes undertaken in furtherance of this Act;

17 (6) a description of the enforcement activities;  
18 violations; and sanctions imposed under section 604;

19 (7) a statistical summary of all applications and  
20 notifications, including—

21 (A) the number of applications and notifi-  
22 cations pending review at the beginning of the  
23 fiscal year;

24 (B) the number of notifications returned  
25 and subject to full license procedure;

1           (C) the number of notifications with no ac-  
2           tion required;

3           (D) the number of applications that were  
4           approved, denied, or withdrawn, and the num-  
5           ber of applications where final action was  
6           taken; and

7           (E) the number of applications and notifi-  
8           cations pending review at the end of the fiscal  
9           year;

10          (8) summary of export license data by export  
11          identification code and dollar value by country;

12          (9) an identification of processing time by—

13               (A) overall average; and

14               (B) top 25 export identification codes;

15          (10) an assessment of the effectiveness of mul-  
16          tilateral regimes; and a description of negotiations  
17          regarding export controls;

18          (11) a description of the significant differences  
19          between the export control requirements of the  
20          United States and those of other multilateral control  
21          regime members; the specific differences between  
22          United States requirements and those of other sig-  
23          nificant supplier countries; and a description of the  
24          extent to which the executive branch intends to ad-  
25          dress the differences;

1           ~~(12)~~ an assessment of the costs of export con-  
2       trols;

3           ~~(13)~~ a description of the progress made toward  
4       achieving the goals established for the Department  
5       dealing with export controls under the Government  
6       Performance Results Act; and

7           ~~(14)~~ any other reports required by this Act to  
8       be submitted to the Committee on Banking, Hous-  
9       ing, and Urban Affairs of the Senate and the Com-  
10      mittee on International Relations of the House of  
11      Representatives.

12      ~~(c) CONGRESSIONAL NOTIFICATION.~~—Whenever the  
13      Secretary determines, in consultation with other appro-  
14      priate departments and agencies, that a significant viola-  
15      tion of this Act poses a direct and imminent threat to  
16      United States national security interests, the Secretary,  
17      in consultation with other appropriate departments and  
18      agencies, shall advise the Committee on Banking, Hous-  
19      ing, and Urban Affairs of the Senate and the Committee  
20      on International Relations of the House of Representa-  
21      tives of such violation consistent with the protection of law  
22      enforcement sources, methods, and activities.

23      ~~(d) FEDERAL REGISTER PUBLICATION REQUIRE-~~  
24      ~~MENTS.~~—Whenever information under this Act is required  
25      to be published in the Federal Register, such information

1 shall, in addition, be made available on the appropriate  
 2 Internet website of the Department.

3 **SEC. 802. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) **REPEAL.**—The Export Administration Act of  
 5 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

6 (b) **ENERGY POLICY AND CONSERVATION ACT.**—

7 (1) Section 103 of the Energy Policy and Con-  
 8 servation Act (42 U.S.C. 6212) is repealed.

9 (2) Section 251(d) of the Energy Policy and  
 10 Conservation Act (42 U.S.C. 6271(d)) is repealed.

11 (c) **ALASKA NATURAL GAS TRANSPORTATION ACT.**—  
 12 Section 12 of the Alaska Natural Gas Transportation Act  
 13 of 1976 (15 U.S.C. 719j) is repealed.

14 (d) **MINERAL LEASING ACT.**—Section 28(u) of the  
 15 Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

16 (e) **EXPORTS OF ALASKAN NORTH SLOPE OIL.**—Sec-  
 17 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))  
 18 is repealed.

19 (f) **DISPOSITION OF CERTAIN NAVAL PETROLEUM**  
 20 **RESERVE PRODUCTS.**—Section 7430(e) of title 10, United  
 21 States Code, is repealed.

22 (g) **OUTER CONTINENTAL SHELF LANDS ACT.**—Sec-  
 23 tion 28 of the Outer Continental Shelf Lands Act (43  
 24 U.S.C. 1354) is repealed.

25 (h) **ARMS EXPORT CONTROL ACT.**—



(1) Section 38 of the Arms Export Control Act  
(22 U.S.C. 2778) is amended—

(A) in subsection (e)—

(i) in the first sentence, by striking  
“subsections (e)” and all that follows  
through “12 of such Act,” and inserting  
“subsections (b), (c), (d) and (e) of section  
603 of the Export Administration Act of  
2001, by subsections (a) and (b) of section  
607 of such Act, and by section 702 of  
such Act,”; and

(ii) in the third sentence, by striking  
“11(e) of the Export Administration Act of  
1979” and inserting “603(e) of the Export  
Administration Act of 2001”; and

(B) in subsection (g)(1)(A)(ii), by inserting  
“or section 603 of the Export Administration  
Act of 2001” after “1979”.

(2) Section 39A(e) of the Arms Export Control  
Act is amended—

(A) by striking “subsections (e),” and all  
that follows through “12(a) of such Act” and  
inserting “subsections (c), (d), and (e) of sec-  
tion 603, section 608(c), and subsections (a)

1 and (b) of section 607, of the Export Adminis-  
 2 tration Act of 2001”; and

3 (B) by striking “11(e)” and inserting  
 4 “603(c)”.

5 (3) Section 40(k) of the Arms Export Control  
 6 Act (22 U.S.C. 2780(k)) is amended—

7 (A) by striking “11(e), 11(e), 11(g), and  
 8 12(a) of the Export Administration Act of  
 9 1979” and inserting “603(b), 603(c), 603(c),  
 10 607(a), and 607(b) of the Export Administra-  
 11 tion Act of 2001”; and

12 (B) by striking “11(e)” and inserting  
 13 “603(c)”.

14 (i) OTHER PROVISIONS OF LAW.—

15 (1) Section 5(b)(4) of the Trading with the  
 16 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by  
 17 striking “section 5 of the Export Administration Act  
 18 of 1979, or under section 6 of that Act to the extent  
 19 that such controls promote the nonproliferation or  
 20 antiterrorism policies of the United States” and in-  
 21 serting “titles II and III of the Export Administra-  
 22 tion Act of 2001”.

23 (2) Section 502B(a)(2) of the Foreign Assist-  
 24 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-  
 25 ed in the second sentence—

1           (A) by striking “Export Administration  
2           Act of 1979” the first place it appears and in-  
3           serting “Export Administration Act of 2001”;  
4           and

5           (B) by striking “Act of 1979” and insert-  
6           ing “Act of 2001”.

7           (3) Section 140(a) of the Foreign Relations Au-  
8           thorization Act, Fiscal Years 1988 and 1989 (22  
9           U.S.C. 2656f(a)) is amended—

10           (A) in paragraph (1)(B), by inserting “or  
11           section 310 of the Export Administration Act of  
12           2001” after “Act of 1979”; and

13           (B) in paragraph (2), by inserting “or 310  
14           of the Export Administration Act of 2001”  
15           after “6(j) of the Export Administration Act of  
16           1979”.

17           (4) Section 40(e)(1) of the State Department  
18           Basic Authorities Act of 1956 (22 U.S.C.  
19           2712(e)(1)) is amended by striking “section 6(j)(1)  
20           of the Export Administration Act of 1979” and in-  
21           serting “section 310 of the Export Administration  
22           Act of 2001”.

23           (5) Section 205(d)(4)(B) of the State Depart-  
24           ment Basic Authorities Act of 1956 (22 U.S.C.  
25           305(d)(4)(B)) is amended by striking “section 6(j)

1 of the Export Administration Act of 1979” and in-  
 2 serting “section 310 of the Export Administration  
 3 Act of 2001”.

4 (6) Section 110 of the International Security  
 5 and Development Cooperation Act of 1980 (22  
 6 U.S.C. 2778a) is amended by striking “Act of  
 7 1979” and inserting “Act of 2001”.

8 (7) Section 203(b)(3) of the International  
 9 Emergency Economic Powers Act (50 U.S.C.  
 10 1702(b)(3)) is amended by striking “section 5 of the  
 11 Export Administration Act of 1979, or under section  
 12 6 of such Act to the extent that such controls pro-  
 13 mote the nonproliferation or antiterrorism policies of  
 14 the United States” and inserting “the Export Ad-  
 15 ministration Act of 2001”.

16 (8) Section 1605(a)(7)(A) of title 28, United  
 17 States Code, is amended by striking “section 6(j) of  
 18 the Export Administration Act of 1979 (50 U.S.C.  
 19 App. 2405(j))” and inserting “section 310 of the  
 20 Export Administration Act of 2001”.

21 (9) Section 2332d(a) of title 18, United States  
 22 Code, is amended by striking “section 6(j) of the  
 23 Export Administration Act of 1979 (50 U.S.C. App.  
 24 2405)” and inserting “section 310 of the Export Ad-  
 25 ministration Act of 2001”.

1           ~~(10) Section 620H(a)(1) of the Foreign Assist-~~  
 2           ~~ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-~~  
 3           ~~ed by striking “section 6(j) of the Export Adminis-~~  
 4           ~~tration Act of 1979 (50 U.S.C. App. 2405(j))” and~~  
 5           ~~inserting “section 310 of the Export Administration~~  
 6           ~~Act of 2001”.~~

7           ~~(11) Section 1621(a) of the International Fi-~~  
 8           ~~nancial Institutions Act (22 U.S.C. 262p–4q(a)) is~~  
 9           ~~amended by striking “section 6(j) of the Export Ad-~~  
 10           ~~ministration Act of 1979 (50 U.S.C. App. 2405(j))”~~  
 11           ~~and inserting “section 310 of the Export Adminis-~~  
 12           ~~tration Act of 2001”.~~

13           ~~(12) Section 1956(e)(7)(D) of title 18, United~~  
 14           ~~States Code, is amended by striking “section 11 (re-~~  
 15           ~~lating to violations) of the Export Administration of~~  
 16           ~~1979” and inserting “section 603 (relating to pen-~~  
 17           ~~alties) of the Export Administration Act of 2001”.~~

18 **SEC. 803. SAVINGS PROVISIONS.**

19           ~~(a) IN GENERAL.—All delegations, rules, regulations,~~  
 20           ~~orders, determinations, licenses, or other forms of admin-~~  
 21           ~~istrative action which have been made, issued, conducted,~~  
 22           ~~or allowed to become effective under—~~

23           ~~(1) the Export Control Act of 1949, the Export~~  
 24           ~~Administration Act of 1969, the Export Administra-~~  
 25           ~~tion Act of 1979, or the International Emergency~~

1 Economic Powers Act when invoked to maintain and  
 2 continue the Export Administration regulations, or  
 3 ~~(2) those provisions of the Arms Export Control~~  
 4 ~~Act which are amended by section 802,~~  
 5 and are in effect on the date of enactment of this Act,  
 6 shall continue in effect according to their terms until  
 7 modified, superseded, set aside, or revoked under this Act  
 8 or the Arms Export Control Act.

9 (b) ADMINISTRATIVE AND JUDICIAL PRO-  
 10 CEEDINGS.—

11 (1) EXPORT ADMINISTRATION ACT.—This Act  
 12 shall not affect any administrative or judicial pro-  
 13 ceedings commenced or any application for a license  
 14 made, under the Export Administration Act of 1979  
 15 or pursuant to Executive Order 12924, which is  
 16 pending at the time this Act takes effect. Any such  
 17 proceedings, and any action on such application,  
 18 shall continue under the Export Administration Act  
 19 of 1979 as if that Act had not been repealed.

20 ~~(2) OTHER PROVISIONS OF LAW.—This Act~~  
 21 ~~shall not affect any administrative or judicial pro-~~  
 22 ~~ceeding commenced or any application for a license~~  
 23 ~~made, under those provisions of the Arms Export~~  
 24 ~~Control Act which are amended by section 802, if~~  
 25 ~~such proceeding or application is pending at the time~~

1       this Act takes effect. Any such proceeding, and any  
 2       action on such application, shall continue under  
 3       those provisions as if those provisions had not been  
 4       amended by section 802.

5       (c) TREATMENT OF CERTAIN DETERMINATIONS.—  
 6       Any determination with respect to the government of a  
 7       foreign country under section 6(j) of the Export Adminis-  
 8       tration Act of 1979, or Executive Order 12924, that is  
 9       in effect on the day before the date of enactment of this  
 10      Act, shall, for purposes of this title or any other provision  
 11      of law, be deemed to be made under section 310 of this  
 12      Act until superseded by a determination under such sec-  
 13      tion 310.

14      (d) LAWFUL INTELLIGENCE ACTIVITIES.—The pro-  
 15      hibitions otherwise applicable under this Act do not apply  
 16      with respect to any transaction subject to the reporting  
 17      requirements of title V of the National Security Act of  
 18      1947.

19      (e) IMPLEMENTATION.—The Secretary shall make  
 20      any revisions to the Export Administration regulations re-  
 21      quired by this Act no later than 180 days after the date  
 22      of enactment of this Act.

23      **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

24      (a) *SHORT TITLE.*—*This Act may be cited as the “Ex-*  
 25      *port Administration Act of 2001”.*

- 1       (b) *TABLE OF CONTENTS.—The table of contents of this*  
 2 *Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Definitions.*

#### *TITLE I—GENERAL AUTHORITY*

*Sec. 101. Commerce Control List.*

*Sec. 102. Delegation of authority.*

*Sec. 103. Public information; consultation requirements.*

*Sec. 104. Right of export.*

*Sec. 105. Export control advisory committees.*

*Sec. 106. President's Technology Export Council.*

*Sec. 107. Prohibition on charging fees.*

#### *TITLE II—NATIONAL SECURITY EXPORT CONTROLS*

##### *Subtitle A—Authority and Procedures*

*Sec. 201. Authority for national security export controls.*

*Sec. 202. National Security Control List.*

*Sec. 203. Country tiers.*

*Sec. 204. Incorporated parts and components.*

*Sec. 205. Petition process for modifying export status.*

##### *Subtitle B—Foreign Availability and Mass-Market Status*

*Sec. 211. Determination of foreign availability and mass-market status.*

*Sec. 212. Presidential set-aside of foreign availability status determination.*

*Sec. 213. Presidential set-aside of mass-market status determination.*

*Sec. 214. Office of Technology Evaluation.*

#### *TITLE III—FOREIGN POLICY EXPORT CONTROLS*

*Sec. 301. Authority for foreign policy export controls.*

*Sec. 302. Procedures for imposing controls.*

*Sec. 303. Criteria for foreign policy export controls.*

*Sec. 304. Presidential report before imposition of control.*

*Sec. 305. Imposition of controls.*

*Sec. 306. Deferral authority.*

*Sec. 307. Review, renewal, and termination.*

*Sec. 308. Termination of controls under this title.*

*Sec. 309. Compliance with international obligations.*

*Sec. 310. Designation of countries supporting international terrorism.*

*Sec. 311. Crime control instruments.*

#### *TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION*

*Sec. 401. Export license procedures.*

*Sec. 402. Interagency dispute resolution process.*

#### *TITLE V—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT*

*Sec. 501. International arrangements.*



*Sec. 502. Foreign boycotts.*

*Sec. 503. Penalties.*

*Sec. 504. Missile proliferation control violations.*

*Sec. 505. Chemical and biological weapons proliferation sanctions.*

*Sec. 506. Enforcement.*

*Sec. 507. Administrative procedure.*

#### *TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS*

*Sec. 601. Export control authority and regulations.*

*Sec. 602. Confidentiality of information.*

#### *TITLE VII—MISCELLANEOUS PROVISIONS*

*Sec. 701. Annual report.*

*Sec. 702. Technical and conforming amendments.*

*Sec. 703. Savings provisions.*

### **1 SEC. 2. DEFINITIONS.**

2       *In this Act:*

3               (1) *AFFILIATE.*—*The term “affiliate” includes*  
 4       *both governmental entities and commercial entities*  
 5       *that are controlled in fact by the government of a*  
 6       *country.*

7               (2) *CONTROL OR CONTROLLED.*—*The terms “con-*  
 8       *trol” and “controlled” mean any requirement, condi-*  
 9       *tion, authorization, or prohibition on the export or*  
 10       *reexport of an item.*

11              (3) *CONTROL LIST.*—*The term “Control List”*  
 12       *means the Commerce Control List established under*  
 13       *section 101.*

14              (4) *CONTROLLED COUNTRY.*—*The term “con-*  
 15       *trolled country” means a country with respect to*  
 16       *which exports are controlled under section 201 or 301.*

1           (5) *CONTROLLED ITEM*.—The term “controlled  
2           item” means an item the export of which is controlled  
3           under this Act.

4           (6) *COUNTRY*.—The term “country” means a  
5           sovereign country or an autonomous customs terri-  
6           tory.

7           (7) *COUNTRY SUPPORTING INTERNATIONAL TER-*  
8           *RORISM*.—The term “country supporting inter-  
9           national terrorism” means a country designated by  
10          the Secretary of State pursuant to section 310.

11          (8) *DEPARTMENT*.—The term “Department”  
12          means the Department of Commerce.

13          (9) *EXPORT*.—

14               (A) The term “export” means—

15                   (i) an actual shipment, transfer, or  
16                   transmission of an item out of the United  
17                   States;

18                   (ii) a transfer to any person of an item  
19                   either within the United States or outside of  
20                   the United States with the knowledge or in-  
21                   tent that the item will be shipped, trans-  
22                   ferred, or transmitted to an unauthorized  
23                   recipient outside the United States; or

24                   (iii) a transfer of an item in the  
25                   United States to an embassy or affiliate of

1           *a country, which shall be considered an ex-*  
 2           *port to that country.*

3           *(B) The term includes a reexport.*

4           *(10) FOREIGN AVAILABILITY STATUS.—The term*  
 5           *“foreign availability status” means the status de-*  
 6           *scribed in section 211(d)(1).*

7           *(11) FOREIGN PERSON.—The term “foreign per-*  
 8           *son” means—*

9           *(A) an individual who is not—*

10           *(i) a United States citizen;*

11           *(ii) an alien lawfully admitted for per-*  
 12           *manent residence to the United States; or*

13           *(iii) a protected individual as defined*  
 14           *in section 274B(a)(3) of the Immigration*  
 15           *and Nationality Act. (8 U.S.C.*  
 16           *1324b(a)(3));*

17           *(B) any corporation, partnership, business*  
 18           *association, society, trust, organization, or other*  
 19           *nongovernmental entity created or organized*  
 20           *under the laws of a foreign country or that has*  
 21           *its principal place of business outside the United*  
 22           *States; and*

23           *(C) any governmental entity of a foreign*  
 24           *country.*

25           *(12) ITEM.—*

1           (A) *IN GENERAL.*—The term “item” means  
2           any good, technology, or service.

3           (B) *OTHER DEFINITIONS.*—In this para-  
4           graph:

5                   (i) *GOOD.*—The term “good” means  
6                   any article, natural or manmade substance,  
7                   material, supply or manufactured product,  
8                   including inspection and test equipment,  
9                   including source code, and excluding tech-  
10                  nical data.

11                   (ii) *TECHNOLOGY.*—The term “tech-  
12                   nology” means specific information that is  
13                   necessary for the development, production,  
14                   or use of an item, and takes the form of  
15                   technical data or technical assistance.

16                   (iii) *SERVICE.*—The term “service”  
17                   means any act of assistance, help or aid.

18           (13) *MASS-MARKET STATUS.*—The term “mass-  
19           market status” means the status described in section  
20           211(d)(2).

21           (14) *MULTILATERAL EXPORT CONTROL RE-*  
22           *GIME.*—The term “multilateral export control regime”  
23           means an international agreement or arrangement  
24           among two or more countries, including the United  
25           States, a purpose of which is to coordinate national

1 *export control policies of its members regarding cer-*  
 2 *tain tems. The term includes regimes such as the Aus-*  
 3 *tralia Group, the Wassenaar Arrangement, the Missile*  
 4 *Technology Control Regime (MTCR), and the Nuclear*  
 5 *Suppliers' Group Dual Use Arrangement.*

6 (15) *NATIONAL SECURITY CONTROL LIST.*—*The*  
 7 *term “National Security Control List” means the list*  
 8 *established under section 202(a).*

9 (16) *PERSON.*—*The term “person” includes—*

10 (A) *any individual, or partnership, cor-*  
 11 *poration, business association, society, trust, or-*  
 12 *ganization, or any other group created or orga-*  
 13 *nized under the laws of a country; and*

14 (B) *any government, or any governmental*  
 15 *entity, including any governmental entity oper-*  
 16 *ating as a business enterprise.*

17 (17) *REEXPORT.*—*The term “reexport” means*  
 18 *the shipment, transfer, transshipment, or diversion of*  
 19 *items from one foreign country to another.*

20 (18) *SECRETARY.*—*The term “Secretary” means*  
 21 *the Secretary of Commerce.*

22 (19) *UNITED STATES.*—*The term “United*  
 23 *States” means the States of the United States, the*  
 24 *District of Columbia, and any commonwealth, terri-*  
 25 *tory, dependency, or possession of the United States,*

1       *and includes the outer Continental Shelf, as defined*  
 2       *in section 2(a) of the Outer Continental Shelf Lands*  
 3       *Act (42 U.S.C. 1331(a)).*

4           (20) *UNITED STATES PERSON.*—*The term*  
 5       *“United States person” means—*

6               (A) *any United States citizen, resident, or*  
 7               *national (other than an individual resident out-*  
 8               *side the United States who is employed by a per-*  
 9               *son other than a United States person);*

10              (B) *any domestic concern (including any*  
 11              *permanent domestic establishment of any foreign*  
 12              *concern); and*

13              (C) *any foreign subsidiary or affiliate (in-*  
 14              *cluding any permanent foreign establishment) of*  
 15              *any domestic concern which is controlled in fact*  
 16              *by such domestic concern, as determined under*  
 17              *regulations prescribed by the President.*

## 18       ***TITLE I—GENERAL AUTHORITY***

### 19       ***SEC. 101. COMMERCE CONTROL LIST.***

20           (a) *IN GENERAL.*—*Under such conditions as the Sec-*  
 21       *retary may impose, consistent with the provisions of this*  
 22       *Act, the Secretary—*

23               (1) *shall establish and maintain a Commerce*  
 24       *Control List (in this Act referred to as the “Control*  
 25       *List”) consisting of items the export of which are sub-*

1     *ject to licensing or other authorization or require-*  
 2     *ment; and*

3             *(2) may require any type of license, or other au-*  
 4     *thorization, including recordkeeping and reporting,*  
 5     *appropriate to the effective and efficient implementa-*  
 6     *tion of this Act with respect to the export of an item*  
 7     *on the Control List or otherwise subject to control*  
 8     *under title II or III of this Act.*

9     ***(b) TYPES OF LICENSE OR OTHER AUTHORIZATION.—***  
 10    *The types of license or other authorization referred to in*  
 11    *subsection (a)(2) include the following:*

12            ***(1) SPECIFIC EXPORTS.—****A license that author-*  
 13    *izes a specific export.*

14            ***(2) MULTIPLE EXPORTS.—****A license that author-*  
 15    *izes multiple exports in lieu of a license for each ex-*  
 16    *port.*

17            ***(3) NOTIFICATION IN LIEU OF LICENSE.—****A no-*  
 18    *tification in lieu of a license that authorizes a specific*  
 19    *export or multiple exports subject to the condition*  
 20    *that the exporter file with the Department advance*  
 21    *notification of the intent to export in accordance with*  
 22    *regulations prescribed by the Secretary.*

23            ***(4) LICENSE EXCEPTION.—****Authority to export*  
 24    *an item on the Control List without prior license or*  
 25    *notification in lieu of a license.*

1       (c) *AFTER-MARKET SERVICE AND REPLACEMENT*  
 2 *PARTS.*—A license to export an item under this Act shall  
 3 not be required for an exporter to provide after-market serv-  
 4 ice or replacement parts in order to replace on a one-for-  
 5 one basis parts that were in an item that was lawfully ex-  
 6 ported from the United States, unless—

7           (1) the Secretary determines that such license is  
 8 required to export such parts; or

9           (2) the after-market service or replacement parts  
 10 would materially enhance the capability of an item  
 11 which was the basis for the item being controlled.

12       (d) *INCIDENTAL TECHNOLOGY.*—A license or other au-  
 13 thorization to export an item under this Act includes au-  
 14 thorization to export technology related to the item, if the  
 15 level of the technology does not exceed the minimum nec-  
 16 essary to install, repair, maintain, inspect, operate, or use  
 17 the item.

18       (e) *REGULATIONS.*—The Secretary may prescribe such  
 19 regulations as are necessary to carry out the provisions of  
 20 this Act.

