

Mr. STUMP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the motion offered by the gentleman from Arizona [Mr. STUMP] that the House suspend the rules and pass the bill, H.R. 3674, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

## EXPORT ADMINISTRATION ACT OF 1996

Mr. ROTH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 361) to provide authority to control exports, and for other purposes, as amended.

The Clerk read as follows:

H.R. 361

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Table of contents.

#### TITLE I—EXPORT ADMINISTRATION

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#### TITLE II—NUCLEAR PROLIFERATION PREVENTION

- Sec. 201. Repeal of termination of provisions of the Nuclear Proliferation Prevention Act of 1994.
- Sec. 202. Seeking multilateral support for unilateral sanctions.
- Sec. 203. Sanctions under the Nuclear Proliferation Prevention Act of 1994.

#### TITLE I—EXPORT ADMINISTRATION

##### SEC. 101. SHORT TITLE.

This title may be cited as the "Export Administration Act of 1996".

##### SEC. 102. FINDINGS.

The Congress makes the following findings:

(1) Export controls are a part of a comprehensive response to national security threats. United States exports should be restricted only for significant national security, nonproliferation, and foreign policy reasons.

(2) Exports of certain commodities and technology may adversely affect the national security and foreign policy of the United States by making a significant contribution to the military potential of individual countries or by disseminating the capability to design, develop, test, produce, stockpile, or use weapons of mass destruction, missile delivery systems, and other significant military capabilities. Therefore, the administration of export controls should emphasize the control of these exports.

(3) The acquisition of sensitive commodities and technology by those countries and end users whose actions or policies run counter to United States national security or foreign policy interests may enhance the military capabilities of those countries, particularly their ability to design, develop, test, produce, stockpile, use, and deliver nuclear, chemical, and biological weapons, missile delivery systems, and other significant military capabilities. This enhancement threatens the security of the United States and its allies, and places additional demands on the defense budget of the United States. Availability to countries and end users of items that contribute to military capabilities or the proliferation of weapons of mass destruction is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(4) With the growing importance of exports to sustained United States economic growth and vitality, restrictions on exports must be evaluated in terms of their effects on the United States economy.

(5) Export controls cannot be the sole instrument of the United States to prevent a country or end user from developing weapons of mass destruction. For this reason, export controls should be applied as part of a comprehensive response to security threats.

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

(7) International treaties, such as the Chemical Weapons Convention, and international agreements and arrangements intended to control, lessen, or eliminate weapons of mass destruction should be fully implemented by, among other things, imposing restrictions on imports and exports of designated items, monitoring, and transmitting reports on, the production, processing, consumption, export, and import of designated items, and complying with verification regimes mandated by such treaties, agreements, and arrangements.

(8) Except in the event the United States is the sole source of critical supplies, unilateral export controls are generally not truly effective in influencing the behavior of other governments or impeding access to controlled items. Unilateral controls alone may impede access to United States sources of supply without affecting the ability of countries to obtain controlled items elsewhere. Moreover, unilateral controls generally permit foreign competitors to serve markets the United States Government denies to United States firms and workers, thus impairing the reliability of United States suppliers in comparison with their foreign competitors. At the same time, the need to lead the international community or overriding national security or foreign policy interests may justify unilateral controls in specific cases.

(9) The United States recognizes the importance of comprehensive enforcement measures to maximize the effectiveness of multilateral controls.

(10) The United States export control system must not be overly restrictive or bu-

reaucratic, or undermine the competitive position of United States industry. The export control system must be efficient, responsive, transparent, and effective.

(11) Export restrictions that negatively affect the United States industrial base may ultimately weaken United States military capabilities and lead to dependencies on foreign sources for key components.

(12) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(13) Minimization of restrictions on the export of information technology products and services is of critical importance to United States leadership in removing obstacles to the effective development of a superior global information infrastructure and the new jobs and markets, increased trade and information flows, improved national security, and new tools for the improvement of the quality of life for people globally that will be created.

(14) The United States should play a leading role in promoting transparency and responsibility with regard to the transfers of conventional armaments and sensitive dual-use goods and technologies.

### SEC. 103. POLICY STATEMENT.

It is the policy of the United States to do the following:

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

(A) leading international efforts to control the proliferation of chemical and biological weapons, nuclear explosive devices, missile delivery systems, and other significant military capabilities;

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

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

(2) To restrict the export of items—

(A) that would significantly contribute to the military potential of countries so as to prove detrimental to the national security of the United States or its allies; or

(B) where necessary to further significantly the foreign policy of the United States or to fulfill its declared international commitments.

(3) To—

(A) minimize uncertainties in export control policy; and

(B) encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

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

(5) To further increase the reliance of the United States upon multilateral coordination of controls through effective control regimes that maintain lists of controlled items

that are truly critical to the control objectives, strive to increase membership to include all relevant countries, maintain common criteria and procedures for licensing, and harmonize member countries' licensing practices. It is the policy of the United States that multilateral controls are the best means of achieving the control objectives of the United States.

(6) To impose unilateral controls only when it is necessary to further significantly the national security or foreign policy of the United States, and only after full consideration of the economic impact of the controls and their effectiveness in achieving their intended objectives.

(7) To make all licensing determinations in a timely manner so undue delays in the licensing process will not cause a United States person to lose an export sale.

(8) To use export controls to deter and punish acts of international terrorism and to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To this end, consistent with the policies of this section and the provisions of this title, the United States should, by restricting exports to countries that have violated international norms of behavior by repeatedly supporting acts of international terrorism, distance itself from those countries.

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

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

(10) To streamline export control functions and increase administrative accountability, and thereby better serve the exporting public by reducing and eliminating overlapping, conflicting, and inconsistent regulatory burdens.

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

(12) To minimize restrictions on the export of information technology products and services as part of a flexible regulatory environment that can keep pace with the rapid technological changes necessary to realize the full economic, societal, and national security benefits of United States leadership in the development of a superior global information infrastructure.

(13) To cooperate with other countries to promote greater transparency and responsibility with regard to the transfers of armaments and sensitive goods and technologies, both for the purpose of developing common understandings of the risks to international peace and regional security associated with the transfers of such items and to coordinate national control policies to combat those risks.

(14) To enhance the national security and nonproliferation interests of the United States. To this end and consistent with the other policies of this section and the provisions of this title, the United States will use export controls when necessary to ensure that access to weapons of mass destruction, missile delivery systems, and other significant military capabilities is restricted. While the multilateral nonproliferation re-

gimes will be the primary instruments through which the United States will pursue its nonproliferation goals, it may also, consistent with the policies of this section and the provisions of this title, take unilateral action.

(15) To promote international peace, stability, and respect for fundamental human rights. The United States may establish controls on exports that contribute to the military capabilities of countries that threaten international peace or stability or to countries that abuse the fundamental rights of their citizens, or to promote other important foreign policy objectives of the United States, consistent with the policies of this section and the provisions of this title.

#### SEC. 104. GENERAL PROVISIONS.

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

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

(2) MULTIPLE EXPORTS.—Licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of a license for each such export. Licenses under this paragraph shall be designed to encourage and acknowledge exporters' internal control programs for ensuring compliance with the terms of the license.

(b) UNITED STATES COMMODITY CONTROL INDEX.—

(1) IN GENERAL.—The Secretary shall establish and maintain, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies, a United States Commodity Control Index specifying the license requirements under this title that are applicable to the items on the list.

(2) CONTENTS.—The control index shall—

(A) consist of a multilateral control list of items on which export controls are imposed under section 105, an emergency control list of items on which export controls are imposed under section 106, and a short supply control list of commodities on which export controls are imposed under section 107;

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

(C) for each item on the control index, specify with particularity the performance (where applicable) and other identifying characteristics of the item and provide a rationale for why the item is on the control list;

(D) identify countries, and, as appropriate, end uses or end users, including specific projects and end users of concern, cross-referenced with the list of commodities and technology on which export controls are imposed; and

(E) be sufficiently specific and clear as to guide exporters and licensing officers in determinations of licensing requirements under this title.

(c) DENIED OR DEBARRED PARTIES, SANCTIONED PARTIES, BLOCKED PERSONS, SPECIALLY DESIGNATED NATIONALS, AND OTHER PARTIES PRESENTING UNACCEPTABLE RISKS OF DIVERSION.—

(1) DENIED OR DEBARRED PARTIES, SANCTIONED PARTIES, BLOCKED PERSONS, AND SPECIALLY DESIGNATED NATIONALS.—The President shall ensure that an official list is published semiannually in the Federal Register of all parties denied or debarred from export privileges under this title or under the Arms Export Control Act, all parties sanctioned for prohibited proliferation activity under this title or other statutes, and all blocked

persons and specially designated nationals. For purposes of this paragraph, a "blocked person" or "specially designated national" is a person or entity so designated by the President or the Secretary of the Treasury under the Trading With the Enemy Act, or the International Emergency Economic Powers Act, with whom transactions are prohibited on account of the relationship of that person or entity with a country, organization, or activity against which sanctions are imposed under either such Act. Promptly after any person is designated a "blocked person" or "specially designated national", the Secretary of the Treasury shall publish such designation in the Federal Register.

