

105TH CONGRESS
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H. R. 1942

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1997

Ms. ROS-LEHTINEN (for herself, Mr. GILMAN, Mr. SMITH of New Jersey, Mr. GALLEGLY, and Mr. MANZULLO) introduced the following bill; which was referred to the Committee on International Relations

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—EXPORT ADMINISTRATION

Sec. 101. Short title.

Sec. 102. Findings.

Sec. 103. Policy statement.

Sec. 104. General provisions.

Sec. 105. Multilateral controls.

Sec. 106. Emergency controls.

Sec. 107. Short supply controls.

Sec. 108. Foreign boycotts.

Sec. 109. Procedures for processing export license applications; other inquiries.

Sec. 110. Violations.

Sec. 111. Controlling proliferation activity.
 Sec. 112. Administrative and judicial review.
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 Sec. 114. Export control authorities and procedures.
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 Sec. 116. Definitions.
 Sec. 117. Effects on other Acts.
 Sec. 118. Secondary Arab boycott.
 Sec. 119. Conforming amendments.
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TITLE II—NUCLEAR PROLIFERATION PREVENTION

Sec. 201. Conforming amendment relating to provisions of the Nuclear Proliferation Prevention Act of 1994.
 Sec. 202. Seeking multilateral support for unilateral sanctions.
 Sec. 203. Sanctions under the Nuclear Proliferation Prevention Act of 1994.

1 **TITLE I—EXPORT** 2 **ADMINISTRATION**

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

4 This title may be cited as the “Export Administration
 5 Act of 1997”.

6 **SEC. 102. FINDINGS.**

7 The Congress makes the following findings:

8 (1) Export controls are a part of a comprehen-
 9 sive response to national security threats. United
 10 States exports should be restricted only for signifi-
 11 cant national security, nonproliferation, and foreign
 12 policy reasons.

13 (2) Exports of certain commodities and tech-
 14 nology may adversely affect the national security
 15 and foreign policy of the United States by making
 16 a significant contribution to the military potential of
 17 individual countries or by disseminating the capabil-

1 ity to design, develop, test, produce, stockpile, or use
2 weapons of mass destruction, missile delivery sys-
3 tems, and other significant military capabilities.
4 Therefore, the administration of export controls
5 should emphasize the control of these exports.

6 (3) The acquisition of sensitive commodities
7 and technology by those countries and end users
8 whose actions or policies run counter to United
9 States national security or foreign policy interests
10 may enhance the military capabilities of those coun-
11 tries, particularly their ability to design, develop,
12 test, produce, stockpile, use, and deliver weapons of
13 mass destruction, missile delivery systems, and other
14 significant military capabilities. This enhancement
15 threatens the security of the United States and its
16 allies, and places additional demands on the defense
17 budget of the United States. Availability to countries
18 and end users of items that contribute to military
19 capabilities or the proliferation of weapons of mass
20 destruction is a fundamental concern of the United
21 States and should be eliminated through negotia-
22 tions and other appropriate means whenever pos-
23 sible.

24 (4) With the growing importance of exports to
25 sustained United States economic growth and vital-

1 ity, restrictions on exports must be evaluated in
2 terms of their effects on the United States economy.

3 (5) Export controls cannot be the sole instru-
4 ment of the United States to prevent a country or
5 end user from developing weapons of mass destruc-
6 tion. For this reason, export controls should be ap-
7 plied as part of a comprehensive response to security
8 threats.

9 (6) The national security of the United States
10 depends not only on wise foreign policies and a
11 strong defense, but also a vibrant national economy.
12 To be truly effective, export controls should be ap-
13 plied uniformly by all suppliers.

14 (7) International treaties, such as the Chemical
15 Weapons Convention, and international agreements
16 and arrangements intended to control, lessen, or
17 eliminate weapons of mass destruction should be
18 fully implemented by, among other things, imposing
19 restrictions on imports and exports of designated
20 items, monitoring, and transmitting reports on, the
21 production, processing, consumption, export, and im-
22 port of designated items, and complying with ver-
23 ification regimes mandated by such treaties, agree-
24 ments, and arrangements.

1 (8) Except in the event the United States is the
2 sole source of critical supplies, unilateral export con-
3 trols are generally not truly effective in influencing
4 the behavior of other governments or impeding ac-
5 cess to controlled items. Unilateral controls alone
6 may impede access to United States sources of sup-
7 ply without affecting the ability of countries to ob-
8 tain controlled items elsewhere. Moreover, unilateral
9 controls generally permit foreign competitors to
10 serve markets the United States Government denies
11 to United States firms and workers, thus impairing
12 the reliability of United States suppliers in compari-
13 son with their foreign competitors. At the same
14 time, the need to lead the international community
15 or overriding national security or foreign policy in-
16 terests may justify unilateral controls in specific
17 cases.

18 (9) The United States recognizes the impor-
19 tance of comprehensive enforcement measures to
20 maximize the effectiveness of multilateral controls.

21 (10) The United States export control system
22 must not be overly restrictive or bureaucratic, or un-
23 dermine the competitive position of United States in-
24 dustry. The export control system must be efficient,
25 responsive, transparent, and effective.

1 (11) Export restrictions that negatively affect
2 the United States industrial base may ultimately
3 weaken United States military capabilities and lead
4 to dependencies on foreign sources for key compo-
5 nents.

6 (12) Minimization of restrictions on exports of
7 agricultural commodities and products is of critical
8 importance to the maintenance of a sound agricul-
9 tural sector, to a positive contribution to the balance
10 of payments, to reducing the level of Federal ex-
11 penditures for agricultural support programs, and to
12 United States cooperation in efforts to eliminate
13 malnutrition and world hunger.

14 (13) Minimization of restrictions on the export
15 of information technology products and services is of
16 critical importance to United States leadership in re-
17 moving obstacles to the effective development of a
18 superior global information infrastructure and the
19 new jobs and markets, increased trade and informa-
20 tion flows, improved national security, and new tools
21 for the improvement of the quality of life for people
22 globally that will be created.

23 (14) The United States should play a leading
24 role in promoting transparency and responsibility

1 with regard to the transfers of conventional arma-
2 ments and sensitive dual-use goods and technologies.

3 **SEC. 103. POLICY STATEMENT.**

4 It is the policy of the United States to do the follow-
5 ing:

6 (1) To stem the proliferation of weapons of
7 mass destruction, and the means to deliver them,
8 and other significant military capabilities by—

9 (A) leading international efforts to control
10 the proliferation of chemical and biological
11 weapons, nuclear explosive devices, missile deliv-
12 ery systems, and other significant military ca-
13 pabilities;

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

21 (C) implementing international treaties or
22 other agreements or arrangements concerning
23 controls on exports of designated items, reports
24 on the production, processing, consumption,

1 and exports and imports of such items, and
2 compliance with verification programs.

3 (2) To restrict the export of items—

4 (A) that would significantly contribute to
5 the military potential of countries so as to prove
6 detrimental to the national security of the Unit-
7 ed States or its allies; or

8 (B) where necessary to further signifi-
9 cantly the foreign policy of the United States or
10 to fulfill its declared international commit-
11 ments.

12 (3) To—

13 (A) minimize uncertainties in export con-
14 trol policy; and

15 (B) encourage trade with all countries with
16 which the United States has diplomatic or trad-
17 ing relations, except those countries with which
18 such trade has been determined by the Presi-
19 dent to be against the national interest.

20 (4) To restrict export trade when necessary to
21 protect the domestic economy from the excessive
22 drain of scarce materials and to reduce the serious
23 inflationary impact of foreign demand.

24 (5) To further increase the reliance of the Unit-
25 ed States upon multilateral coordination of controls

1 through effective control regimes that maintain lists
2 of controlled items that are truly critical to the con-
3 trol objectives, strive to increase membership to in-
4 clude all relevant countries, maintain common cri-
5 teria and procedures for licensing, and harmonize
6 member countries' licensing practices. It is the pol-
7 icy of the United States that multilateral controls
8 are the best means of achieving the control objec-
9 tives of the United States.

10 (6) To impose unilateral controls only when it
11 is necessary to further significantly the national se-
12 curity or foreign policy of the United States, and
13 only after full consideration of the economic impact
14 of the controls and their effectiveness in achieving
15 their intended objectives.

16 (7) To make all licensing determinations in a
17 timely manner so undue delays in the licensing proc-
18 ess will not cause a United States person to lose an
19 export sale.

20 (8) To use export controls to deter and punish
21 acts of international terrorism and to encourage
22 other countries to take immediate steps to prevent
23 the use of their territories or resources to aid, en-
24 courage, or give sanctuary to those persons involved
25 in directing, supporting, or participating in acts of

1 international terrorism. To this end, consistent with
2 the policies of this section and the provisions of this
3 title, the United States should, by restricting exports
4 to countries that have violated international norms
5 of behavior by repeatedly supporting acts of inter-
6 national terrorism, distance itself from those coun-
7 tries.

8 (9)(A) To counteract restrictive trade practices
9 or boycotts fostered or imposed by foreign countries
10 against other countries friendly to the United States
11 or against any United States person.

12 (B) To encourage and, in specified cases, re-
13 quire United States persons engaged in the export of
14 commodities, technology, and other information to
15 refuse to take actions, including furnishing informa-
16 tion or entering into or implementing agreements,
17 which have the effect of furthering or supporting the
18 restrictive trade practices or boycotts fostered or im-
19 posed by any foreign country against a country
20 friendly to the United States or against any United
21 States person.

22 (10) To streamline export control functions and
23 increase administrative accountability, and thereby
24 better serve the exporting public by reducing and

1 eliminating overlapping, conflicting, and inconsistent
2 regulatory burdens.

3 (11) To minimize restrictions on the export of
4 agricultural commodities and products.

5 (12) To minimize restrictions on the export of
6 information technology products and services as part
7 of a flexible regulatory environment that can keep
8 pace with the rapid technological changes necessary
9 to realize the full economic, societal, and national se-
10 curity benefits of United States leadership in the de-
11 velopment of a superior global information infra-
12 structure.

13 (13) To cooperate with other countries to pro-
14 mote greater transparency and responsibility with
15 regard to the transfers of armaments and sensitive
16 goods and technologies, both for the purpose of de-
17 veloping common understandings of the risks to
18 international peace and regional security associated
19 with the transfers of such items and to coordinate
20 national control policies to combat those risks.

21 (14) To enhance the national security and non-
22 proliferation interests of the United States. To this
23 end and consistent with the other policies of this sec-
24 tion and the provisions of this title, the United
25 States will use export controls when necessary to en-

1 sure that access to weapons of mass destruction,
2 missile delivery systems, and other significant mili-
3 tary capabilities is restricted. While the multilateral
4 nonproliferation regimes will be the primary instru-
5 ments through which the United States will pursue
6 its nonproliferation goals, it may also, consistent
7 with the policies of this section and the provisions of
8 this title, take unilateral action.

9 (15) To promote international peace, stability,
10 and respect for fundamental human rights. The
11 United States may establish controls on exports that
12 contribute to the military capabilities of countries
13 that threaten international peace or stability or to
14 countries that abuse the fundamental rights of their
15 citizens, or to promote other important foreign pol-
16 icy objectives of the United States, consistent with
17 the policies of this section and the provisions of this
18 title.

19 **SEC. 104. GENERAL PROVISIONS.**

20 (a) TYPES OF LICENSES.—Under such conditions as
21 the Secretary may impose, consistent with the provisions
22 of this title, the Secretary may require any type of license
23 appropriate to the effective and efficient implementation
24 of this title, including the following:

1 (1) SPECIFIC EXPORTS.—A license authorizing
2 a specific export.

3 (2) MULTIPLE EXPORTS.—Licenses authorizing
4 multiple exports, issued pursuant to an application
5 by the exporter, in lieu of a license for each such ex-
6 port. Licenses under this paragraph shall be de-
7 signed to encourage and acknowledge exporters' in-
8 ternal control programs for ensuring compliance
9 with the terms of the license.

10 (b) UNITED STATES COMMODITY CONTROL
11 INDEX.—

12 (1) IN GENERAL.—The Secretary shall establish
13 and maintain, in consultation with the Secretary of
14 Defense and the heads of other appropriate depart-
15 ments and agencies, a United States Commodity
16 Control Index specifying the license requirements
17 under this title that are applicable to the items on
18 the list.

19 (2) CONTENTS.—The control index shall—

20 (A) consist of a multilateral control list of
21 items on which export controls are imposed
22 under section 105, an emergency control list of
23 items on which export controls are imposed
24 under section 106, and a short supply control

1 list of commodities on which export controls are
2 imposed under section 107;

3 (B) include, as part of the multilateral and
4 emergency control lists, those items identified
5 pursuant to section 111(a);

6 (C) for each item on the control index,
7 specify with particularity the performance
8 (where applicable) and other identifying charac-
9 teristics of the item and provide a rationale for
10 why the item is on the control list;

11 (D) identify countries, and, as appropriate,
12 end uses or end users, including specific
13 projects and end users of concern, cross-ref-
14 erenced with the list of commodities and tech-
15 nology on which export controls are imposed;
16 and

17 (E) be sufficiently specific and clear as to
18 guide exporters and licensing officers in deter-
19 minations of licensing requirements under this
20 title.

21 (c) DENIED OR DEBARRED PARTIES, SANCTIONED
22 PARTIES, BLOCKED PERSONS, SPECIALLY DESIGNATED
23 NATIONALS, AND OTHER PARTIES PRESENTING UNAC-
24 CEPTABLE RISKS OF DIVERSION.—

1 (1) DENIED OR DEBARRED PARTIES, SANC-
2 TIONED PARTIES, BLOCKED PERSONS, AND SPE-
3 CIALLY DESIGNATED NATIONALS.—The President
4 shall ensure that an official list is published semi-
5 annually in the Federal Register of all parties denied
6 or debarred from export privileges under this title or
7 under the Arms Export Control Act, all parties sanc-
8 tioned for prohibited proliferation activity under this
9 title or other statutes, and all blocked persons and
10 specially designated nationals. For purposes of this
11 paragraph, a “blocked person” or “specially des-
12 ignated national” is a person or entity so designated
13 by the President or the Secretary of the Treasury
14 under the Trading With the Enemy Act, or the
15 International Emergency Economic Powers Act, with
16 whom transactions are prohibited on account of the
17 relationship of that person or entity with a country,
18 organization, or activity against which sanctions are
19 imposed under either such Act. Promptly after any
20 person is designated a “blocked person” or “spe-
21 cially designated national”, the Secretary of the
22 Treasury shall publish such designation in the Fed-
23 eral Register.

1 (2) OTHER PARTIES.—The Secretary shall
2 maintain a list of parties for whom licenses under
3 this title will be presumptively denied.

4 (d) DELEGATION OF AUTHORITY.—Subject to the
5 provisions of this title, the President may delegate the
6 power, authority, and discretion conferred upon the Presi-
7 dent by this title to such departments, agencies, and offi-
8 cials of the Government as the President considers appro-
9 priate, except that no authority under this title may be
10 delegated to, or exercised by, any official of any depart-
11 ment or agency the head of which is not appointed by the
12 President, by and with the advice and consent of the Sen-
13 ate. The President may not delegate or transfer his power,
14 authority, or discretion to overrule or modify any rec-
15 ommendation or decision made by the Secretary, the Sec-
16 retary of Defense, or the Secretary of State under this
17 title and may not delegate the authority under section
18 106(a)(4).

19 (e) NOTIFICATION OF THE PUBLIC; CONSULTATION
20 WITH BUSINESS.—The Secretary shall keep the public
21 fully apprised of changes in export control policy and pro-
22 cedures instituted in conformity with this title with a view
23 to encouraging trade. The Secretary shall consult regu-
24 larly with representatives of a broad spectrum of enter-
25 prises, labor organizations, and citizens interested in or

1 affected by export controls, in order to obtain their views
2 on United States export control policy and the foreign
3 availability of items subject to controls.

4 (f) EXPORT ADVISORY COMMITTEES.—

5 (1) APPOINTMENT.—Upon his or her own ini-
6 tiative or upon the written request of representatives
7 of a substantial segment of any industry which pro-
8 duces any items subject to export controls under this
9 title or under the International Emergency Eco-
10 nomic Powers Act, or being considered for such con-
11 trols, the Secretary shall appoint export advisory
12 committees with respect to any such items. Each
13 such committee shall consist of representatives of
14 United States industry and Government, including
15 the Department of Commerce and other appropriate
16 departments and agencies of the Government. The
17 Secretary shall permit the widest possible participa-
18 tion by the business community on the export advi-
19 sory committees.

20 (2) FUNCTIONS.—Export advisory committees
21 appointed under paragraph (1) shall advise and as-
22 sist the Secretary, and any other department, agen-
23 cy, or official of the Government carrying out func-
24 tions under this title, on actions (including all as-
25 pects of controls imposed or proposed) designed to

1 carry out the policies of this title concerning the
2 items with respect to which such export advisory
3 committees were appointed. Such committees, where
4 they have expertise in such matters, shall be con-
5 sulted on questions involving—

6 (A) technical matters,

7 (B) worldwide availability and actual utili-
8 zation of production technology,

9 (C) licensing procedures which affect the
10 level of export controls applicable to any items,

11 (D) revisions of the multilateral control list
12 (as provided in section 105(g)), including pro-
13 posed revisions of multilateral controls in which
14 the United States participates,

15 (E) the issuance of regulations,

16 (F) the impact and interpretation of exist-
17 ing regulations,

18 (G) processes and procedures for review of
19 licenses and policy,

20 (H) any other questions relating to actions
21 designed to carry out this title, and

22 (I) the operation and conduct of inter-
23 national business transactions.

24 Nothing in this subsection shall prevent the United
25 States Government from consulting, at any time,

1 with any person representing an industry or the gen-
2 eral public, regardless of whether such person is a
3 member of an export advisory committee. Members
4 of the public shall be given a reasonable opportunity,
5 pursuant to regulations prescribed by the Secretary,
6 to present evidence to such committees.

7 (3) REIMBURSEMENT OF EXPENSES.—Upon
8 the request of any member of any export advisory
9 committee appointed under paragraph (1), the Sec-
10 retary may, if the Secretary determines it to be ap-
11 propriate, reimburse such member for travel, sub-
12 sistence, and other necessary expenses incurred by
13 such member in connection with the duties of such
14 member.

15 (4) CHAIRPERSON.—Each export advisory com-
16 mittee appointed under paragraph (1) shall elect a
17 chairperson, and shall meet at least every 3 months
18 at the call of the chairperson, unless the chairperson
19 determines, in consultation with the other members
20 of the committee, that such a meeting is not nec-
21 essary to achieve the purposes of this subsection.
22 Each such committee shall be terminated after a pe-
23 riod of 2 years, unless extended by the Secretary for
24 additional periods of 2 years each. The Secretary

1 shall consult with each such committee on such ter-
2 mination or extension of that committee.

3 (5) ACCESS TO INFORMATION.—To facilitate
4 the work of the export advisory committees ap-
5 pointed under paragraph (1), the Secretary, in con-
6 junction with other departments and agencies par-
7 ticipating in the administration of this title, shall
8 disclose to each such committee adequate informa-
9 tion, consistent with national security, pertaining to
10 the reasons for the export controls which are in ef-
11 fect or contemplated for the items or policies for
12 which that committee furnishes advice. Information
13 provided by the export advisory committees shall not
14 be subject to disclosure under section 552 of title 5,
15 United States Code, and such information shall not
16 be published or disclosed unless the Secretary deter-
17 mines that the withholding thereof is contrary to the
18 national interest.

19 (g) DEVELOPMENT AND REVIEW OF THE CONTROL
20 INDEX.—

21 (1) IN GENERAL.—

22 (A) Consistent with the general guidance
23 of the Export Control Policy Committee estab-
24 lished in section 114(c), the Secretary of De-
25 fense and the heads of other appropriate de-

partments and agencies may identify and recommend to the Secretary—

(i) commodities and technology for inclusion on, or deletion from, the multilateral and emergency control lists; and

(ii) the licensing requirements that should or should not apply to these commodities and technology.

(B) The Secretary of Defense shall have primary responsibility for identifying commodities and technologies that are critical to the design, development, test, production, stockpiling, or use of weapons of mass destruction and other military capabilities, including manned and unmanned vehicles capable of delivering such weapons, in determining recommendations for inclusion of items on the control index.

(C) If the Secretary of Defense, the Secretary of State, or the Secretary of Energy disagrees with the decision of the Secretary regarding the inclusion or deletion, or licensing requirements of, any commodity or technology, the Secretary of Defense, State, or Energy (as the case may be) may, within 30 days after the Secretary makes the decision, appeal the Sec-

1 retary's decision to the President in writing,
2 but only on the basis of the specific provisions
3 of this title. If the Secretary of Defense, the
4 Secretary of State, or the Secretary of Energy
5 fails to appeal a decision of the Secretary in ac-
6 cordance with the preceding sentence, he or she
7 shall be deemed to have no objection to the de-
8 cision. The President shall resolve a disagree-
9 ment under this subsection not later than 30
10 days after the appeal is made under this para-
11 graph.

12 (2) NEGOTIATIONS.—The Secretary of State, in
13 consultation with appropriate departments and agen-
14 cies, shall be responsible for conducting negotiations
15 with other countries regarding multilateral arrange-
16 ments for restricting the export of items to carry out
17 the policies of this title. All appropriate departments
18 and agencies shall develop initial technical param-
19 eters and product definitions in connection with the
20 development of proposals within the United States
21 Government to be made to multilateral regimes, in
22 consultation with the export advisory committees as
23 provided in paragraph (3).

24 (3) CONSULTATIONS WITH EXPORT ADVISORY
25 COMMITTEES.—The Secretary shall consult with the

1 appropriate export advisory committee appointed
2 under this section with respect to changes in the
3 control index, and such export advisory committee
4 may submit recommendations to the Secretary with
5 respect to such changes. The Secretary shall con-
6 sider the recommendations of the export advisory
7 committee and shall inform the committee of the dis-
8 position of its recommendations. The Secretary shall
9 also seek comments and recommendations from the
10 public in connection with changes in the control
11 index. To the maximum extent practicable and con-
12 sistent with the conduct of international negotia-
13 tions, such comments and recommendations should
14 be taken into consideration in the development of
15 United States Government proposals and positions
16 to be taken in multilateral regimes.

17 (h) RIGHT OF EXPORT.—No authority or permission
18 to export may be required under this title, or under regula-
19 tions issued under this title, except to carry out the poli-
20 cies set forth in section 103.

21 (i) INTERNATIONAL OBLIGATIONS UNDER TREA-
22 TIES.—Notwithstanding any other provision of this title
23 containing limitations on authority to control exports, the
24 Secretary, in consultation with the Secretary of State, may
25 impose controls on exports to a particular country or coun-

1 tries in order to fulfill obligations of the United States
2 under resolutions of the United Nations and under trea-
3 ties to which the United States is a party. The Secretary
4 may regulate domestic and foreign conduct consistent with
5 the policies of such United Nations resolutions and trea-
6 ties. Such authority shall include, but not be limited to,
7 authority to prohibit activity such as financing, contract-
8 ing, providing services, or employment, to deny access to
9 items in the United States and abroad, to conduct audits
10 of records and inspections of facilities, to compel reports,
11 and to curtail travel.

12 (j) FEES.—No fee may be charged in connection with
13 the submission or processing of an export license applica-
14 tion under this title.

15 **SEC. 105. MULTILATERAL CONTROLS.**

16 (a) AUTHORITY.—

17 (1) IN GENERAL.—In order to carry out the
18 policies set forth in paragraphs (1), (2), (5), (13),
19 (14), and (15) of section 103, the President may, in
20 accordance with this section, prohibit, curtail, or re-
21 quire the provision of information regarding, the ex-
22 port of any commodities, technology, or other infor-
23 mation subject to the jurisdiction of the United
24 States, or exported by any person subject to the ju-
25 risdiction of the United States, in order to imple-

1 ment multilateral export control regimes. The au-
2 thority under this paragraph shall include, but not
3 be limited to, the authority to regulate domestic and
4 foreign conduct, to prohibit activity such as financ-
5 ing, contracting, providing services, or employment,
6 to deny access to items in the United States and
7 abroad, to conduct audits of records and inspections
8 of facilities, and to compel reports. The authority
9 granted by this subsection may not be exercised to
10 impose unilateral controls.

11 (2) EXERCISE OF AUTHORITY.—The authority
12 granted by this subsection shall be implemented by
13 the Secretary, in consultation with appropriate de-
14 partments and agencies.

15 (3) CONSISTENCY WITH EXPORT CONTROL RE-
16 GIMES.—Any provision of this title that provides
17 that no authority or permission to export may be re-
18 quired under this title shall not apply to the extent
19 that such a provision is inconsistent with an inter-
20 national commitment of the United States under a
21 multilateral export control regime.

22 (b) MULTILATERAL CONTROL LIST.—The Secretary
23 shall, in consultation with appropriate departments and
24 agencies as provided in section 104(g), designate as part
25 of the control index, a multilateral control list, comprised

1 of the items on which export controls are in effect under
2 this section.

3 (c) EXPORT LICENSING POLICIES.—The President
4 shall ensure that steps are taken to increase the degree
5 to which the licensing requirements of other export regime
6 members are harmonized with the licensing requirements
7 maintained by the Secretary in controlling items under
8 this section.

9 (d) MULTILATERAL CONTROL REGIMES.—

10 (1) POLICY.—In order to carry out the policies
11 set forth in section 103, the Secretary of State, in
12 consultation with appropriate departments and agen-
13 cies, should seek multilateral arrangements that are
14 intended to secure effective achievement of these
15 policies and, in so doing, also establish fairer and
16 more predictable competitive opportunities for Unit-
17 ed States exporters.

18 (2) STANDARDS FOR NATIONAL SYSTEMS.—In
19 the establishment and maintenance of multilateral
20 regimes, the Secretary of State, in consultation with
21 appropriate departments and agencies, shall take
22 steps to attain the cooperation of members of the re-
23 gimes in the effective implementation of export con-
24 trol systems. Such systems should contain the fol-
25 lowing elements:

1 (A) National laws providing enforcement
2 authorities, civil and criminal penalties, and
3 statutes of limitations sufficient to deter poten-
4 tial violations and punish violators.

5 (B) A program to evaluate export license
6 applications that includes sufficient technical
7 expertise to assess the licensing status of ex-
8 ports and ensure the reliability of end users.

9 (C) An enforcement mechanism that pro-
10 vides authority for trained enforcement officers
11 to investigate and prevent illegal exports.

12 (D) A system of export control documenta-
13 tion to verify the movement of items.

14 (E) Procedures for the coordination and
15 exchange of information concerning licensing,
16 end users, and enforcement.

17 (F) Adequate national resources devoted to
18 carrying out subparagraphs (A) through (E).

