

115TH CONGRESS
2D SESSION

H. R. 5040

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2018

Mr. ROYCE of California (for himself and Mr. ENGEL) 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 export, reexport, and transfer of commodities, software, and technology 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 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 Control Reform Act of 2018”.

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—AUTHORITY AND ADMINISTRATION OF CONTROLS

Sec. 101. Short title.
 Sec. 102. Statement of policy.
 Sec. 103. Authority of the President.
 Sec. 104. Additional authorities.
 Sec. 105. Administration of export controls.
 Sec. 106. Control lists.
 Sec. 107. Licensing.
 Sec. 108. Compliance assistance.
 Sec. 109. Requirements to identify and control emerging critical technologies in
 export control regulations.
 Sec. 110. Penalties.
 Sec. 111. Enforcement.
 Sec. 112. Administrative procedure.
 Sec. 113. Annual report to Congress.
 Sec. 114. Repeal.
 Sec. 115. Effect on other Acts.
 Sec. 116. Transition provisions.

TITLE II—ANTI-BOYCOTT ACT OF 2018

Sec. 201. Short title.
 Sec. 202. Statement of policy.
 Sec. 203. Foreign boycotts.
 Sec. 204. 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.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) CONTROLLED.—The term “controlled”,
 6 with respect to an item, means the export, reexport,
 7 or transfer of the item is controlled under title I.
 8 (2) DUAL-USE.—The term “dual-use”, with re-
 9 spect to an item, means the item has civilian appli-

1 cations and military, terrorism, or weapons of mass
2 destruction-related applications.

3 (3) EXPORT.—The term “export”, with respect
4 to an item subject to controls under title I, in-
5 cludes—

6 (A) the shipment or transmission of the
7 item out of the United States, including the
8 sending or taking of the item out of the United
9 States, in any manner; and

10 (B) the release or transfer of technology or
11 source code relating to the item to a foreign
12 person in the United States.

13 (4) EXPORT ADMINISTRATION REGULATIONS.—
14 The term “Export Administration Regulations”
15 means—

16 (A) the Export Administration Regulations
17 as promulgated, maintained, and amended
18 under the authority of the International Emer-
19 gency Economic Powers Act and codified, as of
20 the date of the enactment of this Act, in sub-
21 chapter C of chapter VII of title 15, Code of
22 Federal Regulations; or

23 (B) regulations that are promulgated,
24 maintained, and amended under the authority

1 of title I on or after the date of the enactment
2 of this Act.

3 (5) FOREIGN PERSON.—The term “foreign per-
4 son” means a person that is not a United States
5 person.

6 (6) ITEM.—The term “item” means a com-
7 modity, software, or technology.

8 (7) PERSON.—

9 (A) IN GENERAL.—The term “person”
10 means—

11 (i) a natural person;

12 (ii) a corporation, business associa-
13 tion, partnership, society, trust, financial
14 institution, insurer, underwriter, guar-
15 antor, and any other business organization,
16 any other nongovernmental entity, organi-
17 zation, or group, and any governmental en-
18 tity operating as a business enterprise; and

19 (iii) any successor to any entity de-
20 scribed in clause (ii).

21 (B) APPLICATION TO GOVERNMENTAL EN-
22 TITIES.—The term “person” does not include a
23 government or governmental entity that is not
24 operating as a business enterprise.

1 (8) REEXPORT.—The term “reexport”, with re-
2 spect to an item subject to controls under title I, in-
3 cludes—

4 (A) the shipment or transmission of the
5 item from a foreign country to another foreign
6 country, including the sending or taking of the
7 item from the foreign country to the other for-
8 eign country, in any manner; and

9 (B) the release or transfer of technology or
10 source code relating to the item to a foreign
11 person outside the United States.

12 (9) TECHNOLOGY.—The term “technology”—

13 (A) includes—

14 (i) information necessary for the de-
15 velopment, production, use, operation, in-
16 stallation, maintenance, repair, overhaul or
17 refurbishing of an item; and

18 (ii) information at whatever stage of
19 its creation, such as foundational informa-
20 tion and know-how, as further defined by
21 regulations; and

22 (B) does not include published informa-
23 tion, including prerecorded records, printed
24 books, pamphlets, miscellaneous publications, or
25 other information, that—

1 (i) arises during, or results from, fun-
2 damental research and is intended to be
3 published;

4 (ii) is released by instruction in a
5 catalog course or associated teaching lab-
6 oratory of an academic institution;

7 (iii) appears in patents or open (pub-
8 lished) patent publications available from
9 or at any patent office, unless covered by
10 an invention secrecy order;

11 (iv) is non-proprietary system descrip-
12 tions;

13 (v) is telemetry data; or

14 (vi) is any other category or type of
15 information, as determined by the Presi-
16 dent for purposes of national security or
17 foreign policy concerns.

18 (10) TRANSFER.—The term “transfer”, with
19 respect to an item subject to controls under title I,
20 means a change in the end-use or end user of the
21 item within the same foreign country.

22 (11) UNITED STATES.—The term “United
23 States” means the several States, the District of Co-
24 lumbia, the Commonwealth of Puerto Rico, the Com-
25 monwealth of the Northern Mariana Islands, Amer-

1 ican Samoa, Guam, the United States Virgin Is-
2 lands, and any other territory or possession of the
3 United States.

4 (12) UNITED STATES PERSON.—The term
5 “United States person” means—

6 (A) any individual who is a citizen or na-
7 tional of the United States or who is an indi-
8 vidual described in subparagraph (B) of section
9 274B(a)(3) of the Immigration and Nationality
10 Act (8 U.S.C. 1324b(a)(3)); and

11 (B) a corporation or other legal entity
12 which is organized under the laws of the United
13 States, any State or territory thereof, or the
14 District of Columbia, if natural persons de-
15 scribed in subparagraph (A) own, directly or in-
16 directly, more than 50 percent of the out-
17 standing capital stock or other beneficial inter-
18 est in such legal entity.

19 (13) WEAPONS OF MASS DESTRUCTION.—The
20 term “weapons of mass destruction” means nuclear,
21 radiological, chemical, and biological weapons and
22 delivery systems for such weapons.

1 **TITLE I—AUTHORITY AND**
2 **ADMINISTRATION OF CONTROLS**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Export Controls Act
5 of 2018”.

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

7 The following is the policy of the United States:

8 (1) The national security and foreign policy of
9 the United States require that the export, reexport,
10 and transfer of items, and specific activities of
11 United States persons, wherever located, be con-
12 trolled for the following purposes:

13 (A) To control the access to items for use
14 in—

15 (i) the proliferation of weapons of
16 mass destruction or of conventional weap-
17 ons;

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

20 (iii) acts of terrorism;

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

1 (v) activities undertaken specifically to
2 cause significant interference with or dis-
3 ruption of critical infrastructure.

4 (B) To preserve the qualitative military su-
5 periority of the United States.

6 (C) To strengthen the United States in-
7 dustrial base.

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

11 (E) To carry out obligations and commit-
12 ments under international agreements and ar-
13 rangements, including multilateral export con-
14 trol regimes.

15 (F) To facilitate military interoperability
16 between the United States and its North Atlan-
17 tic Treaty Organization (NATO) and other
18 close allies.

19 (G) To ensure national security controls
20 are tailored to focus on those core technologies
21 and other items that are capable of being used
22 to pose a serious national security threat to the
23 United States.

24 (2) The national security of the United States
25 requires that the United States maintain its leader-

1 ship in the science, technology, engineering, and
2 manufacturing sectors. Such leadership requires that
3 United States persons are competitive in global mar-
4 kets. The impact of the implementation of this title
5 on such leadership and competitiveness must be
6 evaluated on an ongoing basis and applied in impos-
7 ing controls under sections 103 and 104 to avoid
8 negatively affecting such leadership.

9 (3) The national security and foreign policy of
10 the United States require that the United States
11 participate in multilateral organizations and agree-
12 ments regarding export controls on items that are
13 consistent with the policy of the United States, and
14 take all the necessary steps to secure the adoption
15 and consistent enforcement, by the governments of
16 such countries, of export controls on items that are
17 consistent with such policy.

18 (4) Export controls should be fully coordinated
19 with the multilateral export control regimes. Export
20 controls that are multilateral are most effective, and
21 should be tailored to focus on those core technologies
22 and other items that are capable of being used to
23 pose a serious national security threat to the United
24 States and its allies.

1 (5) Export controls applied unilaterally to items
2 widely available from foreign sources generally are
3 less effective in preventing end-users from acquiring
4 those items.

5 (6) The effective administration of export con-
6 trols requires a clear understanding both inside and
7 outside the United States Government of which tech-
8 nologies and other items are controlled and an effi-
9 cient process should be created to update the con-
10 trols, such as by removing and adding technologies
11 and other items.

12 (7) The export control system must ensure that
13 it is transparent, predictable, and timely, has the
14 flexibility to be adapted to address new threats in
15 the future, and allows seamless access to and shar-
16 ing of export control information among all relevant
17 United States national security and foreign policy
18 agencies.

19 (8) Implementation and enforcement of United
20 States export controls require robust capabilities in
21 monitoring, intelligence, and investigation, appro-
22 priate penalties for violations, and the ability to
23 swiftly interdict unapproved transfers.

