

107TH CONGRESS
1ST SESSION

S. 149

AN ACT

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

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Export Administration Act of 2001”.

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

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

TITLE I—GENERAL AUTHORITY

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

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

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

Subtitle B—Foreign Availability and Mass-Market Status

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

TITLE III—FOREIGN POLICY EXPORT CONTROLS

- Sec. 301. Authority for foreign policy export controls.
Sec. 302. Procedures for imposing controls.
Sec. 303. Criteria for foreign policy export controls.
Sec. 304. Presidential report before imposition of control.
Sec. 305. Imposition of controls.
Sec. 306. Deferral authority.
Sec. 307. Review, renewal, and termination.
Sec. 308. Termination of controls under this title.
Sec. 309. Compliance with international obligations.
Sec. 310. Designation of countries supporting international terrorism.
Sec. 311. Crime control instruments.

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND
INTERAGENCY DISPUTE RESOLUTION

- Sec. 401. Export license procedures.
Sec. 402. Interagency dispute resolution process.

TITLE V—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS;
SANCTIONS; AND ENFORCEMENT

- Sec. 501. International arrangements.

Sec. 502. Foreign boycotts.
 Sec. 503. Penalties.
 Sec. 504. Missile proliferation control violations.
 Sec. 505. Chemical and biological weapons proliferation sanctions.
 Sec. 506. Enforcement.
 Sec. 507. Administrative procedure.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 601. Export control authority and regulations.
 Sec. 602. Confidentiality of information.
 Sec. 603. Agricultural commodities, medicine, medical devices.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.
 Sec. 702. Technical and conforming amendments.
 Sec. 703. Savings provisions.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

7 (2) **CONTROL OR CONTROLLED.**—The terms
 8 “control” and “controlled” mean any requirement,
 9 condition, authorization, or prohibition on the export
 10 or reexport of an item.

11 (3) **CONTROL LIST.**—The term “Control List”
 12 means the Commerce Control List established under
 13 section 101.

14 (4) **CONTROLLED COUNTRY.**—The term “con-
 15 trolled country” means a country with respect to
 16 which exports are controlled under section 201 or
 17 301.

1 (5) CONTROLLED ITEM.—The term “controlled
2 item” means an item the export of which is con-
3 trolled under this Act.

4 (6) COUNTRY.—The term “country” means a
5 sovereign country or an autonomous customs terri-
6 tory.

7 (7) COUNTRY SUPPORTING INTERNATIONAL
8 TERRORISM.—The term “country supporting inter-
9 national terrorism” means a country designated by
10 the Secretary of State pursuant to section 310.

11 (8) DEPARTMENT.—The term “Department”
12 means the Department of Commerce.

13 (9) EXPORT.—

14 (A) The term “export” means—

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

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

1 (iii) a transfer of an item in the
2 United States to an embassy or affiliate of
3 a country, which shall be considered an ex-
4 port to that country.

5 (B) The term includes a reexport.

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

9 (11) FOREIGN PERSON.—The term “foreign
10 person” means—

11 (A) an individual who is not—

12 (i) a United States citizen;

13 (ii) an alien lawfully admitted for per-
14 manent residence to the United States; or

15 (iii) a protected individual as defined
16 in section 274B(a)(3) of the Immigration
17 and Nationality Act. (8 U.S.C.
18 1324b(a)(3));

19 (B) any corporation, partnership, business
20 association, society, trust, organization, or other
21 nongovernmental entity created or organized
22 under the laws of a foreign country or that has
23 its principal place of business outside the
24 United States; and

1 (C) any governmental entity of a foreign
2 country.

3 (12) ITEM.—

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

6 (B) OTHER DEFINITIONS.—In this para-
7 graph:

8 (i) GOOD.—The term “good” means
9 any article, natural or manmade substance,
10 material, supply or manufactured product,
11 including inspection and test equipment,
12 including source code, and excluding tech-
13 nical data.

14 (ii) TECHNOLOGY.—The term “tech-
15 nology” means specific information that is
16 necessary for the development, production,
17 or use of an item, and takes the form of
18 technical data or technical assistance.

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

21 (13) MASS-MARKET STATUS.—The term “mass-
22 market status” means the status described in section
23 211(d)(2).

24 (14) MULTILATERAL EXPORT CONTROL RE-
25 GIME.—The term “multilateral export control re-

gime” means an international agreement or arrangement among two or more countries, including the United States, a purpose of which is to coordinate national export control policies of its members regarding certain items. The term includes regimes such as the Australia Group, the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), and the Nuclear Suppliers’ Group Dual Use Arrangement.

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

(16) PERSON.—The term “person” includes—

(A) any individual, or partnership, corporation, business association, society, trust, organization, or any other group created or organized under the laws of a country; and

(B) any government, or any governmental entity, including any governmental entity operating as a business enterprise.

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

(18) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

1 (19) UNITED STATES.—The term “United
2 States” means the States of the United States, the
3 District of Columbia, and any commonwealth, terri-
4 tory, dependency, or possession of the United States,
5 and includes the outer Continental Shelf, as defined
6 in section 2(a) of the Outer Continental Shelf Lands
7 Act (42 U.S.C. 1331(a)).

8 (20) UNITED STATES PERSON.—The term
9 “United States person” means—

10 (A) any United States citizen, resident, or
11 national (other than an individual resident out-
12 side the United States who is employed by a
13 person other than a United States person);

14 (B) any domestic concern (including any
15 permanent domestic establishment of any for-
16 eign concern); and

17 (C) any foreign subsidiary or affiliate (in-
18 cluding any permanent foreign establishment)
19 of any domestic concern which is controlled in
20 fact by such domestic concern, as determined
21 under regulations prescribed by the President.

1 **TITLE I—GENERAL AUTHORITY**

2 **SEC. 101. COMMERCE CONTROL LIST.**

3 (a) IN GENERAL.—Under such conditions as the Sec-
4 retary may impose, consistent with the provisions of this
5 Act, the Secretary—

6 (1) shall establish and maintain a Commerce
7 Control List (in this Act referred to as the “Control
8 List”) consisting of items the export of which are
9 subject to licensing or other authorization or re-
10 quirement; and

11 (2) may require any type of license, or other
12 authorization, including recordkeeping and report-
13 ing, appropriate to the effective and efficient imple-
14 mentation of this Act with respect to the export of
15 an item on the Control List or otherwise subject to
16 control under title II or III of this Act.

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

20 (1) SPECIFIC EXPORTS.—A license that author-
21 izes a specific export.

22 (2) MULTIPLE EXPORTS.—A license that au-
23 thorizes multiple exports in lieu of a license for each
24 export.

1 (3) NOTIFICATION IN LIEU OF LICENSE.— A
2 notification in lieu of a license that authorizes a spe-
3 cific export or multiple exports subject to the condi-
4 tion that the exporter file with the Department ad-
5 vance notification of the intent to export in accord-
6 ance with regulations prescribed by the Secretary.

7 (4) LICENSE EXCEPTION.—Authority to export
8 an item on the Control List without prior license or
9 notification in lieu of a license.

10 (c) AFTER-MARKET SERVICE AND REPLACEMENT
11 PARTS.—A license to export an item under this Act shall
12 not be required for an exporter to provide after-market
13 service or replacement parts in order to replace on a one-
14 for-one basis parts that were in an item that was lawfully
15 exported from the United States, unless—

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

18 (2) the after-market service or replacement
19 parts would materially enhance the capability of an
20 item which was the basis for the item being con-
21 trolled.

22 (d) INCIDENTAL TECHNOLOGY.—A license or other
23 authorization to export an item under this Act includes
24 authorization to export technology related to the item, if
25 the level of the technology does not exceed the minimum

1 necessary to install, repair, maintain, inspect, operate, or
 2 use the item.

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

6 **SEC. 102. DELEGATION OF AUTHORITY.**

7 (a) IN GENERAL.—Except as provided in subsection
 8 (b) and subject to the provisions of this Act, the President
 9 may delegate the power, authority, and discretion con-
 10 ferred upon the President by this Act to such depart-
 11 ments, agencies, and officials of the Government as the
 12 President considers appropriate.

13 (b) EXCEPTIONS.—

14 (1) DELEGATION TO APPOINTEES CONFIRMED
 15 BY SENATE.—No authority delegated to the Presi-
 16 dent under this Act may be delegated by the Presi-
 17 dent to, or exercised by, any official of any depart-
 18 ment or agency the head of which is not appointed
 19 by the President, by and with the advice and consent
 20 of the Senate.

21 (2) OTHER LIMITATIONS.—The President may
 22 not delegate or transfer the President’s power, au-
 23 thority, or discretion to overrule or modify any rec-
 24 ommendation or decision made by the Secretary, the

1 Secretary of Defense, or the Secretary of State
2 under this Act.

3 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**
4 **MENTS.**

5 (a) PUBLIC INFORMATION.—The Secretary shall
6 keep the public fully informed of changes in export control
7 policy and procedures instituted in conformity with this
8 Act.

9 (b) CONSULTATION WITH PERSONS AFFECTED.—
10 The Secretary shall consult regularly with representatives
11 of a broad spectrum of enterprises, labor organizations,
12 and citizens interested in or affected by export controls
13 in order to obtain their views on United States export con-
14 trol policy and the foreign availability or mass-market sta-
15 tus of controlled items.

16 **SEC. 104. RIGHT OF EXPORT.**

17 No license or other authorization to export may be
18 required under this Act, or under regulations issued under
19 this Act, except to carry out the provisions of this Act.

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

21 (a) APPOINTMENT.—Upon the Secretary's own initia-
22 tive or upon the written request of representatives of a
23 substantial segment of any industry which produces any
24 items subject to export controls under this Act or being
25 considered for such controls, the Secretary may appoint

1 export control advisory committees with respect to any
2 such items. Each such committee shall consist of rep-
3 resentatives of United States industry and Government of-
4 ficials, including officials from the Departments of Com-
5 merce, Defense, and State, and other appropriate depart-
6 ments and agencies of the Government. The Secretary
7 shall permit the widest possible participation by the busi-
8 ness community on the export control advisory commit-
9 tees.

10 (b) FUNCTIONS.—

11 (1) IN GENERAL.—Export control advisory
12 committees appointed under subsection (a) shall ad-
13 vise and assist the Secretary, and any other depart-
14 ment, agency, or official of the Government carrying
15 out functions under this Act, on actions (including
16 all aspects of controls imposed or proposed) designed
17 to carry out the provisions of this Act concerning the
18 items with respect to which such export control advi-
19 sory committees were appointed.

20 (2) OTHER CONSULTATIONS.—Nothing in para-
21 graph (1) shall prevent the United States Govern-
22 ment from consulting, at any time, with any person
23 representing an industry or the general public, re-
24 gardless of whether such person is a member of an
25 export control advisory committee. Members of the

1 public shall be given a reasonable opportunity, pur-
2 suant to regulations prescribed by the Secretary, to
3 present information to such committees.

4 (c) REIMBURSEMENT OF EXPENSES.—Upon the re-
5 quest of any member of any export control advisory com-
6 mittee appointed under subsection (a), the Secretary may,
7 if the Secretary determines it to be appropriate, reimburse
8 such member for travel, subsistence, and other necessary
9 expenses incurred by such member in connection with the
10 duties of such member.

11 (d) CHAIRPERSON.—Each export control advisory
12 committee appointed under subsection (a) shall elect a
13 chairperson, and shall meet at least every 3 months at
14 the call of the chairperson, unless the chairperson deter-
15 mines, in consultation with the other members of the com-
16 mittee, that such a meeting is not necessary to achieve
17 the purposes of this section. Each such committee shall
18 be terminated after a period of 2 years, unless extended
19 by the Secretary for additional periods of 2 years each.
20 The Secretary shall consult with each such committee on
21 such termination or extension of that committee.

22 (e) ACCESS TO INFORMATION.—To facilitate the
23 work of the export control advisory committees appointed
24 under subsection (a), the Secretary, in conjunction with
25 other departments and agencies participating in the ad-

1 ministration of this Act, shall disclose to each such com-
2 mittee adequate information, consistent with national se-
3 curity and intelligence sources and methods, pertaining to
4 the reasons for the export controls which are in effect or
5 contemplated for the items or policies for which that com-
6 mittee furnishes advice. Information provided by the ex-
7 port control advisory committees shall not be subject to
8 disclosure under section 552 of title 5, United States
9 Code, and such information shall not be published or dis-
10 closed unless the Secretary determines that the with-
11 holding thereof is contrary to the national interest.

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

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

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

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

TITLE II—NATIONAL SECURITY
EXPORT CONTROLS
Subtitle A—Authority and
Procedures

SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT
CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the purposes set forth in subsection (b), the President may, in accordance with the provisions of this Act, prohibit, curtail, or require a license, or other authorization for the export of any item subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The President may also require record-keeping and reporting with respect to the export of such item.

(2) EXERCISE OF AUTHORITY.—The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, the intelligence agencies, and such other departments and agencies as the Secretary considers appropriate.

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

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

6 (2) 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, key-enabling technologies, and
13 other significant military capabilities;

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 (3) To deter acts of international terrorism.

4 (c) END USE AND END USER CONTROLS.—Notwith-
5 standing any other provision of this title, controls may be
6 imposed, based on the end use or end user, on the export
7 of any item, that could contribute to the proliferation of
8 weapons of mass destruction or the means to deliver them.

9 (d) ENHANCED CONTROLS.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provisions of this title, the President may determine
12 that applying the provisions of section 204 or 211
13 with respect to an item on the National Security
14 Control List would constitute a significant threat to
15 the national security of the United States and that
16 such item requires enhanced control. If the Presi-
17 dent determines that enhanced control should apply
18 to such item, the item may be excluded from the
19 provisions of section 204, section 211, or both, until
20 such time as the President shall determine that such
21 enhanced control should no longer apply to such
22 item. The President may not delegate the authority
23 provided for in this subsection.

24 (2) REPORT TO CONGRESS.—The President
25 shall promptly report any determination described in

1 paragraph (1), along with the specific reasons for
2 the determination, to the Committee on Banking,
3 Housing, and Urban Affairs of the Senate and the
4 Committee on International Relations of the House
5 of Representatives.

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

7 (a) ESTABLISHMENT OF LIST.—

8 (1) ESTABLISHMENT.—The Secretary shall es-
9 tablish and maintain a National Security Control
10 List as part of the Control List.

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

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

1 to protect the national security of the United States,
2 to prevent the proliferation of weapons of mass de-
3 struction and the means to deliver them, and to
4 deter acts of international terrorism. The Secretary
5 shall review on a continuing basis and, with the con-
6 currence of the Secretary of Defense and in con-
7 sultation with the head of any other department or
8 agency of the United States that the Secretary con-
9 siders appropriate, adjust the National Security
10 Control List to add items that require control under
11 this section and to remove items that no longer war-
12 rant control under this section.

13 (b) RISK ASSESSMENT.—

14 (1) REQUIREMENT.—In establishing and main-
15 taining the National Security Control List, the risk
16 factors set forth in paragraph (2) shall be consid-
17 ered, weighing national security concerns and eco-
18 nomic costs.

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

22 (A) The characteristics of the item.

23 (B) The threat, if any, to the United
24 States or the national security interest of the

1 United States from the misuse or diversion of
2 such item.

3 (C) The effectiveness of controlling the
4 item for national security purposes of the
5 United States, taking into account mass-market
6 status, foreign availability, and other relevant
7 factors.

8 (D) The threat to the national security in-
9 terests of the United States if the item is not
10 controlled.

11 (E) Any other appropriate risk factors.

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

22 **SEC. 203. COUNTRY TIERS.**

23 (a) IN GENERAL.—

24 (1) ESTABLISHMENT AND ASSIGNMENT.—In
25 administering export controls for national security

1 purposes under this title, the President shall, not
2 later than 120 days after the date of enactment of
3 this Act—

4 (A) establish and maintain a country
5 tiering system in accordance with subsection
6 (b); and

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

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

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

1 the Committee on International Relations of the
2 House of Representatives.

3 (4) EFFECTIVE DATE OF TIER ASSIGNMENT.—

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

7 (b) TIERS.—

8 (1) IN GENERAL.—The President shall establish
9 a country tiering system consisting of not less than
10 3 tiers for purposes of this section.