19 (3) STANDARDS FOR MULTILATERAL RE-
20 GIMES.—In the establishment and maintenance of
21 multilateral regimes, the Secretary of State, in con-
22 sultation with appropriate departments and agen-
23 cies, should seek, consistent with the policies set
24 forth in section 103, the following features for the

1 multilateral control regimes in which the United
2 States participates:

3 (A) FULL MEMBERSHIP.—Achieve mem-
4 bership of all supplier countries whose policies
5 and activities are consistent with the objectives
6 and membership criteria of the multilateral re-
7 gime.

8 (B) EFFECTIVE ENFORCEMENT AND COM-
9 PLIANCE.—Promote enforcement and compli-
10 ance with the rules and guidelines of the mem-
11 bers of the regime through maintenance of an
12 effective control list.

13 (C) PUBLIC UNDERSTANDING.—Enhance
14 public understanding of each regime’s purpose
15 and procedures.

16 (D) EFFECTIVE IMPLEMENTATION PROCE-
17 DURES.—Achieve procedures for effective imple-
18 mentation of the rules and guidelines of the re-
19 gime through uniform and consistent interpre-
20 tations of export controls agreed to by the gov-
21 ernments participating in the regime.

22 (E) ENHANCED COOPERATION AMONG RE-
23 GIME MEMBERS.—Reach agreement to enhance
24 cooperation among members of the regime in
25 obtaining the agreement of governments outside

1 the regime to restrict the export of items con-
2 trolled by the regime, to establish an ongoing
3 mechanism in the regime to coordinate planning
4 and implementation of export control measures
5 related to such agreements, and to remove
6 items from the list of items controlled by the re-
7 gime if the control of such items no longer
8 serves the objectives of the members of the re-
9 gime.

10 (F) PERIODIC HIGH-LEVEL MEETINGS.—

11 Conduct periodic meetings of high-level rep-
12 resentatives of participating governments for
13 the purpose of coordinating export control poli-
14 cies and issuing policy guidance to members of
15 the regime.

16 (G) COMMON LIST OF CONTROLLED

17 ITEMS.—Reach agreement on a common list of
18 items controlled by the regime.

19 (H) TREATMENT OF CERTAIN COUN-

20 TRIES.—Prevent the export or diversion of the
21 most sensitive items to countries whose activi-
22 ties are threatening to the national security of
23 the United States or its allies.

24 (I) DISCLOSURE OF NONPROPRIETARY IN-

25 FORMATION.—Promote transparency and timely

1 disclosure of nonproprietary information with
2 respect to the transfers of sensitive dual-use
3 commodities and technologies, when appro-
4 priate, for the purpose of developing common
5 understandings of the risks to international
6 peace and regional security associated with such
7 transfers and to coordinate national control
8 policies to combat those risks.

9 (e) INCENTIVES FOR PARTNERSHIP.—Consistent
10 with the policies of this title and consistent with the objec-
11 tives, rules, and guidelines of the individual regime—

12 (1) the Secretary, in consultation with appro-
13 priate departments and agencies, may provide for
14 exports free of license requirements to and among
15 members of a multilateral regime for items subject
16 to controls under such a multilateral regime; and

17 (2) the Secretary, in consultation with appro-
18 priate departments and agencies, may adjust licens-
19 ing policies with respect to a particular country or
20 entity for access to items controlled under this title
21 to the extent of the adherence of that country or en-
22 tity to the export control policies of this section.

23 Actions by the Secretary under paragraphs (1) and (2)
24 shall be consistent with the requirements of section
25 111(a)(1)(C).

1 (f) TRANSPARENCY OF MULTILATERAL CONTROL
2 REGIMES.—

3 (1) PUBLICATION OF INFORMATION ON EACH
4 EXISTING REGIME.—Within 6 months after the date
5 of the enactment of this Act, the Secretary shall, to
6 the extent doing so is not inconsistent with arrange-
7 ments in multilateral export control regimes, publish
8 in the Federal Register the following information
9 with respect to each multilateral control regime ex-
10 isting on the date of the enactment of this Act:

11 (A) Purposes of the control regime.

12 (B) Members of the regime.

13 (C) Licensing policy.

14 (D) Items subject to the controls under the
15 regime, together with all public notes, under-
16 standings, and other aspects of the agreement
17 of the regime, and all changes thereto.

18 (E) Any countries, end uses, or end users
19 that are subject to the controls.

20 (F) Rules of interpretation.

21 (G) Major policy actions.

22 (H) The rules and procedures of the re-
23 gime for establishing and modifying any matter
24 described in subparagraphs (A) through (G)
25 and for reviewing export license applications.

1 (2) NEW REGIMES.—Within 2 months after the
2 United States joins or organizes a new export con-
3 trol regime, the Secretary shall, to the extent doing
4 so is not inconsistent with arrangements in the re-
5 gime, publish the information described in subpara-
6 graphs (A) through (H) of paragraph (1) with re-
7 spect to that regime.

8 (3) PUBLICATION OF CHANGES.—Within 2
9 months after the applicable regime adopts any
10 changes in the information published under this sub-
11 section, the Secretary shall, to the extent doing so
12 is not inconsistent with arrangements in the regime,
13 publish such changes in the Federal Register.

14 (g) REVIEW OF CONTROLLED ITEMS.—

15 (1) IN GENERAL.—Under the policy guidance of
16 the Export Control Policy Committee established in
17 section 114(c), and consistent with the procedures in
18 section 104(g), the Secretary shall review all items
19 on the multilateral control list maintained under
20 subsection (b) at least every 2 years, except that the
21 Secretary shall review annually whether the policy
22 set forth in section 103(12) is being achieved. At the
23 conclusion of each review, the Secretary shall decide
24 whether to maintain or remove items from the multi-
25 lateral control list, maintain, change, or eliminate

1 the specifications, performance thresholds, or licens-
2 ing requirements on items on the list, or add items
3 to the list.

4 (2) CONSIDERATIONS.—In conducting the re-
5 view, the Secretary shall—

6 (A) consult with the Secretary of Defense
7 concerning militarily critical technologies;

8 (B) consult with the appropriate export ad-
9 visory committees appointed under section
10 104(f) and consider recommendations of such
11 committees with respect to proposed changes in
12 the multilateral control list;

13 (C) consider whether controlled items or
14 their equivalent are so widely available in the
15 United States (in terms of quantity, cost, and
16 means of sale and delivery) that the require-
17 ment for a license is ineffective in achieving the
18 purpose of the control;

19 (D) consider whether the differences be-
20 tween the export controls of the United States
21 and that of governments of foreign suppliers of
22 competing items effectively has placed or will
23 place the United States exporter at a significant
24 commercial disadvantage with respect to its
25 competitors abroad, and has placed, or will

1 place, employment in the United States in jeop-
2 ardy;

3 (E) consider the results of determinations
4 made under section 114(k); and

5 (F) consider comments received pursuant
6 to the notice of review provided under para-
7 graph (3)(A).

8 (3) PROCEDURES.—

9 (A) NOTICE OF REVIEW.—Before begin-
10 ning each review under this subsection, the Sec-
11 retary shall publish a notice of that review in
12 the Federal Register and shall provide a 30-day
13 period for comments and submission of data,
14 including by exporters and other interested par-
15 ties.

16 (B) PROPOSALS TO EXPORT CONTROL RE-
17 GIMES.—If a revision to the multilateral control
18 list or to a licensing requirement under this
19 paragraph is inconsistent with the control lists,
20 guidelines, or the licensing requirements of, an
21 export control regime, the Secretary of State
22 shall propose such revision to that regime. Such
23 revision shall become effective only to the extent
24 such revision is agreed to by the export control
25 regime.

1 (C) PUBLICATION OF REVISIONS.—The
2 Secretary shall publish in the Federal Register
3 any revisions in the list, with an explanation of
4 the reasons for the revisions.

5 **SEC. 106. EMERGENCY CONTROLS.**

6 (a) AUTHORITY.—

7 (1) IN GENERAL.—In order to carry out the
8 policy set forth in paragraphs (1), (2), (6), (8), (14),
9 and (15) of section 103, the President may, in ac-
10 cordance with the provisions of this section, unilater-
11 ally prohibit, curtail, or require the provision of in-
12 formation regarding the export of any commodity,
13 technology, or other information subject to the juris-
14 diction of the United States or exported by any per-
15 son subject to the jurisdiction of the United States.
16 The authority under this paragraph shall include,
17 but not be limited to, the authority to regulate do-
18 mestic and foreign conduct, to prohibit activity such
19 as financing, contracting, providing services, or em-
20 ployment, to deny access to items in the United
21 States and abroad, to conduct audits of records and
22 inspections of facilities, and to compel reports.

23 (2) EXERCISE OF AUTHORITY.—The authority
24 contained in this section shall be exercised by the
25 Secretary, in consultation with the Secretary of

1 State, the Secretary of Defense, and such other de-
2 partments and agencies as the President considers
3 appropriate, and consistent with the procedures in
4 section 104(g).

5 (3) EXPIRATION OF CONTROLS.—

6 (A) IN GENERAL.—Any controls imposed
7 under this section shall expire 12 months after
8 they are imposed, unless they are terminated
9 earlier by the President or unless they are ex-
10 tended under this section, except that such con-
11 trols may be adopted as multilateral controls
12 under section 105 or included in an embargo
13 that is imposed by the President under the
14 International Emergency Economic Powers Act,
15 the Trading with the Enemy Act, or other pro-
16 vision of law other than this title. Any extension
17 or subsequent extension of the controls under
18 this section shall be for a period of not more
19 than 1 year each. The controls shall expire at
20 the end of each such extension unless they are
21 terminated earlier by the President or unless
22 they are further extended under this section,
23 except that such controls may be adopted as
24 multilateral controls under section 105 or in-

1 cluded in an embargo described in the first sen-
2 tence of this subparagraph.

3 (B) EXCEPTION FOR MULTILATERAL
4 AGREEMENTS.—Subparagraph (A) shall not
5 apply to controls imposed by the President in
6 order to fulfill obligations of the United States
7 under resolutions of the United Nations or
8 under treaties to which the United States is a
9 party. If such a resolution or treaty ceases to
10 be in effect, controls imposed by the President
11 pursuant to such resolution or treaty shall im-
12 mediately cease to be in effect.

13 (4) CRITERIA.—Controls may be imposed, ex-
14 panded, or extended under this section only if the
15 President determines that—

16 (A) the controls are necessary to further
17 significantly the nonproliferation, national secu-
18 rity, or foreign policies of the United States
19 provided in section 103, the objective of the
20 controls is in the overall national interest of the
21 United States, and reasonable alternative
22 means to the controls are not available;

23 (B) the controls are likely to make sub-
24 stantial progress toward achieving the intended
25 purpose of—

1 (i) changing, modifying, or constrain-
2 ing the undesirable conduct or policies of
3 the country to which the controls apply;

4 (ii) denying access by the country to
5 controlled items from all sources;

6 (iii) establishing multilateral coopera-
7 tion to deny the country access to con-
8 trolled items from all sources; or

9 (iv) denying exports or assistance that
10 significantly contributes to the prolifera-
11 tion of weapons of mass destruction or
12 other important military capabilities, ter-
13 rorism, or human rights abuses;

14 (C) the proposed controls are compatible
15 with the foreign policy objectives of the United
16 States and with overall United States policy to-
17 ward the country to which the controls apply;

18 (D) the reaction of other countries to the
19 imposition, expansion, or extension of such ex-
20 port controls by the United States is not likely
21 to render the controls ineffective in achieving
22 the intended purpose or to be counter-produc-
23 tive to United States policy interests;

24 (E) the effect of the proposed controls on
25 the export performance of the United States,

1 the competitive position of the United States as
2 a supplier of items, or on the economic well-
3 being of individual United States companies
4 and their employees and communities does not
5 exceed the benefit to the United States foreign
6 policy, nonproliferation, or national security in-
7 terests; and

8 (F) the United States has the ability to en-
9 force the proposed controls effectively.

10 (b) CONSULTATION WITH INDUSTRY.—The Sec-
11 retary shall consult with and seek advice from affected
12 United States industries and export advisory committees
13 appointed under section 104(f) before the imposition, ex-
14 pansion, or extension of any export control under this sec-
15 tion.

16 (c) CONSULTATION WITH OTHER COUNTRIES.—
17 When expanding or extending export controls under this
18 section (unless such action is taken under subsection
19 (a)(3)(B)), the Secretary of State, in consultation with ap-
20 propriate departments and agencies, shall, at the earliest
21 appropriate opportunity, consult with the countries with
22 which the United States maintains export controls coop-
23 eratively, and with other countries, as appropriate, to ad-
24 vise them of the reasons for the action and to urge them
25 to adopt similar controls.

1 (d) CONSULTATIONS WITH THE CONGRESS.—

2 (1) CONSULTATIONS.—The Secretary may im-
3 pose, expand, or extend export controls under this
4 section only after consultation with the Congress, in-
5 cluding the Committee on International Relations of
6 the House of Representatives and the Committee on
7 Banking, Housing, and Urban Affairs of the Senate.

8 (2) REPORTS.—The Secretary may not impose
9 or expand controls under subsection (a) until the
10 Secretary has submitted to the Congress a report—

11 (A) addressing each of the criteria set
12 forth in subsection (a)(4);

13 (B) specifying the purpose of the controls;

14 (C) describing the nature, the subjects,
15 and the results of, or plans for, the consultation
16 with industry under subsection (b) and with
17 other countries under subsection (c);

18 (D) specifying the nature and results of
19 any alternative means attempted to achieve the
20 objectives of the controls, or the reasons for im-
21 posing or expanding the controls without at-
22 tempting any such alternative means; and

23 (E) describing the availability from other
24 countries of items comparable to the items sub-
25 ject to the controls, and describing the nature

1 and results of the efforts made to secure the
2 cooperation of foreign governments in control-
3 ling the foreign availability of such comparable
4 items.

5 Such report shall also indicate how such controls will
6 further significantly the policies of the United States
7 as set forth in section 103 or will further its de-
8 clared international obligations.

9 (e) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
10 ERAL CONTROLS.—The Secretary of State, in consultation
11 with appropriate departments and agencies, shall have a
12 continuing duty to seek support for controls imposed
13 under this section by other countries and by effective mul-
14 tilateral control regimes.

15 (f) PROCEDURES AND LIMITATIONS ON EMERGENCY
16 CONTROLS.—

17 (1) CESSATION OF EMERGENCY CONTROLS.—

18 (A) IN GENERAL.—Controls imposed under
19 this section on commodities, technology, or
20 other information shall cease to be in effect im-
21 mediately upon—

22 (i) the imposition of similarly restric-
23 tive controls under section 105 on the
24 same commodities, technology, or informa-
25 tion to the country or end user, or for the

1 end use, with respect to which the controls
2 were imposed under this section; or

3 (ii) the imposition of an embargo,
4 under the International Emergency Eco-
5 nomic Powers Act, the Trading with the
6 Enemy Act, or other provision of law, on
7 exports to, and imports from the country
8 with respect to which the controls were im-
9 posed under this section.

10 (B) CONVERSION TO MULTILATERAL
11 AGREEMENTS.—If the President imposes con-
12 trols on commodities, technology, or other infor-
13 mation to a country or end user, or for an end
14 use, under this section in order to fulfill obliga-
15 tions of the United States under resolutions of
16 the United Nations or under a treaty to which
17 the United States is a party, any equivalent
18 controls imposed prior thereto under this sec-
19 tion on the same commodities, technology, or
20 information to the same country or end user, or
21 for the same end use, shall immediately cease
22 to be in effect.

23 (2) LIMITATIONS ON REIMPOSITION.—Controls
24 which have ceased to be in effect under subsection
25 (a)(3), and which have not been extended under sub-

1 section (g), may not be reimposed by the President
2 under subsection (a) for a period of 6 months begin-
3 ning on the date on which the original controls ex-
4 pire, unless the President determines that reimposi-
5 tion of controls is warranted due to significant
6 changes in circumstances since the expiration of the
7 controls.

8 (g) EXTENSION OF EMERGENCY CONTROLS.—

9 (1) REPORT.—If the President decides to ex-
10 tend controls imposed under subsection (a), which
11 are due to expire under subsection (a)(3), the Presi-
12 dent shall, not later than 30 calendar days before
13 the expiration of such controls, transmit to the Con-
14 gress a report on the proposed extension, setting
15 forth the reasons for the proposed extension in detail
16 and specifying the period of time, which may not ex-
17 ceed 1 year, for which the controls are proposed to
18 be extended. In particular, such report shall—

19 (A) contain determinations by the Presi-
20 dent—

21 (i) that the controls are likely to con-
22 tinue to make substantial progress toward
23 achieving the intended purpose of—

24 (I) changing, modifying, or con-
25 straining the undesirable conduct or

1 policies of the country to which the
2 controls apply;

3 (II) denying access by the coun-
4 try to controlled items from all
5 sources;

6 (III) establishing multilateral co-
7 operation to deny the country access
8 to controlled items from all sources;
9 or

10 (IV) denying exports or assist-
11 ance that significantly contributes to
12 the proliferation of weapons of mass
13 destruction or other important mili-
14 tary capabilities, terrorism, or human
15 rights abuses;

16 (ii) that the impact of the controls has
17 been compatible with the foreign policy ob-
18 jectives of the United States and with
19 overall United States policy toward the
20 controlled country;

21 (iii) that the reaction of other coun-
22 tries to the imposition or expansion of the
23 controls by the United States has not ren-
24 dered the controls ineffective in achieving
25 the intended purpose and have not been

1 counterproductive to United States policy
2 interests;

3 (iv) that the effect of the controls on
4 the export performance of the United
5 States, the competitive position of the
6 United States as a supplier of items, and
7 the economic well-being of individual Unit-
8 ed States companies and their employees
9 and communities has not exceeded the ben-
10 efit to the United States foreign policy,
11 nonproliferation, or national security inter-
12 ests; and

13 (v) that the United States has en-
14 forced the controls effectively.

15 (2) FURTHER EXTENSIONS OF CONTROLS.—If,
16 upon the expiration of the controls extended under
17 this subsection, the President determines that a fur-
18 ther extension of emergency controls for an addi-
19 tional period of time of not more than 1 year is nec-
20 essary, paragraph (1) shall apply to such further ex-
21 tension.

22 (h) EFFECT ON OTHER AUTHORITY.—

23 (1) EMBARGO AUTHORITY.—Nothing in this
24 section shall be construed to limit the authority of
25 the President to impose an embargo on exports to,

1 and imports from, a specific country under the
2 International Emergency Economic Powers Act, the
3 Trading with the Enemy Act, or other provision of
4 law (other than this title). In any case in which the
5 President exercises any such authority to impose an
6 embargo, the requirements of this section shall not
7 apply for so long as such embargo is in effect.

8 (2) EFFECT ON EXISTING EMBARGOES.—(A)

9 Nothing in this section affects the authorities con-
10 ferred upon the President by section 5(b) of the
11 Trading with the Enemy Act, which were being exer-
12 cised with respect to a country on July 1, 1977, as
13 a result of a national emergency declared by the
14 President before that date, and are being exercised
15 on the date of the enactment of this Act.

16 (B) Nothing in this section affects the authori-
17 ties conferred upon the President by the Inter-
18 national Economic Powers Act or other provision of
19 law (other than the Export Administration Act of
20 1979), which were being exercised with respect to a
21 country before the date of the enactment of this Act
22 as a result of a national emergency declared by the
23 President before that date, and are being exercised
24 with respect to such country on such date of enact-
25 ment.

1 (i) COUNTRIES SUPPORTING INTERNATIONAL TER-
2 RORISM.—

3 (1) PROHIBITION ON EXPORTS.—(A) No export
4 described in subparagraph (B) may be made to any
5 country the government of which the Secretary of
6 State has determined has repeatedly provided sup-
7 port for acts of international terrorism.

8 (B) The exports referred to in subparagraph
9 (A) are—

10 (i) of any commodity or technology the ex-
11 port of which is controlled under this title pur-
12 suant to the Wassenaar Arrangement, the Mis-
13 sile Technology Control Regime, or the Aus-
14 tralia Group, or controlled under this title pur-
15 suant to section 309(c) of the Nuclear Non-
16 Proliferation Act of 1978,

17 (ii) of any other commodity or technology
18 the export of which is controlled under this title
19 pursuant to multilateral export control regimes
20 in which the United States participates, and

21 (iii) of any commodity or technology which
22 could make a significant contribution to the
23 military potential of a country described in sub-
24 paragraph (A), including its military logistics
25 capability, or could enhance the ability of such

1 country to support acts of international terror-
2 ism,
3 other than food, medicine, or medical supplies that
4 the President determines will be used only for hu-
5 manitarian purposes. An individual validated license
6 shall be required for the export under this subpara-
7 graph of any such food, medicine, or medical sup-
8 plies.

9 (C) Paragraphs (3) and (4) of subsection (a)
10 shall not apply to exports prohibited or restricted
11 under this subsection.

12 (D)(i) The Secretary shall maintain a list of
13 commodities and technology described in subpara-
14 graph (B)(iii). The Secretary shall review the list of
15 items on that list at least annually. At the conclu-
16 sion of the review, the Secretary shall determine
17 whether to remove items from the list, change the
18 specifications of items on the list, or add items to
19 the list, in order to ensure that the items on the list
20 meet the requirements of subparagraph (B)(iii).

21 (ii) The procedures set forth in subparagraphs
22 (A) and (C) of section 105(g)(3) shall apply to re-
23 views under clause (i) of the list of items described
24 in subparagraph (B)(iii) to the same extent as such

1 section applies to reviews of the multilateral control
2 list under section 105(g).

3 (2) NOTIFICATION OF CONGRESS OF LICENSES
4 ISSUED.—The Secretary and the Secretary of State
5 shall notify the Speaker of the House of Representa-
6 tives and the Committee on Banking, Housing, and
7 Urban Affairs and the Committee on Foreign Rela-
8 tions of the Senate at least 30 days before issuing
9 any license under this title for exports to a country
10 the government of which the Secretary of State has
11 determined has repeatedly provided support for acts
12 of international terrorism.

13 (3) PUBLICATION OF DETERMINATIONS.—Each
14 determination of the Secretary of State under para-
15 graph (1)(A) shall be published in the Federal Reg-
16 ister.

17 (4) RESCISSION OF DETERMINATIONS.—A de-
18 termination made by the Secretary of State under
19 paragraph (1)(A) may not be rescinded unless the
20 President submits to the Speaker of the House of
21 Representatives and the chairman of the Committee
22 on Banking, Housing, and Urban Affairs and the
23 chairman of the Committee on Foreign Relations of
24 the Senate—

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

3 (i) there has been a fundamental
4 change in the leadership and policies of the
5 government of the country concerned;

6 (ii) that government is not supporting
7 acts of international terrorism; and

8 (iii) that government has provided as-
9 surances that it will not support acts of
10 international terrorism in the future; or

11 (B) at least 45 days before the proposed
12 rescission would take effect, a report justifying
13 the rescission and certifying that—

14 (i) the government concerned has not
15 provided any support for international ter-
16 rorism during the preceding 6-month pe-
17 riod; and

18 (ii) the government concerned has
19 provided assurances that it will not sup-
20 port acts of international terrorism in the
21 future.

22 (5) WAIVER OF PROHIBITIONS.—The President
23 may waive the prohibitions contained in paragraph
24 (1)(A) with respect to a specific transaction if—

1 (A) the President determines that the
2 transaction is essential to the national security
3 interests of the United States; and

4 (B) not less than 30 days prior to the pro-
5 posed transaction, the President—

6 (i) consults with the Committee on
7 International Relations of the House of
8 Representatives and the Committee on
9 Banking, Housing, and Urban Affairs of
10 the Senate regarding the proposed trans-
11 action; and

12 (ii) submits to the Speaker of the
13 House of Representatives and the chair-
14 man of the Committee on Banking, Hous-
15 ing, and Urban Affairs of the Senate a re-
16 port containing—

17 (I) the name of any country in-
18 volved in the proposed transaction,
19 the identity of any recipient of the
20 items to be provided pursuant to the
21 proposed transaction, and the antici-
22 pated use of those items;

23 (II) a description of the items in-
24 volved in the proposed transaction (in-
25 cluding their market value) and the

1 actual sale price at each step in the
2 transaction;

3 (III) the reasons why the pro-
4 posed transaction is essential to the
5 national security interests of the Unit-
6 ed States and the justification for the
7 proposed transaction;

8 (IV) the date on which the pro-
9 posed transaction is expected to occur;
10 and

11 (V) the name of any foreign gov-
12 ernments involved in the proposed
13 transaction.

14 To the extent possible, the information specified in
15 clause (ii) of subparagraph (B) shall be provided in
16 unclassified form.

17 (6) MULTILATERAL REGIMES.—The Secretary
18 of State, in consultation with appropriate depart-
19 ments and agencies, shall seek support by other
20 countries and by effective multilateral control re-
21 gimes of controls imposed by this subsection.

22 (7) EFFECT ON OTHER LAWS.—The provisions
23 of this subsection do not affect any other provision
24 of law to the extent such other provision imposes
25 greater restrictions on exports to any country the

1 government of which the Secretary of State has de-
2 termined has repeatedly provided support for acts of
3 international terrorism than are imposed under this
4 subsection.

5 (j) CRIME CONTROL INSTRUMENTS.—

6 (1) LICENSE REQUIRED.—Crime control and
7 detection instruments and equipment shall be ap-
8 proved for export by the Secretary only pursuant to
9 an export license. Paragraphs (3)(A) and (4) of sub-
10 section (a) shall not apply to the export controls im-
11 posed by this subsection.

12 (2) CONCURRENCE OF SECRETARY OF STATE.—

13 (A) ITEMS ON CONTROL INDEX.—Any de-
14 termination of the Secretary of what commod-
15 ities or technology shall be included on the con-
16 trol index as a result of the export restrictions
17 imposed by this subsection shall be made with
18 the concurrence of the Secretary of State.

19 (B) ACTION ON LICENSE APPLICATION.—

20 Any determination of the Secretary to approve
21 or deny an export license application to export
22 crime control or detection instruments or equip-
23 ment shall be made with the concurrence of the
24 Secretary of State.

1 (3) DISPUTE RESOLUTION.—If the Secretary of
2 State does not agree with the Secretary with respect
3 to any determination under paragraph (2), the Sec-
4 retary of State shall refer the matter to the Presi-
5 dent for resolution.

6 (4) EXCEPTIONS.—The provisions of this sub-
7 section shall not apply with respect to exports to
8 countries which are members of the North Atlantic
9 Treaty Organization or to Japan, Australia, or New
10 Zealand, or to such other countries as the President
11 shall designate consistent with the purposes of this
12 subsection and section 502B of the Foreign Assist-
13 ance Act of 1961.