24 (9) Export controls should be balanced with
25 United States counterterrorism, information secu-

1 rity, and cyber-security policies to ensure the ability
2 to export, reexport, and transfer technology and
3 other items in support of counterterrorism, critical
4 infrastructure, and other homeland security prior-
5 ities, while effectively preventing malicious cyber ter-
6 rorists from obtaining items that threaten the
7 United States and its interests, including the protec-
8 tion of and safety of United States citizens abroad.

9 (10) Export controls complement and are a
10 critical element of the national security policies un-
11 derlying the laws and regulations governing foreign
12 direct investment in the United States, including
13 controlling the transfer of critical technologies to
14 certain foreign persons. Thus, the President, in close
15 coordination with the Department of Commerce, the
16 Department of Defense, the Department of State,
17 the Department of Energy, and other agencies re-
18 sponsible for export controls, should have a regular
19 and robust process to identify the emerging and
20 other types of critical technologies of concern, as de-
21 fined in United States foreign direct investment
22 laws, and regulate their release to foreign persons as
23 warranted regardless of the nature of the underlying
24 transaction. Such identification efforts should draw
25 upon the resources and expertise of all relevant

1 parts of the United States Government, industry,
2 and academia. These efforts should be in addition to
3 traditional efforts to modernize and update the lists
4 of controlled items under the multilateral export con-
5 trol regimes.

6 (11) The authority under this title may be exer-
7 cised only in furtherance of all of the objectives set
8 forth in paragraphs (1) through (10).

9 **SEC. 103. AUTHORITY OF THE PRESIDENT.**

10 (a) **AUTHORITY.**—In order to carry out the policy set
11 forth in paragraphs (1) through (10) of section 102, the
12 President shall control—

13 (1) the export, reexport, and transfer of items,
14 whether by United States persons, wherever located,
15 or by foreign persons, wherever located; and

16 (2) the activities of United States persons,
17 wherever located, relating to specific—

18 (A) nuclear explosive devices;

19 (B) missiles;

20 (C) chemical or biological weapons;

21 (D) whole plants for chemical weapons pre-
22 cursors;

23 (E) foreign maritime nuclear projects; and

24 (F) foreign intelligence services.

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

4 (1) To regulate the export, reexport, and trans-
5 fer of items described in subsection (a)(1) of United
6 States persons, wherever located, or foreign persons,
7 wherever located.

8 (2) To regulate the activities described in sub-
9 section (a)(2) of United States persons, wherever lo-
10 cated.

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

16 (4) To maintain the leadership of the United
17 States in science, engineering, technology research
18 and development, and manufacturing.

19 (5) To enhance the viability of commercial
20 firms, academic institutions, and research establish-
21 ments, and maintain the skilled workforce of such
22 firms, institutions, and establishments, that are nec-
23 essary to preserving the leadership of the United
24 States described in paragraph (4).

1 (6) To strengthen the United States industrial
2 base, both with respect to current and future de-
3 fense requirements.

4 (7) To enforce the controls through means such
5 as regulations, requirements for compliance, lists of
6 controlled items, lists of foreign persons who threat-
7 en the national security or foreign policy of the
8 United States, and guidance in a form that facili-
9 tates compliance by United States persons and for-
10 eign persons, in particular academic institutions, sci-
11 entific and research establishments, and small- and
12 medium-sized businesses.

13 **SEC. 104. ADDITIONAL AUTHORITIES.**

14 (a) IN GENERAL.—In carrying out this title, the
15 President shall—

16 (1) establish and maintain lists published by
17 the Secretary of Commerce of items that are con-
18 trolled under this title;

19 (2) establish and maintain lists published by
20 the Secretary of Commerce of foreign persons and
21 end-uses that are determined to be a threat to the
22 national security and foreign policy of the United
23 States pursuant to the policy set forth in section
24 102(1)(A) and to whom exports, reexports, and
25 transfers of items are controlled;

1 (3) prohibit unauthorized exports, reexports,
2 and transfers of controlled items;

3 (4) restrict exports, reexports, and transfers of
4 any controlled items to any foreign person or end-
5 use listed under paragraph (2);

6 (5) require licenses or other authorizations, as
7 appropriate, for exports, reexports, and transfers of
8 controlled items, including imposing conditions or re-
9 strictions on United States persons and foreign per-
10 sons with respect to such licenses or other authoriza-
11 tions;

12 (6) establish a process by which the Secretary
13 of Commerce or a license applicant requests an as-
14 sessment that a foreign item is comparable in qual-
15 ity to an item controlled under this title, and is
16 available in sufficient quantities to render the
17 United States export control of that item or the de-
18 nial of a license ineffective;

19 (7) require measures for compliance with the
20 export controls established under this title;

21 (8) require and obtain such information from
22 United States persons and foreign persons as is nec-
23 essary to carry out this title;

1 (9) require, as appropriate, advance notice be-
2 fore an item is exported, reexported, or transferred,
3 as an alternative to requiring a license;

4 (10) require, to the extent feasible, identifica-
5 tion of items subject to controls under this title in
6 order to facilitate the enforcement of such controls;

7 (11) inspect, search, detain, seize, or impose
8 temporary denial orders with respect to items, in
9 any form, that are subject to controls under this
10 title, or conveyances on which it is believed that
11 there are items that have been, are being, or are
12 about to be exported, reexported, or transferred in
13 violation of this title;

14 (12) monitor shipments, or other means of
15 transfer;

16 (13) keep the public fully apprised of changes
17 in policy, regulations, and procedures established
18 under this title;

19 (14) appoint technical advisory committees in
20 accordance with the Federal Advisory Committee
21 Act;

22 (15) create, as warranted, exceptions to licens-
23 ing requirements in order to further the objectives of
24 this title; and

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

4 (b) RELATIONSHIP TO IEEPA.—The authority under
5 this title may not be used to regulate or prohibit under
6 this title the export, reexport, or transfer of any item that
7 may not be regulated or prohibited under section 203(b)
8 of the International Emergency Economic Powers Act (50
9 U.S.C. 1702(b)).

10 (c) COUNTRIES SUPPORTING INTERNATIONAL TER-
11 RORISM.—

12 (1) LICENSE REQUIREMENT.—

13 (A) IN GENERAL.—A license shall be re-
14 quired for the export, reexport, or transfer of
15 items to a country if the Secretary of State has
16 made the following determinations:

17 (i) The government of such country
18 has repeatedly provided support for acts of
19 international terrorism.

20 (ii) The export, reexport, or transfer
21 of such items could make a significant con-
22 tribution to the military potential of such
23 country, including its military logistics ca-
24 pability, or could enhance the ability of

1 such country to support acts of inter-
2 national terrorism.

3 (B) DETERMINATION UNDER OTHER PRO-
4 VISIONS OF LAW.—A determination of the Sec-
5 retary of State under section 620A of the For-
6 eign Assistance Act of 1961 (22 U.S.C. 2371),
7 section 40 of the Arms Export Control Act (22
8 U.S.C. 2780), or any other provision of law
9 that the government of a country described in
10 subparagraph (A) has repeatedly provided sup-
11 port for acts of international terrorism shall be
12 deemed to be a determination with respect to
13 such government for purposes of clause (i) of
14 subparagraph (A).

15 (2) NOTIFICATION TO CONGRESS.—The Sec-
16 retary of State and the Secretary of Commerce shall
17 notify the Committee on Foreign Affairs of the
18 House of Representatives and the Committee on
19 Banking, Housing, and Urban Affairs and the Com-
20 mittee on Foreign Relations of the Senate at least
21 30 days before issuing any license required by para-
22 graph (1).

23 (3) PUBLICATION IN FEDERAL REGISTER.—
24 Each determination of the Secretary of State under
25 paragraph (1)(A) shall be published in the Federal

1 Register, except that the Secretary of State may ex-
2 clude confidential information and trade secrets con-
3 tained in such determination.

4 (4) RESCISSION OF DETERMINATION.—A deter-
5 mination of the Secretary of State under paragraph
6 (1)(A) may not be rescinded unless the President
7 submits to the Speaker of the House of Representa-
8 tives, the chairman of the Committee on Foreign Af-
9 fairs, and the chairman of the Committee on Bank-
10 ing, Housing, and Urban Affairs and the chairman
11 of the Committee on Foreign Relations of the Sen-
12 ate—

13 (A) before the proposed rescission would
14 take effect, a report certifying that—

15 (i) there has been a fundamental
16 change in the leadership and policies of the
17 government of the country concerned;

18 (ii) that government is not supporting
19 acts of international terrorism; and

20 (iii) that government has provided as-
21 surances that it will not support acts of
22 international terrorism in the future; or

23 (B) at least 90 days before the proposed
24 rescission would take effect, a report justifying
25 the rescission and certifying that—

1 (i) the government concerned has not
2 provided any support for acts international
3 terrorism during the preceding 24-month
4 period; and

5 (ii) the government concerned has
6 provided assurances that it will not sup-
7 port acts of international terrorism in the
8 future.

9 (5) DISAPPROVAL OF RESCISSION.—No rescis-
10 sion under paragraph (4)(B) of a determination
11 under paragraph (1)(A) with respect to the govern-
12 ment of a country may be made if Congress, within
13 90 days after receipt of a report under paragraph
14 (4)(B), enacts a joint resolution described in sub-
15 section (f)(2) of section 40 of the Arms Export Con-
16 trol Act with respect to a rescission under subsection
17 (f)(1) of such section with respect to the government
18 of such country.