21 **SEC. 102. DELEGATION OF AUTHORITY.**

22       (a) *IN GENERAL.*—Except as provided in subsection  
 23 (b) and subject to the provisions of this Act, the President  
 24 may delegate the power, authority, and discretion conferred  
 25 upon the President by this Act to such departments, agen-



1 *cies, and officials of the Government as the President con-*  
 2 *siders appropriate.*

3 *(b) EXCEPTIONS.—*

4 *(1) DELEGATION TO APPOINTEES CONFIRMED BY*  
 5 *SENATE.—No authority delegated to the President*  
 6 *under this Act may be delegated by the President to,*  
 7 *or exercised by, any official of any department or*  
 8 *agency the head of which is not appointed by the*  
 9 *President, by and with the advice and consent of the*  
 10 *Senate.*

11 *(2) OTHER LIMITATIONS.—The President may*  
 12 *not delegate or transfer the President's power, author-*  
 13 *ity, or discretion to overrule or modify any rec-*  
 14 *ommendation or decision made by the Secretary, the*  
 15 *Secretary of Defense, or the Secretary of State under*  
 16 *this Act.*

17 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**  
 18 **MENTS.**

19 *(a) PUBLIC INFORMATION.—The Secretary shall keep*  
 20 *the public fully informed of changes in export control policy*  
 21 *and procedures instituted in conformity with this Act.*

22 *(b) CONSULTATION WITH PERSONS AFFECTED.—The*  
 23 *Secretary shall consult regularly with representatives of a*  
 24 *broad spectrum of enterprises, labor organizations, and citi-*  
 25 *zens interested in or affected by export controls in order*

1 *to obtain their views on United States export control policy*  
2 *and the foreign availability or mass-market status of con-*  
3 *trolled items.*

4 **SEC. 104. RIGHT OF EXPORT.**

5 *No license or other authorization to export may be re-*  
6 *quired under this Act, or under regulations issued under*  
7 *this Act, except to carry out the provisions of this Act.*

8 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

9 *(a) APPOINTMENT.—Upon the Secretary’s own initia-*  
10 *tive or upon the written request of representatives of a sub-*  
11 *stantial segment of any industry which produces any items*  
12 *subject to export controls under this Act or being considered*  
13 *for such controls, the Secretary may appoint export control*  
14 *advisory committees with respect to any such items. Each*  
15 *such committee shall consist of representatives of United*  
16 *States industry and Government officials, including offi-*  
17 *cials from the Departments of Commerce, Defense, and*  
18 *State, and other appropriate departments and agencies of*  
19 *the Government. The Secretary shall permit the widest pos-*  
20 *sible participation by the business community on the export*  
21 *control advisory committees.*

22 *(b) FUNCTIONS.—*

23 *(1) IN GENERAL.—Export control advisory com-*  
24 *mittees appointed under subsection (a) shall advise*  
25 *and assist the Secretary, and any other department,*

1       agency, or official of the Government carrying out  
2       functions under this Act, on actions (including all as-  
3       pects of controls imposed or proposed) designed to  
4       carry out the provisions of this Act concerning the  
5       items with respect to which such export control advi-  
6       sory committees were appointed.

7               (2) *OTHER CONSULTATIONS.*—Nothing in para-  
8       graph (1) shall prevent the United States Government  
9       from consulting, at any time, with any person rep-  
10      resenting an industry or the general public, regardless  
11      of whether such person is a member of an export con-  
12      trol advisory committee. Members of the public shall  
13      be given a reasonable opportunity, pursuant to regu-  
14      lations prescribed by the Secretary, to present infor-  
15      mation to such committees.

16       (c) *REIMBURSEMENT OF EXPENSES.*—Upon the re-  
17      quest of any member of any export control advisory com-  
18      mittee appointed under subsection (a), the Secretary may,  
19      if the Secretary determines it to be appropriate, reimburse  
20      such member for travel, subsistence, and other necessary ex-  
21      penses incurred by such member in connection with the du-  
22      ties of such member.

23       (d) *CHAIRPERSON.*—Each export control advisory  
24      committee appointed under subsection (a) shall elect a  
25      chairperson, and shall meet at least every 3 months at the

1 *call of the chairperson, unless the chairperson determines,*  
2 *in consultation with the other members of the committee,*  
3 *that such a meeting is not necessary to achieve the purposes*  
4 *of this section. Each such committee shall be terminated*  
5 *after a period of 2 years, unless extended by the Secretary*  
6 *for additional periods of 2 years each. The Secretary shall*  
7 *consult with each such committee on such termination or*  
8 *extension of that committee.*

9       (e) *ACCESS TO INFORMATION.—To facilitate the work*  
10 *of the export control advisory committees appointed under*  
11 *subsection (a), the Secretary, in conjunction with other de-*  
12 *partments and agencies participating in the administra-*  
13 *tion of this Act, shall disclose to each such committee ade-*  
14 *quate information, consistent with national security and*  
15 *intelligence sources and methods, pertaining to the reasons*  
16 *for the export controls which are in effect or contemplated*  
17 *for the items or policies for which that committee furnishes*  
18 *advice. Information provided by the export control advisory*  
19 *committees shall not be subject to disclosure under section*  
20 *552 of title 5, United States Code, and such information*  
21 *shall not be published or disclosed unless the Secretary de-*  
22 *termines that the withholding thereof is contrary to the na-*  
23 *tional interest.*

1 **SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.**

2       *The President may establish a President's Technology*  
 3 *Export Council to advise the President on the implementa-*  
 4 *tion, operation, and effectiveness of this Act.*

5 **SEC. 107. PROHIBITION ON CHARGING FEES.**

6       *No fee may be charged in connection with the submis-*  
 7 *sion or processing of an application for an export license*  
 8 *under this Act.*

9       **TITLE II—NATIONAL SECURITY**  
 10               **EXPORT CONTROLS**  
 11               **Subtitle A—Authority and**  
 12               **Procedures**

13 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**  
 14 **CONTROLS.**

15       (a) *AUTHORITY.*—

16               (1) *IN GENERAL.*—*In order to carry out the pur-*  
 17 *poses set forth in subsection (b), the President may,*  
 18 *in accordance with the provisions of this Act, pro-*  
 19 *hibit, curtail, or require a license, or other authoriza-*  
 20 *tion for the export of any item subject to the jurisdic-*  
 21 *tion of the United States or exported by any person*  
 22 *subject to the jurisdiction of the United States. The*  
 23 *President may also require recordkeeping and report-*  
 24 *ing with respect to the export of such item.*

25               (2) *EXERCISE OF AUTHORITY.*—*The authority*  
 26 *contained in this subsection shall be exercised by the*

1        *Secretary, in consultation with the Secretary of De-*  
2        *fense, the intelligence agencies, and such other depart-*  
3        *ments and agencies as the Secretary considers appro-*  
4        *priate.*

5        *(b) PURPOSES.—The purposes of national security ex-*  
6        *port controls are the following:*

7                *(1) To restrict the export of items that would*  
8                *contribute to the military potential of countries so as*  
9                *to prove detrimental to the national security of the*  
10               *United States, its allies or countries sharing common*  
11               *strategic objectives with the United States.*

12               *(2) To stem the proliferation of weapons of mass*  
13               *destruction, and the means to deliver them, and other*  
14               *significant military capabilities by—*

15                        *(A) leading international efforts to control*  
16                        *the proliferation of chemical and biological*  
17                        *weapons, nuclear explosive devices, missile deliv-*  
18                        *ery systems, key-enabling technologies, and other*  
19                        *significant military capabilities;*

20                        *(B) controlling involvement of United*  
21                        *States persons in, and contributions by United*  
22                        *States persons to, foreign programs intended to*  
23                        *develop weapons of mass destruction, missiles,*  
24                        *and other significant military capabilities, and*

1           *the means to design, test, develop, produce, stock-*  
 2           *pile, or use them; and*

3           *(C) implementing international treaties or*  
 4           *other agreements or arrangements concerning*  
 5           *controls on exports of designated items, reports*  
 6           *on the production, processing, consumption, and*  
 7           *exports and imports of such items, and compli-*  
 8           *ance with verification programs.*

9           *(3) To deter acts of international terrorism.*

10          *(c) END USE AND END USER CONTROLS.—Notwith-*  
 11         *standing any other provision of this title, controls may be*  
 12         *imposed, based on the end use or end user, on the export*  
 13         *of any item, that could contribute to the proliferation of*  
 14         *weapons of mass destruction or the means to deliver them.*

15          *(d) ENHANCED CONTROLS.—*

16                 *(1) IN GENERAL.—Notwithstanding any other*  
 17         *provisions of this title, the President may determine*  
 18         *that applying the provisions of section 204 or 211*  
 19         *with respect to an item on the National Security Con-*  
 20         *trol List would constitute a significant threat to the*  
 21         *national security of the United States and that such*  
 22         *item requires enhanced control. If the President deter-*  
 23         *mines that enhanced control should apply to such*  
 24         *item, the item may be excluded from the provisions of*  
 25         *section 204, section 211, or both, until such time as*

1     *the President shall determine that such enhanced con-*  
 2     *trol should no longer apply to such item. The Presi-*  
 3     *dent may not delegate the authority provided for in*  
 4     *this subsection.*

5             (2) *REPORT TO CONGRESS.—The President shall*  
 6     *promptly report any determination described in*  
 7     *paragraph (1), along with the specific reasons for the*  
 8     *determination, to the Committee on Banking, Hous-*  
 9     *ing, and Urban Affairs of the Senate and the Com-*  
 10    *mittee on International Relations of the House of*  
 11    *Representatives.*

12   **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

13             (a) *ESTABLISHMENT OF LIST.—*

14                 (1) *ESTABLISHMENT.—The Secretary shall estab-*  
 15     *lish and maintain a National Security Control List*  
 16     *as part of the Control List.*

17                 (2) *CONTENTS.—The National Security Control*  
 18     *List shall be composed of a list of items the export of*  
 19     *which is controlled for national security purposes*  
 20     *under this title.*

21                 (3) *IDENTIFICATION OF ITEMS FOR NATIONAL SE-*  
 22     *curity Control List.—The Secretary, with the con-*  
 23     *currence of the Secretary of Defense and in consulta-*  
 24     *tion with the head of any other department or agency*  
 25     *of the United States that the Secretary considers ap-*



1     *appropriate, shall identify the items to be included on*  
2     *the National Security Control List provided that the*  
3     *National Security Control List shall, on the date of*  
4     *enactment of this Act, include all of the items on the*  
5     *Commerce Control List controlled on the day before*  
6     *the date of enactment of this Act to protect the na-*  
7     *tional security of the United States, to prevent the*  
8     *proliferation of weapons of mass destruction and the*  
9     *means to deliver them, and to deter acts of inter-*  
10    *national terrorism. The Secretary shall review on a*  
11    *continuing basis and, with the concurrence of the Sec-*  
12    *retary of Defense and in consultation with the head*  
13    *of any other department or agency of the United*  
14    *States that the Secretary considers appropriate, ad-*  
15    *just the National Security Control List to add items*  
16    *that require control under this section and to remove*  
17    *items that no longer warrant control under this sec-*  
18    *tion.*

19    *(b) RISK ASSESSMENT.—*

20         *(1) REQUIREMENT.—In establishing and main-*  
21         *taining the National Security Control List, the risk*  
22         *factors set forth in paragraph (2) shall be considered,*  
23         *weighing national security concerns and economic*  
24         *costs.*

1           (2) *RISK FACTORS.*—*The risk factors referred to*  
2           *in paragraph (1), with respect to each item, are as*  
3           *follows:*

4                   (A) *The characteristics of the item.*

5                   (B) *The threat, if any, to the United States*  
6                   *or the national security interest of the United*  
7                   *States from the misuse or diversion of such item.*

8                   (C) *The effectiveness of controlling the item*  
9                   *for national security purposes of the United*  
10                  *States, taking into account mass-market status,*  
11                  *foreign availability, and other relevant factors.*

12                  (D) *The threat to the national security in-*  
13                  *terests of the United States if the item is not con-*  
14                  *trolled.*

15                  (E) *Any other appropriate risk factors.*

16       (c) *REPORT ON CONTROL LIST.*—*Not later than 90*  
17       *days after the date of enactment of this Act, the Secretary*  
18       *shall submit a report to Congress which lists all items on*  
19       *the Commerce Control List controlled on the day before the*  
20       *date of enactment of this Act to protect the national security*  
21       *of the United States, to prevent the proliferation of weapons*  
22       *of mass destruction and the means to deliver them, and to*  
23       *deter acts of international terrorism, not included on the*  
24       *National Security Control List pursuant to the provisions*  
25       *of this Act.*

1 **SEC. 203. COUNTRY TIERS.**

2 (a) *IN GENERAL.*—

3 (1) *ESTABLISHMENT AND ASSIGNMENT.*—*In ad-*  
4 *ministering export controls for national security pur-*  
5 *poses under this title, the President shall, not later*  
6 *than 120 days after the date of enactment of this*  
7 *Act—*

8 (A) *establish and maintain a country*  
9 *tiering system in accordance with subsection (b);*  
10 *and*

11 (B) *based on the assessments required under*  
12 *subsection (c), assign each country to an appro-*  
13 *priate tier for each item or group of items the*  
14 *export of which is controlled for national secu-*  
15 *rity purposes under this title.*

16 (2) *CONSULTATION.*—*The establishment and as-*  
17 *signment of country tiers under this section shall be*  
18 *made after consultation with the Secretary, the Sec-*  
19 *retary of Defense, the Secretary of State, the intel-*  
20 *ligence agencies, and such other departments and*  
21 *agencies as the President considers appropriate.*

22 (3) *REDETERMINATION AND REVIEW OF ASSIGN-*  
23 *MENTS.*—*The President may redetermine the assign-*  
24 *ment of a country to a particular tier at any time*  
25 *and shall review and, as the President considers ap-*  
26 *propriate, reassign country tiers on an on-going*

1       *basis. The Secretary shall provide notice of any such*  
 2       *reassignment to the Committee on Banking, Housing,*  
 3       *and Urban Affairs of the Senate and the Committee*  
 4       *on International Relations of the House of Represent-*  
 5       *atives.*

6               (4) *EFFECTIVE DATE OF TIER ASSIGNMENT.—*

7       *An assignment of a country to a particular tier shall*  
 8       *take effect on the date on which notice of the assign-*  
 9       *ment is published in the Federal Register.*

10              (b) *TIERS.—*

11               (1) *IN GENERAL.—The President shall establish*

12       *a country tiering system consisting of not less than*  
 13       *3 tiers for purposes of this section.*

14               (2) *RANGE.—Countries that represent the lowest*

15       *risk of diversion or misuse of an item on the National*  
 16       *Security Control List shall be assigned to the lowest*  
 17       *tier. Countries that represent the highest risk of diver-*  
 18       *sion or misuse of an item on the National Security*  
 19       *Control List shall be assigned to the highest tier.*

20               (3) *OTHER COUNTRIES.—Countries that fall be-*

21       *tween the lowest and highest risk to the national secu-*  
 22       *rity interest of the United States with respect to the*  
 23       *risk of diversion or misuse of an item on the National*  
 24       *Security Control List shall be assigned to a tier other*

1        *than the lowest or highest tier, based on the assess-*  
 2        *ments required under subsection (c).*

3        *(c) ASSESSMENTS.—The President shall make an as-*  
 4        *essment of each country in assigning a country tier taking*  
 5        *into consideration risk factors including the following:*

6            *(1) The present and potential relationship of the*  
 7            *country with the United States.*

8            *(2) The present and potential relationship of the*  
 9            *country with countries friendly to the United States*  
 10          *and with countries hostile to the United States.*

11          *(3) The country's capabilities regarding chem-*  
 12          *ical, biological, and nuclear weapons and the coun-*  
 13          *try's membership in, and level of compliance with,*  
 14          *relevant multilateral export control regimes.*

15          *(4) The country's capabilities regarding missile*  
 16          *systems and the country's membership in, and level of*  
 17          *compliance with, relevant multilateral export control*  
 18          *regimes.*

19          *(5) Whether the country, if a NATO or major*  
 20          *non-NATO ally with whom the United States has en-*  
 21          *tered into a free trade agreement as of January 1,*  
 22          *1986, controls exports in accordance with the criteria*  
 23          *and standards of a multilateral export control regime*  
 24          *as defined in section 2(14) pursuant to an inter-*

1        *national agreement to which the United States is a*  
 2        *party.*

3            *(6) The country's other military capabilities and*  
 4        *the potential threat posed by the country to the*  
 5        *United States or its allies.*

6            *(7) The effectiveness of the country's export con-*  
 7        *trol system.*

8            *(8) The level of the country's cooperation with*  
 9        *United States export control enforcement and other ef-*  
 10       *forts.*

11           *(9) The risk of export diversion by the country*  
 12        *to a higher tier country.*

13           *(10) The designation of the country as a country*  
 14        *supporting international terrorism under section 310.*

15        *(d) TIER APPLICATION.—The country tiering system*  
 16        *shall be used in the determination of license requirements*  
 17        *pursuant to section 201(a)(1).*

18        **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

19        *(a) EXPORT OF ITEMS CONTAINING CONTROLLED*  
 20        *PARTS AND COMPONENTS.—Controls may not be imposed*  
 21        *under this title or any other provision of law on an item*  
 22        *solely because the item contains parts or components subject*  
 23        *to export controls under this title, if the parts or*  
 24        *components—*

25           *(1) are essential to the functioning of the item,*

1           (2) *are customarily included in sales of the item*  
 2           *in countries other than controlled countries, and*

3           (3) *comprise 25 percent or less of the total value*  
 4           *of the item,*

5 *unless the item itself, if exported, would by virtue of the*  
 6 *functional characteristics of the item as a whole make a*  
 7 *significant contribution to the military or proliferation po-*  
 8 *tential of a controlled country or end user which would*  
 9 *prove detrimental to the national security of the United*  
 10 *States, or unless failure to control the item would be con-*  
 11 *trary to the provisions of section 201(c), section 201(d), or*  
 12 *section 309 of this Act.*

13           (b) *REEXPORTS OF FOREIGN-MADE ITEMS INCOR-*  
 14 *PORATING UNITED STATES CONTROLLED CONTENT.—*

15           (1) *IN GENERAL.—No authority or permission*  
 16           *may be required under this title to reexport to a coun-*  
 17           *try an item that is produced in a country other than*  
 18           *the United States and incorporates parts or compo-*  
 19           *nents that are subject to the jurisdiction of the United*  
 20           *States, if the value of the controlled United States*  
 21           *content of the item produced in such other country is*  
 22           *25 percent or less of the total value of the item; except*  
 23           *that in the case of reexports of an item to a country*  
 24           *designated as a country supporting international ter-*  
 25           *rorism pursuant to section 310, controls may be*

1        *maintained if the value of the controlled United*  
 2        *States content is more than 10 percent of the total*  
 3        *value of the item.*

4                (2) *DEFINITION OF CONTROLLED UNITED STATES*  
 5        *CONTENT.—For purposes of this paragraph, the term*  
 6        *“controlled United States content” of an item means*  
 7        *those parts or components that—*

8                        (A) *are subject to the jurisdiction of the*  
 9                        *United States;*

10                      (B) *are incorporated into the item; and*

11                      (C) *would, at the time of the reexport, re-*  
 12                      *quire a license under this title if exported from*  
 13                      *the United States to a country to which the item*  
 14                      *is to be reexported.*

15    **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STA-**  
 16                      **TUS.**

17                (a) *ESTABLISHMENT.—The Secretary shall establish a*  
 18        *process for interested persons to petition the Secretary to*  
 19        *change the status of an item on the National Security Con-*  
 20        *trol List.*

21                (b) *EVALUATIONS AND DETERMINATIONS.—Evalua-*  
 22        *tions and determinations with respect to a petition filed*  
 23        *pursuant to this section shall be made in accordance with*  
 24        *section 202.*



***Subtitle B—Foreign Availability  
and Mass-Market Status***

***SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND  
MASS-MARKET STATUS.***

*(a) IN GENERAL.—The Secretary shall—*

*(1) on a continuing basis,*

*(2) upon a request from the Office of Technology  
Evaluation, or*

*(3) upon receipt of a petition filed by an inter-  
ested party,*

*review and determine the foreign availability and the mass-  
market status of any item the export of which is controlled  
under this title.*

*(b) PETITION AND CONSULTATION.—*

*(1) IN GENERAL.—The Secretary shall establish  
a process for an interested party to petition the Sec-  
retary for a determination that an item has a foreign  
availability or mass-market status. In evaluating and  
making a determination with respect to a petition  
filed under this section, the Secretary shall consult  
with the Secretary of Defense, Secretary of State, and  
other appropriate Government agencies and with the  
Office of Technology Evaluation (established pursuant  
to section 214).*

1           (2) *TIME FOR MAKING DETERMINATION.*—The  
 2       Secretary shall, within 6 months after receiving a pe-  
 3       tition described in subsection (a)(3), determine wheth-  
 4       er the item that is the subject of the petition has for-  
 5       eign availability or mass-market status and shall no-  
 6       tify the petitioner of the determination.

7       (c) *RESULT OF DETERMINATION.*—In any case in  
 8       which the Secretary determines, in accordance with proce-  
 9       dures and criteria which the Secretary shall by regulation  
 10      establish, that an item described in subsection (a) has—

11           (1) a foreign availability status, or

12           (2) a mass-market status,

13      the Secretary shall notify the President (and other appro-  
 14      priate departments and agencies) and publish the notice of  
 15      the determination in the Federal Register. The Secretary's  
 16      determination shall become final 30 days after the date the  
 17      notice is published, the item shall be removed from the Na-  
 18      tional Security Control List, and a license or other author-  
 19      ization shall not be required under this title with respect  
 20      to the item, unless the President makes a determination de-  
 21      scribed in section 212 or 213, or takes action under section  
 22      309, with respect to the item in that 30-day period.

23      (d) *CRITERIA FOR DETERMINING FOREIGN AVAIL-*  
 24      *ABILITY AND MASS-MARKET STATUS.*—

1           (1) *FOREIGN AVAILABILITY STATUS.*—*The Sec-*  
 2           *retary shall determine that an item has foreign avail-*  
 3           *ability status under this subtitle, if the item (or a*  
 4           *substantially identical or directly competitive item)—*

5                   (A) *is available to controlled countries from*  
 6                   *sources outside the United States, including*  
 7                   *countries that participate with the United States*  
 8                   *in multilateral export controls;*

9                   (B) *can be acquired at a price that is not*  
 10                  *excessive when compared to the price at which a*  
 11                  *controlled country could acquire such item from*  
 12                  *sources within the United States in the absence*  
 13                  *of export controls; and*

14                  (C) *is available in sufficient quantity so*  
 15                  *that the requirement of a license or other author-*  
 16                  *ization with respect to the export of such item is*  
 17                  *or would be ineffective.*

18           (2) *MASS-MARKET STATUS.*—

19                   (A) *IN GENERAL.*—*In determining whether*  
 20                   *an item has mass-market status under this sub-*  
 21                   *title, the Secretary shall consider the following*  
 22                   *criteria with respect to the item (or a substan-*  
 23                   *tially identical or directly competitive item):*

1                   (i) *The production and availability for*  
 2                   *sale in a large volume to multiple potential*  
 3                   *purchasers.*

4                   (ii) *The widespread distribution*  
 5                   *through normal commercial channels, such*  
 6                   *as retail stores, direct marketing catalogues,*  
 7                   *electronic commerce, and other channels.*

8                   (iii) *The conduciveness to shipment*  
 9                   *and delivery by generally accepted commer-*  
 10                   *cial means of transport.*

11                   (iv) *The use for the item's normal in-*  
 12                   *tended purpose without substantial and spe-*  
 13                   *cialized service provided by the manufac-*  
 14                   *turer, distributor, or other third party.*

15                   (B) *DETERMINATION BY SECRETARY.—If*  
 16                   *the Secretary finds that the item (or a substan-*  
 17                   *tially identical or directly competitive item)*  
 18                   *meets the criteria set forth in subparagraph (A),*  
 19                   *the Secretary shall determine that the item has*  
 20                   *mass-market status.*

21                   (3) *SPECIAL RULES.—For purposes of this*  
 22                   *subtitle—*

23                   (A) *SUBSTANTIALLY IDENTICAL ITEM.—The*  
 24                   *determination of whether an item in relation to*  
 25                   *another item is a substantially identical item*

1       *shall include a fair assessment of end-uses, the*  
 2       *properties, nature, and quality of the item.*

3       *(B) DIRECTLY COMPETITIVE ITEM.—*

4               *(i) IN GENERAL.—The determination*  
 5       *of whether an item in relation to another*  
 6       *item is a directly competitive item shall in-*  
 7       *clude a fair assessment of whether the item,*  
 8       *although not substantially identical in its*  
 9       *intrinsic or inherent characteristics, is sub-*  
 10       *stantially equivalent for commercial pur-*  
 11       *poses and may be adapted for substantially*  
 12       *the same uses.*

13              *(ii) EXCEPTION.—An item is not di-*  
 14       *rectly competitive with a controlled item if*  
 15       *the item is substantially inferior to the con-*  
 16       *trolled item with respect to characteristics*  
 17       *that resulted in the export of the item being*  
 18       *controlled.*

19   **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**  
 20       **ABILITY STATUS DETERMINATION.**

21       *(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—*

22              *(1) GENERAL CRITERIA.—*

23                      *(A) IN GENERAL.—If the President deter-*  
 24       *mines that—*

1                   (i) *decontrolling or failing to control*  
 2                   *an item constitutes a threat to the national*  
 3                   *security of the United States, and export*  
 4                   *controls on the item would advance the na-*  
 5                   *tional security interests of the United*  
 6                   *States,*

7                   (ii) *there is a high probability that the*  
 8                   *foreign availability of an item will be elimi-*  
 9                   *nated through international negotiations*  
 10                   *within a reasonable period of time taking*  
 11                   *into account the characteristics of the item,*  
 12                   *or*

13                   (iii) *United States controls on the item*  
 14                   *have been imposed under section 309,*  
 15                   *the President may set aside the Secretary's deter-*  
 16                   *mination of foreign availability status with re-*  
 17                   *spect to the item.*

18                   (B) *NONDELEGATION.*—*The President may*  
 19                   *not delegate the authority provided for in this*  
 20                   *paragraph.*

21                   (2) *REPORT TO CONGRESS.*—*The President shall*  
 22                   *promptly—*

23                   (A) *report any set-aside determination de-*  
 24                   *scribed in paragraph (1), along with the specific*  
 25                   *reasons for the determination, to the Committee*

1       *on Banking, Housing, and Urban Affairs of the*  
 2       *Senate and the Committee on International Re-*  
 3       *lations of the House of Representatives; and*

4               *(B) publish the determination in the Fed-*  
 5       *eral Register.*

6       ***(b) PRESIDENTIAL ACTION IN CASE OF SET-ASIDE.—***

7               ***(1) IN GENERAL.—***

8               ***(A) NEGOTIATIONS.—****In any case in which*  
 9       *export controls are maintained on an item be-*  
 10       *cause the President has made a determination*  
 11       *under subsection (a), the President shall actively*  
 12       *pursue negotiations with the governments of the*  
 13       *appropriate foreign countries for the purpose of*  
 14       *eliminating such availability.*

15               ***(B) REPORT TO CONGRESS.—****Not later than*  
 16       *the date the President begins negotiations, the*  
 17       *President shall notify in writing the Committee*  
 18       *on Banking, Housing, and Urban Affairs of the*  
 19       *Senate and the Committee on International Re-*  
 20       *lations of the House of Representatives that the*  
 21       *President has begun such negotiations and why*  
 22       *the President believes it is important to the na-*  
 23       *tional security that export controls on the item*  
 24       *involved be maintained.*

1           (2) *PERIODIC REVIEW OF DETERMINATION.*—The  
 2       *President shall review a determination described in*  
 3       *subsection (a) at least every 6 months. Promptly after*  
 4       *each review is completed, the Secretary shall submit*  
 5       *to the committees of Congress referred to in para-*  
 6       *graph (1)(B) a report on the results of the review, to-*  
 7       *gether with the status of international negotiations to*  
 8       *eliminate the foreign availability of the item.*

9           (3) *EXPIRATION OF PRESIDENTIAL SET-ASIDE.*—  
 10      *A determination by the President described in sub-*  
 11      *section (a)(1)(A) (i) or (ii) shall cease to apply with*  
 12      *respect to an item on the earlier of—*

13           (A) *the date that is 6 months after the date on*  
 14           *which the determination is made under sub-*  
 15           *section (a), if the President has not commenced*  
 16           *international negotiations to eliminate the for-*  
 17           *ign availability of the item within that 6-month*  
 18           *period;*

19           (B) *the date on which the negotiations de-*  
 20           *scribed in paragraph (1) have terminated with-*  
 21           *out achieving an agreement to eliminate foreign*  
 22           *availability;*

23           (C) *the date on which the President deter-*  
 24           *mines that there is not a high probability of*



eliminating foreign availability of the item  
through negotiation; or

(D) the date that is 18 months after the  
date on which the determination described in  
subsection (a)(1)(A) (i) or (ii) is made if the  
President has been unable to achieve an agree-  
ment to eliminate foreign availability within  
that 18-month period.

