H. R. 2004

To authorize the President to control the transfer of goods, services, technology, and software to protect the national security, and to promote the foreign policy, of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2011

Mr. Berman introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To authorize the President to control the transfer of goods, services, technology, and software to protect the national security, and to promote the foreign policy, of the United States, and for other purposes.

1 Be it enacted by the Senate and House of Representatives 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 “Technology Security and Antiboycott Act”.

6 (b) Table of Contents.—The table of contents of this Act is as follows:

7
TITLE I—TECHNOLOGY SECURITY

Sec. 101. Short title.
Sec. 102. Statement of policy.
Sec. 103. Authority of the President.
Sec. 104. Additional authorities.
Sec. 105. Transfer Policy Committee.
Sec. 106. Control lists.
Sec. 107. Licensing.
Sec. 108. Compliance assistance.
Sec. 109. Penalties.
Sec. 110. Enforcement.
Sec. 111. Administrative procedure.
Sec. 112. Annual report to Congress.
Sec. 113. Repeal.
Sec. 114. Effect on other Acts.
Sec. 115. Transition provisions.

TITLE II—ANTIBOYCOTT PROVISIONS

Sec. 201. Short title.
Sec. 202. Policy.
Sec. 203. Enforcement.

TITLE III—SANCTIONS REGARDING MISSILE PROLIFERATION AND CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION

Sec. 301. Missile proliferation control violations.
Sec. 302. Chemical and biological weapons proliferation sanctions.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONTROLLED.—Items are “controlled” if the transfer of the items is controlled under title I.

(2) CRITICAL INFRASTRUCTURE.—The term “critical infrastructure”—

(A) means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on national security, national economic se-
curity, national public health or safety, or any combination of thereof;

(B) may be publicly or privately owned; and

(C) includes gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and food and agriculture delivery systems.

(3) DOMESTIC DEFENSE INDUSTRIAL BASE.—
The term “domestic defense industrial base” has the meaning given that term in section 702 of the Defense Production Act of 1950 (50 U.S.C. App. 2152).

(4) DUAL-USE.—The term “dual-use” means capable of being applied for both civilian uses and uses that threaten the national security and foreign policy of the United States through military action, terrorist attack, or cyber attack.

(5) EXPORT ADMINISTRATION REGULATIONS.—
The term “Export Administration Regulations”
means the Export Administration Regulations as promulgated, maintained, and amended under the authority of the International Emergency Economic Powers Act and codified, as of the date of the enactment of this Act, in subchapter C of chapter VII of title 15, Code of Federal Regulations.

(6) FOREIGN PERSON.—The term “foreign person” means a person other than a United States person.

(7) GOOD.—The term “good” means any article, natural or manmade substance, material, supply, or manufactured product.

(8) ITEM.—The term “item” means any goods, technology, software, and services.

(9) PERSON.—The term “person” includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

(10) TECHNOLOGY.—The term “technology” means the information and knowhow (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture,
utilize, or reconstruct goods, including computer
software and technical data.

(11) TRANSFER.—The term “transfer” in-
cludes—

(A) an export of an item from the United
States or a transshipment of an item through
the United States, the provision of services
from the United States, and the transmission of
technology from the United States;

(B) the transfer of an item to a person
within the United States with the knowledge or
intent that the item will be exported or trans-
mitted from the United States to an unauthor-
ized recipient under this title; and

(C) a reexport of an item of United States
origin, whether or not by a person subject to
the jurisdiction of the United States.

(12) UNITED STATES.—The term “United
States”—

(A) means the several States, the District
of Columbia, and any commonwealth, territory,
or possession of the United States; and

(B) includes the outer Continental Shelf,
as defined in section 2(a) of the Outer Con-
tinental Shelf Lands Act (43 U.S.C. 1331(a)).
(13) **United States person.**—The term “United States person” means—

(A) any individual who is a United States citizen or an alien lawfully admitted for permanent residence to the United States;

(B) any business or other entity operating in the United States or organized under the laws of the United States; and

(C) any business or other entity that is organized under the laws of a foreign country but is controlled in fact by a business or entity described in subparagraph (B), as determined under regulations of the President.

(14) **Weapons of mass destruction.**—The term “weapons of mass destruction” has the means nuclear, radiological, chemical, and biological weapons and delivery systems for such weapons.

**TITLE I—TECHNOLOGY SECURITY**

**SEC. 101. SHORT TITLE.**

This title may be cited as the “Technology Security Act”.

**SEC. 102. STATEMENT OF POLICY.**

The following is the policy of the United States:
(1) The national security and foreign policy of the United States require that the transfer of items be controlled for the following purposes:

(A) To prevent the access to such items for use in—

(i) the proliferation of weapons of mass destruction or of advanced conventional weapons;

(ii) the acquisition of destabilizing numbers or types of conventional weapons;

(iii) acts of terrorism;

(iv) military programs that could pose a threat to the security of the United States or its allies; or

(v) activities undertaken specifically to cause significant interference with or disruption of critical infrastructure.