11 (2) RANGE.—Countries that represent the low-
12 est risk of diversion or misuse of an item on the Na-
13 tional Security Control List shall be assigned to the
14 lowest tier. Countries that represent the highest risk
15 of diversion or misuse of an item on the National
16 Security Control List shall be assigned to the high-
17 est tier.

18 (3) OTHER COUNTRIES.—Countries that fall be-
19 tween the lowest and highest risk to the national se-
20 curity interest of the United States with respect to
21 the risk of diversion or misuse of an item on the Na-
22 tional Security Control List shall be assigned to a
23 tier other than the lowest or highest tier, based on
24 the assessments required under subsection (c).

1 (c) ASSESSMENTS.—The President shall make an as-
2 essment of each country in assigning a country tier tak-
3 ing into consideration risk factors including the following:

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

6 (2) The present and potential relationship of
7 the country with countries friendly to the United
8 States and with countries hostile to the United
9 States.

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

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

18 (5) Whether the country, if a NATO or major
19 non-NATO ally with whom the United States has
20 entered into a free trade agreement as of January
21 1, 1986, controls exports in accordance with the cri-
22 teria and standards of a multilateral export control
23 regime as defined in section 2(14) pursuant to an
24 international agreement to which the United States
25 is a party.

1 (6) The country's other military capabilities
2 and the potential threat posed by the country to the
3 United States or its allies.

4 (7) The effectiveness of the country's export
5 control system.

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

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

11 (10) The designation of the country as a coun-
12 try supporting international terrorism under section
13 310.

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

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

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

24 (1) are essential to the functioning of the item,

1 (2) are customarily included in sales of the item
2 in countries other than controlled countries, and
3 (3) comprise 25 percent or less of the total
4 value of the item,
5 unless the item itself, if exported, would by virtue of the
6 functional characteristics of the item as a whole make a
7 significant contribution to the military or proliferation po-
8 tential of a controlled country or end user which would
9 prove detrimental to the national security of the United
10 States, or unless failure to control the item would be con-
11 trary to the provisions of section 201(c), section 201(d),
12 or section 309 of this Act.

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

15 (1) IN GENERAL.—No authority or permission
16 may be required under this title to reexport to a
17 country an item that is produced in a country other
18 than the United States and incorporates parts or
19 components that are subject to the jurisdiction of
20 the United States, if the value of the controlled
21 United States content of the item produced in such
22 other country is 25 percent or less of the total value
23 of the item; except that in the case of reexports of
24 an item to a country designated as a country sup-
25 porting international terrorism pursuant to section

1 310, controls may be maintained if the value of the
 2 controlled United States content is more than 10
 3 percent of the total value of the item.

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

8 (A) are subject to the jurisdiction of the
 9 United States;

10 (B) are incorporated into the item; and

11 (C) would, at the time of the reexport, re-
 12 quire a license under this title if exported from
 13 the United States to a country to which the
 14 item is to be reexported.

15 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**
 16 **STATUS.**

17 (a) ESTABLISHMENT.—The Secretary shall establish
 18 a process for interested persons to petition the Secretary
 19 to change the status of an item on the National Security
 20 Control List.

21 (b) EVALUATIONS AND DETERMINATIONS.—Evalua-
 22 tions and determinations with respect to a petition filed
 23 pursuant to this section shall be made in accordance with
 24 section 202.

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

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

(a) IN GENERAL.—The Secretary shall—

(1) on a continuing basis,

(2) upon a request from the Office of Technology Evaluation, or

(3) upon receipt of a petition filed by an interested person,

review and determine the foreign availability and the mass-market status of any item the export of which is controlled under this title.

(b) PETITION AND CONSULTATION.—

(1) IN GENERAL.—The Secretary shall establish a process for an interested person to petition the Secretary for a determination that an item has a foreign availability or mass-market status. In evaluating and making a determination with respect to a petition filed under this section, the Secretary shall consult with the Secretary of Defense, Secretary of State, and other appropriate Government agencies and with the Office of Technology Evaluation (established pursuant to section 214).

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

7 (c) RESULT OF DETERMINATION.—In any case in
8 which the Secretary determines, in accordance with proce-
9 dures and criteria which the Secretary shall by regulation
10 establish, that an item described in subsection (a) has—

11 (1) a foreign availability status, or

12 (2) a mass-market status,

13 the Secretary shall notify the President (and other appro-
14 priate departments and agencies) and publish the notice
15 of the determination in the Federal Register. The Sec-
16 retary's determination shall become final 30 days after the
17 date the notice is published, the item shall be removed
18 from the National Security Control List, and a license or
19 other authorization shall not be required under this title
20 with respect to the item, unless the President makes a
21 determination described in section 212 or 213, or takes
22 action under section 309, with respect to the item in that
23 30-day period.

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

1 (1) FOREIGN AVAILABILITY STATUS.—The Sec-
2 retary shall determine that an item has foreign
3 availability status under this subtitle, if the item (or
4 a substantially identical or directly competitive
5 item)—

6 (A) is available to controlled countries
7 from sources outside the United States, includ-
8 ing countries that participate with the United
9 States in multilateral export controls;

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

15 (C) is available in sufficient quantity so
16 that the requirement of a license or other au-
17 thorization with respect to the export of such
18 item is or would be ineffective.

19 (2) MASS-MARKET STATUS.—

20 (A) IN GENERAL.—In determining whether
21 an item has mass-market status under this sub-
22 title, the Secretary shall consider the following
23 criteria with respect to the item (or a substan-
24 tially identical or directly competitive item):

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

4 (ii) The widespread distribution
5 through normal commercial channels, such
6 as retail stores, direct marketing cata-
7 logues, electronic commerce, and other
8 channels.

9 (iii) The conduciveness to shipment
10 and delivery by generally accepted commer-
11 cial means of transport.

12 (iv) The use for the item's normal in-
13 tended purpose without substantial and
14 specialized service provided by the manu-
15 facturer, distributor, or other third party.

16 (B) DETERMINATION BY SECRETARY.—If
17 the Secretary finds that the item (or a substan-
18 tially identical or directly competitive item)
19 meets the criteria set forth in subparagraph
20 (A), the Secretary shall determine that the item
21 has mass-market status.

22 (3) SPECIAL RULES.—For purposes of this
23 subtitle—

24 (A) SUBSTANTIALLY IDENTICAL ITEM.—
25 The determination of whether an item in rela-

tion to another item is a substantially identical item shall include a fair assessment of end-uses, the properties, nature, and quality of the item.

(B) DIRECTLY COMPETITIVE ITEM.—

(i) IN GENERAL.—The determination of whether an item in relation to another item is a directly competitive item shall include a fair assessment of whether the item, although not substantially identical in its intrinsic or inherent characteristics, is substantially equivalent for commercial purposes and may be adapted for substantially the same uses.

(ii) EXCEPTION.—An item is not directly competitive with a controlled item if the item is not of comparable quality to the controlled item with respect to characteristics that resulted in the export of the item being controlled.

SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAILABILITY STATUS DETERMINATION.

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—

(A) IN GENERAL.—If the President determines that—

1 (i) decontrolling or failing to control
2 an item constitutes a threat to the national
3 security of the United States, and export
4 controls on the item would advance the na-
5 tional security interests of the United
6 States,

7 (ii) there is a high probability that the
8 foreign availability of an item will be elimi-
9 nated through international negotiations
10 within a reasonable period of time taking
11 into account the characteristics of the
12 item, or

13 (iii) United States controls on the
14 item have been imposed under section 309,
15 the President may set aside the Secretary's de-
16 termination of foreign availability status with
17 respect to the item.

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

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

23 (A) report any set-aside determination de-
24 scribed in paragraph (1), along with the specific
25 reasons for the determination, to the Committee

1 on Banking, Housing, and Urban Affairs of the
2 Senate and the Committee on International Re-
3 lations of the House of Representatives; and

4 (B) publish the determination in the Fed-
5 eral Register.

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

8 (1) IN GENERAL.—

9 (A) NEGOTIATIONS.—In any case in which
10 export controls are maintained on an item be-
11 cause the President has made a determination
12 under subsection (a), the President shall ac-
13 tively pursue negotiations with the governments
14 of the appropriate foreign countries for the pur-
15 pose of eliminating such availability.

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

1 (2) PERIODIC REVIEW OF DETERMINATION.—

2 The President shall review a determination described
3 in subsection (a) at least every 6 months. Promptly
4 after each review is completed, the Secretary shall
5 submit to the committees of Congress referred to in
6 paragraph (1)(B) a report on the results of the re-
7 view, together with the status of international nego-
8 tiations to eliminate the foreign availability of the
9 item.

10 (3) EXPIRATION OF PRESIDENTIAL SET-
11 ASIDE.—A determination by the President described
12 in subsection (a)(1)(A) (i) or (ii) shall cease to apply
13 with respect to an item on the earlier of—

14 (A) the date that is 6 months after the date
15 on which the determination is made under sub-
16 section (a), if the President has not commenced
17 international negotiations to eliminate the for-
18 eign availability of the item within that 6-month
19 period;

20 (B) the date on which the negotiations de-
21 scribed in paragraph (1) have terminated with-
22 out achieving an agreement to eliminate foreign
23 availability;

24 (C) the date on which the President deter-
25 mines that there is not a high probability of

eliminating foreign availability of the item
through negotiation; or

(D) the date that is 18 months after the
date on which the determination described in
subsection (a)(1)(A) (i) or (ii) is made if the
President has been unable to achieve an agree-
ment to eliminate foreign availability within
that 18-month period.

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

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

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

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

(A)(i) decontrolling or failing to control an
item constitutes a serious threat to the national
security of the United States, and

(ii) export controls on the item would ad-
vance the national security interests of the
United States, or

1 (B) United States controls on the item
2 have been imposed under section 309,
3 the President may set aside the Secretary's deter-
4 mination of mass-market status with respect to the
5 item.

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

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

11 (1) IN GENERAL.—In any case in which export
12 controls are maintained on an item because the
13 President has made a determination under sub-
14 section (a), the President shall promptly report the
15 determination, along with the specific reasons for
16 the determination, to the Committee on Banking,
17 Housing, and Urban Affairs of the Senate and the
18 Committee on International Relations of the House
19 of Representatives, and shall publish notice of the
20 determination in the Federal Register not later than
21 30 days after the Secretary publishes notice of the
22 Secretary's determination that an item has mass-
23 market status.

24 (2) PERIODIC REVIEW OF DETERMINATION.—
25 The President shall review a determination made

1 under subsection (a) at least every 6 months.
 2 Promptly after each review is completed, the Sec-
 3 retary shall submit a report on the results of the re-
 4 view to the Committee on Banking, Housing, and
 5 Urban Affairs of the Senate and the Committee on
 6 International Relations of the House of Representa-
 7 tives.

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

9 (a) IN GENERAL.—

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

19 (2) STAFF.—

20 (A) IN GENERAL.—The Secretary shall en-
 21 sure that the Office include persons to carry
 22 out the responsibilities set forth in subsection
 23 (b) of this section that have training, expertise,
 24 and experience in—

25 (i) economic analysis;

- 1 (ii) the defense industrial base;
- 2 (iii) technological developments; and
- 3 (iv) national security and foreign pol-
4 icy export controls.

5 (B) DETAILEES.—In addition to employees
6 of the Department of Commerce, the Secretary
7 may accept on nonreimbursable detail to the
8 Office, employees of the Departments of De-
9 fense, State, and Energy and other departments
10 and agencies as appropriate.

11 (b) RESPONSIBILITIES.—The Office shall be respon-
12 sible for—

13 (1) conducting foreign availability assessments
14 to determine whether a controlled item is available
15 to controlled countries and whether requiring a li-
16 cense, or denial of a license for the export of such
17 item, is or would be ineffective;

18 (2) conducting mass-market assessments to de-
19 termine whether a controlled item is available to
20 controlled countries because of the mass-market sta-
21 tus of the item;

22 (3) monitoring and evaluating worldwide tech-
23 nological developments in industry sectors critical to
24 the national security interests of the United States

1 to determine foreign availability and mass-market
2 status of controlled items;

3 (4) monitoring and evaluating multilateral ex-
4 port control regimes and foreign government export
5 control policies and practices that affect the national
6 security interests of the United States;

7 (5) conducting assessments of United States in-
8 dustrial sectors critical to the United States defense
9 industrial base and how the sectors are affected by
10 technological developments, technology transfers,
11 and foreign competition, including imports of manu-
12 factured goods; and

13 (6) conducting assessments of the impact of
14 United States export control policies on—

15 (A) United States industrial sectors critical
16 to the national security interests of the United
17 States; and

18 (B) the United States economy in general.

19 (c) REPORTS TO CONGRESS.—The Secretary shall
20 make available to the Committee on International Rela-
21 tions of the House of Representatives and the Committee
22 on Banking, Housing, and Urban Affairs of the Senate
23 as part of the Secretary's annual report required under
24 section 701 information on the operations of the Office,
25 and on improvements in the Government's ability to assess

1 foreign availability and mass-market status, during the
 2 fiscal year preceding the report, including information on
 3 the training of personnel, and the use of Commercial Serv-
 4 ice Officers of the United States and Foreign Commercial
 5 Service to assist in making determinations. The informa-
 6 tion shall also include a description of determinations
 7 made under this Act during the preceding fiscal year that
 8 foreign availability or mass-market status did or did not
 9 exist (as the case may be), together with an explanation
 10 of the determinations.

11 (d) SHARING OF INFORMATION.—Each department
 12 or agency of the United States, including any intelligence
 13 agency, and all contractors with any such department or
 14 agency, shall, consistent with the need to protect intel-
 15 ligence sources and methods, furnish information to the
 16 Office concerning foreign availability and the mass-market
 17 status of items subject to export controls under this Act.

18 **TITLE III—FOREIGN POLICY**

19 **EXPORT CONTROLS**

20 **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**

21 **TROLS.**

22 (a) AUTHORITY.—

23 (1) IN GENERAL.—In order to carry out the
 24 purposes set forth in subsection (b), the President
 25 may, in accordance with the provisions of this Act,

1 prohibit, curtail, or require a license, other author-
2 ization, recordkeeping, or reporting for the export of
3 any item subject to the jurisdiction of the United
4 States or exported by any person subject to the ju-
5 risdiction of the United States.

6 (2) EXERCISE OF AUTHORITY.—The authority
7 contained in this subsection shall be exercised by the
8 Secretary, in consultation with the Secretary of
9 State and such other departments and agencies as
10 the Secretary considers appropriate.

11 (b) PURPOSES.—The purposes of foreign policy ex-
12 port controls are the following:

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

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

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

1 (c) FOREIGN PRODUCTS.—No authority or permis-
2 sion may be required under this title to reexport to a coun-
3 try an item that is produced in a country other than the
4 United States and incorporates parts or components that
5 are subject to the jurisdiction of the United States, except
6 that in the case of reexports of an item to a country des-
7 ignated as a country supporting international terrorism
8 pursuant to section 310, controls may be maintained if
9 the value of the controlled United States content is more
10 than 10 percent of the value of the item.

11 (d) CONTRACT SANCTITY.—

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

15 (A) in performance of a binding contract,
16 agreement, or other contractual commitment
17 entered into before the date on which the Presi-
18 dent reports to Congress the President’s inten-
19 tion to impose controls on that item under this
20 title; or

21 (B) under a license or other authorization
22 issued under this Act before the earlier of the
23 date on which the control is initially imposed or
24 the date on which the President reports to Con-

1 gress the President's intention to impose con-
2 trols under this title.

3 (2) EXCEPTION.—The prohibition contained in
4 paragraph (1) shall not apply in any case in which
5 the President determines and certifies to the Com-
6 mittee on Banking, Housing, and Urban Affairs of
7 the Senate and the Committee on International Re-
8 lations of the House of Representatives that—

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

11 (B) the prohibition of exports under each
12 binding contract, agreement, commitment, li-
13 cense, or authorization will be instrumental in
14 remedying the situation posing the serious
15 threat; and

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

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

19 (a) NOTICE.—

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

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

1 (B) provide for a period of not less than
2 30 days for any interested person to submit
3 comments on the export control proposed under
4 this title.

5 (2) PURPOSES OF NOTICE.—The purposes of
6 the notice are—

7 (A) to provide an opportunity for the for-
8 mulation of an effective export control policy
9 under this title that advances United States
10 economic and foreign policy interests; and

11 (B) to provide an opportunity for negotia-
12 tions to achieve the purposes set forth in sec-
13 tion 301(b).