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

(d) DELEGATION OF AUTHORITY.—Subject to the provisions of this title, the President may delegate the power, authority, and discretion conferred upon the President by this title to such departments, agencies, and officials of the Government as the President considers appropriate, except that no authority under this title may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, or discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State under this title and may not delegate the authority under section 106(a)(4).

(e) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this title with a view to encouraging trade. The Secretary shall consult regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of items subject to controls.

(f) EXPORT ADVISORY COMMITTEES.—

(1) APPOINTMENT.—Upon his or her own initiative or upon the written request of representatives of a substantial segment of any industry which produces any items subject to export controls under this title or under the International Emergency Economic Powers Act, or being considered for such controls, the Secretary shall appoint export advisory committees with respect to any such items. Each such committee shall consist of representatives of United States industry and Government, including the Department of Commerce and other appropriate departments and agencies of the Government. The Secretary shall permit the widest possible participation by the business community on the export advisory committees.

(2) FUNCTIONS.—Export advisory committees appointed under paragraph (1) shall advise and assist the Secretary, and any other department, agency, or official of the Government carrying out functions under this title, on actions (including all aspects of controls imposed or proposed) designed to carry out the policies of this title concerning the items with respect to which such export advisory committees were appointed. Such committees, where they have expertise in such matters, shall be consulted on questions involving—

(A) technical matters,

(B) worldwide availability and actual utilization of production technology,

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

(D) revisions of the multilateral control list (as provided in section 105(g)), including proposed revisions of multilateral controls in which the United States participates,

(E) the issuance of regulations,

(F) the impact and interpretation of existing regulations,

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

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

(I) the operation and conduct of international business transactions.

Nothing in this subsection shall prevent the United States Government from consulting, at any time, with any person representing an industry or the general public, regardless of whether such person is a member of an export advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export advisory committee appointed under paragraph (1), the Secretary may, if the Secretary determines it to be appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) CHAIRPERSON.—Each export advisory committee appointed under paragraph (1) shall elect a chairperson, and shall meet at least every 3 months at the call of the chairperson, unless the chairperson determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years each. The Secretary shall consult with each such committee on such termination or extension of that committee.

(5) ACCESS TO INFORMATION.—To facilitate the work of the export advisory committees appointed under paragraph (1), the Secretary, in conjunction with other departments and agencies participating in the administration of this title, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the items or policies for which that committee furnishes advice. Information provided by the export advisory committees shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest.

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

(1) IN GENERAL.—

(A) Consistent with the general guidance of the Export Control Policy Committee established in section 114(c), the Secretary of Defense and the heads of other appropriate departments and agencies may identify and recommend to the Secretary—

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

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

(B) The Secretary of Defense shall have primary responsibility for identifying commodities and technologies that are critical to the design, development, test, production, stockpiling, or use of weapons of mass destruction and other military capabilities, including nuclear, biological, and chemical weapons, and manned and unmanned vehicles capable of delivering such weapons, in

determining recommendations for inclusion of items on the control index.

(C) If the Secretary of Defense, the Secretary of State, or the Secretary of Energy disagrees with the decision of the Secretary regarding the inclusion or deletion, or licensing requirements of, any commodity or technology, the Secretary of Defense, State, or Energy (as the case may be) may, within 30 days after the Secretary makes the decision, appeal the Secretary's decision to the President in writing, but only on the basis of the specific provisions of this title. If the Secretary of Defense, the Secretary of State, or the Secretary of Energy fails to appeal a decision of the Secretary in accordance with the preceding sentence, he or she shall be deemed to have no objection to the decision. The President shall resolve a disagreement under this subsection not later than 30 days after the appeal is made under this paragraph.

(2) NEGOTIATIONS.—The Secretary of State, in consultation with appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding multilateral arrangements for restricting the export of items to carry out the policies of this title. All appropriate departments and agencies shall develop initial technical parameters and product definitions in connection with the development of proposals within the United States Government to be made to multilateral regimes, in consultation with the export advisory committees as provided in paragraph (3).

(3) CONSULTATIONS WITH EXPORT ADVISORY COMMITTEES.—The Secretary shall consult with the appropriate export advisory committee appointed under this section with respect to changes in the control index, and such export advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the export advisory committee and shall inform the committee of the disposition of its recommendations. The Secretary shall also seek comments and recommendations from the public in connection with changes in the control index. To the maximum extent practicable and consistent with the conduct of international negotiations, such comments and recommendations should be taken into consideration in the development of United States Government proposals and positions to be taken in multilateral regimes.

(h) RIGHT OF EXPORT.—No authority or permission to export may be required under this title, or under regulations issued under this title, except to carry out the policies set forth in section 103.

(i) INTERNATIONAL OBLIGATIONS UNDER TREATIES.—Notwithstanding any other provision of this title containing limitations on authority to control exports, the Secretary, in consultation with the Secretary of State, may impose controls on exports to a particular country or countries in order to fulfill obligations of the United States under resolutions of the United Nations and under treaties to which the United States is a party. The Secretary may regulate domestic and foreign conduct consistent with the policies of such United Nations resolutions, treaties, and other international agreements. Such authority shall include, but not be limited to, authority to prohibit activity such as financing, contracting, providing services, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, to compel reports, and to curtail travel.

(j) FEES.—No fee may be charged in connection with the submission or processing of an export license application under this title.

## SEC. 105. MULTILATERAL CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the policies set forth in paragraphs (1), (2), (5), (13), (14), and (15) of section 103, the President may, in accordance with this section, prohibit, curtail, or require the provision of information regarding, the export of any commodities, technology, or other information subject to the jurisdiction of the United States, or exported by any person subject to the jurisdiction of the United States, in order to implement multilateral export control regimes. The authority under this paragraph shall include, but not be limited to, the authority to regulate domestic and foreign conduct, to prohibit activity such as financing, contracting, providing services, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, and to compel reports. The authority granted by this subsection may not be exercised to impose unilateral controls.

(2) EXERCISE OF AUTHORITY.—The authority granted by this subsection shall be implemented by the Secretary, in consultation with appropriate departments and agencies.

(3) CONSISTENCY WITH EXPORT CONTROL REGIMES.—Any provision of this title that provides that no authority or permission to export may be required under this title shall not apply to the extent that such a provision is inconsistent with an international commitment of the United States under a multilateral export control regime.

(b) MULTILATERAL CONTROL LIST.—The Secretary shall, in consultation with appropriate departments and agencies as provided in section 104(g), designate as part of the control index, a multilateral control list, comprised of the items on which export controls are in effect under this section.

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

(d) MULTILATERAL CONTROL REGIMES.—

(1) POLICY.—In order to carry out the policies set forth in section 103, the Secretary of State, in consultation with appropriate departments and agencies, should seek multilateral arrangements that are intended to secure effective achievement of these policies and, in so doing, also establish fairer and more predictable competitive opportunities for United States exporters.

(2) STANDARDS FOR NATIONAL SYSTEMS.—In the establishment and maintenance of multilateral regimes, the Secretary of State, in consultation with appropriate departments and agencies, shall take steps to attain the cooperation of members of the regimes in the effective implementation of export control systems. Such systems should contain the following elements:

(A) National laws providing enforcement authorities, civil and criminal penalties, and statutes of limitations sufficient to deter potential violations and punish violators.

(B) A program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end users.

(C) An enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports.

(D) A system of export control documentation to verify the movement of items.

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

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

(3) STANDARDS FOR MULTILATERAL REGIMES.—In the establishment and maintenance of multilateral regimes, the Secretary of State, in consultation with appropriate departments and agencies, should seek, consistent with the policies set forth in section 103, the following features for the multilateral control regimes in which the United States participates:

(A) FULL MEMBERSHIP.—Achieve membership of all supplier countries whose policies and activities are consistent with the objectives and membership criteria of the multilateral regime.

(B) EFFECTIVE ENFORCEMENT AND COMPLIANCE.—Promote enforcement and compliance with the rules and guidelines of the members of the regime through maintenance of an effective control list.

(C) PUBLIC UNDERSTANDING.—Enhance public understanding of each regime's purpose and procedures.

(D) EFFECTIVE IMPLEMENTATION PROCEDURES.—Achieve procedures for effective implementation of the rules and guidelines of the regime through uniform and consistent interpretations of export controls agreed to by the governments participating in the regime.

(E) ENHANCED COOPERATION AMONG REGIME MEMBERS.—Reach agreement to enhance cooperation among members of the regime in obtaining the agreement of governments outside the regime to restrict the export of items controlled by the regime, to establish an ongoing mechanism in the regime to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the list of items controlled by the regime if the control of such items no longer serves the objectives of the members of the regime.

(F) PERIODIC HIGH-LEVEL MEETINGS.—Conduct periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to members of the regime.

(G) COMMON LIST OF CONTROLLED ITEMS.—Reach agreement on a common list of items controlled by the regime.

(H) TREATMENT OF CERTAIN COUNTRIES.—Prevent the export or diversion of the most sensitive items to countries whose activities are threatening to the national security of the United States or its allies.