(B) To preserve the qualitative military superiority of the United States.

(C) To maintain the ability of the United States to collect information and intelligence in order to protect the national security of the United States.

(D) To sustain the domestic defense industrial base.
(E) To protect the supply in the United States of critical raw materials and manufactured items.

(F) To carry out the foreign policy of the United States, including the protection of human rights and the promotion of democracy.

(G) To carry out obligations and commitments under international agreements and arrangements, including multilateral export control regimes.

(2) The national security of the United States requires that the United States maintain its leadership in the science, technology, and manufacturing sectors. Such leadership requires that United States persons are competitive in global markets. The impact of the implementation of this title on such leadership and competitiveness must be evaluated on an ongoing basis and applied in imposing controls under sections 103 and 104 to avoid negatively affecting such leadership.

(3) The national security and foreign policy of the United States require that the United States participate in multilateral organizations and agreements regarding export controls on items that are consistent with the policy of the United States, and
take all the necessary steps to secure the adoption
and enforcement, by the governments of other coun-
tries, of export controls on items that are consistent
with such policy.

(4) The authority under this title may be exer-
cised only in furtherance of all the objectives set
forth in paragraphs (1), (2), and (3).

SEC. 103. AUTHORITY OF THE PRESIDENT.

(a) Authority.—

(1) In general.—In order to carry out the
policy set forth in paragraphs (1), (2), and (3) of
section 102, the President shall control the transfer
of items by United States persons, wherever located,
and by foreign persons who are subject to the juris-
diction of the United States.

(2) Powers.—In carrying out paragraph (1),
the President may investigate, regulate, direct and compel, nullify, void, prevent, or prohibit any acqui-
sition, holding, withholding, use, transfer, with-
drawal, transportation, exportation, reexportation of,
or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving,
items in which any foreign country or a national
thereof has any interest by any person, or with re-
spect to any property, subject to the jurisdiction of
the United States.

(b) REQUIREMENTS.—In exercising authority under
this title, the President shall impose controls to achieve
the following objectives:

(1) To prevent the transfer of items subject to
the controls that would pose a risk to the national
security or foreign policy of the United States in any
manner described under section 102(1)(A).

(2) To secure the cooperation of other govern-
ments and multilateral organizations to impose con-
trol systems that are consistent, to the extent pos-
sible, with the controls imposed under subsection
(a).

(3) To maintain the leadership of the United
States in science, engineering, technology research
and development, and manufacturing.

(4) To sustain the viability of commercial firms,
academic institutions, and research establishments,
and maintain the skilled workforce of such firms, in-
stitutions, and establishments, that are necessary to
preserving the leadership of the United States de-
scribed in paragraph (3).
(5) To sustain the domestic defense industrial base, both with respect to current and future defense requirements.

(6) To enforce the controls through regulations, requirements for compliance, lists of controlled items, lists of foreign persons who threaten the national security or foreign policy of the United States, and guidance in a form that facilitates compliance by United States persons, in particular academic institutions, scientific and research establishments, and small- and medium-sized businesses.

SEC. 104. ADDITIONAL AUTHORITIES.

(a) In General.—In carrying out this title, the President shall—

(1) establish and maintain lists of items that are subject to controls under this title by reason of the dual-use technology, capability, performance, or characteristics of the items and that are controlled under section 103(a);

(2) establish and maintain lists of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in section 102(1)(A) and to whom transfers of items are controlled;
(3) prohibit unauthorized transfers of controlled items;

(4) prohibit transfers of any controlled items to any foreign person or end-use listed under paragraph (2);

(5) require licenses for transfers of controlled items, including imposing conditions or restrictions on United States persons and foreign persons with respect to such licenses;

(6) require measures for compliance;

(7) require and obtain such information from United States persons and foreign persons as is necessary to carry out this title;

(8) require advance notice before an item is transferred, as an alternative to requiring a license;

(9) require, to the extent feasible, identification of items subject to controls under this title in order to facilitate the enforcement of such controls;

(10) inspect, search, detain, or seize outgoing items, in any form, that are subject to controls under this title, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported in violation of this title;

(11) monitor shipments, or other means of transfer;
(12) keep the public fully apprised of changes in policy, regulations, and procedures established under this title;

(13) appoint technical advisory committees in accordance with the Federal Advisory Committee Act; and

(14) undertake any other action as is necessary to carry out this title and is not otherwise prohibited by law.

(b) RELATIONSHIP TO IEEPA.—The authority under this title may not be used to regulate or prohibit under this title the transfer of any item that may not be regulated or prohibited under paragraph (1), (2), or (4) of section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b) (1), (2), and (4)).

(c) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—

(1) LICENSE REQUIREMENT.—A license shall be required for the transfer of items to a country if the President has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

(B) The transfer of such items could make a significant contribution to the military poten-
tial of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) NOTIFICATION TO CONGRESS.—The President shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any license required by paragraph (1).