19 (6) NOTIFICATION AND BRIEFING.—Not later
20 than—

21 (A) ten days after initiating a review of the
22 activities of the government of the country con-
23 cerned within the 24-month period referred to
24 in paragraph (4)(B)(i), the Secretary of State
25 shall notify the Committee on Foreign Affairs

1 of the House of Representatives and the Com-
2 mittee on Foreign Relations of the Senate of
3 such initiation; and

4 (B) 20 days after the notification described
5 in paragraph (1), the Secretary of State shall
6 brief the congressional committees described in
7 paragraph (1) on the status of such review.

8 (7) CONTENTS OF NOTIFICATION OF LI-
9 CENSE.—The Secretary of State shall include in the
10 notification required by paragraph (2)—

11 (A) a detailed description of the items to
12 be offered, including a brief description of the
13 capabilities of any item for which a license to
14 export, reexport, or transfer the items is
15 sought;

16 (B) the reasons why the foreign country,
17 person, or entity to which the export, reexport,
18 or transfer is proposed to be made has re-
19 quested the items under the export, reexport, or
20 transfer, and a description of the manner in
21 which such country, person, or entity intends to
22 use such items;

23 (C) the reasons why the proposed export,
24 reexport, or transfer is in the national interest
25 of the United States;

1 (D) an analysis of the impact of the pro-
2 posed export, reexport, or transfer on the mili-
3 tary capabilities of the foreign country, person,
4 or entity to which such transfer would be made;

5 (E) an analysis of the manner in which the
6 proposed export, reexport, or transfer would af-
7 fect the relative military strengths of countries
8 in the region to which the items that are the
9 subject of such export, reexport, or transfer
10 would be delivered and whether other countries
11 in the region have comparable kinds and
12 amounts of items; and

13 (F) an analysis of the impact of the pro-
14 posed export, reexport, or transfer on the rela-
15 tions of the United States with the countries in
16 the region to which the items that are the sub-
17 ject of such export, reexport, or transfer would
18 be delivered.

19 (d) ENHANCED PROLIFERATION CONTROLS.—

20 (1) IN GENERAL.—In furtherance of section
21 103(a) of this title, the President shall, except to the
22 extent authorized by a statute or regulation adminis-
23 tered by a Federal department or agency other than
24 the Department of Commerce, require a United
25 States person, wherever located, to apply for and re-

1 ceive a license from the Department of Commerce
2 for the export, reexport, or transfer of items de-
3 scribed in paragraph (2) or for the performance of
4 services relating to such items.

5 (2) ITEMS DESCRIBED.—The items described in
6 this paragraph are—

7 (A) nuclear explosive devices;

8 (B) missiles;

9 (C) chemical or biological weapons;

10 (D) whole plants for chemical weapons pre-
11 cursors; and

12 (E) foreign maritime nuclear projects that
13 would pose a risk to the national security or
14 foreign policy of the United States.

15 (e) ADDITIONAL PROHIBITIONS.—The Secretary of
16 Commerce may inform United States persons, either indi-
17 vidually by specific notice or through amendment to any
18 regulation or order issued under this title, that a license
19 from the Bureau of Industry and Security of the Depart-
20 ment of Commerce is required to engage in any activity
21 if the activity involves the types of movement, service, or
22 support described in subsection (d). The absence of any
23 such notification does not excuse the United States person
24 from compliance with the license requirements of sub-

1 section (d), or any regulation or order issued under this
2 title.

3 (f) LICENSE REVIEW STANDARDS.—The Secretary of
4 Commerce shall deny an application to engage in any ac-
5 tivity that involves the types of movement, service, or sup-
6 port described in subsection (d) if the activity would make
7 a material contribution to any of the items described in
8 subsection (d)(2).

9 **SEC. 105. ADMINISTRATION OF EXPORT CONTROLS.**

10 (a) IN GENERAL.—The President shall delegate to
11 the Secretary of Commerce, the Secretary of Defense, the
12 Secretary of State and, as appropriate, the Director of Na-
13 tional Intelligence and the heads of other appropriate Fed-
14 eral departments and agencies, the authority to carry out
15 the purposes set forth in subsection (b).

16 (b) PURPOSES.—

17 (1) IN GENERAL.—The purpose of the delega-
18 tions of authority pursuant to subsection (a) are—

19 (A) to advise the President with respect
20 to—

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

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

5 (B) to review and approve—

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

9 (ii) an interagency procedure for com-
10 piling and amending any list described in
11 clause (i);

12 (iii) criteria for including a person on
13 a list of persons to whom exports, reex-
14 ports, and transfers of items are prohibited
15 or restricted under this title;

16 (iv) standards for compliance by per-
17 sons subject to controls under this title;
18 and

19 (v) policies and procedures for the
20 end-use monitoring of exports, reexports,
21 and transfers of items controlled under
22 this title;

23 (C) to obtain independent evaluations, in-
24 cluding from Inspectors General of the relevant
25 departments or agencies, on a periodic basis on

1 the effectiveness of the implementation of this
2 title in carrying out the policy set forth in sec-
3 tion 102; and

4 (D) to benefit from the inherent equities,
5 experience, and capabilities of the Federal offi-
6 cials described in subsection (a), including—

7 (i) the views of the Department of De-
8 fense with respect to the national security
9 implications of a particular control or deci-
10 sion;

11 (ii) the views of the Department of
12 State with respect to the foreign policy im-
13 plications of a particular control or deci-
14 sion;

15 (iii) the views of the Department of
16 Energy with respect to the implications for
17 nuclear proliferation of a particular control
18 or decision; and

19 (iv) the views of the Department of
20 Commerce with respect to the administra-
21 tion of an efficient, coherent, reliable, en-
22 forceable, and predictable export control
23 system, and the resolution of competing
24 views or policy objectives described in sec-
25 tion 102.

1 (2) **AUTHORITY TO SEEK INFORMATION.**—The
2 Federal officials described in subsection (a) may, in
3 carrying out the purposes set forth in paragraph (1),
4 seek information and advice from experts who are
5 not officers or employees of the Federal Govern-
6 ment.

7 (3) **TRANSMITTAL AND IMPLEMENTATION OF**
8 **EVALUATIONS.**—The results of the independent eval-
9 uations conducted pursuant to paragraph (1)(D)
10 shall be transmitted to the President and the Con-
11 gress, in classified form if necessary. Subject to the
12 delegation of authority by the President, the Federal
13 officials described in subsection (a) shall determine,
14 direct, and ensure that improvements recommended
15 in the evaluations are implemented.

16 **SEC. 106. CONTROL LISTS.**

17 The President shall, pursuant to the delegation of au-
18 thority in section 105, ensure that—

19 (1) a process is established for regular inter-
20 agency review of each list established under section
21 104(a)(1), that pursuant to such review the Sec-
22 retary of Commerce regularly updates such lists to
23 ensure that new items (including emerging critical
24 technologies) are appropriately controlled, and that

1 the level of control of items on the lists are adjusted
2 as conditions change;

3 (2) information and expertise is obtained from
4 officers and employees from relevant Federal depart-
5 ments, agencies, and offices and persons outside the
6 Federal Government who have technical expertise,
7 with respect to the characteristics of the items con-
8 sidered for each list established under section
9 104(a)(1) and the effect of controlling the items on
10 addressing the policy set forth in section 102;

11 (3) each list established under section 104(a)(1)
12 appropriately identifies each entry that has been in-
13 cluded by virtue of the participation of the United
14 States in a multilateral regime, organization, or
15 group the purpose of which is consistent with and
16 supports the policy of the United States under this
17 title relating to the control of exports, reexports, and
18 transfers of items; and

19 (4) each list established under section 104(a)(1)
20 is published by the Secretary of Commerce in a form
21 that facilitates compliance with it and related re-
22 quirements, particularly by small- and medium-sized
23 businesses, and academic institutions.

1 **SEC. 107. LICENSING.**

2 (a) IN GENERAL.—The President shall, pursuant to
3 the delegation of authority in section 105, establish a pro-
4 cedure for the Department of Commerce to license or oth-
5 erwise authorize the export, reexport, and transfer of
6 items controlled under this title in order to carry out the
7 policy set forth in section 102 and the requirements set
8 forth in section 103(b). The procedure shall ensure that—

9 (1) license applications, other requests for au-
10 thorization, and related dispute resolution proce-
11 dures are considered and decisions made with the
12 participation of appropriate departments, agencies,
13 and offices that have delegated functions under this
14 title; and

15 (2) licensing decisions are made in an expedi-
16 tious manner, with transparency to applicants on the
17 status of license and other authorization processing
18 and the reason for denying any license or request for
19 authorization.

20 (b) SENSE OF CONGRESS.—It is the sense of Con-
21 gress that the President should make best efforts to en-
22 sure that an accurate, consistent, and timely evaluation
23 and processing of licenses or other requests for authoriza-
24 tion to export, reexport, or transfer items controlled under
25 this title is accomplished within 30 days from the date
26 of such license request.

1 (c) FEES.—No fee may be charged in connection with
2 the submission, processing, or consideration of any appli-
3 cation for a license or other authorization or other request
4 made in connection with any regulation in effect under
5 the authority of this title.

6 **SEC. 108. COMPLIANCE ASSISTANCE.**

7 (a) SYSTEM FOR SEEKING ASSISTANCE.—The Presi-
8 dent may establish a system to provide United States per-
9 sons with assistance in complying with this title, which
10 may include a mechanism for providing information, in
11 classified form as appropriate, who are potential cus-
12 tomers, suppliers, or business partners with respect to
13 items controlled under this title, in order to further ensure
14 the prevention of the export, reexport, or transfer of items
15 that may pose a threat to the national security or foreign
16 policy of the United States.