(I) DISCLOSURE OF NONPROPRIETARY INFORMATION.—Promote transparency and timely disclosure of nonproprietary information with respect to the transfers of sensitive dual-use commodities and technologies, when appropriate, for the purpose of developing common understandings of the risks to international peace and regional security associated with such transfers and to coordinate national control policies to combat those risks.

(J) INCENTIVES FOR PARTNERSHIP.—Consistent with the policies of this title and consistent with the objectives, rules, and guidelines of the individual regime—

(1) the Secretary, in consultation with appropriate departments and agencies, may provide for exports free of license requirements to and among members of a multilateral regime for items subject to controls under such a multilateral regime; and

(2) the Secretary, in consultation with appropriate departments and agencies, may adjust licensing policies with respect to a particular country or entity for access to items controlled under this title to the extent of the adherence of that country or entity to the export control policies of this section.

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

(F) TRANSPARENCY OF MULTILATERAL CONTROL REGIMES.—

(1) PUBLICATION OF INFORMATION ON EACH EXISTING REGIME.—Within 6 months after the date of the enactment of this Act, the Secretary shall, to the extent doing so is not inconsistent with arrangements in multilateral export control regimes, publish in the Federal Register the following information with respect to each multilateral control regime existing on the date of the enactment of this Act:

(A) Purposes of the control regime.

(B) Members of the regime.

(C) Licensing policy.

(D) Items subject to the controls under the regime, together with all public notes, understandings, and other aspects of the agreement of the regime, and all changes thereto.

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

(F) Rules of interpretation.

(G) Major policy actions.

(H) The rules and procedures of the regime for establishing and modifying any matter described in subparagraphs (A) through (G) and for reviewing export license applications.

(2) NEW REGIMES.—Within 2 months after the United States joins or organizes a new export control regime, the Secretary shall, to the extent doing so is not inconsistent with arrangements in the regime, publish the information described in subparagraphs (A) through (H) of paragraph (1) with respect to that regime.

(3) PUBLICATION OF CHANGES.—Within 2 months after the applicable regime adopts any changes in the information published under this subsection, the Secretary shall, to the extent doing so is not inconsistent with arrangements in the regime, publish such changes in the Federal Register.

(G) REVIEW OF CONTROLLED ITEMS.—

(1) IN GENERAL.—Under the policy guidance of the Export Control Policy Committee established in section 104(c), and consistent with the procedures in section 104(g), the Secretary shall review all items on the multilateral control list maintained under subsection (b) at least every 2 years, except that the Secretary shall review annually whether the policy set forth in section 103(12) is being achieved. At the conclusion of each review, the Secretary shall decide whether to maintain or remove items from the multilateral control list, maintain, change, or eliminate the specifications, performance thresholds, or licensing requirements on items on the list, or add items to the list.

(2) CONSIDERATIONS.—In conducting the review, the Secretary shall—

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

(B) consult with the appropriate export advisory committees appointed under section 104(f) and consider recommendations of such committees with respect to proposed changes in the multilateral control list;

(C) consider whether controlled items or their equivalent are so widely available in the United States (in terms of quantity, cost, and means of sale and delivery) that the requirement for a license is ineffective in achieving the purpose of the control;

(D) consider whether the differences between the export controls of the United States and that of governments of foreign suppliers of competing items effectively has placed or will place the United States exporter at a significant commercial disadvantage with respect to its competitors abroad, and has placed, or will place, employment in the United States in jeopardy;

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

(F) consider comments received pursuant to the notice of review provided under paragraph (3)(A).

(3) PROCEDURES.—

(A) NOTICE OF REVIEW.—Before beginning each review under this subsection, the Secretary shall publish a notice of that review in the Federal Register and shall provide a 30-day period for comments and submission of data, including by exporters and other interested parties.

(B) PROPOSALS TO EXPORT CONTROL REGIMES.—If a revision to the multilateral control list or to a licensing requirement under this paragraph is inconsistent with the control lists, guidelines, or the licensing requirements of, an export control regime, the Secretary of State shall propose such revision to that regime. Such revision shall become effective only to the extent such revision is agreed to by the export control regime.

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

## SEC. 106. EMERGENCY CONTROLS.

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the policy set forth in paragraphs (1), (2), (6), (8), (14), and (15) of section 103, the President may, in accordance with the provisions of this section, unilaterally prohibit, curtail, or require the provision of information regarding the export of any commodity, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority under this paragraph shall include, but not be limited to, the authority to regulate domestic and foreign conduct, to prohibit activity such as financing, contracting, providing services, or employment, to deny access to items in the United States and abroad, to conduct audits of records and inspections of facilities, and to compel reports.

(2) EXERCISE OF AUTHORITY.—The authority contained in this section shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, and such other departments and agencies as the President considers appropriate, and consistent with the procedures in section 104(g).

(3) EXPIRATION OF CONTROLS.—

(A) IN GENERAL.—Any controls imposed under this section shall expire 12 months after they are imposed, unless they are terminated earlier by the President or unless they are extended under this section, except that such controls may be adopted as multilateral controls under section 105 or included in an embargo that is imposed by the President under the International Emergency Economic Powers Act, the Trading with the Enemy Act, or other provision of law other than this title. Any extension or subsequent extension of the controls under this section shall be for a period of not more than 1 year each. The controls shall expire at the end of each such extension unless they are terminated earlier by the President or unless they are further extended under this section, except that such controls may be adopted as multilateral controls under section 105 or included in an embargo described in the first sentence of this subparagraph.

(B) EXCEPTION FOR MULTILATERAL AGREEMENTS.—Subparagraph (A) shall not apply to controls imposed by the President in order to fulfill obligations of the United States under resolutions of the United Nations or under treaties to which the United States is a party. If such a resolution or treaty ceases to be in effect, controls imposed by the

President pursuant to such resolution or treaty shall immediately cease to be in effect.

(4) **CRITERIA.**—Controls may be imposed, expanded, or extended under this section only if the President determines that—

(A) the controls are necessary to further significantly the nonproliferation, national security, or foreign policies of the United States provided in section 103, the objective of the controls is in the overall national interest of the United States, and reasonable alternative means to the controls are not available;

(B) the controls are likely to make substantial progress toward achieving the intended purpose of—

(i) changing, modifying, or constraining the undesirable conduct or policies of the country to which the controls apply;

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

(iii) establishing multilateral cooperation to deny the country access to controlled items from all sources; or

(iv) denying exports or assistance that significantly contributes to the proliferation of weapons of mass destruction or other important military capabilities, terrorism, or human rights abuses;

(C) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which the controls apply;

(D) the reaction of other countries to the imposition, expansion, or extension of such export controls by the United States is not likely to render the controls ineffective in achieving the intended purpose or to be counterproductive to United States policy interests;

(E) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States as a supplier of items, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to the United States foreign policy, nonproliferation, or national security interests; and

(F) the United States has the ability to enforce the proposed controls effectively.

(b) **CONSULTATION WITH INDUSTRY.**—The Secretary shall consult with and seek advice from affected United States industries and export advisory committees appointed under section 104(f) before the imposition, expansion, or extension of any export control under this section.

(c) **CONSULTATION WITH OTHER COUNTRIES.**—When expanding or extending export controls under this section (unless such action is taken under subsection (a)(3)(B)), the Secretary of State, in consultation with appropriate departments and agencies, shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with other countries, as appropriate, to advise them of the reasons for the action and to urge them to adopt similar controls.

(d) **CONSULTATIONS WITH THE CONGRESS.**—

(1) **CONSULTATIONS.**—The Secretary may impose, expand, or extend export controls under this section only after consultation with the Congress, including the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

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

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

(B) specifying the purpose of the controls;

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

(D) specifying the nature and results of any alternative means attempted to achieve the objectives of the controls, or the reasons for imposing or expanding the controls without attempting any such alternative means; and

(E) describing the availability from other countries of items comparable to the items subject to the controls, and describing the nature and results of the efforts made to secure the cooperation of foreign governments in controlling the foreign availability of such comparable items.

Such report shall also indicate how such controls will further significantly the policies of the United States as set forth in section 103 or will further its declared international obligations.

(e) **SEEKING MULTILATERAL SUPPORT FOR UNILATERAL CONTROLS.**—The Secretary of State, in consultation with appropriate departments and agencies, shall have a continuing duty to seek support for controls imposed under this section by other countries and by effective multilateral control regimes.

(f) **PROCEDURES AND LIMITATIONS ON EMERGENCY CONTROLS.**—

(1) **CESSATION OF EMERGENCY CONTROLS.**—

(A) **IN GENERAL.**—Controls imposed under this section on commodities, technology, or other information shall cease to be in effect immediately upon—

(i) the imposition of similarly restrictive controls under section 105 on the same commodities, technology, or information to the country or end user, or for the end use, with respect to which the controls were imposed under this section; or

(ii) the imposition of an embargo, under the International Emergency Economic Powers Act, the Trading with the Enemy Act, or other provision of law, on exports to, and imports from the country with respect to which the controls were imposed under this section.

(B) **CONVERSION TO MULTILATERAL AGREEMENTS.**—If the President imposes controls on commodities, technology, or other information to a country or end user, or for an end use, under this section in order to fulfill obligations of the United States under resolutions of the United Nations or under a treaty to which the United States is a party, any equivalent controls imposed prior thereto under this section on the same commodities, technology, or information to the same country or end user, or for the same end use, shall immediately cease to be in effect.