(4) 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.

**SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-  
TUS DETERMINATION.**

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—If the President deter-  
mines that—

(A)(i) decontrolling or failing to control an  
item constitutes a serious threat to the national  
security of the United States, and

(ii) export controls on the item would ad-  
vance the national security interests of the  
United States, or

1                   (B) *United States controls on the item have*  
 2                   *been imposed under section 309,*  
 3                   *the President may set aside the Secretary's deter-*  
 4                   *mination of mass-market status with respect to the*  
 5                   *item.*

6                   (2) *NONDELEGATION.—The President may not*  
 7                   *delegate the authority provided for in this subsection.*

8                   (b) *PRESIDENTIAL ACTION IN CASE OF SET-ASIDE.—*

9                   (1) *IN GENERAL.—In any case in which export*  
 10                  *controls are maintained on an item because the Presi-*  
 11                  *dent has made a determination under subsection (a),*  
 12                  *the President shall promptly report the determina-*  
 13                  *tion, along with the specific reasons for the deter-*  
 14                  *mination, to the Committee on Banking, Housing,*  
 15                  *and Urban Affairs of the Senate and the Committee*  
 16                  *on International Relations of the House of Represent-*  
 17                  *atives, and shall publish notice of the determination*  
 18                  *in the Federal Register not later than 30 days after*  
 19                  *the Secretary publishes notice of the Secretary's deter-*  
 20                  *mination that an item has mass-market status.*

21                  (2) *PERIODIC REVIEW OF DETERMINATION.—The*  
 22                  *President shall review a determination made under*  
 23                  *subsection (a) at least every 6 months. Promptly after*  
 24                  *each review is completed, the Secretary shall submit*  
 25                  *a report on the results of the review to the Committee*

1        *on Banking, Housing, and Urban Affairs of the Sen-*  
 2        *ate and the Committee on International Relations of*  
 3        *the House of Representatives.*

4    **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

5        *(a) IN GENERAL.—*

6            *(1) ESTABLISHMENT OF OFFICE.—The Secretary*  
 7        *shall establish in the Department of Commerce an Of-*  
 8        *fice of Technology Evaluation (in this section referred*  
 9        *to as the “Office”), which shall be under the direction*  
 10       *of the Secretary. The Office shall be responsible for*  
 11       *gathering, coordinating, and analyzing all the nec-*  
 12       *essary information in order for the Secretary to make*  
 13       *determinations of foreign availability and mass-mar-*  
 14       *ket status under this Act.*

15        *(2) STAFF.—*

16            *(A) IN GENERAL.—The Secretary shall en-*  
 17        *sure that the Office include persons to carry out*  
 18        *the responsibilities set forth in subsection (b) of*  
 19        *this section that have training, expertise, and ex-*  
 20        *perience in—*

21                    *(i) economic analysis;*

22                    *(ii) the defense industrial base;*

23                    *(iii) technological developments; and*

24                    *(iv) national security and foreign pol-*  
 25        *icy export controls.*

1                   (B) *DETAILEES.*—*In addition to employees*  
2                   *of the Department of Commerce, the Secretary*  
3                   *may accept on nonreimbursable detail to the Of-*  
4                   *fice, employees of the Departments of Defense,*  
5                   *State, and Energy and other departments and*  
6                   *agencies as appropriate.*

7           (b) *RESPONSIBILITIES.*—*The Office shall be respon-*  
8           *sible for—*

9                   (1) *conducting foreign availability assessments*  
10                  *to determine whether a controlled item is available to*  
11                  *controlled countries and whether requiring a license,*  
12                  *or denial of a license for the export of such item, is*  
13                  *or would be ineffective;*

14                  (2) *conducting mass-market assessments to deter-*  
15                  *mine whether a controlled item is available to con-*  
16                  *trolled countries because of the mass-market status of*  
17                  *the item;*

18                  (3) *monitoring and evaluating worldwide techno-*  
19                  *logical developments in industry sectors critical to the*  
20                  *national security interests of the United States to de-*  
21                  *termine foreign availability and mass-market status*  
22                  *of controlled items;*

23                  (4) *monitoring and evaluating multilateral ex-*  
24                  *port control regimes and foreign government export*

1        *control policies and practices that affect the national*  
2        *security interests of the United States;*

3            *(5) conducting assessments of United States in-*  
4        *dustrial sectors critical to the United States defense*  
5        *industrial base and how the sectors are affected by*  
6        *technological developments, technology transfers, and*  
7        *foreign competition; and*

8            *(6) conducting assessments of the impact of*  
9        *United States export control policies on—*

10            *(A) United States industrial sectors critical*  
11        *to the national security interests of the United*  
12        *States; and*

13            *(B) the United States economy in general.*

14        *(c) REPORTS TO CONGRESS.—The Secretary shall*  
15        *make available to the Committee on International Relations*  
16        *of the House of Representatives and the Committee on*  
17        *Banking, Housing, and Urban Affairs of the Senate as part*  
18        *of the Secretary's annual report required under section 701*  
19        *information on the operations of the Office, and on im-*  
20        *provements in the Government's ability to assess foreign*  
21        *availability and mass-market status, during the fiscal year*  
22        *preceding the report, including information on the training*  
23        *of personnel, and the use of Commercial Service Officers*  
24        *of the United States and Foreign Commercial Service to*  
25        *assist in making determinations. The information shall also*

1 *include a description of determinations made under this*  
 2 *Act during the preceding fiscal year that foreign avail-*  
 3 *ability or mass-market status did or did not exist (as the*  
 4 *case may be), together with an explanation of the deter-*  
 5 *minations.*

6 (d) *SHARING OF INFORMATION.*—*Each department or*  
 7 *agency of the United States, including any intelligence*  
 8 *agency, and all contractors with any such department or*  
 9 *agency, shall, consistent with the need to protect intelligence*  
 10 *sources and methods, furnish information to the Office con-*  
 11 *cerning foreign availability and the mass-market status of*  
 12 *items subject to export controls under this Act.*

## 13 ***TITLE III—FOREIGN POLICY*** 14 ***EXPORT CONTROLS***

### 15 ***SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-*** 16 ***TROLS.***

17 (a) *AUTHORITY.*—

18 (1) *IN GENERAL.*—*In order to carry out the pur-*  
 19 *poses set forth in subsection (b), the President may,*  
 20 *in accordance with the provisions of this Act, pro-*  
 21 *hibit, curtail, or require a license, other authoriza-*  
 22 *tion, recordkeeping, or reporting for the export of any*  
 23 *item subject to the jurisdiction of the United States*  
 24 *or exported by any person subject to the jurisdiction*  
 25 *of the United States.*

1           (2) *EXERCISE OF AUTHORITY.*—*The authority*  
2           *contained in this subsection shall be exercised by the*  
3           *Secretary, in consultation with the Secretary of State*  
4           *and such other departments and agencies as the Sec-*  
5           *retary considers appropriate.*

6           (b) *PURPOSES.*—*The purposes of foreign policy export*  
7           *controls are the following:*

8                 (1) *To promote the foreign policy objectives of the*  
9                 *United States, consistent with the purposes of this sec-*  
10                *tion and the provisions of this Act.*

11               (2) *To promote international peace, stability,*  
12               *and respect for fundamental human rights.*

13               (3) *To use export controls to deter and punish*  
14               *acts of international terrorism and to encourage other*  
15               *countries to take immediate steps to prevent the use*  
16               *of their territories or resources to aid, encourage, or*  
17               *give sanctuary to those persons involved in directing,*  
18               *supporting, or participating in acts of international*  
19               *terrorism.*

20           (c) *FOREIGN PRODUCTS.*—*No authority or permission*  
21           *may be required under this title to reexport to a country*  
22           *an item that is produced in a country other than the United*  
23           *States and incorporates parts or components that are sub-*  
24           *ject to the jurisdiction of the United States, except that in*  
25           *the case of reexports of an item to a country designated*

1 *as a country supporting international terrorism pursuant*  
 2 *to section 310, controls may be maintained if the value of*  
 3 *the controlled United States content is more than 10 percent*  
 4 *of the value of the item.*

5 (d) *CONTRACT SANCTITY.*—

6 (1) *IN GENERAL.*—*The President may not pro-*  
 7 *hibit the export of any item under this title if that*  
 8 *item is to be exported—*

9 (A) *in performance of a binding contract,*  
 10 *agreement, or other contractual commitment en-*  
 11 *tered into before the date on which the President*  
 12 *reports to Congress the President's intention to*  
 13 *impose controls on that item under this title; or*

14 (B) *under a license or other authorization*  
 15 *issued under this Act before the earlier of the*  
 16 *date on which the control is initially imposed or*  
 17 *the date on which the President reports to Con-*  
 18 *gress the President's intention to impose controls*  
 19 *under this title.*

20 (2) *EXCEPTION.*—*The prohibition contained in*  
 21 *paragraph (1) shall not apply in any case in which*  
 22 *the President determines and certifies to the Com-*  
 23 *mittee on Banking, Housing, and Urban Affairs of*  
 24 *the Senate and the Committee on International Rela-*  
 25 *tions of the House of Representatives that—*



1           (A) *there is a serious threat to a foreign*  
 2           *policy interest of the United States;*

3           (B) *the prohibition of exports under each*  
 4           *binding contract, agreement, commitment, li-*  
 5           *cence, or authorization will be instrumental in*  
 6           *remedying the situation posing the serious*  
 7           *threat; and*

8           (C) *the export controls will be in effect only*  
 9           *as long as the serious threat exists.*

10 **SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.**

11       (a) *NOTICE.—*

12           (1) *INTENT TO IMPOSE FOREIGN POLICY EXPORT*  
 13           *CONTROL.—Except as provided in section 306, not*  
 14           *later than 45 days before imposing or implementing*  
 15           *an export control under this title, the President shall*  
 16           *publish in the Federal Register—*

17               (A) *a notice of intent to do so; and*

18               (B) *provide for a period of not less than 30*  
 19               *days for any interested person to submit com-*  
 20               *ments on the export control proposed under this*  
 21               *title.*

22           (2) *PURPOSES OF NOTICE.—The purposes of the*  
 23           *notice are—*

24               (A) *to provide an opportunity for the for-*  
 25               *mulation of an effective export control policy*

1           *under this title that advances United States eco-*  
2           *nomie and foreign policy interests; and*

3           *(B) to provide an opportunity for negotia-*  
4           *tions to achieve the purposes set forth in section*  
5           *301(b).*

6           *(b) NEGOTIATIONS.—During the 45-day period that*  
7           *begins on the date of notice described in subsection (a), the*  
8           *President may negotiate with the government of the foreign*  
9           *country against which the export control is proposed in*  
10          *order to resolve the reasons underlying the proposed export*  
11          *control.*

12          *(c) CONSULTATION.—*

13           *(1) REQUIREMENT.—The President shall consult*  
14           *with the Committee on Banking, Housing, and Urban*  
15           *Affairs of the Senate and the Committee on Inter-*  
16           *national Relations of the House of Representatives re-*  
17           *garding any export control proposed under this title*  
18           *and the efforts to achieve or increase multilateral co-*  
19           *operation on the issues or problems underlying the*  
20           *proposed export control.*

21           *(2) CLASSIFIED CONSULTATION.—The consulta-*  
22           *tions described in paragraph (1) may be conducted on*  
23           *a classified basis if the Secretary considers it nec-*  
24           *essary.*

1 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**  
2 **TROLS.**

3 *Each export control imposed by the President under*  
4 *this title shall—*

5 *(1) have clearly stated and specific United States*  
6 *foreign policy objectives;*

7 *(2) have objective standards for evaluating the*  
8 *success or failure of the export control;*

9 *(3) include an assessment by the President*  
10 *that—*

11 *(A) the export control is likely to achieve*  
12 *such objectives and the expected time for achiev-*  
13 *ing the objectives; and*

14 *(B) the achievement of the objectives of the*  
15 *export control outweighs any potential costs of*  
16 *the export control to other United States eco-*  
17 *nomics, foreign policy, humanitarian, or national*  
18 *security interests;*

19 *(4) be targeted narrowly; and*

20 *(5) seek to minimize any adverse impact on the*  
21 *humanitarian activities of United States and foreign*  
22 *nongovernmental organizations in the country subject*  
23 *to the export control.*

1 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**  
2 **CONTROL.**

3 (a) *REQUIREMENT.*—Before imposing an export con-  
4 trol under this title, the President shall submit to the Com-  
5 mittee on Banking, Housing, and Urban Affairs of the Sen-  
6 ate and the Committee on International Relations of the  
7 House of Representatives a report on the proposed export  
8 control. The report may be provided on a classified basis  
9 if the Secretary considers it necessary.

10 (b) *CONTENT.*—The report shall contain a description  
11 and assessment of each of the criteria described in section  
12 303. In addition, the report shall contain a description and  
13 assessment of—

14 (1) any diplomatic and other steps that the  
15 United States has taken to accomplish the intended  
16 objective of the proposed export control;

17 (2) unilateral export controls imposed, and other  
18 measures taken, by other countries to achieve the in-  
19 tended objective of the proposed export control;

20 (3) the likelihood of multilateral adoption of  
21 comparable export controls;

22 (4) alternative measures to promote the same ob-  
23 jectives and the likelihood of their potential success;

24 (5) any United States obligations under inter-  
25 national trade agreements, treaties, or other inter-

1        *national arrangements, with which the proposed ex-*  
 2        *port control may conflict;*

3            *(6) the likelihood that the proposed export con-*  
 4        *trol could lead to retaliation against United States*  
 5        *interests;*

6            *(7) the likely economic impact of the proposed*  
 7        *export control on the United States economy, United*  
 8        *States international trade and investment, and*  
 9        *United States agricultural interests, commercial in-*  
 10       *terests, and employment; and*

11           *(8) a conclusion that the probable achievement of*  
 12        *the objectives of the proposed export control outweighs*  
 13        *any likely costs to United States economic, foreign*  
 14        *policy, humanitarian, or national security interests,*  
 15        *including any potential harm to the United States*  
 16        *agricultural and business firms and to the inter-*  
 17        *national reputation of the United States as a reliable*  
 18        *supplier of goods, services, or technology.*

19    **SEC. 305. IMPOSITION OF CONTROLS.**

20        *The President may impose an export control under*  
 21        *this title after the submission of the report required under*  
 22        *section 304 and publication in the Federal Register of a*  
 23        *notice of the imposition of the export control .*

1 **SEC. 306. DEFERRAL AUTHORITY.**

2       (a) *AUTHORITY.*—*The President may defer compliance*  
 3 *with any requirement contained in section 302(a), 304, or*  
 4 *305 in the case of a proposed export control if—*

5           (1) *the President determines that a deferral of*  
 6 *compliance with the requirement is in the national*  
 7 *interest of the United States; and*

8           (2) *the requirement is satisfied not later than 60*  
 9 *days after the date on which the export control is im-*  
 10 *posed under this title.*

11       (b) *TERMINATION OF CONTROL.*—*An export control*  
 12 *with respect to which a deferral has been made under sub-*  
 13 *section (a) shall terminate 60 days after the date the export*  
 14 *control is imposed unless all requirements have been satis-*  
 15 *fied before the expiration of the 60-day period.*

16 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

17       (a) *RENEWAL AND TERMINATION.*—

18           (1) *IN GENERAL.*—*Any export control imposed*  
 19 *under this title shall terminate on March 31 of each*  
 20 *renewal year unless the President renews the export*  
 21 *control on or before such date. For purposes of this*  
 22 *section, the term “renewal year” means 2003 and*  
 23 *every 2 years thereafter.*

24           (2) *EXCEPTION.*—*This section shall not apply to*  
 25 *an export control imposed under this title that—*

26           (A) *is required by law;*

1           (B) is targeted against any country des-  
2           ignated as a country supporting international  
3           terrorism pursuant to section 310; or

4           (C) has been in effect for less than 1 year  
5           as of February 1 of a renewal year.

6       (b) REVIEW.—

7           (1) IN GENERAL.—Not later than February 1 of  
8           each renewal year, the President shall review all ex-  
9           port controls in effect under this title.

10          (2) CONSULTATION.—

11           (A) REQUIREMENT.—Before completing a  
12           review under paragraph (1), the President shall  
13           consult with the Committee on Banking, Hous-  
14           ing, and Urban Affairs of the Senate and the  
15           Committee on International Relations of the  
16           House of Representative regarding each export  
17           control that is being reviewed.

18           (B) CLASSIFIED CONSULTATION.—The con-  
19           sultations may be conducted on a classified basis  
20           if the Secretary considers it necessary.

21           (3) PUBLIC COMMENT.—In conducting the review  
22           of each export control under paragraph (1), the Presi-  
23           dent shall provide a period of not less than 30 days  
24           for any interested person to submit comments on re-  
25           newal of the export control. The President shall pub-

1        *lish notice of the opportunity for public comment in*  
 2        *the Federal Register not less than 45 days before the*  
 3        *review is required to be completed.*

4        *(c) REPORT TO CONGRESS.—*

5            *(1) REQUIREMENT.—Before renewing an export*  
 6        *control imposed under this title, the President shall*  
 7        *submit to the committees of Congress referred to in*  
 8        *subsection (b)(2)(A) a report on each export control*  
 9        *that the President intends to renew.*

10          *(2) FORM AND CONTENT OF REPORT.—The re-*  
 11        *port may be provided on a classified basis if the Sec-*  
 12        *retary considers it necessary. Each report shall con-*  
 13        *tain the following:*

14            *(A) A clearly stated explanation of the spe-*  
 15        *cific United States foreign policy objective that*  
 16        *the existing export control was intended to*  
 17        *achieve.*

18            *(B) An assessment of—*

19            *(i) the extent to which the existing ex-*  
 20        *port control achieved its objectives before re-*  
 21        *newal based on the objective criteria estab-*  
 22        *lished for evaluating the export control; and*

23            *(ii) the reasons why the existing export*  
 24        *control has failed to fully achieve its objec-*  
 25        *tives and, if renewed, how the export control*



1                    *will achieve that objective before the next re-*  
 2                    *newal year.*

3                    *(C) An updated description and assessment*  
 4                    *of—*

5                    *(i) each of the criteria described in sec-*  
 6                    *tion 303, and*

7                    *(ii) each matter required to be reported*  
 8                    *under section 304(b) (1) through (8).*

9                    *(3) RENEWAL OF EXPORT CONTROL.—The Presi-*  
 10                    *dent may renew an export control under this title*  
 11                    *after submission of the report described in paragraph*  
 12                    *(2) and publication of notice of renewal in the Fed-*  
 13                    *eral Register.*

14    **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

15                    *(a) IN GENERAL.—Notwithstanding any other provi-*  
 16                    *sion of law, the President—*

17                    *(1) shall terminate any export control imposed*  
 18                    *under this title if the President determines that the*  
 19                    *control has substantially achieved the objective for*  
 20                    *which it was imposed; and*

21                    *(2) may terminate at any time any export con-*  
 22                    *trol imposed under this title that is not required by*  
 23                    *law.*

(b) *EXCEPTION.*—Paragraphs (1) and (2) of subsection (a) do not apply to any export control imposed pursuant to section 310.

4 (c) *EFFECTIVE DATE OF TERMINATION.*—The termi-  
5 nation of an export control pursuant to this section shall  
6 take effect on the date notice of the termination is published  
7 in the *Federal Register*.

8 SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-  
9 TIONS.

10        *Notwithstanding any other provision of this Act set-*  
11   *ting forth limitations on authority to control exports and*  
12   *except as provided in section 304, the President may impose*  
13   *controls on exports to a particular country or countries—*

(1) of items listed on the control list of a multi-lateral export control regime, as defined in section 2(14); or

(2) in order to fulfill obligations or commitments of the United States under resolutions of the United Nations and under treaties, or other international agreements and arrangements, to which the United States is a party.

22 SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING  
23 INTERNATIONAL TERRORISM.

24 (a) *LICENSE REQUIRED.*—Notwithstanding any other  
25 provision of this Act setting forth limitations on the author-

1 *ity to control exports, a license shall be required for the*  
 2 *export of any item to a country if the Secretary of State*  
 3 *has determined that—*

4           (1) *the government of such country has repeat-*  
 5 *edly provided support for acts of international ter-*  
 6 *rorism; and*

7           (2) *the export of the item could make a signifi-*  
 8 *cant contribution to the military potential of such*  
 9 *country, including its military logistics capability, or*  
 10 *could enhance the ability of such country to support*  
 11 *acts of international terrorism.*

12       (b) *NOTIFICATION.—The Secretary and the Secretary*  
 13 *of State shall notify the Committee on International Rela-*  
 14 *tions of the House of Representatives and the Committee*  
 15 *on Banking, Housing, and Urban Affairs and the Com-*  
 16 *mittee on Foreign Relations of the Senate at least 30 days*  
 17 *before issuing any license required by subsection (a).*

18       (c) *DETERMINATIONS REGARDING REPEATED SUP-*  
 19 *PORT.—Each determination of the Secretary of State under*  
 20 *subsection (a)(1), including each determination in effect on*  
 21 *the date of the enactment of the Antiterrorism and Arms*  
 22 *Export Amendments Act of 1989, shall be published in the*  
 23 *Federal Register.*

24       (d) *LIMITATIONS ON RESCINDING DETERMINATION.—*  
 25 *A determination made by the Secretary of State under sub-*

1 *section (a)(1) may not be rescinded unless the President*  
 2 *submits to the Speaker of the House of Representatives and*  
 3 *the Chairman of the Committee on Banking, Housing, and*  
 4 *Urban Affairs and the Chairman of the Committee on For-*  
 5 *ign Relations of the Senate—*

6 *(1) before the proposed rescission would take ef-*  
 7 *fect, a report certifying that—*

8 *(A) there has been a fundamental change in*  
 9 *the leadership and policies of the government of*  
 10 *the country concerned;*

11 *(B) that government is not supporting acts*  
 12 *of international terrorism; and*

13 *(C) that government has provided assur-*  
 14 *ances that it will not support acts of inter-*  
 15 *national terrorism in the future; or*

16 *(2) at least 45 days before the proposed rescission*  
 17 *would take effect, a report justifying the rescission*  
 18 *and certifying that—*

19 *(A) the government concerned has not pro-*  
 20 *vided any support for international terrorism*  
 21 *during the preceding 6-month period; and*

22 *(B) the government concerned has provided*  
 23 *assurances that it will not support acts of inter-*  
 24 *national terrorism in the future.*

1       (e) *INFORMATION TO BE INCLUDED IN NOTIFICA-*  
2 *TION.—The Secretary and the Secretary of State shall in-*  
3 *clude in the notification required by subsection (b)—*

4           (1) *a detailed description of the item to be of-*  
5 *fered, including a brief description of the capabilities*  
6 *of any item for which a license to export is sought;*

7           (2) *the reasons why the foreign country or inter-*  
8 *national organization to which the export or transfer*  
9 *is proposed to be made needs the item which is the*  
10 *subject of such export or transfer and a description*  
11 *of the manner in which such country or organization*  
12 *intends to use the item;*

13          (3) *the reasons why the proposed export or trans-*  
14 *fer is in the national interest of the United States;*

15          (4) *an analysis of the impact of the proposed ex-*  
16 *port or transfer on the military capabilities of the*  
17 *foreign country or international organization to*  
18 *which such export or transfer would be made;*

19          (5) *an analysis of the manner in which the pro-*  
20 *posed export would affect the relative military*  
21 *strengths of countries in the region to which the item*  
22 *which is the subject of such export would be delivered*  
23 *and whether other countries in the region have com-*  
24 *parable kinds and amounts of the item; and*

1           (6) *an analysis of the impact of the proposed ex-*  
2           *port or transfer on the United States relations with*  
3           *the countries in the region to which the item which*  
4           *is the subject of such export would be delivered.*

5 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

6           (a) *IN GENERAL.*—*Crime control and detection instru-*  
7           *ments and equipment shall be approved for export by the*  
8           *Secretary only pursuant to an individual export license.*  
9           *Notwithstanding any other provision of this Act—*

10           (1) *any determination by the Secretary of what*  
11           *goods or technology shall be included on the list estab-*  
12           *lished pursuant to this subsection as a result of the*  
13           *export restrictions imposed by this section shall be*  
14           *made with the concurrence of the Secretary of State,*  
15           *and*

16           (2) *any determination by the Secretary to ap-*  
17           *prove or deny an export license application to export*  
18           *crime control or detection instruments or equipment*  
19           *shall be made in concurrence with the recommenda-*  
20           *tions of the Secretary of State submitted to the Sec-*  
21           *retary with respect to the application pursuant to sec-*  
22           *tion 401 of this Act,*

23           *except that, if the Secretary does not agree with the Sec-*  
24           *retary of State with respect to any determination under*

1 paragraph (1) or (2), the matter shall be referred to the  
2 President for resolution.