17 (b) SECURITY CLEARANCES.—In order to carry out
18 subsection (a), the President may issue appropriate secu-
19 rity clearances to persons described in that subsection who
20 are responsible for complying with this title.

21 (c) ASSISTANCE FOR CERTAIN BUSINESSES.—

22 (1) IN GENERAL.—Not later than 120 days
23 after the date of the enactment of this Act, the
24 President shall develop and submit to Congress a
25 plan to assist small- and medium-sized United

1 States in export licensing and other processes under
2 this title.

3 (2) CONTENTS.—The plan shall include, among
4 other things, arrangements for the Department of
5 Commerce to provide counseling to businesses de-
6 scribed in paragraph (1) on filing applications and
7 identifying items controlled under this title, as well
8 as proposals for seminars and conferences to educate
9 such businesses on export controls, licensing proce-
10 dures, and related obligations.

11 **SEC. 109. REQUIREMENTS TO IDENTIFY AND CONTROL**
12 **EMERGING CRITICAL TECHNOLOGIES IN EX-**
13 **PORT CONTROL REGULATIONS.**

14 (a) IN GENERAL.—The President shall, pursuant to
15 the delegation of authority in section 105, establish and,
16 in coordination with the Department of Commerce, the
17 Department of Defense, the Department of State, the De-
18 partment of Energy, and other departments determined
19 to be necessary, lead a regular, ongoing interagency proc-
20 ess to identify emerging critical technologies that are not
21 identified in any list of items controlled for export under
22 United States law or regulations, but that nonetheless
23 could be essential for maintaining or increasing the tech-
24 nological advantage of the United States over countries
25 that pose a significant threat to the national security of

1 the United States with respect to national defense, intel-
2 ligence, or other areas of national security, or gaining such
3 an advantage over such countries in areas where such an
4 advantage may not currently exist.

5 (b) REQUIREMENTS.—The interagency process re-
6 quired under subsection (a) shall—

7 (1) draw upon the expertise, resources, and eq-
8 uities of all relevant United States Government
9 agencies, industries, and academic institutions to
10 identify and describe such emerging critical tech-
11 nologies;

12 (2) require the relevant export control authority
13 to publish proposed regulations for public comment
14 that would control heretofore unlisted emerging crit-
15 ical technologies identified pursuant to subsection
16 (a) and control the release of each such technology
17 to destinations, end uses, or end users as determined
18 by the President;

19 (3) require the Secretary of Commerce, the Sec-
20 retary of State, and the Secretary of Defense to pro-
21 pose to the relevant multilateral export control re-
22 gimes in the following year that such emerging crit-
23 ical technologies be added to the list of technologies
24 controlled by such regimes;

1 (4) determine whether national security con-
2 cerns warrant continued unilateral export controls
3 over technologies identified pursuant to subsection
4 (a) if the relevant multilateral export control regime
5 does not agree to list such technologies on its control
6 list within three years; and

7 (5) require the agencies responsible for admin-
8 istering the export controls identified in subsection
9 (a) to remove or revise, as appropriate, existing con-
10 trols determined to warrant removal or revision as a
11 result of insight or information obtained during ef-
12 forts undertaken to comply with the requirements of
13 this section.

14 **SEC. 110. PENALTIES.**

15 (a) UNLAWFUL ACTS.—

16 (1) IN GENERAL.—It shall be unlawful for a
17 person to violate, attempt to violate, conspire to vio-
18 late, or cause a violation of this title or of any regu-
19 lation, order, license, or other authorization issued
20 under this title, including any of the unlawful acts
21 described in paragraph (2).

22 (2) SPECIFIC UNLAWFUL ACTS.—The unlawful
23 acts described in this paragraph are the following:

24 (A) No person may engage in any conduct
25 prohibited by or contrary to, or refrain from en-

1 gaging in any conduct required by this title, the
2 Export Administration Regulations, or any
3 order, license or authorization issued there-
4 under.

5 (B) No person may cause or aid, abet,
6 counsel, command, induce, procure, or approve
7 the doing of any act prohibited, or the omission
8 of any act required by this title, the Export Ad-
9 ministration Regulations, or any order, license
10 or authorization issued thereunder.

11 (C) No person may solicit or attempt a vio-
12 lation of this Act, the Export Administration
13 Regulations, or any order, license or authoriza-
14 tion issued thereunder.

15 (D) No person may conspire or act in con-
16 cert with one or more other persons in any
17 manner or for any purpose to bring about or to
18 do any act that constitutes a violation of this
19 title, the Export Administration Regulations, or
20 any order, license or authorization issued there-
21 under.

22 (E) No person may order, buy, remove,
23 conceal, store, use, sell, loan, dispose of, trans-
24 fer, transport, finance, forward, or otherwise
25 service, in whole or in part, any item exported

1 or to be exported from the United States, or
2 that is otherwise subject to the Export Admin-
3 istration Regulations, with knowledge that a
4 violation of this title, the Export Administration
5 Regulations, or any order, license or authoriza-
6 tion issued thereunder, has occurred, is about
7 to occur, or is intended to occur in connection
8 with the item unless valid authorization is ob-
9 tained therefor.

10 (F) No person may make any false or mis-
11 leading representation, statement, or certifi-
12 cation, or falsify or conceal any material fact,
13 either directly to the Department of Commerce,
14 or an official of any other United States agen-
15 cy, or indirectly through any other person—

16 (i) in the course of an investigation or
17 other action subject to the Export Admin-
18 istration Regulations;

19 (ii) in connection with the prepara-
20 tion, submission, issuance, use, or mainte-
21 nance of any export control document or
22 any report filed or required to be filed pur-
23 suant to the Export Administration Regu-
24 lations; or

1 (iii) for the purpose of or in connec-
2 tion with effecting any export, reexport, or
3 transfer of an item subject to the Export
4 Administration Regulations or a service or
5 other activity of a United States person de-
6 scribed in section 104.

7 (G) No person may engage in any trans-
8 action or take any other action with intent to
9 evade the provisions of this title, the Export
10 Administration Regulations, or any order, li-
11 cense, or authorization issued thereunder.

12 (H) No person may fail or refuse to com-
13 ply with any reporting or recordkeeping require-
14 ments of the Export Administration Regula-
15 tions or of any order, license, or authorization
16 issued thereunder.

17 (I) Except as specifically authorized in the
18 Export Administration Regulations or in writ-
19 ing by the Department of Commerce, no person
20 may alter any license, authorization, export con-
21 trol document, or order issued under the Export
22 Administration Regulations.

23 (J) No person may take any action that is
24 prohibited by a denial order issued by the De-
25 partment of Commerce to prevent imminent

1 violations of this title, the Export Administra-
2 tion Regulations, or any order, license or au-
3 thorization issued thereunder.

4 (3) ADDITIONAL REQUIREMENTS.—For pur-
5 poses of subparagraph (G), any representation,
6 statement, or certification made by any person shall
7 be deemed to be continuing in effect. Each person
8 who has made a representation, statement, or certifi-
9 cation to the Department of Commerce relating to
10 any order, license, or other authorization issued
11 under this title shall notify the Department of Com-
12 merce, in writing, of any change of any material fact
13 or intention from that previously represented, stated,
14 or certified, immediately upon receipt of any infor-
15 mation that would lead a reasonably prudent person
16 to know that a change of material fact or intention
17 had occurred or may occur in the future.

18 (b) CRIMINAL PENALTY.—

19 (1) KNOWING VIOLATIONS.—Except as provided
20 in paragraph (2), a person who knowingly violates or
21 conspires or attempts to violate subsection (a) shall
22 be fined not more than 5 times the amount or value
23 of the exports, reexports, or transfers involved, or
24 \$500,000, whichever is greater, and, in the case of

1 an individual, imprisoned not more than 5 years, or
2 both.

3 (2) WILLFUL VIOLATIONS.—A person who will-
4 fully violates or conspires to or attempts to violate
5 any provision of subsection (a) shall be fined not
6 more than 5 times the amount or value of the ex-
7 ports, reexports, or transfers involved, or
8 \$1,000,000, whichever is greater, and, in the case of
9 an individual, shall be fined not more than
10 \$250,000, or imprisoned not more than 10 years, or
11 both.

12 (c) CIVIL PENALTIES.—

13 (1) AUTHORITY.—The President may impose
14 the following civil penalties on a person for each vio-
15 lation by that person of this title or any regulation,
16 order, or license issued under this title, for each vio-
17 lation:

18 (A) A fine of not more than \$250,000 or
19 an amount that is twice the value of the trans-
20 action that is the basis of the violation with re-
21 spect to which the penalty is imposed, which-
22 ever is greater.

23 (B) Revocation of a license issued under
24 this title to the person.

1 (C) A prohibition on the person's ability to
2 export, reexport, or transfer any items, whether
3 or not subject to controls under this title.

4 (2) PROCEDURES.—Any civil penalty under this
5 subsection may be imposed only after notice and op-
6 portunity for an agency hearing on the record in ac-
7 cordance with sections 554 through 557 of title 5,
8 United States Code.

9 (3) STANDARDS FOR LEVELS OF CIVIL PEN-
10 ALTY.—The President may by regulation provide
11 standards for establishing levels of civil penalty
12 under this subsection based upon factors such as the
13 seriousness of the violation, the culpability of the vi-
14 olator, and such mitigating factors as the violator's
15 record of cooperation with the Government in dis-
16 closing the violation.