14 (b) NEGOTIATIONS.—During the 45-day period that
15 begins on the date of notice described in subsection (a),
16 the President may negotiate with the government of the
17 foreign country against which the export control is pro-
18 posed in order to resolve the reasons underlying the pro-
19 posed export control.

20 (c) CONSULTATION.—

21 (1) REQUIREMENT.—The President shall con-
22 sult with the Committee on Banking, Housing, and
23 Urban Affairs of the Senate and the Committee on
24 International Relations of the House of Representa-
25 tives regarding any export control proposed under

1 this title and the efforts to achieve or increase multi-
 2 lateral cooperation on the issues or problems under-
 3 lying the proposed export control.

4 (2) CLASSIFIED CONSULTATION.—The con-
 5 sultations described in paragraph (1) may be con-
 6 ducted on a classified basis if the Secretary con-
 7 siders it necessary.

8 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
 9 **TROLS.**

10 Each export control imposed by the President under
 11 this title shall—

12 (1) have clearly stated and specific United
 13 States foreign policy objectives;

14 (2) have objective standards for evaluating the
 15 success or failure of the export control;

16 (3) include an assessment by the President
 17 that—

18 (A) the export control is likely to achieve
 19 such objectives and the expected time for
 20 achieving the objectives; and

21 (B) the achievement of the objectives of
 22 the export control outweighs any potential costs
 23 of the export control to other United States
 24 economic, foreign policy, humanitarian, or na-
 25 tional security interests;

1 (4) be targeted narrowly; and

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

6 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**
7 **CONTROL.**

8 (a) REQUIREMENT.—Before imposing an export con-
9 trol under this title, the President shall submit to the
10 Committee on Banking, Housing, and Urban Affairs of
11 the Senate and the Committee on International Relations
12 of the House of Representatives a report on the proposed
13 export control. The report may be provided on a classified
14 basis if the Secretary considers it necessary.

15 (b) CONTENT.—The report shall contain a descrip-
16 tion and assessment of each of the criteria described in
17 section 303. In addition, the report shall contain a descrip-
18 tion and assessment of—

19 (1) any diplomatic and other steps that the
20 United States has taken to accomplish the intended
21 objective of the proposed export control;

22 (2) unilateral export controls imposed, and
23 other measures taken, by other countries to achieve
24 the intended objective of the proposed export con-
25 trol;

1 (3) the likelihood of multilateral adoption of
2 comparable export controls;

3 (4) alternative measures to promote the same
4 objectives and the likelihood of their potential suc-
5 cess;

6 (5) any United States obligations under inter-
7 national trade agreements, treaties, or other inter-
8 national arrangements, with which the proposed ex-
9 port control may conflict;

10 (6) the likelihood that the proposed export con-
11 trol could lead to retaliation against United States
12 interests;

13 (7) the likely economic impact of the proposed
14 export control on the United States economy, United
15 States international trade and investment, and
16 United States agricultural interests, commercial in-
17 terests, and employment; and

18 (8) a conclusion that the probable achievement
19 of the objectives of the proposed export control out-
20 weighs any likely costs to United States economic,
21 foreign policy, humanitarian, or national security in-
22 terests, including any potential harm to the United
23 States agricultural and business firms and to the
24 international reputation of the United States as a
25 reliable supplier of goods, services, or technology.

1 **SEC. 305. IMPOSITION OF CONTROLS.**

2 The President may impose an export control under
3 this title after the submission of the report required under
4 section 304 and publication in the Federal Register of a
5 notice of the imposition of the export control .

6 **SEC. 306. DEFERRAL AUTHORITY.**

7 (a) **AUTHORITY.**—The President may defer compli-
8 ance with any requirement contained in section 302(a),
9 304, or 305 in the case of a proposed export control if—

10 (1) the President determines that a deferral of
11 compliance with the requirement is in the national
12 interest of the United States; and

13 (2) the requirement is satisfied not later than
14 60 days after the date on which the export control
15 is imposed under this title.

16 (b) **TERMINATION OF CONTROL.**—An export control
17 with respect to which a deferral has been made under sub-
18 section (a) shall terminate 60 days after the date the ex-
19 port control is imposed unless all requirements have been
20 satisfied before the expiration of the 60-day period.

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

22 (a) **RENEWAL AND TERMINATION.**—

23 (1) **IN GENERAL.**—Any export control imposed
24 under this title shall terminate on March 31 of each
25 renewal year unless the President renews the export
26 control on or before such date. For purposes of this

1 section, the term “renewal year” means 2003 and
2 every 2 years thereafter.

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

5 (A) is required by law;

6 (B) is targeted against any country des-
7 ignated as a country supporting international
8 terrorism pursuant to section 310; or

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

11 (b) REVIEW.—

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

15 (2) CONSULTATION.—

16 (A) REQUIREMENT.—Before completing a
17 review under paragraph (1), the President shall
18 consult with the Committee on Banking, Hous-
19 ing, and Urban Affairs of the Senate and the
20 Committee on International Relations of the
21 House of Representative regarding each export
22 control that is being reviewed.

23 (B) CLASSIFIED CONSULTATION.—The
24 consultations may be conducted on a classified
25 basis if the Secretary considers it necessary.

1 (3) PUBLIC COMMENT.—conducting the review
 2 of each export control under paragraph (1), the
 3 President shall provide a period of not less than 30
 4 days for any interested person to submit comments
 5 on renewal of the export control. The President shall
 6 publish notice of the opportunity for public comment
 7 in the Federal Register not less than 45 days before
 8 the review is required to be completed.

9 (c) REPORT TO CONGRESS.—

10 (1) REQUIREMENT.—Before renewing an export
 11 control imposed under this title, the President shall
 12 submit to the committees of Congress referred to in
 13 subsection (b)(2)(A) a report on each export control
 14 that the President intends to renew.

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

19 (A) A clearly stated explanation of the spe-
 20 cific United States foreign policy objective that
 21 the existing export control was intended to
 22 achieve.

23 (B) An assessment of—

24 (i) the extent to which the existing ex-
 25 port control achieved its objectives before

renewal based on the objective criteria established for evaluating the export control; and

(ii) the reasons why the existing export control has failed to fully achieve its objectives and, if renewed, how the export control will achieve that objective before the next renewal year.

(C) An updated description and assessment of—

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

(ii) each matter required to be reported under section 304(b) (1) through (8).

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

SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President—

(1) shall terminate any export control imposed under this title if the President determines that the

1 control has substantially achieved the objective for
2 which it was imposed; and

3 (2) may terminate at any time any export con-
4 trol imposed under this title that is not required by
5 law.

6 (b) EXCEPTION.—Paragraphs (1) and (2) of sub-
7 section (a) do not apply to any export control imposed pur-
8 suant to section 310.

9 (c) EFFECTIVE DATE OF TERMINATION.—The termi-
10 nation of an export control pursuant to this section shall
11 take effect on the date notice of the termination is pub-
12 lished in the Federal Register.

13 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**
14 **TIONS.**

15 Notwithstanding any other provision of this Act set-
16 ting forth limitations on authority to control exports and
17 except as provided in section 304, the President may im-
18 pose controls on exports to a particular country or
19 countries—

20 (1) of items listed on the control list of a multi-
21 lateral export control regime, as defined in section
22 2(14); or

23 (2) in order to fulfill obligations or commit-
24 ments of the United States under resolutions of the
25 United Nations and under treaties, or other inter-

1 national agreements and arrangements, to which the
2 United States is a party.

3 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**
4 **INTERNATIONAL TERRORISM.**

5 (a) LICENSE REQUIRED.—Notwithstanding any
6 other provision of this Act setting forth limitations on the
7 authority to control exports, a license shall be required for
8 the export of any item to a country if the Secretary of
9 State has determined that—

10 (1) the government of such country has repeat-
11 edly provided support for acts of international ter-
12 rorism; and

13 (2) the export of the item could make a signifi-
14 cant contribution to the military potential of such
15 country, including its military logistics capability, or
16 could enhance the ability of such country to support
17 acts of international terrorism.

18 (b) NOTIFICATION.—The Secretary and the Sec-
19 retary of State shall notify the Committee on International
20 Relations of the House of Representatives and the Com-
21 mittee on Banking, Housing, and Urban Affairs and the
22 Committee on Foreign Relations of the Senate at least 30
23 days before issuing any license required by subsection (a).

24 (c) DETERMINATIONS REGARDING REPEATED SUP-
25 PORT.—Each determination of the Secretary of State

1 under subsection (a)(1), including each determination in
2 effect on the date of the enactment of the Antiterrorism
3 and Arms Export Amendments Act of 1989, shall be pub-
4 lished in the Federal Register.

5 (d) LIMITATIONS ON RESCINDING DETERMINA-
6 TION.—A determination made by the Secretary of State
7 under subsection (a)(1) may not be rescinded unless the
8 President submits to the Speaker of the House of Rep-
9 resentatives and the Chairman of the Committee on Bank-
10 ing, Housing, and Urban Affairs and the Chairman of the
11 Committee on Foreign Relations of the Senate—

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

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

17 (B) that government is not supporting acts
18 of international terrorism; and

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

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

1 (A) the government concerned has not pro-
2 vided any support for international terrorism
3 during the preceding 6-month period; and

4 (B) the government concerned has pro-
5 vided assurances that it will not support acts of
6 international terrorism in the future.

7 (e) INFORMATION TO BE INCLUDED IN NOTIFICA-
8 TION.—The Secretary and the Secretary of State shall in-
9 clude in the notification required by subsection (b)—

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

13 (2) the reasons why the foreign country or
14 international organization to which the export or
15 transfer is proposed to be made needs the item
16 which is the subject of such export or transfer and
17 a description of the manner in which such country
18 or organization intends to use the item;

19 (3) the reasons why the proposed export or
20 transfer is in the national interest of the United
21 States;

22 (4) an analysis of the impact of the proposed
23 export or transfer on the military capabilities of the
24 foreign country or international organization to
25 which such export or transfer would be made;

1 (5) an analysis of the manner in which the pro-
2 posed export would affect the relative military
3 strengths of countries in the region to which the
4 item which is the subject of such export would be de-
5 livered and whether other countries in the region
6 have comparable kinds and amounts of the item; and

7 (6) an analysis of the impact of the proposed
8 export or transfer on the United States relations
9 with the countries in the region to which the item
10 which is the subject of such export would be deliv-
11 ered.

12 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

13 (a) IN GENERAL.—In order to promote respect for
14 fundamental human rights, crime control and detection in-
15 struments and equipment shall be approved for export by
16 the Secretary only pursuant to an individual export li-
17 cense. Notwithstanding any other provision of this Act—

18 (1) any determination by the Secretary of what
19 goods or technology shall be included on the list es-
20 tablished pursuant to this subsection as a result of
21 the export restrictions imposed by this section shall
22 be made with the concurrence of the Secretary of
23 State, and

24 (2) any determination by the Secretary to ap-
25 prove or deny an export license application to export

1 crime control or detection instruments or equipment
2 shall be made in concurrence with the recommenda-
3 tions of the Secretary of State submitted to the Sec-
4 retary with respect to the application pursuant to
5 section 401 of this Act,

6 except that, if the Secretary does not agree with the Sec-
7 retary of State with respect to any determination under
8 paragraph (1) or (2), the matter shall be referred to the
9 President for resolution.

10 (b) EXCEPTION.—Except as herein provided, the pro-
11 visions of this section shall not apply with respect to ex-
12 ports to countries that are members of the North Atlantic
13 Treaty Organization or to Japan, Australia, or New Zea-
14 land, or to such other countries as the President shall des-
15 ignate consistent with the purposes of this section and sec-
16 tion 502B of the Foreign Assistance Act of 1961 (22
17 U.S.C. 2304). The provisions of subsection (a) shall apply
18 with respect to exports of any of the items identified in
19 subsection (c).

20 (c) REPORT.—Notwithstanding the provisions of sec-
21 tion 602 or any other confidentiality requirements, the
22 Secretary shall include in the annual report submitted to
23 Congress pursuant to section 701 a report describing the
24 aggregate number of licenses approved during the pre-
25 ceding calendar year for the export of any items listed in

1 the following paragraphs identified by country and control
 2 list number:

3 (1) Serrated thumbcuffs, leg irons,
 4 thumbscrews, and electro-shock stun belts.

5 (2) Leg cuffs, thumbcuffs, shackle boards, re-
 6 straint chairs, straitjackets, and plastic handcuffs.

7 (3) Stun guns, shock batons, electric cattle
 8 prods, immobilization guns and projectiles, other
 9 than equipment used exclusively to treat or tran-
 10 quelize animals and arms designed solely for signal,
 11 flare, or saluting use.

12 (4) Technology exclusively for the development
 13 or production of electro-shock devices.

14 (5) Pepper gas weapons and saps.

15 (6) Any other item or technology the Secretary
 16 determines is a specially designed instrument of tor-
 17 ture or is especially susceptible to abuse as an in-
 18 strument of torture.

19 **TITLE IV—PROCEDURES FOR EX-** 20 **PORT LICENSES AND INTER-** 21 **AGENCY DISPUTE RESOLU-** 22 **TION**

23 **SEC. 401. EXPORT LICENSE PROCEDURES.**

24 (a) RESPONSIBILITY OF THE SECRETARY.—

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

6 (2) PROCEDURES.—In guidance and regulations
7 that implement this section, the Secretary shall de-
8 scribe the procedures required by this section, the
9 responsibilities of the Secretary and of other depart-
10 ments and agencies in reviewing applications, the
11 rights of the applicant, and other relevant matters
12 affecting the review of license applications.

13 (3) CALCULATION OF PROCESSING TIMES.—In
14 calculating the processing times set forth in this
15 title, the Secretary shall use calendar days, except
16 that if the final day for a required action falls on a
17 weekend or holiday, that action shall be taken no
18 later than the following business day.

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

23 (A) The characteristics of the controlled
24 item.

25 (B) The threat to—

1 (i) the national security interests of
2 the United States from items controlled
3 under title II of this Act; or

4 (ii) the foreign policy of the United
5 States from items controlled under title III
6 of this Act.

7 (C) The country tier designation of the
8 country to which a controlled item is to be ex-
9 ported pursuant to section 203.

10 (D) The risk of export diversion or misuse
11 by—

12 (i) the exporter;

13 (ii) the method of export;

14 (iii) the end-user;

15 (iv) the country where the end-user is
16 located; and

17 (v) the end-use.

18 (E) Risk mitigating factors including, but
19 not limited to—

20 (i) changing the characteristics of the
21 controlled item;

22 (ii) after-market monitoring by the ex-
23 porter; and

24 (iii) post-shipment verification.

25 (b) INITIAL SCREENING.—

1 (1) UPON RECEIPT OF APPLICATION.—Upon re-
2 ceipt of an export license application, the Secretary
3 shall enter and maintain in the records of the De-
4 partment information regarding the receipt and sta-
5 tus of the application.

6 (2) INITIAL PROCEDURES.—

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

10 (i) contact the applicant if the appli-
11 cation is improperly completed or if addi-
12 tional information is required, and hold the
13 application for a reasonable time while the
14 applicant provides the necessary correc-
15 tions or information, and such time shall
16 not be included in calculating the time pe-
17 riods prescribed in this title; and

18 (ii) upon receipt of completed
19 application—

20 (I) ensure that the classification
21 stated on the application for the ex-
22 port items is correct;

23 (II) refer the application,
24 through the use of a common data-
25 base or other means, and all informa-

tion submitted by the applicant, and all necessary recommendations and analyses by the Secretary to the Secretary of Defense, the Secretary of State, and the heads of any other departments and agencies the Secretary considers appropriate; or

(III) return the application if a license is not required.

(B) REFERRAL NOT REQUIRED.—In the event that the head of a department or agency determines that certain types of applications need not be referred to the department or agency, such department or agency head shall notify the Secretary of the specific types of such applications that the department or agency does not wish to review.

(3) WITHDRAWAL OF APPLICATION.—An applicant may, by written notice to the Secretary, withdraw an application at any time before final action.

(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

(1) REFERRAL TO OTHER AGENCIES.—The Secretary shall promptly refer a license application to the departments and agencies under subsection (b)

1 to make recommendations and provide information
2 to the Secretary.