3 (b) *EXCEPTION.*—The provisions of this section shall  
4 not apply with respect to exports to countries that are mem-  
5 bers of the North Atlantic Treaty Organization or to Japan,  
6 Australia, or New Zealand, or to such other countries as  
7 the President shall designate consistent with the purposes  
8 of this section and section 502B of the Foreign Assistance  
9 Act of 1961 (22 U.S.C. 2304).

## 10 **TITLE IV—PROCEDURES FOR EX-** 11 **PORT LICENSES AND INTER-** 12 **AGENCY DISPUTE RESOLU-** 13 **TION**

### 14 **SEC. 401. EXPORT LICENSE PROCEDURES.**

15 (a) *RESPONSIBILITY OF THE SECRETARY.*—

16 (1) *IN GENERAL.*—All applications for a license  
17 or other authorization to export a controlled item  
18 shall be filed in such manner and include such infor-  
19 mation as the Secretary may, by regulation, pre-  
20 scribe.

21 (2) *PROCEDURES.*—In guidance and regulations  
22 that implement this section, the Secretary shall de-  
23 scribe the procedures required by this section, the re-  
24 sponsibilities of the Secretary and of other depart-  
25 ments and agencies in reviewing applications, the

1        *rights of the applicant, and other relevant matters af-*  
 2        *fecting the review of license applications.*

3            (3) *CALCULATION OF PROCESSING TIMES.—In*  
 4        *calculating the processing times set forth in this title,*  
 5        *the Secretary shall use calendar days, except that if*  
 6        *the final day for a required action falls on a weekend*  
 7        *or holiday, that action shall be taken no later than*  
 8        *the following business day.*

9            (4) *CRITERIA FOR EVALUATING APPLICATIONS.—*  
 10       *In determining whether to grant an application to ex-*  
 11       *port a controlled item under this Act, the following*  
 12       *criteria shall be considered:*

13            (A) *The characteristics of the controlled*  
 14        *item.*

15            (B) *The threat to—*

16            (i) *the national security interests of the*  
 17        *United States from items controlled under*  
 18        *title II of this Act; or*

19            (ii) *the foreign policy of the United*  
 20        *States from items controlled under title III*  
 21        *of this Act.*

22            (C) *The country tier designation of the*  
 23        *country to which a controlled item is to be ex-*  
 24        *ported pursuant to section 203.*



1                   (D) *The risk of export diversion or misuse*  
 2                   *by—*

3                               (i) *the exporter;*

4                               (ii) *the method of export;*

5                               (iii) *the end-user;*

6                               (iv) *the country where the end-user is*  
 7                               *located; and*

8                               (v) *the end-use.*

9                   (E) *Risk mitigating factors including, but*  
 10                   *not limited to—*

11                               (i) *changing the characteristics of the*  
 12                               *controlled item;*

13                               (ii) *after-market monitoring by the ex-*  
 14                               *porter; and*

15                               (iii) *post-shipment verification.*

16                   (b) *INITIAL SCREENING.—*

17                               (1) *UPON RECEIPT OF APPLICATION.—Upon re-*  
 18                               *ceipt of an export license application, the Secretary*  
 19                               *shall enter and maintain in the records of the Depart-*  
 20                               *ment information regarding the receipt and status of*  
 21                               *the application.*

22                               (2) *INITIAL PROCEDURES.—*

23                               (A) *IN GENERAL.—Not later than 9 days*  
 24                               *after receiving any license application, the Sec-*  
 25                               *retary shall—*

1           (i) *contact the applicant if the applica-*  
2           *tion is improperly completed or if addi-*  
3           *tional information is required, and hold the*  
4           *application for a reasonable time while the*  
5           *applicant provides the necessary corrections*  
6           *or information, and such time shall not be*  
7           *included in calculating the time periods*  
8           *prescribed in this title;*

9           (ii) *refer the application, through the*  
10          *use of a common data base or other means,*  
11          *and all information submitted by the appli-*  
12          *cant, and all necessary recommendations*  
13          *and analyses by the Secretary to the Sec-*  
14          *retary of Defense, the Secretary of State,*  
15          *and the heads of and other departments and*  
16          *agencies the Secretary considers appro-*  
17          *priate;*

18          (iii) *ensure that the classification stat-*  
19          *ed on the application for the export items is*  
20          *correct; and*

21          (iv) *return the application if a license*  
22          *is not required.*

23          (B) *REFERRAL NOT REQUIRED.—In the*  
24          *event that the head of a department or agency*  
25          *determines that certain types of applications*

1           *need not be referred to the department or agency,*  
 2           *such department or agency head shall notify the*  
 3           *Secretary of the specific types of such applica-*  
 4           *tions that the department or agency does not*  
 5           *wish to review.*

6           (3) *WITHDRAWAL OF APPLICATION.—An appli-*  
 7           *cant may, by written notice to the Secretary, with-*  
 8           *draw an application at any time before final action.*

9           (c) *ACTION BY OTHER DEPARTMENTS AND AGEN-*  
 10          *CIES.—*

11           (1) *REFERRAL TO OTHER AGENCIES.—The Sec-*  
 12           *retary shall promptly refer a license application to*  
 13           *the departments and agencies under subsection (b) to*  
 14           *make recommendations and provide information to*  
 15           *the Secretary.*

16           (2) *RESPONSIBILITY OF REFERRAL DEPART-*  
 17           *MENTS AND AGENCIES.—The Secretary of Defense, the*  
 18           *Secretary of State, and the heads of other reviewing*  
 19           *departments and agencies shall take all necessary ac-*  
 20           *tions in a prompt and responsible manner on an ap-*  
 21           *plication. Each department or agency reviewing an*  
 22           *application under this section shall establish and*  
 23           *maintain records properly identifying and moni-*  
 24           *toring the status of the matter referred to the depart-*  
 25           *ment or agency.*

1           (3) *ADDITIONAL INFORMATION REQUESTS.*—

2       *Each department or agency to which a license appli-*  
 3       *cation is referred shall specify to the Secretary any*  
 4       *information that is not in the application that would*  
 5       *be required for the department or agency to make a*  
 6       *determination with respect to the application, and the*  
 7       *Secretary shall promptly request such information*  
 8       *from the applicant. The time that may elapse between*  
 9       *the date the information is requested by that depart-*  
 10       *ment or agency and the date the information is re-*  
 11       *ceived by that department or agency shall not be in-*  
 12       *cluded in calculating the time periods prescribed in*  
 13       *this title.*

14           (4) *TIME PERIOD FOR ACTION BY REFERRAL DE-*

15       *PARTMENTS AND AGENCIES.*—*Within 30 days after*  
 16       *the Secretary refers an application under this section,*  
 17       *each department or agency to which an application*  
 18       *has been referred shall provide the Secretary with a*  
 19       *recommendation either to approve the license or to*  
 20       *deny the license. A recommendation that the Sec-*  
 21       *retary deny a license shall include a statement of rea-*  
 22       *sons for the recommendation that are consistent with*  
 23       *the provisions of this title, and shall cite both the spe-*  
 24       *cific statutory and regulatory basis for the rec-*  
 25       *ommendation. A department or agency that fails to*

1        *provide a recommendation in accordance with this*  
2        *paragraph within that 30-day period shall be deemed*  
3        *to have no objection to the decision of the Secretary*  
4        *on the application.*

5        *(d) ACTION BY THE SECRETARY.—Not later than 30*  
6        *days after the date the application is referred, the Secretary*  
7        *shall—*

8                *(1) if there is agreement among the referral de-*  
9        *partments and agencies to issue or deny the license—*

10                *(A) issue the license and ensure all appro-*  
11        *priate personnel in the Department (including*  
12        *the Office of Export Enforcement) are notified of*  
13        *all approved license applications; or*

14                *(B) notify the applicant of the intention to*  
15        *deny the license; or*

16        *(2) if there is no agreement among the referral*  
17        *departments and agencies, notify the applicant that*  
18        *the application is subject to the interagency dispute*  
19        *resolution process provided for in section 402.*

20        *(e) CONSEQUENCES OF APPLICATION DENIAL.—*

21                *(1) IN GENERAL.—If a determination is made to*  
22        *deny a license, the applicant shall be informed in*  
23        *writing, consistent with the protection of intelligence*  
24        *information sources and methods, by the Secretary*  
25        *of—*

1                   (A) the determination;

2                   (B) the specific statutory and regulatory  
3 bases for the proposed denial;

4                   (C) what, if any, modifications to, or re-  
5 strictions on, the items for which the license was  
6 sought would allow such export to be compatible  
7 with export controls imposed under this Act, and  
8 which officer or employee of the Department  
9 would be in a position to discuss modifications  
10 or restrictions with the applicant and the spe-  
11 cific statutory and regulatory bases for imposing  
12 such modifications or restrictions;

13                  (D) to the extent consistent with the na-  
14 tional security and foreign policy interests of the  
15 United States, the specific considerations that led  
16 to the determination to deny the application;  
17 and

18                  (E) the availability of appeal procedures.

19                  (2) *PERIOD FOR APPLICANT TO RESPOND.*—The  
20 applicant shall have 20 days from the date of the no-  
21 tice of intent to deny the application to respond in  
22 a manner that addresses and corrects the reasons for  
23 the denial. If the applicant does not adequately ad-  
24 dress or correct the reasons for denial or does not re-  
25 spond, the license shall be denied. If the applicant

1        *does address or correct the reasons for denial, the ap-*  
 2        *plication shall be considered in a timely manner.*

3        *(f) APPEALS AND OTHER ACTIONS BY APPLICANT.—*

4            *(1) IN GENERAL.—The Secretary shall establish*  
 5        *appropriate procedures for an applicant to appeal to*  
 6        *the Secretary the denial of an application or other*  
 7        *administrative action under this Act. In any case in*  
 8        *which the Secretary proposes to reverse the decision*  
 9        *with respect to the application, the appeal under this*  
 10       *subsection shall be handled in accordance with the*  
 11       *interagency dispute resolution process provided for in*  
 12       *section 402(b)(3).*

13           *(2) ENFORCEMENT OF TIME LIMITS.—*

14            *(A) IN GENERAL.—In any case in which an*  
 15        *action prescribed in this section is not taken on*  
 16        *an application within the time period estab-*  
 17        *lished by this section (except in the case of a*  
 18        *time period extended under subsection (g) of*  
 19        *which the applicant is notified), the applicant*  
 20        *may file a petition with the Secretary requesting*  
 21        *compliance with the requirements of this section.*  
 22        *When such petition is filed, the Secretary shall*  
 23        *take immediate steps to correct the situation giv-*  
 24        *ing rise to the petition and shall immediately*  
 25        *notify the applicant of such steps.*

1                   (B) *BRINGING COURT ACTION.*—*If, within*  
 2                   *20 days after a petition is filed under subpara-*  
 3                   *graph (A), the processing of the application has*  
 4                   *not been brought into conformity with the re-*  
 5                   *quirements of this section, or the processing of*  
 6                   *the application has been brought into conformity*  
 7                   *with such requirements but the Secretary has not*  
 8                   *so notified the applicant, the applicant may*  
 9                   *bring an action in an appropriate United States*  
 10                  *district court for an order requiring compliance*  
 11                  *with the time periods required by this section.*

12               (g) *EXCEPTIONS FROM REQUIRED TIME PERIODS.*—  
 13               *The following actions related to processing an application*  
 14               *shall not be included in calculating the time periods pre-*  
 15               *scribed in this section:*

16               (1) *AGREEMENT OF THE APPLICANT.*—*Delays*  
 17               *upon which the Secretary and the applicant mutually*  
 18               *agree.*

19               (2) *PRELICENSE CHECKS.*—*A prelicense check*  
 20               *(for a period not to exceed 60 days) that may be re-*  
 21               *quired to establish the identity and reliability of the*  
 22               *recipient of items controlled under this Act, if—*

23               (A) *the need for the prelicense check is de-*  
 24               *termined by the Secretary or by another depart-*  
 25               *ment or agency in any case in which the request*



1       *for the prelicense check is made by such depart-*  
 2       *ment or agency;*

3               *(B) the request for the prelicense check is*  
 4       *initiated by the Secretary within 5 days after*  
 5       *the determination that the prelicense check is re-*  
 6       *quired; and*

7               *(C) the analysis of the result of the*  
 8       *prelicense check is completed by the Secretary*  
 9       *within 5 days.*

10       (3) *REQUESTS FOR GOVERNMENT-TO-GOVERN-*  
 11       *MENT ASSURANCES.—Any request by the Secretary or*  
 12       *another department or agency for government-to-gov-*  
 13       *ernment assurances of suitable end-uses of items ap-*  
 14       *proved for export, when failure to obtain such assur-*  
 15       *ances would result in rejection of the application, if—*

16               *(A) the request for such assurances is sent*  
 17       *to the Secretary of State within 5 days after the*  
 18       *determination that the assurances are required;*

19               *(B) the Secretary of State initiates the re-*  
 20       *quest of the relevant government within 10 days*  
 21       *thereafter; and*

22               *(C) the license is issued within 5 days after*  
 23       *the Secretary receives the requested assurances.*

24       (4) *EXCEPTION.—Whenever a prelicense check*  
 25       *described in paragraph (2) or assurances described in*

1        *paragraph (3) are not requested within the time peri-*  
 2        *ods set forth therein, then the time expended for such*  
 3        *prelicense check or assurances shall be included in*  
 4        *calculating the time periods established by this sec-*  
 5        *tion.*

6            (5) *MULTILATERAL REVIEW.*—*Multilateral re-*  
 7        *view of a license application to the extent that such*  
 8        *multilateral review is required by a relevant multilat-*  
 9        *eral regime.*

10          (6) *CONGRESSIONAL NOTIFICATION.*—*Such time*  
 11        *as is required for mandatory congressional notifica-*  
 12        *tions under this Act.*

13          (7) *CONSULTATIONS.*—*Consultation with foreign*  
 14        *governments, if such consultation is provided for by*  
 15        *a relevant multilateral regime as a precondition for*  
 16        *approving a license.*

17          (h) *CLASSIFICATION REQUESTS AND OTHER INQUIR-*  
 18        *IES.*—

19            (1) *CLASSIFICATION REQUESTS.*—*In any case in*  
 20        *which the Secretary receives a written request asking*  
 21        *for the proper classification of an item on the Control*  
 22        *List or the applicability of licensing requirements*  
 23        *under this title, the Secretary shall promptly notify*  
 24        *the Secretary of Defense and the head of any depart-*  
 25        *ment or agency the Secretary considers appropriate.*

1        *The Secretary shall, within 14 days after receiving*  
 2        *the request, inform the person making the request of*  
 3        *the proper classification.*

4            (2) *OTHER INQUIRIES.—In any case in which*  
 5        *the Secretary receives a written request for informa-*  
 6        *tion under this Act, the Secretary shall, within 30*  
 7        *days after receiving the request, reply with that infor-*  
 8        *mation to the person making the request.*

9        **SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

10        (a) *IN GENERAL.—All license applications on which*  
 11        *agreement cannot be reached shall be referred to the inter-*  
 12        *agency dispute resolution process for decision.*

13        (b) *INTERAGENCY DISPUTE RESOLUTION PROCESS.—*

14            (1) *INITIAL RESOLUTION.—The Secretary shall*  
 15        *establish, select the chairperson of, and determine pro-*  
 16        *cedures for an interagency committee to review ini-*  
 17        *tially all license applications described in subsection*  
 18        *(a) with respect to which the Secretary and any of the*  
 19        *referral departments and agencies are not in agree-*  
 20        *ment. The chairperson shall consider the positions of*  
 21        *all the referral departments and agencies (which shall*  
 22        *be included in the minutes described in subsection*  
 23        *(c)(2)) and make a decision on the license applica-*  
 24        *tion, including appropriate revisions or conditions*  
 25        *thereto.*

1           (2) *INTELLIGENCE COMMUNITY.*—*The analytic*  
2           *product of the intelligence community should be fully*  
3           *considered with respect to any proposed license under*  
4           *this title.*

5           (3) *FURTHER RESOLUTION.*—*The President shall*  
6           *establish additional levels for review or appeal of any*  
7           *matter that cannot be resolved pursuant to the process*  
8           *described in paragraph (1). Each such review shall—*

9                   (A) *provide for decision-making based on*  
10                  *the majority vote of the participating depart-*  
11                  *ments and agencies;*

12                  (B) *provide that a department or agency*  
13                  *that fails to take a timely position, citing the*  
14                  *specific statutory and regulatory bases for a po-*  
15                  *sition, shall be deemed to have no objection to the*  
16                  *pending decision;*

17                  (C) *provide that any decision of an inter-*  
18                  *agency committee established under paragraph*  
19                  *(1) or interagency dispute resolution process es-*  
20                  *tablished under this paragraph may be escalated*  
21                  *to the next higher level of review at the request*  
22                  *of an official appointed by the President, by and*  
23                  *with the advice of the Senate, or an officer prop-*  
24                  *erly acting in such capacity, of a department or*  
25                  *agency that participated in the interagency com-*

1            *mittee or dispute resolution process that made*  
 2            *the decision; and*

3            *(D) ensure that matters are resolved or re-*  
 4            *ferred to the President not later than 90 days*  
 5            *after the date the completed license application is*  
 6            *referred by the Secretary.*

7            *(c) FINAL ACTION.—*

8            *(1) IN GENERAL.—Once a final decision is made*  
 9            *under subsection (b), the Secretary shall promptly—*

10            *(A) issue the license and ensure that all ap-*  
 11            *propriate personnel in the Department (includ-*  
 12            *ing the Office of Export Enforcement) are noti-*  
 13            *fied of all approved license applications; or*

14            *(B) notify the applicant of the intention to*  
 15            *deny the application.*

16            *(2) MINUTES.—The interagency committee and*  
 17            *each level of the interagency dispute resolution process*  
 18            *shall keep reasonably detailed minutes of all meetings.*  
 19            *On each matter before the interagency committee or*  
 20            *before any other level of the interagency dispute reso-*  
 21            *lution process in which members disagree, each mem-*  
 22            *ber shall clearly state the reasons for the member's po-*  
 23            *sition and the reasons shall be entered in the minutes.*

1 **TITLE V—INTERNATIONAL AR-**  
 2 **RANGEMENTS; FOREIGN BOY-**  
 3 **COTTS; SANCTIONS; AND EN-**  
 4 **FORCEMENT**

5 **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

6 (a) *MULTILATERAL EXPORT CONTROL REGIMES.—*

7 (1) *POLICY.—It is the policy of the United*  
 8 *States to seek multilateral arrangements that support*  
 9 *the national security objectives of the United States*  
 10 *(as described in title II) and that establish fairer and*  
 11 *more predictable competitive opportunities for United*  
 12 *States exporters.*

13 (2) *PARTICIPATION IN EXISTING REGIMES.—Con-*  
 14 *gress encourages the United States to continue its ac-*  
 15 *tive participation in and to strengthen existing mul-*  
 16 *tilateral export control regimes.*

17 (3) *PARTICIPATION IN NEW REGIMES.—It is the*  
 18 *policy of the United States to participate in addi-*  
 19 *tional multilateral export control regimes if such par-*  
 20 *ticipation would serve the national security interests*  
 21 *of the United States.*

22 (b) *ANNUAL REPORT ON MULTILATERAL EXPORT CON-*  
 23 *TROL REGIMES.—Not later than February 1 of each year,*  
 24 *the President shall submit to the Committee on Banking,*  
 25 *Housing, and Urban Affairs of the Senate and the Com-*

1 *mittee on International Relations of the House of Rep-*  
 2 *resentatives a report evaluating the effectiveness of each*  
 3 *multilateral export control regime, including an assessment*  
 4 *of the steps undertaken pursuant to subsections (c) and (d).*  
 5 *The report, or any part of this report, may be submitted*  
 6 *in classified form to the extent the President considers nec-*  
 7 *essary.*

8       (c) *STANDARDS FOR MULTILATERAL EXPORT CON-*  
 9 *TROL REGIMES.—The President shall take steps to establish*  
 10 *the following features in any multilateral export control re-*  
 11 *gime in which the United States is participating or may*  
 12 *participate:*

13           (1) *FULL MEMBERSHIP.—All supplier countries*  
 14 *are members of the regime, and the policies and ac-*  
 15 *tivities of the members are consistent with the objec-*  
 16 *tives and membership criteria of the multilateral ex-*  
 17 *port control regime.*

18           (2) *EFFECTIVE ENFORCEMENT AND COMPLI-*  
 19 *ANCE.—The regime promotes enforcement and compli-*  
 20 *ance with the regime’s rules and guidelines.*

21           (3) *PUBLIC UNDERSTANDING.—The regime*  
 22 *makes an effort to enhance public understanding of*  
 23 *the purpose and procedures of the multilateral export*  
 24 *control regime.*

1           (4) *EFFECTIVE IMPLEMENTATION PROCEDURE*.—*The multilateral export control regime has*  
 2           *procedures for the uniform and consistent interpreta-*  
 3           *tion and implementation of its rules and guidelines.*

5           (5) *ENHANCED COOPERATION WITH REGIME*  
 6           *NONMEMBERS*.—*There is agreement among the mem-*  
 7           *bers of the multilateral export control regime to—*

8                   (A) *cooperate with governments outside the*  
 9                   *regime to restrict the export of items controlled*  
 10                  *by such regime; and*

11                  (B) *establish an ongoing mechanism in the*  
 12                  *regime to coordinate planning and implementa-*  
 13                  *tion of export control measures related to such*  
 14                  *cooperation.*

15           (6) *PERIODIC HIGH-LEVEL MEETINGS*.—*There*  
 16           *are regular periodic meetings of high-level representa-*  
 17           *tives of the governments of members of the multilat-*  
 18           *eral export control regime for the purpose of coordi-*  
 19           *nating export control policies and issuing policy*  
 20           *guidance to members of the regime.*

21           (7) *COMMON LIST OF CONTROLLED ITEMS*.—  
 22           *There is agreement on a common list of items con-*  
 23           *trolled by the multilateral export control regime.*

24           (8) *REGULAR UPDATES OF COMMON LIST*.—  
 25           *There is a procedure for removing items from the list*



1       of controlled items when the control of such items no  
 2       longer serves the objectives of the members of the mul-  
 3       tilateral export control regime.

4               (9) *TREATMENT OF CERTAIN COUNTRIES.*—There  
 5       is agreement to prevent the export or diversion of the  
 6       most sensitive items to countries whose activities are  
 7       threatening to the national security of the United  
 8       States or its allies.

9               (10) *HARMONIZATION OF LICENSE APPROVAL*  
 10       *PROCEDURES.*—There is harmonization among the  
 11       members of the regime of their national export license  
 12       approval procedures, practices, and standards.

13              (11) *UNDERCUTTING.*—There is a limit with re-  
 14       spect to when members of a multilateral export con-  
 15       trol regime—

16                   (A) grant export licenses for any item that  
 17                   is substantially identical to or directly competi-  
 18                   tive with an item controlled pursuant to the re-  
 19                   gime, where the United States has denied an ex-  
 20                   port license for such item, or

21                   (B) approve exports to a particular end  
 22                   user to which the United States has denied ex-  
 23                   port license for a similar item.

24              (d) *STANDARDS FOR NATIONAL EXPORT CONTROL*  
 25       *SYSTEMS.*—The President shall take steps to attain the co-

1 operation of members of each regime in implementing effec-  
 2 tive national export control systems containing the fol-  
 3 lowing features:

4 (1) *EXPORT CONTROL LAW.*—Enforcement au-  
 5 thority, civil and criminal penalties, and statutes of  
 6 limitations are sufficient to deter potential violations  
 7 and punish violators under the member's export con-  
 8 trol law.

9 (2) *LICENSE APPROVAL PROCESS.*—The system  
 10 for evaluating export license applications includes  
 11 sufficient technical expertise to assess the licensing  
 12 status of exports and ensure the reliability of end  
 13 users.

14 (3) *ENFORCEMENT.*—The enforcement mecha-  
 15 nism provides authority for trained enforcement offi-  
 16 cers to investigate and prevent illegal exports.

17 (4) *DOCUMENTATION.*—There is a system of ex-  
 18 port control documentation and verification with re-  
 19 spect to controlled items.