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

19 (1) FORFEITURE.—Any person who is convicted
20 under subsection (b) of a violation of a control im-
21 posed under section 103 (or any regulation, order,
22 or license issued with respect to such control) shall,
23 in addition to any other penalty, forfeit to the
24 United States—

1 (A) any of that person's interest in, secu-
2 rity of, claim against, or property or contractual
3 rights of any kind in the tangible items that
4 were the subject of the violation;

5 (B) any of that person's interest in, secu-
6 rity of, claim against, or property or contractual
7 rights of any kind in tangible property that was
8 used in the violation; and

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

12 (2) PROCEDURES.—The procedures in any for-
13 feiture under this subsection, and the duties and au-
14 thority of the courts of the United States and the
15 Attorney General with respect to any forfeiture ac-
16 tion under this subsection or with respect to any
17 property that may be subject to forfeiture under this
18 subsection, shall be governed by the provisions of
19 section 1963 of title 18, United States Code.

20 (e) PRIOR CONVICTIONS.—

21 (1) LICENSE BAR.—

22 (A) IN GENERAL.—The President may—

23 (i) deny the eligibility of any person
24 convicted of a criminal violation described
25 in subparagraph (B) to export, reexport, or

1 transfer outside the United States any
2 item, whether or not subject to controls
3 under this title, for a period of up to 10
4 years beginning on the date of the conviction;
5 and

6 (ii) revoke any license or other authorization
7 to export, reexport, or transfer
8 items that was issued under this title and
9 in which such person has an interest at the
10 time of the conviction.

11 (B) VIOLATIONS.—The violations referred
12 to in subparagraph (A) are any criminal violations
13 of, or criminal attempt or conspiracy to
14 violate—

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

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

20 (iii) section 793, 794, or 798 of title
21 18, United States Code;

22 (iv) section 4(b) of the Internal Security
23 Act of 1950 (50 U.S.C. 783(b)); or

24 (v) section 38 of the Arms Export
25 Control Act (22 U.S.C. 2778).

1 (2) APPLICATION TO OTHER PARTIES.—The
2 President may exercise the authority under para-
3 graph (1) with respect to any person related,
4 through affiliation, ownership, control, or position of
5 responsibility, to any person convicted of any viola-
6 tion of law set forth in paragraph (1), upon a show-
7 ing of such relationship with the convicted party,
8 and subject to the procedures set forth in subsection
9 (c)(2).

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

12 (1) the availability of other administrative or
13 judicial remedies with respect to violations of this
14 title, or any regulation, order, license or other au-
15 thorization issued under this title;

16 (2) the authority to compromise and settle ad-
17 ministrative proceedings brought with respect to vio-
18 lations of this title, or any regulation, order, license,
19 or other authorization issued under this title; or

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

1 **SEC. 111. ENFORCEMENT.**

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

4 (1) issue regulations, orders, and guidelines;

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

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

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

21 (5) inspect, search, detain, seize, or issue tem-
22 porary denial orders with respect to items, in any
23 form, that are subject to controls under this title, or
24 conveyances on which it is believed that there are
25 items that have been, are being, or are about to be
26 exported, reexported, or transferred in violation of

1 this title, or any regulations, order, license, or other
2 authorization issued thereunder;

3 (6) conduct prelicense inspections and post-
4 shipment verifications; and

5 (7) execute warrants and make arrests.

6 (b) ENFORCEMENT OF SUBPOENAS.—In the case of
7 contumacy by, or refusal to obey a subpoena issued to,
8 any person under subsection (a)(3), a district court of the
9 United States, after notice to such person and a hearing,
10 shall have jurisdiction to issue an order requiring such
11 person to appear and give testimony or to appear and
12 produce books, records, and other writings, regardless of
13 format, that are the subject of the subpoena. Any failure
14 to obey such order of the court may be punished by such
15 court as a contempt thereof.

16 (c) BEST PRACTICE GUIDELINES.—

17 (1) IN GENERAL.—The President, in consulta-
18 tion with the Secretary of Commerce and other Fed-
19 eral officials described in section 105(a), should pub-
20 lish and update “best practices” guidelines to assist
21 persons in developing and implementing, on a vol-
22 untary basis, effective export control programs in
23 compliance with the regulations issued under this
24 title.

1 (2) EXPORT COMPLIANCE PROGRAM.—The im-
2 plementation by a person of an effective export com-
3 pliance program and a high quality overall export
4 compliance effort by a person should ordinarily be
5 given weight as mitigating factors in a civil penalty
6 action against the person under this title.

7 (d) REFERENCE TO ENFORCEMENT.—For purposes
8 of this section, a reference to the enforcement of, or a vio-
9 lation of, this title includes a reference to the enforcement
10 or a violation of any regulation, order, license or other au-
11 thorization issued pursuant to this title.

12 (e) IMMUNITY.—A person shall not be excused from
13 complying with any requirements under this section be-
14 cause of the person's privilege against self-incrimination,
15 but the immunity provisions of section 6002 of title 18,
16 United States Code, shall apply with respect to any indi-
17 vidual who specifically claims such privilege.

18 (f) CONFIDENTIALITY OF INFORMATION.—

19 (1) EXEMPTIONS FROM DISCLOSURE.—

20 (A) IN GENERAL.—Information obtained
21 under this title may be withheld from disclosure
22 only to the extent permitted by statute, except
23 that information described in subparagraph (B)
24 shall be withheld from public disclosure and
25 shall not be subject to disclosure under section

1 552(b)(3) of title 5, United States Code, unless
2 the release of such information is determined by
3 the President to be in the national interest.

4 (B) INFORMATION DESCRIBED.—Informa-
5 tion described in this subparagraph is informa-
6 tion submitted or obtained in connection with
7 an application for a license or other authoriza-
8 tion to export, reexport, or transfer items, en-
9 gage in other activities, a recordkeeping or re-
10 porting requirement, enforcement activity, or
11 other operations under this title, including—

12 (i) the license application, license, or
13 other authorization itself;

14 (ii) classification or advisory opinion
15 requests, and the response thereto;

16 (iii) license determinations, and infor-
17 mation pertaining thereto;

18 (iv) information or evidence obtained
19 in the course of any investigation; and

20 (v) information obtained or furnished
21 in connection with any international agree-
22 ment, treaty, or other obligation.

23 (2) INFORMATION TO THE CONGRESS AND
24 GAO.—

1 (A) IN GENERAL.—Nothing in this section
2 shall be construed as authorizing the with-
3 holding of information from the Congress or
4 from the Government Accountability Office.

5 (B) AVAILABILITY TO THE CONGRESS.—

6 (i) IN GENERAL.—Any information
7 obtained at any time under any provision
8 of the Export Administration Act of 1979
9 (as in effect on the day before the date of
10 the enactment of this Act and as continued
11 in effect pursuant to the International
12 Emergency Economic Powers Act), under
13 the Export Administration Regulations, or
14 under this title, including any report or li-
15 cense application required under any such
16 provision, shall be made available to a
17 committee or subcommittee of Congress of
18 appropriate jurisdiction, upon the request
19 of the chairman or ranking minority mem-
20 ber of such committee or subcommittee.

21 (ii) PROHIBITION ON FURTHER DIS-
22 CLOSURE.—No such committee or sub-
23 committee, or member thereof, may dis-
24 close any information made available under
25 clause (i), that is submitted on a confiden-

1 tial basis unless the full committee deter-
2 mines that the withholding of that infor-
3 mation is contrary to the national interest.

4 (C) AVAILABILITY TO GAO.—

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

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

18 (3) INFORMATION SHARING.—

19 (A) IN GENERAL.—Any Federal official de-
20 scribed in section 105(a) who obtains informa-
21 tion that is relevant to the enforcement of this
22 title, including information pertaining to any in-
23 vestigation, shall furnish such information to
24 each appropriate department, agency, or office
25 with enforcement responsibilities under this sec-

tion 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 regular basis with one another and with the head of other departments, agencies, and offices that obtain information subject to this paragraph,

1 in order to facilitate the exchange of such
2 information.

3 (D) INFORMATION SHARING WITH FED-
4 ERAL AGENCIES.—Licensing or enforcement in-
5 formation obtained under this title may be
6 shared with heads of departments, agencies,
7 and offices that do not have enforcement au-
8 thorities under this title on a case-by-case basis
9 at the discretion of the President. Such infor-
10 mation may be shared only when the President
11 makes a determination that the sharing of this
12 information is in the national interest.

13 (g) REPORTING REQUIREMENTS.—In the administra-
14 tion of this section, reporting requirements shall be de-
15 signed so as to reduce the cost of reporting, recordkeeping,
16 and documentation to the extent consistent with effective
17 enforcement and compilation of useful trade statistics. Re-
18 porting, recordkeeping, and documentation requirements
19 shall be periodically reviewed and revised in the light of
20 developments in the field of information technology.

21 (h) CIVIL FORFEITURE.—

22 (1) IN GENERAL.—Any tangible items seized
23 under subsection (a) by designated officers or em-
24 ployees shall be subject to forfeiture to the United
25 States in accordance with applicable law, except that

1 property seized shall be returned if the property
2 owner is not found guilty of a civil or criminal viola-
3 tion under section 109.

4 (2) PROCEDURES.—Any seizure or forfeiture
5 under this subsection shall be carried out in accord-
6 ance with the procedures set forth in section 981 of
7 title 18, United States Code.