(3) PUBLICATION IN FEDERAL REGISTER.—Each determination of the President under paragraph (1)(A) shall be published in the Federal Register.

(4) RESCISSION OF DETERMINATION.—A determination of the President under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—
(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;
(ii) that government is not supporting acts of international terrorism; and
(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—
(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and
(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(5) USE OF TERRITORY AS SANCTUARY FOR TERRORISTS.—

(A) IN GENERAL.—As used in paragraph (1), the term “repeatedly provided support for acts of international terrorism” shall include the recurring use of any part of the territory of
the country as a sanctuary for terrorists or ter-
rorist organizations.

(B) DEFINITIONS.—In this paragraph—

(i) the term “territory of a country”

means the land, waters, and airspace of
the country; and

(ii) the term “sanctuary” means an

area in the territory of a country—

(I) that is used by a terrorist or
terrorist organization—

(aa) to carry out terrorist

activities, including training, fi-
nancing, and recruitment; or

(bb) as a transit point; and

(II) the government of which ex-
pressly consents to, or with knowl-
edge, allows, tolerates, or disregards
such use of its territory.

(6) CONTENTS OF NOTIFICATION OF LI-
CENSE.—The President shall include in the notifica-
tion required by paragraph (2)—

(A) a detailed description of the items to

be offered, including a brief description of the
capabilities of any article for which a license to
transfer the items is sought;
(B) the reasons why the foreign country or international organization to which the transfer is proposed to be made needs the items that are the subject of such transfer, and a description of the manner in which such country or organization intends to use such items;

(C) the reasons why the proposed transfer is in the national interest of the United States;

(D) an analysis of the impact of the proposed transfer on the military capabilities of the foreign country or international organization to which such transfer would be made;

(E) an analysis of the manner in which the proposed transfer would affect the relative military strengths of countries in the region to which the items that are the subject of such transfer would be delivered and whether other countries in the region have comparable kinds and amounts of items; and

(F) an analysis of the impact of the proposed transfer on the relations of the United States with the countries in the region to which the items that are the subject of such transfer would be delivered.
SEC. 105. TRANSFER POLICY COMMITTEE.

(a) Establishment.—The President may establish a Transfer Policy Committee (in this section referred to as the "Committee"), composed of senior officials of Federal departments, agencies, and offices to which the President delegates authority under this title, as the President considers appropriate, to carry out the purposes set forth in subsection (b).

(b) Purposes.—

(1) In general.—The purposes of the Committee are—

(A) to advise the President with respect to—

(i) identifying specific threats to the national security and foreign policy that the authority of this title may be used to address; and

(ii) exercising the authority under this title to implement policies, regulations, procedures, and actions that are necessary to effectively counteract those threats;

(B) pursuant to a delegation of authority by the President, to review and approve—

(i) criteria for including items on, and removing such an item from, a list of con-
trolled items, and information established under this title;

(ii) an interagency procedure for compiling and amending any list described in clause (i);

(iii) criteria for including a person on a list of persons to whom transfers of items are prohibited or restricted under this title;

(iv) standards for compliance by persons subject to this title; and

(v) policies and procedures for monitoring transfers of items controlled under this title;

(C) to receive information and advice from any United States Government official regarding any matter with respect to which the Committee has responsibilities; and

(D) to obtain an independent evaluation on a periodic basis of the effectiveness of the implementation of this title in carrying out the policy set forth in section 102.

(2) Authority to seek information.—The Committee may, in carrying out its functions, seek
information and advice from experts who are not officers or employees of the Federal Government.

(3) **TRANSMITTAL AND IMPLEMENTATION OF EVALUATIONS.**—The results of the independent evaluations conducted pursuant to paragraph (1)(D) shall be transmitted to the President and the Congress, in classified form if necessary. Subject to the delegation of authority by the President, the Committee shall determine, direct, and ensure that improvements recommended in the evaluations are implemented.

**SEC. 106. CONTROL LISTS.**

The President shall, through the Technology Transfer Policy Committee, to the maximum extent possible, ensure that—

(1) a process is established for regular review of each list established under section 104(a)(1) and that such lists are updated periodically to ensure that new items are adequately controlled, and that the level of control of items on the lists are adjusted as conditions change;

(2) information and expertise is obtained from persons from relevant Federal departments, agencies, and offices and persons outside the Government who have technical expertise, with respect to the
characteristics of the items considered for each list
established under section 104(a)(1) and the effect of
controlling the items on addressing the policy set
forth in section 102;

(3) the control lists established under section
104(a)(1) identify each entry that has been included
by virtue of the participation of the United States in
a multilateral regime, organization, or group the
purpose of which is consistent with and supports the
policy of the United States under this title relating
to the control of transfers of items; and

(4) each such list is published in a form that
facilitates compliance with it, in particular by small
and medium-sized businesses and academic institu-
tions.