14 (k) SPARE PARTS.—At the same time as the Presi-
15 dent imposes or expands export controls under this sec-
16 tion, the President shall determine whether such export
17 controls will apply to replacement parts or parts in com-
18 modities subject to such export controls.

19 (l) EFFECT ON OTHER LAWS.—None of the prohibi-
20 tions contained in this section shall apply to any trans-
21 action subject to the reporting requirements of title V of
22 the National Security Act of 1947.

23 **SEC. 107. SHORT SUPPLY CONTROLS.**

24 (a) AUTHORITY.—

1 (1) IN GENERAL.—In order to carry out the
2 policy set forth in section 103(4), the President may
3 prohibit or curtail the export of any commodities
4 subject to the jurisdiction of the United States or
5 exported by any person subject to the jurisdiction of
6 the United States. In curtailing exports to carry out
7 the policy set forth in section 103(4), the President
8 shall allocate a portion of export licenses on the
9 basis of factors other than a prior history of export-
10 tation. Such factors shall include the extent to which
11 a country engages in equitable trade practices with
12 respect to United States commodities and treats the
13 United States equitably in times of short supply.

14 (2) PUBLIC PARTICIPATION.—Upon imposing
15 quantitative restrictions on exports of any commod-
16 ities to carry out the policy set forth in section
17 103(4), the Secretary shall include in a notice pub-
18 lished in the Federal Register with respect to such
19 restrictions an invitation to all interested parties to
20 submit written comments within 15 days after the
21 date of publication on the impact of such restrictions
22 and the method of licensing used to implement
23 them.

24 (3) LICENSE FEES.—In imposing export con-
25 trols under this section, the President's authority

1 shall include, but not be limited to, the imposition
2 of export license fees.

3 (b) MONITORING.—

4 (1) IN GENERAL.—In order to carry out the
5 policy set forth in section 103(4), the Secretary shall
6 monitor exports, and contracts for exports, of any
7 commodity (other than a commodity which is subject
8 to the reporting requirements of section 602 of the
9 Agricultural Trade Act of 1978 (7 U.S.C. 5712))
10 when the volume of such exports in relation to do-
11 mestic supply contributes, or may contribute, to an
12 increase in domestic prices or a domestic shortage,
13 and such price increase or shortage has, or may
14 have, a serious adverse impact on the economy or
15 any sector thereof. Any such monitoring shall com-
16 mence at a time adequate to assure that the mon-
17 itoring will result in a data base sufficient to enable
18 policies to be developed, in accordance with section
19 103(4), to mitigate a short supply situation or seri-
20 ous inflationary price rise or, if export controls are
21 needed, to permit imposition of such controls in a
22 timely manner. Information which the Secretary re-
23 quires to be furnished in effecting such monitoring
24 shall be confidential, except as provided in para-
25 graph (2).

1 (2) REPORTS ON MONITORING.—The results of
2 monitoring under paragraph (1) shall, to the extent
3 practicable, be aggregated and included in weekly re-
4 ports setting forth, with respect to each item mon-
5 itored, actual and anticipated exports, the destina-
6 tion by country, and the domestic and worldwide
7 price, supply, and demand. Such reports may be
8 made monthly if the Secretary determines that there
9 is insufficient information to justify weekly reports.

10 (3) CONSULTATION WITH SECRETARY OF EN-
11 ERGY.—The Secretary shall consult with the Sec-
12 retary of Energy to determine whether monitoring or
13 export controls under this section are warranted
14 with respect to exports of facilities, machinery, or
15 equipment normally and principally used, or in-
16 tended to be used, in the production, conversion, or
17 transportation of fuels and energy (except nuclear
18 energy), including, but not limited to—

19 (A) drilling rigs, platforms, and equipment;

20 (B) petroleum refineries, and natural gas
21 processing, liquefaction, and gasification plants;

22 (C) facilities for production of synthetic
23 natural gas or synthetic crude oil;

24 (D) oil and gas pipelines, pumping sta-
25 tions, and associated equipment; and

1 (E) vessels for transporting oil, gas, coal,
2 and other fuels.

3 (c) PETITIONS FOR MONITORING OR CONTROLS OF
4 METALLIC MATERIALS.—

5 (1) IN GENERAL.—(A) Any entity, including a
6 trade association, firm, or certified or recognized
7 union or group of workers, that is representative of
8 an industry or a substantial segment of an industry
9 that processes metallic materials capable of being re-
10 cycled may transmit a written petition to the Sec-
11 retary requesting the monitoring of exports or the
12 imposition of export controls, or both, with respect
13 to any such material, in order to carry out the policy
14 set forth in section 103(4).

15 (B) Each petition shall be in such form as the
16 Secretary shall prescribe and shall contain informa-
17 tion in support of the action requested. The petition
18 shall include any information reasonably available to
19 the petitioner indicating that each of the criteria set
20 forth in paragraph (3)(A) is satisfied.

21 (2) PUBLICATION OF NOTICE.—Within 15 days
22 after receipt of any petition described in paragraph
23 (1), the Secretary shall publish a notice in the Fed-
24 eral Register. The notice shall—

1 (A) include the name of the material that
2 is the subject to the petition;

3 (B) include the schedule B number of the
4 material as set forth in the Statistical Classi-
5 fication of Domestic and Foreign Commodities
6 Exported from the United States;

7 (C) indicate whether the petition is re-
8 questing that controls or monitoring, or both,
9 be imposed with respect to the exportation of
10 such material; and

11 (D) provide that interested persons shall
12 have a period of 30 days beginning on the date
13 on which the notice is published to submit to
14 the Secretary written data, views, or argu-
15 ments, with or without opportunity for oral
16 presentation, with respect to the matter in-
17 volved.

18 At the request of the petitioner or any other entity
19 described in paragraph (1)(A) with respect to the
20 material which is the subject of the petition, or at
21 the request of any entity representative of producers
22 or exporters of such material, the Secretary shall
23 conduct public hearings with respect to the subject
24 of the petition, in which case the 30-day period may
25 be extended to 45 days.

1 (3) DETERMINATION OF MONITORING OR CON-
2 TROLS.—(A) Within 45 days after the end of the
3 30- or 45-day period described in paragraph (2), as
4 the case may be, the Secretary shall determine
5 whether to impose monitoring or controls, or both,
6 on the export of the material that is the subject of
7 the petition in order to carry out the policy set forth
8 in section 103(4). In making such determination,
9 the Secretary shall determine whether—

10 (i) there has been a significant increase, in
11 relation to a specific period of time, in exports
12 of such material in relation to domestic supply
13 and demand;

14 (ii) there has been a significant increase in
15 domestic price of such material or a domestic
16 shortage of such material relative to demand;

17 (iii) exports of such material are as impor-
18 tant as any other cause of a domestic price in-
19 crease or shortage relative to demand found
20 under clause (ii);

21 (iv) a domestic price increase or shortage
22 relative to demand found under clause (ii) has
23 significantly adversely affected or may signifi-
24 cantly adversely affect the national economy or

1 any sector thereof, including a domestic indus-
2 try; and

3 (v) monitoring or controls, or both, are
4 necessary in order to carry out the policy set
5 forth in section 103(4).

6 (B) The Secretary shall publish in the Federal
7 Register a detailed statement of the reasons for the
8 Secretary's determination under subparagraph (A)
9 of whether to impose monitoring or controls, or
10 both, including the findings of fact in support of
11 that determination.

12 (4) PUBLICATION OF REGULATIONS.—Within
13 15 days after making a determination under para-
14 graph (3) to impose monitoring or controls on the
15 export of a material, the Secretary shall publish in
16 the Federal Register proposed regulations with re-
17 spect to such monitoring or controls. Within 30 days
18 after the publication of such proposed regulations,
19 and after considering any public comments on the
20 proposed regulations, the Secretary shall publish and
21 implement final regulations with respect to such
22 monitoring or controls.

23 (5) CONSOLIDATION OF PETITIONS.—For pur-
24 poses of publishing notices in the Federal Register
25 and scheduling public hearings pursuant to this sub-

1 section, the Secretary may consolidate petitions, and
2 responses to such petitions, which involve the same
3 or related materials.

4 (6) SUBSEQUENT PETITIONS ON SAME MATE-
5 RIAL.—If a petition with respect to a particular ma-
6 terial or group of materials has been considered in
7 accordance with all the procedures described in this
8 subsection, the Secretary may determine, in the ab-
9 sence of significantly changed circumstances, that
10 any other petition with respect to the same material
11 or group of materials which is filed within 6 months
12 after the consideration of the prior petition has been
13 completed does not merit complete consideration
14 under this subsection.

15 (7) PRECEDENCE OF PROCEDURES OVER
16 OTHER REVIEWS.—The procedures and time limits
17 set forth in this subsection with respect to a petition
18 filed under this subsection shall take precedence over
19 any review undertaken at the initiative of the Sec-
20 retary with respect to the same subject as that of
21 the petition.

22 (8) TEMPORARY CONTROLS.—The Secretary
23 may impose monitoring or controls, on a temporary
24 basis, on the export of a metallic material after a pe-
25 tition is filed under paragraph (1)(A) with respect to

1 that material but before the Secretary makes a de-
2 termination under paragraph (3) with respect to
3 that material only if—

4 (A) the failure to take such temporary ac-
5 tions would result in irreparable harm to the
6 entity filing the petition, or to the national
7 economy or segment thereof, including a domes-
8 tic industry, and

9 (B) the Secretary considers such action to
10 be necessary to carry out the policy set forth in
11 section 103(4).

12 (9) OTHER AUTHORITY NOT AFFECTED.—The
13 authority under this subsection shall not be con-
14 strued to affect the authority of the Secretary under
15 any other provision of this title, except that if the
16 Secretary determines, on the Secretary's own initia-
17 tive, to impose monitoring or controls, or both, on
18 the export of metallic materials capable of being re-
19 cycled, under the authority of this section, the Sec-
20 retary shall publish the reasons for such action in
21 accordance with paragraph (3) (A) and (B).

22 (10) SUBMISSION AND CONSIDERATION OF AD-
23 DITIONAL INFORMATION.—Nothing contained in this
24 subsection shall be construed to preclude submission
25 on a confidential basis to the Secretary of informa-

1 tion relevant to a decision to impose or remove mon-
2 itoring or controls under the authority of this title,
3 or to preclude consideration of such information by
4 the Secretary in reaching decisions required under
5 this subsection. The provisions of this paragraph
6 shall not be construed to affect the applicability of
7 section 552(b) of title 5, United States Code.

8 (d) AGRICULTURAL COMMODITIES.—

9 (1) APPROVAL OF CONTROLS BY SECRETARY OF
10 AGRICULTURE.—The authority conferred by this sec-
11 tion shall not be exercised with respect to any agri-
12 cultural commodity, including fats and oils, forest
13 products, or animal hides or skins, without the ap-
14 proval of the Secretary of Agriculture. The Secretary
15 of Agriculture shall not approve the exercise of such
16 authority with respect to any such commodity during
17 any period for which the supply of such commodity
18 is determined by the Secretary of Agriculture to be
19 in excess of the requirements of the domestic econ-
20 omy, except to the extent the President determines
21 that the controls on such agricultural commodities
22 are also imposed under section 106. The Secretary
23 of Agriculture shall, by exercising the authority
24 which the Secretary of Agriculture has under other

1 applicable provisions of law, collect data with respect
2 to export sales of animal hides and skins.

3 (2) PROTECTION OF STORED COMMODITIES
4 FROM FUTURE CONTROLS.—Upon approval of the
5 Secretary, in consultation with the Secretary of Ag-
6 riculture, agricultural commodities purchased by or
7 for use in a foreign country may remain in the Unit-
8 ed States for export at a later date free from any
9 quantitative limitations on export which may be im-
10 posed to carry out the policy set forth in section
11 103(4) subsequent to such approval. The Secretary
12 may not grant such approval unless the Secretary
13 receives adequate assurance and, in conjunction with
14 the Secretary of Agriculture, finds—

15 (A) that such commodities will eventually
16 be exported,

17 (B) that neither the sale nor export thereof
18 will result in an excessive drain of scarce mate-
19 rial and have a serious domestic inflationary
20 impact,

21 (C) that storage of such commodities in
22 the United States will not unduly limit the
23 space available for storage of domestically
24 owned commodities, and

1 (D) that the purpose of such storage is to
2 establish a reserve of such commodities for later
3 use, not including resale to or use by another
4 country.

5 The Secretary may issue such regulations as may be
6 necessary to carry out this paragraph.

7 (3) PROCEDURES FOR IMPOSING CONTROLS.—

8 (A) If the President imposes export controls on any
9 agricultural commodity under section 106 or this
10 section, the President shall immediately transmit a
11 report on such action to the Congress, setting forth
12 the reasons for the controls in detail and specifying
13 the period of time, which may not exceed 1 year,
14 that the controls are proposed to be in effect. If the
15 Congress, within 60 days after the date of the re-
16 ceipt of the report, enacts a joint resolution pursu-
17 ant to paragraph (4) approving the imposition of the
18 export controls, then such controls shall remain in
19 effect for the period specified in the report, or until
20 terminated by the President, whichever occurs first.
21 If the Congress, within 60 days after the date of its
22 receipt of such report, fails to adopt a joint resolu-
23 tion approving such controls, then such controls
24 shall cease to be effective upon the expiration of that
25 60-day period.

1 (B) The provisions of subparagraph (A) and
2 paragraph (4) shall not apply to export controls—

3 (i) which are extended under this title if
4 the controls, when imposed, were approved by
5 the Congress under subparagraph (A) and
6 paragraph (4); or

7 (ii) which are imposed with respect to a
8 country as part of the prohibition or curtail-
9 ment of all exports to that country.

10 (4) EXPEDITED PROCEDURES.—(A) For pur-
11 poses of this paragraph, the term “joint resolution”
12 means only a joint resolution the matter after the
13 resolving clause of which is as follows: “That pursu-
14 ant to section 107(d)(3) of the Export Administra-
15 tion Act of 1997, the President may impose export
16 controls as specified in the report submitted to the
17 Congress on _____.”, with the blank space being
18 filled with the appropriate date.

19 (B) On the day on which a report is submitted
20 to the House of Representatives and the Senate
21 under paragraph (3), a joint resolution with respect
22 to the export controls specified in such report shall
23 be introduced (by request) in the House by either
24 the chairman of the Committee on International Re-
25 lations, for the chairman and the ranking minority

1 member of the Committee, or by Members of the
2 House designated by the chairman and ranking mi-
3 nority member; and shall be introduced (by request)
4 in the Senate by the majority leader of the Senate,
5 for the majority leader and the minority leader of
6 the Senate, or by Members of the Senate designated
7 by the majority leader and minority leader of the
8 Senate. If either House is not in session on the day
9 on which such a report is submitted, the joint reso-
10 lution shall be introduced in that House, as provided
11 in the preceding sentence, on the first day thereafter
12 on which that House is in session.

13 (C) If the committee of either House to which
14 a joint resolution has been referred has not reported
15 the joint resolution at the end of 30 days after its
16 referral, the committee shall be discharged from fur-
17 ther consideration of the resolution.

18 (D) A joint resolution under this paragraph
19 shall be considered in the Senate in accordance with
20 the provisions of section 601(b)(4) of the Inter-
21 national Security Assistance and Arms Export Con-
22 trol Act of 1976. For the purpose of expediting the
23 consideration and passage of joint resolutions re-
24 ported to the House of Representatives by the Com-
25 mittee on International Relations under this para-

1 graph, a motion to proceed to the consideration in
2 the House of any such joint resolution shall be con-
3 sidered as highly privileged if offered by the chair-
4 man of the committee or a designee on or after the
5 third day the report on the joint resolution has been
6 available to Members pursuant to clause 2(l)(6) of
7 rule XI of the Rules of the House of Representa-
8 tives. The motion shall not be subject to debate or
9 to intervening motion or otherwise subject to points
10 of order, nor shall it be in order to move to recon-
11 sider the vote by which the motion is agreed to or
12 not agreed to. If the motion is agreed to, the joint
13 resolution shall be considered in the House and de-
14 batable for not to exceed two hours equally divided
15 and controlled by the chairman and ranking minor-
16 ity member of the committee. The previous question
17 shall be considered as ordered on the joint resolution
18 to final passage without intervening motion.

19 (E) In the case of a joint resolution described
20 in subparagraph (A), if, before the passage by one
21 House of a joint resolution of that House, that
22 House receives a resolution with respect to the same
23 matter from the other House, then—

1 (i) the procedure in that House shall be
2 the same as if no joint resolution has been re-
3 ceived from the other House; but

4 (ii) the vote on final passage shall be on
5 the joint resolution of the other House.

6 (5) COMPUTATION OF TIME PERIODS.—In the
7 computation of the period of 60 days referred to in
8 paragraph (3)(A) and the period of 30 days referred
9 to in paragraph (4)(C), there shall be excluded the
10 days on which either House of Congress is not in
11 session because of an adjournment of more than 3
12 days to a day certain or because of an adjournment
13 of the Congress sine die.

14 (6) RULEMAKING POWER.—The provisions of
15 this subsection are enacted by the Congress—

16 (A) as an exercise of the rulemaking power
17 of the House of Representatives and the Sen-
18 ate, respectively, and as such, they shall be con-
19 sidered as part of the rules of each House, re-
20 spectively, or of that House to which they spe-
21 cifically apply, and such rules shall supersede
22 other rules only to the extent that they are in-
23 consistent therewith; and

24 (B) with full recognition of the constitu-
25 tional right of either House to change such

1 rules (so far as relating to such House) at any
2 time, in the same manner, and to the same ex-
3 tent as in the case of any other rule of such
4 House.

5 (e) BARTER AGREEMENTS.—

6 (1) EXEMPTION FROM CONTROLS.—The expor-
7 tation pursuant to a barter agreement of any com-
8 modities which may lawfully be exported from the
9 United States, for any commodities which may law-
10 fully be imported into the United States, may be ex-
11 empted, in accordance with paragraph (2), from any
12 quantitative limitation on exports (other than any
13 reporting requirement) imposed to carry out the pol-
14 icy set forth in section 103(4).

15 (2) CRITERIA FOR EXEMPTION.—The Secretary
16 shall grant an exemption under paragraph (1) if the
17 Secretary finds, after consultation with the appro-
18 priate department or agency of the United States,
19 that—

20 (A) for the period during which the barter
21 agreement is to be performed—

22 (i) the average annual quantity of the
23 commodities to be exported pursuant to
24 the barter agreement will not be required
25 to satisfy the average amount of such com-

1 modities estimated to be required annually
 2 by the domestic economy and will be sur-
 3 plus thereto; and

4 (ii) the average annual quantity of the
 5 commodities to be imported will be less
 6 than the average amount of such commod-
 7 ities estimated to be required annually to
 8 supplement domestic production; and

9 (B) the parties to such barter agreement
 10 have demonstrated adequately that they intend,
 11 and have the capacity, to perform such barter
 12 agreement.

13 (3) DEFINITION.—For purposes of this sub-
 14 section, the term “barter agreement” means any
 15 agreement which is made for the exchange, without
 16 monetary consideration, of any commodities pro-
 17 duced in the United States for any commodities pro-
 18 duced outside of the United States.

19 (4) APPLICABILITY.—This subsection shall
 20 apply only with respect to barter agreements entered
 21 into after September 30, 1979.

22 (f) EFFECT OF CONTROLS ON EXISTING CON-
 23 TRACTS.—

24 (1) WESTERN RED CEDAR.—Any export con-
 25 trols imposed under section 7(i) of the Export Ad-

1 ministration Act of 1979 or this section shall not af-
2 fect any contract to harvest unprocessed western red
3 cedar from State lands which was entered into be-
4 fore October 1, 1979, and the performance of which
5 would make the red cedar available for export.

6 (2) OTHER CONTROLS.—Any export controls
7 imposed under this section on any agricultural com-
8 modity (including fats, oils, forest products, and ani-
9 mal hides and skins), or on any fishery product,
10 shall not affect any contract to export entered into
11 before the date on which such controls are imposed.
12 For purposes of this paragraph, the term “contract
13 to export” includes, but is not limited to, an export
14 sales agreement and an agreement to invest in an
15 enterprise which involves the export of commodities
16 or technology.

17 (g) OIL EXPORTS FOR USE BY UNITED STATES
18 MILITARY FACILITIES.—For purposes of this section, and
19 for purposes of any export controls imposed under this
20 title, shipments of crude oil, refined petroleum products,
21 or partially refined petroleum products from the United
22 States for use by the Department of Defense or United
23 States-supported installations or facilities shall not be con-
24 sidered to be exports.

1 **SEC. 108. FOREIGN BOYCOTTS.**

2 (a) PROHIBITIONS AND EXCEPTIONS.—

3 (1) PROHIBITIONS.—In order to carry out the
4 policies set forth in section 103(9), the President
5 shall issue regulations prohibiting any United States
6 person, with respect to that person's activities in the
7 interstate or foreign commerce of the United States,
8 from taking or knowingly agreeing to take any of
9 the following actions with intent to comply with, fur-
10 ther, or support any boycott fostered or imposed by
11 a foreign country against a country which is friendly
12 to the United States and which is not itself the ob-
13 ject of any form of boycott pursuant to United
14 States law or regulation:

15 (A) Refusing, or requiring any other per-
16 son to refuse, to do business with or in the boy-
17 cotted country, with any business concern orga-
18 nized under the laws of the boycotted country,
19 with any national or resident of the boycotted
20 country, or with any other person, pursuant to
21 an agreement with, a requirement of, or a re-
22 quest from or on behalf of the boycotting coun-
23 try. The mere absence of a business relationship
24 with or in the boycotted country, with any busi-
25 ness concern organized under the laws of the
26 boycotted country, with any national or resident

1 of the boycotted country, or with any other per-
2 son, does not indicate the existence of the in-
3 tent required to establish a violation of regula-
4 tions issued to carry out this subparagraph.

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

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

15 (D) Furnishing information about whether
16 any person has, has had, or proposes to have
17 any business relationship (including a relation-
18 ship by way of sale, purchase, legal or commer-
19 cial representation, shipping or other transport,
20 insurance, investment, or supply) with or in the
21 boycotted country, with any business concern
22 organized under the laws of the boycotted coun-
23 try, with any national or resident of the boy-
24 cotted country, or with any other person that is
25 known or believed to be restricted from having

1 any business relationship with or in the boycott-
2 ing country. Nothing in this paragraph shall
3 prohibit the furnishing of normal business in-
4 formation in a commercial context as defined by
5 the Secretary.

6 (E) Furnishing information about whether
7 any person is a member of, has made a con-
8 tribution to, or is otherwise associated with or
9 involved in the activities of any charitable or
10 fraternal organization which supports the boy-
11 cotted country.

12 (F) Paying, honoring, confirming, or other-
13 wise implementing a letter of credit which con-
14 tains any condition or requirement compliance
15 with which is prohibited by regulations issued
16 pursuant to this paragraph, and no United
17 States person shall, as a result of the applica-
18 tion of this paragraph, be obligated to pay or
19 otherwise honor or implement such letter of
20 credit.

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

23 (A) complying or agreeing to comply with
24 requirements—

1 (i) prohibiting the import of commod-
2 ities or services from the boycotted country
3 or commodities produced or services pro-
4 vided by any business concern organized
5 under the laws of the boycotted country or
6 by nationals or residents of the boycotted
7 country; or

8 (ii) prohibiting the shipment of com-
9 modities to the boycotting country on a
10 carrier of the boycotted country, or by a
11 route other than that prescribed by the
12 boycotting country or the recipient of the
13 shipment;

14 (B) complying or agreeing to comply with
15 import and shipping document requirements
16 with respect to the country of origin, the name
17 of the carrier and route of shipment, the name
18 of the supplier of the shipment, or the name of
19 the provider of other services, except that no in-
20 formation knowingly furnished or conveyed in
21 response to such requirements may be stated in
22 negative, blacklisting, or similar exclusionary
23 terms, other than with respect to carriers or
24 route of shipment as may be permitted by such
25 regulations in order to comply with precaution-

1 ary requirements protecting against war risks
2 and confiscation;

3 (C) complying or agreeing to comply in the
4 normal course of business with the unilateral
5 and specific selection by a boycotting country,
6 or national or resident thereof, of carriers, in-
7 surers, suppliers of services to be performed
8 within the boycotting country, or specific com-
9 modities which, in the normal course of busi-
10 ness, are identifiable by source when imported
11 into the boycotting country;

12 (D) complying or agreeing to comply with
13 export requirements of the boycotting country
14 relating to shipments or transshipment of ex-
15 ports to the boycotted country, to any business
16 concern of or organized under the laws of the
17 boycotted country, or to any national or resi-
18 dent of the boycotted country;

19 (E) compliance by an individual or agree-
20 ment by an individual to comply with the immi-
21 gration or passport requirements of any country
22 with respect to such individual or any member
23 of such individual's family or with requests for
24 information regarding requirements of employ-

1 ment of such individual within the boycotting
2 country; and

3 (F) compliance by a United States person
4 resident in a foreign country or agreement by
5 such person to comply with the laws of the
6 country with respect to such person's activities
7 exclusively therein, and such regulations may
8 contain exceptions for such resident complying
9 with the laws or regulations of the foreign coun-
10 try governing imports into such country of
11 trademarked, trade named, or similarly specifi-
12 cally identifiable products, or components of
13 products for such person's own use, including
14 the performance of contractual services within
15 that country, as may be defined by such regula-
16 tions.

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

21 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
22 AFFECTED.—Nothing in the subsection may be con-
23 strued to supersede or limit the operation of the
24 antitrust or civil rights laws of the United States.

1 (5) EVASION.—This section shall apply to any
2 transaction or activity undertaken, by or through a
3 United States person or any other person, with in-
4 tent to evade the provisions of this section as imple-
5 mented by the regulations issued pursuant to this
6 subsection, and such regulations shall expressly pro-
7 vide that the exceptions set forth in paragraph (2)
8 shall not permit activities or agreements (expressed
9 or implied by a course of conduct, including a pat-
10 tern of responses) otherwise prohibited, which are
11 not within the intent of such exceptions.

12 (b) ADDITIONAL REGULATIONS AND REPORTS.—

13 (1) REGULATIONS.—In addition to the regula-
14 tions issued pursuant to subsection (a), regulations
15 issued under section 106 shall implement the policies
16 set forth in section 103(9).