8 **SEC. 112. ADMINISTRATIVE PROCEDURE.**

9 (a) IN GENERAL.—The functions exercised under
10 this title shall be subject to sections 551, 553 through
11 559, and 701 through 706 of title 5, United States Code.

12 (b) AMENDMENTS TO REGULATIONS.—The President
13 shall notify in advance the Committee on Banking, Hous-
14 ing, and Urban Affairs of the Senate and the Committee
15 on Foreign Affairs of the House of Representatives of any
16 proposed amendments to the Export Administration Regu-
17 lations with an explanation of the intent and rationale of
18 such amendments.

19 **SEC. 113. ANNUAL REPORT TO CONGRESS.**

20 (a) IN GENERAL.—The President shall submit to
21 Congress, by December 31 of each year, a report on the
22 implementation of this title during the preceding fiscal
23 year. The report shall include an analysis of—

24 (1) the effect of controls imposed under this
25 title on exports, reexports, and transfers of items in

1 addressing threats to the national security or foreign
2 policy of the United States, including a description
3 of licensing processing times;

4 (2) the impact of such controls on the scientific
5 and technological leadership of the United States;

6 (3) the consistency with such controls of export
7 controls imposed by other countries;

8 (4) efforts to provide exporters with compliance
9 assistance, including specific actions to assist small-
10 and medium-sized businesses;

11 (5) a summary of regulatory changes from the
12 prior fiscal year;

13 (6) a summary of export enforcement actions,
14 including of actions taken to implement end-use
15 monitoring of dual-use, military, and other items
16 subject to the Export Administration Regulations;

17 (7) a summary of approved license applications
18 to proscribed persons; and

19 (8) efforts undertaken within the previous year
20 to comply with the requirements of section 109, in-
21 cluding any “critical technologies” identified under
22 such section and how or whether such critical tech-
23 nologies were controlled for export.

1 (b) FORM.—The report required under subsection (a)
2 shall be submitted in unclassified form, but may contain
3 a classified annex.

4 **SEC. 114. REPEAL.**

5 (a) IN GENERAL.—The Export Administration Act of
6 1979 (50 U.S.C. App. 2401 et seq.) (as continued in effect
7 pursuant to the International Emergency Economic Pow-
8 ers Act) is repealed.

9 (b) IMPLEMENTATION.—The President shall imple-
10 ment the amendment made by subsection (a) by exercising
11 the authorities of the President under the International
12 Emergency Economic Powers Act (50 U.S.C. 1701 et
13 seq.).

14 **SEC. 115. EFFECT ON OTHER ACTS.**

15 (a) IN GENERAL.—Except as otherwise provided in
16 this title, nothing contained in this title shall be construed
17 to modify, repeal, supersede, or otherwise affect the provi-
18 sions of any other laws authorizing control over exports,
19 reexports, or transfers of any item, or activities of United
20 States persons subject to the Export Administration Reg-
21 ulations.

22 (b) COORDINATION OF CONTROLS.—

23 (1) IN GENERAL.—The authority granted to the
24 President under this title shall be exercised in such
25 manner so as to achieve effective coordination with

1 all export control and sanctions authorities exercised
2 by Federal departments and agencies delegated with
3 authority under this title, particularly the Depart-
4 ment of State, the Department of the Treasury, and
5 the Department of Energy.

6 (2) SENSE OF CONGRESS.—It is the sense of
7 Congress that in order to achieve effective coordina-
8 tion described in paragraph (1), such Federal de-
9 partments and agencies—

10 (A) should continuously work to create en-
11 forceable regulations with respect to the export,
12 reexport, and transfer by United States and
13 foreign persons of commodities, software, tech-
14 nology, and services to various end uses and
15 end users for foreign policy and national secu-
16 rity reasons;

17 (B) should regularly work to reduce com-
18 plexity in the system, including complexity
19 caused merely by the existence of structural,
20 definitional, and other non-policy based dif-
21 ferences between and among different export
22 control and sanctions systems; and

23 (C) should coordinate controls on items ex-
24 ported, reexported, or transferred in connection
25 with a foreign military sale under chapter 2 of

1 the Arms Export Control Act or a commercial
2 sale under section 38 of the Arms Export Con-
3 trol Act to reduce as much unnecessary admin-
4 istrative burden as possible that is a result of
5 differences between the exercise of those two
6 authorities.

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

11 **SEC. 116. TRANSITION PROVISIONS.**

12 (a) IN GENERAL.—All delegations, rules, regulations,
13 orders, determinations, licenses, or other forms of admin-
14 istrative action that have been made, issued, conducted,
15 or allowed to become effective under the Export Adminis-
16 tration Act of 1979 (as in effect on the day before the
17 date of the enactment of this Act and as continued in ef-
18 fect pursuant to the International Emergency Economic
19 Powers Act), or the Export Administration Regulations,
20 and are in effect as of the date of the enactment of this
21 Act, shall continue in effect according to their terms until
22 modified, superseded, set aside, or revoked under the au-
23 thority of this title.

24 (b) ADMINISTRATIVE AND JUDICIAL PRO-
25 CEEDINGS.—This title shall not affect any administrative

1 or judicial proceedings commenced, or any applications for
2 licenses made, under the Export Administration Act of
3 1979 (as in effect on the day before the date of the enact-
4 ment of this Act and as continued in effect pursuant to
5 the International Emergency Economic Powers Act), or
6 the Export Administration Regulations.

7 (c) CERTAIN DETERMINATIONS AND REFERENCES.—

8 (1) STATE SPONSORS OF TERRORISM.—Any de-
9 termination that was made under section 6(j) of the
10 Export Administration Act of 1979 (as in effect on
11 the day before the date of the enactment of this Act
12 and as continued in effect pursuant to the Inter-
13 national Emergency Economic Powers Act) shall
14 continue in effect as if the determination had been
15 made under section 104(c) of this Act.

16 (2) REFERENCE.—Any reference in any other
17 provision of law to a country the government of
18 which the Secretary of State has determined, for
19 purposes of section 6(j) of the Export Administra-
20 tion Act of 1979 (as in effect on the day before the
21 date of the enactment of this Act and as continued
22 in effect pursuant to the International Emergency
23 Economic Powers Act), is a government that has re-
24 peatedly provided support for acts of international
25 terrorism shall be deemed to refer to a country the

1 government of which the Secretary of State has de-
2 termined, for purposes of section 104(c) of this Act,
3 is a government that has repeatedly provided sup-
4 port for acts of international terrorism.

5 **TITLE II—ANTI-BOYCOTT ACT OF** 6 **2018**

7 **SEC. 201. SHORT TITLE.**

8 This Act may be cited as the “Anti-Boycott Act of
9 2018”.

10 **SEC. 202. STATEMENT OF POLICY.**

11 Congress declares it is the policy of the United
12 States—

13 (1) to oppose restrictive trade practices or boy-
14 cotts fostered or imposed by any foreign country, or
15 requests to impose restrictive trade practices or boy-
16 cotts by any foreign country, against other countries
17 friendly to the United States or against any United
18 States person;

19 (2) to encourage and, in specified cases, require
20 United States persons engaged in the export of
21 goods or technology or other information to refuse to
22 take actions, including furnishing information or en-
23 tering into or implementing agreements, which have
24 the effect of furthering or supporting the restrictive
25 trade practices or boycotts fostered or imposed by

1 any foreign country, or requests to impose restrictive
2 trade practices or boycotts by any foreign country
3 against a country friendly to the United States or
4 against any United States person; and

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

8 **SEC. 203. FOREIGN BOYCOTTS.**

9 (a) PROHIBITIONS AND EXCEPTIONS.—

10 (1) PROHIBITIONS.—For the purpose of imple-
11 menting the policies set forth in section 202, the
12 President shall issue regulations prohibiting any
13 United States person, with respect to that person's
14 activities in the interstate or foreign commerce of
15 the United States, from taking or knowingly agree-
16 ing to take any of the following actions with intent
17 to comply with, further, or support any boycott fos-
18 tered or imposed by any foreign country, or request
19 to impose any boycott by any foreign country,
20 against a country which is friendly to the United
21 States and which is not itself the object of any form
22 of boycott pursuant to United States law or regula-
23 tion:

24 (A) Refusing, or requiring any other per-
25 son to refuse, to do business with or in the boy-

1 cotted country, with any business concern orga-
2 nized under the laws of the boycotted country,
3 with any national or resident of the boycotted
4 country, or with any other person, pursuant to
5 an agreement with, a requirement of, or a re-
6 quest from or on behalf of the boycotting coun-
7 try. The mere absence of a business relationship
8 with or in the boycotted country with any busi-
9 ness concern organized under the laws of the
10 boycotted country, with any national or resident
11 of the boycotted country, or with any other per-
12 son, does not indicate the existence of the in-
13 tent required to establish a violation of regula-
14 tions issued to carry out this subparagraph.

15 (B) Refusing, or requiring any other per-
16 son to refuse, to employ or otherwise discrimi-
17 nating against any United States person on the
18 basis of race, religion, sex, or national origin of
19 that person or of any owner, officer, director, or
20 employee 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,
24 director, or employee of such person.