3 (2) RESPONSIBILITY OF REFERRAL DEPART-
4 MENTS AND AGENCIES.—The Secretary of Defense,
5 the Secretary of State, and the heads of other re-
6 viewing departments and agencies shall take all nec-
7 essary actions in a prompt and responsible manner
8 on an application. Each department or agency re-
9 viewing an application under this section shall estab-
10 lish and maintain records properly identifying and
11 monitoring the status of the matter referred to the
12 department or agency.

13 (3) ADDITIONAL INFORMATION REQUESTS.—
14 Each department or agency to which a license appli-
15 cation is referred shall specify to the Secretary any
16 information that is not in the application that would
17 be required for the department or agency to make
18 a determination with respect to the application, and
19 the Secretary shall promptly request such informa-
20 tion from the applicant. The time that may elapse
21 between the date the information is requested by
22 that department or agency and the date the infor-
23 mation is received by that department or agency
24 shall not be included in calculating the time periods
25 prescribed in this title.

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

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

20 (1) if there is agreement among the referral de-
21 partments and agencies to issue or deny the
22 license—

23 (A) issue the license and ensure all appro-
24 priate personnel in the Department (including

1 the Office of Export Enforcement) are notified
2 of all approved license applications; or

3 (B) notify the applicant of the intention to
4 deny the license; or

5 (2) if there is no agreement among the referral
6 departments and agencies, notify the applicant that
7 the application is subject to the interagency dispute
8 resolution process provided for in section 402.

9 (e) CONSEQUENCES OF APPLICATION DENIAL.—

10 (1) IN GENERAL.—If a determination is made
11 to deny a license, the applicant shall be informed in
12 writing, consistent with the protection of intelligence
13 information sources and methods, by the Secretary
14 of—

15 (A) the determination;

16 (B) the specific statutory and regulatory
17 bases for the proposed denial;

18 (C) what, if any, modifications to, or re-
19 strictions on, the items for which the license
20 was sought would allow such export to be com-
21 patible with export controls imposed under this
22 Act, and which officer or employee of the De-
23 partment would be in a position to discuss
24 modifications or restrictions with the applicant

1 and the specific statutory and regulatory bases
2 for imposing such modifications or restrictions;

3 (D) to the extent consistent with the na-
4 tional security and foreign policy interests of
5 the United States, the specific considerations
6 that led to the determination to deny the appli-
7 cation; and

8 (E) the availability of appeal procedures.

9 (2) PERIOD FOR APPLICANT TO RESPOND.—

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

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

20 (1) IN GENERAL.—The Secretary shall establish
21 appropriate procedures for an applicant to appeal to
22 the Secretary the denial of an application or other
23 administrative action under this Act. In any case in
24 which the Secretary proposes to reverse the decision
25 with respect to the application, the appeal under this

1 subsection shall be handled in accordance with the
2 interagency dispute resolution process provided for
3 in section 402(b)(3).

4 (2) ENFORCEMENT OF TIME LIMITS.—

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

17 (B) BRINGING COURT ACTION.—If, within
18 20 days after a petition is filed under subpara-
19 graph (A), the processing of the application has
20 not been brought into conformity with the re-
21 quirements of this section, or the processing of
22 the application has been brought into con-
23 formity with such requirements but the Sec-
24 retary has not so notified the applicant, the ap-
25 plicant may bring an action in an appropriate

1 United States district court for an order requir-
2 ing compliance with the time periods required
3 by this section.

4 (g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—
5 The following actions related to processing an application
6 shall not be included in calculating the time periods pre-
7 scribed in this section:

8 (1) AGREEMENT OF THE APPLICANT.—Delays
9 upon which the Secretary and the applicant mutu-
10 ally agree.

11 (2) PRELICENSE CHECKS.—A prelicense check
12 (for a period not to exceed 60 days) that may be re-
13 quired to establish the identity and reliability of the
14 recipient of items controlled under this Act, if—

15 (A) the need for the prelicense check is de-
16 termined by the Secretary or by another depart-
17 ment or agency in any case in which the re-
18 quest for the prelicense check is made by such
19 department or agency;

20 (B) the request for the prelicense check is
21 initiated by the Secretary within 5 days after
22 the determination that the prelicense check is
23 required; and

1 (C) the analysis of the result of the
2 prelicense check is completed by the Secretary
3 within 5 days.

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

11 (A) the request for such assurances is sent
12 to the Secretary of State within 5 days after
13 the determination that the assurances are re-
14 quired;

15 (B) the Secretary of State initiates the re-
16 quest of the relevant government within 10
17 days thereafter; and

18 (C) the license is issued within 5 days
19 after the Secretary receives the requested assur-
20 ances.

21 (4) EXCEPTION.—Whenever a prelicense check
22 described in paragraph (2) or assurances described
23 in paragraph (3) are not requested within the time
24 periods set forth therein, then the time expended for
25 such prelicense check or assurances shall be included

1 in calculating the time periods established by this
2 section.

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

7 (6) CONGRESSIONAL NOTIFICATION.—Such
8 time as is required for mandatory congressional noti-
9 fications under this Act.

10 (7) CONSULTATIONS.—Consultation with for-
11 eign governments, if such consultation is provided
12 for by a relevant multilateral regime as a pre-
13 condition for approving a license.

14 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
15 IES.—

16 (1) CLASSIFICATION REQUESTS.—In any case
17 in which the Secretary receives a written request
18 asking for the proper classification of an item on the
19 Control List or the applicability of licensing require-
20 ments under this title, the Secretary shall promptly
21 notify the Secretary of Defense and the head of any
22 department or agency the Secretary considers appro-
23 priate. The Secretary shall, within 14 days after re-
24 ceiving the request, inform the person making the
25 request of the proper classification.

1 (2) OTHER INQUIRIES.—In any case in which
2 the Secretary receives a written request for informa-
3 tion under this Act, the Secretary shall, within 30
4 days after receiving the request, reply with that in-
5 formation to the person making the request.

6 **SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

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

10 (b) INTERAGENCY DISPUTE RESOLUTION PROC-
11 ESS.—

12 (1) INITIAL RESOLUTION.—The Secretary shall
13 establish, select the chairperson of, and determine
14 procedures for an interagency committee to review
15 initially all license applications described in sub-
16 section (a) with respect to which the Secretary and
17 any of the referral departments and agencies are not
18 in agreement. The chairperson shall consider the po-
19 sitions of all the referral departments and agencies
20 (which shall be included in the minutes described in
21 subsection (c)(2)) and make a decision on the license
22 application, including appropriate revisions or condi-
23 tions thereto.

24 (2) INTELLIGENCE COMMUNITY.—The analytic
25 product of the intelligence community should be fully

1 considered with respect to any proposed license
2 under this title.

3 (3) FURTHER RESOLUTION.—The President
4 shall establish additional levels for review or appeal
5 of any matter that cannot be resolved pursuant to
6 the process described in paragraph (1). Each such
7 review shall—

8 (A) provide for decision-making based on
9 the majority vote of the participating depart-
10 ments and agencies;

11 (B) provide that a department or agency
12 that fails to take a timely position, citing the
13 specific statutory and regulatory bases for a po-
14 sition, shall be deemed to have no objection to
15 the pending decision;

16 (C) provide that any decision of an inter-
17 agency committee established under paragraph
18 (1) or interagency dispute resolution process es-
19 tablished under this paragraph may be esca-
20 lated to the next higher level of review at the
21 request of an official appointed by the Presi-
22 dent, by and with the advice of the Senate, or
23 an officer properly acting in such capacity, of a
24 department or agency that participated in the

1 interagency committee or dispute resolution
2 process that made the decision; and

3 (D) ensure that matters are resolved or re-
4 ferred to the President not later than 90 days
5 after the date the completed license application
6 is referred by the Secretary.

7 (c) FINAL ACTION.—

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

11 (A) issue the license and ensure that all
12 appropriate personnel in the Department (in-
13 cluding the Office of Export Enforcement) are
14 notified of all approved license applications; or

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

17 (2) MINUTES.—The interagency committee and
18 each level of the interagency dispute resolution proc-
19 ess shall keep reasonably detailed minutes of all
20 meetings. On each matter before the interagency
21 committee or before any other level of the inter-
22 agency dispute resolution process in which members
23 disagree, each member shall clearly state the reasons
24 for the member's position and the reasons shall be
25 entered in the minutes.

1 **TITLE V—INTERNATIONAL AR-**
2 **RANGEMENTS; FOREIGN BOY-**
3 **COTTS; SANCTIONS; AND EN-**
4 **FORCEMENT**

5 **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

6 (a) MULTILATERAL EXPORT CONTROL REGIMES.—

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

13 (2) PARTICIPATION IN EXISTING REGIMES.—

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

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

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

22 (b) ANNUAL REPORT ON MULTILATERAL EXPORT

23 CONTROL REGIMES.—Not later than February 1 of each
24 year, the President shall submit to the Committee on
25 Banking, Housing, and Urban Affairs of the Senate and

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

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

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

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

21 (3) PUBLIC UNDERSTANDING.—The regime
22 makes an effort to enhance public understanding of
23 the purpose and procedures of the multilateral ex-
24 port control regime.

1 (4) EFFECTIVE IMPLEMENTATION PROCE-
2 DURES.—The multilateral export control regime has
3 procedures for the uniform and consistent interpre-
4 tation and implementation of its rules and guide-
5 lines.

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

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

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

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

23 (7) COMMON LIST OF CONTROLLED ITEMS.—
24 There is agreement on a common list of items con-
25 trolled by the multilateral export control regime.

1 (8) REGULAR UPDATES OF COMMON LIST.—

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

6 (9) TREATMENT OF CERTAIN COUNTRIES.—

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

11 (10) HARMONIZATION OF LICENSE APPROVAL

12 PROCEDURES.—There is harmonization among the
13 members of the regime of their national export li-
14 cense approval procedures, practices, and standards.

15 (11) UNDERCUTTING.—There is a limit with re-
16 spect to when members of a multilateral export con-
17 trol regime—

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

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

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

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

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

16 (3) ENFORCEMENT.—The enforcement mecha-
17 nism provides authority for trained enforcement offi-
18 cers to investigate and prevent illegal exports.

19 (4) DOCUMENTATION.—There is a system of
20 export control documentation and verification with
21 respect to controlled items.

22 (5) INFORMATION.—There are procedures for
23 the coordination and exchange of information con-
24 cerning licensing, end users, and enforcement with

1 other members of the multilateral export control re-
2 gime.

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

7 (e) OBJECTIVES REGARDING MULTILATERAL EX-
8 PORT CONTROL REGIMES.—The President shall seek to
9 achieve the following objectives with regard to multilateral
10 export control regimes:

11 (1) STRENGTHEN EXISTING REGIMES.—
12 Strengthen existing multilateral export control
13 regimes—

14 (A) by creating a requirement to share in-
15 formation about export license applications
16 among members before a member approves an
17 export license; and

18 (B) harmonizing national export license
19 approval procedures and practices, including
20 the elimination of undercutting.

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

24 (A) national security concerns;

25 (B) the controllability of items; and

1 (C) the costs and benefits of controls.

2 (3) ENCOURAGE COMPLIANCE BY NONMEM-
3 BERS.—Encourage nonmembers of the multilateral
4 export control regime—

5 (A) to strengthen their national export
6 control regimes and improve enforcement;

7 (B) to adhere to the appropriate multilat-
8 eral export control regime; and

9 (C) not to undermine an existing multilat-
10 eral export control regime by exporting con-
11 trolled items in a manner inconsistent with the
12 guidelines of the regime.

13 (f) TRANSPARENCY OF MULTILATERAL EXPORT
14 CONTROL REGIMES.—

15 (1) PUBLICATION OF INFORMATION ON EACH
16 EXISTING REGIME.—Not later than 120 days after
17 the date of enactment of this Act, the Secretary
18 shall, for each multilateral export control regime, to
19 the extent that it is not inconsistent with the ar-
20 rangements of that regime (in the judgment of the
21 Secretary of State) or with the national interest,
22 publish in the Federal Register and post on the De-
23 partment of Commerce website the following infor-
24 mation with respect to the regime:

25 (A) The purposes of the regime.

1 (B) The members of the regime.

2 (C) The export licensing policy of the re-
3 gime.

4 (D) The items that are subject to export
5 controls under the regime, together with all
6 public notes, understandings, and other aspects
7 of the agreement of the regime, and all changes
8 thereto.

9 (E) Any countries, end uses, or end users
10 that are subject to the export controls of the re-
11 gime.

12 (F) Rules of interpretation.

13 (G) Major policy actions.

14 (H) The rules and procedures of the re-
15 gime for establishing and modifying any matter
16 described in subparagraphs (A) through (G)
17 and for reviewing export license applications.

18 (2) NEW REGIMES.—Not later than 60 days
19 after the United States joins or organizes a new
20 multilateral export control regime, the Secretary
21 shall, to the extent that it is not inconsistent with
22 arrangements under the regime (in the judgment of
23 the Secretary of State) or with the national interest,
24 publish in the Federal Register and post on the De-
25 partment of Commerce website the information de-

1 scribed in subparagraphs (A) through (H) of para-
2 graph (1) with respect to the regime.

3 (3) PUBLICATION OF CHANGES.—Not later
4 than 60 days after a multilateral export control re-
5 gime adopts any change in the information published
6 under this subsection, the Secretary shall, to the ex-
7 tent not inconsistent with the arrangements under
8 the regime or the national interest, publish such
9 changes in the Federal Register and post such
10 changes on the Department of Commerce website.

11 (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
12 TROL SYSTEMS.—The Secretary is encouraged to continue
13 to—

14 (1) participate in training of, and provide train-
15 ing to, officials of other countries on the principles
16 and procedures for implementing effective export
17 controls; and

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

21 **SEC. 502. FOREIGN BOYCOTTS.**

22 (a) PURPOSES.—The purposes of this section are as
23 follows:

24 (1) To counteract restrictive trade practices or
25 boycotts fostered or imposed by foreign countries

1 against other countries friendly to the United States
2 or against any United States person.

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

12 (b) PROHIBITIONS AND EXCEPTIONS.—

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

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

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

24 (C) Furnishing information with respect to
25 the race, religion, sex, or national origin of any

1 United States person or of any owner, officer,
2 director, or employee of such person.

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

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

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

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

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

10 (A) compliance, or agreement to comply,
11 with requirements—

12 (i) prohibiting the import of items
13 from the boycotted country or items pro-
14 duced or provided, by any business concern
15 organized under the laws of the boycotted
16 country or by nationals or residents of the
17 boycotted country; or

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

23 (B) compliance, or agreement to comply,
24 with import and shipping document require-
25 ments with respect to the country of origin, the

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

14 (C) compliance, or agreement to comply, in
15 the normal course of business with the unilat-
16 eral and specific selection by a boycotting coun-
17 try, or a national or resident thereof, or car-
18 riers, insurers, suppliers of services to be per-
19 formed within the boycotting country, or spe-
20 cific items which, in the normal course of busi-
21 ness, are identifiable by source when imported
22 into the boycotting country;

23 (D) compliance, or agreement to comply,
24 with export requirements of the boycotting
25 country relating to shipment or transshipment

1 of exports to the boycotted country, to any busi-
2 ness concern of or organized under the laws of
3 the boycotted country, or to any national or
4 resident of the boycotted country;

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

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

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

5 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
 6 AFFECTED.—Nothing in this subsection may be con-
 7 strued to supersede or limit the operation of the
 8 antitrust or civil rights laws of the United States.

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

20 (c) ADDITIONAL REGULATIONS AND REPORTS.—

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

1 (2) REPORTS BY UNITED STATES PERSONS.—

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

1 (d) PREEMPTION.—The provisions of this section and
2 the regulations issued under this section shall preempt any
3 law, rule, or regulation that—

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

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

13 **SEC. 503. PENALTIES.**

14 (a) CRIMINAL PENALTIES.—

15 (1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-
16 vidual who willfully violates, conspires to violate, or
17 attempts to violate any provision of this Act or any
18 regulation, license, or order issued under this Act
19 shall be fined up to 10 times the value of the exports
20 involved or \$1,000,000, whichever is greater, impris-
21 oned for not more than 10 years, or both, for each
22 violation.

23 (2) VIOLATIONS BY A PERSON OTHER THAN AN
24 INDIVIDUAL.—Any person other than an individual
25 who willfully violates, conspires to violate, or at-

1 tempts to violate any provision of this Act or any
2 regulation, license, or order issued under this Act
3 shall be fined up to 10 times the value of the exports
4 involved or \$5,000,000, whichever is greater, for
5 each violation.