(2) **LIMITATIONS ON REIMPOSITION.**—Controls which have ceased to be in effect under subsection (a)(3), and which have not been extended under subsection (g), may not be reimposed by the President under subsection (a) for a period of 6 months beginning on the date on which the original controls expire, unless the President determines that reimposition of controls is warranted due to significant changes in circumstances since the expiration of the controls.

(g) **EXTENSION OF EMERGENCY CONTROLS.**—

(1) **REPORT.**—If the President decides to extend controls imposed under subsection (a), which are due to expire under subsection (a)(3), the President shall, not later than 30 calendar days before the expiration of such controls, transmit to the Congress a report on the proposed extension, setting forth the reasons for the proposed extension in detail and specifying the period of time, which may not exceed 1 year, for which the controls are proposed to be extended. In particular, such report shall—

(A) contain determinations by the President—

(i) that the controls are likely to continue to make substantial progress toward achieving the intended purpose of—

(I) changing, modifying, or constraining the undesirable conduct or policies of the country to which the controls apply;

(II) denying access by the country to controlled items from all sources;

(III) establishing multilateral cooperation to deny the country access to controlled items from all sources; or

(IV) denying exports or assistance that significantly contributes to the proliferation of weapons of mass destruction or other important military capabilities, terrorism, or human rights abuses;

(ii) that the impact of the controls has been compatible with the foreign policy objectives of the United States and with overall United States policy toward the controlled country;

(iii) that the reaction of other countries to the imposition or expansion of the controls by the United States has not rendered the controls ineffective in achieving the intended purpose and have not been counterproductive to United States policy interests;

(iv) that the effect of the controls on the export performance of the United States, the competitive position of the United States as a supplier of items, and the economic well-being of individual United States companies and their employees and communities has not exceeded the benefit to the United States foreign policy, nonproliferation, or national security interests; and

(v) that the United States has enforced the controls effectively.

(2) **FURTHER EXTENSIONS OF CONTROLS.**—If, upon the expiration of the controls extended under this subsection, the President determines that a further extension of emergency controls for an additional period of time of not more than 1 year is necessary, paragraph (1) shall apply to such further extension.

(h) **EFFECT ON OTHER AUTHORITY.**—

(1) **EMBARGO AUTHORITY.**—Nothing in this section shall be construed to limit the authority of the President to impose an embargo on exports to, and imports from, a specific country under the International Emergency Economic Powers Act, the Trading with the Enemy Act, or other provision of law (other than this title). In any case in which the President exercises any such authority to impose an embargo, the requirements of this section shall not apply for so long as such embargo is in effect.

(2) **EFFECT ON EXISTING EMBARGOES.**—(A) Nothing in this section affects the authorities conferred upon the President by section 5(b) of the Trading with the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before that date, and are being exercised on the date of the enactment of this Act.

(B) Nothing in this section affects the authorities conferred upon the President by the International Economic Powers Act or other provision of law (other than the Export Administration Act of 1979), which were being exercised with respect to a country before the date of the enactment of this Act as a result of a national emergency declared by the President before that date, and are being exercised with respect to such country on such date of enactment.

(i) **COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.**—

(1) **PROHIBITION ON EXPORTS.**—(A) No export described in subparagraph (B) may be made to any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism.

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

(i) of any commodity or technology the export of which is controlled under this title pursuant to the Wassenaar Arrangement, the Missile Technology Control Regime, or the Australia Group, or controlled under this title pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978,

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

(iii) of any commodity or technology which could make a significant contribution to the military potential of a country described in subparagraph (A), including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism,

other than food, medicine, or medical supplies that the President determines will be used only for humanitarian purposes. An individual validated license shall be required for the export under this subparagraph of any such food, medicine, or medical supplies.

(C) Subsections (a)(3) and (b) shall not apply to exports prohibited or restricted under this subsection.

(D)(i) The Secretary shall maintain a list of commodities and technology described in subparagraph (B)(iii). The Secretary shall review the list of items on that list at least annually. At the conclusion of the review, the Secretary shall determine whether to remove items from the list, change the specifications of items on the list, or add items to the list, in order to ensure that the items on the list meet the requirements of subparagraph (B)(iii).

(ii) The procedures set forth in subparagraphs (A) and (C) of section 105(g)(3) shall apply to reviews under clause (i) of the list of items described in subparagraph (B)(iii) to the same extent as such section applies to reviews of the control list under section 105(g).

(2) NOTIFICATION OF CONGRESS OF LICENSES ISSUED.—The Secretary and the Secretary of State shall notify the Speaker of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any license under this title for exports to a country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism.

(3) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under paragraph (1)(A) shall be published in the Federal Register.

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

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

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

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

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

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

(i) the government concerned has not provided any support for international terrorism

during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

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

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

(B) not less than 30 days prior to the proposed transaction, the President—

(i) consults with the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the proposed transaction; and

(ii) submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(I) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(II) a description of the items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction;

(III) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for the proposed transaction;

(IV) the date on which the proposed transaction is expected to occur; and

(V) the name of any foreign governments involved in the proposed transaction.

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

(6) MULTILATERAL REGIMES.—The Secretary of State, in consultation with appropriate departments and agencies, shall seek support by other countries and by effective multilateral control regimes of controls imposed by this subsection.

(7) EFFECT ON OTHER LAWS.—The provisions of this subsection do not affect any other provision of law to the extent such other provision imposes greater restrictions on exports to any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism than are imposed under this subsection.

(j) CRIME CONTROL INSTRUMENTS.—

(1) LICENSE REQUIRED.—Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to an export license. Paragraphs (3)(A) and (4) of subsection (a) shall not apply to the export controls imposed by this subsection.

(2) CONCURRENCE OF SECRETARY OF STATE.—

(A) ITEMS ON CONTROL INDEX.—Any determination of the Secretary of what commodities or technology shall be included on the control index as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State.

(B) ACTION ON LICENSE APPLICATION.—Any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made with the concurrence of the Secretary of State.

(3) DISPUTE RESOLUTION.—If the Secretary of State does not agree with the Secretary with respect to any determination under paragraph (2), the Secretary of State shall refer the matter to the President for resolution.

(4) EXCEPTIONS.—The provisions of this subsection shall not apply with respect to

exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(k) SPARE PARTS.—At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts or parts in commodities subject to such export controls.

(l) EFFECT ON OTHER LAWS.—None of the prohibitions contained in this section shall apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947.

#### SEC. 107. SHORT SUPPLY CONTROLS.

(a) AUTHORITY.—

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

(2) PUBLIC PARTICIPATION.—Upon imposing quantitative restrictions on exports of any commodities to carry out the policy set forth in section 103(4), the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days after the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) LICENSE FEES.—In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—

(1) IN GENERAL.—In order to carry out the policy set forth in section 103(4), the Secretary shall monitor exports, and contracts for exports, of any commodity (other than a commodity which is subject to the reporting requirements of section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712)) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 103(4), to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2).

(2) REPORTS ON MONITORING.—The results of monitoring under paragraph (1) shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) CONSULTATION WITH SECRETARY OF ENERGY.—The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to—

(A) drilling rigs, platforms, and equipment;

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

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

(D) oil and gas pipelines, pumping stations, and associated equipment; and

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

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

(1) IN GENERAL.—(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 103(4).

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

(2) PUBLICATION OF NOTICE.—Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

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

(B) include the schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States;

(C) indicate whether the petition is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material; and

(D) provide that interested persons shall have a period of 30 days beginning on the date on which the notice is published to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

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

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

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

(ii) there has been a significant increase in domestic price of such material or a domes-

tic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

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

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

(4) PUBLICATION OF REGULATIONS.—Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) CONSOLIDATION OF PETITIONS.—For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions, which involve the same or related materials.

(6) SUBSEQUENT PETITIONS ON SAME MATERIAL.—If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures described in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) PRECEDENCE OF PROCEDURES OVER OTHER REVIEWS.—The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) TEMPORARY CONTROLS.—The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary actions would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry; and

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

(9) OTHER AUTHORITY NOT AFFECTED.—The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this title, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this

section, the Secretary shall publish the reasons for such action in accordance with paragraph (3)(A) and (B).

(10) SUBMISSION AND CONSIDERATION OF ADDITIONAL INFORMATION.—Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this title, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) AGRICULTURAL COMMODITIES.—

(1) APPROVAL OF CONTROLS BY SECRETARY OF AGRICULTURE.—The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, forest products, or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent the President determines that the controls on such agricultural commodities are also imposed under section 106. The Secretary of Agriculture shall, by exercising the authority which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) PROTECTION OF STORED COMMODITIES FROM FUTURE CONTROLS.—Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 103(4) subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds—

(A) that such commodities will eventually be exported,

(B) that neither the sale nor export thereof will result in an excessive drain of scarce material and have a serious domestic inflationary impact,

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

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

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

(3) PROCEDURES FOR IMPOSING CONTROLS.—(A) If the President imposes export controls on any agricultural commodity under section 106 or this section, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of the receipt of the report, enacts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days



after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

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

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

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4) **EXPEDITED PROCEDURES.**—(A) For purposes of this paragraph, the term “joint resolution” means only a joint resolution the matter after the resolving clause of which is as follows: “That pursuant to section 107(d)(3) of the Export Administration Act of 1996, the President may impose export controls as specified in the report submitted to the Congress on \_\_\_\_\_”, with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by either the chairman of the Committee on International Relations, for the chairman and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for the majority leader and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(C) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the resolution.