17 (2) REPORTS BY UNITED STATES PERSONS.—
18 Such regulations shall require that any United
19 States person receiving a request for the furnishing
20 of information, the entering into or implementing of
21 agreements, or the taking of any other action re-
22 ferred to in section 103(9) shall report that fact to
23 the Secretary, together with such other information
24 concerning such request as the Secretary may re-
25 quire, for such action as the Secretary considers ap-

1 appropriate for carrying out the policies of that sec-
2 tion. Such person shall also report to the Secretary
3 whether such person intends to comply and whether
4 such person has complied with such request. Any re-
5 port filed pursuant to this paragraph shall be made
6 available promptly for public inspection and copying,
7 except that information regarding the quantity, de-
8 scription, and value of any commodities or tech-
9 nology to which such report relates may be kept con-
10 fidential if the Secretary determines that disclosure
11 thereof would place the United States person in-
12 volved at a competitive disadvantage. The Secretary
13 shall periodically transmit summaries of the infor-
14 mation contained in such reports to the Secretary of
15 State for such action as the Secretary of State, in
16 consultation with the Secretary, considers appro-
17 priate for carrying out the policies set forth in sec-
18 tion 103(9).

19 (c) PREEMPTION.—The provisions of this section and
20 the regulations issued under this section shall preempt any
21 law, rule, or regulation which—

22 (1) is a law, rule, or regulation of any of the
23 several States or the District of Columbia, or any of
24 the territories or possessions of the United States,
25 or of any governmental subdivision thereof; and

1 (2) pertains to participation in, compliance
 2 with, implementation of, or the furnishing of infor-
 3 mation regarding restrictive trade practices or boy-
 4 cotts fostered or imposed by foreign countries
 5 against other countries.

6 **SEC. 109. PROCEDURES FOR PROCESSING EXPORT LI-**
 7 **CENSE APPLICATIONS; OTHER INQUIRIES.**

8 (a) PRIMARY RESPONSIBILITY OF THE SEC-
 9 RETARY.—

10 (1) IN GENERAL.—All export license applica-
 11 tions required under this title shall be submitted by
 12 the applicant to the Secretary. Subject to the proce-
 13 dures provided in this section—

14 (A) if referral of an application to other
 15 departments or agencies for review is not re-
 16 quired, the Secretary shall, within 9 days after
 17 receiving the application, issue a license or no-
 18 tify the applicant of the intent to deny the ap-
 19 plication; or

20 (B) if referral of the application to other
 21 departments or agencies for review is required,
 22 the Secretary shall, within 30 days after refer-
 23 ral of any such application to other depart-
 24 ments or agencies—

25 (i) issue a license;

- 1 (ii) notify the applicant of the intent
2 to deny the application; or
3 (iii) ensure that the application is sub-
4 ject to the interagency resolution process
5 set forth in subsection (d).

6 (2) RECOMMENDATIONS OF OTHER AGEN-
7 CIES.—The Secretary shall seek information and
8 recommendations from the Department of Defense
9 and other departments and agencies of the United
10 States that are identified by the President as being
11 concerned with factors having an important bearing
12 on exports administered under this title. Such de-
13 partments and agencies shall cooperate fully and
14 promptly in rendering information and recommenda-
15 tions.

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

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

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

4 (5) RELIABILITY OF PARTIES.—In reviewing
5 applications for export licenses, the Secretary may in
6 each case consider the reliability of the parties to the
7 proposed export. In making such an evaluation, the
8 Secretary may consider all sources of information,
9 including results of other United States Government
10 actions, such as actions by the Committee on For-
11 eign Investment in the United States, investigations
12 of diversions from authorized end uses or end users,
13 and intelligence information, except that the consid-
14 eration of such information in connection with the
15 evaluation of the reliability of parties shall not au-
16 thorize the direct or indirect disclosure of classified
17 information or sources and methods of gathering
18 classified information and shall not confer a right on
19 private parties to have access to classified informa-
20 tion.

21 (b) INITIAL SCREENING.—

22 (1) UPON RECEIPT OF APPLICATION.—Upon re-
23 ceipt of an export license application, the Secretary
24 shall enter and maintain in the records of the De-

1 partment of Commerce information regarding the re-
2 ceipt and status of the application.

3 (2) INITIAL PROCEDURES.—Promptly upon re-
4 ceiving any license application, the Secretary shall—

5 (A) contact the applicant if the application
6 is improperly completed or if additional infor-
7 mation is required, and hold the application for
8 a reasonable time while the applicant provides
9 the necessary corrections or information, and
10 such time shall not be included in calculating
11 the time periods prescribed in this section;

12 (B) refer the application, including all in-
13 formation submitted by the applicant, and all
14 necessary recommendations and analyses by the
15 Secretary to the Department of Defense and
16 other departments and agencies identified by
17 the President under subsection (a)(2); and

18 (C) ensure that the classification stated on
19 the application for the export items is correct,
20 return the application if a license is not re-
21 quired, and, if referral to other departments or
22 agencies is not required, grant the application
23 or notify the applicant of the Secretary's intent
24 to deny the application.

1 In the event that the head of a department or agen-
2 cy determines that certain types of applications need
3 not be referred to the department or agency, such
4 department or agency head shall notify the Sec-
5 retary of the specific types of such applications that
6 the department or agency does not wish to review.

7 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
8 CIES.—

9 (1) REFERRAL TO OTHER AGENCIES.—The Sec-
10 retary shall promptly refer license applications to de-
11 partments and agencies under subsection (b) to
12 make recommendations and provide information to
13 the Secretary.

14 (2) RESPONSIBILITY OF REFERRAL AGEN-
15 CIES.—The Department of Defense and other re-
16 viewing departments and agencies shall organize
17 their resources and units to plan for the prompt and
18 expeditious internal dissemination of export license
19 applications, if necessary, so as to avoid delays in re-
20 sponding to the referral of applications.

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

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

9 (4) TIME PERIOD FOR ACTION BY REFERRAL
10 DEPARTMENTS AND AGENCIES.—Within 30 days
11 after receiving a referral of an application under this
12 section, the department or agency concerned shall
13 provide the Secretary with a recommendation either
14 to approve the license or to deny the license. A rec-
15 ommendation that the Secretary deny a license shall
16 include a statement of reasons for the recommenda-
17 tion that are consistent with the provisions of this
18 title, and shall cite both the specific statutory and
19 the regulatory bases for the recommendation. A de-
20 partment or agency that fails to provide a rec-
21 ommendation in accordance with this paragraph
22 within that 30-day period shall be deemed to have
23 no objection to the decision of the Secretary on the
24 application.

25 (d) INTERAGENCY RESOLUTION.—

1 (1) INITIAL RESOLUTION.—The Secretary shall
2 establish, select the chairperson of, and determine
3 procedures for an interagency committee to review
4 initially all license applications on which the depart-
5 ments and agencies reviewing the applications under
6 this section are not in agreement. The chairperson
7 of such committee shall consider the recommenda-
8 tions of the departments and agencies reviewing a
9 particular application and inform them of his or her
10 decision on the application, which may include a de-
11 cision that the particular application requires further
12 consideration under the procedures established
13 under paragraph (2). An application may also be re-
14 ferred to further consideration under the procedures
15 established under paragraph (2) if an appeal from
16 the chairperson’s decision is made in writing by an
17 official of the department or agency concerned who
18 is appointed by the President by and with the advice
19 and consent of the Senate, or an officer properly
20 acting in such capacity.

21 (2) FURTHER RESOLUTION.—The President
22 shall establish a process for the further review and
23 determination of export license applications pursuant
24 to a decision by the chairperson under paragraph (1)

1 or an appeal by a department or agency under para-
2 graph (1). Such process shall—

3 (A) be chaired by the Secretary or his or
4 her designee;

5 (B) ensure that license applications are re-
6 solved or referred to the President no later than
7 90 days after the date the license application is
8 initially received by the Secretary;

9 (C) provide that a department or agency
10 dissenting from the decision reached under sub-
11 paragraph (B) may appeal the decision to the
12 President; and

13 (D) provide that a department or agency
14 that fails to take a timely position, citing the
15 specific statutory and regulatory bases for a de-
16 nial, shall be deemed to have no objection to the
17 pending decision.

18 (e) ACTIONS BY THE SECRETARY IF APPLICATION
19 DENIED.—In cases where the Secretary has determined
20 that an application should be denied, the applicant shall
21 be informed in writing of—

22 (1) the determination to deny;

23 (2) the specific statutory and regulatory bases
24 for the proposed denial;

1 (3) what, if any, modifications in or restrictions
2 on the items for which the license was sought would
3 allow such export to be compatible with export con-
4 trols imposed under this title, and which officer or
5 employee of the Department of Commerce would be
6 in a position to discuss modifications or restrictions
7 with the applicant and the specific statutory and
8 regulatory bases for imposing such modifications or
9 restrictions;

10 (4) to the extent consistent with the national
11 security and foreign policy of the United States, the
12 specific considerations that led to the determination
13 to deny the application; and

14 (5) the availability of appeal procedures.
15 The Secretary shall allow the applicant 20 days to respond
16 to the determination before the license application is de-
17 nied.

18 (f) EXCEPTIONS FROM REQUIRED TIME PERIODS.—
19 The following actions related to processing an application
20 shall not be included in calculating the time periods pre-
21 scribed in this section:

22 (1) AGREEMENT OF THE APPLICANT.—Delays
23 upon which the Secretary and the applicant mutu-
24 ally agree.

1 (2) PRELICENSE CHECKS.—A prelicense check
2 that may be required to establish the identity and
3 reliability of the recipient of items controlled under
4 this title, if—

5 (A) the need for the prelicense check is de-
6 termined by the Secretary, or by another de-
7 partment or agency if the request for the
8 prelicense check is made by such department or
9 agency;

10 (B) the request for the prelicense check is
11 sent by the Secretary within 5 days after the
12 determination that the prelicense check is re-
13 quired; and

14 (C) the analysis of the result of the
15 prelicense check is completed by the Secretary
16 within 5 days.

17 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
18 MENT ASSURANCES.—Any request by the Secretary
19 or another department or agency for government-to-
20 government assurances of suitable end uses of items
21 approved for export, when failure to obtain such as-
22 surances would result in rejection of the application,
23 if—

24 (A) the request for such assurances is sent
25 to the Secretary of State within 5 days after

1 the determination that the assurances are re-
2 quired;

3 (B) the Secretary of State initiates the re-
4 quest of the relevant government within 10
5 days thereafter; and

6 (C) the license is issued within 5 days
7 after the Secretary receives the requested assur-
8 ances.

9 Whenever a prelicense check described in paragraph
10 (2) and assurances described in this paragraph are
11 not requested within the time periods set forth
12 therein, then the time expended for such prelicense
13 check or assurances shall be included in calculating
14 the time periods established by this section.

15 (4) MULTILATERAL REVIEW.—Multilateral re-
16 view of a license application to the extent that such
17 multilateral review is required by a relevant multilat-
18 eral regime.

19 (5) CONGRESSIONAL NOTIFICATION.—Such
20 time as is required for mandatory congressional noti-
21 fications under this title.

22 (6) CONSULTATIONS.—Consultation with other
23 governments, if such consultation is provided for by
24 a relevant multilateral regime as a precondition for
25 approving a license.

1 (g) APPEALS.—

2 (1) IN GENERAL.—The Secretary shall establish
3 appropriate procedures for any applicant to appeal
4 to the Secretary the denial of an export license ap-
5 plication or other administrative action under this
6 title.

7 (2) FILING OF PETITION.—In any case in which
8 any action prescribed in this section is not taken on
9 a license application within the time periods estab-
10 lished by this section (except in the case of a time
11 period extended under subsection (f) of which the
12 applicant is notified), the applicant may file a peti-
13 tion with the Secretary requesting compliance with
14 the requirements of this section. When such petition
15 is filed, the Secretary shall take immediate steps to
16 correct the situation giving rise to the petition and
17 shall immediately notify the applicant of such steps.

18 (3) BRINGING COURT ACTION.—If, within 20
19 days after a petition is filed under paragraph (2),
20 the processing of the application has not been
21 brought into conformity with the requirements of
22 this section, or the application has been brought into
23 conformity with such requirements but the Secretary
24 has not so notified the applicant, the applicant may
25 bring an action in an appropriate United States dis-

1 trict court for an order requiring compliance with
2 the time periods required by this section. The Unit-
3 ed States district courts shall have jurisdiction to
4 provide such relief, as appropriate.

5 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
6 IES.—

7 (1) CLASSIFICATION REQUESTS.—In any case
8 in which the Secretary receives a written request
9 asking for the proper classification of an item on the
10 control index, the Secretary shall, within 14 days
11 after receiving the request, inform the person mak-
12 ing the request of the proper classification.

13 (2) OTHER INQUIRIES.—In any case in which
14 the Secretary receives a written request for informa-
15 tion about the applicability of licensing requirements
16 under this title to a proposed export transaction or
17 series of transactions, the Secretary shall, within 30
18 days after receiving the request, reply with that in-
19 formation to the person making the request.

20 **SEC. 110. VIOLATIONS.**

21 (a) CRIMINAL PENALTIES.—

22 (1) VIOLATIONS BY AN INDIVIDUAL.—Except as
23 provided in paragraph (3), any individual who know-
24 ingly violates or conspires to or attempts to violate
25 any provision of this title or any regulation, license,

1 or order issued under this title shall be fined not
2 more than 5 times the value of the exports involved
3 or \$500,000, whichever is greater, or imprisoned not
4 more than 10 years, or both.

5 (2) VIOLATIONS BY A PERSON OTHER THAN AN
6 INDIVIDUAL.—Except as provided in paragraph (3),
7 any person other than an individual who knowingly
8 violates or conspires to or attempts to violate any
9 provision of this title or any regulation, license, or
10 order issued under this title shall be fined not more
11 than 10 times the value of the exports involved or
12 \$1,000,000, whichever is greater.

13 (3) ANTIBOYCOTT VIOLATIONS.—

14 (A) Any individual who knowingly violates
15 or conspires to or attempts to violate any regu-
16 lation or order issued under section 108 shall
17 be fined, for each violation, not more than 5
18 times the value of the exports involved or
19 \$250,000, whichever is greater, or imprisoned
20 not more than 10 years, or both.

21 (B) Any person other than an individual
22 who knowingly violates or conspires to or at-
23 tempts to violate any regulation or order issued
24 under section 108 shall be fined, for each viola-
25 tion, not more than 5 times the value of the ex-

1 ports involved or \$500,000, whichever is great-
2 er.

3 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
4 CEEDS.—

5 (1) FORFEITURE.—Any person who is convicted
6 under subsection (a)(1) or (2) shall, in addition to
7 any other penalty, forfeit to the United States—

8 (A) any of that person's interest in, secu-
9 rity of, claim against, or property or contractual
10 rights of any kind in the commodities or tan-
11 gible items that were the subject of the viola-
12 tion;

13 (B) any of that person's interest in, secu-
14 rity of, claim against, or property or contractual
15 rights of any kind in tangible property that was
16 used in the export or attempt to export that
17 was the subject of the violation; and

18 (C) any of that person's property con-
19 stituting, or derived from, any proceeds ob-
20 tained directly or indirectly as a result of the
21 violation.

22 (2) PROCEDURES.—The procedures in any for-
23 feiture under this subsection, and the duties and au-
24 thority of the courts of the United States and the
25 Attorney General with respect to any forfeiture ac-

1 tion under this subsection or with respect to any
2 property that may be subject to forfeiture under this
3 subsection, shall be governed by the provisions of
4 chapter 46 of title 18, United States Code, to the
5 same extent as property subject to forfeiture under
6 that chapter.

7 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
8 TIONS.—

9 (1) CIVIL PENALTIES.—The Secretary may im-
10 pose a civil penalty of not more than \$250,000 for
11 each violation of this title or any regulation, license,
12 or order issued under this title, either in addition to
13 or in lieu of any other liability or penalty which may
14 be imposed, except that the civil penalty for each
15 such violation of regulations issued under section
16 108 may not exceed \$50,000.

17 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
18 retary may deny the export privileges of any person,
19 including suspending or revoking the authority of
20 any person to export or receive United States-origin
21 commodities or technology subject to this title, on
22 account of any violation of this title or any regula-
23 tion, license, or order issued under this title.

24 (d) PAYMENT OF CIVIL PENALTIES.—The payment
25 of any civil penalty imposed under subsection (c) may be

1 made a condition, for a period not exceeding 1 year after
2 the penalty has become due but has not been paid, to the
3 granting, restoration, or continuing validity of any export
4 license, permission, or privilege granted or to be granted
5 to the person upon whom such penalty is imposed. In addi-
6 tion, the payment of any civil penalty imposed under sub-
7 section (c) may be deferred or suspended in whole or in
8 part for a period of time no longer than any probation
9 period (which may exceed 1 year) that may be imposed
10 upon such person. Such deferral or suspension shall not
11 operate as a bar to the collection of the penalty in the
12 event that the conditions of the suspension, deferral, or
13 probation are not fulfilled.

14 (e) REFUNDS.—Any amount paid in satisfaction of
15 any civil penalty imposed under subsection (c) shall be cov-
16 ered into the Treasury as a miscellaneous receipt. The
17 head of the department or agency concerned may, in his
18 or her discretion, refund any such civil penalty imposed
19 under subsection (c), within 2 years after payment, on the
20 ground of a material error of fact or law in the imposition
21 of the penalty. Notwithstanding section 1346(a) of title
22 28, United States Code, no action for the refund of any
23 such penalty may be maintained in any court.

24 (f) EFFECT OF OTHER CONVICTIONS.—

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

3 (A) this title or the Export Administration
4 Act of 1979,

5 (B) the International Emergency Economic
6 Powers Act,

7 (C) section 793, 794, or 798 of title 18,
8 United States Code,

9 (D) section 4(b) of the Internal Security
10 Act of 1950 (50 U.S.C. 783(b)),

11 (E) section 38 of the Arms Export Control
12 Act,

13 (F) section 16 of the Trading with the
14 Enemy Act (59 U.S.C. App. 16),

15 (G) any regulation, license, or order issued
16 under any provision of law listed in subpara-
17 graph (A), (B), (C), (D), (E), or (F), or

18 (H) section 371 or 1001 of title 18, United
19 States Code, if the violation is in connection
20 with the export of commodities or technology
21 controlled under this title, any regulation, li-
22 cense or order issued under the International
23 Emergency Economic Powers Act, or defense
24 articles or defense services controlled under the
25 Arms Export Control Act,

1 may, at the discretion of the Secretary, be denied ex-
2 port privileges under this title for a period of up to
3 10 years from the date of the conviction. The Sec-
4 retary may also revoke any export license under this
5 title in which such person had an interest at the
6 time of the conviction.

7 (2) RELATED PERSONS.—The Secretary may
8 exercise the authority under paragraph (1) with re-
9 spect to any person related, through affiliation, own-
10 ership, control, or position of responsibility, to any
11 person convicted of any violation of a law set forth
12 in paragraph (1), upon a showing of such relation-
13 ship with the convicted person, after providing notice
14 and opportunity for a hearing.

15 (g) STATUTE OF LIMITATIONS.—Any proceeding in
16 which a civil penalty or other administrative sanction
17 (other than a temporary denial order) is sought under sub-
18 section (c) may not be instituted more than 5 years after
19 the date of the alleged violation, except that, in any case
20 in which a criminal indictment alleging a violation of this
21 title is returned within the time limits prescribed by law
22 for the institution of such action, the statute of limitations
23 for bringing a proceeding to impose such a civil penalty
24 or other administrative sanction under this title shall,
25 upon the return of the criminal indictment, be tolled

1 against all persons named as a defendant. The tolling of
2 the statute of limitations shall continue for a period of
3 6 months from the date a conviction becomes final or the
4 indictment is dismissed.

5 (h) VIOLATIONS DEFINED BY REGULATION.—Nothing
6 ing in this section shall limit the power of the Secretary
7 to define by regulation violations under this title.

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

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

14 (2) the authority to compromise and settle ad-
15 ministrative proceedings brought with respect to any
16 such violation; or

17 (3) the authority to compromise, remit, or miti-
18 gate seizures and forfeitures pursuant to section
19 1(b) of title VI of the Act of June 15, 1917 (22
20 U.S.C. 401(b)).

21 (j) PRIVATE RIGHT OF ACTION.—Any person—

22 (1) against whom an act of discrimination de-
23 scribed in section 108(a)(1)(B) is committed, or

24 (2) who, on account of a violation of the regula-
25 tions issued pursuant to section 108(a), loses an op-

1 portunity to engage in a commercial venture pursu-
2 ant to a contract, joint venture, or other commercial
3 transaction, including an opportunity to bid or ten-
4 der an offer for a contract,
5 may bring an action in an appropriate district court of
6 the United States against the United States person com-
7 mitting the violation, for recovery of actual damages in-
8 curred on account of such act of discrimination or lost
9 opportunity. In any such action the court may award puni-
10 tive damages. An action may be brought under this sub-
11 section against a United States person whether or not the
12 United States person has been determined under this sec-
13 tion to have violated the regulations issued pursuant to
14 section 108(a) on account of which the action is brought.
15 In an action brought under this subsection, unless the
16 court finds that the interests of justice require otherwise,
17 the court shall designate the substantially prevailing party
18 or parties in the action, and the remaining parties shall
19 pay the reasonable attorneys' fees of the substantially pre-
20 vailing party or parties in such proportion as the court
21 shall determine.

22 **SEC. 111. CONTROLLING PROLIFERATION ACTIVITY.**

23 (a) PROLIFERATION CONTROLS.—

24 (1) MISSILE TECHNOLOGY CONTROLS.—The
25 Secretary, in consultation with the Secretary of De-

1 fense and the heads of other appropriate depart-
2 ments and agencies and consistent with sections 103
3 and 104(g)—

4 (A) shall establish and maintain, as part of
5 the control index established under section
6 104(b), dual-use items on the MTCR Annex;

7 (B) may include, as part of the control
8 index established under section 104(b), items
9 that—

10 (i) would make a material contribu-
11 tion to the design, development, test, pro-
12 duction, stockpiling, or use of missile deliv-
13 ery systems, and

14 (ii) are not included in the MTCR
15 Annex but which the United States has
16 proposed to the other members of the
17 MTCR for inclusion in the MTCR Annex;
18 and

19 (C) shall require a license under paragraph
20 (1) or (2) of section 104(a), consistent with the
21 arrangements of the MTCR, for—

22 (i) any export of items on the control
23 index pursuant to subparagraphs (A) and
24 (B) to any country; and

1 (ii) any export of items that the ex-
2 porter knows is destined for a project or
3 facility for the design, development, or
4 manufacture of a missile in a country that
5 is not an adherent to the MTCR.

6 (2) CHEMICAL AND BIOLOGICAL WEAPONS CON-
7 TROLS.—The Secretary, in consultation with the
8 Secretary of Defense and the heads of other appro-
9 priate departments and agencies and consistent with
10 sections 103 and 104(g)—

11 (A) shall establish and maintain, as part of
12 the control index established under section
13 104(b), dual-use items listed by the Australia
14 Group or the Chemical Weapons Convention;

15 (B) may include, as part of the control
16 index established under section 104(b), items
17 that—

18 (i) would make a material contribu-
19 tion to the design, development, test, pro-
20 duction, stockpiling, or use of chemical or
21 biological weapons, and

22 (ii) are not contained on the list of
23 controlled items of the Australia Group but
24 which the United States has proposed to

1 the other members of the Australia Group
2 for inclusion in such list; and

3 (C) shall require a license under paragraph
4 (1) or (2) of section 104(a), consistent with the
5 arrangements of the Australia Group and the
6 Chemical Weapons Convention, for—

7 (i) any export of items on the control
8 index pursuant to subparagraphs (A) and
9 (B) to any country, except as provided for
10 in section 105(e); and

11 (ii) any export of items that the ex-
12 porter knows is destined for a project or
13 facility for the design, development, or
14 manufacture of a chemical or biological
15 weapon.

16 (3) POLICY OF DENIAL OF LICENSES.—(A) Li-
17 censes under paragraph (1)(C) should in general be
18 denied if the ultimate consignee of the commodities
19 or technology is a facility in a country that is not
20 an adherent to the MTCR and the facility is de-
21 signed to develop or build missiles.

22 (B) Licenses under paragraph (1)(C) shall be
23 denied if the ultimate consignee of the commodities
24 or technology is a facility in a country the govern-
25 ment of which has been determined under section

1 106(i)(1) to have repeatedly provided support for
2 acts of international terrorism.

3 (b) TECHNICAL AMENDMENTS TO ARMS EXPORT
4 CONTROL ACT.—(1) Section 71(a) of the Arms Export
5 Control Act (22 U.S.C. 2797(a)) is amended by striking
6 “6(l) of the Export Administration Act of 1979” and in-
7 serting “111(a) of the Export Administration Act of
8 1997”.

9 (2) Section 81(a)(1) of the Arms Export Control Act
10 (22 U.S.C. 2798(a)(1)) is amended—

11 (A) in subparagraphs (A) and (B) by inserting
12 “under this Act” after “United States” the second
13 place it appears in each subparagraph, and

14 (B) in subparagraph (C), by striking “1979”
15 and inserting “1996”.

16 (c) GENERAL PROHIBITION.—Notwithstanding any
17 other provision of this title, the export of commodities or
18 technology shall be prohibited if the ultimate consignee is
19 a program or activity for the design, development, manu-
20 facture, stockpiling, testing, or other acquisition of a
21 weapon of mass destruction or missile in a country that
22 is not an adherent to the regime controlling such weapon
23 or missile, unless the Secretary determines such export
24 would not make a material contribution to such program
25 or activity.

1 (d) CHEMICAL AND BIOLOGICAL WEAPONS PRO-
2 LIFERATION SANCTIONS.—

3 (1) IMPOSITION OF SANCTIONS.—

4 (A) DETERMINATION BY THE PRESI-
5 DENT.—Except as provided in paragraph
6 (2)(B), the President shall impose both of the
7 sanctions described in paragraph (3) if the
8 President determines that a foreign person, on
9 or after the date of the enactment of this Act,
10 has knowingly and materially contributed—

11 (i) through the export from the Unit-
12 ed States of any goods or technology that
13 are subject to the jurisdiction of the Unit-
14 ed States under this title, or

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

20 to the efforts by any foreign country, project, or
21 entity described in subparagraph (B) to use, de-
22 velop, produce, stockpile, or otherwise acquire
23 chemical or biological weapons.

1 (B) COUNTRIES, PROJECTS, OR ENTITIES
2 RECEIVING ASSISTANCE.—Subparagraph (A)
3 applies in the case of—

4 (i) any foreign country that the Presi-
5 dent determines has, at any time after
6 January 1, 1980—

7 (I) used chemical or biological
8 weapons in violation of international
9 law;

10 (II) used lethal chemical or bio-
11 logical weapons against its own na-
12 tionals; or

13 (III) made substantial prepara-
14 tions to engage in the activities de-
15 scribed in subclause (I) or (II);

16 (ii) any foreign country whose govern-
17 ment is determined for purposes of section
18 106(i) to be a government that has repeat-
19 edly provided support for acts of inter-
20 national terrorism; or

21 (iii) any other foreign country,
22 project, or entity designated by the Presi-
23 dent for purposes of this subsection.