6 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
7 CEEDS.—

8 (1) FORFEITURE.—Any person who is convicted
9 under paragraph (1) or (2) of subsection (a) shall,
10 in addition to any other penalty, forfeit to the
11 United States—

12 (A) any of that person's security or other
13 interest in, claim against, or property or con-
14 tractual rights of any kind in the tangible items
15 that were the subject of the violation;

16 (B) any of that person's security or other
17 interest in, claim against, or property or con-
18 tractual rights of any kind in the tangible prop-
19 erty that was used in the export or attempt to
20 export that was the subject of the violation; and

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

24 (2) PROCEDURES.—The procedures in any for-
25 feiture under this subsection, and the duties and au-

1 thority of the courts of the United States and the
2 Attorney General with respect to any forfeiture ac-
3 tion under this subsection, or with respect to any
4 property that may be subject to forfeiture under this
5 subsection, shall be governed by the provisions of
6 chapter 46 of title 18, United States Code (relating
7 to criminal forfeiture), to the same extent as prop-
8 erty subject to forfeiture under that chapter.

9 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
10 TIONS.—

11 (1) CIVIL PENALTIES.—The Secretary may im-
12 pose a civil penalty of up to \$500,000 for each viola-
13 tion of a provision of this Act or any regulation, li-
14 cense, or order issued under this Act. A civil penalty
15 under this paragraph may be in addition to, or in
16 lieu of, any other liability or penalty which may be
17 imposed for such a violation.

18 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
19 retary may deny the export privileges of any person,
20 including the suspension or revocation of the author-
21 ity of such person to export or receive United
22 States-origin items subject to this Act, for a viola-
23 tion of a provision of this Act or any regulation, li-
24 cense, or order issued under this Act.

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

7 (d) PAYMENT OF CIVIL PENALTIES.—

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

18 (2) DEFERRAL OR SUSPENSION.—

19 (A) IN GENERAL.—The payment of a civil
20 penalty imposed under subsection (c) may be
21 deferred or suspended in whole or in part for a
22 period no longer than any probation period
23 (which may exceed 1 year) that may be imposed
24 upon the person on whom the penalty is im-
25 posed.

1 (B) NO BAR TO COLLECTION OF PEN-
 2 ALTY.—A deferral or suspension under sub-
 3 paragraph (A) shall not operate as a bar to the
 4 collection of the penalty concerned in the event
 5 that the conditions of the suspension, deferral,
 6 or probation are not fulfilled.

7 (3) TREATMENT OF PAYMENTS.—Any amount
 8 paid in satisfaction of a civil penalty imposed under
 9 subsection (c) shall be covered into the Treasury as
 10 miscellaneous receipts.

11 (e) REFUNDS.—

12 (1) AUTHORITY.—

13 (A) IN GENERAL.—The Secretary may, in
 14 the Secretary's discretion, refund any civil pen-
 15 alty imposed under subsection (c) on the
 16 ground of a material error of fact or law in im-
 17 position of the penalty.

18 (B) LIMITATION.—A civil penalty may not
 19 be refunded under subparagraph (A) later than
 20 2 years after payment of the penalty.

21 (2) PROHIBITION ON ACTIONS FOR REFUND.—
 22 Notwithstanding section 1346(a) of title 28, United
 23 States Code, no action for the refund of any civil
 24 penalty referred to in paragraph (1) may be main-
 25 tained in any court.

1 (f) EFFECT OF OTHER CONVICTIONS.—

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

4 (A) a provision of this Act or the Export
5 Administration Act of 1979,

6 (B) a provision of the International Emer-
7 gency Economic Powers Act (50 U.S.C. 1701 et
8 seq.),

9 (C) section 793, 794, or 798 of title 18,
10 United States Code,

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

13 (E) section 38 of the Arms Export Control
14 Act (22 U.S.C. 2778),

15 (F) section 16 of the Trading with the
16 Enemy Act (50 U.S.C. App. 16),

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

20 (H) section 371 or 1001 of title 18, United
21 States Code, if in connection with the export of
22 controlled items under this Act or any regula-
23 tion, license, or order issued under the Inter-
24 national Emergency Economic Powers Act, or

1 the export of items controlled under the Arms
2 Export Control Act,

3 (I) section 175 of title 18, United States
4 Code,

5 (J) a provision of the Atomic Energy Act
6 (42 U.S.C. 201 et seq.),

7 (K) section 831 of title 18, United States
8 Code, or

9 (L) section 2332a of title 18, United
10 States Code,

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

17 (2) RELATED PERSONS.—The Secretary may
18 exercise the authority under paragraph (1) with re-
19 spect to any person related through affiliation, own-
20 ership, control, or position of responsibility to a per-
21 son convicted of any violation of a law set forth in
22 paragraph (1) upon a showing of such relationship
23 with the convicted person. The Secretary shall make
24 such showing only after providing notice and oppor-
25 tunity for a hearing.

1 (g) STATUTE OF LIMITATIONS.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), a proceeding in which a civil penalty or
4 other administrative sanction (other than a tem-
5 porary denial order) is sought under subsection (c)
6 may not be instituted more than 5 years after the
7 later of the date of the alleged violation or the date
8 of discovery of the alleged violation.

9 (2) EXCEPTION.—

10 (A) TOLLING.—In any case in which a
11 criminal indictment alleging a violation under
12 subsection (a) is returned within the time limits
13 prescribed by law for the institution of such ac-
14 tion, the limitation under paragraph (1) for
15 bringing a proceeding to impose a civil penalty
16 or other administrative sanction under this sec-
17 tion shall, upon the return of the criminal in-
18 dictment, be tolled against all persons named as
19 a defendant.

20 (B) DURATION.—The tolling of the limita-
21 tion with respect to a defendant under subpara-
22 graph (A) as a result of a criminal indictment
23 shall continue for a period of 6 months from
24 the date on which the conviction of the defend-
25 ant becomes final, the indictment against the

1 defendant is dismissed, or the criminal action
2 has concluded.

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

6 (i) CONSTRUCTION.—Nothing in subsection (c), (d),
7 (e), (f), or (g) limits—

8 (1) the availability of other administrative or
9 judicial remedies with respect to a violation of a pro-
10 vision of this Act, or any regulation, order, or license
11 issued under this Act;

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

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

19 **SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

20 (a) VIOLATIONS BY UNITED STATES PERSONS.—

21 (1) SANCTIONS.—

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

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

1 MTCR Annex, in violation of the provi-
2 sions of section 38 (22 U.S.C. 2778) or
3 chapter 7 of the Arms Export Control Act,
4 title II or III of this Act, or any regula-
5 tions or orders issued under any such pro-
6 visions,

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

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

11 then the President shall impose the applicable
12 sanctions described in subparagraph (B).

13 (B) SANCTIONS DESCRIBED.—The sanc-
14 tions which apply to a United States person
15 under subparagraph (A) are the following:

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

24 (ii) If the item on the MTCR Annex
25 involved in the export, transfer, or trade is

missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 503.

(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to an item if the President certifies to Congress that—

(A) the item is essential to the national security of the United States; and

(B) such person is a sole source supplier of the item, the item is not available from any alternative reliable supplier, and the need for the item cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

(1) SANCTIONS.—

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

5 (i) exports, transfers, or otherwise en-
6 gages in the trade of any MTCR equip-
7 ment or technology that contributes to the
8 design, development, or production of mis-
9 siles in a country that is not an MTCR ad-
10 herent and would be, if it were United
11 States-origin equipment or technology,
12 subject to the jurisdiction of the United
13 States under this Act,

14 (ii) conspires to or attempts to engage
15 in such export, transfer, or trade, or

16 (iii) facilitates such export, transfer,
17 or trade by any other person,

18 or if the President has made a determination
19 with respect to a foreign person under section
20 73(a) of the Arms Export Control Act, then the
21 President shall impose on that foreign person
22 the applicable sanctions under subparagraph
23 (B).

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

4 (i) If the item involved in the export,
5 transfer, or trade is within category II of
6 the MTCR Annex, then the President shall
7 deny, for a period of 2 years, licenses for
8 the transfer to such foreign person of mis-
9 sile equipment or technology the export of
10 which is controlled under this Act.

11 (ii) If the item involved in the export,
12 transfer, or trade is within category I of
13 the MTCR Annex, then the President shall
14 deny, for a period of not less than 2 years,
15 licenses for the transfer to such foreign
16 person of items the export of which is con-
17 trolled under this Act.

18 (iii) If, in addition to actions taken
19 under clauses (i) and (ii), the President de-
20 termines that the export, transfer, or trade
21 has substantially contributed to the design,
22 development, or production of missiles in a
23 country that is not an MTCR adherent,
24 then the President shall prohibit, for a pe-
25 riod of not less than 2 years, the importa-

1 tion into the United States of products
2 produced by that foreign person.

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

6 (A) any export, transfer, or trading activ-
7 ity that is authorized by the laws of an MTCR
8 adherent, if such authorization is not obtained
9 by misrepresentation or fraud; or

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

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

1 (4) ADVISORY OPINIONS.—The Secretary, in
2 consultation with the Secretary of State and the
3 Secretary of Defense, may, upon the request of any
4 person, issue an advisory opinion to that person as
5 to whether a proposed activity by that person would
6 subject that person to sanctions under this sub-
7 section. Any person who relies in good faith on such
8 an advisory opinion which states that the proposed
9 activity would not subject a person to such sanc-
10 tions, and any person who thereafter engages in
11 such activity, may not be made subject to such sanc-
12 tions on account of such activity.

13 (5) WAIVER AND REPORT TO CONGRESS.—

14 (A) WAIVER.—In any case other than one
15 in which an advisory opinion has been issued
16 under paragraph (4) stating that a proposed ac-
17 tivity would not subject a person to sanctions
18 under this subsection, the President may waive
19 the application of paragraph (1) to a foreign
20 person if the President determines that such
21 waiver is essential to the national security of
22 the United States.

23 (B) REPORT TO CONGRESS.—In the event
24 that the President decides to apply the waiver
25 described in subparagraph (A), the President

1 shall so notify Congress not less than 20 work-
2 ing days before issuing the waiver. Such notifi-
3 cation shall include a report fully articulating
4 the rationale and circumstances which led the
5 President to apply the waiver.

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

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

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

19 (7) EXCEPTIONS.—The President shall not
20 apply the sanction under this subsection prohibiting
21 the importation of the products of a foreign
22 person—

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

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

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

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

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

23 (C) to—

24 (i) spare parts,

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

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

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

11 (c) DEFINITIONS.—In this section:

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

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

1 (3) MTCR ADHERENT.—The term “MTCR ad-
2 herent” means a country that participates in the
3 MTCR or that, pursuant to an international under-
4 standing to which the United States is a party, con-
5 trols MTCR equipment or technology in accordance
6 with the criteria and standards set forth in the
7 MTCR.

8 (4) MTCR ANNEX.—The term “MTCR Annex”
9 means the Guidelines and Equipment and Tech-
10 nology Annex of the MTCR, and any amendments
11 thereto.

12 (5) MISSILE EQUIPMENT OR TECHNOLOGY;
13 MTCR EQUIPMENT OR TECHNOLOGY.—The terms
14 “missile equipment or technology” and “MTCR
15 equipment or technology” mean those items listed in
16 category I or category II of the MTCR Annex.

17 (6) FOREIGN PERSON.—The term “foreign per-
18 son” means any person other than a United States
19 person.

20 (7) PERSON.—

21 (A) IN GENERAL.—The term “person”
22 means a natural person as well as a corpora-
23 tion, business association, partnership, society,
24 trust, any other nongovernmental entity, orga-
25 nization, or group, and any governmental entity

operating as a business enterprise, and any successor of any such entity.

(B) IDENTIFICATION IN CERTAIN CASES.—

In the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term “person” means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

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

(8) OTHERWISE ENGAGED IN THE TRADE OF.—

The term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President

1 shall impose both of the sanctions described in sub-
 2 section (c) if the President determines that a foreign
 3 person, on or after the date of enactment of this sec-
 4 tion, has knowingly and materially contributed—

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

8 (B) through the export from any other
 9 country of any item that would be, if it were a
 10 United States item, subject to the jurisdiction
 11 of the United States under this Act,

12 to the efforts by any foreign country, project, or en-
 13 tity described in paragraph (2) to use, develop,
 14 produce, stockpile, or otherwise acquire chemical or
 15 biological weapons.

16 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
 17 CEIVING ASSISTANCE.—Paragraph (1) applies in the
 18 case of—

19 (A) any foreign country that the President
 20 determines has, at any time after the date of
 21 enactment of this Act—

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

24 (ii) used lethal chemical or biological
 25 weapons against its own nationals; or

1 (iii) made substantial preparations to
2 engage in the activities described in clause
3 (i) or (ii);

4 (B) any foreign country whose government
5 is determined for purposes of section 310 to be
6 a government that has repeatedly provided sup-
7 port for acts of international terrorism; or

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

11 (3) PERSONS AGAINST WHICH SANCTIONS ARE
12 TO BE IMPOSED.—Sanctions shall be imposed pursu-
13 ant to paragraph (1) on—

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

17 (B) any successor entity to that foreign
18 person;

19 (C) any foreign person that is a parent or
20 subsidiary of that foreign person if that parent
21 or subsidiary knowingly assisted in the activities
22 which were the basis of that determination; and

23 (D) any foreign person that is an affiliate
24 of that foreign person if that affiliate knowingly
25 assisted in the activities which were the basis of

1 that determination and if that affiliate is con-
2 trolled in fact by that foreign person.

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

5 (1) CONSULTATIONS.—If the President makes
6 the determinations described in subsection (a)(1)
7 with respect to a foreign person, Congress urges the
8 President to initiate consultations immediately with
9 the government with primary jurisdiction over that
10 foreign person with respect to the imposition of
11 sanctions pursuant to this section.

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

1 process of taking the actions described in the pre-
2 ceding sentence.

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

11 (c) SANCTIONS.—

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

16 (A) PROCUREMENT SANCTION.—The
17 United States Government shall not procure, or
18 enter into any contract for the procurement of,
19 any goods or services from any person described
20 in subsection (a)(3).

21 (B) IMPORT SANCTIONS.—The importation
22 into the United States of products produced by
23 any person described in subsection (a)(3) shall
24 be prohibited.

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

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

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

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

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

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

1 (C) to—

2 (i) spare parts,

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

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

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

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

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

24 (e) WAIVER.—

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

9 (2) NOTIFICATION OF AND REPORT TO CON-
10 GRESS.—If the President decides to exercise the
11 waiver authority provided in paragraph (1), the
12 President shall so notify the Congress not less than
13 20 days before the waiver takes effect. Such notifica-
14 tion shall include a report fully articulating the ra-
15 tionale and circumstances which led the President to
16 exercise the waiver authority.

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

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

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

1 **SEC. 506. ENFORCEMENT.**

2 (a) GENERAL AUTHORITY AND DESIGNATION.—

3 (1) POLICY GUIDANCE ON ENFORCEMENT.—

4 The Secretary, in consultation with the Secretary of
5 the Treasury and the heads of other departments
6 and agencies that the Secretary considers appro-
7 priate, shall be responsible for providing policy guid-
8 ance on the enforcement of this Act.

9 (2) GENERAL AUTHORITIES.—

10 (A) EXERCISE OF AUTHORITY.—To the ex-
11 tent necessary or appropriate to the enforce-
12 ment of this Act, officers and employees of the
13 Department designated by the Secretary, offi-
14 cers and employees of the United States Cus-
15 toms Service designated by the Commissioner of
16 Customs, and officers and employees of any
17 other department or agency designated by the
18 head of a department or agency exercising func-
19 tions under this Act, may exercise the enforce-
20 ment authority under paragraph (3).

21 (B) CUSTOMS SERVICE.—In carrying out
22 enforcement authority under paragraph (3), the
23 Commissioner of Customs and employees of the
24 United States Customs Service designated by
25 the Commissioner may make investigations
26 within or outside the United States and at

1 ports of entry into or exit from the United
2 States where officers of the United States Cus-
3 toms Service are authorized by law to carry out
4 law enforcement responsibilities. Subject to
5 paragraph (3), the United States Customs
6 Service is authorized, in the enforcement of this
7 Act, to search, detain (after search), and seize
8 items at the ports of entry into or exit from the
9 United States where officers of the United
10 States Customs Service are authorized by law
11 to conduct searches, detentions, and seizures,
12 and at the places outside the United States
13 where the United States Customs Service, pur-
14 suant to agreement or other arrangement with
15 other countries, is authorized to perform en-
16 forcement activities.