(D) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported to the House of Representatives by the Committee on International Relations under this paragraph, a motion to proceed to the consideration in the House of any such joint resolution shall be considered as highly privileged if offered by the chairman of the committee or a designee on or after the third day the report on the joint resolution has been available to Members pursuant to clause 2(l)(6) of rule XI of the Rules of the House of Representatives. The motion shall not be subject to debate or to intervening motion or otherwise subject to points of order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or not agreed to. If the motion is agreed to, the joint resolution shall be considered in the House and debatable for not to exceed two hours equally divided and controlled by the chairman and ranking minority member of the committee. The previous question shall be considered as ordered on the joint resolution to final passage without intervening motion.

(E) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution

with respect to the same matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution has been received from the other House; but

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

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

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

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such, they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(e) **BARTER AGREEMENTS.**—

(1) **EXEMPTION FROM CONTROLS.**—The exportation pursuant to a barter agreement of any commodities which may lawfully be exported from the United States, for any commodities which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2), from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 103(4).

(2) **CRITERIA FOR EXEMPTION.**—The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

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

(i) the average annual quantity of the commodities to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such commodities estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the commodities to be imported will be more than the average amount of such commodities estimated to be required annually to supplement domestic production; and

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

(3) **DEFINITION.**—For purposes of this subsection, the term “barter agreement” means any agreement which is made for the exchange, without monetary consideration, of any commodities produced in the United States for any commodities produced outside of the United States.

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

(f) **EFFECT OF CONTROLS ON EXISTING CONTRACTS.**—

(1) **WESTERN RED CEDAR.**—Any export controls imposed under section 7(i) of the Export Administration Act of 1979 or this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export.

(2) **OTHER CONTROLS.**—Any export controls imposed under this section on any agricultural commodity (including fats, oils, forest products, and animal hides and skins), or on any fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this paragraph, the term “contract to export” includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of commodities or technology.

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

#### **SEC. 108. FOREIGN BOYCOTTS.**

(a) **PROHIBITIONS AND EXCEPTIONS.**—

(1) **PROHIBITIONS.**—In order to carry out the policies set forth in section 103(9), the President shall issue regulations prohibiting any United States person, with respect to that person's activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of the race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

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

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person that is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

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



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

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

(A) complying or agreeing to comply with requirements—

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

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

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment, or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

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

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

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

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

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

(4) ANTITRUST AND CIVIL RIGHTS LAWS NOT AFFECTED.—Nothing in the subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) EVASION.—This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) ADDITIONAL REGULATIONS AND REPORTS.—

(1) REGULATIONS.—In addition to the regulations issued pursuant to subsection (a), regulations issued under section 106 shall implement the policies set forth in section 103(9).

(2) REPORTS BY UNITED STATES PERSONS.—Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 103(9) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require, for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any commodities or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 103(9).

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

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

(2) pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

#### **SEC. 109. PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES.**

(a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—

(1) IN GENERAL.—All export license applications required under this title shall be submitted by the applicant to the Secretary. Subject to the procedures provided in this section—

(A) if referral of an application to other departments or agencies for review is not required, the Secretary shall, within 9 days after receiving the application, issue a license or notify the applicant of the intent to deny the application; or

(B) if referral of the application to other departments or agencies for review is required, the Secretary shall, within 30 days after referral of any such application to other departments or agencies—

(i) issue a license;

(ii) notify the applicant of the intent to deny the application; or

(iii) ensure that the application is subject to the interagency resolution process set forth in subsection (d).

(2) RECOMMENDATIONS OF OTHER AGENCIES.—The Secretary shall seek information and recommendations from the Department of Defense and other departments and agencies of the United States that are identified by the President as being concerned with factors having an important bearing on exports administered under this title. Such departments and agencies shall cooperate fully and promptly in rendering information and recommendations.

(3) PROCEDURES.—In guidance and regulations that implement this section, the Secretary shall describe the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies in reviewing applications, the rights of the applicant, and other relevant matters affecting the review of license applications.

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

(5) RELIABILITY OF PARTIES.—In reviewing applications for export licenses, the Secretary may in each case consider the reliability of the parties to the proposed export. In making such an evaluation, the Secretary may consider all sources of information, including results of other United States Government actions, such as actions by the Committee on Foreign Investment in the United States, investigations of diversions from authorized end uses or end users, and intelligence information, except that the consideration of such information in connection with the evaluation of the reliability of parties shall not authorize the direct or indirect disclosure of classified information or sources and methods of gathering classified information and shall not confer a right on private parties to have access to classified information.

(b) INITIAL SCREENING.—

(1) UPON RECEIPT OF APPLICATION.—Upon receipt of an export license application, the Secretary shall enter and maintain in the records of the Department of Commerce information regarding the receipt and status of the application.

(2) INITIAL PROCEDURES.—Promptly upon receiving any license application, the Secretary shall—

(A) contact the applicant if the application is improperly completed or if additional information is required, and hold the application for a reasonable time while the applicant provides the necessary corrections or information, and such time shall not be included in calculating the time periods prescribed in this section;

(B) refer the application, including all information submitted by the applicant, and all necessary recommendations and analyses by the Secretary to the Department of Defense and other departments and agencies identified by the President under subsection (a)(2); and

(C) ensure that the classification stated on the application for the export items is correct, return the application if a license is not required, and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intent to deny the application. 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.

(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

(1) REFERRAL TO OTHER AGENCIES.—The Secretary shall promptly refer license applications to departments and agencies under subsection (b) to make recommendations and provide information to the Secretary.

(2) RESPONSIBILITY OF REFERRAL AGENCIES.—The Department of Defense and other reviewing departments and agencies shall organize their resources and units to plan for the prompt and expeditious internal dissemination of export license applications, if necessary, so as to avoid delays in responding to the referral of applications.

(3) ADDITIONAL INFORMATION REQUESTS.—Each department or agency to which a license application is referred shall specify to the Secretary any information that is not in the application that would be required for the department or agency to make a determination with respect to the application, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by that department or agency and the date the information is received by that department or agency shall not be included in calculating the time periods prescribed in this section.

(4) TIME PERIOD FOR ACTION BY REFERRAL DEPARTMENTS AND AGENCIES.—Within 30 days after receiving a referral of an application under this section, the department or agency concerned shall provide the Secretary with a recommendation either to approve the license or to deny the license. A recommendation that the Secretary deny a license shall include a statement of reasons for the recommendation that are consistent with the provisions of this title, and shall cite both the specific statutory and the regulatory basis for the recommendation. A department or agency that fails to provide a recommendation in accordance with this paragraph within that 30-day period shall be deemed to have no objection to the decision of the Secretary on the application.

(d) INTERAGENCY RESOLUTION.—

(1) INITIAL RESOLUTION.—The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications on which the departments and agencies reviewing the applications under this section are not in agreement. The chairperson of such committee shall consider the recommendations of the departments and agencies reviewing a particular application and inform them of his or her decision on the application, which may include a decision that the particular application requires further consideration under the procedures established under paragraph (2). An application may also be referred to further consideration under the procedures established under paragraph (2) if an appeal from the chairperson's decision is made in writing by an official of the department or agency concerned who is appointed by the President by and with the advice and consent of the Senate, or an officer properly acting in such capacity.

(2) FURTHER RESOLUTION.—The President shall establish a process for the further review and determination of export license applications pursuant to a decision by the chairperson under paragraph (1) or an appeal by a department or agency under paragraph (1). Such process shall—

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

(B) ensure that license applications are resolved or referred to the President no later

than 90 days after the date the license application is initially received by the Secretary;

(C) provide that a department or agency dissenting from the decision reached under subparagraph (B) may appeal the decision to the President; and

(D) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases for a denial, shall be deemed to have no objection to the pending decision.

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

(1) the determination to deny;

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

(3) what, if any, modifications in or restrictions on the items for which the license was sought would allow such export to be compatible with export controls imposed under this title, and which officer or employee of the Department of Commerce would be in a position to discuss modifications or restrictions with the applicant and the specific statutory and regulatory bases for imposing such modifications or restrictions;

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

(5) the availability of appeal procedures.

The Secretary shall allow the applicant 20 days to respond to the determination before the license application is denied.

(f) EXCEPTIONS FROM REQUIRED TIME PERIODS.—The following actions related to processing an application shall not be included in calculating the time periods prescribed in this section:

(1) AGREEMENT OF THE APPLICANT.—Delays upon which the Secretary and the applicant mutually agree.