SEC. 107. LICENSING.

The President shall, through the Technology Trans-
fer Policy Committee, establish a procedure for licensing
the transfer of items controlled under this title in order
to carry out the policy set forth in section 102 and the
requirements set forth in section 103(b). The procedure
shall, to the maximum extent possible, ensure that—

(1) license applications are considered and deci-
sions made with the participation of departments,
agencies, and offices that have delegated functions under this title; and

(2) licensing decisions are made in an expeditious manner, with transparency to applicants on the status of license processing and the reason for denying any license.

SEC. 108. COMPLIANCE ASSISTANCE.

(a) System for Seeking Assistance.—The President may establish a system to provide United States persons with assistance in complying with this title, which may include a mechanism for providing information, in classified form as appropriate, on foreign persons who are potential customers, suppliers, or business partners with respect to items controlled under this title, in order to further ensure the prevention of the transfer of items that may pose a threat to the national security or foreign policy of the United States.

(b) Security Clearances.—In order to carry out subsection (a), the President may issue appropriate security clearances to persons described in paragraph (1) who are responsible for complying with this title.

SEC. 109. PENALTIES.

(a) Unlawful Acts.—It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or
cause a violation of this title or of any regulation, order, or license issued under this title.

(b) CRIMINAL PENALTY.—A person who commits, attempts to commit, or conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a), with knowledge or intent that the items that are the subject of the violation would be transferred to a person who is not authorized under this title to receive the items, or would be applied for a use described in section 102(1)(A), shall, upon conviction, be fined not more than $1,000,000, or, if a natural person, be imprisoned for not more than 20 years, or both.

c) CIVIL PENALTIES.—

(1) Authority.—The President may impose the following civil penalties on a person for each violation by that person of this title or any regulation, order, or license issued under this title, for each violation:

(A) A fine of not more than $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under this title to the person.
(C) A prohibition on the person’s ability to transfer outside the United States any items, whether or not subject to controls under this title.

(2) PROCEDURES.—Any civil penalty under this subsection may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code, and shall be subject to judicial review in accordance with chapter 7 of such title.

(3) STANDARDS FOR LEVELS OF CIVIL PENALTY.—The President may by regulation provide standards for establishing levels of civil penalty under this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator’s record of cooperation with the Government in disclosing the violation.

(d) CRIMINAL FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

(1) FORFEITURE.—Any person who is convicted under subsection (b) of a violation of a control imposed under section 103 (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—
(A) any of that person’s interest in, security of, claim against, or property or contractual rights of any kind in the tangible items that were the subject of the violation;

(B) any of that person’s interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the violation; and

(C) any of that person’s property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) PROCEDURES.—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(e) PRIOR CONVICTIONS.—

(1) LICENSE BAR.—
(A) IN GENERAL.—The President may—

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) to transfer outside the United States any item, whether or not subject to controls under this title, for a period of up to 10 years beginning on the date of the conviction; and

(ii) revoke any license to transfer items that was issued under this title and in which such person has an interest at the time of the conviction.

(B) VIOLATIONS.—The violations referred to in subparagraph (A) are any criminal violation of—

(i) this title (or any regulation, license, or order issued under this title);

(ii) any regulation, license, or order issued under the International Emergency Economic Powers Act;

(iii) section 793, 794, or 798 of title 18, United States Code;

(iv) section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)); or
(v) section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(2) APPLICATION TO OTHER PARTIES.—The President may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in subsection (c)(2).

(f) OTHER AUTHORITIES.—Nothing in subsection (c), (d), or (e) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this title, or any regulation, order, or license issued under this title;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this title, or any regulation, order, or license issued under this title; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).
SEC. 110. ENFORCEMENT.

(a) AUTHORITIES.—In order to enforce this title, the President may—

(1) issue regulations, orders, and guidelines;

(2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this title;

(3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;

(4) conduct investigations (including undercover) in the United States and in other countries, including intercepting any wire, oral, and electronic communications, conducting electronic surveillance, using pen registers and trap and trace devices, and carrying out acquisitions, to the extent authorized under chapters 119, 121, and 206 of title 18, United States Code, and other applicable laws of the United States;

(5) inspect, search, detain, or seize items, in any form, that are subject to controls under this title, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported in violation of this title;
(6) conduct prelicense inspections and post-shipment verifications; and

(7) execute warrants and make arrests.

(b) Enforcement of Subpoenas.—In the case of contumacy by, or refusal to obey a subpoena issued to, any person under subsection (a)(3), a district court of the United States, after notice to such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, that are the subject of the subpoena. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Best Practices Guidelines.—

(1) In General.—The President, in consultation with the Interagency Transfer Policy Committee established under section 105, should publish and update “best practices” guidelines to assist persons in developing and implementing, on a voluntary basis, effective export control programs in compliance with the regulations issued under this title.