20 (5) *INFORMATION.*—There are procedures for the  
 21 coordination and exchange of information concerning  
 22 licensing, end users, and enforcement with other mem-  
 23 bers of the multilateral export control regime.

24 (6) *RESOURCES.*—The member has devoted ade-  
 25 quate resources to administer effectively the authori-

1        *ties, systems, mechanisms, and procedures described*  
 2        *in paragraphs (1) through (5).*

3        *(e) OBJECTIVES REGARDING MULTILATERAL EXPORT*  
 4        *CONTROL REGIMES.—The President shall seek to achieve*  
 5        *the following objectives with regard to multilateral export*  
 6        *control regimes:*

7                *(1) STRENGTHEN EXISTING REGIMES.—Strengthen*  
 8        *existing multilateral export control regimes—*

9                        *(A) by creating a requirement to share in-*  
 10        *formation about export license applications*  
 11        *among members before a member approves an ex-*  
 12        *port license; and*

13                        *(B) harmonizing national export license ap-*  
 14        *proval procedures and practices, including the*  
 15        *elimination of undercutting.*

16                *(2) REVIEW AND UPDATE.—Review and update*  
 17        *multilateral regime export control lists with other*  
 18        *members, taking into account—*

19                        *(A) national security concerns;*

20                        *(B) the controllability of items; and*

21                        *(C) the costs and benefits of controls.*

22                *(3) ENCOURAGE COMPLIANCE BY NONMEM-*  
 23        *BERS.—Encourage nonmembers of the multilateral*  
 24        *export control regime—*

1           (A) to strengthen their national export con-  
2           trol regimes and improve enforcement;

3           (B) to adhere to the appropriate multilat-  
4           eral export control regime; and

5           (C) not to undermine an existing multilat-  
6           eral export control regime by exporting con-  
7           trolled items in a manner inconsistent with the  
8           guidelines of the regime.

9           (f) *TRANSPARENCY OF MULTILATERAL EXPORT CON-*  
10 *TROL REGIMES.—*

11           (1) *PUBLICATION OF INFORMATION ON EACH EX-*  
12 *ISTING REGIME.—*Not later than 120 days after the  
13 date of enactment of this Act, the Secretary shall, for  
14 each multilateral export control regime, to the extent  
15 that it is not inconsistent with the arrangements of  
16 that regime (in the judgment of the Secretary of  
17 State) or with the national interest, publish in the  
18 Federal Register and post on the Department of Com-  
19 merce website the following information with respect  
20 to the regime:

21           (A) The purposes of the regime.

22           (B) The members of the regime.

23           (C) The export licensing policy of the re-  
24           gime.

1           (D) *The items that are subject to export*  
2           *controls under the regime, together with all pub-*  
3           *lic notes, understandings, and other aspects of*  
4           *the agreement of the regime, and all changes*  
5           *thereto.*

6           (E) *Any countries, end uses, or end users*  
7           *that are subject to the export controls of the re-*  
8           *gime.*

9           (F) *Rules of interpretation.*

10          (G) *Major policy actions.*

11          (H) *The rules and procedures of the regime*  
12          *for establishing and modifying any matter de-*  
13          *scribed in subparagraphs (A) through (G) and*  
14          *for reviewing export license applications.*

15          (2) *NEW REGIMES.*—*Not later than 60 days after*  
16          *the United States joins or organizes a new multilat-*  
17          *eral export control regime, the Secretary shall, to the*  
18          *extent that it is not inconsistent with arrangements*  
19          *under the regime (in the judgment of the Secretary of*  
20          *State) or with the national interest, publish in the*  
21          *Federal Register and post on the Department of Com-*  
22          *merce website the information described in subpara-*  
23          *graphs (A) through (H) of paragraph (1) with respect*  
24          *to the regime.*

1           (3) *PUBLICATION OF CHANGES.*—Not later than  
 2           60 days after a multilateral export control regime  
 3           adopts any change in the information published  
 4           under this subsection, the Secretary shall, to the ex-  
 5           tent not inconsistent with the arrangements under the  
 6           regime or the national interest, publish such changes  
 7           in the Federal Register and post such changes on the  
 8           Department of Commerce website.

9           (g) *SUPPORT OF OTHER COUNTRIES' EXPORT CON-*  
 10          *TROL SYSTEMS.*—The Secretary is encouraged to continue  
 11          to—

12               (1) *participate in training of, and provide*  
 13               *training to, officials of other countries on the prin-*  
 14               *ciples and procedures for implementing effective ex-*  
 15               *port controls; and*

16               (2) *participate in any such training provided by*  
 17               *other departments and agencies of the United States.*

18          **SEC. 502. FOREIGN BOYCOTTS.**

19           (a) *PURPOSES.*—The purposes of this section are as  
 20          *follows:*

21               (1) *To counteract restrictive trade practices or*  
 22               *boycotts fostered or imposed by foreign countries*  
 23               *against other countries friendly to the United States*  
 24               *or against any United States person.*

1           (2) *To encourage and, in specified cases, require*  
2           *United States persons engaged in the export of items*  
3           *to refuse to take actions, including furnishing infor-*  
4           *mation or entering into or implementing agreements,*  
5           *which have the effect of furthering or supporting the*  
6           *restrictive trade practices or boycotts fostered or im-*  
7           *posed by any foreign country against a country*  
8           *friendly to the United States or against any United*  
9           *States person.*

10       (b) *PROHIBITIONS AND EXCEPTIONS.—*

11           (1) *PROHIBITIONS.—In order to carry out the*  
12           *purposes set forth in subsection (a), the President*  
13           *shall issue regulations prohibiting any United States*  
14           *person, with respect to that person's activities in the*  
15           *interstate or foreign commerce of the United States,*  
16           *from taking or knowingly agreeing to take any of the*  
17           *following actions with intent to comply with, further,*  
18           *or support any boycott fostered or imposed by a for-*  
19           *ign country against a country that is friendly to the*  
20           *United States and is not itself the object of any form*  
21           *of boycott pursuant to United States law or regula-*  
22           *tion:*

23                   (A) *Refusing, or requiring any other person*  
24                   *to refuse, to do business with or in the boycotted*  
25                   *country, with any business concern organized*

1        *under the laws of the boycotted country, with*  
2        *any national or resident of the boycotted coun-*  
3        *try, or with any other person, pursuant to an*  
4        *agreement with, or requirement of, or a request*  
5        *from or on behalf of the boycotting country (sub-*  
6        *ject to the condition that the intent required to*  
7        *be associated with such an act in order to con-*  
8        *stitute a violation of the prohibition is not indi-*  
9        *cated solely by the mere absence of a business re-*  
10       *lationship with or in the boycotted country, with*  
11       *any business concern organized under the laws of*  
12       *the boycotted country, with any national or resi-*  
13       *dent of the boycotted country, or with any other*  
14       *person).*

15        *(B) Refusing, or requiring any other person*  
16        *to refuse, to employ or otherwise discriminate*  
17        *against any United States person on the basis of*  
18        *the race, religion, sex, or national origin of that*  
19        *person or of any owner, officer, director, or em-*  
20        *ployee of such person.*

21        *(C) Furnishing information with respect to*  
22        *the race, religion, sex, or national origin of any*  
23        *United States person or of any owner, officer, di-*  
24        *rector, or employee of such person.*



1           (D) *Furnishing information (other than*  
2 *furnishing normal business information in a*  
3 *commercial context, as defined by the Secretary)*  
4 *about whether any person has, has had, or pro-*  
5 *poses to have any business relationship (includ-*  
6 *ing a relationship by way of sale, purchase, legal*  
7 *or commercial representation, shipping or other*  
8 *transport, insurance, investment, or supply)*  
9 *with or in the boycotted country, with any busi-*  
10 *ness concern organized under the laws of the boy-*  
11 *cotted country, with any national or resident of*  
12 *the boycotted country, or with any other person*  
13 *that is known or believed to be restricted from*  
14 *having any business relationship with or in the*  
15 *boycotting country.*

16           (E) *Furnishing information about whether*  
17 *any person is a member of, has made a contribu-*  
18 *tion to, or is otherwise associated with or in-*  
19 *volved in the activities of any charitable or fra-*  
20 *ternal organization which supports the boycotted*  
21 *country.*

22           (F) *Paying, honoring, confirming, or other-*  
23 *wise implementing a letter of credit which con-*  
24 *tains any condition or requirement the compli-*  
25 *ance with which is prohibited by regulations*

1       *issued pursuant to this paragraph, and no*  
2       *United States person shall, as a result of the ap-*  
3       *plication of this paragraph, be obligated to pay*  
4       *or otherwise honor or implement such letter of*  
5       *credit.*

6       (2) *EXCEPTIONS.—Regulations issued pursuant*  
7       *to paragraph (1) shall provide exceptions for—*

8               (A) *compliance, or agreement to comply,*  
9               *with requirements—*

10                   (i) *prohibiting the import of items*  
11                   *from the boycotted country or items pro-*  
12                   *duced or provided, by any business concern*  
13                   *organized under the laws of the boycotted*  
14                   *country or by nationals or residents of the*  
15                   *boycotted country; or*

16                   (ii) *prohibiting the shipment of items*  
17                   *to the boycotting country on a carrier of the*  
18                   *boycotted country or by a route other than*  
19                   *that prescribed by the boycotting country or*  
20                   *the recipient of the shipment;*

21               (B) *compliance, or agreement to comply,*  
22               *with import and shipping document require-*  
23               *ments with respect to the country of origin, the*  
24               *name of the carrier and route of shipment, the*  
25               *name of the supplier of the shipment, or the*

1        *name of the provider of other services, except*  
2        *that, for purposes of applying any exception*  
3        *under this subparagraph, no information know-*  
4        *ingly furnished or conveyed in response to such*  
5        *requirements may be stated in negative, black-*  
6        *listing, or similar exclusionary terms, other than*  
7        *with respect to carriers or route of shipment as*  
8        *may be permitted by such regulations in order to*  
9        *comply with precautionary requirements pro-*  
10       *tecting against war risks and confiscation;*

11            *(C) compliance, or agreement to comply, in*  
12        *the normal course of business with the unilateral*  
13        *and specific selection by a boycotting country, or*  
14        *a national or resident thereof, or carriers, insur-*  
15        *ers, suppliers of services to be performed within*  
16        *the boycotting country, or specific items which,*  
17        *in the normal course of business, are identifiable*  
18        *by source when imported into the boycotting*  
19        *country;*

20            *(D) compliance, or agreement to comply,*  
21        *with export requirements of the boycotting coun-*  
22        *try relating to shipment or transshipment of ex-*  
23        *ports to the boycotted country, to any business*  
24        *concern of or organized under the laws of the*

1        *boycotted country, or to any national or resident*  
 2        *of the boycotted country;*

3                *(E) compliance by an individual, or agree-*  
 4        *ment by an individual to comply, with the im-*  
 5        *migration or passport requirements of any coun-*  
 6        *try with respect to such individual or any mem-*  
 7        *ber of such individual's family or with requests*  
 8        *for information regarding requirements of em-*  
 9        *ployment of such individual within the boy-*  
 10       *cotting country; and*

11               *(F) compliance by a United States person*  
 12       *resident in a foreign country, or agreement by*  
 13       *such a person to comply, with the laws of the*  
 14       *country with respect to the person's activities ex-*  
 15       *clusively therein, and such regulations may con-*  
 16       *tain exceptions for such resident complying with*  
 17       *the laws or regulations of the foreign country*  
 18       *governing imports into such country of*  
 19       *trademarked, trade-named, or similarly specifi-*  
 20       *cally identifiable products, or components of*  
 21       *products for such person's own use, including the*  
 22       *performance of contractual services within that*  
 23       *country.*

24               *(3) LIMITATION ON EXCEPTIONS.—Regulations*  
 25       *issued pursuant to paragraphs (2)(C) and (2)(F)*

1       *shall not provide exceptions from paragraphs (1)(B)*  
 2       *and (1)(C).*

3               (4) *ANTITRUST AND CIVIL RIGHTS LAWS NOT AF-*  
 4       *FECTED.—Nothing in this subsection may be con-*  
 5       *strued to supersede or limit the operation of the anti-*  
 6       *trust or civil rights laws of the United States.*

7               (5) *EVASION.—This section applies to any trans-*  
 8       *action or activity undertaken by or through a United*  
 9       *States person or any other person with intent to*  
 10       *evade the provisions of this section or the regulations*  
 11       *issued pursuant to this subsection. The regulations*  
 12       *issued pursuant to this section shall expressly provide*  
 13       *that the exceptions set forth in paragraph (2) do not*  
 14       *permit activities or agreements (expressed or implied*  
 15       *by a course of conduct, including a pattern of re-*  
 16       *sponses) that are otherwise prohibited, pursuant to*  
 17       *the intent of such exceptions.*

18       (c) *ADDITIONAL REGULATIONS AND REPORTS.—*

19               (1) *REGULATIONS.—In addition to the regula-*  
 20       *tions issued pursuant to subsection (b), regulations*  
 21       *issued pursuant to title III shall implement the pur-*  
 22       *poses set forth in subsection (a).*

23               (2) *REPORTS BY UNITED STATES PERSONS.—The*  
 24       *regulations shall require that any United States per-*  
 25       *son receiving a request to furnish information, enter*

1       into or implement an agreement, or take any other  
2       action referred to in subsection (a) shall report that  
3       request to the Secretary, together with any other in-  
4       formation concerning the request that the Secretary  
5       determines appropriate. The person shall also submit  
6       to the Secretary a statement regarding whether the  
7       person intends to comply, and whether the person has  
8       complied, with the request. Any report filed pursuant  
9       to this paragraph shall be made available promptly  
10      for public inspection and copying, except that infor-  
11      mation regarding the quantity, description, and value  
12      of any item to which such report relates may be treat-  
13      ed as confidential if the Secretary determines that  
14      disclosure of that information would place the United  
15      States person involved at a competitive disadvantage.  
16      The Secretary shall periodically transmit summaries  
17      of the information contained in the reports to the Sec-  
18      retary of State for such action as the Secretary of  
19      State, in consultation with the Secretary, considers  
20      appropriate to carry out the purposes set forth in sub-  
21      section (a).

22      (d) *PREEMPTION*.—The provisions of this section and  
23      the regulations issued under this section shall preempt any  
24      law, rule, or regulation that—

(1) is a law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof; and

(2) pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

**SEC. 503. PENALTIES.**

(a) *CRIMINAL PENALTIES.*—

(1) *VIOLATIONS BY AN INDIVIDUAL.*—Any individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports involved or \$1,000,000, whichever is greater, imprisoned for not more than 10 years, or both, for each violation.

(2) *VIOLATIONS BY A PERSON OTHER THAN AN INDIVIDUAL.*—Any person other than an individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports in-

1        *involved or \$5,000,000, whichever is greater, for each*  
2        *violation.*

3        *(b) FORFEITURE OF PROPERTY INTEREST AND PRO-*  
4        *CEEDS.—*

5                *(1) FORFEITURE.—Any person who is convicted*  
6        *under paragraph (1) or (2) of subsection (a) shall, in*  
7        *addition to any other penalty, forfeit to the United*  
8        *States—*

9                *(A) any of that person’s security or other*  
10        *interest in, claim against, or property or con-*  
11        *tractual rights of any kind in the tangible items*  
12        *that were the subject of the violation;*

13                *(B) any of that person’s security or other*  
14        *interest in, claim against, or property or con-*  
15        *tractual rights of any kind in the tangible prop-*  
16        *erty that was used in the export or attempt to*  
17        *export that was the subject of the violation; and*

18                *(C) any of that person’s property consti-*  
19        *tuting, or derived from, any proceeds obtained*  
20        *directly or indirectly as a result of the violation.*

21                *(2) PROCEDURES.—The procedures in any for-*  
22        *feiture under this subsection, and the duties and au-*  
23        *thority of the courts of the United States and the At-*  
24        *torney General with respect to any forfeiture action*  
25        *under this subsection, or with respect to any property*



1     *that may be subject to forfeiture under this subsection,*  
 2     *shall be governed by the provisions of chapter 46 of*  
 3     *title 18, United States Code (relating to criminal for-*  
 4     *feiture), to the same extent as property subject to for-*  
 5     *feiture under that chapter.*

6     (c) *CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—*

7         (1) *CIVIL PENALTIES.—The Secretary may im-*  
 8     *pose a civil penalty of up to \$500,000 for each viola-*  
 9     *tion of a provision of this Act or any regulation, li-*  
 10    *cence, or order issued under this Act. A civil penalty*  
 11    *under this paragraph may be in addition to, or in*  
 12    *lieu of, any other liability or penalty which may be*  
 13    *imposed for such a violation.*

14        (2) *DENIAL OF EXPORT PRIVILEGES.—The Sec-*  
 15    *retary may deny the export privileges of any person,*  
 16    *including the suspension or revocation of the author-*  
 17    *ity of such person to export or receive United States-*  
 18    *origin items subject to this Act, for a violation of a*  
 19    *provision of this Act or any regulation, license, or*  
 20    *order issued under this Act.*

21        (3) *EXCLUSION FROM PRACTICE.—The Secretary*  
 22    *may exclude any person acting as an attorney, ac-*  
 23    *countant, consultant, freight forwarder, or in any*  
 24    *other representative capacity from participating be-*

1     *fore the Department with respect to a license applica-*  
 2     *tion or any other matter under this Act.*

3     *(d) PAYMENT OF CIVIL PENALTIES.—*

4             *(1) PAYMENT AS CONDITION OF FURTHER EX-*  
 5     *PORT PRIVILEGES.—The payment of a civil penalty*  
 6     *imposed under subsection (c) may be made a condi-*  
 7     *tion for the granting, restoration, or continuing va-*  
 8     *lidity of any export license, permission, or privilege*  
 9     *granted or to be granted to the person upon whom*  
 10    *such penalty is imposed. The period for which the*  
 11    *payment of a penalty may be made such a condition*  
 12    *may not exceed 1 year after the date on which the*  
 13    *payment is due.*

14            *(2) DEFERRAL OR SUSPENSION.—*

15                *(A) IN GENERAL.—The payment of a civil*  
 16     *penalty imposed under subsection (c) may be de-*  
 17     *ferred or suspended in whole or in part for a pe-*  
 18     *riod no longer than any probation period (which*  
 19     *may exceed 1 year) that may be imposed upon*  
 20     *the person on whom the penalty is imposed.*

21                *(B) NO BAR TO COLLECTION OF PENALTY.—*

22     *A deferral or suspension under subparagraph (A)*  
 23     *shall not operate as a bar to the collection of the*  
 24     *penalty concerned in the event that the condi-*

1           *tions of the suspension, deferral, or probation are*  
 2           *not fulfilled.*

3           (3) *TREATMENT OF PAYMENTS.*—*Any amount*  
 4           *paid in satisfaction of a civil penalty imposed under*  
 5           *subsection (c) shall be covered into the Treasury as*  
 6           *miscellaneous receipts.*

7           (e) *REFUNDS.*—

8           (1) *AUTHORITY.*—

9                   (A) *IN GENERAL.*—*The Secretary may, in*  
 10           *the Secretary's discretion, refund any civil pen-*  
 11           *alty imposed under subsection (c) on the ground*  
 12           *of a material error of fact or law in imposition*  
 13           *of the penalty.*

14                   (B) *LIMITATION.*—*A civil penalty may not*  
 15           *be refunded under subparagraph (A) later than*  
 16           *2 years after payment of the penalty.*

17           (2) *PROHIBITION ON ACTIONS FOR REFUND.*—  
 18           *Notwithstanding section 1346(a) of title 28, United*  
 19           *States Code, no action for the refund of any civil pen-*  
 20           *alty referred to in paragraph (1) may be maintained*  
 21           *in any court.*

22           (f) *EFFECT OF OTHER CONVICTIONS.*—

23                   (1) *DENIAL OF EXPORT PRIVILEGES.*—*Any per-*  
 24           *son convicted of a violation of—*

1           (A) a provision of this Act or the Export  
2           Administration Act of 1979,

3           (B) a provision of the International Emer-  
4           gency Economic Powers Act (50 U.S.C. 1701 et  
5           seq.),

6           (C) section 793, 794, or 798 of title 18,  
7           United States Code,

8           (D) section 4(b) of the Internal Security Act  
9           of 1950 (50 U.S.C. 783(b)),

10          (E) section 38 of the Arms Export Control  
11          Act (22 U.S.C. 2778),

12          (F) section 16 of the Trading with the  
13          Enemy Act (50 U.S.C. App. 16),

14          (G) any regulation, license, or order issued  
15          under any provision of law listed in subpara-  
16          graph (A), (B), (C), (D), (E), or (F),

17          (H) section 371 or 1001 of title 18, United  
18          States Code, if in connection with the export of  
19          controlled items under this Act or any regula-  
20          tion, license, or order issued under the Inter-  
21          national Emergency Economic Powers Act, or  
22          the export of items controlled under the Arms  
23          Export Control Act,

24          (I) section 175 of title 18, United States  
25          Code,

1                   (J) a provision of the Atomic Energy Act  
2                   (42 U.S.C. 201 et seq.),

3                   (K) section 831 of title 18, United States  
4                   Code, or

5                   (L) section 2332a of title 18, United States  
6                   Code,

7                   may, at the discretion of the Secretary, be denied ex-  
8                   port privileges under this Act for a period not to ex-  
9                   ceed 10 years from the date of the conviction. The  
10                  Secretary may also revoke any export license under  
11                  this Act in which such person had an interest at the  
12                  time of the conviction.

13               (2) *RELATED PERSONS.*—The Secretary may ex-  
14               ercise the authority under paragraph (1) with respect  
15               to any person related through affiliation, ownership,  
16               control, or position of responsibility to a person con-  
17               victed of any violation of a law set forth in para-  
18               graph (1) upon a showing of such relationship with  
19               the convicted person. The Secretary shall make such  
20               showing only after providing notice and opportunity  
21               for a hearing.

22               (g) *STATUTE OF LIMITATIONS.*—

23               (1) *IN GENERAL.*—Except as provided in para-  
24               graph (2), a proceeding in which a civil penalty or  
25               other administrative sanction (other than a tem-

porary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) *EXCEPTION.*—

(A) *TOLLING.*—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

(B) *DURATION.*—The tolling of the limitation with respect to a defendant under subparagraph (A) as a result of a criminal indictment shall continue for a period of 6 months from the date on which the conviction of the defendant becomes final, the indictment against the defendant is dismissed, or the criminal action has concluded.

1       (h) *VIOLATIONS DEFINED BY REGULATION.*—*Nothing*  
 2 *in this section shall limit the authority of the Secretary to*  
 3 *define by regulation violations under this Act.*

4       (i) *CONSTRUCTION.*—*Nothing in subsection (c), (d),*  
 5 *(e), (f), or (g) limits—*

6           (1) *the availability of other administrative or ju-*  
 7 *dicial remedies with respect to a violation of a provi-*  
 8 *sion of this Act, or any regulation, order, or license*  
 9 *issued under this Act;*

10          (2) *the authority to compromise and settle ad-*  
 11 *ministrative proceedings brought with respect to any*  
 12 *such violation; or*

13          (3) *the authority to compromise, remit, or miti-*  
 14 *gate seizures and forfeitures pursuant to section 1(b)*  
 15 *of title VI of the Act of June 15, 1917 (22 U.S.C.*  
 16 *401(b)).*

17 **SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

18       (a) *VIOLATIONS BY UNITED STATES PERSONS.*—

19           (1) *SANCTIONS.*—

20           (A) *IN GENERAL.*—*If the President deter-*  
 21 *mines that a United States person knowingly—*

22                   (i) *exports, transfers, or otherwise en-*  
 23 *gages in the trade of any item on the*  
 24 *MTCR Annex, in violation of the provisions*  
 25 *of section 38 (22 U.S.C. 2778) or chapter 7*

1           *of the Arms Export Control Act, title II or*  
2           *III of this Act, or any regulations or orders*  
3           *issued under any such provisions,*

4                   (ii) *conspires to or attempts to engage*  
5           *in such export, transfer, or trade, or*

6                   (iii) *facilitates such export, transfer, or*  
7           *trade by any other person,*

8           *then the President shall impose the applicable*  
9           *sanctions described in subparagraph (B).*

10           (B) *SANCTIONS DESCRIBED.—The sanctions*  
11           *which apply to a United States person under*  
12           *subparagraph (A) are the following:*

13                   (i) *If the item on the MTCR Annex in-*  
14           *volved in the export, transfer, or trade is*  
15           *missile equipment or technology within cat-*  
16           *egory II of the MTCR Annex, then the*  
17           *President shall deny to such United States*  
18           *person, for a period of 2 years, licenses for*  
19           *the transfer of missile equipment or tech-*  
20           *nology controlled under this Act.*

21                   (ii) *If the item on the MTCR Annex*  
22           *involved in the export, transfer, or trade is*  
23           *missile equipment or technology within cat-*  
24           *egory I of the MTCR Annex, then the Presi-*  
25           *dent shall deny to such United States per-*



1                   son, for a period of not less than 2 years,  
 2                   all licenses for items the export of which is  
 3                   controlled under this Act.