17 (C) OTHER EMPLOYEES.—In carrying out
18 enforcement authority under paragraph (3), the
19 Secretary and officers and employees of the De-
20 partment designated by the Secretary may
21 make investigations within the United States,
22 and may conduct, outside the United States,
23 pre-license and post-shipment verifications of
24 controlled items and investigations in the en-
25 forcement of section 502. The Secretary and of-

1 ficers and employees of the Department des-
2 igned by the Secretary are authorized to
3 search, detain (after search), and seize items at
4 places within the United States other than
5 ports referred to in subparagraph (B). The
6 search, detention (after search), or seizure of
7 items at the ports and places referred to in sub-
8 paragraph (B) may be conducted by officers
9 and employees of the Department only with the
10 concurrence of the Commissioner of Customs or
11 a person designated by the Commissioner.

12 (D) AGREEMENTS AND ARRANGEMENTS.—

13 The Secretary and the Commissioner of Cus-
14 toms may enter into agreements and arrange-
15 ments for the enforcement of this Act, including
16 foreign investigations and information ex-
17 change.

18 (3) SPECIFIC AUTHORITIES.—

19 (A) ACTIONS BY ANY DESIGNATED PER-
20 SONNEL.—Any officer or employee designated
21 under paragraph (2), in carrying out the en-
22 forcement authority under this Act, may do the
23 following:

24 (i) Make investigations of, obtain in-
25 formation from, make inspection of any

1 books, records, or reports (including any
2 writings required to be kept by the Sec-
3 retary), premises, or property of, and take
4 the sworn testimony of, any person.

5 (ii) Administer oaths or affirmations,
6 and by subpoena require any person to ap-
7 pear and testify or to appear and produce
8 books, records, and other writings, or both.
9 In the case of contumacy by, or refusal to
10 obey a subpoena issued to, any such per-
11 son, a district court of the United States,
12 on request of the Attorney General and
13 after notice to any such person and a hear-
14 ing, shall have jurisdiction to issue an
15 order requiring such person to appear and
16 give testimony or to appear and produce
17 books, records, and other writings, or both.
18 Any failure to obey such order of the court
19 may be punished by such court as a con-
20 tempt thereof. The attendance of witnesses
21 and the production of documents provided
22 for in this clause may be required from
23 any State, the District of Columbia, or in
24 any territory of the United States at any
25 designated place. Witnesses subpoenaed

1 under this subsection shall be paid the
2 same fees and mileage allowance as paid
3 witnesses in the district courts of the
4 United States.

5 (B) ACTIONS BY OFFICE OF EXPORT EN-
6 FORCEMENT AND CUSTOMS SERVICE PER-
7 SONNEL.—

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

21 (I) Execute any warrant or other
22 process issued by a court or officer of
23 competent jurisdiction with respect to
24 the enforcement of this Act.

1 (II) Make arrests without war-
2 rant for any violation of this Act com-
3 mitted in his or her presence or view,
4 or if the officer or employee has prob-
5 able cause to believe that the person
6 to be arrested has committed, is com-
7 mitting, or is about to commit such a
8 violation.

9 (III) Carry firearms.

10 (ii) OEE PERSONNEL.—Any officer or
11 employee of the OEE designated by the
12 Secretary under paragraph (2) shall exer-
13 cise the authority set forth in clause (i)
14 pursuant to guidelines approved by the At-
15 torney General.

16 (C) OTHER ACTIONS BY CUSTOMS SERVICE
17 PERSONNEL.—Any officer or employee of the
18 United States Customs Service designated by
19 the Commissioner of Customs under paragraph
20 (2) may do the following in carrying out the en-
21 forcement authority under this Act:

22 (i) Stop, search, and examine a vehi-
23 cle, vessel, aircraft, or person on which or
24 whom the officer or employee has reason-
25 able cause to suspect there is any item

1 that has been, is being, or is about to be
2 exported from or transited through the
3 United States in violation of this Act.

4 (ii) Detain and search any package or
5 container in which the officer or employee
6 has reasonable cause to suspect there is
7 any item that has been, is being, or is
8 about to be exported from or transited
9 through the United States in violation of
10 this Act.

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

21 (4) OTHER AUTHORITIES NOT AFFECTED.—The
22 authorities conferred by this section are in addition
23 to any authorities conferred under other laws.

24 (b) FORFEITURE.—

1 (1) IN GENERAL.—Any tangible items lawfully
2 seized under subsection (a) by designated officers or
3 employees shall be subject to forfeiture to the United
4 States.

5 (2) APPLICABLE LAWS.—Those provisions of
6 law relating to—

7 (A) the seizure, summary and judicial for-
8 feiture, and condemnation of property for viola-
9 tions of the customs laws;

10 (B) the disposition of such property or the
11 proceeds from the sale thereof;

12 (C) the remission or mitigation of such for-
13 feitures; and

14 (D) the compromise of claims,
15 shall apply to seizures and forfeitures incurred, or
16 alleged to have been incurred, under the provisions
17 of this subsection, insofar as applicable and not in-
18 consistent with this Act.

19 (3) FORFEITURES UNDER CUSTOMS LAWS.—
20 Duties that are imposed upon a customs officer or
21 any other person with respect to the seizure and for-
22 feiture of property under the customs laws may be
23 performed with respect to seizures and forfeitures of
24 property under this subsection by the Secretary or
25 any officer or employee of the Department that may

1 be authorized or designated for that purpose by the
2 Secretary (or by the Commissioner of Customs or
3 any officer or employee of the United States Customs Service designated by the Commissioner), or,
4 upon the request of the Secretary, by any other
5 agency that has authority to manage and dispose of
6 seized property.
7

8 (c) REFERRAL OF CASES.—All cases involving viola-
9 tions of this Act shall be referred to the Secretary for pur-
10 poses of determining civil penalties and administrative
11 sanctions under section 503 or to the Attorney General
12 for criminal action in accordance with this Act or to both
13 the Secretary and the Attorney General.

14 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

15 (1) USE OF FUNDS.—With respect to any un-
16 dercover investigative operation conducted by the
17 OEE that is necessary for the detection and pros-
18 ecution of violations of this Act—

19 (A) funds made available for export en-
20 forcement under this Act may be used to pur-
21 chase property, buildings, and other facilities,
22 and to lease equipment, conveyances, and space
23 within the United States, without regard to sec-
24 tions 1341 and 3324 of title 31, United States
25 Code, the third undesignated paragraph under

1 the heading of “miscellaneous” of the Act of
2 March 3, 1877, (40 U.S.C. 34), sections
3 3732(a) and 3741 of the Revised Statutes of
4 the United States (41 U.S.C. 11(a) and 22),
5 subsections (a) and (c) of section 304 of the
6 Federal Property and Administrative Services
7 Act of 1949 (41 U.S.C. 254 (a) and (c)), and
8 section 305 of the Federal Property and Ad-
9 ministrative Services Act of 1949 (41 U.S.C.
10 255);

11 (B) funds made available for export en-
12 forcement under this Act may be used to estab-
13 lish or to acquire proprietary corporations or
14 business entities as part of an undercover oper-
15 ation, and to operate such corporations or busi-
16 ness entities on a commercial basis, without re-
17 gard to sections 1341, 3324, and 9102 of title
18 31, United States Code;

19 (C) funds made available for export en-
20 forcement under this Act and the proceeds from
21 undercover operations may be deposited in
22 banks or other financial institutions without re-
23 gard to the provisions of section 648 of title 18,
24 United States Code, and section 3302 of title
25 31, United States Code; and

1 (D) the proceeds from undercover oper-
2 ations may be used to offset necessary and rea-
3 sonable expenses incurred in such operations
4 without regard to the provisions of section 3302
5 of title 31, United States Code,
6 if the Director of OEE (or an officer or employee
7 designated by the Director) certifies, in writing, that
8 the action authorized by subparagraph (A), (B), (C),
9 or (D) for which the funds would be used is nec-
10 essary for the conduct of the undercover operation.

11 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
12 corporation or business entity established or ac-
13 quired as part of an undercover operation has a net
14 value of more than \$250,000 and is to be liquidated,
15 sold, or otherwise disposed of, the Director of OEE
16 shall report the circumstances to the Secretary and
17 the Comptroller General of the United States as
18 much in advance of such disposition as the Director
19 of the OEE (or the Director's designee) determines
20 is practicable. The proceeds of the liquidation, sale,
21 or other disposition, after obligations incurred by the
22 corporation or business enterprise are met, shall be
23 deposited in the Treasury of the United States as
24 miscellaneous receipts. Any property or equipment
25 purchased pursuant to paragraph (1) may be re-

1 tained for subsequent use in undercover operations
2 under this section. When such property or equip-
3 ment is no longer needed, it shall be considered sur-
4 plus and disposed of as surplus government prop-
5 erty.

6 (3) DEPOSIT OF PROCEEDS.—As soon as the
7 proceeds from an OEE undercover investigative op-
8 eration with respect to which an action is authorized
9 and carried out under this subsection are no longer
10 needed for the conduct of such operation, the pro-
11 ceeds or the balance of the proceeds remaining at
12 the time shall be deposited into the Treasury of the
13 United States as miscellaneous receipts.

14 (4) AUDIT AND REPORT.—

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

23 (B) REPORT.—The Secretary shall submit
24 annually to Congress a report, which may be in-

1 cluded in the annual report under section 701,
2 specifying the following information:

3 (i) The number of undercover inves-
4 tigative operations pending as of the end of
5 the period for which such report is sub-
6 mitted.

7 (ii) The number of undercover inves-
8 tigative operations commenced in the 1-
9 year period preceding the period for which
10 such report is submitted.

11 (iii) The number of undercover inves-
12 tigative operations closed in the 1-year pe-
13 riod preceding the period for which such
14 report is submitted and, with respect to
15 each such closed undercover operation, the
16 results obtained and any civil claims made
17 with respect to the operation.

18 (5) DEFINITIONS.—For purposes of paragraph

19 (4)—

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

1 activities pursuant to such operation are con-
2 cluded, whichever occurs later; and

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

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

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

16 (e) WIRETAPS.—

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

21 (2) CONFORMING AMENDMENT.—Section
22 2516(1) of title 18, United States Code, is amended
23 by adding at the end the following:

1 “(q)(i) any violation of, or conspiracy to
2 violate, the Export Administration Act of 2001
3 or the Export Administration Act of 1979.”.

4 (f) POST-SHIPMENT VERIFICATION.—The Secretary
5 shall target post-shipment verifications to exports involv-
6 ing the greatest risk to national security.

7 (g) REFUSAL TO ALLOW POST-SHIPMENT
8 VERIFICATION.—

9 (1) IN GENERAL.—If an end-user refuses to
10 allow post-shipment verification of a controlled item,
11 the Secretary shall deny a license for the export of
12 any controlled item to such end-user until such post-
13 shipment verification occurs.

14 (2) RELATED PERSONS.—The Secretary may
15 exercise the authority under paragraph (1) with re-
16 spect to any person related through affiliation, own-
17 ership, control, or position of responsibility, to any
18 end-user refusing to allow post-shipment verification
19 of a controlled item.

20 (3) REFUSAL BY COUNTRY.—If the country in
21 which the end-user is located refuses to allow post-
22 shipment verification of a controlled item, the Sec-
23 retary may deny a license for the export of that
24 item, any substantially identical or directly competi-
25 tive item or class of items, any item that the Sec-

1 retary determines to be of equal or greater sensi-
2 tivity than the controlled item, or any controlled
3 item for which a determination has not been made
4 pursuant to section 211 to all end-users in that
5 country until such post-shipment verification is al-
6 lowed.

7 (h) FREIGHT FORWARDERS BEST PRACTICES PRO-
8 GRAM AUTHORIZATION.—There is authorized to be appro-
9 priated for the Department of Commerce \$3,500,000 and
10 such sums as may be necessary, to be available until ex-
11 pended, to hire 20 additional employees to assist United
12 States freight forwarders and other interested persons in
13 developing and implementing, on a voluntary basis, a
14 “best practices” program to ensure that exports of con-
15 trolled items are undertaken in compliance with this Act.

16 (i) END-USE VERIFICATION AUTHORIZATION.—

17 (1) IN GENERAL.—There is authorized to be
18 appropriated for the Department of Commerce
19 \$4,500,000 and such sums as may be necessary, to
20 be available until expended, to hire 10 additional
21 overseas investigators to be posted in the People’s
22 Republic of China, the Russian Federation, the
23 Hong Kong Special Administrative Region, the Re-
24 public of India, Singapore, Egypt, and Taiwan, or
25 any other place the Secretary deems appropriate, for

1 the purpose of verifying the end use of high-risk,
2 dual-use technology.

3 (2) REPORT.—Not later than 2 years after the
4 date of enactment of this Act and annually there-
5 after, the Department shall, in its annual report to
6 Congress on export controls, include a report on the
7 effectiveness of the end-use verification activities au-
8 thorized under subsection (a). The report shall in-
9 clude the following information:

10 (A) The activities of the overseas investiga-
11 tors of the Department.

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

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

17 (3) ENHANCEMENTS.—In addition to the au-
18 thorization provided in paragraph (1), there is au-
19 thorized to be appropriated for the Department of
20 Commerce \$5,000,000, to be available until ex-
21 pended, to enhance its program for verifying the end
22 use of items subject to controls under this Act.

23 (j) ENHANCED COOPERATION WITH UNITED STATES
24 CUSTOMS SERVICE.—Consistent with the purposes of this
25 Act, the Secretary is authorized to undertake, in coopera-

tion with the United States Customs Service, such measures as may be necessary or required to enhance the ability of the United States to detect unlawful exports and to enforce violations of this Act.

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

(l) AUTHORIZATION FOR EXPORT LICENSING AND ENFORCEMENT COMPUTER SYSTEM.—There is authorized to be appropriated for the Department \$5,000,000 and such other sums as may be necessary, to be available until expended, for planning, design, and procurement of a computer system to replace the Department's primary export licensing and computer enforcement system.

(m) AUTHORIZATION FOR BUREAU OF EXPORT ADMINISTRATION.—The Secretary may authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement in accordance with section 9703 of title 31, United States Code (as added by Public Law 102–393). The Secretary may also authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made

1 available to the Bureau of Export Administration as a re-
2 imbursement from the Department of Justice Assets For-
3 feiture Fund in accordance with section 524 of title 28,
4 United States Code. Such funds shall be deposited in an
5 account and shall remain available until expended.

6 (n) AMENDMENTS TO TITLE 31.—

7 (1) Section 9703(a) of title 31, United States
8 Code (as added by Public Law 102–393) is amended
9 by striking “or the United States Coast Guard” and
10 inserting “, the United States Coast Guard, or the
11 Bureau of Export Administration of the Department
12 of Commerce”.

13 (2) Section 9703(a)(2)(B)(i) of title 31, United
14 States Code is amended (as added by Public Law
15 102–393)—

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

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

20 (C) by inserting at the end, the following
21 new subclause:

22 “(III) a violation of the Export
23 Administration Act of 1979, the Ex-
24 port Administration Act of 2001, or

1 any regulation, license, or order issued
2 under those Acts;”.

3 (3) Section 9703(p)(1) of title 31, United
4 States Code (as added by Public Law 102–393) is
5 amended by adding at the end the following: “In ad-
6 dition, for purposes of this section, the Bureau of
7 Export Administration of the Department of Com-
8 merce shall be considered to be a Department of the
9 Treasury law enforcement organization.”.

10 (o) AUTHORIZATION FOR LICENSE REVIEW OFFI-
11 CERS.—

12 (1) IN GENERAL.—There is authorized to be
13 appropriated to the Department of Commerce
14 \$2,000,000, to be available until expended, to hire
15 additional license review officers.

16 (2) TRAINING.—There is authorized to be ap-
17 propriated to the Department of Commerce
18 \$2,000,000, to be available until expended, to con-
19 duct professional training of license review officers,
20 auditors, and investigators conducting post-shipment
21 verification checks. These funds shall be used to—

22 (A) train and certify, through a formal
23 program, new employees entering these posi-
24 tions for the first time; and

1 (B) the ongoing professional training of ex-
2 perience employees on an as needed basis.