(2) Export Compliance Program.—The implementation by a person of an effective export compliance program and a high quality overall export compliance effort by a person should ordinarily be
given weight as mitigating factors in a civil penalty
action against the person under this title.

(d) Reference to Enforcement.—For purposes
of this section, a reference to the enforcement of, or a vio-
lation of, this title includes a reference to the enforcement
or a violation of any order or license issued pursuant to
this title.

(e) Immunity.—A person shall not be excused from
complying with any requirements under this section be-
because of the person’s privilege against self-incrimination,
but the immunity provisions of section 6002 of title 18,
United States Code, shall apply with respect to any indi-
vidual who specifically claims such privilege.

(f) Confidentiality of Information.—

(1) Exemptions from disclosure.—

(A) In general.—Information obtained
under this title may be withheld from disclosure
only to the extent permitted by statute, except
that information described in subparagraph (B)
shall be withheld from public disclosure and
shall not be subject to disclosure under section
552(b)(3) of title 5, United States Code, unless
the release of such information is determined by
the President to be in the national interest.
(B) INFORMATION DESCRIBED.—Information described in this subparagraph is information submitted or obtained in connection with an application for a license to transfer items, other transfer authorization (or recordkeeping or reporting requirement), enforcement activity, or other operations under this title, including—

(i) the license application, license or other transfer authorization itself,

(ii) classification requests,

(iii) information or evidence obtained in the course of any investigation, and

(iv) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

(2) INFORMATION TO THE CONGRESS AND GAO.—

(A) IN GENERAL.—Nothing in this section shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office.

(B) AVAILABILITY TO THE CONGRESS.—

(i) IN GENERAL.—Any information obtained at any time under any provision of the Export Administration Act of 1979
(including such Act as continued in effect pursuant to the International Emergency Economic Powers Act), under previous Acts regarding the control of exports, under the Export Administration Regulations, or under this title, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—No such committee or subcommittee, or member thereof, may disclose any information obtained under the Export Administration Act of 1979 (including such Act as continued in effect pursuant to the International Emergency Economic Powers Act), under previous Acts regarding the control of exports, under the Export Administration Regulations, or under this title, that is submitted on a confidential basis unless the full com-
mittee determines that the withholding of
that information is contrary to the national
interest.

(C) AVAILABILITY TO GAO.—

(i) IN GENERAL.—Information de-
scribed in clause (i) of subparagraph (B)
shall be subject to the limitations con-
tained in section 716 of title 31, United
States Code.

(ii) PROHIBITION ON FURTHER DIS-
closure.—An officer or employee of the
Government Accountability Office may not
disclose, except to the Congress in accord-
ance with this paragraph, any such infor-
mation that is submitted on a confidential
basis or from which any individual can be
identified.

(3) INFORMATION SHARING.—

(A) IN GENERAL.—Any department, agen-
ey, or office that obtains information that is rel-
evant to the enforcement of this title, including
information pertaining to any investigation,
shall furnish such information to each depart-
ment, agency, or office with enforcement re-
sponsibilities under this section to the extent
consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities.

(B) EXCEPTIONS.—The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code, and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)), may be disclosed only as authorized by that section.

(C) EXCHANGE OF INFORMATION.—The President shall ensure that the heads of departments, agencies, and offices with enforcement authorities under this title, consistent with protection of law enforcement and its sources and methods—

(i) exchange any licensing and enforcement information with one another that is necessary to facilitate enforcement efforts under this section; and

(ii) consult on a continuing basis with one another and with the head of other departments, agencies, and offices that obtain information subject to this paragraph,
in order to facilitate the exchange of such information.

(D) INFORMATION SHARING WITH FEDERAL AGENCIES.—Licensing or enforcement information obtained under this title may be shared with heads of departments, agencies, and offices that do not have enforcement authorities under this title on a case-by-case basis at the discretion of the President. Such information may be shared only when the President makes a determination that the sharing of this information is in the national interest.

(g) REPORTING REQUIREMENTS.—In the administration of this section, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this section, to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(h) CIVIL FORFEITURE.—

(1) IN GENERAL.—Any tangible items seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United
States in accordance with applicable law, except that property seized shall be returned if the property owner is not found guilty of a civil or criminal violation under section 109.

(2) Procedures.—Any seizure or forfeiture under this subsection shall be carried in accordance with the procedures set forth in section 981 of title 18, United States Code.

SEC. 111. ADMINISTRATIVE PROCEDURE.

The functions exercised under this title shall be subject to sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

SEC. 112. ANNUAL REPORT TO CONGRESS.

(a) In General.—The President shall submit to Congress, by December 31 of each year, a report on the implementation of this title during the preceding fiscal year. The report shall also include an analysis of—

(1) the effect of controls imposed under this title on transfers of items in addressing threats to the national security or foreign policy of the United States;

(2) the impact of such controls on the scientific and technological leadership of the United States; and
(3) the consistency with such controls of export controls imposed by other countries.

(b) Submission in Classified.—The report under subsection (a) may be submitted in classified form, in whole or in part, if necessary.