1 (C) PERSONS AGAINST WHICH SANCTIONS
2 ARE TO BE IMPOSED.—Sanctions shall be im-
3 posed pursuant to subparagraph (A) on—

4 (i) the foreign person with respect to
5 which the President makes the determina-
6 tion described in that subparagraph;

7 (ii) any successor entity to that for-
8 eign person;

9 (iii) any foreign person that is a par-
10 ent or subsidiary of that foreign person if
11 that parent or subsidiary knowingly as-
12 sisted in the activities which were the basis
13 of that determination; and

14 (iv) any foreign person that is an af-
15 filiate of that foreign person if that affili-
16 ate knowingly assisted in the activities
17 which were the basis of that determination
18 and if that affiliate is controlled in fact by
19 that foreign person.

20 (2) CONSULTATIONS WITH AND ACTIONS BY
21 FOREIGN GOVERNMENT OF JURISDICTION.—

22 (A) CONSULTATIONS.—If the President
23 makes the determinations described in para-
24 graph (1)(A) with respect to a foreign person,
25 the Congress urges the President to initiate

1 consultations immediately with the government
2 with primary jurisdiction over that foreign per-
3 son with respect to the imposition of sanctions
4 pursuant to this subsection.

5 (B) ACTIONS BY GOVERNMENT OF JURIS-
6 DICTION.—In order to pursue such consulta-
7 tions with that government, the President may
8 delay imposition of sanctions pursuant to this
9 subsection for a period of up to 90 days. Fol-
10 lowing these consultations, the President shall
11 impose sanctions unless the President deter-
12 mines and certifies to the Congress that that
13 government has taken specific and effective ac-
14 tions, including appropriate penalties, to termi-
15 nate the involvement of the foreign person in
16 the activities described in paragraph (1)(A).
17 The President may delay imposition of sanc-
18 tions for an additional period of up to 90 days
19 if the President determines and certifies to the
20 Congress that that government is in the process
21 of taking the actions described in the preceding
22 sentence.

23 (C) REPORT TO CONGRESS.—The Presi-
24 dent shall report to the Congress, not later than
25 90 days after making a determination under

1 paragraph (1)(A), on the status of consultations
2 with the appropriate government under this
3 subsection, and the basis for any determination
4 under subparagraph (B) of this paragraph that
5 such government has taken specific corrective
6 actions.

7 (3) SANCTIONS.—

8 (A) DESCRIPTION OF SANCTIONS.—The
9 sanctions to be imposed pursuant to paragraph
10 (1)(A) are, except as provided in subparagraph
11 (B) of this paragraph, the following:

12 (i) PROCUREMENT SANCTION.—The
13 United States Government shall not pro-
14 cure, or enter into any contract for the
15 procurement of, any goods or services from
16 any person described in paragraph (1)(C).

17 (ii) IMPORT SANCTIONS.—The impor-
18 tation into the United States of products
19 produced by any person described in para-
20 graph (1)(C) shall be prohibited.

21 (B) EXCEPTIONS.—The President shall
22 not be required to apply or maintain sanctions
23 under this subsection—

24 (i) in the case of procurement of de-
25 fense articles or defense services—

1 (I) under existing contracts or
2 subcontracts, including the exercise of
3 options for production quantities to
4 satisfy United States operational mili-
5 tary requirements;

6 (II) if the President determines
7 that the person or other entity to
8 which the sanctions would otherwise
9 be applied is a sole source supplier of
10 the defense articles or services, that
11 the defense articles or services are es-
12 sential, and that alternative sources
13 are not readily or reasonably avail-
14 able; or

15 (III) if the President determines
16 that such articles or services are es-
17 sential to the national security under
18 defense coproduction agreements;

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

23 (iii) to—

24 (I) spare parts,

1 (II) component parts, but not
2 finished products, essential to United
3 States products or production, or

4 (III) routine servicing and main-
5 tenance of products, to the extent that
6 alternative sources are not readily or
7 reasonably available;

8 (iv) to information and technology es-
9 sential to United States products or pro-
10 duction; or

11 (v) to medical or other humanitarian
12 items.

13 (4) TERMINATION OF SANCTIONS.—The sanc-
14 tions imposed pursuant to this subsection shall apply
15 for a period of at least 12 months following the im-
16 position of sanctions and shall cease to apply there-
17 after only if the President determines and certifies
18 to the Congress that reliable information indicates
19 that the foreign person with respect to which the de-
20 termination was made under paragraph (1)(A) has
21 ceased to aid or abet any foreign government,
22 project, or entity in its efforts to acquire chemical or
23 biological weapons capability as described in that
24 paragraph.

25 (5) WAIVER.—

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

10 (B) NOTIFICATION OF AND REPORT TO
11 CONGRESS.—If the President decides to exercise
12 the waiver authority provided in subparagraph
13 (A), the President shall so notify the Congress
14 not less than 20 days before the waiver takes
15 effect. Such notification shall include a report
16 fully articulating the rationale and cir-
17 cumstances which led the President to exercise
18 the waiver authority.

19 (6) DEFINITION OF FOREIGN PERSON.—For
20 purposes of this subsection, the term “foreign per-
21 son” means—

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

1 (B) a corporation, partnership, or other
2 entity which is created or organized under the
3 laws of a foreign country or which has its prin-
4 cipal place of business outside the United
5 States.

6 (e) MISSILE PROLIFERATION CONTROL VIOLA-
7 TIONS.—

8 (1) VIOLATIONS BY UNITED STATES PER-
9 SONS.—

10 (A) SANCTIONS.—(i) If the President de-
11 termines that a United States person know-
12 ingly—

13 (I) exports, transfers, or otherwise en-
14 gages in the trade of any item on the
15 MTCR Annex, in violation of the provi-
16 sions of section 38 (22 U.S.C. 2778) or
17 chapter 7 of the Arms Export Control Act,
18 this title, or any regulations or orders is-
19 sued under any such provisions,

20 (II) conspires to or attempts to en-
21 gage in such export, transfer, or trade, or

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

24 then the President shall impose the applicable
25 sanctions described in clause (ii).

1 (ii) The sanctions which apply to a United
2 States person under clause (i) are the following:

3 (I) If the item on the MTCR Annex
4 involved in the export, transfer, or trade is
5 missile equipment or technology within cat-
6 egory II of the MTCR Annex, then the
7 President shall deny to such United States
8 person, for a period of 2 years, licenses for
9 the transfer of missile equipment or tech-
10 nology controlled under this title.

11 (II) If the item on the MTCR Annex
12 involved in the export, transfer, or trade is
13 missile equipment or technology within cat-
14 egory I of the MTCR Annex, then the
15 President shall deny to such United States
16 person, for a period of not less than 2
17 years, all licenses for items the export of
18 which is controlled under this title.

19 (B) DISCRETIONARY SANCTIONS.—In the
20 case of any determination referred to in sub-
21 paragraph (A), the Secretary may pursue any
22 other appropriate penalties under section 110.

23 (C) WAIVER.—The President may waive
24 the imposition of sanctions under subparagraph
25 (A) on a person with respect to a product or

1 service if the President certifies to the Congress
2 that—

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

6 (ii) such person is a sole source sup-
7 plier of the product or service, the product
8 or service is not available from any alter-
9 native reliable supplier, and the need for
10 the product or service cannot be met in a
11 timely manner by improved manufacturing
12 processes or technological developments.

13 (2) TRANSFERS OF MISSILE EQUIPMENT OR
14 TECHNOLOGY BY FOREIGN PERSONS.—

15 (A) SANCTIONS.—(i) Subject to subpara-
16 graphs (C) through (G), if the President deter-
17 mines that a foreign person, after the date of
18 the enactment of this section, knowingly—

19 (I) exports, transfers, or otherwise en-
20 gages in the trade of any MTCR equip-
21 ment or technology that contributes to the
22 design, development, or production of mis-
23 siles in a country that is not an adherent
24 to the MTCR and would be, if it were
25 United States-origin equipment or tech-

nology, subject to the jurisdiction of the United States under this title,

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

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

or if the President has made a determination with respect to a foreign person, under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under clause (ii).

(ii) The sanctions which apply to a foreign person under clause (i) are the following:

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

(II) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign

1 person of items the export of which is con-
2 trolled under this title.

3 (III) If, in addition to actions taken
4 under subclauses (I) and (II), the Presi-
5 dent determines that the export, transfer,
6 or trade has substantially contributed to
7 the design, development, or production of
8 missiles in a country that is not an adher-
9 ent to the MTCR, then the President shall
10 prohibit, for a period of not less than 2
11 years, the importation into the United
12 States of products produced by that for-
13 eign person.

14 (B) INAPPLICABILITY WITH RESPECT TO
15 MTCR ADHERENTS.—Subparagraph (A) does
16 not apply with respect to—

17 (i) any export, transfer, or trading ac-
18 tivity that is authorized by the laws of an
19 adherent to the MTCR, if such authoriza-
20 tion is not obtained by misrepresentation
21 or fraud; or

22 (ii) any export, transfer, or trade of
23 an item to an end user in a country that
24 is an adherent to the MTCR.

1 (C) EFFECT OF ENFORCEMENT ACTIONS
2 BY MTCR ADHERENTS.—Sanctions set forth in
3 subparagraph (A) may not be imposed under
4 this paragraph on a person with respect to acts
5 described in such subparagraph or, if such
6 sanctions are in effect against a person on ac-
7 count of such acts, such sanctions shall be ter-
8 minated, if an adherent to the MTCR is taking
9 judicial or other enforcement against that per-
10 son with respect to such acts, or that person
11 has been found by the government of an adher-
12 ent to the MTCR to be innocent of wrongdoing
13 with respect to such acts.

14 (D) ADVISORY OPINIONS.—The Secretary,
15 in consultation with the Secretary of State and
16 the Secretary of Defense, may, upon the re-
17 quest of any person, issue an advisory opinion
18 to that person as to whether a proposed activity
19 by that person would subject that person to
20 sanctions under this paragraph. Any person
21 who relies in good faith on such an advisory
22 opinion which states that the proposed activity
23 would not subject a person to such sanctions,
24 and any person who thereafter engages in such

1 activity, may not be made subject to such sanc-
2 tions on account of such activity.

3 (E) WAIVER AND REPORT TO CONGRESS.—

4 (i) In any case other than one in which an advi-
5 sory opinion has been issued under subpara-
6 graph (D) stating that a proposed activity
7 would not subject a person to sanctions under
8 this paragraph, the President may waive the
9 application of subparagraph (A) to a foreign
10 person if the President determines that such
11 waiver is essential to the national security of
12 the United States.

13 (ii) In the event that the President decides
14 to apply the waiver described in clause (i), the
15 President shall so notify the Congress not less
16 than 20 working days before issuing the waiver.
17 Such notification shall include a report fully ar-
18 ticulating the rationale and circumstances
19 which led the President to apply the waiver.

20 (F) ADDITIONAL WAIVER.—The President
21 may waive the imposition of sanctions under
22 subparagraph (A) on a person with respect to
23 a product or service if the President certifies to
24 the Congress that—

1 (i) the product or service is essential
2 to the national security of the United
3 States; and

4 (ii) such person is a sole source sup-
5 plier of the product or service, the product
6 or service is not available from any alter-
7 native reliable supplier, and the need for
8 the product or service cannot be met in a
9 timely manner by improved manufacturing
10 processes or technological developments.

11 (G) EXCEPTIONS FROM IMPORT SANC-
12 TIONS.—The President shall not apply the
13 sanction under this subsection prohibiting the
14 importation of the products of a foreign per-
15 son—

16 (i) in the case of procurement of de-
17 fense articles or defense services—

18 (I) under existing contracts or
19 subcontracts, including the exercise of
20 options for production quantities to
21 satisfy requirements essential to the
22 national security of the United States;

23 (II) if the President determines
24 that the person to which the sanctions
25 would be applied is a sole source sup-

1 plier of the defense articles and serv-
2 ices, that the defense articles or serv-
3 ices are essential to the national secu-
4 rity of the United States, and that al-
5 ternative sources are not readily or
6 reasonably available; or

7 (III) if the President determines
8 that such articles or services are es-
9 sential to the national security of the
10 United States under defense co-
11 production agreements;

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

16 (iii) to—

17 (I) spare parts,

18 (II) component parts, but not
19 finished products, essential to United
20 States products or production,

21 (III) routine services and mainte-
22 nance of products, to the extent that
23 alternative sources are not readily or
24 reasonably available, or

1 (IV) information and technology
2 essential to United States products or
3 production.

4 (3) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) the terms “missile equipment or tech-
7 nology” and “MTCR equipment or technology”
8 mean those items listed in category I or cat-
9 egory II of the MTCR Annex;

10 (B) the term “foreign person” means any
11 person other than a United States person;

12 (C)(i) the term “person” means a natural
13 person as well as a corporation, business asso-
14 ciation, partnership, society, trust, any other
15 nongovernmental entity, organization, or group,
16 and any governmental entity operating as a
17 business enterprise, and any successor of any
18 such entity; and

19 (ii) in the case of a country where it may
20 be impossible to identify a specific governmental
21 entity referred to in clause (i), the term “per-
22 son” means—

23 (I) all activities of that government
24 relating to the development or production

1 of any missile equipment or technology;
2 and

3 (II) all activities of that government
4 affecting the development or production of
5 aircraft, electronics, and space systems or
6 equipment; and

7 (D) the term “otherwise engaged in the
8 trade of” means, with respect to a particular
9 export or transfer, to be a freight forwarder or
10 designated exporting agent, or a consignee or
11 end user of the item to be exported or trans-
12 ferred.

13 (f) EFFECT ON OTHER LAWS.—The provisions of
14 this section do not affect any activities subject to the re-
15 porting requirements contained in title V of the National
16 Security Act of 1947.

17 (g) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
18 ERAL SANCTIONS.—The Secretary of State, in consulta-
19 tion with appropriate departments and agencies, shall seek
20 the support of other countries for sanctions imposed under
21 this section.

22 **SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.**

23 (a) APPLICABILITY.—

24 (1) EXEMPTIONS FROM ADMINISTRATIVE PRO-
25 CEDURE.—Except as provided in this section, the

1 functions exercised under this title are excluded
2 from the operation of sections 551, 553 through
3 559, and 701 through 706 of title 5, United States
4 Code.

5 (2) JUDICIAL REVIEW.—Except as otherwise
6 provided in this section, a final agency action under
7 this title may be reviewed by appeal to the United
8 States Court of Appeals for the District of Columbia
9 Circuit, to the extent provided in this paragraph.
10 The court's review in any such appeal shall be lim-
11 ited to determining whether—

12 (A) a regulation—

13 (i) fails to take an action required by
14 this title;

15 (ii) takes an action prohibited by this
16 title; or

17 (iii) otherwise violates this title;

18 (B) an agency action violates this title;

19 (C) an agency action violates an agency
20 regulation establishing time requirements or
21 other procedural requirements of a non-discre-
22 tionary nature;

23 (D) the issuance of regulations required by
24 this title complies with time restrictions im-
25 posed by this title;

1 (E) license decisions are made and appeals
2 thereof are concluded in compliance with time
3 restrictions imposed by this title;

4 (F) classifications and advisory opinions
5 are issued in compliance with time restrictions
6 imposed by this title;

7 (G) unfair impact determinations under
8 section 114(k) are in compliance with time re-
9 strictions imposed by that section; or

10 (H) the United States has complied with
11 the requirements of section 114(k) after an un-
12 fair impact determination has been made.

13 (3) RESTRICTIONS ON JUDICIAL REVIEW.—In
14 no case may a court substitute its judgment for any
15 decision made under this title relating to foreign pol-
16 icy, national security, or proliferation of weapons of
17 mass destruction, including any determination of
18 items to be included or removed from the control
19 index.

20 (b) PROCEDURES RELATING TO CIVIL PENALTIES
21 AND SANCTIONS.—

22 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
23 ministrative sanction imposed under section 110(c)
24 may be imposed only after notice and opportunity
25 for an agency hearing on the record in accordance

1 with sections 554 through 557 of title 5, United
2 States Code. The imposition of any such administra-
3 tive sanction shall be subject to judicial review in ac-
4 cordance with sections 701 through 706 of title 5,
5 United States Code.

6 (2) AVAILABILITY OF CHARGING LETTER.—Any
7 charging letter or other document initiating adminis-
8 trative proceedings for the imposition of sanctions
9 for violations of the regulations issued under section
10 108(a) shall be made available for public inspection
11 and copying.

12 (c) COLLECTION.—If any person fails to pay a civil
13 penalty imposed under section 110(c), the Secretary may
14 ask the Attorney General to bring a civil action in an ap-
15 propriate district court to recover the amount imposed
16 (plus interest at currently prevailing rates from the date
17 of the final order). No such action may be commenced
18 more than 5 years after the order imposing the civil pen-
19 alty becomes final. In such an action, the validity, amount,
20 and appropriateness of such penalty shall not be subject
21 to review.

22 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

23 (1) GROUNDS FOR IMPOSITION.—In any case in
24 which there is reasonable cause to believe that a per-
25 son is engaged in or is about to engage in any act

1 or practice which constitutes or would constitute a
2 violation of this title, or any regulation, order, or li-
3 cense issued under this title, including any diversion
4 of goods or technology from an authorized end use
5 or end user, or in any case in which a criminal in-
6 dictment has been returned against a person alleging
7 a violation of this title or any of the statutes listed
8 in section 110(f), the Secretary may, without a hear-
9 ing, issue an order temporarily denying that person's
10 United States export privileges (hereafter in this
11 subsection referred to as a "temporary denial
12 order"). A temporary denial order may be effective
13 for no longer than 180 days, but may be renewed by
14 the Secretary, following notice and an opportunity
15 for a hearing, for additional periods of not more
16 than 180 days each.

17 (2) ADMINISTRATIVE APPEALS.—The person or
18 persons subject to the issuance or renewal of a tem-
19 porary denial order may appeal the issuance or re-
20 newal of the temporary denial order, supported by
21 briefs and other material, to an administrative law
22 judge who shall, within 15 working days after the
23 appeal is filed, issue a decision affirming, modifying,
24 or vacating the temporary denial order. The tem-

1 porary denial order shall be affirmed if it is shown
2 that—

3 (A) there is reasonable cause to believe
4 that the person subject to the order is engaged
5 in or is about to engage in any act or practice
6 which constitutes or would constitute a violation
7 of this title, or any regulation, order, or license
8 issued under this title, or

9 (B) a criminal indictment has been re-
10 turned against the person subject to the order
11 alleging a violation of this title or any of the
12 statutes listed in section 110(f).

13 The decision of the administrative law judge shall be
14 final unless, within 10 working days after the date
15 of the administrative law judge's decision, an appeal
16 is filed with the Secretary. On appeal, the Secretary
17 shall either affirm, modify, reverse, or vacate the de-
18 cision of the administrative law judge by written
19 order within 10 working days after receiving the ap-
20 peal. The written order of the Secretary shall be
21 final and is not subject to judicial review, except as
22 provided in paragraph (3). The materials submitted
23 to the administrative law judge and the Secretary
24 shall constitute the administrative record for pur-
25 poses of review by the court.

1 (3) COURT APPEALS.—An order of the Sec-
2 retary affirming, in whole or in part, the issuance or
3 renewal of a temporary denial order may, within 15
4 days after the order is issued, be appealed by a per-
5 son subject to the order to the United States Court
6 of Appeals for the District of Columbia Circuit,
7 which shall have jurisdiction of the appeal. The
8 court may review only those issues necessary to de-
9 termine whether the issuance of the temporary de-
10 nial order was based on reasonable cause to believe
11 that the person subject to the order was engaged in
12 or was about to engage in any act or practice which
13 constitutes or would constitute a violation of this
14 title, or any regulation, order, or license issued
15 under this title, or if a criminal indictment has been
16 returned against the person subject to the order al-
17 leging a violation of this title or any of the statutes
18 listed in section 110(f). The court shall vacate the
19 Secretary's order if the court finds that the Sec-
20 retary's order is arbitrary, capricious, an abuse of
21 discretion, or otherwise not in accordance with law.

22 **SEC. 113. ENFORCEMENT.**

23 (a) GENERAL AUTHORITY AND DESIGNATION.—

24 (1) POLICY GUIDANCE ON ENFORCEMENT.—

25 The Secretary, in consultation with the Secretary of

1 the Treasury and the heads of other appropriate de-
2 partments and agencies, shall be responsible for pro-
3 viding policy guidance on the enforcement of this
4 title.

5 (2) GENERAL AUTHORITIES.—(A) To the extent
6 necessary or appropriate to the enforcement of this
7 title or to the imposition of any penalty, forfeiture,
8 or liability arising under the Export Administration
9 Act of 1979, officers or employees of the Depart-
10 ment of Commerce designated by the Secretary and
11 officers and employees of the United States Customs
12 Service designated by the Commissioner may exer-
13 cise the enforcement authorities described in para-
14 graph (3).

15 (B) In carrying out the enforcement authorities
16 described in paragraph (3), the Commissioner of
17 Customs, and employees of the United States Cus-
18 toms Service designated by the Commissioner, may
19 make investigations within or outside the United
20 States and at those ports of entry or exit from the
21 United States where officers of the United States
22 Customs Service are authorized by law to carry out
23 such enforcement responsibilities. Subject to para-
24 graph (3), the United States Customs Service is au-
25 thorized, in the enforcement of this title, to search,

1 detain (after search), and seize commodities or tech-
2 nology at those ports of entry or exit from the Unit-
3 ed States where officers of the Customs Service are
4 authorized by law to conduct such searches, deten-
5 tions, and seizures, and at those places outside the
6 United States where the Customs Service, pursuant
7 to agreements or other arrangements with other
8 countries, is authorized to perform enforcement ac-
9 tivities.

10 (C) In carrying out the enforcement authorities
11 described in paragraph (3), the Secretary, and offi-
12 cers and employees of the Department of Commerce
13 designated by the Secretary, may make investiga-
14 tions within the United States, and shall conduct,
15 outside the United States, prelicense and
16 postshipment verifications of items licensed for ex-
17 port and investigations in the enforcement of section
18 108. The Secretary, and officers and employees of
19 the Department of Commerce designated by the Sec-
20 retary, are authorized to search, detain (after
21 search), and seize items at those places within the
22 United States other than those ports specified in
23 subparagraph (B). The search, detention (after
24 search), or seizure of items at those ports and places
25 specified in subparagraph (B) may be conducted by

1 officers and employees of the Department of Com-
2 merce only with the concurrence of the Commis-
3 sioner of Customs or a person designated by the
4 Commissioner.

5 (D) The Secretary and the Commissioner of
6 Customs may enter into agreements and arrange-
7 ments for the enforcement of this title, including for-
8 eign investigations and information exchange.

9 (3) SPECIFIC AUTHORITIES.—(A) Any officer or
10 employee designated under paragraph (2) may do
11 the following in carrying out the enforcement au-
12 thority under this title:

13 (i) Make investigations of, obtain informa-
14 tion from, make inspection of any books,
15 records, or reports (including any writings re-
16 quired to be kept by the Secretary), premises,
17 or property of, and take the sworn testimony of,
18 any person.

19 (ii) Administer oaths or affirmations, and
20 by subpoena require any person to appear and
21 testify or to appear and produce books, records,
22 and other writings, or both. In the case of con-
23 tumacy by, or refusal to obey a subpoena issued
24 to, any such person, a district court of the
25 United States, on request of the Attorney Gen-

1 eral and after notice to any such person and a
2 hearing, shall have jurisdiction to issue an order
3 requiring such person to appear and give testi-
4 mony or to appear and produce books, records,
5 and other writings, or both. Any failure to obey
6 such order of the court may be punished by
7 such court as a contempt thereof. The attend-
8 ance of witnesses and the production of docu-
9 ments provided for in this clause may be re-
10 quired from any State, the District of Colum-
11 bia, or in any territory of the United States at
12 any designated place. Witnesses subpoenaed
13 under this subsection shall be paid the same
14 fees and mileage as are paid witnesses in the
15 district courts of the United States.

16 (B)(i) Any officer or employee of the Office of
17 Export Enforcement of the Department of Com-
18 merce who is designated by the Secretary under
19 paragraph (2), and any officer or employee of the
20 United States Customs Service who is designated by
21 the Commissioner of Customs under paragraph (2),
22 may do the following in carrying out the enforce-
23 ment authority under this title:

24 (I) Execute any warrant or other process
25 issued by a court or officer of competent juris-

1 diction with respect to the enforcement of this
2 title.

3 (II) Make arrests without warrant for any
4 violation of this title committed in his or her
5 presence or view, or if the officer or employee
6 has probable cause to believe that the person to
7 be arrested has committed, is committing, or is
8 about to commit such a violation.

9 (III) Carry firearms.

10 (ii) Officers and employees of the Office of Ex-
11 port Enforcement designated by the Secretary under
12 paragraph (2) shall exercise the authorities set forth
13 in clause (i) pursuant to guidelines approved by the
14 Attorney General.

15 (C) Any officer or employee of the United
16 States Customs Service designated by the Commis-
17 sioner of Customs under paragraph (2) may do the
18 following in carrying out the enforcement authority
19 under this title:

20 (i) Stop, search, and examine a vehicle,
21 vessel, aircraft, or person on which or whom the
22 officer or employee has reasonable cause to sus-
23 pect there is any item that has been, is being,
24 or is about to be exported from or transited

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

3 (ii) Detain and search any package or con-
4 tainer in which the officer or employee has rea-
5 sonable cause to suspect there is any item that
6 has been, is being, or is about to be exported
7 from or transited through the United States in
8 violation of this title.

9 (iii) Detain (after search) or seize any
10 item, for purposes of securing for trial or for-
11 feiture to the United States, on or about such
12 vehicle, vessel, aircraft, or person or in such
13 package or container, if the officer or employee
14 has probable cause to believe the item has been,
15 is being, or is about to be exported from or
16 transited through the United States in violation
17 of this title.

18 (4) OTHER AUTHORITIES NOT AFFECTED.—The
19 authorities conferred by this section are in addition
20 to any authorities conferred under other laws.