3 (p) AUTHORIZATION.—

4 (1) IN GENERAL.—There are authorized to be
5 appropriated to the Department of Commerce to
6 carry out the purposes of this Act—

7 (A) \$72,000,000 for the fiscal year 2002,
8 of which no less than \$27,701,000 shall be used
9 for compliance and enforcement activities;

10 (B) \$73,000,000 for the fiscal year 2003,
11 of which no less than \$28,312,000 shall be used
12 for compliance and enforcement activities;

13 (C) \$74,000,000 for the fiscal year 2004,
14 of which no less than \$28,939,000 shall be used
15 for compliance and enforcement activities;

16 (D) \$76,000,000 for the fiscal year 2005,
17 of which no less than \$29,582,000 shall be used
18 for compliance and enforcement activities; and

19 (E) such additional amounts, for each such
20 fiscal year, as may be necessary for increases in
21 salary, pay, retirement, other employee benefits
22 authorized by law, and other nondiscretionary
23 costs.

1 (2) LIMITATION.—The authority granted by
2 this Act shall terminate on September 30, 2004, un-
3 less the President carries out the following duties:

4 (A) Provides to Congress a detailed report
5 on—

6 (i) the implementation and operation
7 of this Act; and

8 (ii) the operation of United States ex-
9 port controls in general.

10 (B)(i) Provides to Congress legislative re-
11 form proposals in connection with the report
12 described in subparagraph (A); or

13 (ii) certifies to Congress that no legislative
14 reforms are necessary in connection with such
15 report.

16 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

17 (a) EXEMPTIONS FROM ADMINISTRATIVE PROCE-
18 DURE.—Except as provided in this section, the functions
19 exercised under this Act are excluded from the operation
20 of sections 551, 553 through 559, and 701 through 706
21 of title 5, United States Code.

22 (b) PROCEDURES RELATING TO CIVIL PENALTIES
23 AND SANCTIONS.—

24 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
25 ministrative sanction imposed under section 503

1 may be imposed only after notice and opportunity
2 for an agency hearing on the record in accordance
3 with sections 554 through 557 of title 5, United
4 States Code. The imposition of any such administra-
5 tive sanction shall be subject to judicial review in ac-
6 cordance with sections 701 through 706 of title 5,
7 United States Code, except that the review shall be
8 initiated in the United States Court of Appeals for
9 the District of Columbia Circuit, which shall have
10 jurisdiction of the review.

11 (2) AVAILABILITY OF CHARGING LETTER.—Any
12 charging letter or other document initiating adminis-
13 trative proceedings for the imposition of sanctions
14 for violations of the regulations issued under section
15 502 shall be made available for public inspection and
16 copying.

17 (c) COLLECTION.—If any person fails to pay a civil
18 penalty imposed under section 503, the Secretary may ask
19 the Attorney General to commence a civil action in an ap-
20 propriate district court of the United States to recover the
21 amount imposed (plus interest at currently prevailing
22 rates from the date of the final order). No such action
23 may be commenced more than 5 years after the order im-
24 posing the civil penalty becomes final. In such an action,

1 the validity, amount, and appropriateness of such penalty
2 shall not be subject to review.

3 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

4 (1) GROUNDS FOR IMPOSITION.—In any case in
5 which there is reasonable cause to believe that a per-
6 son is engaged in or is about to engage in any act
7 or practice which constitutes or would constitute a
8 violation of this Act, or any regulation, order, or li-
9 cense issued under this Act, including any diversion
10 of goods or technology from an authorized end use
11 or end user, and in any case in which a criminal in-
12 dictment has been returned against a person alleging
13 a violation of this Act or any of the statutes listed
14 in section 503, the Secretary may, without a hear-
15 ing, issue an order temporarily denying that person's
16 United States export privileges (hereafter in this
17 subsection referred to as a “temporary denial
18 order”). A temporary denial order shall be effective
19 for such period (not in excess of 180 days) as the
20 Secretary specifies in the order, but may be renewed
21 by the Secretary, following notice and an oppor-
22 tunity for a hearing, for additional periods of not
23 more than 180 days each.

24 (2) ADMINISTRATIVE APPEALS.—The person or
25 persons subject to the issuance or renewal of a tem-

1 porary denial order may appeal the issuance or re-
2 newal of the temporary denial order, supported by
3 briefs and other material, to an administrative law
4 judge who shall, within 15 working days after the
5 appeal is filed, issue a decision affirming, modifying,
6 or vacating the temporary denial order. The tem-
7 porary denial order shall be affirmed if it is shown
8 that—

9 (A) there is reasonable cause to believe
10 that the person subject to the order is engaged
11 in or is about to engage in any act or practice
12 that constitutes or would constitute a violation
13 of this Act, or any regulation, order, or license
14 issued under this Act; or

15 (B) a criminal indictment has been re-
16 turned against the person subject to the order
17 alleging a violation of this Act or any of the
18 statutes listed in section 503.

19 The decision of the administrative law judge shall be
20 final unless, within 10 working days after the date
21 of the administrative law judge's decision, an appeal
22 is filed with the Secretary. On appeal, the Secretary
23 shall either affirm, modify, reverse, or vacate the de-
24 cision of the administrative law judge by written
25 order within 10 working days after receiving the ap-

1 peal. The written order of the Secretary shall be
2 final and is not subject to judicial review, except as
3 provided in paragraph (3). The materials submitted
4 to the administrative law judge and the Secretary
5 shall constitute the administrative record for pur-
6 poses of review by the court.

7 (3) COURT APPEALS.—An order of the Sec-
8 retary affirming, in whole or in part, the issuance or
9 renewal of a temporary denial order may, within 15
10 days after the order is issued, be appealed by a per-
11 son subject to the order to the United States Court
12 of Appeals for the District of Columbia Circuit,
13 which shall have jurisdiction of the appeal. The
14 court may review only those issues necessary to de-
15 termine whether the issuance of the temporary de-
16 nial order was based on reasonable cause to believe
17 that the person subject to the order was engaged in
18 or was about to engage in any act or practice that
19 constitutes or would constitute a violation of this
20 title, or any regulation, order, or license issued
21 under this Act, or whether a criminal indictment has
22 been returned against the person subject to the
23 order alleging a violation of this Act or of any of the
24 statutes listed in section 503. The court shall vacate
25 the Secretary's order if the court finds that the Sec-

1 retary's order is arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with law.

3 (e) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-
4 MATION.—Any classified information that is included in
5 the administrative record that is subject to review pursu-
6 ant to subsection (b)(1) or (d)(3) may be reviewed by the
7 court only on an ex parte basis and in camera.

8 **TITLE VI—EXPORT CONTROL** 9 **AUTHORITY AND REGULATIONS**

10 **SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-** 11 **TIONS.**

12 (a) EXPORT CONTROL AUTHORITY.—

13 (1) IN GENERAL.—Unless otherwise reserved to
14 the President or a department (other than the De-
15 partment) or agency of the United States, all power,
16 authority, and discretion conferred by this Act shall
17 be exercised by the Secretary.

18 (2) DELEGATION OF FUNCTIONS OF THE SEC-
19 RETARY.—The Secretary may delegate any function
20 under this Act, unless otherwise provided, to the
21 Under Secretary of Commerce for Export Adminis-
22 tration or to any other officer of the Department.

23 (b) UNDER SECRETARY OF COMMERCE; ASSISTANT
24 SECRETARIES.—

1 (1) UNDER SECRETARY OF COMMERCE.—There
2 shall be within the Department an Under Secretary
3 of Commerce for Export Administration (in this sec-
4 tion referred to as the “Under Secretary”) who shall
5 be appointed by the President, by and with the ad-
6 vice and consent of the Senate. The Under Secretary
7 shall carry out all functions of the Secretary under
8 this Act and other provisions of law relating to na-
9 tional security, as the Secretary may delegate.

10 (2) ADDITIONAL ASSISTANT SECRETARIES.—In
11 addition to the number of Assistant Secretaries oth-
12 erwise authorized for the Department of Commerce,
13 there shall be within the Department of Commerce
14 the following Assistant Secretaries of Commerce:

15 (A) An Assistant Secretary for Export Ad-
16 ministration who shall be appointed by the
17 President, by and with the advice and consent
18 of the Senate, and who shall assist the Sec-
19 retary and the Under Secretary in carrying out
20 functions relating to export listing and licens-
21 ing.

22 (B) An Assistant Secretary for Export En-
23 forcement who shall be appointed by the Presi-
24 dent, by and with the advice and consent of the
25 Senate, and who shall assist the Secretary and

1 the Under Secretary in carrying out functions
2 relating to export enforcement.

3 (c) ISSUANCE OF REGULATIONS.—

4 (1) IN GENERAL.—The President and the Sec-
5 retary may issue such regulations as are necessary
6 to carry out this Act. Any such regulations the pur-
7 pose of which is to carry out title II or title III may
8 be issued only after the regulations are submitted
9 for review to such departments or agencies as the
10 President considers appropriate. The Secretary shall
11 consult with the appropriate export control advisory
12 committee appointed under section 105(a) in formu-
13 lating regulations under this title. The second sen-
14 tence of this subsection does not require the concur-
15 rence or approval of any official, department, or
16 agency to which such regulations are submitted.

17 (2) AMENDMENTS TO REGULATIONS.—If the
18 Secretary proposes to amend regulations issued
19 under this Act, the Secretary shall report to the
20 Committee on Banking, Housing, and Urban Affairs
21 of the Senate and the Committee on International
22 Relations of the House of Representatives on the in-
23 tent and rationale of such amendments. Such report
24 shall evaluate the cost and burden to the United
25 States exporters of the proposed amendments in re-

1 lation to any enhancement of licensing objectives.
2 The Secretary shall consult with the appropriate ex-
3 port control advisory committees appointed under
4 section 105(a) in amending regulations issued under
5 this Act.

6 **SEC. 602. CONFIDENTIALITY OF INFORMATION.**

7 (a) EXEMPTIONS FROM DISCLOSURE.—

8 (1) INFORMATION OBTAINED ON OR BEFORE
9 JUNE 30, 1980.—Except as otherwise provided by the
10 third sentence of section 502(c)(2) and by section
11 507(b)(2), information obtained under the Export
12 Administration Act of 1979, or any predecessor stat-
13 ute, on or before June 30, 1980, which is deemed
14 confidential, including Shipper's Export Declara-
15 tions, or with respect to which a request for con-
16 fidential treatment is made by the person furnishing
17 such information, shall not be subject to disclosure
18 under section 552 of title 5, United States Code,
19 and such information shall not be published or dis-
20 closed, unless the Secretary determines that the
21 withholding thereof is contrary to the national inter-
22 est.

23 (2) INFORMATION OBTAINED AFTER JUNE 30,
24 1980.—Except as otherwise provided by the third
25 sentence of section 502(c)(2) and by section

1 507(b)(2), information obtained under this Act,
2 under the Export Administration Act of 1979 after
3 June 30, 1980, or under the Export Administration
4 regulations as maintained and amended under the
5 authority of the International Emergency Economic
6 Powers Act (50 U.S.C. 1706), may be withheld from
7 disclosure only to the extent permitted by statute,
8 except that information submitted, obtained, or con-
9 sidered in connection with an application for an ex-
10 port license or other export authorization (or record-
11 keeping or reporting requirement), enforcement ac-
12 tivity, or other operations under the Export Admin-
13 istration Act of 1979, under this Act, or under the
14 Export Administration regulations as maintained
15 and amended under the authority of the Inter-
16 national Emergency Economic Powers Act (50
17 U.S.C. 1706), including—

18 (A) the export license or other export au-
19 thorization itself,

20 (B) classification requests described in sec-
21 tion 401(h),

22 (C) information or evidence obtained in the
23 course of any investigation by an employee or
24 officer of the Department of Commerce,

1 (D) information obtained or furnished
2 under title V in connection with any inter-
3 national agreement, treaty, or other obligation,
4 and

5 (E) information obtained in making the
6 determinations set forth in section 211 of this
7 Act,

8 and information obtained in any investigation of an
9 alleged violation of section 502 of this Act except for
10 information required to be disclosed by section
11 502(c)(2) or 507(b)(2) of this Act, shall be withheld
12 from public disclosure and shall not be subject to
13 disclosure under section 552 of title 5, United States
14 Code, unless the release of such information is deter-
15 mined by the Secretary to be in the national inter-
16 est.

17 (b) INFORMATION TO CONGRESS AND GAO.—

18 (1) IN GENERAL.—Nothing in this title shall be
19 construed as authorizing the withholding of informa-
20 tion from Congress or from the General Accounting
21 Office.

22 (2) AVAILABILITY TO THE CONGRESS—

23 (A) IN GENERAL.—Any information ob-
24 tained at any time under this title or under any
25 predecessor Act regarding the control of ex-

1 ports, including any report or license applica-
2 tion required under this title, shall be made
3 available to any committee or subcommittee of
4 Congress of appropriate jurisdiction upon the
5 request of the chairman or ranking minority
6 member of such committee or subcommittee.

7 (B) PROHIBITION ON FURTHER DISCLO-
8 SURE.—No committee, subcommittee, or Mem-
9 ber of Congress shall disclose any information
10 obtained under this Act or any predecessor Act
11 regarding the control of exports which is sub-
12 mitted on a confidential basis to the Congress
13 under subparagraph (A) unless the full com-
14 mittee to which the information is made avail-
15 able determines that the withholding of the in-
16 formation is contrary to the national interest.

17 (3) AVAILABILITY TO THE GAO.—

18 (A) IN GENERAL.—Notwithstanding sub-
19 section (a), information described in paragraph
20 (2) shall, consistent with the protection of intel-
21 ligence, counterintelligence, and law enforce-
22 ment sources, methods, and activities, as deter-
23 mined by the agency that originally obtained
24 the information, and consistent with the provi-
25 sions of section 716 of title 31, United States

1 Code, be made available only by the agency,
2 upon request, to the Comptroller General of the
3 United States or to any officer or employee of
4 the General Accounting Office authorized by
5 the Comptroller General to have access to such
6 information.

7 (B) PROHIBITION ON FURTHER DISCLO-
8 SURES.—No officer or employee of the General
9 Accounting Office shall disclose, except to Con-
10 gress in accordance with this paragraph, any
11 such information which is submitted on a con-
12 fidential basis and from which any individual
13 can be identified.

14 (c) INFORMATION EXCHANGE.—Notwithstanding
15 subsection (a), the Secretary and the Commissioner of
16 Customs shall exchange licensing and enforcement infor-
17 mation with each other as necessary to facilitate enforce-
18 ment efforts and effective license decisions.

19 (d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL
20 INFORMATION.—

21 (1) DISCLOSURE PROHIBITED.—No officer or
22 employee of the United States, or any department or
23 agency thereof, may publish, divulge, disclose, or
24 make known in any manner or to any extent not au-
25 thorized by law any information that—

1 (A) the officer or employee obtains in the
2 course of his or her employment or official du-
3 ties or by reason of any examination or inves-
4 tigation made by, or report or record made to
5 or filed with, such department or agency, or of-
6 ficer or employee thereof; and

7 (B) is exempt from disclosure under this
8 section.

9 (2) CRIMINAL PENALTIES.—Any such officer or
10 employee who knowingly violates paragraph (1) shall
11 be fined not more than \$50,000, imprisoned not
12 more than 1 year, or both, for each violation of
13 paragraph (1). Any such officer or employee may
14 also be removed from office or employment.

15 (3) CIVIL PENALTIES; ADMINISTRATIVE SANC-
16 TIONS.—The Secretary may impose a civil penalty of
17 not more than \$5,000 for each violation of para-
18 graph (1), except that no civil penalty may be im-
19 posed on an officer or employee of the United
20 States, or any department or agency thereof, without
21 the concurrence of the department or agency em-
22 ploying such officer or employee. Sections 503 (e),
23 (g), (h), and (i) and 507 (a), (b), and (c) shall apply
24 to actions to impose civil penalties under this para-
25 graph. At the request of the Secretary, a department

1 or agency employing an officer or employee found to
 2 have violated paragraph (1) shall deny that officer
 3 or employee access to information exempt from dis-
 4 closure under this section. Any officer or employee
 5 who commits a violation of paragraph (1) may also
 6 be removed from office or employment by the em-
 7 ploying agency.