4                   (2) *DISCRETIONARY SANCTIONS.*—*In the case of*  
 5                   *any determination referred to in paragraph (1), the*  
 6                   *Secretary may pursue any other appropriate pen-*  
 7                   *alties under section 503.*

8                   (3) *WAIVER.*—*The President may waive the im-*  
 9                   *position of sanctions under paragraph (1) on a per-*  
 10                  *son with respect to an item if the President certifies*  
 11                  *to Congress that—*

12                   (A) *the item is essential to the national se-*  
 13                   *curity of the United States; and*

14                   (B) *such person is a sole source supplier of*  
 15                   *the item, the item is not available from any al-*  
 16                   *ternative reliable supplier, and the need for the*  
 17                   *item cannot be met in a timely manner by im-*  
 18                   *proved manufacturing processes or technological*  
 19                   *developments.*

20                  (b) *TRANSFERS OF MISSILE EQUIPMENT OR TECH-*  
 21                  *NOLOGY BY FOREIGN PERSONS.*—

22                   (1) *SANCTIONS.*—

23                   (A) *IN GENERAL.*—*Subject to paragraphs*

24                   (3) *through (7), if the President determines that*

1        *a foreign person, after the date of enactment of*  
2        *this section, knowingly—*

3                *(i) exports, transfers, or otherwise en-*  
4                *gages in the trade of any MTCR equipment*  
5                *or technology that contributes to the design,*  
6                *development, or production of missiles in a*  
7                *country that is not an MTCR adherent and*  
8                *would be, if it were United States-origin*  
9                *equipment or technology, subject to the ju-*  
10               *risdiction of the United States under this*  
11               *Act,*

12               *(ii) conspires to or attempts to engage*  
13               *in such export, transfer, or trade, or*

14               *(iii) facilitates such export, transfer, or*  
15               *trade by any other person,*

16        *or if the President has made a determination*  
17        *with respect to a foreign person under section*  
18        *73(a) of the Arms Export Control Act, then the*  
19        *President shall impose on that foreign person the*  
20        *applicable sanctions under subparagraph (B).*

21               *(B) SANCTIONS DESCRIBED.—The sanctions*  
22               *which apply to a foreign person under subpara-*  
23               *graph (A) are the following:*

24               *(i) If the item involved in the export,*  
25               *transfer, or trade is within category II of*

1           *the MTCR Annex, then the President shall*  
2           *deny, for a period of 2 years, licenses for the*  
3           *transfer to such foreign person of missile*  
4           *equipment or technology the export of which*  
5           *is controlled under this Act.*

6           *(ii) If the item involved in the export,*  
7           *transfer, or trade is within category I of the*  
8           *MTCR Annex, then the President shall*  
9           *deny, for a period of not less than 2 years,*  
10          *licenses for the transfer to such foreign per-*  
11          *son of items the export of which is con-*  
12          *trolled under this Act.*

13          *(iii) If, in addition to actions taken*  
14          *under clauses (i) and (ii), the President de-*  
15          *termines that the export, transfer, or trade*  
16          *has substantially contributed to the design,*  
17          *development, or production of missiles in a*  
18          *country that is not an MTCR adherent,*  
19          *then the President shall prohibit, for a pe-*  
20          *riod of not less than 2 years, the importa-*  
21          *tion into the United States of products pro-*  
22          *duced by that foreign person.*

23           (2) *INAPPLICABILITY WITH RESPECT TO MTCR*  
24          *ADHERENTS.—Paragraph (1) does not apply with re-*  
25          *spect to—*

1           (A) any export, transfer, or trading activity  
 2           that is authorized by the laws of an MTCR ad-  
 3           herent, if such authorization is not obtained by  
 4           misrepresentation or fraud; or

5           (B) any export, transfer, or trade of an  
 6           item to an end user in a country that is an  
 7           MTCR adherent.

8           (3) *EFFECT OF ENFORCEMENT ACTIONS BY MTCR*  
 9           *ADHERENTS.*—Sanctions set forth in paragraph (1)  
 10          may not be imposed under this subsection on a person  
 11          with respect to acts described in such paragraph or,  
 12          if such sanctions are in effect against a person on ac-  
 13          count of such acts, such sanctions shall be terminated,  
 14          if an MTCR adherent is taking judicial or other en-  
 15          forcement action against that person with respect to  
 16          such acts, or that person has been found by the gov-  
 17          ernment of an MTCR adherent to be innocent of  
 18          wrongdoing with respect to such acts.

19          (4) *ADVISORY OPINIONS.*—The Secretary, in con-  
 20          sultation with the Secretary of State and the Sec-  
 21          retary of Defense, may, upon the request of any per-  
 22          son, issue an advisory opinion to that person as to  
 23          whether a proposed activity by that person would sub-  
 24          ject that person to sanctions under this subsection.  
 25          Any person who relies in good faith on such an advi-

1        *sory opinion which states that the proposed activity*  
 2        *would not subject a person to such sanctions, and any*  
 3        *person who thereafter engages in such activity, may*  
 4        *not be made subject to such sanctions on account of*  
 5        *such activity.*

6            (5) *WAIVER AND REPORT TO CONGRESS.—*

7            (A) *WAIVER.—In any case other than one*  
 8            *in which an advisory opinion has been issued*  
 9            *under paragraph (4) stating that a proposed ac-*  
 10          *tivity would not subject a person to sanctions*  
 11          *under this subsection, the President may waive*  
 12          *the application of paragraph (1) to a foreign*  
 13          *person if the President determines that such*  
 14          *waiver is essential to the national security of the*  
 15          *United States.*

16          (B) *REPORT TO CONGRESS.—In the event*  
 17          *that the President decides to apply the waiver*  
 18          *described in subparagraph (A), the President*  
 19          *shall so notify Congress not less than 20 working*  
 20          *days before issuing the waiver. Such notification*  
 21          *shall include a report fully articulating the ra-*  
 22          *tionale and circumstances which led the Presi-*  
 23          *dent to apply the waiver.*

24          (6) *ADDITIONAL WAIVER.—The President may*  
 25          *wave the imposition of sanctions under paragraph*

1       (1) *on a person with respect to a product or service*  
2       *if the President certifies to the Congress that—*

3               (A) *the product or service is essential to the*  
4               *national security of the United States; and*

5               (B) *such person is a sole source supplier of*  
6               *the product or service, the product or service is*  
7               *not available from any alternative reliable sup-*  
8               *plier, and the need for the product or service*  
9               *cannot be met in a timely manner by improved*  
10              *manufacturing processes or technological develop-*  
11              *ments.*

12       (7) *EXCEPTIONS.—The President shall not apply*  
13       *the sanction under this subsection prohibiting the im-*  
14       *portation of the products of a foreign person—*

15              (A) *in the case of procurement of defense ar-*  
16              *ticles or defense services—*

17                      (i) *under existing contracts or sub-*  
18                      *contracts, including the exercise of options*  
19                      *for production quantities to satisfy require-*  
20                      *ments essential to the national security of*  
21                      *the United States;*

22                      (ii) *if the President determines that the*  
23                      *person to which the sanctions would be ap-*  
24                      *plied is a sole source supplier of the defense*  
25                      *articles and services, that the defense arti-*

1            *cles or services are essential to the national*  
2            *security of the United States, and that al-*  
3            *ternative sources are not readily or reason-*  
4            *ably available; or*

5            *(iii) if the President determines that*  
6            *such articles or services are essential to the*  
7            *national security of the United States under*  
8            *defense coproduction agreements or NATO*  
9            *Programs of Cooperation;*

10           *(B) to products or services provided under*  
11           *contracts entered into before the date on which*  
12           *the President publishes his intention to impose*  
13           *the sanctions; or*

14           *(C) to—*

15           *(i) spare parts,*

16           *(ii) component parts, but not finished*  
17           *products, essential to United States prod-*  
18           *ucts or production,*

19           *(iii) routine services and maintenance*  
20           *of products, to the extent that alternative*  
21           *sources are not readily or reasonably avail-*  
22           *able, or*

23           *(iv) information and technology essen-*  
24           *tial to United States products or produc-*  
25           *tion.*

1       (c) *DEFINITIONS.*—*In this section:*

2               (1) *MISSILE.*—*The term “missile” means a cat-*  
 3 *egory I system as defined in the MTCR Annex, and*  
 4 *any other unmanned delivery system of similar capa-*  
 5 *bility, as well as the specially designed production fa-*  
 6 *cilities for these systems.*

7               (2) *MISSILE TECHNOLOGY CONTROL REGIME;*  
 8 *MTCR.*—*The term “Missile Technology Control Re-*  
 9 *gime” or “MTCR” means the policy statement, be-*  
 10 *tween the United States, the United Kingdom, the*  
 11 *Federal Republic of Germany, France, Italy, Canada,*  
 12 *and Japan, announced on April 16, 1987, to restrict*  
 13 *sensitive missile-relevant transfers based on the*  
 14 *MTCR Annex, and any amendments thereto.*

15              (3) *MTCR ADHERENT.*—*The term “MTCR ad-*  
 16 *herent” means a country that participates in the*  
 17 *MTCR or that, pursuant to an international under-*  
 18 *standing to which the United States is a party, con-*  
 19 *trols MTCR equipment or technology in accordance*  
 20 *with the criteria and standards set forth in the*  
 21 *MTCR.*

22              (4) *MTCR ANNEX.*—*The term “MTCR Annex”*  
 23 *means the Guidelines and Equipment and Technology*  
 24 *Annex of the MTCR, and any amendments thereto.*



1           (5) *MISSILE EQUIPMENT OR TECHNOLOGY; MTCR*  
 2           *EQUIPMENT OR TECHNOLOGY.*—*The terms “missile*  
 3           *equipment or technology” and “MTCR equipment or*  
 4           *technology” mean those items listed in category I or*  
 5           *category II of the MTCR Annex.*

6           (6) *FOREIGN PERSON.*—*The term “foreign per-*  
 7           *son” means any person other than a United States*  
 8           *person.*

9           (7) *PERSON.*—

10           (A) *IN GENERAL.*—*The term “person”*  
 11           *means a natural person as well as a corporation,*  
 12           *business association, partnership, society, trust,*  
 13           *any other nongovernmental entity, organization,*  
 14           *or group, and any governmental entity operating*  
 15           *as a business enterprise, and any successor of*  
 16           *any such entity.*

17           (B) *IDENTIFICATION IN CERTAIN CASES.*—  
 18           *In the case of countries where it may be impos-*  
 19           *sible to identify a specific governmental entity*  
 20           *referred to in subparagraph (A), the term “per-*  
 21           *son” means—*

22                   (i) *all activities of that government re-*  
 23                   *lating to the development or production of*  
 24                   *any missile equipment or technology; and*

1                   (ii) all activities of that government  
 2                   affecting the development or production of  
 3                   aircraft, electronics, and space systems or  
 4                   equipment.

5                   (8) *OTHERWISE ENGAGED IN THE TRADE OF.*—

6                   The term “otherwise engaged in the trade of” means,  
 7                   with respect to a particular export or transfer, to be  
 8                   a freight forwarder or designated exporting agent, or  
 9                   a consignee or end user of the item to be exported or  
 10                  transferred.

11 **SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**  
 12 **LIFERATION SANCTIONS.**

13                  (a) *IMPOSITION OF SANCTIONS.*—

14                   (1) *DETERMINATION BY THE PRESIDENT.*—*Ex-*  
 15                   cept as provided in subsection (b)(2), the President  
 16                   shall impose both of the sanctions described in sub-  
 17                   section (c) if the President determines that a foreign  
 18                   person, on or after the date of enactment of this sec-  
 19                   tion, has knowingly and materially contributed—

20                   (A) through the export from the United  
 21                   States of any item that is subject to the jurisdic-  
 22                   tion of the United States under this Act, or

23                   (B) through the export from any other coun-  
 24                   try of any item that would be, if it were a

1           *United States item, subject to the jurisdiction of*  
2           *the United States under this Act,*  
3           *to the efforts by any foreign country, project, or entity*  
4           *described in paragraph (2) to use, develop, produce,*  
5           *stockpile, or otherwise acquire chemical or biological*  
6           *weapons.*

7           (2) *COUNTRIES, PROJECTS, OR ENTITIES RECEIV-*  
8           *ING ASSISTANCE.—Paragraph (1) applies in the case*  
9           *of—*

10           (A) *any foreign country that the President*  
11           *determines has, at any time after the date of en-*  
12           *actment of this Act—*

13                   (i) *used chemical or biological weapons*  
14                   *in violation of international law;*

15                   (ii) *used lethal chemical or biological*  
16                   *weapons against its own nationals; or*

17                   (iii) *made substantial preparations to*  
18                   *engage in the activities described in clause*  
19                   *(i) or (ii);*

20           (B) *any foreign country whose government*  
21           *is determined for purposes of section 310 to be*  
22           *a government that has repeatedly provided sup-*  
23           *port for acts of international terrorism; or*

1           (C) any other foreign country, project, or  
 2           entity designated by the President for purposes  
 3           of this section.

4           (3) *PERSONS AGAINST WHICH SANCTIONS ARE TO*  
 5           *BE IMPOSED.*—Sanctions shall be imposed pursuant  
 6           to paragraph (1) on—

7                   (A) the foreign person with respect to which  
 8                   the President makes the determination described  
 9                   in that paragraph;

10                   (B) any successor entity to that foreign per-  
 11                   son;

12                   (C) any foreign person that is a parent or  
 13                   subsidiary of that foreign person if that parent  
 14                   or subsidiary knowingly assisted in the activities  
 15                   which were the basis of that determination; and

16                   (D) any foreign person that is an affiliate  
 17                   of that foreign person if that affiliate knowingly  
 18                   assisted in the activities which were the basis of  
 19                   that determination and if that affiliate is con-  
 20                   trolled in fact by that foreign person.

21           (b) *CONSULTATIONS WITH AND ACTIONS BY FOREIGN*  
 22           *GOVERNMENT OF JURISDICTION.*—

23                   (1) *CONSULTATIONS.*—If the President makes the  
 24                   determinations described in subsection (a)(1) with re-  
 25                   spect to a foreign person, Congress urges the President

1       to initiate consultations immediately with the govern-  
2       ment with primary jurisdiction over that foreign per-  
3       son with respect to the imposition of sanctions pursu-  
4       ant to this section.

5               (2) *ACTIONS BY GOVERNMENT OF JURISDIC-*  
6       *TION.*—In order to pursue such consultations with  
7       that government, the President may delay imposition  
8       of sanctions pursuant to this section for a period of  
9       up to 90 days. Following the consultations, the Presi-  
10      dent shall impose sanctions unless the President deter-  
11      mines and certifies to Congress that government has  
12      taken specific and effective actions, including appro-  
13      priate penalties, to terminate the involvement of the  
14      foreign person in the activities described in subsection  
15      (a)(1). The President may delay imposition of sanc-  
16      tions for an additional period of up to 90 days if the  
17      President determines and certifies to Congress that  
18      government is in the process of taking the actions de-  
19      scribed in the preceding sentence.

20              (3) *REPORT TO CONGRESS.*—The President shall  
21      report to Congress, not later than 90 days after mak-  
22      ing a determination under subsection (a)(1), on the  
23      status of consultations with the appropriate govern-  
24      ment under this subsection, and the basis for any de-  
25      termination under paragraph (2) of this subsection

1       *that such government has taken specific corrective ac-*  
 2       *tions.*

3       (c) *SANCTIONS.—*

4               (1) *DESCRIPTION OF SANCTIONS.—The sanctions*  
 5       *to be imposed pursuant to subsection (a)(1) are, ex-*  
 6       *cept as provided in paragraph (2) of this subsection,*  
 7       *the following:*

8                       (A) *PROCUREMENT SANCTION.—The United*  
 9       *States Government shall not procure, or enter*  
 10       *into any contract for the procurement of, any*  
 11       *goods or services from any person described in*  
 12       *subsection (a)(3).*

13                      (B) *IMPORT SANCTIONS.—The importation*  
 14       *into the United States of products produced by*  
 15       *any person described in subsection (a)(3) shall be*  
 16       *prohibited.*

17               (2) *EXCEPTIONS.—The President shall not be re-*  
 18       *quired to apply or maintain sanctions under this*  
 19       *section—*

20                      (A) *in the case of procurement of defense ar-*  
 21       *ticles or defense services—*

22                               (i) *under existing contracts or sub-*  
 23       *contracts, including the exercise of options*  
 24       *for production quantities to satisfy United*  
 25       *States operational military requirements;*

1           (ii) if the President determines that the  
2           person or other entity to which the sanc-  
3           tions would otherwise be applied is a sole  
4           source supplier of the defense articles or  
5           services, that the defense articles or services  
6           are essential, and that alternative sources  
7           are not readily or reasonably available; or

8           (iii) if the President determines that  
9           such articles or services are essential to the  
10          national security under defense coproduc-  
11          tion agreements;

12          (B) to products or services provided under  
13          contracts entered into before the date on which  
14          the President publishes his intention to impose  
15          sanctions;

16          (C) to—

17               (i) spare parts,

18               (ii) component parts, but not finished  
19               products, essential to United States prod-  
20               ucts or production, or

21               (iii) routine servicing and mainte-  
22               nance of products, to the extent that alter-  
23               native sources are not readily or reasonably  
24               available;

1                   (D) to information and technology essential  
2                   to United States products or production; or

3                   (E) to medical or other humanitarian  
4                   items.

5           (d) *TERMINATION OF SANCTIONS.*—The sanctions im-  
6 posed pursuant to this section shall apply for a period of  
7 at least 12 months following the imposition of sanctions and  
8 shall cease to apply thereafter only if the President deter-  
9 mines and certifies to the Congress that reliable information  
10 indicates that the foreign person with respect to which the  
11 determination was made under subsection (a)(1) has ceased  
12 to aid or abet any foreign government, project, or entity  
13 in its efforts to acquire chemical or biological weapons ca-  
14 pability as described in that subsection.

15           (e) *WAIVER.*—

16               (1) *CRITERION FOR WAIVER.*—The President  
17 may waive the application of any sanction imposed  
18 on any person pursuant to this section, after the end  
19 of the 12-month period beginning on the date on  
20 which that sanction was imposed on that person, if  
21 the President determines and certifies to Congress  
22 that such waiver is important to the national security  
23 interests of the United States.

24               (2) *NOTIFICATION OF AND REPORT TO CON-*  
25 *GRESS.*—If the President decides to exercise the waiv-



1        *er authority provided in paragraph (1), the President*  
 2        *shall so notify the Congress not less than 20 days be-*  
 3        *fore the waiver takes effect. Such notification shall in-*  
 4        *clude a report fully articulating the rationale and*  
 5        *circumstances which led the President to exercise the*  
 6        *waiver authority.*

7        *(f) DEFINITION OF FOREIGN PERSON.—For the pur-*  
 8        *poses of this section, the term “foreign person” means—*

9                *(1) an individual who is not a citizen of the*  
 10        *United States or an alien admitted for permanent*  
 11        *residence to the United States; or*

12                *(2) a corporation, partnership, or other entity*  
 13        *which is created or organized under the laws of a for-*  
 14        *foreign country or which has its principal place of busi-*  
 15        *ness outside the United States.*

16        **SEC. 506. ENFORCEMENT.**

17        *(a) GENERAL AUTHORITY AND DESIGNATION.—*

18                *(1) POLICY GUIDANCE ON ENFORCEMENT.—The*  
 19        *Secretary, in consultation with the Secretary of the*  
 20        *Treasury and the heads of other departments and*  
 21        *agencies that the Secretary considers appropriate,*  
 22        *shall be responsible for providing policy guidance on*  
 23        *the enforcement of this Act.*

24                *(2) GENERAL AUTHORITIES.—*

1           (A) *EXERCISE OF AUTHORITY.*—*To the ex-*  
2           *tent necessary or appropriate to the enforcement*  
3           *of this Act, officers and employees of the Depart-*  
4           *ment designated by the Secretary, officers and*  
5           *employees of the United States Customs Service*  
6           *designated by the Commissioner of Customs, and*  
7           *officers and employees of any other department*  
8           *or agency designated by the head of a depart-*  
9           *ment or agency exercising functions under this*  
10          *Act, may exercise the enforcement authority*  
11          *under paragraph (3).*

12          (B) *CUSTOMS SERVICE.*—*In carrying out*  
13          *enforcement authority under paragraph (3), the*  
14          *Commissioner of Customs and employees of the*  
15          *United States Customs Service designated by the*  
16          *Commissioner may make investigations within*  
17          *or outside the United States and at ports of*  
18          *entry into or exit from the United States where*  
19          *officers of the United States Customs Service are*  
20          *authorized by law to carry out law enforcement*  
21          *responsibilities. Subject to paragraph (3), the*  
22          *United States Customs Service is authorized, in*  
23          *the enforcement of this Act, to search, detain*  
24          *(after search), and seize items at the ports of*  
25          *entry into or exit from the United States where*

1        *officers of the United States Customs Service are*  
2        *authorized by law to conduct searches, deten-*  
3        *tions, and seizures, and at the places outside the*  
4        *United States where the United States Customs*  
5        *Service, pursuant to agreement or other arrange-*  
6        *ment with other countries, is authorized to per-*  
7        *form enforcement activities.*

8                (C) *OTHER EMPLOYEES.—In carrying out*  
9        *enforcement authority under paragraph (3), the*  
10       *Secretary and officers and employees of the De-*  
11       *partment designated by the Secretary may make*  
12       *investigations within the United States, and*  
13       *may conduct, outside the United States, pre-li-*  
14       *cense and post-shipment verifications of con-*  
15       *trolled items and investigations in the enforce-*  
16       *ment of section 502. The Secretary and officers*  
17       *and employees of the Department designated by*  
18       *the Secretary are authorized to search, detain*  
19       *(after search), and seize items at places within*  
20       *the United States other than ports referred to in*  
21       *subparagraph (B). The search, detention (after*  
22       *search), or seizure of items at the ports and*  
23       *places referred to in subparagraph (B) may be*  
24       *conducted by officers and employees of the De-*  
25       *partment only with the concurrence of the Com-*

1        *missioner of Customs or a person designated by*  
 2        *the Commissioner.*

3                *(D) AGREEMENTS AND ARRANGEMENTS.—*

4        *The Secretary and the Commissioner of Customs*  
 5        *may enter into agreements and arrangements for*  
 6        *the enforcement of this Act, including foreign in-*  
 7        *vestigations and information exchange.*

8                *(3) SPECIFIC AUTHORITIES.—*

9                *(A) ACTIONS BY ANY DESIGNATED PER-*  
 10        *SONNEL.—Any officer or employee designated*  
 11        *under paragraph (2), in carrying out the en-*  
 12        *forcement authority under this Act, may do the*  
 13        *following:*

14                *(i) Make investigations of, obtain in-*  
 15        *formation from, make inspection of any*  
 16        *books, records, or reports (including any*  
 17        *writings required to be kept by the Sec-*  
 18        *retary), premises, or property of, and take*  
 19        *the sworn testimony of, any person.*

20                *(ii) Administer oaths or affirmations,*  
 21        *and by subpoena require any person to ap-*  
 22        *pear and testify or to appear and produce*  
 23        *books, records, and other writings, or both.*  
 24        *In the case of contumacy by, or refusal to*  
 25        *obey a subpoena issued to, any such person,*

1           *a district court of the United States, on re-*  
2           *quest of the Attorney General and after no-*  
3           *tice to any such person and a hearing, shall*  
4           *have jurisdiction to issue an order requiring*  
5           *such person to appear and give testimony*  
6           *or to appear and produce books, records,*  
7           *and other writings, or both. Any failure to*  
8           *obey such order of the court may be pun-*  
9           *ished by such court as a contempt thereof.*  
10          *The attendance of witnesses and the produc-*  
11          *tion of documents provided for in this*  
12          *clause may be required from any State, the*  
13          *District of Columbia, or in any territory of*  
14          *the United States at any designated place.*  
15          *Witnesses subpoenaed under this subsection*  
16          *shall be paid the same fees and mileage al-*  
17          *lowance as paid witnesses in the district*  
18          *courts of the United States.*

19           *(B) ACTIONS BY OFFICE OF EXPORT EN-*  
20          *FORCEMENT AND CUSTOMS SERVICE PER-*  
21          *SONNEL.—*

22                   *(i) OFFICE OF EXPORT ENFORCEMENT*  
23          *AND CUSTOMS SERVICE PERSONNEL.—Any*  
24          *officer or employee of the Office of Export*  
25          *Enforcement of the Department of Com-*

1           *merce (in this Act referred to as “OEE”)*  
2           *who is designated by the Secretary under*  
3           *paragraph (2), and any officer or employee*  
4           *of the United States Customs Service who is*  
5           *designated by the Commissioner of Customs*  
6           *under paragraph (2), may do the following*  
7           *in carrying out the enforcement authority*  
8           *under this Act:*

9                     *(I) Execute any warrant or other*  
10                    *process issued by a court or officer of*  
11                    *competent jurisdiction with respect to*  
12                    *the enforcement of this Act.*

13                    *(II) Make arrests without warrant*  
14                    *for any violation of this Act committed*  
15                    *in his or her presence or view, or if the*  
16                    *officer or employee has probable cause*  
17                    *to believe that the person to be arrested*  
18                    *has committed, is committing, or is*  
19                    *about to commit such a violation.*

20                    *(III) Carry firearms.*

21                    *(ii) OEE PERSONNEL.—Any officer or*  
22                    *employee of the OEE designated by the Sec-*  
23                    *retary under paragraph (2) shall exercise*  
24                    *the authority set forth in clause (i) pursu-*

1           *ant to guidelines approved by the Attorney*  
2           *General.*

3           (C) *OTHER ACTIONS BY CUSTOMS SERVICE*  
4           *PERSONNEL.—Any officer or employee of the*  
5           *United States Customs Service designated by the*  
6           *Commissioner of Customs under paragraph (2)*  
7           *may do the following in carrying out the enforce-*  
8           *ment authority under this Act:*

9                   (i) *Stop, search, and examine a vehi-*  
10                  *cle, vessel, aircraft, or person on which or*  
11                  *whom the officer or employee has reasonable*  
12                  *cause to suspect there is any item that has*  
13                  *been, is being, or is about to be exported*  
14                  *from or transited through the United States*  
15                  *in violation of this Act.*