21 (b) FORFEITURE.—Any commodities or tangible
22 items lawfully seized under subsection (a) by designated
23 officers or employees shall be subject to forfeiture to the
24 United States. Those provisions of law relating to—

1 (1) the seizure, summary and judicial forfeiture,
2 and condemnation of property for violations of the
3 customs laws,

4 (2) the disposition of such property or the pro-
5 ceeds from the sale thereof,

6 (3) the remission or mitigation of such forfeit-
7 ures, and

8 (4) the compromise of claims,

9 shall apply to seizures and forfeitures incurred, or alleged
10 to have been incurred, under the provisions of this sub-
11 section, insofar as applicable and not inconsistent with
12 this title; except that such duties as are imposed upon the
13 customs officer or any other person with respect to the
14 seizure and forfeiture of property under the customs laws
15 may be performed with respect to seizures and forfeitures
16 of property under this subsection by the Secretary or such
17 officers and employees of the Department of Commerce
18 as may be authorized or designated for that purpose by
19 the Secretary, or, upon the request of the Secretary, by
20 any other agency that has authority to manage and dis-
21 pose of seized property.

22 (c) REFERRAL OF CASES.—All cases involving viola-
23 tions of this title shall be referred to the Secretary for
24 purposes of determining civil penalties and administrative
25 sanctions under section 110(c), or to the Attorney General

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

3 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

4 (1) USE OF FUNDS.—With respect to any un-
5 dercover investigative operation conducted by the Of-
6 fice of Export Enforcement of the Department of
7 Commerce (hereafter in this subsection referred to
8 as “OEE”) necessary for the detection and prosecu-
9 tion of violations of this title—

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

24 (B) funds made available for export en-
25 forcement under this title may be used to estab-

lish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31, United States Code,

(C) funds made available for export enforcement under this title and the proceeds from undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code, and

(D) the proceeds from undercover operations may be used to offset necessary and reasonable expenses incurred in such operations without regard to the provisions of section 3302 of title 31, United States Code,

if the Director of OEE (or an officer or employee designated by the Director) certifies, in writing, that the action authorized by subparagraph (A), (B), (C), or (D) for which the funds would be used is necessary for the conduct of the undercover operation.

(2) DISPOSITION OF BUSINESS ENTITIES.—If a corporation or business entity established or ac-

1 quired as part of an undercover operation with a net
2 value of more than \$50,000 is to be liquidated, sold,
3 or otherwise disposed of, the Director of OEE shall
4 report the circumstances to the Secretary and the
5 Comptroller General, as much in advance of such
6 disposition as the Director of OEE or his or her des-
7 ignee determines is practicable. The proceeds of the
8 liquidation, sale, or other disposition, after obliga-
9 tions incurred by the corporation or business enter-
10 prise are met, shall be deposited in the Treasury of
11 the United States as miscellaneous receipts.

12 (3) DEPOSIT OF PROCEEDS.—As soon as the
13 proceeds from an OEE undercover investigative op-
14 eration with respect to which an action is authorized
15 and carried out under this subsection are no longer
16 necessary for the conduct of such operation, such
17 proceeds or the balance of such proceeds remaining
18 at the time shall be deposited into the Treasury of
19 the United States as miscellaneous receipts.

20 (4) AUDIT AND REPORT.—(A) The Director of
21 OEE shall conduct a detailed financial audit of each
22 OEE undercover investigative operation which is
23 closed and shall submit the results of the audit in
24 writing to the Secretary. Not later than 180 days
25 after an undercover operation is closed, the Sec-

1 retary shall submit to the Congress a report on the
2 results of the audit.

3 (B) The Secretary shall submit annually to the
4 Congress a report, which may be included in the an-
5 nual report under section 115, specifying the follow-
6 ing information:

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

10 (ii) The number of undercover investigative
11 operations commenced in the 1-year period pre-
12 ceding the period for which such report is sub-
13 mitted.

14 (iii) The number of undercover investiga-
15 tive operations closed in the 1-year period pre-
16 ceding the period for which such report is sub-
17 mitted and, with respect to each such closed un-
18 dercover operation, the results obtained and any
19 civil claims made with respect thereto.

20 (5) DEFINITIONS.—For purposes of paragraph
21 (4)—

22 (A) the term “closed”, with respect to an
23 undercover investigative operation, refers to the
24 earliest point in time at which all criminal pro-
25 ceedings (other than appeals) pursuant to the

1 investigative operation are concluded, or covert
2 activities pursuant to such operation are con-
3 cluded, whichever occurs later;

4 (B) the terms “undercover investigative
5 operation” and “undercover operation” mean
6 any undercover investigative operation con-
7 ducted by OEE—

8 (i) in which the gross receipts (exclud-
9 ing interest earned) exceed \$25,000, or ex-
10 penditures (other than expenditures for
11 salaries of employees) exceed \$75,000, and

12 (ii) which is exempt from section 3302
13 or 9102 of title 31, United States Code,
14 except that clauses (i) and (ii) shall not apply
15 with respect to the report to the Congress re-
16 quired by subparagraph (B) of paragraph (4);
17 and

18 (C) the term “employees” means employ-
19 ees, as defined in section 2105 of title 5, United
20 States Code, of the Department of Commerce.

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

1 **SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCE-**
2 **DURES.**

3 (a) **POLICY GUIDANCE.—**

4 (1) **IN GENERAL.**—As directed by the Presi-
5 dent, annual policy guidance shall be issued to pro-
6 vide detailed implementing guidance to export licens-
7 ing officials in all appropriate departments and
8 agencies.

9 (2) **ELEMENTS OF ANNUAL POLICY REVIEW.—**

10 In order to develop such annual policy guidance, ex-
11 port controls and other regulations to implement
12 this title shall be reviewed annually. This annual pol-
13 icy review shall include an evaluation of the benefits
14 and costs of the imposition, extension, or removal of
15 controls under this title. This review shall include—

16 (A) an assessment by the Secretary of the
17 economic consequences of the imposition, exten-
18 sion, or removal of controls during the preced-
19 ing 12 months, including the impact on United
20 States exports and jobs;

21 (B) an assessment by the Secretary of
22 State of the objectives of the controls in effect
23 during the preceding 12 months, and the extent
24 to which the controls have served those objec-
25 tives; and

1 (C) an assessment by the Secretary of De-
2 fense of the impact that the imposition, exten-
3 sion, or removal of controls during the preced-
4 ing 12 months has had on United States na-
5 tional security.

6 (b) EXPORT CONTROL AUTHORITY AND FUNC-
7 TIONS.—

8 (1) IN GENERAL.—Unless otherwise reserved to
9 the President or a department or agency outside the
10 Department of Commerce, all power, authority, and
11 discretion conferred by this title shall be exercised by
12 the Secretary.

13 (2) DELEGATION OF FUNCTIONS OF THE SEC-
14 RETARY.—The Secretary may delegate any function
15 under this title to the Under Secretary of Commerce
16 for Export Administration appointed under sub-
17 section (d) or to any other officer of the Department
18 of Commerce.

19 (c) EXPORT CONTROL POLICY COMMITTEE.—

20 (1) ESTABLISHMENT.—There is established an
21 Export Control Policy Committee (hereafter in this
22 subsection referred to as the “Committee”).

23 (2) FUNCTIONS.—The Committee shall—

1 (A) provide policy guidance and advice to
2 the President on export control issues under
3 this title;

4 (B) review policy recommendations pro-
5 posed by the Secretary and other members of
6 the Committee; and

7 (C) receive policy recommendations from
8 other departments and agencies and resolve pol-
9 icy disputes among departments and agencies
10 under this title.

11 (3) MEMBERSHIP.—The Committee shall in-
12 clude the Secretary, the Secretary of Defense, the
13 Secretary of Energy, the heads of other relevant de-
14 partments, and appropriate officials of the Executive
15 Office of the President.

16 (4) CHAIR.—The Committee shall be chaired by
17 the President or his designee.

18 (5) DELEGATION; OTHER REPRESENTATIVES.—
19 A member of the Committee under paragraph (3)
20 may designate the deputy head of his or her depart-
21 ment or agency to serve in his or her absence as a
22 member of the Committee, but this authority may
23 not be delegated to any other individual. The chair
24 may also invite the temporary participation in the
25 Committee's meetings of representatives from other

1 offices and agencies as appropriate to the issues
2 under consideration.

3 (6) MEETINGS.—The chair of the Committee
4 may call a meeting of the Committee. Meetings shall
5 not be subject to section 552b of title 5, United
6 States Code.

7 (d) UNDER SECRETARY OF COMMERCE; ASSISTANT
8 SECRETARIES.—

9 (1) APPOINTMENT.—The President shall ap-
10 point, by and with the advice and consent of the
11 Senate, an Under Secretary of Commerce for Export
12 Administration who shall carry out all functions of
13 the Secretary under this title and other provisions of
14 law relating to national security, as the Secretary
15 may delegate. The President shall appoint, by and
16 with the advice and consent of the Senate, two As-
17 sistant Secretaries of Commerce to assist the Under
18 Secretary in carrying out such functions.

19 (2) TRANSITION PROVISIONS.—Those individ-
20 uals serving in the positions of Under Secretary of
21 Commerce for Export Administration and Assistant
22 Secretaries of Commerce under section 15(a) of the
23 Export Administration Act of 1979, on the day be-
24 fore the date of the enactment of this Act, shall be
25 deemed to have been appointed under paragraph (1),

1 by and with the advice and consent of the Senate,
2 as of such date of enactment.

3 (e) ISSUANCE OF REGULATIONS.—The President and
4 the Secretary may issue such regulations as are necessary
5 to carry out this title. Any such regulations the purpose
6 of which is to carry out section 105, 106, or 111(a) may
7 be issued only after the regulations are submitted for re-
8 view to such departments or agencies as the President con-
9 siders appropriate. The Secretary shall consult with the
10 appropriate export advisory committee appointed under
11 section 104(f) in formulating regulations under this title.
12 The second sentence of this subsection does not require
13 the concurrence or approval of any official, department,
14 or agency to which such regulations are submitted.

15 (f) AMENDMENTS TO REGULATIONS.—If the Sec-
16 retary proposes to amend regulations issued under this
17 title, the Secretary shall report to the Committee on Bank-
18 ing, Housing, and Urban Affairs of the Senate and the
19 Speaker of the House of Representatives on the intent and
20 rationale of such amendments. Such report shall evaluate
21 the cost and burden to the United States exporters of the
22 proposed amendments in relation to any enhancement of
23 licensing objectives. The Secretary shall consult with the
24 appropriate export advisory committees appointed under

1 section 104(f) in amending regulations issued under this
2 title.

3 (g) CONFIDENTIALITY OF INFORMATION.—

4 (1) EXEMPTIONS FROM DISCLOSURE.—

5 (A) INFORMATION OBTAINED ON OR BE-
6 FORE JUNE 30, 1980.—Except as otherwise pro-
7 vided by the third sentence of section
8 108(b)(2), information obtained under the Ex-
9 port Administration Act of 1979 and its prede-
10 cessor statutes on or before June 30, 1980,
11 which is deemed confidential, including Ship-
12 per's Export Declarations, or with reference to
13 which a request for confidential treatment is
14 made by the person furnishing such informa-
15 tion, shall not be subject to disclosure under
16 section 552 of title 5, United States Code, and
17 such information shall not be published or dis-
18 closed unless the Secretary determines that the
19 withholding thereof is contrary to the national
20 interest.

21 (B) INFORMATION OBTAINED AFTER JUNE
22 30, 1980.—Except as otherwise provided by the
23 third sentence of section 108(b)(2), information
24 obtained under this title or under the Export
25 Administration Act of 1979 after June 30,

1 1980, may be withheld from disclosure only to
2 the extent permitted by statute, except that in-
3 formation submitted, obtained, or considered in
4 connection with an application for an export li-
5 cense or other export authorization under the
6 Export Administration Act of 1979 or this title,
7 including—

8 (i) the export license or other export
9 authorization itself,

10 (ii) classification requests described in
11 section 109(h)(1),

12 (iii) information obtained during the
13 course of an assessment under subsection
14 (k),

15 (iv) information or evidence obtained
16 in the course of any investigation, and

17 (v) information obtained or furnished
18 under this title in connection with inter-
19 national agreements, treaties, or obliga-
20 tions,

21 shall be withheld from public disclosure and
22 shall not be subject to disclosure under section
23 552 of title 5, United States Code, unless the
24 release of such information is determined by the
25 Secretary to be in the national interest.

1 (2) INFORMATION TO CONGRESS AND GAO.—

2 (A) IN GENERAL.—Nothing in this title
3 shall be construed as authorizing the withhold-
4 ing of information from the Congress or from
5 the General Accounting Office.

6 (B) AVAILABILITY TO THE CONGRESS.—

7 (i) IN GENERAL.—All information ob-
8 tained at any time under this title or pre-
9 vious Acts regarding the control of exports,
10 including any report or license application
11 required under this title, shall be made
12 available to any committee or subcommit-
13 tee of Congress of appropriate jurisdiction
14 upon the request of the chairman or rank-
15 ing minority member of such committee or
16 subcommittee.

17 (ii) PROHIBITION ON FURTHER DIS-
18 CLOSURE.—No committee, subcommittee,
19 or Member of Congress shall disclose any
20 information obtained under this title or
21 previous Acts regarding the control of ex-
22 ports which is submitted on a confidential
23 basis to the Congress under clause (i) un-
24 less the full committee to which the infor-
25 mation is made available determines that

1 the withholding of the information is con-
2 trary to the national interest.

3 (C) AVAILABILITY TO THE GAO.—

4 (i) IN GENERAL.—Notwithstanding
5 paragraph (1), information referred to in
6 subparagraph (B) shall, consistent with
7 the protection of intelligence, counterintel-
8 ligence, and law enforcement sources,
9 methods, and activities, as determined by
10 the agency that originally obtained the in-
11 formation, and consistent with the provi-
12 sions of section 716 of title 31, United
13 States Code, be made available only by the
14 agency, upon request, to the Comptroller
15 General of the United States or to any of-
16 ficer or employee of the General Account-
17 ing Office authorized by the Comptroller
18 General to have access to such informa-
19 tion.

20 (ii) PROHIBITION ON FURTHER DIS-
21 CLOSURES.—No officer or employee of the
22 General Accounting Office shall disclose,
23 except to the Congress in accordance with
24 this paragraph, any such information
25 which is submitted on a confidential basis

1 and from which any individual can be iden-
2 tified.

3 (3) INFORMATION EXCHANGE.—Notwithstand-
4 ing paragraph (1), the Secretary and the Commis-
5 sioner of Customs shall exchange licensing and en-
6 forcement information with each other which is nec-
7 essary to facilitate enforcement efforts and effective
8 license decisions.

9 (4) PENALTIES FOR DISCLOSURE OF CON-
10 FIDENTIAL INFORMATION.—Any officer or employee
11 of the United States, or any department or agency
12 thereof, who publishes, divulges, discloses, or makes
13 known in any manner or to any extent not author-
14 ized by law any confidential information that—

15 (A) he or she obtains in the course of his
16 or her employment or official duties or by rea-
17 son of any examination or investigation made
18 by, or report or record made to or filed with,
19 such department or agency, or officer or em-
20 ployee thereof, and

21 (B) is exempt from disclosure under this
22 subsection,
23 shall be fined not more than \$10,000, or imprisoned
24 not more than one year, or both, shall be removed
25 from office or employment, and shall be subject to

1 a civil penalty of not more than \$1,000 imposed by
2 the Secretary under section 110(c).

3 (h) AUTHORITY FOR SEMINAR AND PUBLICATIONS
4 FUND.—The Secretary is authorized to cooperate with
5 public agencies, other governments, international organi-
6 zations, private individuals, private associations, and other
7 groups in connection with seminars, publications, and re-
8 lated activities to carry out export activities, including
9 educating the public or government officials on the appli-
10 cation of this title and the regulations issued under this
11 title. The Secretary is further authorized to accept con-
12 tributions of funds, property, or services in connection
13 with such activities to recover the cost of such programs
14 and activities. Contributions may include payments for
15 materials or services provided as part of such activities.
16 The contributions collected may be retained for use in cov-
17 ering the costs of such activities, and for providing infor-
18 mation to the public with respect to this title and other
19 export control programs of the United States and other
20 governments.

21 (i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
22 TROL PROGRAM.—The Secretary is authorized to partici-
23 pate in and provide training to officials of other countries
24 on the principles and procedures for the implementation
25 of effective export controls and may participate in any

1 such training provided by other departments and agencies
2 of the United States.

3 (j) INCORPORATED COMMODITIES AND TECH-
4 NOLOGY.—

5 (1) COMMODITIES CONTAINING CONTROLLED
6 PARTS AND COMPONENTS.—Controls may not be im-
7 posed under this title or any other provision of law
8 for a commodity solely because the commodity con-
9 tains parts or components subject to export controls
10 under this title if such parts or components—

11 (A) are essential to the functioning of the
12 commodity,

13 (B) are customarily included in sales of the
14 commodity in countries other than controlled
15 countries, and

16 (C) comprise 25 percent or less of the total
17 value of the commodity,

18 unless the commodity itself, if exported, would by
19 virtue of the functional characteristics of the com-
20 modity as a whole make a significant contribution to
21 the military or proliferation potential of a controlled
22 country or end user which would prove detrimental
23 to the national security of the United States.

24 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-
25 CORPORATING U.S. ITEMS.—

1 (A) COMMODITIES.—(i) No authority or
2 permission may be required under section 105
3 or section 106 to reexport to a country other
4 than a terrorist country or an embargoed coun-
5 try a commodity that is produced in a country
6 other than the United States and incorporates
7 commodities that are subject to the jurisdiction
8 of the United States, if the value of the con-
9 trolled United States content of the commodity
10 produced in such other country is 25 percent or
11 less of the total value of the commodity.

12 (ii) No authority or permission may be re-
13 quired under section 105 or section 106 to reex-
14 port to a terrorist country or to an embargoed
15 country a commodity that is produced in a
16 country other than the United States and incor-
17 porates commodities that are subject to the ju-
18 risdiction of the United States, if the value of
19 the controlled United States content of the
20 commodity produced in such other country is
21 10 percent or less of the total value of the com-
22 modity.

23 (B) TECHNOLOGY.—(i) No authority or
24 permission may be required under section 105
25 or section 106 to reexport to a country other

1 than a terrorist country or an embargoed coun-
2 try technology that is produced in a country
3 other than the United States and is commingled
4 with or drawn from technology that is produced
5 in the United States, if the value of the con-
6 trolled United States content of the technology
7 produced in such other country is 25 percent or
8 less of the total value of the technology.

9 (ii) No authority or permission may be re-
10 quired under section 105 or section 106 to reex-
11 port to a terrorist country or an embargoed
12 country technology that is produced in a coun-
13 try other than the United States and is com-
14 mingled with or drawn from technology that is
15 produced in the United States, if the value of
16 the controlled United States content of the
17 technology produced in such other country is 10
18 percent or less of the total value of the tech-
19 nology.

20 (C) DEFINITIONS.—For purposes of this
21 paragraph—

22 (i) the “controlled United States con-
23 tent” of a commodity or technology means
24 those commodities or technology that—

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

3 (II) are incorporated into the
4 commodity or technology; and

5 (III) would, at the time of the re-
6 export, require a license under section
7 105 or 106 if exported from the Unit-
8 ed States to a country to which the
9 commodity or technology is to be reex-
10 ported;

11 (ii) an “embargoed country” is a
12 country against which an embargo is in ef-
13 fect under the Trading with the Enemy
14 Act, the International Emergency Eco-
15 nomic Powers Act, or other provision of
16 law; and

17 (iii) a “terrorist country” is a country
18 with respect to which a determination is in
19 effect that was made under section
20 106(i)(1)(A) of this Act, or section
21 6(j)(1)(A) of the Export Administration
22 Act of 1979, that the government of such
23 country has repeatedly provided support
24 for acts of international terrorism.

1 (3) TREATMENT OF TECHNOLOGY AND SOURCE
2 CODE.—For purposes of this subsection, technology
3 and source code used to design or produce foreign-
4 made commodities are not deemed to be incor-
5 porated into such foreign-made commodities.

6 (4) REPORTING REQUIREMENTS.—Notwith-
7 standing paragraphs (1) through (3), the Secretary
8 may require persons to report to the Department of
9 Commerce their proposed calculations and underly-
10 ing data sufficient for the Department of Commerce
11 to evaluate the adequacy of those calculations and
12 data related to commodities and technology before a
13 reexporter may rely upon the exclusions from con-
14 trols provided in this subsection.

15 (5) EXCEPTIONS.—Paragraphs (1) and (2) do
16 not require any changes to regulations in effect on
17 the effective date of this title and, notwithstanding
18 paragraphs (1) and (2), controls may be imposed on
19 commodities or technology transferred, after March
20 1, 1996, from export control under the Arms Export
21 Control Act to control under this title if those com-
22 modities or technology are designated by the Presi-
23 dent for exemption from paragraph (1) or (2), as
24 the case may be.

1 (k) UNFAIR IMPACT ON UNITED STATES EX-
2 PORTER.—

3 (1) POLICY.—It is the policy of the United
4 States that no United States exporter should be af-
5 fected unfairly by export control policies or practices
6 unless relief from such controls would create a sig-
7 nificant risk to the foreign policy, nonproliferation,
8 or national security interests of the United States.

9 (2) RELIEF FROM EXPORT CONTROLS.—(A) A
10 person may petition the Secretary for relief from
11 current export control requirements (other than con-
12 trol requirements specifically imposed by this title or
13 other provisions of law) on the basis of foreign avail-
14 ability. A person may also petition the Secretary for
15 approval of an export license application on other
16 grounds which the Secretary, with the concurrence
17 of the Secretary of Defense, shall establish by regu-
18 lation. The Secretary shall, upon receipt of such pe-
19 titions, and may, on his or her initiative, conduct as-
20 sessments for providing relief based upon these
21 grounds.

22 (B) For purposes of this subsection, foreign
23 availability exists when the controlled item is avail-
24 able in fact, under terms and conditions established
25 by the Secretary with the concurrence of the Sec-

1 retary of Defense, to controlled countries or end
2 users from sources outside the United States so that
3 the requirement for a license is or would be ineffec-
4 tive in achieving the purpose of the control.

5 (3) PROVISIONS FOR RELIEF.—The Secretary,
6 in consultation with appropriate departments and
7 agencies, shall make determinations of facts under
8 paragraph (2), addressing, in the case of a petition
9 filed under paragraph (2), each ground for relief as-
10 serted in the petition, and, subject to paragraph (4),
11 shall provide at least one of the following forms of
12 relief to persons that meet the criteria in paragraph
13 (2):

14 (A) Change the control status of, or licens-
15 ing requirements on, all or some of the items in
16 question so as to eliminate the unfair impact.

17 (B) Selectively approve the sale of con-
18 trolled items so as to eliminate the unfair im-
19 pact.

20 (C) Seek multilateral support to eliminate
21 the source of unfair impact. If relief under this
22 subparagraph is chosen and if such efforts fail
23 to achieve multilateral support, then the Sec-
24 retary, not later than 330 days from the date
25 of the Secretary's initiation of the assessment

1 under paragraph (2), shall provide other relief
2 pursuant to subparagraph (A) or (B) or con-
3 clude pursuant to paragraph (4) that the grant-
4 ing of such relief would create a significant risk
5 to United States nonproliferation, foreign pol-
6 icy, or national security interests.

7 A determination that a petitioner qualifies for relief
8 under paragraph (2) shall not compel the United
9 States to remove controls from an item that remains
10 subject to control by a multilateral regime.

11 (4) EXCEPTIONS FROM RELIEF.—The Secretary
12 shall provide relief under paragraph (3) to a peti-
13 tioner who qualifies for relief under paragraph (2)
14 unless the Secretary concludes that the granting of
15 such relief would create a significant risk to United
16 States nonproliferation, foreign policy, or national
17 security interests. In the event the Secretary deter-
18 mines to grant such relief, he or she may do so un-
19 less the President determines that such relief would
20 create a significant risk to the foreign policy, non-
21 proliferation, or national security interests of the
22 United States.

23 (5) PROCEDURES.—

24 (A) PUBLICATION.—In any case in which
25 the President or the Secretary determines that

1 relief under paragraph (3) will not be granted,
2 notwithstanding the existence of facts that con-
3 stitute a basis for granting relief, the Secretary
4 shall publish that determination, together with
5 a concise statement of its basis and the esti-
6 mated economic impact of the decision.

7 (B) NOTICE OF ASSESSMENTS.—Whenever
8 the Secretary undertakes an assessment under
9 paragraph (2), the Secretary shall publish in
10 the Federal Register notice of the initiation of
11 such assessment.

12 (C) PROCEDURES FOR MAKING DETER-
13 MINATIONS.—During the conduct of an assess-
14 ment under this subsection, the Secretary shall
15 consult with other appropriate departments and
16 agencies concerning the assessment. The Sec-
17 retary shall make a determination as to whether
18 relief is required under paragraph (2) within
19 120 days after the date of the Secretary's re-
20 ceipt of the petition requesting relief or the date
21 of the Secretary's initiation of the assessment
22 (as the case may be) and shall so notify the ap-
23 plicant. If the Secretary has determined that
24 relief is appropriate, the Secretary shall, upon
25 making such a determination, submit the deter-

1 mination for review to the Department of De-
2 fense and other appropriate departments and
3 agencies for consultations regarding the find-
4 ings and the relief selected. If the Secretary of
5 Defense or other department or agency head
6 disagrees with the Secretary's determination, he
7 or she may appeal the determination to the
8 President in writing, but only on the basis of
9 the criteria set forth in paragraph (4). The
10 President shall resolve any such disagreement
11 so that, in all cases, not later than 150 days
12 after the date of the Secretary's receipt of the
13 petition requesting relief or the date of the Sec-
14 retary's initiation of the assessment (as the
15 case may be), the Secretary responds in writing
16 to the petitioner and submits for publication in
17 the Federal Register, that—

18 (i) unfair impact exists and—

19 (I) the requirement of a license
20 has been removed;

21 (II) the control status of all or
22 some of the items in question has
23 been changed so as to eliminate the
24 unfair impact;

1 (III) the sale of controlled items
2 has been approved so as to eliminate
3 the unfair impact;

4 (IV) export controls under this
5 title are to be maintained notwith-
6 standing the finding under paragraph
7 (2); or

8 (V) the United States rec-
9 ommendation to remove the license re-
10 quirement or change the control sta-
11 tus will be submitted to a relevant
12 multilateral regime for consideration
13 for a period of not more than 180
14 days beginning on the date of the
15 publication; or

16 (ii) a right to relief under paragraph
17 (2) does not exist.

18 The reasons for maintaining export controls
19 under clause (i)(IV) shall be included in the
20 submission to the petitioner and the publica-
21 tion. In any case in which the submission for
22 publication is not made within the 150-day pe-
23 riod required by this subparagraph, the Sec-
24 retary may not thereafter require a license for

1 the export of items that are the subject of the
2 allegation under paragraph (2).