SEC. 113. REPEAL.

The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

SEC. 114. EFFECT ON OTHER ACTS.

(a) In General.—Except as otherwise provided in this title, nothing contained in this title shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) Coordination of Controls.—The authority granted to the President under this title shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) Civil Aircraft Equipment.—

(1) In General.—Notwithstanding any other provision of law, any product described in paragraph (2) shall be subject to export controls exclusively under this title. Any such product shall not be sub-
ject to controls under section 38(b)(2) of the Arms
Export Control Act.

(2) PRODUCTS DESCRIBED.—A product de-
scribed in this paragraph is a product that—

(A) is standard equipment certified by the
Federal Aviation Administration, in civil air-
craft and is an integral part of such aircraft;
and

(B) is to be transferred to a country other
than a country to which transfers of items are
controlled under this title.

(d) NONPROLIFERATION CONTROLS.—Nothing in
this title shall be construed to supersede the procedures
published by the President pursuant to section 309(c) of
the Nuclear Non-Proliferation Act of 1978.

SEC. 115. TRANSITION PROVISIONS.

(a) IN GENERAL.—All delegations, rules, regulations,
orders, determinations, licenses, or other forms of admin-
istrative action which have been made, issued, conducted,
or allowed to become effective under the Export Adminis-
tration Act of 1979 and are in effect at the time this title
takes effect, shall continue in effect according to their
terms until modified, superseded, set aside, or revoked
under this title.
(b) Administrative and Judicial Proceedings.—This title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979, that is pending at the time this title takes effect. Any such proceedings, and any action on such application, shall continue under the Export Administration Act of 1979 as if that Act had not been repealed.

(c) Certain Determinations and References.—

(1) State sponsors of terrorism.—Any determination that was made under section 6(j) of the Export Administration Act of 1979, and is in effect on the day before the effective date of this title, shall continue in effect as if the determination had been made under section 104(c) of this Act.

(2) Reference.—Any reference in any other provision of law to a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979, is a government that has repeatedly provided support for acts of international terrorism shall be deemed to refer to a country the government of which the President has determined, for purposes of section 104(c) of this Act, is a govern-
ment that has repeatedly provided support for acts
of international terrorism.

**TITLE II—ANTIBOYCOTT
PROVISIONS**

**SEC. 201. SHORT TITLE.**

This title may be cited as the “Antiboycott Act”.

**SEC. 202. POLICY.**

(a) In General.—It is the policy of the United
States—

(1) to oppose restrictive trade practices or boy-
cotts fostered or imposed by foreign countries
against other countries friendly to the United States
or against any United States person;

(2) to encourage and, in specified cases, require
United States persons engaged in the export of
goods or technology or other information to refuse to
take actions, including furnishing information or en-
tering into or implementing agreements, which have
the effect of furthering or supporting the restrictive
trade practices or boycotts fostered or imposed by
any foreign country against a country friendly to the
United States or against any United States person;

and
(3) to foster international cooperation and the
development of international rules and institutions
to assure reasonable access to world supplies.

(b) Prohibitions and Exceptions.—

(1) Prohibitions.—In order to carry out the
purposes set forth in subsection (a), the President
shall issue regulations prohibiting any United States
person, with respect to that person’s activities in the
interstate or foreign commerce of the United States,
from taking or knowingly agreeing to take any of
the following actions with intent to comply with, fur-
ther, or support any boycott fostered or imposed by
a foreign country against a country that is friendly
to the United States and is not itself the object of
any form of boycott pursuant to United States law
or regulation:

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

(B) Refusing, or requiring any other per-
son to refuse, to employ or otherwise discrimi-
nate against any United States person on the
basis of the race, religion, sex, or national ori-
gin of that person or of any owner, officer, di-
rector, or employee of such person.

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

(D) Furnishing information (other than
furnishing normal business information in a
commercial context, as defined by the Sec-
retary) about whether any person has, has had,
or proposes to have any business relationship
(including a relationship by way of sale, pur-
chase, legal or commercial representation, ship-
ping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person that is known or believed to be restricted from having any business relationship with or in the boycotting country.

(E) Furnishing information about whether any person is a member of, has made a contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement the compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) EXCEPTIONS.—Regulations issued pursuant to paragraph (1) shall provide exceptions for—
(A) compliance, or agreement to comply, with requirements—

(i) prohibiting the import of items from the boycotted country or items produced or provided, by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

(ii) prohibiting the shipment of items to the boycotting country on a carrier of the boycotted country or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) compliance, or agreement to comply, with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment, or the name of the provider of other services, except that, for purposes of applying any exception under this subparagraph, no information knowingly furnished or conveyed in response to such requirements may be stated in negative, black-listing, or similar exclusionary terms, other than with respect to carriers or route of ship-
ment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) compliance, or agreement to comply, in the normal course of business with the unilateral and specific selection by a boycotting country, or a national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific items which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) compliance, or agreement to comply, with export requirements of the boycotting country relating to shipment or transshipment of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual, or agreement by an individual to comply, with the immigration or passport requirements of any country with respect to such individual or any member of such individual’s family or with requests for
information regarding requirements of employ-
ment of such individual within the boycotting
country; and

(F) compliance by a United States person
resident in a foreign country, or agreement by
such a person to comply, with the laws of the
country with respect to the person's activities
exclusively therein, and such regulations may
contain exceptions for such resident complying
with the laws or regulations of the foreign coun-
try governing imports into such country of
trademarked, trade-named, or similarly specifi-
cally identifiable products, or components of
products for such person's own use, including
the performance of contractual services within
that country.