16                  (ii) *Detain and search any package or*  
17                  *container in which the officer or employee*  
18                  *has reasonable cause to suspect there is any*  
19                  *item that has been, is being, or is about to*  
20                  *be exported from or transited through the*  
21                  *United States in violation of this Act.*

22                  (iii) *Detain (after search) or seize any*  
23                  *item, for purposes of securing for trial or*  
24                  *forfeiture to the United States, on or about*  
25                  *such vehicle, vessel, aircraft, or person or in*

1            *such package or container, if the officer or*  
 2            *employee has probable cause to believe the*  
 3            *item has been, is being, or is about to be ex-*  
 4            *ported from or transited through the United*  
 5            *States in violation of this Act.*

6            (4) *OTHER AUTHORITIES NOT AFFECTED.—The*  
 7            *authorities conferred by this section are in addition*  
 8            *to any authorities conferred under other laws.*

9            (b) *FORFEITURE.—*

10            (1) *IN GENERAL.—Any tangible items lawfully*  
 11            *seized under subsection (a) by designated officers or*  
 12            *employees shall be subject to forfeiture to the United*  
 13            *States.*

14            (2) *APPLICABLE LAWS.—Those provisions of law*  
 15            *relating to—*

16            (A) *the seizure, summary and judicial for-*  
 17            *feiture, and condemnation of property for viola-*  
 18            *tions of the customs laws;*

19            (B) *the disposition of such property or the*  
 20            *proceeds from the sale thereof;*

21            (C) *the remission or mitigation of such for-*  
 22            *feitures; and*

23            (D) *the compromise of claims,*

24            *shall apply to seizures and forfeitures incurred, or al-*  
 25            *leged to have been incurred, under the provisions of*



1        *this subsection, insofar as applicable and not incon-*  
2        *sistent with this Act.*

3            (3) *FORFEITURES UNDER CUSTOMS LAWS.—Du-*  
4        *ties that are imposed upon a customs officer or any*  
5        *other person with respect to the seizure and forfeiture*  
6        *of property under the customs laws may be performed*  
7        *with respect to seizures and forfeitures of property*  
8        *under this subsection by the Secretary or any officer*  
9        *or employee of the Department that may be author-*  
10       *ized or designated for that purpose by the Secretary*  
11       *(or by the Commissioner of Customs or any officer or*  
12       *employee of the United States Customs Service des-*  
13       *ignated by the Commissioner), or, upon the request of*  
14       *the Secretary, by any other agency that has authority*  
15       *to manage and dispose of seized property.*

16        (c) *REFERRAL OF CASES.—All cases involving viola-*  
17       *tions of this Act shall be referred to the Secretary for pur-*  
18       *poses of determining civil penalties and administrative*  
19       *sanctions under section 503 or to the Attorney General for*  
20       *criminal action in accordance with this Act or to both the*  
21       *Secretary and the Attorney General.*

22        (d) *UNDERCOVER INVESTIGATION OPERATIONS.—*

23            (1) *USE OF FUNDS.—With respect to any under-*  
24        *cover investigative operation conducted by the OEE*

1       *that is necessary for the detection and prosecution of*  
2       *violations of this Act—*

3               *(A) funds made available for export enforce-*  
4       *ment under this Act may be used to purchase*  
5       *property, buildings, and other facilities, and to*  
6       *lease equipment, conveyances, and space within*  
7       *the United States, without regard to sections*  
8       *1341 and 3324 of title 31, United States Code,*  
9       *the third undesignated paragraph under the*  
10       *heading of “miscellaneous” of the Act of March*  
11       *3, 1877, (40 U.S.C. 34), sections 3732(a) and*  
12       *3741 of the Revised Statutes of the United States*  
13       *(41 U.S.C. 11(a) and 22), subsections (a) and (c)*  
14       *of section 304 of the Federal Property and Ad-*  
15       *ministrative Services Act of 1949 (41 U.S.C. 254*  
16       *(a) and (c)), and section 305 of the Federal*  
17       *Property and Administrative Services Act of*  
18       *1949 (41 U.S.C. 255);*

19               *(B) funds made available for export enforce-*  
20       *ment under this Act may be used to establish or*  
21       *to acquire proprietary corporations or business*  
22       *entities as part of an undercover operation, and*  
23       *to operate such corporations or business entities*  
24       *on a commercial basis, without regard to sections*

1           1341, 3324, and 9102 of title 31, United States  
2           Code;

3           (C) funds made available for export enforce-  
4           ment under this Act and the proceeds from un-  
5           dercover operations may be deposited in banks or  
6           other financial institutions without regard to the  
7           provisions of section 648 of title 18, United  
8           States Code, and section 3302 of title 31, United  
9           States Code; and

10           (D) the proceeds from undercover operations  
11           may be used to offset necessary and reasonable  
12           expenses incurred in such operations without re-  
13           gard to the provisions of section 3302 of title 31,  
14           United States Code,  
15           if the Director of OEE (or an officer or employee des-  
16           ignated by the Director) certifies, in writing, that the  
17           action authorized by subparagraph (A), (B), (C), or  
18           (D) for which the funds would be used is necessary for  
19           the conduct of the undercover operation.

20           (2) *DISPOSITION OF BUSINESS ENTITIES.*—If a  
21           corporation or business entity established or acquired  
22           as part of an undercover operation has a net value  
23           of more than \$250,000 and is to be liquidated, sold,  
24           or otherwise disposed of, the Director of OEE shall re-  
25           port the circumstances to the Secretary and the

1        *Comptroller General of the United States as much in*  
2        *advance of such disposition as the Director of the*  
3        *OEE (or the Director's designee) determines is prac-*  
4        *ticable. The proceeds of the liquidation, sale, or other*  
5        *disposition, after obligations incurred by the corpora-*  
6        *tion or business enterprise are met, shall be deposited*  
7        *in the Treasury of the United States as miscellaneous*  
8        *receipts. Any property or equipment purchased pur-*  
9        *suant to paragraph (1) may be retained for subse-*  
10       *quent use in undercover operations under this section.*  
11       *When such property or equipment is no longer needed,*  
12       *it shall be considered surplus and disposed of as sur-*  
13       *plus government property.*

14                (3) *DEPOSIT OF PROCEEDS.—As soon as the pro-*  
15        *ceeds from an OEE undercover investigative oper-*  
16        *ation with respect to which an action is authorized*  
17        *and carried out under this subsection are no longer*  
18        *needed for the conduct of such operation, the proceeds*  
19        *or the balance of the proceeds remaining at the time*  
20        *shall be deposited into the Treasury of the United*  
21        *States as miscellaneous receipts.*

22                (4) *AUDIT AND REPORT.—*

23                        (A) *AUDIT.—The Director of OEE shall*  
24        *conduct a detailed financial audit of each closed*  
25        *OEE undercover investigative operation and*

1       *shall submit the results of the audit in writing*  
2       *to the Secretary. Not later than 180 days after*  
3       *an undercover operation is closed, the Secretary*  
4       *shall submit to Congress a report on the results*  
5       *of the audit.*

6               *(B) REPORT.—The Secretary shall submit*  
7       *annually to Congress a report, which may be in-*  
8       *cluded in the annual report under section 701,*  
9       *specifying the following information:*

10               *(i) The number of undercover inves-*  
11       *tigative operations pending as of the end of*  
12       *the period for which such report is sub-*  
13       *mitted.*

14               *(ii) The number of undercover inves-*  
15       *tigative operations commenced in the 1-year*  
16       *period preceding the period for which such*  
17       *report is submitted.*

18               *(iii) The number of undercover inves-*  
19       *tigative operations closed in the 1-year pe-*  
20       *riod preceding the period for which such re-*  
21       *port is submitted and, with respect to each*  
22       *such closed undercover operation, the results*  
23       *obtained and any civil claims made with*  
24       *respect to the operation.*

1           (5) *DEFINITIONS.*—For purposes of paragraph  
2       (4)—

3                   (A) the term “closed”, with respect to an  
4                   undercover investigative operation, refers to the  
5                   earliest point in time at which all criminal pro-  
6                   ceedings (other than appeals) pursuant to the in-  
7                   vestigative operation are concluded, or covert ac-  
8                   tivities pursuant to such operation are con-  
9                   cluded, whichever occurs later; and

10                   (B) the terms “undercover investigative op-  
11                   eration” and “undercover operation” mean any  
12                   undercover investigative operation conducted by  
13                   the OEE—

14                           (i) in which the gross receipts (exclud-  
15                           ing interest earned) exceed \$25,000, or ex-  
16                           penditures (other than expenditures for sal-  
17                           aries of employees) exceed \$75,000, and

18                           (ii) which is exempt from section 3302  
19                           or 9102 of title 31, United States Code, ex-  
20                           cept that clauses (i) and (ii) shall not apply  
21                           with respect to the report to Congress re-  
22                           quired by paragraph (4)(B).

23       (e) *WIRETAPS.*—

24                   (1) *AUTHORITY.*—Interceptions of communica-  
25                   tions in accordance with section 2516 of title 18,

1       *United States Code, are authorized to further the en-*  
 2       *forcement of this Act.*

3               (2) *CONFORMING AMENDMENT.*—*Section 2516(1)*  
 4       *of title 18, United States Code, is amended by adding*  
 5       *at the end the following:*

6                       “(q)(i) *any violation of, or conspiracy to*  
 7                       *violate, the Export Administration Act of 2001*  
 8                       *or the Export Administration Act of 1979.”.*

9               (f) *POST-SHIPMENT VERIFICATION.*—*The Secretary*  
 10       *shall target post-shipment verifications to exports involving*  
 11       *the greatest risk to national security.*

12               (g) *REFUSAL TO ALLOW POST-SHIPMENT*  
 13       *VERIFICATION.*—

14                       (1) *IN GENERAL.*—*If an end-user refuses to allow*  
 15       *post-shipment verification of a controlled item, the*  
 16       *Secretary shall deny a license for the export of any*  
 17       *controlled item to such end-user until such post-ship-*  
 18       *ment verification occurs.*

19                       (2) *RELATED PERSONS.*—*The Secretary may ex-*  
 20       *ercise the authority under paragraph (1) with respect*  
 21       *to any person related through affiliation, ownership,*  
 22       *control, or position of responsibility, to any end-user*  
 23       *refusing to allow post-shipment verification of a con-*  
 24       *trolled item.*

1           (3) *REFUSAL BY COUNTRY.*—*If the country in*  
 2           *which the end-user is located refuses to allow post-*  
 3           *shipment verification of a controlled item, the Sec-*  
 4           *retary may deny a license for the export of that item*  
 5           *or any substantially identical or directly competitive*  
 6           *item or class of items to all end-users in that country*  
 7           *until such post-shipment verification is allowed.*

8           (h) *FREIGHT FORWARDERS BEST PRACTICES PRO-*  
 9           *GRAM AUTHORIZATION.*—*There is authorized to be appro-*  
 10          *priated for the Department of Commerce \$3,500,000 and*  
 11          *such sums as may be necessary to hire 20 additional em-*  
 12          *ployees to assist United States freight forwarders and other*  
 13          *interested parties in developing and implementing, on a*  
 14          *voluntary basis, a “best practices” program to ensure that*  
 15          *exports of controlled items are undertaken in compliance*  
 16          *with this Act.*

17          (i) *END-USE VERIFICATION AUTHORIZATION.*—

18               (1) *IN GENERAL.*—*There is authorized to be ap-*  
 19               *propriated for the Department of Commerce*  
 20               *\$4,500,000 and such sums as may be necessary to*  
 21               *hire 10 additional overseas investigators to be posted*  
 22               *in the People’s Republic of China, the Russian Fed-*  
 23               *eration, the Hong Kong Special Administrative Re-*  
 24               *gion, the Republic of India, Singapore, Egypt, and*  
 25               *Taiwan, or any other place the Secretary deems ap-*



1       *appropriate, for the purpose of verifying the end use of*  
2       *high-risk, dual-use technology.*

3               (2) *REPORT.*—*Not later than 2 years after the*  
4       *date of enactment of this Act and annually thereafter,*  
5       *the Department shall, in its annual report to Con-*  
6       *gress on export controls, include a report on the effec-*  
7       *tiveness of the end-use verification activities author-*  
8       *ized under subsection (a). The report shall include the*  
9       *following information:*

10               (A) *The activities of the overseas investiga-*  
11       *tors of the Department.*

12               (B) *The types of goods and technologies that*  
13       *were subject to end-use verification.*

14               (C) *The ability of the Department's inves-*  
15       *tigators to detect the illegal transfer of high risk,*  
16       *dual-use goods and technologies.*

17               (3) *ENHANCEMENTS.*—*In addition to the author-*  
18       *ization provided in paragraph (1), there is authorized*  
19       *to be appropriated for the Department of Commerce*  
20       *\$5,000,000 to enhance its program for verifying the*  
21       *end use of items subject to controls under this Act.*

22               (j) *ENHANCED COOPERATION WITH UNITED STATES*  
23       *CUSTOMS SERVICE.*—*Consistent with the purposes of this*  
24       *Act, the Secretary is authorized to undertake, in coopera-*  
25       *tion with the United States Customs Service, such measures*

1 *as may be necessary or required to enhance the ability of*  
2 *the United States to detect unlawful exports and to enforce*  
3 *violations of this Act.*

4       *(k) REFERENCE TO ENFORCEMENT.—For purposes of*  
5 *this section, a reference to the enforcement of this Act or*  
6 *to a violation of this Act includes a reference to the enforce-*  
7 *ment or a violation of any regulation, license, or order*  
8 *issued under this Act.*

9       *(l) AUTHORIZATION FOR EXPORT LICENSING AND EN-*  
10 *FORCEMENT COMPUTER SYSTEM.—There is authorized to*  
11 *be appropriated for the Department \$5,000,000 and such*  
12 *other sums as may be necessary for planning, design, and*  
13 *procurement of a computer system to replace the Depart-*  
14 *ment's primary export licensing and computer enforcement*  
15 *system.*

16       *(m) AUTHORIZATION FOR BUREAU OF EXPORT AD-*  
17 *MINISTRATION.—The Secretary may authorize, without fis-*  
18 *cal year limitation, the expenditure of funds transferred to,*  
19 *paid to, received by, or made available to the Bureau of*  
20 *Export Administration as a reimbursement in accordance*  
21 *with section 9703 of title 31, United States Code (as added*  
22 *by Public Law 102–393). The Secretary may also authorize,*  
23 *without fiscal year limitation, the expenditure of funds*  
24 *transferred to, paid to, received by, or made available to*  
25 *the Bureau of Export Administration as a reimbursement*

1 *from the Department of Justice Assets Forfeiture Fund in*  
 2 *accordance with section 524 of title 28, United States Code.*  
 3 *Such funds shall be deposited in an account and shall re-*  
 4 *main available until expended.*

5 (n) *AMENDMENTS TO TITLE 31.—*

6 (1) *Section 9703(a) of title 31, United States*  
 7 *Code (as added by Public Law 102–393) is amended*  
 8 *by striking “or the United States Coast Guard” and*  
 9 *inserting “, the United States Coast Guard, or the*  
 10 *Bureau of Export Administration of the Department*  
 11 *of Commerce”.*

12 (2) *Section 9703(a)(2)(B)(i) of title 31, United*  
 13 *States Code is amended (as added by Public Law*  
 14 *102–393)—*

15 (A) *by striking “or” at the end of subclause*  
 16 *(I);*

17 (B) *by inserting “or” at the end of sub-*  
 18 *clause (II); and*

19 (C) *by inserting at the end, the following*  
 20 *new subclause:*

21 “(III) *a violation of the Export*  
 22 *Administration Act of 1979, the Ex-*  
 23 *port Administration Act of 2001, or*  
 24 *any regulation, license, or order issued*  
 25 *under those Acts;”.*

1           (3) *Section 9703(p)(1) of title 31, United States*  
 2           *Code (as added by Public Law 102–393) is amended*  
 3           *by adding at the end the following: “In addition, for*  
 4           *purposes of this section, the Bureau of Export Admin-*  
 5           *istration of the Department of Commerce shall be con-*  
 6           *sidered to be a Department of the Treasury law en-*  
 7           *forcement organization.”.*

8           (6) *AUTHORIZATION FOR LICENSE REVIEW OFFI-*  
 9           *CERS.—*

10           (1) *IN GENERAL.—There is authorized to be ap-*  
 11           *propriated to the Department of Commerce*  
 12           *\$2,000,000 to hire additional license review officers.*

13           (2) *TRAINING.—There is authorized to be appro-*  
 14           *priated to the Department of Commerce \$2,000,000 to*  
 15           *conduct professional training of license review offi-*  
 16           *cers, auditors, and investigators conducting post-ship-*  
 17           *ment verification checks. These funds shall be used*  
 18           *to—*

19                   (A) *train and certify, through a formal pro-*  
 20                   *gram, new employees entering these positions for*  
 21                   *the first time; and*

22                   (B) *the ongoing professional training of ex-*  
 23                   *perienced employees on an as needed basis.*

24           (p) *AUTHORIZATION.—*

1           (1) *IN GENERAL.*—*There are authorized to be ap-*  
2           *propriated to the Department of Commerce to carry*  
3           *out the purposes of this Act—*

4                   (A) *\$72,000,000 for the fiscal year 2002, of*  
5                   *which no less than \$27,701,000 shall be used for*  
6                   *compliance and enforcement activities;*

7                   (B) *\$73,000,000 for the fiscal year 2003, of*  
8                   *which no less than \$28,312,000 shall be used for*  
9                   *compliance and enforcement activities;*

10                  (C) *\$74,000,000 for the fiscal year 2004, of*  
11                  *which no less than \$28,939,000 shall be used for*  
12                  *compliance and enforcement activities;*

13                  (D) *\$76,000,000 for the fiscal year 2005, of*  
14                  *which no less than \$29,582,000 shall be used for*  
15                  *compliance and enforcement activities; and*

16                  (E) *such additional amounts, for each such*  
17                  *fiscal year, as may be necessary for increases in*  
18                  *salary, pay, retirement, other employee benefits*  
19                  *authorized by law, and other nondiscretionary*  
20                  *costs.*

21           (2) *LIMITATION.*—*The authority granted by this*  
22           *Act shall terminate on September 30, 2004, unless the*  
23           *President carries out the following duties:*

24                   (A) *Provides to Congress a detailed report*  
25                   *on—*

1                   (i) the implementation and operation  
2                   of this Act; and

3                   (ii) the operation of United States ex-  
4                   port controls in general.

5                   (B)(i) Provides to Congress legislative re-  
6                   form proposals in connection with the report de-  
7                   scribed in subparagraph (A); or

8                   (ii) certifies to Congress that no legislative  
9                   reforms are necessary in connection with such re-  
10                  port.

11 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

12           (a) *EXEMPTIONS FROM ADMINISTRATIVE PROCE-*  
13 *DURE.—Except as provided in this section, the functions*  
14 *exercised under this Act are excluded from the operation*  
15 *of sections 551, 553 through 559, and 701 through 706 of*  
16 *title 5, United States Code.*

17           (b) *PROCEDURES RELATING TO CIVIL PENALTIES AND*  
18 *SANCTIONS.—*

19               (1) *ADMINISTRATIVE PROCEDURES.—Any ad-*  
20 *ministrative sanction imposed under section 503 may*  
21 *be imposed only after notice and opportunity for an*  
22 *agency hearing on the record in accordance with sec-*  
23 *tions 554 through 557 of title 5, United States Code.*  
24 *The imposition of any such administrative sanction*  
25 *shall be subject to judicial review in accordance with*

1       sections 701 through 706 of title 5, United States  
2       Code, except that the review shall be initiated in the  
3       United States Court of Appeals for the District of Co-  
4       lumbia Circuit, which shall have jurisdiction of the  
5       review.

6               (2) *AVAILABILITY OF CHARGING LETTER.*—Any  
7       charging letter or other document initiating adminis-  
8       trative proceedings for the imposition of sanctions for  
9       violations of the regulations issued under section 502  
10      shall be made available for public inspection and  
11      copying.

12      (c) *COLLECTION.*—If any person fails to pay a civil  
13      penalty imposed under section 503, the Secretary may ask  
14      the Attorney General to commence a civil action in an ap-  
15      propriate district court of the United States to recover the  
16      amount imposed (plus interest at currently prevailing rates  
17      from the date of the final order). No such action may be  
18      commenced more than 5 years after the order imposing the  
19      civil penalty becomes final. In such an action, the validity,  
20      amount, and appropriateness of such penalty shall not be  
21      subject to review.

22      (d) *IMPOSITION OF TEMPORARY DENIAL ORDERS.*—

23               (1) *GROUND FOR IMPOSITION.*—In any case in  
24      which there is reasonable cause to believe that a per-  
25      son is engaged in or is about to engage in any act

1       or practice which constitutes or would constitute a  
2       violation of this Act, or any regulation, order, or li-  
3       cense issued under this Act, including any diversion  
4       of goods or technology from an authorized end use or  
5       end user, and in any case in which a criminal indict-  
6       ment has been returned against a person alleging a  
7       violation of this Act or any of the statutes listed in  
8       section 503, the Secretary may, without a hearing,  
9       issue an order temporarily denying that person's  
10      United States export privileges (hereafter in this sub-  
11      section referred to as a "temporary denial order"). A  
12      temporary denial order shall be effective for such pe-  
13      riod (not in excess of 180 days) as the Secretary  
14      specifies in the order, but may be renewed by the Sec-  
15      retary, following notice and an opportunity for a  
16      hearing, for additional periods of not more than 180  
17      days each.

18           (2) *ADMINISTRATIVE APPEALS.*—The person or  
19      persons subject to the issuance or renewal of a tem-  
20      porary denial order may appeal the issuance or re-  
21      newal of the temporary denial order, supported by  
22      briefs and other material, to an administrative law  
23      judge who shall, within 15 working days after the ap-  
24      peal is filed, issue a decision affirming, modifying, or



1       *vacating the temporary denial order. The temporary*  
2       *denial order shall be affirmed if it is shown that—*

3               *(A) there is reasonable cause to believe that*  
4               *the person subject to the order is engaged in or*  
5               *is about to engage in any act or practice that*  
6               *constitutes or would constitute a violation of this*  
7               *Act, or any regulation, order, or license issued*  
8               *under this Act; or*

9               *(B) a criminal indictment has been re-*  
10              *turned against the person subject to the order al-*  
11              *leging a violation of this Act or any of the stat-*  
12              *utes listed in section 503.*

13       *The decision of the administrative law judge shall be*  
14       *final unless, within 10 working days after the date of*  
15       *the administrative law judge's decision, an appeal is*  
16       *filed with the Secretary. On appeal, the Secretary*  
17       *shall either affirm, modify, reverse, or vacate the deci-*  
18       *sion of the administrative law judge by written order*  
19       *within 10 working days after receiving the appeal.*  
20       *The written order of the Secretary shall be final and*  
21       *is not subject to judicial review, except as provided in*  
22       *paragraph (3). The materials submitted to the admin-*  
23       *istrative law judge and the Secretary shall constitute*  
24       *the administrative record for purposes of review by*  
25       *the court.*

1           (3) *COURT APPEALS.*—*An order of the Secretary*  
2           *affirming, in whole or in part, the issuance or re-*  
3           *newal of a temporary denial order may, within 15*  
4           *days after the order is issued, be appealed by a person*  
5           *subject to the order to the United States Court of Ap-*  
6           *peals for the District of Columbia Circuit, which shall*  
7           *have jurisdiction of the appeal. The court may review*  
8           *only those issues necessary to determine whether the*  
9           *issuance of the temporary denial order was based on*  
10          *reasonable cause to believe that the person subject to*  
11          *the order was engaged in or was about to engage in*  
12          *any act or practice that constitutes or would con-*  
13          *stitute a violation of this title, or any regulation,*  
14          *order, or license issued under this Act, or whether a*  
15          *criminal indictment has been returned against the*  
16          *person subject to the order alleging a violation of this*  
17          *Act or of any of the statutes listed in section 503.*  
18          *The court shall vacate the Secretary's order if the*  
19          *court finds that the Secretary's order is arbitrary, ca-*  
20          *pricious, an abuse of discretion, or otherwise not in*  
21          *accordance with law.*

22          *(e) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-*  
23          *MATION.*—*Any classified information that is included in*  
24          *the administrative record that is subject to review pursuant*

1 *to subsection (b)(1) or (d)(3) may be reviewed by the court*  
 2 *only on an ex parte basis and in camera.*

3       ***TITLE VI—EXPORT CONTROL***  
 4       ***AUTHORITY AND REGULATIONS***

5       ***SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-***  
 6               ***TIONS.***

7       *(a) EXPORT CONTROL AUTHORITY.—*

8               *(1) IN GENERAL.—Unless otherwise reserved to*  
 9       *the President or a department (other than the Depart-*  
 10       *ment) or agency of the United States, all power, au-*  
 11       *thority, and discretion conferred by this Act shall be*  
 12       *exercised by the Secretary.*

13              *(2) DELEGATION OF FUNCTIONS OF THE SEC-*  
 14       *RETARY.—The Secretary may delegate any function*  
 15       *under this Act, unless otherwise provided, to the*  
 16       *Under Secretary of Commerce for Export Administra-*  
 17       *tion or to any other officer of the Department.*

18       *(b) UNDER SECRETARY OF COMMERCE; ASSISTANT*  
 19       *SECRETARIES.—*

20              *(1) UNDER SECRETARY OF COMMERCE.—There*  
 21       *shall be within the Department an Under Secretary*  
 22       *of Commerce for Export Administration (in this sec-*  
 23       *tion referred to as the “Under Secretary”) who shall*  
 24       *be appointed by the President, by and with the advice*  
 25       *and consent of the Senate. The Under Secretary shall*