3 (D) NEGOTIATIONS TO ELIMINATE UNFAIR
4 IMPACT.—(i) In any case in which export con-
5 trols are maintained under this section pursu-
6 ant to paragraph (4) despite a determination of
7 unfair impact, the Secretary of State shall ac-
8 tively pursue negotiations with the governments
9 of the appropriate foreign countries for the pur-
10 pose of eliminating the unfair impact. No later
11 than the commencement of such negotiations,
12 the Secretary of State shall notify the Congress
13 in writing that the Secretary of State has begun
14 such negotiations and why it is important that
15 export controls on the items involved be main-
16 tained to avoid a significant risk to the foreign
17 policy, nonproliferation, or national security in-
18 terests of the United States.

19 (ii) Whenever the Secretary of State has
20 reason to believe that items subject to export
21 controls by the United States may become
22 available in fact from other countries to con-
23 trolled countries and that such availability can
24 be prevented or eliminated by means of negotia-
25 tions with such other countries, the Secretary of

1 State shall promptly initiate negotiations with
2 the governments of such other countries to pre-
3 vent such foreign availability.

4 (6) SHARING OF INFORMATION.—Each depart-
5 ment or agency of the United States, including any
6 intelligence agency, and all contractors with any
7 such department or agency, shall, upon the request
8 of the Secretary and consistent with the protection
9 of intelligence sources and methods, furnish informa-
10 tion to the Department of Commerce concerning for-
11 eign availability of items subject to export controls
12 under this title. Consistent with the protection of in-
13 telligence sources and methods and classification re-
14 strictions, each such department or agency shall
15 allow the Department of Commerce access to such
16 information from a laboratory or other facility with-
17 in such department or agency.

18 (7) CONGRESSIONAL NOTIFICATION AND RE-
19 PORTING REQUIREMENTS.—The Secretary shall each
20 year notify the Congress of all petitions for relief
21 under this subsection and the status of all such peti-
22 tions.

23 (l) EXCEPTIONS FOR MEDICAL AND HUMANITARIAN
24 PURPOSES.—This title does not authorize controls on—

25 (1) medicine or medical supplies; or

1 (2) donations of items that are intended to
2 meet basic human needs, including food, educational
3 materials, seeds, hand tools, water resources equip-
4 ment, clothing and shelter materials, and basic
5 household supplies.

6 (m) SANCTITY OF EXISTING CONTRACTS AND LI-
7 CENSES.—

8 (1) IN GENERAL.—In the case of a control im-
9 posed under section 106 on the export of any items,
10 the President may not prohibit the export of those
11 items—

12 (A) in performance of a contract, agree-
13 ment, or other contractual commitment entered
14 into before the date on which the control is ini-
15 tially imposed, or the date on which the Presi-
16 dent reports to the Congress the President's in-
17 tention to impose the control, whichever date
18 occurs first, or

19 (B) under a license or other authorization
20 issued under this title before the date on which
21 the control is initially imposed, or the date on
22 which the President reports to the Congress the
23 President's intention to impose the control,
24 whichever date occurs first.

1 (2) EXCEPTION.—The prohibition in paragraph
2 (1) shall not apply if the President determines and
3 certifies to the Congress that—

4 (A) a breach of the peace poses a serious
5 and direct threat to the strategic interest of the
6 United States;

7 (B) the prohibition of exports under each
8 such contract, agreement, commitment, license,
9 or authorization will be directly instrumental in
10 remedying the situation posing the direct
11 threat; and

12 (C) the export controls will continue only
13 so long as the direct threat persists.

14 The authority of the President to make determina-
15 tions under this paragraph may not be delegated.

16 (n) PUBLICATION OF DECISIONS AND ACTIONS OF
17 THE SECRETARY.—

18 (1) IN GENERAL.—The Secretary shall publish
19 in the Federal Register, to the greatest extent prac-
20 ticable, actions, procedures, and decisions of the Sec-
21 retary under this title, taking into account restric-
22 tions on disclosure of classified or confidential infor-
23 mation. The Secretary shall publish in the Federal
24 Register calculations by the Secretary of commonly-
25 used control index parameters for commodities and

1 technologies, including all officially accepted compos-
2 ite theoretical performance calculations for comput-
3 ers and microprocessors, except in a case in which
4 a private party requested the calculation and asked
5 that it not be published.

6 (2) NOTICE OF REVISIONS.—Whenever the Sec-
7 retary makes any revision in the control index with
8 respect to any commodity or technology, or with re-
9 spect to any country or destination affected by con-
10 trols imposed under section 105 or section 106, the
11 Secretary shall publish in the Federal Register a no-
12 tice of such revision and shall specify in such notice
13 under which authority the revision is being made.

14 (c) NOTIFICATION OF THE PUBLIC; CONSULTATION
15 WITH INDUSTRY; RECORDKEEPING.—

16 (1) NOTIFICATION OF THE PUBLIC.—The Sec-
17 retary shall keep the public fully apprised of changes
18 in export control policy and procedures instituted
19 under this title with a view to encouraging trade.

20 (2) CONSULTATION WITH INDUSTRY.—The Sec-
21 retary shall meet regularly with export advisory com-
22 mittees appointed under section 104(f) in order to
23 obtain their views on United States export control
24 policy and the foreign availability of commodities
25 and technology.

1 (p) EXPORT CONTROL DUTIES.—

2 (1) ASSIGNMENT.—The Secretary shall ensure
3 that at least one full-time representative of the De-
4 partment of Commerce stationed in the People's Re-
5 public of China has duties related to the implemen-
6 tation of export controls under this title. These du-
7 ties shall include giving priority to conducting
8 postshipment verifications and prelicense checks,
9 and to using other means to ensure that United
10 States exports from the United States of dual use
11 items are not diverted to unauthorized end uses or
12 end users.

13 (2) OTHER RESOURCES.—The Secretary shall
14 ensure that appropriate resources are made available
15 and, if necessary, new procedures established to as-
16 sist the representative or representatives of the De-
17 partment of Commerce referred to in paragraph (1)
18 in carrying out their duties and to ensure that sen-
19 sitive items are not diverted to inappropriate end
20 uses or end users in the People's Republic of China.
21 Efforts to carry out this paragraph shall include ap-
22 propriate coordination with United States officials in
23 Hong Kong to ensure that sensitive items exported
24 to Hong Kong are protected from diversion.

1 (3) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out paragraph (1).

4 (q) AUTHORIZATION FOR TECHNICAL DATA.—A li-
5 cense authorizing the export of any commodities or tech-
6 nology under this title shall also authorize the export of
7 operation technical data related to such commodities or
8 technology, if the technical level of the data does not ex-
9 ceed the minimum necessary to install, repair, maintain,
10 inspect, operate, or use the commodities or technology.

11 (r) LICENSES FOR SPARE PARTS NOT REQUIRED.—
12 A license shall not be required under this title for replace-
13 ment parts which are exported to replace on a one-for-
14 one basis parts that were in a commodity that was lawfully
15 exported from the United States, unless the President de-
16 termines that such a license should be required for such
17 parts.

18 **SEC. 115. ANNUAL REPORT.**

19 (a) CONTENTS.—Not later than March 1 of each
20 year, the Secretary shall submit to the Congress a report
21 on the administration of this title during the preceding
22 calendar year. All agencies shall cooperate fully with the
23 Secretary in providing information for such report. Such
24 report shall include detailed information on the following:

1 (1) The implementation of the policies set forth
2 in section 103, including delegations of authority by
3 the President under section 104(d), consultations
4 with the export advisory committees established
5 under section 104(f), and any changes in the exer-
6 cise of the authorities contained in sections 105(a),
7 106(a), 107(a), and 108(a).

8 (2) With respect to multilateral export controls
9 imposed or maintained under section 105, the fol-
10 lowing:

11 (A) Adjustments to multilateral export
12 controls.

13 (B) The exercise of the Secretary's author-
14 ity under section 105(e).

15 (3) Determinations made under section 114(k),
16 the criteria used to make such determinations, the
17 removal of any export controls under such section,
18 and any evidence demonstrating a need to maintain
19 export controls notwithstanding determinations
20 made under paragraph (2) of section 114(k).

21 (4) Short supply controls and monitoring under
22 section 107.

23 (5) Organizational and procedural changes un-
24 dertaken in furtherance of the policies set forth in
25 this title, including changes to increase the efficiency

1 of the export licensing process and to fulfill the re-
2 quirements of section 109, including an accounting
3 of appeals received, and actions taken pursuant
4 thereto, under section 109(g).

5 (6) Violations under section 110 and enforce-
6 ment activities under section 113.

7 (7) The issuance of regulations under this title.

8 (8) The results, in as much detail as may be in-
9 cluded consistent with the strategic and political in-
10 terests of the United States and the need to main-
11 tain the confidentiality of proprietary information, of
12 the reviews of the multilateral control list, and any
13 revisions to the list resulting from such reviews, re-
14 quired by section 105.

15 (b) COMPARATIVE REPORT ON EXPORT CONTROL
16 SYSTEMS AMONG COUNTRIES.—The Secretary shall in-
17 clude, in each annual report under subsection (a), a de-
18 scription of significant differences between the export con-
19 trol laws and regulations of the United States and its
20 major trade competitors, particularly as these differences
21 relate to the implementation of multilateral export control
22 regimes. The Secretary shall include—

23 (1) an assessment of the impact of these dif-
24 ferences on important interests of the United States;

1 (2) a description of the extent to which the ex-
2 ecutive branch intends to address these differences;
3 and

4 (3) a listing of unilateral controls and embar-
5 goes imposed by the United States that are in effect,
6 with a quantification of their economic impact, in-
7 cluding the effect of such controls and embargoes on
8 employment in the United States.

9 (c) GAO REPORT.—The Comptroller General shall
10 prepare and submit to the Congress, not later than 120
11 days after each report under subsection (b) is submitted,
12 an analysis of such report.

13 **SEC. 116. DEFINITIONS.**

14 As used in this title:

15 (1) AFFILIATE.—The term “affiliate” includes
16 both governmental entities and commercial entities
17 that are controlled in fact by a country.

18 (2) ADHERENT.—An “adherent” to a multilat-
19 eral regime is a country that is a member of that
20 regime or that, pursuant to an international under-
21 standing to which the United States is a party, con-
22 trols exports in accordance with the criteria and
23 standards of that regime.

24 (3) AUSTRALIA GROUP.—The term “Australia
25 Group” means the multilateral regime in which the

1 United States participates that seeks to prevent the
2 proliferation of chemical and biological weapons.

3 (4) CHEMICAL WEAPONS CONVENTION.—The
4 term “Chemical Weapons Convention” refers to the
5 Convention on the Prohibition of the Development,
6 Production, Stockpiling and Use of Chemical Weap-
7 ons and on Their Destruction of 1992.

8 (5) COMMODITY.—The term “commodity”
9 means any article, natural or manmade substance,
10 material, software, source code, supply, or manufac-
11 tured product, including inspection and test equip-
12 ment, and excluding technical data.

13 (6) CONTROL OR CONTROLLED.—The terms
14 “control” and “controlled” refer to a licensing re-
15 quirement, a written reexport authorization require-
16 ment, or a prohibition on an export.

17 (7) CONTROL INDEX.—The term “control
18 index” means the United States Commodity Control
19 Index established under section 104(b)(1).

20 (8) CONTROLLED COUNTRY.—The term “con-
21 trolled country” means a country to which exports
22 are controlled under section 105 or 106.

23 (9) EXPORT.—(A) The term “export”—

24 (i) means—

1 (I) an actual shipment, transfer, or
2 transmission of items out of the United
3 States; and

4 (II) a transfer to any person of items
5 either within the United States or outside
6 of the United States with the knowledge or
7 intent that the items will be shipped,
8 transferred, or transmitted outside the
9 United States; and

10 (ii) includes the term “reexport”.

11 (B) The Secretary may further define the term
12 export by regulation to include, among other con-
13 cepts, that—

14 (i) a transfer of items in the United States
15 to an embassy or affiliate of a country is an ex-
16 port to the country,

17 (ii) disclosure of technology to a foreign
18 person is deemed to be an export to the country
19 of which he or she is a national, and

20 (iii) transfer of effective control from one
21 country to another over a satellite above the
22 earth is an export from one country to another.

23 (C) As used in this paragraph, the term “for-
24 eign person” means—

1 (i) an individual who is not a United
2 States citizen or an alien lawfully admitted for
3 permanent residence to the United States;

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

10 (iii) any governmental entity of a foreign
11 country that is operating as a business enter-
12 prise.

13 (10) EXPORT CONTROL REGIME, MULTILAT-
14 ERAL EXPORT CONTROL REGIME, MULTILATERAL
15 REGIME, AND REGIME.—The terms “export control
16 regime”, “multilateral export control regime”, “mul-
17 tilateral regime”, and “regime” each means an
18 international agreement or an arrangement among
19 two or more countries, including the United States,
20 a purpose of which is to coordinate national export
21 control policies of participating countries regarding
22 certain items. Such terms include the Australia
23 Group, the Wassenaar Arrangement, the MTCR,
24 and the Nuclear Suppliers’ Group.

1 (11) FOREIGN AVAILABILITY, AVAILABLE IN
2 FACT TO CONTROLLED COUNTRIES.—The terms
3 “foreign availability” and “available in fact to con-
4 trolled countries” each include production or avail-
5 ability of any item from any country—

6 (A) in which the item is not restricted for
7 export to any controlled country; or

8 (B) in which such export restrictions are
9 determined by the Secretary to be ineffective.

10 For purposes of subparagraph (B), the mere inclu-
11 sion of items on a list of items subject to export con-
12 trols imposed pursuant to a multilateral export con-
13 trol regime shall not alone constitute credible evi-
14 dence that the government of a country provides an
15 effective means of controlling the export of such
16 items to controlled countries.

17 (12) ITEM.—The term “item” means any com-
18 modity, technology, or other information.

19 (13) LICENSING REQUIREMENT.—The term “li-
20 censing requirement” includes any restriction or
21 condition, including recordkeeping and reporting,
22 imposed by the Secretary under this title in licensing
23 the export of a commodity, technology, or other in-
24 formation.

1 (14) MEMBER OF AN EXPORT CONTROL RE-
2 GIME.—A “member” of an export control regime,
3 multilateral export control regime, multilateral re-
4 gime, or regime is a country that participates in that
5 regime.

6 (15) MISSILE.—The term “missile” means any
7 missile system or component listed in category I of
8 the MTCR Annex, and any other unmanned delivery
9 system or component of similar capability, as well as
10 the specially designed production facilities for these
11 systems.

12 (16) MISSILE TECHNOLOGY CONTROL REGIME;
13 MTCR.—The term “Missile Technology Control Re-
14 gime” or “MTCR” means the policy statement and
15 guidelines between the United States, the United
16 Kingdom, the Federal Republic of Germany, France,
17 Italy, Canada, and Japan, announced on April 16,
18 1987, to restrict sensitive missile-related transfers
19 based on the MTCR Annex, and any amendments
20 thereto.

21 (17) MTCR ANNEX.—The term “MTCR
22 Annex” means the Equipment and Technology
23 Annex of the MTCR, and any amendments thereto.

24 (18) NUCLEAR EXPLOSIVE DEVICE.—The term
25 “nuclear explosive device” means any device, wheth-

1 er assembled or disassembled, that is designed to
2 produce an instantaneous release of an amount of
3 nuclear energy from special nuclear material that is
4 greater than the amount of energy that would be re-
5 leased from the detonation of one pound of trinitro-
6 toluene (TNT).

7 (19) NUCLEAR SUPPLIERS' GROUP.—The term
8 “Nuclear Suppliers' Group” means the multilateral
9 arrangement in which the United States participates
10 whose purpose is to restrict the transfers of items
11 with relevance to the nuclear fuel cycle or nuclear
12 explosive applications.

13 (20) PERSON.—Except as provided in section
14 111, the term “person” includes—

15 (A) the singular and the plural and any in-
16 dividual, partnership, corporation, business as-
17 sociation, society, trust, organization, or any
18 other group created or organized under the laws
19 of a country; and

20 (B) any government, or any governmental
21 body, corporation, trust, agency, department, or
22 group, operating as a business enterprise.

23 (21) REEXPORT.—The term “reexport” means
24 the shipment, transfer, transshipment, or diversion
25 of items from one foreign country to another.

1 (22) SECRETARY.—The term “Secretary”
2 means the Secretary of Commerce or any successor
3 officer performing functions of the Secretary of
4 Commerce under this title.

5 (23) TECHNOLOGY.—The term “technology”
6 means specific information that is necessary for the
7 development, production, or use of a commodity, in-
8 cluding source code, and that takes the form of tech-
9 nical data or technical assistance.

10 (24) UNILATERAL AND UNILATERALLY.—The
11 terms “unilateral” and “unilaterally”, with respect
12 to an export control on a commodity or technology,
13 refer to a control that is not similarly imposed in
14 similar circumstances by any country other than the
15 United States, and that materially restricts the ex-
16 port of the commodity or technology.

17 (25) UNITED STATES.—The term “United
18 States” means the States of the United States, the
19 District of Columbia, and any commonwealth, terri-
20 tory, dependency, or possession of the United States,
21 and includes the outer Continental Shelf, as defined
22 in section 2(a) of the Outer Continental Shelf Lands
23 Act (43 U.S.C. 1331(a)).

24 (26) UNITED STATES PERSON.—The term
25 “United States person” means any United States

1 citizen, resident, or national (other than an individ-
2 ual resident outside the United States and employed
3 by other than a United States person), any domestic
4 concern (including any permanent domestic estab-
5 lishment of any foreign concern) and any foreign
6 subsidiary or affiliate (including any permanent for-
7 eign establishment) of any domestic concern which is
8 controlled in fact by such domestic concern, as de-
9 termined under regulations of the President.

10 (27) WASSENAAR ARRANGEMENT.—The term
11 “Wassenaar Arrangement” means the multilateral
12 regime in which the United States participates that
13 seeks to promote transparency and responsibility
14 with regard to the transfers of conventional arma-
15 ments and sensitive dual-use goods and technologies.

16 (28) WEAPON OF MASS DESTRUCTION.—The
17 term “weapon of mass destruction” means any
18 chemical, biological, or nuclear weapon, including a
19 nuclear explosive device.

20 **SEC. 117. EFFECTS ON OTHER ACTS.**

21 (a) COMMODITY JURISDICTION.—

22 (1) COORDINATION OF CONTROLS.—The au-
23 thority granted under this title and under section 38
24 of the Arms Export Control Act (22 U.S.C. 2778)
25 shall be exercised in such a manner as to achieve ef-

1 fective coordination between the licensing systems
2 under this title and such section 38 and to share in-
3 formation regarding the trustworthiness of parties.

4 (2) ELIMINATION OF OVERLAPPING CON-
5 TROLS.—Notwithstanding any other provision of
6 law, no item may be included on both the control
7 index and the United States Munitions List after
8 the date of the enactment of this Act.

9 (3) COMMODITY JURISDICTION DISPUTE RESO-
10 LUTION.—The President shall establish procedures
11 for the resolution of commodity jurisdiction disputes
12 among departments and agencies of the United
13 States. Such disputes shall normally be resolved
14 within 60 days, and the procedures shall allow dis-
15 putes to be referred to the President normally within
16 90 days. These procedures shall also—

17 (A) require the Secretary and the Sec-
18 retary of State to refer matters to each other
19 in accordance with their respective jurisdictions;

20 (B) require transparency, among the Sec-
21 retary, the Secretary of State, and the Sec-
22 retary of Defense, in commodity jurisdiction
23 cases and commodity classification requests and
24 determinations;

1 (C) provide for interagency meetings and
2 consultations to permit the free exchange of
3 views regarding significant jurisdictional issues;
4 and

5 (D) provide deadlines for action and stand-
6 ards for decision, and ensure that disputes that
7 cannot be resolved may be referred to the Presi-
8 dent by the Secretary of State, the Secretary of
9 Defense, or the Secretary.

10 (b) IN GENERAL.—Except as otherwise provided in
11 this title, nothing in this title shall be construed to modify,
12 repeal, supersede, or otherwise affect the provisions of any
13 other laws authorizing control over exports of any com-
14 modities, technology, or other information.

15 (c) LICENSING PROCESS.—The provisions of section
16 109 shall supersede the procedures published pursuant to
17 section 309(c) of the Nuclear Non-Proliferation Act of
18 1978 (42 U.S.C. 2139a(c)) to the extent such procedures
19 are inconsistent with the provisions of section 109.

20 (d) AMENDMENTS TO THE INTERNATIONAL EMER-
21 GENCY ECONOMIC POWERS ACT.—

22 (1) EXERCISE OF PRESIDENTIAL AUTHORITY.—
23 (A) Section 204(b) of the International Emergency
24 Economic Powers Act (50 U.S.C. 1703(b)) is
25 amended—

1 (i) by striking “and” at the end of para-
2 graph (4);

3 (ii) by striking the period at the end of
4 paragraph (5) and inserting “; and”; and

5 (iii) by adding at the end the following:

6 “(6) if the action is being taken unilaterally—

7 “(A) why the President believes the action
8 is necessary to meet the unusual and extraor-
9 dinary threat referred to in paragraph (2); and

10 “(B) what steps the President is taking to
11 gain multilateral support for the action.”.

12 (B) Section 204(c) of that Act (50 U.S.C.
13 1703(c)) is amended—

14 (i) by striking “(5)” and inserting “(6)”;
15 and

16 (ii) by striking the period and inserting “,
17 and, in the case of controls referred to in para-
18 graph (6) of subsection (b), the President shall
19 report to the Congress on the economic losses
20 that have occurred as a result of the unilateral
21 action”.

22 (2) CONFIDENTIALITY OF INFORMATION.—The
23 International Emergency Economic Powers Act is
24 amended—

1 (A) by redesignating section 208 as section
2 209; and

3 (B) by inserting after section 207 the fol-
4 lowing:

5 **“SEC. 208. CONFIDENTIALITY OF INFORMATION.**

6 “(a) EXEMPTIONS FROM DISCLOSURE.—Information
7 obtained under this title before or after the enactment of
8 this section may be withheld only to the extent permitted
9 by statute, except that information submitted, obtained,
10 or considered in connection with any transaction that
11 would otherwise be prohibited under this title, including—

12 “(1) the license or other authorization itself,

13 “(2) classification requests or other inquiries on
14 the applicability of export license requirements to a
15 proposed transaction or series of transactions,

16 “(3) information or evidence obtained in the
17 course of any investigation, and

18 “(4) information obtained or furnished under
19 this title in connection with international agree-
20 ments, treaties, or obligations,

21 shall be withheld from public disclosure, and shall not be
22 subject to disclosure under section 552 of title 5, United
23 States Code, unless the release of such information is de-
24 termined by the Secretary of Commerce or the Secretary
25 of the Treasury to be in the national interest. In the case

1 of information obtained or furnished under this title in
2 connection with international agreements, treaties, or obli-
3 gations, such a determination may be made only after con-
4 sultation with the Secretary of State.

5 “(b) INFORMATION TO CONGRESS AND GAO.—

6 “(1) IN GENERAL.—Nothing in this title shall
7 be construed as authorizing the withholding of infor-
8 mation from the Congress or from the General Ac-
9 counting Office.

10 “(2) AVAILABILITY TO THE CONGRESS.—

11 “(A) IN GENERAL.—All information ob-
12 tained at any time under this title regarding
13 the control of exports, including any report or
14 license application required under this title,
15 shall be made available to any committee or
16 subcommittee of Congress of appropriate juris-
17 diction upon the request of the chairman or
18 ranking minority member of such committee or
19 subcommittee.

20 “(B) PROHIBITION ON FURTHER DISCLO-
21 SURE.—No committee, subcommittee, or Mem-
22 ber of Congress shall disclose any information
23 obtained under this title or previous Acts re-
24 garding the control of exports which is submit-
25 ted on a confidential basis to the Congress

1 under subparagraph (A) unless the full commit-
2 tee to which the information is made available
3 determines that the withholding of the informa-
4 tion is contrary to the national interest.

5 “(3) AVAILABILITY TO THE GAO.—

6 “(A) IN GENERAL.—Notwithstanding para-
7 graph (1), information referred to in paragraph
8 (2) shall, consistent with the protection of intel-
9 ligence, counterintelligence, and law enforce-
10 ment sources, methods, and activities, as deter-
11 mined by the agency that originally obtained
12 the information, and consistent with the provi-
13 sions of section 716 of title 31, United States
14 Code, be made available only by the agency,
15 upon request, to the Comptroller General of the
16 United States or to any officer or employee of
17 the General Accounting Office authorized by
18 the Comptroller General to have access to such
19 information.

20 “(B) PROHIBITION ON FURTHER DISCLO-
21 SURES.—No officer or employee of the General
22 Accounting Office shall disclose, except to the
23 Congress in accordance with this subsection,
24 any such information which is submitted on a

1 confidential basis and from which any individ-
2 ual can be identified.

3 “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-
4 TIAL INFORMATION.—Any officer or employee of the Unit-
5 ed States, or any department or agency thereof, who pub-
6 lishes, divulges, discloses, or makes known in any manner
7 or to any extent not authorized by law any confidential
8 information that—

9 “(1) he or she obtains in the course of his or
10 her employment or official duties or by reason of any
11 examination or investigation made by, or report or
12 record made to or filed with, such department or
13 agency, or officer or employee thereof, and

14 “(2) is exempt from disclosure under this sec-
15 tion,

16 shall be fined not more than \$10,000, or imprisoned not
17 more than 1 year, or both, shall be removed from office
18 or employment, and shall be subject to a civil penalty of
19 not more than \$1,000.”.

20 (e) AMENDMENTS TO THE TRADING WITH THE
21 ENEMY ACT.—Section 16 of the Trading With the Enemy
22 Act (50 U.S.C. App. 16) is amended—

23 (1) in subsection (a)—

24 (A) by inserting “, or attempt to violate,”

25 after “violate” the first place it appears; and

1 (B) by inserting “attempt to violate,” after
2 “violate,” the second place it appears; and

3 (2) in subsection (b)(1) by inserting “, or at-
4 tempts to violate,” after “violates”.

5 (f) REPORT ON OFAC AND ODTC.—

6 (1) STUDY ON OFAC.—The Secretary of the
7 Treasury shall study ways to make the operations of
8 the Office of Foreign Assets Control of the Depart-
9 ment of the Treasury more effective and efficient in
10 responding to licensing requests and other inquiries
11 of United States exporters, including through the
12 upgrading of technology in that office.

13 (2) STUDY ON ODTC.—The Secretary of State
14 shall study ways to make the Office of Defense
15 Trade Controls of the Department of State more ef-
16 fective and efficient in responding to licensing re-
17 quests and other inquiries of United States export-
18 ers, including through the upgrading of technology
19 in that office.

20 (3) SUBMISSION OF REPORTS.—Not later than
21 6 months after the date of the enactment of this
22 Act, the Secretary of the Treasury shall submit to
23 the Congress a report on the study conducted under
24 paragraph (1) and the Secretary of State shall sub-

1 mit to the Congress a report on the study conducted
2 under paragraph (2).