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

(4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
AFFECTED.—Nothing in this subsection may be con-
strued to supersede or limit the operation of the
antitrust or civil rights laws of the United States.
(5) Evasion.—This section applies to any transaction or activity undertaken by or through a United States person or any other person with intent to evade the provisions of this section or the regulations issued pursuant to this subsection. The regulations issued pursuant to this section shall expressly provide that the exceptions set forth in paragraph (2) do not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(c) Foreign Policy Controls.—In addition to the regulations issued pursuant to subsection (b), regulations issued under title I to carry out the policy set forth in section 102(3) shall implement the policies set forth in section.

(d) Reports.—Regulations issued under this section shall require that any United States person receiving a request to furnish information, enter into or implement an agreement, or take any other action referred to in subsection (a) shall report that request to the Secretary of Commerce, together with any other information concerning the request that the Secretary determines appropriate. The person shall also submit to the Secretary of Commerce a statement regarding whether the person in-
tends to comply, and whether the person has complied, with the request. Any report filed pursuant to this sub-
section shall be made available promptly for public inspec-
tion and copying, except that information regarding the quantity, description, and value of any item to which such report relates may be kept confidential if the Secretary of Commerce determines that disclosure of that information would place the United States person involved at a competitive disadvantage. The Secretary of Commerce shall periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, considers appropriate to carry out the purposes set forth in subsection (a).

(c) **Preemption.**—The provisions of this section and the regulations issued under this section shall preempt any 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 boy-
cots fostered or imposed by foreign countries against other countries.

**SEC. 203. ENFORCEMENT.**

(a) **Civil Penalties.**—The President may impose the following civil penalties on a person who violates section 202 or any regulation issued under this section:

(1) A fine of not more than $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) Revocation of a license issued under title I to the person.

(3) A prohibition of the person’s right and ability to export or otherwise transfer outside the United States any good, service, or information, whether or not subject to controls under this Act.

(b) **Procedures.**—Any civil penalty under this section may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code, and shall be subject to judicial review in accordance with chapter 7 of such title.

(e) **Standards for Levels of Civil Penalty.**—The President may by regulation provide standards for establishing levels of civil penalty under this section based
upon the seriousness of the violation, the culpability of the
violator, and the violator’s record of cooperation with the
Government in disclosing the violation.

TITLE III—SANCTIONS REGARDING MISSILE PROLIFERATION
AND CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION

SEC. 301. MISSILE PROLIFERATION CONTROL VIOLATIONS.

(a) Violations by United States Persons.—

(1) Sanctions.—

(A) Sanctionable Activity.—The President shall impose the applicable sanctions de-
scribed in subparagraph (B) if the President determines that a United States person know-
ingly—

(i) exports, transfers, or otherwise en-
gages in the trade of any item on the
MTCR Annex, in violation of the provi-
sions of section 38 (22 U.S.C. 2778) or
chapter 7 of the Arms Export Control Act,
title I of this Act, or any regulations or or-
ders issued under any such provisions,

(ii) conspires to or attempts to engage
in such export, transfer, or trade, or
(iii) facilitates such export, transfer, or trade by any other person.

(B) SANCTIONS.—The sanctions that apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under title I.

(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the transfer of which is controlled under title I.

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the President may pursue any other appropriate penalties under section 109 of this Act.
(3) WAIVER.—The President may waive the im-
position of sanctions under paragraph (1) on a per-
son with respect to a product or service if the Presi-
dent certifies to the Congress that—

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

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

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

(1) SANCTIONS.—

(A) SANCTIONABLE ACTIVITY.—Subject to
paragraphs (3) through (7), the President shall
impose the applicable sanctions under subpara-
graph (B) on a foreign person if the Presi-
dent—

(i) determines that a foreign person
knowingly—

(I) exports, transfers, or other-
wise engages in the trade of any
MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under title I;

(II) conspires to or attempts to engage in such export, transfer, or trade; or

(III) facilitates such export, transfer, or trade by any other person; or

(ii) has made a determination with respect to the foreign person under section 73(a) of the Arms Export Control Act.

(B) SANCTIONS.—The sanctions that apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of mis-
sile equipment or technology the transfer of which is controlled under title I.