1       *carry out all functions of the Secretary under this*  
 2       *Act and other provisions of law relating to national*  
 3       *security, as the Secretary may delegate.*

4           (2) *ADDITIONAL ASSISTANT SECRETARIES.*—*In*  
 5       *addition to the number of Assistant Secretaries other-*  
 6       *wise authorized for the Department of Commerce,*  
 7       *there shall be within the Department of Commerce the*  
 8       *following Assistant Secretaries of Commerce:*

9           (A) *An Assistant Secretary for Export Ad-*  
 10       *ministration who shall be appointed by the*  
 11       *President, by and with the advice and consent of*  
 12       *the Senate, and who shall assist the Secretary*  
 13       *and the Under Secretary in carrying out func-*  
 14       *tions relating to export listing and licensing.*

15          (B) *An Assistant Secretary for Export En-*  
 16       *forcement who shall be appointed by the Presi-*  
 17       *dent, by and with the advice and consent of the*  
 18       *Senate, and who shall assist the Secretary and*  
 19       *the Under Secretary in carrying out functions*  
 20       *relating to export enforcement.*

21       (c) *ISSUANCE OF REGULATIONS.*—

22           (1) *IN GENERAL.*—*The President and the Sec-*  
 23       *retary may issue such regulations as are necessary to*  
 24       *carry out this Act. Any such regulations the purpose*  
 25       *of which is to carry out title II or title III may be*

1       *issued only after the regulations are submitted for re-*  
2       *view to such departments or agencies as the President*  
3       *considers appropriate. The Secretary shall consult*  
4       *with the appropriate export control advisory com-*  
5       *mittee appointed under section 105(a) in formulating*  
6       *regulations under this title. The second sentence of*  
7       *this subsection does not require the concurrence or ap-*  
8       *proval of any official, department, or agency to which*  
9       *such regulations are submitted.*

10           (2) *AMENDMENTS TO REGULATIONS.—If the Sec-*  
11       *retary proposes to amend regulations issued under*  
12       *this Act, the Secretary shall report to the Committee*  
13       *on Banking, Housing, and Urban Affairs of the Sen-*  
14       *ate and the Committee on International Relations of*  
15       *the House of Representatives on the intent and ra-*  
16       *tionale of such amendments. Such report shall evalu-*  
17       *ate the cost and burden to the United States exporters*  
18       *of the proposed amendments in relation to any en-*  
19       *hancement of licensing objectives. The Secretary shall*  
20       *consult with the appropriate export control advisory*  
21       *committees appointed under section 105(a) in amend-*  
22       *ing regulations issued under this Act.*

23   **SEC. 602. CONFIDENTIALITY OF INFORMATION.**

24       (a) *EXEMPTIONS FROM DISCLOSURE.—*

1           (1) *INFORMATION OBTAINED ON OR BEFORE*  
2           *JUNE 30, 1980.—Except as otherwise provided by the*  
3           *third sentence of section 502(c)(2) and by section*  
4           *507(b)(2), information obtained under the Export Ad-*  
5           *ministration Act of 1979, or any predecessor statute,*  
6           *on or before June 30, 1980, which is deemed confiden-*  
7           *tial, including Shipper's Export Declarations, or with*  
8           *respect to which a request for confidential treatment*  
9           *is made by the person furnishing such information,*  
10          *shall not be subject to disclosure under section 552 of*  
11          *title 5, United States Code, and such information*  
12          *shall not be published or disclosed, unless the Sec-*  
13          *retary determines that the withholding thereof is con-*  
14          *trary to the national interest.*

15          (2) *INFORMATION OBTAINED AFTER JUNE 30,*  
16          *1980.—Except as otherwise provided by the third sen-*  
17          *tence of section 502(c)(2) and by section 507(b)(2),*  
18          *information obtained under this Act, under the Ex-*  
19          *port Administration Act of 1979 after June 30, 1980,*  
20          *or under the Export Administration regulations as*  
21          *maintained and amended under the authority of the*  
22          *International Emergency Economic Powers Act (50*  
23          *U.S.C. 1706), may be withheld from disclosure only*  
24          *to the extent permitted by statute, except that infor-*  
25          *mation submitted, obtained, or considered in connec-*

1        *tion with an application for an export license or*  
2        *other export authorization (or recordkeeping or re-*  
3        *porting requirement) under the Export Administra-*  
4        *tion Act of 1979, under this Act, or under the Export*  
5        *Administration regulations as maintained and*  
6        *amended under the authority of the International*  
7        *Emergency Economic Powers Act (50 U.S.C. 1706),*  
8        *including—*

9                *(A) the export license or other export au-*  
10              *thorization itself,*

11              *(B) classification requests described in sec-*  
12              *tion 401(h),*

13              *(C) information or evidence obtained in the*  
14              *course of any investigation,*

15              *(D) information obtained or furnished*  
16              *under title V in connection with any inter-*  
17              *national agreement, treaty, or other obligation,*  
18              *and*

19              *(E) information obtained in making the de-*  
20              *terminations set forth in section 211 of this Act,*  
21              *and information obtained in any investigation of an*  
22              *alleged violation of section 502 of this Act except for*  
23              *information required to be disclosed by section*  
24              *502(c)(2) or 507(b)(2) of this Act, shall be withheld*  
25              *from public disclosure and shall not be subject to dis-*

1 *closure under section 552 of title 5, United States*  
 2 *Code, unless the release of such information is deter-*  
 3 *mined by the Secretary to be in the national interest.*

4 *(b) INFORMATION TO CONGRESS AND GAO.—*

5 *(1) IN GENERAL.—Nothing in this title shall be*  
 6 *construed as authorizing the withholding of informa-*  
 7 *tion from Congress or from the General Accounting*  
 8 *Office.*

9 *(2) AVAILABILITY TO THE CONGRESS—*

10 *(A) IN GENERAL.—Any information ob-*  
 11 *tained at any time under this title or under any*  
 12 *predecessor Act regarding the control of exports,*  
 13 *including any report or license application re-*  
 14 *quired under this title, shall be made available*  
 15 *to any committee or subcommittee of Congress of*  
 16 *appropriate jurisdiction upon the request of the*  
 17 *chairman or ranking minority member of such*  
 18 *committee or subcommittee.*

19 *(B) PROHIBITION ON FURTHER DISCLO-*  
 20 *SURE.—No committee, subcommittee, or Member*  
 21 *of Congress shall disclose any information ob-*  
 22 *tained under this Act or any predecessor Act re-*  
 23 *garding the control of exports which is submitted*  
 24 *on a confidential basis to the Congress under*  
 25 *subparagraph (A) unless the full committee to*



1       *which the information is made available deter-*  
2       *mines that the withholding of the information is*  
3       *contrary to the national interest.*

4       (3) *AVAILABILITY TO THE GAO.—*

5           (A) *IN GENERAL.—Notwithstanding sub-*  
6       *section (a), information described in paragraph*  
7       *(2) shall, consistent with the protection of intel-*  
8       *ligence, counterintelligence, and law enforcement*  
9       *sources, methods, and activities, as determined*  
10      *by the agency that originally obtained the infor-*  
11      *mation, and consistent with the provisions of*  
12      *section 716 of title 31, United States Code, be*  
13      *made available only by the agency, upon request,*  
14      *to the Comptroller General of the United States*  
15      *or to any officer or employee of the General Ac-*  
16      *counting Office authorized by the Comptroller*  
17      *General to have access to such information.*

18          (B) *PROHIBITION ON FURTHER DISCLO-*  
19      *SURES.—No officer or employee of the General*  
20      *Accounting Office shall disclose, except to Con-*  
21      *gress in accordance with this paragraph, any*  
22      *such information which is submitted on a con-*  
23      *fidential basis and from which any individual*  
24      *can be identified.*

1       (c) *INFORMATION EXCHANGE.*—*Notwithstanding sub-*  
 2 *section (a), the Secretary and the Commissioner of Customs*  
 3 *shall exchange licensing and enforcement information with*  
 4 *each other as necessary to facilitate enforcement efforts and*  
 5 *effective license decisions.*

6       (d) *PENALTIES FOR DISCLOSURE OF CONFIDENTIAL*  
 7 *INFORMATION.*—

8               (1) *DISCLOSURE PROHIBITED.*—*No officer or*  
 9 *employee of the United States, or any department or*  
 10 *agency thereof, may publish, divulge, disclose, or*  
 11 *make known in any manner or to any extent not au-*  
 12 *thorized by law any information that—*

13                       (A) *the officer or employee obtains in the*  
 14 *course of his or her employment or official duties*  
 15 *or by reason of any examination or investigation*  
 16 *made by, or report or record made to or filed*  
 17 *with, such department or agency, or officer or*  
 18 *employee thereof; and*

19                       (B) *is exempt from disclosure under this*  
 20 *section.*

21               (2) *CRIMINAL PENALTIES.*—*Any such officer or*  
 22 *employee who knowingly violates paragraph (1) shall*  
 23 *be fined not more than \$50,000, imprisoned not more*  
 24 *than 1 year, or both, for each violation of paragraph*

1       (1). *Any such officer or employee may also be re-*  
 2       *moved from office or employment.*

3               (3) *CIVIL PENALTIES; ADMINISTRATIVE SANC-*  
 4       *TIONS.—The Secretary may impose a civil penalty of*  
 5       *not more than \$5,000 for each violation of paragraph*  
 6       *(1). Any officer or employee who commits such viola-*  
 7       *tion may also be removed from office or employment*  
 8       *for the violation of paragraph (1). Sections 503 (e),*  
 9       *(g), (h), and (i) and 507 (a), (b), and (c) shall apply*  
 10       *to violations described in this paragraph.*

## 11       ***TITLE VII—MISCELLANEOUS*** 12       ***PROVISIONS***

### 13       ***SEC. 701. ANNUAL REPORT.***

14       (a) *ANNUAL REPORT.—Not later than February 1 of*  
 15       *each year, the Secretary shall submit to Congress a report*  
 16       *on the administration of this Act during the fiscal year end-*  
 17       *ing September 30 of the preceding calendar year. All Fed-*  
 18       *eral agencies shall cooperate fully with the Secretary in pro-*  
 19       *viding information for each such report.*

20       (b) *REPORT ELEMENTS.—Each such report shall in-*  
 21       *clude in detail—*

22               (1) *a description of the implementation of the ex-*  
 23       *port control policies established by this Act, including*  
 24       *any delegations of authority by the President and any*  
 25       *other changes in the exercise of delegated authority;*

1           (2) *a description of the changes to and the year-*  
2           *end status of country tiering and the Control List;*

3           (3) *a description of the petitions filed and the*  
4           *determinations made with respect to foreign avail-*  
5           *ability and mass-market status, the set-asides of for-*  
6           *ign availability and mass-market status determina-*  
7           *tions, and negotiations to eliminate foreign avail-*  
8           *ability;*

9           (4) *a description of any enhanced control im-*  
10          *posed on an item pursuant to section 201(d);*

11          (5) *a description of the regulations issued under*  
12          *this Act;*

13          (6) *a description of organizational and proce-*  
14          *dural changes undertaken in furtherance of this Act;*

15          (7) *a description of the enforcement activities,*  
16          *violations, and sanctions imposed under this Act;*

17          (8) *a statistical summary of all applications and*  
18          *notifications, including—*

19                (A) *the number of applications and notifi-*  
20                *cations pending review at the beginning of the*  
21                *fiscal year;*

22                (B) *the number of notifications returned*  
23                *and subject to full license procedure;*

24                (C) *the number of notifications with no ac-*  
25                *tion required;*

1           (D) the number of applications that were  
2           approved, denied, or withdrawn, and the number  
3           of applications where final action was taken;  
4           and

5           (E) the number of applications and notifi-  
6           cations pending review at the end of the fiscal  
7           year;

8           (9) summary of export license data by export  
9           identification code and dollar value by country;

10          (10) an identification of processing time by—

11               (A) overall average, and

12               (B) top 25 export identification codes;

13          (11) an assessment of the effectiveness of multi-  
14          lateral regimes, and a description of negotiations re-  
15          garding export controls;

16          (12) a description of the significant differences  
17          between the export control requirements of the United  
18          States and those of other multilateral control regime  
19          members, and the specific differences between United  
20          States requirements and those of other significant  
21          supplier countries;

22          (13) an assessment of the costs of export controls;

23          (14) a description of the progress made toward  
24          achieving the goals established for the Department

1       *dealing with export controls under the Government*  
 2       *Performance Results Act; and*

3               *(15) any other reports required by this Act to be*  
 4       *submitted to the Committee on Banking, Housing,*  
 5       *and Urban Affairs of the Senate and the Committee*  
 6       *on International Relations of the House of Represent-*  
 7       *atives.*

8       (c) *FEDERAL REGISTER PUBLICATION REQUIRE-*  
 9       *MENTS.*—*Whenever information under this Act is required*  
 10       *to be published in the Federal Register, such information*  
 11       *shall, in addition, be posted on the Department of Com-*  
 12       *merce or other appropriate government website.*

13       **SEC. 702. TECHNICAL AND CONFORMING AMENDMENTS.**

14       (a) *REPEAL.*—*The Export Administration Act of 1979*  
 15       *(50 U.S.C. App. 2401 et seq.) is repealed.*

16       (b) *ENERGY POLICY AND CONSERVATION ACT.*—

17               (1) *Section 103 of the Energy Policy and Con-*  
 18       *servation Act (42 U.S.C. 6212) is repealed.*

19               (2) *Section 251(d) of the Energy Policy and*  
 20       *Conservation Act (42 U.S.C. 6271(d)) is repealed.*

21       (c) *ALASKA NATURAL GAS TRANSPORTATION ACT.*—  
 22       *Section 12 of the Alaska Natural Gas Transportation Act*  
 23       *of 1976 (15 U.S.C. 719j) is repealed.*

24       (d) *MINERAL LEASING ACT.*—*Section 28(u) of the*  
 25       *Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.*

1       (e) *EXPORTS OF ALASKAN NORTH SLOPE OIL.*—Sec-  
 2       tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))  
 3       is repealed.

4       (f) *DISPOSITION OF CERTAIN NAVAL PETROLEUM RE-*  
 5       *SERVE PRODUCTS.*—Section 7430(e) of title 10, United  
 6       States Code, is repealed.

7       (g) *OUTER CONTINENTAL SHELF LANDS ACT.*—Sec-  
 8       tion 28 of the Outer Continental Shelf Lands Act (43 U.S.C.  
 9       1354) is repealed.

10      (h) *ARMS EXPORT CONTROL ACT.*—

11           (1) Section 38 of the Arms Export Control Act  
 12           (22 U.S.C. 2778) is amended—

13                   (A) in subsection (e)—

14                           (i) in the first sentence, by striking  
 15                           “subsections (c)” and all that follows  
 16                           through “12 of such Act,” and inserting  
 17                           “subsections (b), (c), (d) and (e) of section  
 18                           503 of the Export Administration Act of  
 19                           2001, by subsections (a) and (b) of section  
 20                           506 of such Act, and by section 602 of such  
 21                           Act,”; and

22                           (ii) in the third sentence, by striking  
 23                           “11(c) of the Export Administration Act of  
 24                           1979” and inserting “503(c) of the Export  
 25                           Administration Act of 2001”; and

1           (B) in subsection (g)(1)(A)(ii), by inserting  
 2           “or section 503 of the Export Administration Act  
 3           of 2001” after “1979”.

4           (2) Section 39A(c) of the Arms Export Control  
 5           Act (22 U.S.C. 2779a(c)) is amended—

6           (A) by striking “subsections (c),” and all  
 7           that follows through “12(a) of such Act” and in-  
 8           serting “subsections (c), (d), and (e) of section  
 9           503, section 507(c), and subsections (a) and (b)  
 10          of section 506, of the Export Administration Act  
 11          of 2001”; and

12          (B) by striking “11(c)” and inserting  
 13          “503(c)”.

14          (3) Section 40(k) of the Arms Export Control Act  
 15          (22 U.S.C. 2780(k)) is amended—

16          (A) by striking “11(c), 11(e), 11(g), and  
 17          12(a) of the Export Administration Act of 1979”  
 18          and inserting “503(b), 503(c), 503(e), 506(a),  
 19          and 506(b) of the Export Administration Act of  
 20          2001”; and

21          (B) by striking “11(c)” and inserting  
 22          “503(c)”.

23       (i) OTHER PROVISIONS OF LAW.—

24          (1) Section 5(b)(4) of the Trading with the  
 25          Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by



1        *striking “section 5 of the Export Administration Act*  
 2        *of 1979, or under section 6 of that Act to the extent*  
 3        *that such controls promote the nonproliferation or*  
 4        *antiterrorism policies of the United States” and in-*  
 5        *serting “titles II and III of the Export Administra-*  
 6        *tion Act of 2001”.*

7                *(2) Section 502B(a)(2) of the Foreign Assistance*  
 8        *Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the*  
 9        *second sentence—*

10                *(A) by striking “Export Administration Act*  
 11                *of 1979” the first place it appears and inserting*  
 12                *“Export Administration Act of 2001”; and*

13                *(B) by striking “Act of 1979)” and insert-*  
 14                *ing “Act of 2001)”.*

15                *(3) Section 140(a) of the Foreign Relations Au-*  
 16        *thorization Act, Fiscal Years 1988 and 1989 (22*  
 17        *U.S.C. 2656f(a)) is amended—*

18                *(A) in paragraph (1)(B), by inserting “or*  
 19                *section 310 of the Export Administration Act of*  
 20                *2001” after “Act of 1979”; and*

21                *(B) in paragraph (2), by inserting “or 310*  
 22                *of the Export Administration Act of 2001” after*  
 23                *“6(j) of the Export Administration Act of 1979”.*

24                *(4) Section 40(e)(1) of the State Department*  
 25        *Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1))*

1        *is amended by striking “section 6(j)(1) of the Export*  
 2        *Administration Act of 1979” and inserting “section*  
 3        *310 of the Export Administration Act of 2001”.*

4            (5) *Section 205(d)(4)(B) of the State Depart-*  
 5        *ment Basic Authorities Act of 1956 (22 U.S.C.*  
 6        *305(d)(4)(B)) is amended by striking “section 6(j) of*  
 7        *the Export Administration Act of 1979” and insert-*  
 8        *ing “section 310 of the Export Administration Act of*  
 9        *2001”.*

10           (6) *Section 110 of the International Security*  
 11        *and Development Cooperation Act of 1980 (22 U.S.C.*  
 12        *2778a) is amended by striking “Act of 1979” and in-*  
 13        *serting “Act of 2001”.*

14           (7) *Section 203(b)(3) of the International Emer-*  
 15        *gency Economic Powers Act (50 U.S.C. 1702(b)(3)) is*  
 16        *amended by striking “section 5 of the Export Admin-*  
 17        *istration Act of 1979, or under section 6 of such Act*  
 18        *to the extent that such controls promote the non-*  
 19        *proliferation or antiterrorism policies of the United*  
 20        *States” and inserting “the Export Administration*  
 21        *Act of 2001”.*

22           (8) *Section 1605(a)(7)(A) of title 28, United*  
 23        *States Code, is amended by striking “section 6(j) of*  
 24        *the Export Administration Act of 1979 (50 U.S.C.*

1     *App. 2405(j))” and inserting “section 310 of the Ex-*  
 2     *port Administration Act of 2001”.*

3             *(9) Section 2332d(a) of title 18, United States*  
 4     *Code, is amended by striking “section 6(j) of the Ex-*  
 5     *port Administration Act of 1979 (50 U.S.C. App.*  
 6     *2405)” and inserting “section 310 of the Export Ad-*  
 7     *ministration Act of 2001”.*

8             *(10) Section 620H(a)(1) of the Foreign Assist-*  
 9     *ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended*  
 10    *by striking “section 6(j) of the Export Administration*  
 11    *Act of 1979 (50 U.S.C. App. 2405(j))” and inserting*  
 12    *“section 310 of the Export Administration Act of*  
 13    *2001”.*

14            *(11) Section 1621(a) of the International Finan-*  
 15    *cial Institutions Act (22 U.S.C. 262p–4q(a)) is*  
 16    *amended by striking “section 6(j) of the Export Ad-*  
 17    *ministration Act of 1979 (50 U.S.C. App. 2405(j))”*  
 18    *and inserting “section 310 of the Export Administra-*  
 19    *tion Act of 2001”.*

20            *(12) Section 1956(c)(7)(D) of title 18, United*  
 21    *States Code, is amended by striking “section 11 (re-*  
 22    *lating to violations) of the Export Administration of*  
 23    *1979” and inserting “section 503 (relating to pen-*  
 24    *alties) of the Export Administration Act of 2001”.*

1           (13) *Subsection (f) of section 491 and section*  
 2           *499 of the Forest Resources Conservation and Short-*  
 3           *age Relief Act of 1990 (16 U.S.C. 620c(f) and 620j)*  
 4           *are repealed.*

5           (14) *Section 904(2)(B) of the Trade Sanctions*  
 6           *Reform and Export Enhancement Act of 2000 is*  
 7           *amended by striking “Export Administration Act of*  
 8           *1979” and inserting “Export Administration Act of*  
 9           *2001”.*

10          (15) *Section 983(i)(2) of title 18, United States*  
 11          *Code (as added by Public Law 106–185), is*  
 12          *amended—*

13                 (A) *by striking the “or” at the end of sub-*  
 14                 *paragraph (D);*

15                 (B) *by striking the period at the end of sub-*  
 16                 *paragraph (E) and inserting “; or”; and*

17                 (C) *by inserting the following new subpara-*  
 18                 *graph:*

19                         “(F) *the Export Administration Act of*  
 20                         *2001.”.*

21          (j) *CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding*  
 22          *any other provision of law, any product that—*

23                 (1) *is standard equipment, certified by the Fed-*  
 24                 *eral Aviation Administration, in civil aircraft, and*

1           (2) *is an integral part of such aircraft, shall be*  
 2           *subject to export control only under this Act. Such*  
 3           *product shall not be subject to controls under section*  
 4           *38(b)(2) of the Arms Export Control Act (22 U.S.C.*  
 5           *2778(b)).*

6           (k) *REPEAL OF CERTAIN EXPORT CONTROLS.*—Sub-  
 7           *title B of title XII of division A of the National Defense*  
 8           *Authorization Act for Fiscal Year 1998 (50 U.S.C. App.*  
 9           *2404 note) is repealed.*

10   **SEC. 703. SAVINGS PROVISIONS.**

11           (a) *IN GENERAL.*—All delegations, rules, regulations,  
 12           orders, determinations, licenses, or other forms of adminis-  
 13           trative action which have been made, issued, conducted, or  
 14           allowed to become effective under—

15                   (1) *the Export Control Act of 1949, the Export*  
 16                   *Administration Act of 1969, the Export Administra-*  
 17                   *tion Act of 1979, or the International Emergency*  
 18                   *Economic Powers Act when invoked to maintain and*  
 19                   *continue the Export Administration regulations, or*

20                   (2) *those provisions of the Arms Export Control*  
 21                   *Act which are amended by section 702,*  
 22           *and are in effect on the date of enactment of this Act, shall*  
 23           *continue in effect according to their terms until modified,*  
 24           *superseded, set aside, or revoked under this Act or the Arms*  
 25           *Export Control Act.*

1       (b) *ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.*—

2           (1) *EXPORT ADMINISTRATION ACT.*—*This Act*  
3       *shall not affect any administrative or judicial pro-*  
4       *ceedings commenced or any application for a license*  
5       *made, under the Export Administration Act of 1979*  
6       *or pursuant to Executive Order 12924, which is pend-*  
7       *ing at the time this Act takes effect. Any such pro-*  
8       *ceedings, and any action on such application, shall*  
9       *continue under the Export Administration Act of*  
10      *1979 as if that Act had not been repealed.*

11          (2) *OTHER PROVISIONS OF LAW.*—*This Act shall*  
12      *not affect any administrative or judicial proceeding*  
13      *commenced or any application for a license made,*  
14      *under those provisions of the Arms Export Control*  
15      *Act which are amended by section 702, if such pro-*  
16      *ceeding or application is pending at the time this Act*  
17      *takes effect. Any such proceeding, and any action on*  
18      *such application, shall continue under those provi-*  
19      *sions as if those provisions had not been amended by*  
20      *section 702.*

21          (c) *TREATMENT OF CERTAIN DETERMINATIONS.*—*Any*  
22      *determination with respect to the government of a foreign*  
23      *country under section 6(j) of the Export Administration Act*  
24      *of 1979, or Executive Order 12924, that is in effect on the*  
25      *day before the date of enactment of this Act, shall, for pur-*

1 *poses of this title or any other provision of law, be deemed*  
2 *to be made under section 310 of this Act until superseded*  
3 *by a determination under such section 310.*

4       (d) *LAWFUL INTELLIGENCE ACTIVITIES.*—*The prohi-*  
5 *bitions otherwise applicable under this Act do not apply*  
6 *with respect to any transaction subject to the reporting re-*  
7 *quirements of title V of the National Security Act of 1947.*  
8 *Notwithstanding any other provision of this Act, nothing*  
9 *shall affect the responsibilities and authorities of the Direc-*  
10 *tor of Central Intelligence under section 103 of the National*  
11 *Security Act of 1947.*

12       (e) *IMPLEMENTATION.*—*The Secretary shall make any*  
13 *revisions to the Export Administration regulations required*  
14 *by this Act no later than 180 days after the date of enact-*  
15 *ment of this Act.*

**Calendar No. 26**

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 149**

**[Report No. 107–10]**

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**A BILL**

To provide authority to control exports, and for  
other purposes.

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APRIL 2, 2001

Reported with an amendment