3 **SEC. 118. SECONDARY ARAB BOYCOTT.**

4 (a) SENSE OF CONGRESS.—

5 (1) ENDING SECONDARY BOYCOTT.—It is the
6 sense of the Congress that the countries of the Arab
7 League should end the secondary Arab boycott.

8 (2) ACTIONS TO END SECONDARY BOYCOTT.—

9 The United States will consider the secondary Arab
10 boycott to have ended when—

11 (A) the Arab League issues a public pro-
12 nouncement that the Arab League has ended
13 the secondary Arab boycott;

14 (B) all activities carried out by the Central
15 Office for the Boycott of Israel in support of
16 the secondary Arab boycott have been termi-
17 nated;

18 (C) the Arab League and the individual
19 countries that are members of the Arab League
20 have terminated the practice of barring United
21 States persons and foreign companies that do
22 not comply with the secondary Arab boycott
23 from doing business with countries that are
24 members of the Arab League, and have de-

1 clared null and void any existing list of such
2 barred persons and companies; and

3 (D) the Arab League, and the individual
4 countries that are the members of the Arab
5 League, have ceased requesting United States
6 persons to take actions prohibited under section
7 108(a).

8 (b) DEFINITION.—For purposes of this section, the
9 term “secondary Arab boycott” means the refusal to do
10 business with persons who do not comply with requests
11 to take any action prohibited under section 108(a) with
12 respect to Israel.

13 **SEC. 119. CONFORMING AMENDMENTS.**

14 (a) ARMS EXPORT CONTROL ACT.—

15 (1) Section 38 of the Arms Export Control Act
16 (22 U.S.C. 2778) is amended—

17 (A) in subsection (e)—

18 (i) in the first sentence by striking
19 “subsections (c)” and all that follows
20 through “12 of such Act” and inserting
21 “subsections (b), (c), (d) and (e) of section
22 110 of the Export Administration Act of
23 1997, by subsections (a) and (b) of section
24 113 of such Act, and by section 114(g) of
25 such Act”; and

1 (ii) in the third sentence by striking
2 “11(c) of the Export Administration Act of
3 1979” and inserting “110(c) of the Export
4 Administration Act of 1997”; and

5 (B) in subsection (g)(1)(A) by striking
6 clause (ii) and inserting the following:

7 “(ii) section 110 of the Export Administra-
8 tion Act of 1997,”.

9 (2) Section 39A(c) of the Arms Export Control
10 Act (22 U.S.C. 2779a(c)) is amended—

11 (A) by striking “(c),” and all that follows
12 through “12(a) of such Act” and inserting “(c),
13 (d), and (e) of section 110, section 112(c), and
14 subsections (a) and (b) of section 113, of the
15 Export Administration Act of 1997”; and

16 (B) by striking “11(c)” and inserting
17 “110(c)”.

18 (3) Section 40(k) of the Arms Export Control
19 Act (22 U.S.C. 2780(k)) is amended—

20 (A) by striking “11(c), 11(e), 11(g), and
21 12(a) of the Export Administration Act of
22 1979” and inserting “110(b), 110(c), 110(e),
23 113(a), and 113(b) of the Export Administra-
24 tion Act of 1997”; and

1 (B) by striking “11(c)” and inserting
2 “110(c)”.

3 (4) Section 72 of the Arms Export Control Act
4 (22 U.S.C. 2747a) is amended—

5 (A) in subsection (a)(1)(A) by striking “5
6 or 6 of the Export Administration Act of 1979
7 (50 U.S.C. App. 2404, 2405)” and inserting
8 “111(a) of the Export Administration Act of
9 1979”; and

10 (B) in subsection (c) by striking
11 “6(j)(1)(A) of the Export Administration Act of
12 1979” and inserting “106(i)(1)(A) of the Ex-
13 port Administration Act of 1997”.

14 (5) Section 73(a)(1) of the Arms Export Con-
15 trol Act (22 U.S.C. 2797b(a)(1)) is amended by
16 striking “11B(b)(1) of the Export Administration
17 Act of 1979” and inserting “111(e)(2) of the Export
18 Administration Act of 1997”.

19 (6) Section 73A of the Arms Export Control
20 Act, as added by the Foreign Relations Authoriza-
21 tion Act, Fiscal Years 1995 and 1995, is amended
22 by striking “a MTCR adherent” and inserting “an
23 MTCR adherent”.

24 (7) Section 74(6) of the Arms Export Control
25 Act (22 U.S.C. 2797c(6)) is amended by striking

1 “16(2) of the Export Administration Act of 1979
2 (50 U.S.C. App. 2415(2))” and inserting “116(26)
3 of the Export Administration Act of 1997”.

4 (b) OTHER PROVISIONS OF LAW.—

5 (1) Section 5(b)(4) of the Trading with the
6 Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.
7 5(b)(4)) is amended by striking “section 5 of the
8 Export Administration Act of 1979, or under section
9 6 of that Act to the extent that such controls pro-
10 mote the nonproliferation or antiterrorism policies of
11 the United States” and inserting “the Export Ad-
12 ministration Act of 1997”.

13 (2) Section 502B(a)(2) of the Foreign Assist-
14 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
15 ed in the second sentence—

16 (A) by striking “Export Administration
17 Act of 1979” the first place it appears and in-
18 serting “Export Administration Act of 1997”;
19 and

20 (B) by striking “Act of 1979)” and insert-
21 ing “Act of 1997)”.

22 (3)(A) Section 140(a) of the Foreign Relations
23 Authorization Act, Fiscal Years 1988 and 1989 (22
24 U.S.C. 2656f(a)) is amended—

1 (i) in paragraph (1)(B) by inserting “or
2 section 106(i) of the Export Administration Act
3 of 1997” after “Act of 1979”; and

4 (ii) in paragraph (2) by striking “6(j) of
5 the Export Administration Act of 1979” and
6 inserting “106(i) of the Export Administration
7 Act of 1997”.

8 (B) For purposes of the report required by
9 April 30 , 1998, under section 140(a) of the Foreign
10 Relations Authorization Act, Fiscal Years 1988 and
11 1989, the reference in paragraph (2) of such section
12 to “section 106(i) of the Export Administration Act
13 of 1997” shall be deemed to refer to “section 6(j)
14 of the Export Administration Act of 1979 or section
15 106(i) of the Export Administration Act of 1997”.

16 (4) Section 40(e)(1) of the State Department
17 Basic Authorities Act of 1956 (22 U.S.C.
18 2712(e)(1)) is amended by striking “6(j)(1) of the
19 Export Administration Act of 1979” and inserting
20 “106(i)(1) of the Export Administration Act of
21 1997”.

22 (5) Section 110 of the International Security
23 and Development Cooperation Act of 1980 (22
24 U.S.C. 2778a) is amended by striking “Act of
25 1979” and inserting “Act of 1997”.

1 (6) Section 205(d)(4)(B) of the State Depart-
2 ment Basic Authorities Act of 1956 (22 U.S.C.
3 4305(d)(4)(B)) is amended by striking “6(j) of the
4 Export Administration Act of 1979” and inserting
5 “106(i) of the Export Administration Act of 1997”.

6 (7) Section 203(b)(3) of the International
7 Emergency Economic Powers Act (50 U.S.C.
8 1702(b)(3)) is amended by striking “section 5 of the
9 Export Administration Act of 1979, or under section
10 6 of such Act to the extent that such controls pro-
11 mote the nonproliferation or antiterrorism policies of
12 the United States” and inserting “the Export Ad-
13 ministration Act of 1997”.

14 (8) Section 491(f) of the Forest Resources Con-
15 servation and Shortage Relief Act of 1990 (16
16 U.S.C. 620c(f)) is repealed.

17 (9) Section 499 of the Forest Resources Con-
18 servation and Shortage Relief Act of 1990 (16
19 U.S.C. 620j) is amended by striking “section 7 of
20 the Export Administration Act of 1979” and insert-
21 ing “section 107 of the Export Administration Act
22 of 1997”.

23 (10) Section 1605 (a)(7)(A) of title 28, United
24 States Code, is amended by striking “6(j) of the Ex-
25 port Administration Act of 1979 (50 U.S.C. App.

1 2405(j))” and inserting “106(i) of the Export Ad-
2 ministration Act of 1997”.

3 (11) Section 2332d(a) of title 18, United States
4 Code, is amended by striking “6(j) of the Export
5 Administration Act (50 U.S.C. App. 2405)” and in-
6 serting “106(i) of the Export Administration Act of
7 1997”.

8 (12) Section 620H (a)(1) of the Foreign Assist-
9 ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-
10 ed by striking “6(j) of the Export Administration
11 Act of 1979 (50 U.S.C. App. 2405(j))” and insert-
12 ing “106(i) of the Export Administration Act of
13 1997”.

14 (13) Section 1621(a) of the International Fi-
15 nancial Institutions Act (22 U.S.C. 262p–4q(a)) is
16 amended by striking “6(j) of the Export Administra-
17 tion Act of 1979 (50 U.S.C. App. 2405(j))” and in-
18 serting “106(i) of the Export Administration Act of
19 1997”.

20 (14) Section 565(a) of the Foreign Relations
21 Authorization Act, Fiscal Years 1994 and 1995 (22
22 U.S.C. 2679c(a)) is amended—

23 (A) in paragraph (2)—

24 (i) in subparagraph (A)—

1 (I) by striking “8(a) of the Ex-
2 port Administration Act of 1979 (50
3 U.S.C. App. 2407(a))” and inserting
4 “108(a) of the Export Administration
5 Act of 1997”; and

6 (II) by striking “8(a)(1) of such
7 Act” and inserting “108(a)(1) of such
8 Act”; and

9 (ii) in subparagraph (B) by striking
10 “16(2) of the Export Administration Act
11 of 1979 (50 U.S.C. App. 2415)” and in-
12 serting “116(26) of the Export Adminis-
13 tration Act of 1997”; and

14 (B) in paragraph (3) by striking “8(a) of
15 the Export Administration Act of 1979 (50
16 U.S.C. App. 2407(a))” and inserting “108(a) of
17 the Export Administration Act of 1997”.

18 (15) Section 528(a) of the Foreign Operations,
19 Export Financing, and Related Programs Appro-
20 priations Act, 1994 (Public Law 103–87) is amend-
21 ed by striking “6(j) of the Export Administration
22 Act of 1979” and inserting “106(i) of the Export
23 Administration Act of 1997”.

24 (16) Section 586G of the Iraq Sanctions Act of
25 1990 (50 U.S.C. 1701 note), is amended—

1 (A) by amending subsection (a)(3) to read
2 as follows:

3 “(3) EXPORTS OF CERTAIN COMMODITIES AND
4 TECHNOLOGY.—The authorities of section 105 or
5 106 of the Export Administration Act of 1997 shall
6 be used to prohibit the export to Iraq of any com-
7 modities or technology on the multilateral control
8 list or the emergency control list of the control index
9 established under section 104(b) of that Act.”; and

10 (B) in subsection (b) by striking “date de-
11 scribed in subsection (m)(1)” and all that fol-
12 lows through “shall be deemed” and inserting
13 “the dates described in section 114(m)(1) of
14 the Export Administration Act of 1997 shall be
15 deemed”.

16 (17) Section 601(a) of the Nuclear Non-Pro-
17 liferation Act of 1978 (22 U.S.C. 3281(a)) is
18 amended—

19 (A) in paragraph (6)—

20 (i) in subparagraph (A)—

21 (I) in clause (iii) by striking
22 “1979” and inserting “1996”; and

23 (II) in clause (iv) by adding
24 “and” after the semicolon; and

25 (ii) in subparagraph (C)—

1 (I) by redesignating such sub-
2 paragraph as paragraph (7) and
3 aligning the text with the text of para-
4 graph (6) that precedes subparagraph
5 (A); and

6 (II) by inserting “a description
7 of” before “the progress”; and

8 (B) in the matter that appears following
9 paragraph (7), as so redesignated—

10 (i) by striking “paragraph (6)” and
11 inserting “paragraphs (6) and (7)”; and

12 (ii) by striking “12(c)(1) of the Ex-
13 port Administration Act of 1979” and in-
14 serting “114(g)(1) of the Export Adminis-
15 tration Act of 1997”.

16 (18) Section 304(a) of the Chemical and Bio-
17 logical Weapons Control and Warfare Elimination
18 Act of 1991 (22 U.S.C. 5603) is amended by strik-
19 ing “1979” and inserting “1996”.

20 (19) Section 307 of the Chemical and Biological
21 Weapons Control and Warfare Elimination Act of
22 1991 (22 U.S.C. 5605) is amended—

23 (A) by amending paragraph (5) of sub-
24 section (a) to read as follows:

1 “(5) EXPORTS OF CERTAIN GOODS AND TECH-
2 NOLOGY.—The authorities of section 105 or 106 of
3 the Export Administration Act of 1997 shall be used
4 to prohibit the export to that country of any goods
5 or technology on the multilateral list on the control
6 index established under section 104(b) of that Act.”;

7 (B) in subsection (b)(2)(C) by striking “6
8 of the Export Administration Act of 1979” and
9 inserting “105 or 106 of the Export Adminis-
10 tration Act of 1997”; and

11 (C) in subsection (e)(1)(B)—

12 (i) in the first sentence by striking
13 “subsection (p) of section 6 of the Export
14 Administration Act of 1979 (50 U.S.C.
15 App. 2405), as that subsection is so redes-
16 ignated by section 304(b) of this title,
17 which are applicable to exports prohibited
18 under section 6 of that Act” and inserting
19 “section 114(m) of the Export Administra-
20 tion Act of 1997, which are applicable to
21 exports prohibited under section 106 of
22 that Act”; and

23 (ii) in the last sentence by striking
24 “6(p)” and inserting “114(m)(2)”.

1 (20) Section 1705 of the Cuban Democracy Act
2 of 1992 (22 U.S.C. 6004) is amended—

3 (A) in subsection (a) by striking “1979”
4 and inserting “1996”; and

5 (B) by amending subsection (c)(1) to read
6 as follows:

7 “(1) except to the extent that—

8 “(A) such restrictions would be permitted
9 under section 114(j) of the Export Administra-
10 tion Act of 1997 in the case of commodities
11 containing parts or components on which export
12 controls are in effect under that Act; or

13 “(B) the President determines that such
14 exports meet the requirements of subparagraph
15 (A), (B), or (C) of section 203(b)(2) of the
16 International Emergency Economic Powers
17 Act;”.

18 (21) Section 1133(a)(3) of the Food Security
19 Act of 1985 (7 U.S.C. 1736y(3)) is amended by
20 striking “Export Administration Act” and inserting
21 “International Emergency Economic Powers Act or
22 in time of war under the Trading with the Enemy
23 Act”.

1 (22)(A) Section 6(2)(ii) of the Iran and Libya
2 Sanctions Act of 1996 is amended by striking
3 “1979” and inserting “1996”.

4 (B) Section 8(a)(2) of that Act is amended by
5 striking “6(j) of the Export Administration Act of
6 1979” and inserting “106(i) of the Export Adminis-
7 tration Act of 1997”.

8 (C) Section 14 of that Act is amended—

9 (i) in paragraph (3) by striking “(50
10 U.S.C. App. 2410a(e)(1))” and inserting “(as
11 in effect on the day before the date of the en-
12 actment of the Export Administration Act of
13 1997)”;

14 (ii) in paragraph (6) by striking “(50
15 U.S.C. App. 2410a(e)(2))” and inserting “(as
16 in effect on the day before the date of the en-
17 actment of the Export Administration Act of
18 1997)”;

19 (iii) in paragraph (8) by striking “(50
20 U.S.C. App. 2415)” and inserting “(as in effect
21 on the day before the date of the enactment of
22 the Export Administration Act of 1997)”.

23 (23) Section 208(a) of the Agricultural Trade
24 Suspension Adjustment Act of 1980 (7 U.S.C.
25 4001(a)) is amended by striking “for reasons of na-

1 tional security or foreign policy under the Export
2 Administration Act of 1979” and inserting “under
3 section 105 or 106 of the Export Administration Act
4 of 1997”.

5 (24) Section 411(a)(1) of the Agricultural
6 Trade Act of 1978 (7 U.S.C. 5671(a)(1)) is amend-
7 ed by striking “for reasons of national security or
8 foreign policy under the Export Administration Act
9 of 1979 (50 U.S.C. App. 2401 et seq.)” and insert-
10 ing “under section 105 or 106 of the Export Admin-
11 istration Act of 1997”.

12 (25) Section 302(f) of the Food Security Wheat
13 Reserve Act of 1980 (7 U.S.C. 1736f–1(f)) is
14 amended by striking “7 of the Export Administra-
15 tion Act of 1979” and inserting “107 of the Export
16 Administration Act of 1997”.

17 (26) Section 130(a) of title 10, United States
18 Code, is amended by striking “1979 (50 U.S.C. App.
19 2401–2420)” and inserting “1996”.

20 (27) Section 2249a(a)(1) of title 10, United
21 States Code, is amended by striking “6(j)(1)(A) of
22 the Export Administration Act of 1979 (50 U.S.C.
23 App. 2405(j))” and inserting “106(i)(1)(A) of the
24 Export Administration Act of 1997”.

1 (28) Section 2327(b) of title 10, United States
2 Code, is amended by striking “6(j)(1)(A) of the Ex-
3 port Administration Act of 1979 (50 U.S.C. App.
4 2405(j)(1)(A))” and inserting “106(i)(1)(A) of the
5 Export Administration Act of 1997”.

6 (29) Section 2410i of title 10, United States
7 Code, is amended by striking “3(5)(A) of the Export
8 Administration Act of 1979 (50 U.S.C. App.
9 2402(5)(A))” and inserting “103(9)(A) of the Ex-
10 port Administration Act of 1997”.

11 (30) Section 7430(e) of title 10, United States
12 Code, is amended—

13 (A) by striking “1979 (50 U.S.C. App.
14 2401 et seq.)” and inserting “1996”; and

15 (B) by striking “1979” each subsequent
16 place it appears and inserting “1996”.

17 (31) Section 275 of the National Defense Au-
18 thorization Act for Fiscal Years 1988 and 1989 (15
19 U.S.C. 4605) is amended by striking “1979 (50
20 U.S.C. App. 2401 et seq.)” and inserting “1996”.

21 (32) Section 951(e)(2)(B) of title 18, United
22 States Code, is amended by striking “or under sec-
23 tion 11 of the Export Administration Act of 1979”
24 and inserting “, under section 11 of the Export Ad-

1 ministration Act of 1979, or under section 110 of
2 the Export Administration Act of 1997”.

3 (33) Section 1956(c)(7)(D) of title 18, United
4 States Code, is amended by inserting “or section
5 110 (relating to violations) of the Export Adminis-
6 tration Act of 1997” after “Export Administration
7 Act of 1979”.

8 (34) Section 233 of the Trade Expansion Act
9 of 1962 (19 U.S.C. 1864) is amended—

10 (A) by striking “(50 U.S.C. App. 2404),”
11 and inserting “, any export control imposed
12 under section 105 of the Export Administration
13 Act of 1997,”; and

14 (B) by striking “that section” and insert-
15 ing “either such section”.

16 (35) Section 901(j)(2)(A)(iv) of the Internal
17 Revenue Code of 1986 is amended by striking “6(j)
18 of the Export Administration Act of 1979, as
19 amended” and inserting “106(i) of the Export Ad-
20 ministration Act of 1997”.

21 (36) Section 927(a)(2)(D) of the Internal Reve-
22 nue Code of 1986 is amended by striking “(2)(C) of
23 section 3 of the Export Administration Act of 1979”
24 and inserting “(4) of section 103 of the Export Ad-
25 ministration Act of 1997”.

1 (37) Section 993(c)(2)(D) of the Internal Reve-
2 nue Code of 1986 is amended by striking “7(a)” and
3 all that follows through “such Act” and inserting
4 “107(a) of the Export Administration Act of 1997
5 to effectuate the policy set forth in paragraph (4) of
6 section 103 of such Act”.

7 (38) Section 28(u) of the Mineral Leasing Act
8 of 1920 (30 U.S.C. 185(u)) is amended—

9 (A) by striking “1979 (50 App. U.S.C.
10 2401 and following)” and inserting “1996”;
11 and

12 (B) by striking “1979” each subsequent
13 place it appears and inserting “1996”.

14 (39) Section 103 of the Energy Policy and Con-
15 servation Act (42 U.S.C. 6212) is amended—

16 (A) in subsection (c)—

17 (i) by striking “1979” and inserting
18 “1996”; and

19 (ii) by striking “3(2)(C)” and insert-
20 ing “103(4)”; and

21 (B) in subsection (e)(3) by striking
22 “1969” and inserting “1996”.

23 (40) Section 254(e)(3) of the Energy Policy
24 and Conservation Act (42 U.S.C. 6274(e)(3)) is
25 amended by striking “12 of the Export Administra-

tion Act of 1979” and inserting “114(g) of the Export Administration Act of 1997”.

(41) Section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354) is amended—

(A) in subsection (a) by striking “1969 (50 U.S.C. App. 2401 et seq.)” and inserting “1996”; and

(B) in subsection (b) by striking “1969” each place it appears and inserting “1996”.

(42) Section 721(f)(4)(A) of the Defense Production Act (50 U.S.C. App. 2170(f)(4)(A)) is amended—

(A) in clause (i) by striking “6(j) of the Export Administration Act of 1979” and inserting “106(i) of the Export Administration Act of 1997”;

(B) in clause (ii) by striking “(6)(l) of the Export Administration Act of 1979” and inserting “111(a)(2) of the Export Administration Act of 1997”; and

(C) in clause (iii) by striking “6(m) of the Export Administration Act of 1979” and inserting “111(a)(1) of the Export Administration Act of 1997”.

1 (c) REPEAL.—The Export Administration Act of
2 1979 is repealed.

3 **SEC. 120. EXPIRATION DATE.**

4 This title expires on June 30, 2001.

5 **SEC. 121. SAVINGS PROVISIONS.**

6 (a) IN GENERAL.—All delegations, rules, regulations,
7 orders, determinations, licenses, or other forms of admin-
8 istrative action which have been made, issued, conducted,
9 or allowed to become effective under—

10 (1) the Export Control Act of 1949, the Export
11 Administration Act of 1969, or the Export Adminis-
12 tration Act of 1979, or

13 (2) those provisions of the Arms Export Control
14 Act which are amended by section 111 or 119,
15 and are in effect at the time this title takes effect, shall
16 continue in effect according to their terms until modified,
17 superseded, set aside, or revoked under this title or the
18 Arms Export Control Act.

19 (b) ADMINISTRATIVE AND JUDICIAL PROCEED-
20 INGS.—

21 (1) EXPORT ADMINISTRATION ACT OF 1979.—

22 This title shall not affect any administrative or judi-
23 cial proceedings commenced or any application for a
24 license made, under the Export Administration Act
25 of 1979, which is pending at the time this title takes

1 effect. Any such proceedings, and any action on such
2 application, shall continue under the Export Admin-
3 istration Act of 1979 as if that Act had not been re-
4 pealed.

5 (2) OTHER PROVISIONS OF LAW.—This title
6 shall not affect any administrative or judicial pro-
7 ceedings commenced or any application for a license
8 made, under those provisions of the Arms Export
9 Control Act which are amended by section 111 or
10 119, if such proceedings or application is pending at
11 the time this title takes effect. Any such proceed-
12 ings, and any action on such application, shall con-
13 tinue under those provisions as if those provisions
14 had not been amended by section 111 or 119.

15 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
16 Any determination with respect to the government of a
17 foreign country under section 6(j) of the Export Adminis-
18 tration Act of 1979, that is in effect at the time this title
19 takes effect, shall, for purposes of this title or any other
20 provision of law, be deemed to be made under section
21 106(i) of this Act until superseded by a determination
22 under such section 106(i).

1 **TITLE II—NUCLEAR**
2 **PROLIFERATION PREVENTION**

3 **SEC. 201. CONFORMING AMENDMENT RELATING TO PROVI-**
4 **SIONS OF THE NUCLEAR PROLIFERATION**
5 **PREVENTION ACT OF 1994.**

6 Section 102(b)(2)(G) of the Arms Export Control Act
7 (22 U.S.C. 2799aa–1(b)(2)(G)) is amended by striking
8 “section 6 of the Export Administration Act of 1979” and
9 inserting “section 105 or 106 of the Export Administra-
10 tion Act of 1997”.

11 **SEC. 202. SEEKING MULTILATERAL SUPPORT FOR UNILAT-**
12 **ERAL SANCTIONS.**

13 The Secretary of State, in consultation with appro-
14 priate departments and agencies, shall seek the support
15 of other countries for sanctions imposed under the Nuclear
16 Proliferation Prevention Act of 1994 or the amendments
17 made by that Act.

18 **SEC. 203. SANCTIONS UNDER THE NUCLEAR PROLIFERA-**
19 **TION PREVENTION ACT OF 1994.**

20 Section 102(b)(2) of the Arms Export Control Act
21 (22 U.S.C. 2799aa–1(b)(2)) is amended—

22 (1) in subparagraph (D) by striking “shall not
23 apply—” and all that follows through the end of
24 clause (ii) and inserting “shall not apply to humani-
25 tarian assistance.”;

1 (2) in subparagraph (G) by striking “, except
2 that” and all that follows through the end of the
3 subparagraph and inserting a period; and

4 (3) by adding at the end the following:

5 “(H)(i) The President shall prohibit the impor-
6 tation into the United States of specific products
7 produced in that country by persons who have en-
8 gaged in the activities described in paragraph (1)
9 that were the basis of the President’s determination
10 under such paragraph.

11 “(ii) In the event that it is not possible to iden-
12 tify the persons who have engaged in the activities
13 described in paragraph (1) that were the basis of the
14 President’s determination under such paragraph, the
15 President shall prohibit the importation into the
16 United States of products produced in that country
17 by those persons that the President shall designate
18 as most closely identified with those activities.

19 “(iii) For purposes of this subparagraph, the
20 term ‘person’ means—

21 “(I) a natural person;

22 “(II) a corporation, business association,
23 partnership, society, or trust, or any other non-
24 governmental entity, organization, or group;

1 “(III) a governmental entity operating as a
2 business enterprise;

3 “(IV) a division or office of a governmental
4 department; or

5 “(V) a military unit or successor to such
6 unit.

7 “(iv) The prohibition on imports imposed under
8 this subparagraph shall be in addition to any other
9 prohibition on imports in effect before the Presi-
10 dent’s determination under paragraph (1) is made.
11 The prohibitions contained in subparagraphs (D), (G),
12 and (H) shall not apply to any transaction subject to the
13 reporting requirements of title V of the National Security
14 Act of 1947.”.

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