1 (D) Furnishing information, or requesting
2 the furnishing of information, about whether
3 any person has, has had, or proposes to have
4 any business relationship (including a relation-
5 ship by way of sale, purchase, legal or commer-
6 cial representation, shipping or other transport,
7 insurance, investment, or supply) with or in the
8 boycotted country, with any business concern
9 organized under the laws of the boycotted coun-
10 try, with any national or resident of the boy-
11 cotted country, or with any other person which
12 is known or believed to be restricted from hav-
13 ing any business relationship with or in the boy-
14 cotted country. Nothing in this subparagraph
15 shall prohibit the furnishing of normal business
16 information in a commercial context as defined
17 by the Secretary.

18 (E) Furnishing information about whether
19 any person is a member of, has made contribu-
20 tions to, or is otherwise associated with or in-
21 volved in the activities of any charitable or fra-
22 ternal organization which supports the boy-
23 cotted country.

24 (F) Paying, honoring, confirming, or other-
25 wise implementing a letter of credit which con-

1 tains any condition or requirement compliance
2 with which is prohibited by regulations issued
3 pursuant to this paragraph, and no United
4 States person shall, as a result of the applica-
5 tion of this paragraph, be obligated to pay or
6 otherwise honor or implement such letter of
7 credit.

8 (2) EXCEPTIONS.—Regulations issued pursuant
9 to paragraph (1) shall provide exceptions for—

10 (A) complying or agreeing to comply with
11 requirements—

12 (i) prohibiting the import of goods or
13 services from the boycotted country or
14 goods produced or services provided by any
15 business concern organized under the laws
16 of the boycotted country or by nationals or
17 residents of the boycotted country; or

18 (ii) prohibiting the shipment of goods
19 to the boycotting country on a carrier of
20 the boycotted country, or by a route other
21 than that prescribed by the boycotting
22 country or the recipient of the shipment;

23 (B) complying or agreeing to comply with
24 import and shipping document requirements
25 with respect to the country of origin, the name

1 of the carrier and route of shipment, the name
2 of the supplier of the shipment or the name of
3 the provider of other services, except that no in-
4 formation knowingly furnished or conveyed in
5 response to such requirements may be stated in
6 negative, blacklisting, or similar exclusionary
7 terms, other than with respect to carriers or
8 route of shipment as may be permitted by such
9 regulations in order to comply with pre-
10 cautionary requirements protecting against war
11 risks and confiscation;

12 (C) complying or agreeing to comply in the
13 normal course of business with the unilateral
14 and specific selection by a boycotting country,
15 or national or resident thereof, of carriers, in-
16 surers, suppliers of services to be performed
17 within the boycotting country or specific goods
18 which, in the normal course of business, are
19 identifiable by source when imported into the
20 boycotting country;

21 (D) complying or agreeing to comply with
22 export requirements of the boycotting country
23 relating to shipments or transshipments of ex-
24 ports to the boycotted country, to any business
25 concern of or organized under the laws of the

1 boycotted country, or to any national or resi-
2 dent of the boycotted country;

3 (E) compliance by an individual or agree-
4 ment by an individual to comply with the immi-
5 gration or passport requirements of any country
6 with respect to such individual or any member
7 of such individual's family or with requests for
8 information regarding requirements of employ-
9 ment of such individual within the boycotting
10 country; and

11 (F) compliance by a United States person
12 resident in a foreign country or agreement by
13 such person to comply with the laws of that
14 country with respect to his activities exclusively
15 therein, and such regulations may contain ex-
16 ceptions for such resident complying with the
17 laws or regulations of that foreign country gov-
18 erning imports into such country of
19 trademarked, trade named, or similarly specifi-
20 cally identifiable products, or components of
21 products for his own use, including the per-
22 formance of contractual services within that
23 country, as may be defined by such regulations.

1 (3) SPECIAL RULES.—Regulations issued pur-
2 suant to paragraphs (2)(C) and (2)(F) shall not pro-
3 vide exceptions from paragraphs (1)(B) and (1)(C).

4 (4) RULE OF CONSTRUCTION.—Nothing in this
5 subsection may be construed to supersede or limit
6 the operation of the antitrust or civil rights laws of
7 the United States.

8 (5) APPLICATION.—This section shall apply to
9 any transaction or activity undertaken, by or
10 through a United States person or any other person,
11 with intent to evade the provisions of this section as
12 implemented by the regulations issued pursuant to
13 this subsection, and such regulations shall expressly
14 provide that the exceptions set forth in paragraph
15 (2) shall not permit activities or agreements (ex-
16 pressed or implied by a course of conduct, including
17 a pattern of responses) otherwise prohibited, which
18 are not within the intent of such exceptions.

19 (b) FOREIGN POLICY CONTROLS.—

20 (1) IN GENERAL.—In addition to the regula-
21 tions issued pursuant to subsection (a), regulations
22 issued under title I of this Act to carry out the poli-
23 cies set forth in section 102(1)(D) shall implement
24 the policies set forth in this section.

1 (2) REQUIREMENTS.—Such regulations shall
2 require that any United States person receiving a re-
3 quest for the furnishing of information, the entering
4 into or implementing of agreements, or the taking of
5 any other action referred to in subsection (a) shall
6 report that fact to the Secretary, together with such
7 other information concerning such request as the
8 Secretary may require for such action as the Sec-
9 retary considers appropriate for carrying out the
10 policies of that section. Such person shall also report
11 to the Secretary whether such person intends to
12 comply and whether such person has complied with
13 such request. Any report filed pursuant to this para-
14 graph shall be made available promptly for public in-
15 spection and copying, except that information re-
16 garding the quantity, description, and value of any
17 goods or technology to which such report relates
18 may be kept confidential if the Secretary determines
19 that disclosure thereof would place the United States
20 person involved at a competitive disadvantage. The
21 Secretary shall periodically transmit summaries of
22 the information contained in such reports to the Sec-
23 retary of State for such action as the Secretary of
24 State, in consultation with the Secretary, considers

1 appropriate for carrying out the policies set forth in
2 section 202.

3 (c) PREEMPTION.—The provisions of this section and
4 the regulations issued pursuant thereto shall preempt any
5 law, rule, or regulation of any of the several States or the
6 District of Columbia, or any of the territories or posses-
7 sions of the United States, or of any governmental subdivi-
8 sion thereof, which law, rule, or regulation pertains to par-
9 ticipation in, compliance with, implementation of, or the
10 furnishing of information regarding restrictive trade prac-
11 tices or boycotts fostered or imposed by foreign countries,
12 or requests to impose restrictive trade practices or boy-
13 cotts by any foreign country, against other countries
14 friendly to the United States.

15 **SEC. 204. ENFORCEMENT.**

16 (a) CIVIL PENALTIES.—The President may impose
17 the following civil penalties on a person who violates sec-
18 tion 203 or any regulation issued under this title:

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

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

1 (3) A prohibition on the person's ability to ex-
 2 port, reexport, or transfer any items, whether or not
 3 subject to controls under this title.

4 (b) PROCEDURES.—Any civil penalty under this sec-
 5 tion may be imposed only after notice and opportunity for
 6 an agency hearing on the record in accordance with sec-
 7 tions 554 through 557 of title 5, United States Code, and
 8 shall be subject to judicial review in accordance with chap-
 9 ter 7 of such title.

10 (c) STANDARDS FOR LEVELS OF CIVIL PENALTY.—
 11 The President may by regulation provide standards for es-
 12 tablishing levels of civil penalty under this section based
 13 upon factors such as the seriousness of the violation, the
 14 culpability of the violator, and the violator's record of co-
 15 operation with the Government in disclosing the violation.

16 **TITLE III—SANCTIONS REGARD-**
 17 **ING MISSILE PROLIFERATION**
 18 **AND CHEMICAL AND BIO-**
 19 **LOGICAL WEAPONS PRO-**
 20 **LIFERATION**

21 **SEC. 301. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

22 (a) VIOLATIONS BY UNITED STATES PERSONS.—

23 (1) SANCTIONS.—

24 (A) SANCTIONABLE ACTIVITY.—The Presi-
 25 dent shall impose the applicable sanctions de-

scribed in subparagraph (B) if the President determines that a United States person knowingly—

(i) exports, reexports, or transfers of any item on the MTCR Annex, in violation of the provisions 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 orders issued under any such provisions; or

(ii) conspires to or attempts to engage in such export, reexport, or transfer.

(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, reexport, or transfer 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, reexport, or transfer

1 is missile equipment or technology within
2 category I of the MTCR Annex, then the
3 President shall deny to such United States
4 person, for a period of not less than 2
5 years, all licenses for items the transfer of
6 which is controlled under title I.

7 (2) DISCRETIONARY SANCTIONS.—In the case
8 of any determination referred to in paragraph (1),
9 the President may pursue any other appropriate
10 penalties under section 109 of this Act.

11 (3) WAIVER.—The President may waive the im-
12 position of sanctions under paragraph (1) on a per-
13 son with respect to a product or service if the Presi-
14 dent certifies to the Congress that—

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

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

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

1 (1) SANCTIONS.—

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

7 (i) determines that a foreign person
8 knowingly—

9 (I) exports, reexports, or trans-
10 fers any MTCR equipment or tech-
11 nology that contributes to the design,
12 development, or production of missiles
13 in a country that is not an MTCR ad-
14 herent and would be, if it were United
15 States-origin equipment or technology,
16 subject to the jurisdiction of the
17 United States under title I;

18 (II) conspires to or attempts to
19 engage in such export, reexport, or
20 transfer; or

21 (III) facilitates such export, reex-
22 port, or transfer by any other person;
23 or

1 (ii) has made a determination with re-
2 spect to the foreign person under section
3 73(a) of the Arms Export Control Act.