(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the transfer of which is controlled under title I.

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

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

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

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

(4) ADVISORY OPINIONS.—The President may,
upon the request of any person, issue an advisory
opinion to that person as to whether a proposed ac-
tivity by that person would subject that person to
sanctions under this subsection. Any person who re-
lies in good faith on such an advisory opinion which
states that the proposed activity would not subject
a person to such sanctions, and any person who
thereafter engages in such activity, may not be made
subject to such sanctions on account of such activity.

(5) WAIVER AND REPORT TO CONGRESS.—

(A) WAIVER AUTHORITY.—In any case
other than one in which an advisory opinion has
been issued under paragraph (4) stating that a
proposed activity would not subject a person to
sanctions under this subsection, the President
may waive the application of paragraph (1) to
a foreign person if the President determines
that such waiver is essential to the national security of the United States.

(B) Notification and report to Congress.—In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(6) Additional waiver.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

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

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.
(7) **Exceptions.**—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

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

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;
(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(c) Definitions.—In this section:

(1) Defense articles; defense services.—The terms “defense articles” and “defense services” mean those items on the United States Munitions List or are otherwise controlled under the Arms Export Control Act.

(2) Missile.—The term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capa-
bility, as well as the specially designed production facilities for these systems.

(3) **Missile technology control regime**; MTCR.—The term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(4) **MTCR adherent**.—The term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR.

(5) **MTCR Annex**.—The term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(6) **Missile equipment or technology**; MTCR equipment or technology.—The terms “missile equipment or technology” and “MTCR
equipment or technology” mean those items listed in category I or category II of the MTCR Annex.

(7) FOREIGN PERSON.—The term “foreign person” means any person other than a United States person.

(8) PERSON.—The term “person” means a natural person, a corporation, business association, partnership, society, or trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.

(9) OTHERWISE ENGAGED IN THE TRADE OF.—The term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

SEC. 302. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (e) if the President determines that a foreign person has knowingly and materially contributed—
(A) through the export from the United States of any item that is subject to the jurisdiction of the United States under this title, or
(B) through the export from any other country of any item that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this title,
to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—
(A) any foreign country that the President determines has, at any time after January 1, 1980—
(i) used chemical or biological weapons in violation of international law;
(ii) used lethal chemical or biological weapons against its own nationals; or
(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);
(B) any foreign country whose government
is determined for purposes of section 104(c) of
this Act to be a government that has repeatedly
provided support for acts of international ter-
rorism; or

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

(3) Persons against which sanctions are
to be imposed.—A sanction shall be imposed pur-
suant to paragraph (1) on—

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

(B) any successor entity to that foreign
person; and

(C) any foreign person that is a parent,
subsidiary, or affiliate of that foreign person if
that parent, subsidiary, or affiliate knowingly
assisted in the activities which were the basis of
that determination.

(b) Consultations With and Actions by For-
eign Government of Jurisdiction.—

(1) Consultations.—If the President makes
the determinations described in subsection (a)(1)
with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of a sanction pursuant to this section.

(2) Actions by Government of Jurisdiction.—In order to pursue such consultations with that government, the President may delay imposition of a sanction pursuant to this section for a period of up to 90 days. Following such consultations, the President shall impose the sanction unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of the sanction for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) Report to Congress.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appro-
priate government under this subsection, and the
basis for any determination under paragraph (2) of
this subsection that such government has taken spe-
cific corrective actions.

(c) Sanction.—

(1) Description of Sanction.—The sanction
to be imposed pursuant to subsection (a)(1) is, ex-
cept as provided that the United States Government
shall not procure, or enter into any contract for the
procurement of, any goods or services from any per-
son described in subsection (a)(3).

(2) Exceptions.—The President shall not be
required to apply or maintain a sanction under this
section—

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

(i) under existing contracts or sub-
contracts, including the exercise of options
for production quantities to satisfy United
States operational military requirements;

(ii) if the President determines that
the person or other entity to which the
sanctions would otherwise be applied is a
sole source supplier of the defense articles
or services, that the defense articles or
services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

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

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.
(d) **Termination of Sanctions.**—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of one sanction and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) **Waiver.**—

(1) **Criterion for Waiver.**—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) **Notification of and Report to Congress.**—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the ra-
tionale and circumstances which led the President to exercise the waiver authority.

(f) **DEFINITIONS.**—In this section:

(1) **DEFENSE ARTICLES; DEFENSE SERVICES.**—

The terms “defense articles” and “defense services” mean those items on the United States Munitions List or are otherwise controlled under the Arms Export Control Act.

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

(A) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

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

(3) **PARENT, SUBSIDIARY, AFFILIATE.**—An entity is—

(A) a “parent” of a foreign person if that entity owns or controls that foreign person;

(B) a “subsidiary” of a foreign person if that entity is owned or controlled by that foreign person; and
(C) and “affiliate” of a foreign person if the entity and the foreign person are under common ownership or control by a third entity.