8 **SEC. 603. AGRICULTURAL COMMODITIES, MEDICINE, MED-**
 9 **ICAL DEVICES.**

10 (a) **APPLICABILITY OF TRADE SANCTIONS REFORM**
 11 **AND EXPORT ENHANCEMENT ACT OF 2000.**—Nothing in
 12 this Act authorizes the exercise of authority contrary to
 13 the provisions of the Trade Sanctions Reform and Export
 14 Enhancement Act of 2000 (Public Law 106–387; 114
 15 Stat. 1549, 549A–45) applicable to exports of agricultural
 16 commodities, medicine, or medical devices.

17 (b) **TITLE II LIMITATION.**—Title II does not author-
 18 ize export controls on food.

19 (c) **TITLE III LIMITATION.**—Except as set forth in
 20 section 906 of the Trade Sanctions Reform and Export
 21 Enhancement Act of 2000, title III does not authorize ex-
 22 port controls on agricultural commodities, medicine, or
 23 medical devices unless the procedures set forth in section
 24 903 of such Act are complied with.

1 (d) DEFINITION.—In this section, the term “food”
2 has the same meaning as that term has under section
3 201(f) of the Federal Food, Drug, and Cosmetic Act (21
4 U.S.C. 321(f)).

5 **TITLE VII—MISCELLANEOUS** 6 **PROVISIONS**

7 **SEC. 701. ANNUAL REPORT.**

8 (a) ANNUAL REPORT.—Not later than February 1 of
9 each year, the Secretary shall submit to Congress a report
10 on the administration of this Act during the fiscal year
11 ending September 30 of the preceding calendar year. All
12 Federal agencies shall cooperate fully with the Secretary
13 in providing information for each such report.

14 (b) REPORT ELEMENTS.—Each such report shall in-
15 clude in detail—

16 (1) a description of the implementation of the
17 export control policies established by this Act, in-
18 cluding any delegations of authority by the President
19 and any other changes in the exercise of delegated
20 authority;

21 (2) a description of the changes to and the
22 year-end status of country tiering and the Control
23 List;

24 (3) a description of the petitions filed and the
25 determinations made with respect to foreign avail-

1 ability and mass-market status, the set-asides of for-
2 eign availability and mass-market status determina-
3 tions, and negotiations to eliminate foreign avail-
4 ability;

5 (4) a description of any enhanced control im-
6 posed on an item pursuant to section 201(d);

7 (5) a description of the regulations issued under
8 this Act;

9 (6) a description of organizational and proce-
10 dural changes undertaken in furtherance of this Act;

11 (7) a description of the enforcement activities,
12 violations, and sanctions imposed under this Act;

13 (8) a statistical summary of all applications and
14 notifications, including—

15 (A) the number of applications and notifi-
16 cations pending review at the beginning of the
17 fiscal year;

18 (B) the number of notifications returned
19 and subject to full license procedure;

20 (C) the number of notifications with no ac-
21 tion required;

22 (D) the number of applications that were
23 approved, denied, or withdrawn, and the num-
24 ber of applications where final action was
25 taken; and

1 (E) the number of applications and notifi-
2 cations pending review at the end of the fiscal
3 year;

4 (9) summary of export license data by export
5 identification code and dollar value by country;

6 (10) an identification of processing time by—

7 (A) overall average, and

8 (B) top 25 export identification codes;

9 (11) an assessment of the effectiveness of mul-
10 tilateral regimes, and a description of negotiations
11 regarding export controls;

12 (12) a description of the significant differences
13 between the export control requirements of the
14 United States and those of other multilateral control
15 regime members, and the specific differences be-
16 tween United States requirements and those of other
17 significant supplier countries;

18 (13) an assessment of the costs of export con-
19 trols;

20 (14) a description of the progress made toward
21 achieving the goals established for the Department
22 dealing with export controls under the Government
23 Performance Results Act;

24 (15) a description of the assessment made pur-
25 suant to section 214, including any recommenda-

1 tions to ensure that the defense industrial base (in-
 2 cluding manufacturing) is sufficient to protect na-
 3 tional security; and

4 (16) any other reports required by this Act to
 5 be submitted to the Committee on Banking, Hous-
 6 ing, and Urban Affairs of the Senate and the Com-
 7 mittee on International Relations of the House of
 8 Representatives.

9 (c) **FEDERAL REGISTER PUBLICATION REQUIRE-**
 10 **MENTS.**—Whenever information under this Act is required
 11 to be published in the Federal Register, such information
 12 shall, in addition, be posted on the Department of Com-
 13 merce or other appropriate government website.

14 **SEC. 702. TECHNICAL AND CONFORMING AMENDMENTS.**

15 (a) **REPEAL.**—The Export Administration Act of
 16 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

17 (b) **ENERGY POLICY AND CONSERVATION ACT.**—

18 (1) Section 103 of the Energy Policy and Con-
 19 servation Act (42 U.S.C. 6212) is repealed.

20 (2) Section 251(d) of the Energy Policy and
 21 Conservation Act (42 U.S.C. 6271(d)) is repealed.

22 (c) **ALASKA NATURAL GAS TRANSPORTATION ACT.**—
 23 Section 12 of the Alaska Natural Gas Transportation Act
 24 of 1976 (15 U.S.C. 719j) is repealed.

1 (d) MINERAL LEASING ACT.—Section 28(u) of the
2 Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

3 (e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Sec-
4 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))
5 is repealed.

6 (f) DISPOSITION OF CERTAIN NAVAL PETROLEUM
7 RESERVE PRODUCTS.—Section 7430(e) of title 10, United
8 States Code, is repealed.

9 (g) OUTER CONTINENTAL SHELF LANDS ACT.—Sec-
10 tion 28 of the Outer Continental Shelf Lands Act (43
11 U.S.C. 1354) is repealed.

12 (h) ARMS EXPORT CONTROL ACT.—

13 (1) Section 38 of the Arms Export Control Act
14 (22 U.S.C. 2778) is amended—

15 (A) in subsection (e)—

16 (i) in the first sentence, by striking
17 “subsections (c)” and all that follows
18 through “12 of such Act,” and inserting
19 “subsections (b), (c), (d) and (e) of section
20 503 of the Export Administration Act of
21 2001, by subsections (a) and (b) of section
22 506 of such Act, and by section 602 of
23 such Act,”; and

24 (ii) in the third sentence, by striking
25 “11(c) of the Export Administration Act of

1 1979” and inserting “503(c) of the Export
2 Administration Act of 2001”; and

3 (B) in subsection (g)(1)(A)(ii), by inserting
4 “or section 503 of the Export Administration
5 Act of 2001” after “1979”.

6 (2) Section 39A(c) of the Arms Export Control
7 Act (22 U.S.C. 2779a(c)) is amended—

8 (A) by striking “subsections (c),” and all
9 that follows through “12(a) of such Act” and
10 inserting “subsections (c), (d), and (e) of sec-
11 tion 503, section 507(c), and subsections (a)
12 and (b) of section 506, of the Export Adminis-
13 tration Act of 2001”; and

14 (B) by striking “11(c)” and inserting
15 “503(c)”.

16 (3) Section 40(k) of the Arms Export Control
17 Act (22 U.S.C. 2780(k)) is amended—

18 (A) by striking “11(c), 11(e), 11(g), and
19 12(a) of the Export Administration Act of
20 1979” and inserting “503(b), 503(c), 503(e),
21 506(a), and 506(b) of the Export Administra-
22 tion Act of 2001”; and

23 (B) by striking “11(c)” and inserting
24 “503(c)”.

25 (i) OTHER PROVISIONS OF LAW.—

1 (1) Section 5(b)(4) of the Trading with the
2 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by
3 striking “section 5 of the Export Administration Act
4 of 1979, or under section 6 of that Act to the extent
5 that such controls promote the nonproliferation or
6 antiterrorism policies of the United States” and in-
7 serting “titles II and III of the Export Administra-
8 tion Act of 2001”.

9 (2) Section 502B(a)(2) of the Foreign Assist-
10 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
11 ed in the second sentence—

12 (A) by striking “Export Administration
13 Act of 1979” the first place it appears and in-
14 serting “Export Administration Act of 2001”;
15 and

16 (B) by striking “Act of 1979)” and insert-
17 ing “Act of 2001)”.

18 (3) Section 140(a) of the Foreign Relations Au-
19 thorization Act, Fiscal Years 1988 and 1989 (22
20 U.S.C. 2656f(a)) is amended—

21 (A) in paragraph (1)(B), by inserting “or
22 section 310 of the Export Administration Act of
23 2001” after “Act of 1979”; and

24 (B) in paragraph (2), by inserting “or 310
25 of the Export Administration Act of 2001”

1 after “6(j) of the Export Administration Act of
2 1979”.

3 (4) Section 40(e)(1) of the State Department
4 Basic Authorities Act of 1956 (22 U.S.C.
5 2712(e)(1)) is amended by striking “section 6(j)(1)
6 of the Export Administration Act of 1979” and in-
7 serting “section 310 of the Export Administration
8 Act of 2001”.

9 (5) Section 205(d)(4)(B) of the State Depart-
10 ment Basic Authorities Act of 1956 (22 U.S.C.
11 305(d)(4)(B)) is amended by striking “section 6(j)
12 of the Export Administration Act of 1979” and in-
13 serting “section 310 of the Export Administration
14 Act of 2001”.

15 (6) Section 110 of the International Security
16 and Development Cooperation Act of 1980 (22
17 U.S.C. 2778a) is amended by striking “Act of
18 1979” and inserting “Act of 2001”.

19 (7) Section 203(b)(3) of the International
20 Emergency Economic Powers Act (50 U.S.C.
21 1702(b)(3)) is amended by striking “section 5 of the
22 Export Administration Act of 1979, or under section
23 6 of such Act to the extent that such controls pro-
24 mote the nonproliferation or antiterrorism policies of

1 the United States” and inserting “the Export Ad-
2 ministration Act of 2001”.

3 (8) Section 1605(a)(7)(A) of title 28, United
4 States Code, is amended by striking “section 6(j) of
5 the Export Administration Act of 1979 (50 U.S.C.
6 App. 2405(j))” and inserting “section 310 of the
7 Export Administration Act of 2001”.

8 (9) Section 2332d(a) of title 18, United States
9 Code, is amended by striking “section 6(j) of the
10 Export Administration Act of 1979 (50 U.S.C. App.
11 2405)” and inserting “section 310 of the Export Ad-
12 ministration Act of 2001”.

13 (10) Section 620H(a)(1) of the Foreign Assist-
14 ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-
15 ed by striking “section 6(j) of the Export Adminis-
16 tration Act of 1979 (50 U.S.C. App. 2405(j))” and
17 inserting “section 310 of the Export Administration
18 Act of 2001”.

19 (11) Section 1621(a) of the International Fi-
20 nancial Institutions Act (22 U.S.C. 262p–4q(a)) is
21 amended by striking “section 6(j) of the Export Ad-
22 ministration Act of 1979 (50 U.S.C. App. 2405(j))”
23 and inserting “section 310 of the Export Adminis-
24 tration Act of 2001”.

1 (12) Section 1956(c)(7)(D) of title 18, United
 2 States Code, is amended by striking “section 11 (re-
 3 lating to violations) of the Export Administration of
 4 1979” and inserting “section 503 (relating to pen-
 5 alties) of the Export Administration Act of 2001”.

6 (13) Section 904(2)(B) of the Trade Sanctions
 7 Reform and Export Enhancement Act of 2000 is
 8 amended by striking “Export Administration Act of
 9 1979” and inserting “Export Administration Act of
 10 2001”.

11 (14) Section 983(i)(2) of title 18, United States
 12 Code (as added by Public Law 106–185), is
 13 amended—

14 (A) by striking the “or” at the end of sub-
 15 paragraph (D);

16 (B) by striking the period at the end of
 17 subparagraph (E) and inserting “; or”; and

18 (C) by inserting the following new subpara-
 19 graph:

20 “(F) the Export Administration Act of
 21 2001.”.

22 (j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding
 23 any other provision of law, any product that is standard
 24 equipment, certified by the Federal Aviation Administra-
 25 tion, in civil aircraft, and is an integral part of such air-

1 craft, shall be subject to export control only under this
2 Act. Any such product shall not be subject to controls
3 under section 38(b)(2) of the Arms Export Control Act
4 (22 U.S.C. 2778(b)).

5 (k) CIVIL AIRCRAFT SAFETY.—Notwithstanding any
6 other provision of law, the Secretary may authorize, on
7 a case-by-case basis, exports and reexports of civil aircraft
8 equipment and technology that are necessary for compli-
9 ance with flight safety requirements for commercial pas-
10 senger aircraft. Flight safety requirements are defined as
11 airworthiness directives issued by the Federal Aviation
12 Administration (FAA) or equipment manufacturers' main-
13 tenance instructions or bulletins approved or accepted by
14 the FAA for the continued airworthiness of the manufac-
15 turers' products.

16 (l) REPEAL OF CERTAIN EXPORT CONTROLS.—Sub-
17 title B of title XII of division A of the National Defense
18 Authorization Act for Fiscal Year 1998 (50 U.S.C. App.
19 2404 note) is repealed.

20 **SEC. 703. SAVINGS PROVISIONS.**

21 (a) IN GENERAL.—All delegations, rules, regulations,
22 orders, determinations, licenses, or other forms of admin-
23 istrative action which have been made, issued, conducted,
24 or allowed to become effective under—

1 (1) the Export Control Act of 1949, the Export
 2 Administration Act of 1969, the Export Administra-
 3 tion Act of 1979, or the International Emergency
 4 Economic Powers Act when invoked to maintain and
 5 continue the Export Administration regulations, or

6 (2) those provisions of the Arms Export Control
 7 Act which are amended by section 702,

8 and are in effect on the date of enactment of this Act,
 9 shall continue in effect according to their terms until
 10 modified, superseded, set aside, or revoked under this Act
 11 or the Arms Export Control Act.

12 (b) ADMINISTRATIVE AND JUDICIAL PRO-
 13 CEEDINGS.—

14 (1) EXPORT ADMINISTRATION ACT.—This Act
 15 shall not affect any administrative or judicial pro-
 16 ceedings commenced or any application for a license
 17 made, under the Export Administration Act of 1979
 18 or pursuant to Executive Order 12924, which is
 19 pending at the time this Act takes effect. Any such
 20 proceedings, and any action on such application,
 21 shall continue under the Export Administration Act
 22 of 1979 as if that Act had not been repealed.

23 (2) OTHER PROVISIONS OF LAW.—This Act
 24 shall not affect any administrative or judicial pro-
 25 ceeding commenced or any application for a license

1 made, under those provisions of the Arms Export
2 Control Act which are amended by section 702, if
3 such proceeding or application is pending at the time
4 this Act takes effect. Any such proceeding, and any
5 action on such application, shall continue under
6 those provisions as if those provisions had not been
7 amended by section 702.

8 (c) TREATMENT OF CERTAIN DETERMINATIONS.—

9 Any determination with respect to the government of a
10 foreign country under section 6(j) of the Export Adminis-
11 tration Act of 1979, or Executive Order 12924, that is
12 in effect on the day before the date of enactment of this
13 Act, shall, for purposes of this title or any other provision
14 of law, be deemed to be made under section 310 of this
15 Act until superseded by a determination under such sec-
16 tion 310.

17 (d) LAWFUL INTELLIGENCE ACTIVITIES.—The pro-
18 hibitions otherwise applicable under this Act do not apply
19 with respect to any transaction subject to the reporting
20 requirements of title V of the National Security Act of
21 1947. Notwithstanding any other provision of this Act,
22 nothing shall affect the responsibilities and authorities of
23 the Director of Central Intelligence under section 103 of
24 the National Security Act of 1947.

1 (e) IMPLEMENTATION.—The Secretary shall make
2 any revisions to the Export Administration regulations re-
3 quired by this Act no later than 180 days after the date
4 of enactment of this Act.

Passed the Senate September 6, 2001.

Attest:

Secretary.

107TH CONGRESS
1ST SESSION

S. 149

AN ACT

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

S 149 ES——2

S 149 ES——3

S 149 ES——4

S 149 ES——5

S 149 ES——6

S 149 ES——7

S 149 ES——8

S 149 ES——9

S 149 ES——10

S 149 ES——11

S 149 ES——12

S 149 ES——13

S 149 ES——14

S 149 ES——15