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

(A) the need for the prelicense check is determined by the Secretary, or by another department or agency if the request for the prelicense check is made by such department or agency;

(B) the request for the prelicense check is sent by the Secretary within 5 days after the determination that the prelicense check is required; and

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

(3) REQUESTS FOR GOVERNMENT-TO-GOVERNMENT ASSURANCES.—Any request by the Secretary or another department or agency for government-to-government assurances of suitable end uses of items approved for export, when failure to obtain such assurances would result in rejection of the application, if—

(A) the request for such assurances is sent to the Secretary of State within 5 days after the determination that the assurances are required;

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(C) the license is issued within 5 days after the Secretary receives the requested assurances.

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

(4) MULTILATERAL REVIEW.—Multilateral review of a license application to the extent that such multilateral review is required by a relevant multilateral regime.

(5) CONGRESSIONAL NOTIFICATION.—Such time as is required for mandatory congressional notifications under this title.

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

(g) APPEALS.—

(1) IN GENERAL.—The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application or other administrative action under this title.

(2) FILING OF PETITION.—In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) BRINGING COURT ACTION.—If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for an order requiring compliance with the time periods required by this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(h) CLASSIFICATION REQUESTS AND OTHER INQUIRIES.—

(1) CLASSIFICATION REQUESTS.—In any case in which the Secretary receives a written request asking for the proper classification of an item on the control index, the Secretary shall, within 14 days after receiving the request, inform the person making the request of the proper classification.

(2) OTHER INQUIRIES.—In any case in which the Secretary receives a written request for information about the applicability of licensing requirements under this title to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.

#### SEC. 110. VIOLATIONS.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Except as provided in paragraph (3), any individual who knowingly violates or conspires to or attempts to violate any provision of this title or any regulation, license, or order issued under this title shall be fined not more than 5 times the value of the exports involved or \$500,000, whichever is greater, or imprisoned not more than 10 years, or both.

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

(3) ANTIBOYCOTT VIOLATIONS.—

(A) Any individual who knowingly violates or conspires to or attempts to violate any regulation or order issued under section 108

shall be fined, for each violation, not more than 5 times the value of the exports involved or \$250,000, whichever is greater, or imprisoned not more than 10 years, or both.

(B) Any person other than an individual who knowingly violates or conspires to or attempts to violate any regulation or order issued under section 108 shall be fined, for each violation, not more than 5 times the value of the exports involved or \$500,000, whichever is greater.

**(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—**

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

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the commodities or tangible items that were the subject of the violation;

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

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

(2) **PROCEDURES.**—The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of chapter 46 of title 18, United States Code, to the same extent as property subject to forfeiture under that chapter.

**(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—**

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

(2) **DENIAL OF EXPORT PRIVILEGES.**—The Secretary may deny the export privileges of any person, including suspending or revoking the authority of any person to export or receive United States-origin commodities or technology subject to this title, on account of any violation of this title or any regulation, license, or order issued under this title.

(d) **PAYMENT OF CIVIL PENALTIES.**—The payment of any civil penalty imposed under subsection (c) may be made a condition, for a period not exceeding 1 year after the penalty has become due but has not been paid, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any civil penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed 1 year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) **REFUNDS.**—Any amount paid in satisfaction of any civil penalty imposed under subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his or her discretion, refund any such civil penalty imposed under subsection

(c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

**(f) EFFECT OF OTHER CONVICTIONS.—**

(1) **DENIAL OF EXPORT PRIVILEGES.**—Any person convicted of a violation of—

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

(B) the International Emergency Economic Powers Act,

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

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

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

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

(G) any regulation, license, or order issued under any provision of law listed in subparagraph (A), (B), (C), (D), (E), or (F), or

(H) section 371 or 1001 of title 18, United States Code, if in connection with the export of commodities or technology controlled under this title, any regulation, license or order issued under the International Emergency Economic Powers Act, or defense articles or defense services controlled under the Arms Export Control Act,

may, at the discretion of the Secretary, be denied export privileges under this title for a period of up to 10 years from the date of the conviction. The Secretary may also revoke any export license under this title in which such person had an interest at the time of the conviction.

(2) **RELATED PERSONS.**—The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of a law set forth in paragraph (1), upon a showing of such relationship with the convicted person, after providing notice and opportunity for a hearing.

(g) **STATUTE OF LIMITATIONS.**—Any proceeding in which a civil penalty or other administrative sanction (other than a temporary denial order) is sought under subsection (c) may not be instituted more than 5 years after the date of the alleged violation, except that, in any case in which a criminal indictment alleging a violation of this title is returned within the time limits prescribed by law for the institution of such action, the statute of limitations for bringing a proceeding to impose such a civil penalty or other administrative sanction under this title shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant. The tolling of the statute of limitations shall continue for a period of 6 months from the date a conviction becomes final or the indictment is dismissed.

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

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

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

(2) the authority to compromise and settle administrative proceedings brought with respect to any such violation; or

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

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

(1) against whom an act of discrimination described in section 108(a)(1)(B) is committed, or

(2) who, on account of a violation of the regulations issued pursuant to section 108(a), loses an opportunity to engage in a commercial venture pursuant to a contract, joint venture, or other commercial transaction, including an opportunity to bid or tender an offer for a contract,

may bring an action in an appropriate district court of the United States against the United States person committing the violation, for recovery of actual damages incurred on account of such act of discrimination or lost opportunity. In any such action the court may award punitive damages. An action may be brought under this subsection against a United States person whether or not the United States person has been determined under this section to have violated the regulations issued pursuant to section 108(a) on account of which the action is brought. In an action brought under this subsection, unless the court finds that the interests of justice require otherwise, the court shall designate the substantially prevailing party or parties in the action, and the remaining parties shall pay the reasonable attorneys' fees of the substantially prevailing party or parties in such proportion as the court shall determine.

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

**(a) PROLIFERATION CONTROLS.—**

(1) **MISSILE TECHNOLOGY CONTROLS.**—The Secretary, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies and consistent with sections 103 and 104(g)—

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

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

(i) would make a material contribution to the design, development, test, production, stockpiling, or use of missile delivery systems, and

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

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

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

(ii) any export of items that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an adherent to the MTCR.

(2) **CHEMICAL AND BIOLOGICAL WEAPONS CONTROLS.**—The Secretary, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies and consistent with sections 103 and 104(g)—

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

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

(i) would make a material contribution to the design, development, test, production, stockpiling, or use of chemical or biological weapons, and

(ii) are not contained on the list of controlled items of the Australia Group but which the United States has proposed to the other members of the Australia Group for inclusion in such list; and

(C) shall require a license under paragraph (1) or (2) of section 104(a), consistent with the

arrangements of the Australia Group and the Chemical Weapons Convention, for—

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

(ii) any export of items that the exporter knows is destined for a project or facility for the design, development, or manufacture of a chemical or biological weapon.

(3) POLICY OF DENIAL OF LICENSES.—(A) Licenses under paragraph (1)(C) should in general be denied if the ultimate consignee of the commodities or technology is a facility in a country that is not an adherent to the MTCR and the facility is designed to develop or build missiles.

(B) Licenses under paragraph (1)(C) shall be denied if the ultimate consignee of the commodities or technology is a facility in a country the government of which has been determined under section 106(i)(1) to have repeatedly provided support for acts of international terrorism.

(b) TECHNICAL AMENDMENTS TO ARMS EXPORT CONTROL ACT.—(1) Section 71(a) of the Arms Export Control Act (22 U.S.C. 2797(a)) is amended by striking “6(l) of the Export Administration Act of 1979” and inserting “111(a) of the Export Administration Act of 1996”.

(2) Section 81(a)(1) of the Arms Export Control Act (22 U.S.C. 2798(a)(1)) is amended in subparagraphs (A) and (B) by inserting “under this Act” after “United States” the second place it appears in each subparagraph.

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

(d) CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.—

(1) IMPOSITION OF SANCTIONS.—

(A) DETERMINATION BY THE PRESIDENT.—Except as provided in paragraph (2)(B), the President shall impose both of the sanctions described in paragraph (3) if the President determines that a foreign person, on or after the date of the enactment of this Act, has knowingly and materially contributed—

(i) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this title, or

(ii) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this title, to the efforts by any foreign country, project, or entity described in subparagraph (B) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

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

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

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

(II) used lethal chemical or biological weapons against its own nationals; or

(II) made substantial preparations to engage in the activities described in subclause (I) or (II);

(ii) any foreign country whose government is determined for purposes of section 106(i) to

be a government that has repeatedly provided support for acts of international terrorism; or

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

(C) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to subparagraph (A) on—

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

(ii) any successor entity to that foreign person;

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

(iv) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

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

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

(B) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this subsection for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in paragraph (1)(A). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(C) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under paragraph (1)(A), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under subparagraph (B) of this paragraph that such government has taken specific corrective actions.

(3) SANCTIONS.—

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

(i) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in paragraph (1)(C).

(ii) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in paragraph (1)(C) shall be prohibited.

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

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

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

(II) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source

supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

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

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

(iii) to—

(I) spare parts,

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

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

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

(v) to medical or other humanitarian items.

(4) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this subsection shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under paragraph (1)(A) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that paragraph.