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

7 (i) If the item involved in the export,
8 reexport, or transfer is within category II
9 of the MTCR Annex, then the President
10 shall deny, for a period of 2 years, licenses
11 for the transfer to such foreign person of
12 missile equipment or technology the trans-
13 fer of which is controlled under title I.

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

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

24 (A) any export, reexport, or transfer that
25 is authorized by the laws of an MTCR adher-

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

3 (B) any export, reexport, or transfer 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) WAIVER AND REPORT TO CONGRESS.—

19 (A) WAIVER AUTHORITY.—The President
20 may waive the application of paragraph (1) to
21 a foreign person if the President determines
22 that such waiver is essential to the national se-
23 curity of the United States.

24 (B) NOTIFICATION AND REPORT TO CON-
25 GRESS.—In the event that the President decides

1 to apply the waiver described in subparagraph
2 (A), the President shall so notify the appro-
3 priate congressional committees not less than
4 20 working days before issuing the waiver.
5 Such notification shall include a report fully ar-
6 ticulating the rationale and circumstances
7 which led the President to apply the waiver.

8 (5) ADDITIONAL WAIVER.—The President may
9 waive the imposition of sanctions under paragraph
10 (1) on a person with respect to a product or service
11 if the President certifies to the appropriate congres-
12 sional committees that—

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

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

22 (6) EXCEPTIONS.—The President shall not
23 apply the sanction under this subsection prohibiting
24 the importation of the products of a foreign per-
25 son—

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

3 (i) under existing contracts or sub-
4 contracts, including the exercise of options
5 for production quantities to satisfy require-
6 ments essential to the national security of
7 the United States;

8 (ii) if the President determines that
9 the person to which the sanctions would be
10 applied is a sole source supplier of the de-
11 fense articles or defense services, that the
12 defense articles or defense services are es-
13 sential to the national security of the
14 United States, and that alternative sources
15 are not readily or reasonably available; or

16 (iii) if the President determines that
17 such articles or services are essential to the
18 national security of the United States
19 under defense coproduction agreements or
20 NATO Programs of Cooperation;

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

25 (C) to—

1 (i) spare parts;

2 (ii) component parts, but not finished
3 products, essential to United States prod-
4 ucts or production;

5 (iii) routine services and maintenance
6 of products, to the extent that alternative
7 sources are not readily or reasonably avail-
8 able; or

9 (iv) information and technology essen-
10 tial to United States products or produc-
11 tion.

12 (c) DEFINITIONS.—In this section:

13 (1) APPROPRIATE CONGRESSIONAL COMMIT-
14 TEES.—The term “appropriate congressional com-
15 mittees” means—

16 (A) the Committee on Foreign Affairs of
17 the House of Representatives; and

18 (B) the Committee on Foreign Relations
19 and the Committee on Banking, Housing, and
20 Urban Affairs of the Senate.

21 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—

22 The terms “defense articles” and “defense services”
23 mean those items on the United States Munitions
24 List as defined in section 47(7) of the Arms Export
25 Control Act (22 U.S.C. 2794 note).

1 (3) MISSILE.—The term “missile” means a cat-
2 egory I system as defined in the MTCR Annex.

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

11 (5) MTCR ADHERENT.—The term “MTCR ad-
12 herent” means a country that participates in the
13 MTCR or that, pursuant to an international under-
14 standing to which the United States is a party, con-
15 trols MTCR equipment or technology in accordance
16 with the criteria and standards set forth in the
17 MTCR.

18 (6) MTCR ANNEX.—The term “MTCR Annex”
19 means the Guidelines and Equipment and Tech-
20 nology Annex of the MTCR, and any amendments
21 thereto.

22 (7) MISSILE EQUIPMENT OR TECHNOLOGY;
23 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
24 “missile equipment or technology” and “MTCR

1 equipment or technology” mean those items listed in
 2 category I or category II of the MTCR Annex.

3 **SEC. 302. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
 4 **LIFERATION SANCTIONS.**

5 (a) IMPOSITION OF SANCTIONS.—

6 (1) DETERMINATION BY THE PRESIDENT.—Ex-
 7 cept as provided in subsection (b)(2), the President
 8 shall impose the sanction described in subsection (c)
 9 if the President determines that a foreign person has
 10 knowingly and materially contributed—

11 (A) through the export from the United
 12 States of any item that is subject to the juris-
 13 diction of the United States under this title; or

14 (B) through the export from any other
 15 country of any item that would be, if they were
 16 United States goods or technology, subject to
 17 the jurisdiction of the United States under this
 18 title,

19 to the efforts by any foreign country, project, or en-
 20 tity described in paragraph (2) to use, develop,
 21 produce, stockpile, or otherwise acquire chemical or
 22 biological weapons.

23 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
 24 CEIVING ASSISTANCE.—Paragraph (1) applies in the
 25 case of—

1 (A) any foreign country that the President
2 determines has, at any time after January 1,
3 1980—

4 (i) used chemical or biological weap-
5 ons in violation of international law;

6 (ii) used lethal chemical or biological
7 weapons against its own nationals; or

8 (iii) made substantial preparations to
9 engage in the activities described in clause
10 (i) or (ii);

11 (B) any foreign country whose government
12 is determined for purposes of section 104(c) of
13 this Act to be a government that has repeatedly
14 provided support for acts of international ter-
15 rorism; or

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

19 (3) PERSONS AGAINST WHICH SANCTIONS ARE
20 TO BE IMPOSED.—A sanction shall be imposed pur-
21 suant to paragraph (1) on—

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

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

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

8 (b) CONSULTATIONS WITH AND ACTIONS BY FOR-
9 EIGN GOVERNMENT OF JURISDICTION.—

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

17 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
18 TION.—In order to pursue such consultations with
19 that government, the President may delay imposition
20 of a sanction pursuant to this section for a period
21 of up to 90 days. Following such consultations, the
22 President shall impose the sanction unless the Presi-
23 dent determines and certifies to the appropriate con-
24 gressional committees that the Government has
25 taken specific and effective actions, including appro-

1 piate penalties, to terminate the involvement of the
2 foreign person in the activities described in sub-
3 section (a)(1). The President may delay imposition
4 of the sanction for an additional period of up to 90
5 days if the President determines and certifies to the
6 Congress that the government is in the process of
7 taking the actions described in the preceding sen-
8 tence.

9 (3) REPORT TO CONGRESS.—The President
10 shall report to the appropriate congressional commit-
11 tees, not later than 90 days after making a deter-
12 mination under subsection (a)(1), on the status of
13 consultations with the appropriate government under
14 this subsection, and the basis for any determination
15 under paragraph (2) of this subsection that such
16 government has taken specific corrective actions.

17 (c) SANCTION.—

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

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

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

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

10 (ii) if the President determines that
11 the person or other entity to which the
12 sanctions would otherwise be applied is a
13 sole source supplier of the defense articles
14 or defense services, that the defense arti-
15 cles or defense services are essential, and
16 that alternative sources are not readily or
17 reasonably available; or

18 (iii) if the President determines that
19 such articles or services are essential to the
20 national security under defense coproduc-
21 tion agreements;

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

1 (C) to—

2 (i) spare parts;

3 (ii) component parts, but not finished
4 products, essential to United States prod-
5 ucts or production; or

6 (iii) routine servicing and mainte-
7 nance of products, to the extent that alter-
8 native sources are not readily or reason-
9 ably available;

10 (D) to information and technology essen-
11 tial to United States products or production; or

12 (E) to medical or other humanitarian
13 items.

14 (d) TERMINATION OF SANCTIONS.—A sanction im-
15 posed pursuant to this section shall apply for a period of
16 at least 12 months following the imposition of one sanction
17 and shall cease to apply thereafter only if the President
18 determines and certifies to the appropriate congressional
19 committees that reliable information indicates that the
20 foreign person with respect to which the determination
21 was made under subsection (a)(1) has ceased to aid or
22 abet any foreign government, project, or entity in its ef-
23 forts to acquire chemical or biological weapons capability
24 as described in that subsection.

25 (e) WAIVER.—

1 (1) CRITERION FOR WAIVER.—The President
2 may waive the application of any sanction imposed
3 on any person pursuant to this section, after the end
4 of the 12-month period beginning on the date on
5 which that sanction was imposed on that person, if
6 the President determines and certifies to the appro-
7 priate congressional committees that such waiver is
8 important to the national security interests of the
9 United States.

10 (2) NOTIFICATION OF AND REPORT TO CON-
11 GRESS.—If the President decides to exercise the
12 waiver authority provided in paragraph (1), the
13 President shall so notify the appropriate congress-
14 sional committees not less than 20 days before the
15 waiver takes effect. Such notification shall include a
16 report fully articulating the rationale and cir-
17 cumstances which led the President to exercise the
18 waiver authority.

19 (f) DEFINITIONS.—In this section:

20 (1) APPROPRIATE CONGRESSIONAL COMMIT-
21 TEES.—The term “appropriate congressional com-
22 mittees” means—

23 (A) the Committee on Foreign Affairs of
24 the House of Representatives; and

1 (B) the Committee on Foreign Relations
2 and the Committee on Banking, Housing, and
3 Urban Affairs of the Senate.

4 (2) DEFENSE ARTICLES; DEFENSE SERVICES.—
5 The terms “defense articles” and “defense services”
6 mean those items on the United States Munitions
7 List or are otherwise controlled under the Arms Ex-
8 port Control Act.

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