(5) WAIVER.—

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

(B) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in subparagraph (A), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(6) DEFINITION OF FOREIGN PERSON.—For purposes of this subsection, the term “foreign person” means—

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

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

(e) MISSILE PROLIFERATION CONTROL VIOLATIONS.—

(1) VIOLATIONS BY UNITED STATES PERSONS.—

(A) SANCTIONS.—(i) If the President determines that a United States person knowingly—

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

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

(III) facilitates such export, transfer, or trade by any other person, then the President shall impose the applicable sanctions described in clause (ii).

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

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

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

(B) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in subparagraph (A), the Secretary may pursue any other appropriate penalties under section 110.

(C) WAIVER.—The President may waive the imposition of sanctions under subparagraph (A) on a person with respect to a product or service if the President certifies to the Congress that—

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

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

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

(A) SANCTIONS.—(i) Subject to subparagraphs (C) through (G), if the President determines that a foreign person, after the date of the enactment of this section, knowingly—

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

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

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

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

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

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

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

(III) If, in addition to actions taken under subclauses (I) and (II), the President determines that the export, transfer, or trade has

substantially contributed to the design, development, or production of missiles in a country that is not an adherent to the MTCR, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

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

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

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

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

(D) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this paragraph. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

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

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

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

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

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

(G) EXCEPTIONS FROM IMPORT SANCTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

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

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

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

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

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

(iii) to—

(I) spare parts,

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

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

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

(3) DEFINITIONS.—For purposes of this subsection—

(A) the terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex;

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

(C)(i) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(ii) in the case of a country where it may be impossible to identify a specific governmental entity referred to in clause (i), 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; and

(D) 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.

(f) EFFECT ON OTHER LAWS.—The provisions of this section do not affect any activities subject to the reporting requirements contained in title V of the National Security Act of 1947.

(g) SEEKING MULTILATERAL SUPPORT FOR UNILATERAL SANCTIONS.—The Secretary of State, in consultation with appropriate departments and agencies, shall seek the support of other countries for sanctions imposed under this section.

## SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) APPLICABILITY.—

(1) EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE.—Except as provided in this section, the functions exercised under this title are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

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

(A) a regulation—

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

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

(iii) otherwise violates this title;

(B) an agency action violates this title;

(C) an agency action violates an agency regulation establishing time requirements or other procedural requirements of a non-discretionary nature;

(D) the issuance of regulations required by this title complies with time restrictions imposed by this title;

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

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

(G) unfair impact determinations under section 114(k) are in compliance with time restrictions imposed by that section; or

(H) the United States has complied with the requirements of section 114(k) after an unfair impact determination has been made.

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

(1) ADMINISTRATIVE PROCEDURES.—Any administrative sanction imposed under section 110(c) may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code. The imposition of any such administrative sanction shall be subject to judicial review in accordance with sections 701 through 706 of title 5, United States Code.

(2) AVAILABILITY OF CHARGING LETTER.—Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued under section 108(a) shall be made available for public inspection and copying.

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

#### (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

(1) GROUNDS FOR IMPOSITION.—In any case in which there is reasonable cause to believe that a person is engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this title, including any diversion of goods or technology from an authorized end use or end user, or in any case in which a criminal indictment has been returned against a person alleging a violation of this title or any of the statutes listed in section 110(f), the Secretary may, without a hearing, issue an order temporarily denying that person's United States export privileges (hereafter in this subsection referred to a "temporary denial order"). A temporary denial order may be effective for no longer than 180 days, but may be renewed by the Secretary, following notice and an opportunity for a hearing, for additional periods of not more than 180 days each.

(2) ADMINISTRATIVE APPEALS.—The person or persons subject to the issuance or renewal of a temporary denial order may appeal the issuance or renewal of the temporary denial order, supported by briefs and other material, to an administrative law judge who shall, within 15 working days after the appeal is filed, issue a decision affirming, modi-

fying, or vacating the temporary denial order. The temporary denial order shall be affirmed if it is shown that—

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

(B) a criminal indictment has been returned against the person subject to the order alleging a violation of this title or any of the statutes listed in section 110(f).

The decision of the administrative law judge shall be final unless, within 10 working days after the date of the administrative law judge's decision, an appeal is filed with the Secretary. On appeal, the Secretary shall either affirm, modify, reverse, or vacate the decision of the administrative law judge by written order within 10 working days after receiving the appeal. The written order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3). The materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the court.

(3) COURT APPEALS.—An order of the Secretary affirming, in whole or in part, the issuance or renewal of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the issuance of the temporary denial order was based on reasonable cause to believe that the person subject to the order was engaged in or was about to engage in any act or practice which constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this title, or if a criminal indictment has been returned against the person subject to the order alleging a violation of this title or any of the statutes listed in section 110(f). The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### SEC. 113. ENFORCEMENT.

##### (a) GENERAL AUTHORITY AND DESIGNATION.—

(1) POLICY GUIDANCE ON ENFORCEMENT.—The Secretary, in consultation with the Secretary of the Treasury and the heads of other appropriate departments and agencies, shall be responsible for providing policy guidance on the enforcement of this title.

(2) GENERAL AUTHORITIES.—(A) To the extent necessary or appropriate to the enforcement of this title or to the imposition of any penalty, forfeiture, or liability arising under the Export Administration Act of 1979, officers or employees of the Department of Commerce designated by the Secretary and officers and employees of the United States Customs Service designated by the Commissioner may exercise the enforcement authorities described in paragraph (3).

(B) In carrying out the enforcement authorities described in paragraph (3), the Commissioner of Customs, and employees of the United States Customs Service designated by the Commissioner, may make investigations within or outside the United States and at those ports of entry or exit from the United States where officers of the United States Customs Service are authorized by law to carry out such enforcement responsibilities. Subject to paragraph (3), the United States Customs Service is authorized, in the enforcement of this title, to search,

detain (after search), and seize commodities or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(C) In carrying out the enforcement authorities described in paragraph (3), the Secretary, and officers and employees of the Department of Commerce designated by the Secretary, may make investigations within the United States, and shall conduct, outside the United States, prelicense and postshipment verifications of items licensed for export and investigations in the enforcement of section 108. The Secretary, and officers and employees of the Department of Commerce designated by the Secretary, are authorized to search, detain (after search), and seize items at those places within the United States other than those ports specified in subparagraph (B). The search, detention (after search), or seizure of items at those ports and places specified in subparagraph (B) may be conducted by officers and employees of the Department of Commerce only with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(D) The Secretary and the Commissioner of Customs may enter into agreements and arrangements for the enforcement of this title, including foreign investigations and information exchange.

(3) SPECIFIC AUTHORITIES.—(A) Any officer or employee designated under paragraph (2) may do the following in carrying out the enforcement authority under this title:

(i) Make investigations of, obtain information from, make inspection of any books, records, or reports (including any writings required to be kept by the Secretary), premises, or property of, and take the sworn testimony of, any person.

(ii) Administer oaths or affirmations, and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both. In the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, on request of the Attorney General and after notice to any such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both. Any failure to obey such order of the court may be punished by such court as a contempt thereof. The attendance of witnesses and the production of documents provided for in this clause may be required from any State, the District of Columbia, or in any territory of the United States at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(B)(i) Any officer or employee of the Office of Export Enforcement of the Department of Commerce who is designated by the Secretary under paragraph (2), and any officer or employee of the United States Customs Service who is designated by the Commissioner of Customs under paragraph (2), may do the following in carrying out the enforcement authority under this title:

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

(II) Make arrests without warrant for any violation of this title committed in his or

her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed, is committing, or is about to commit such a violation.

(III) Carry firearms.

(ii) Officers and employees of the Office of Export Enforcement designated by the Secretary under paragraph (2) shall exercise the authorities set forth in clause (i) pursuant to guidelines approved by the Attorney General.

(C) Any officer or employee of the United States Customs Service designated by the Commissioner of Customs under paragraph (2) may do the following in carrying out the enforcement authority under this title:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom the officer or employee has reasonable cause to suspect there is any item that has been, is being, or is about to be exported from or transited through the United States in violation of this title.

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

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

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

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

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

(2) the disposition of such property or the proceeds from the sale thereof,

(3) the remission or mitigation of such forfeitures, and

(4) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subsection, insofar as applicable and not inconsistent with this title; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures of property under this subsection by the Secretary or such officers and employees of the Department of Commerce as may be authorized or designated for that purpose by the Secretary, or, upon the request of the Secretary, by any other agency that has authority to manage and dispose of seized property.

(c) REFERRAL OF CASES.—All cases involving violations of this title shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 110(c), or to the Attorney General for criminal action in accordance with this title or to both the Secretary and the Attorney General.

(d) UNDERCOVER INVESTIGATION OPERATIONS.—

(1) USE OF FUNDS.—With respect to any undercover investigative operation conducted by the Office of Export Enforcement of the Department of Commerce (hereafter in this

subsection referred to as "OEE") necessary for the detection and prosecution of violations of this title—

(A) funds made available for export enforcement under this title may be used to purchase property, buildings, and other facilities, and to lease space within the United States, without regard to sections 1341 and 3324 of title 31, United States Code, the third undesignated paragraph under the heading of "MISCELLANEOUS" of the Act of March 3, 1877, (40 U.S.C. 34), sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22), and subsections (a) and (c) of section 304, and section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a) and (c) and 255),

(B) funds made available for export enforcement under this title may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31, United States Code,

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

(D) the proceeds from undercover operations may be used to offset necessary and reasonable expenses incurred in such operations without regard to the provisions of section 3302 of title 31, United States Code, if the Director of OEE (or an officer or employee designated by the Director) certifies, in writing, that the action authorized by subparagraph (A), (B), (C), or (D) for which the funds would be used is necessary for the conduct of the undercover operation.

(2) DISPOSITION OF BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation with a net value of more than \$50,000 is to be liquidated, sold, or otherwise disposed of, the Director of OEE shall report the circumstances to the Secretary and the Comptroller General, as much in advance of such disposition as the Director of OEE or his or her designee determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations incurred by the corporation or business enterprise are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

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

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

(B) The Secretary shall submit annually to the Congress a report, which may be included in the annual report under section 115, specifying the following information:

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

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

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

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

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

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

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

(ii) which is exempt from section 3302 or 9102 of title 31, United States Code, except that clauses (i) and (ii) shall not apply with respect to the report to the Congress required by subparagraph (B) of paragraph (4); and

(C) the term "employees" means employees, as defined in section 2105 of title 5, United States Code, of the Department of Commerce.

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

#### SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCEDURES.

(a) POLICY GUIDANCE.—

(1) IN GENERAL.—As directed by the President, annual policy guidance shall be issued to provide detailed implementing guidance to export licensing officials in all appropriate departments and agencies.

(2) ELEMENTS OF ANNUAL POLICY REVIEW.—In order to develop such annual policy guidance, export controls and other regulations to implement this title shall be reviewed annually. This annual policy review shall include an evaluation of the benefits and costs of the imposition, extension, or removal of controls under this title. This review shall include—

(A) an assessment by the Secretary of the economic consequences of the imposition, extension, or removal of controls during the preceding 12 months, including the impact on United States exports or jobs;

(B) an assessment by the Secretary of State of the objectives of the controls in effect during the preceding 12 months, and the extent to which the controls have served those objectives; and

(C) an assessment by the Secretary of Defense of the impact that the imposition, extension, or removal of controls during the preceding 12 months has had on United States national security.

(b) EXPORT CONTROL AUTHORITY AND FUNCTIONS.—

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

(2) DELEGATION OF FUNCTIONS OF THE SECRETARY.—The Secretary may delegate any function under this title to the Under Secretary of Commerce for Export Administration appointed under subsection (d) or to any other officer of the Department of Commerce.



(c) EXPORT CONTROL POLICY COMMITTEE.—

(1) ESTABLISHMENT.—There is established an Export Control Policy Committee (hereafter in this subsection referred to as the "Committee").

(2) FUNCTIONS.—The Committee shall—

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

(B) review policy recommendations proposed by the Secretary and other members of the Committee; and

(C) receive policy recommendations from other departments and agencies and resolve policy disputes among departments and agencies under this title.

(3) MEMBERSHIP.—The Committee shall include the Secretary, the Secretary of Defense, the Secretary of Energy, the heads of other relevant departments, and appropriate officials of the Executive Office of the President.

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

(5) DELEGATION; OTHER REPRESENTATIVES.—A member of the Committee under paragraph (3) may designate the deputy head of his or her department or agency to serve in his or her absence as a member of the Committee, but this authority may not be delegated to any other individual. The chair may also invite the temporary participation in the Committee's meetings of representatives from other offices and agencies as appropriate to the issues under consideration.

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

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

(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this title and other provisions of law relating to national security, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(2) TRANSITION PROVISIONS.—Those individuals serving in the positions of Under Secretary of Commerce for Export Administration and Assistant Secretaries of Commerce under section 15(a) of the Export Administration Act of 1979, on the day before the date of the enactment of this Act, shall be deemed to have been appointed under paragraph (1), by and with the advice and consent of the Senate, as of such date of enactment.

(e) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out this title. Any such regulations the purpose of which is to carry out section 105, 106, or 111(a) may be issued only after the regulations are submitted for review to such departments or agencies as the President considers appropriate. The Secretary shall consult with the appropriate export advisory committee appointed under section 104(f) in formulating regulations under this title. The second sentence of this subsection does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(f) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this title, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Speaker of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to the United States exporters of

the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the appropriate export advisory committees appointed under section 104(f) in amending regulations issued under this title.

(g) CONFIDENTIALITY OF INFORMATION.—

(1) EXEMPTIONS FROM DISCLOSURE.—

(A) INFORMATION OBTAINED ON OR BEFORE JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 108(b)(2), information obtained under the Export Administration Act of 1979 and its predecessor statutes on or before June 30, 1980, which is deemed confidential, including Shipper's Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be subject to disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest.

(B) INFORMATION OBTAINED AFTER JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 108(b)(2), information obtained under this title or under the Export Administration Act of 1979 after June 30, 1980, may be withheld from disclosure only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with an application for an export license or other export authorization under the Export Administration Act of 1979 or this title, including—

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

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

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

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

(v) information obtained or furnished under this title in connection with international agreements, treaties, or obligations,

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

(2) INFORMATION TO CONGRESS AND GAO.—

(A) IN GENERAL.—Nothing in this title shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office.

(B) AVAILABILITY TO THE CONGRESS.—

(i) IN GENERAL.—All information obtained at any time under this title or previous Acts regarding the control of exports, including any report or license application required under this title, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon the request of the chairman or ranking minority member of such committee or subcommittee.

(ii) PROHIBITION ON FURTHER DISCLOSURE.—No committee, subcommittee, or Member of Congress shall disclose any information obtained under this title or previous Acts regarding the control of exports which is submitted on a confidential basis to the Congress under clause (i) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

(C) AVAILABILITY TO THE GAO.—

(i) IN GENERAL.—Notwithstanding paragraph (1), information referred to in subparagraph (B) shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and ac-

tivities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

(ii) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) INFORMATION EXCHANGE.—Notwithstanding paragraph (1), the Secretary and the Commissioner of Customs shall exchange licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions.

(4) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—Any officer or employee of the United States, or any department or agency thereof, who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information that—

(A) he or she obtains in the course of his or her employment or official duties or by reason of any examination or investigation made by, or report or record made to or filed with, such department or agency, or officer or employee thereof, and

(B) is exempt from disclosure under this subsection,

shall be fined not more than \$10,000, or imprisoned not more than one year, or both, shall be removed from office or employment, and shall be subject to a civil penalty of not more than \$1,000 imposed by the Secretary under section 110(c).

(h) AUTHORITY FOR SEMINAR AND PUBLICATIONS FUND.—The Secretary is authorized to cooperate with public agencies, other governments, international organizations, private individuals, private associations, and other groups in connection with seminars, publications, and related activities to carry out export activities, including educating the public or government officials on the application of this title and the regulations issued under this title. The Secretary is further authorized to accept contributions of funds, property, or services in connection with such activities to recover the cost of such programs and activities. Contributions may include payments for materials or services provided as part of such activities. The contributions collected may be retained for use in covering the costs of such activities, and for providing information to the public with respect to this title and other export control programs of the United States and other governments.

(i) SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL PROGRAM.—The Secretary is authorized to participate in and provide training to officials of other countries on the principles and procedures for the implementation of effective export controls and may participate in any such training provided by other departments and agencies of the United States.

(j) INCORPORATED COMMODITIES AND TECHNOLOGY.—

(1) COMMODITIES CONTAINING CONTROLLED PARTS AND COMPONENTS.—Controls may not be imposed under this title or any other provision of law for a commodity solely because the commodity contains parts or components subject to export controls under this title if such parts or components—

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

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

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

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

(2) REEXPORTS OF FOREIGN-MADE ITEMS INCORPORATING U.S. ITEMS.—

(A) COMMODITIES.—(i) No authority or permission may be required under section 105 or section 106 to reexport to a country other than a terrorist country or an embargoed country a commodity that is produced in a country other than the United States and incorporates commodities that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the commodity produced in such other country is 25 percent or less of the total value of the commodity.

(ii) No authority or permission may be required under section 105 or section 106 to reexport to a terrorist country or to an embargoed country a commodity that is produced in a country other than the United States and incorporates commodities that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the commodity produced in such other country is 10 percent or less of the total value of the commodity.

(B) TECHNOLOGY.—(i) No authority or permission may be required under section 105 or section 106 to reexport to a country other than a terrorist country or an embargoed country technology that is produced in a country other than the United States and is commingled with or drawn from technology that is produced in the United States, if the value of the controlled United States content of the technology produced in such other country is 25 percent or less of the total value of the technology.

(ii) No authority or permission may be required under section 105 or section 106 to reexport to a terrorist country or an embargoed country technology that is produced in a country other than the United States and is commingled with or drawn from technology that is produced in the United States, if the value of the controlled United States content of the technology produced in such other country is 10 percent or less of the total value of the technology.

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

(i) the “controlled United States content” of a commodity or technology means those commodities or technology that—

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

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

(III) would, at the time of the reexport, require a license under section 105 or 106 if exported from the United States to a country to which the commodity or technology is to be reexported;

(ii) an “embargoed country” is a country against which an embargo is in effect under the Trading with the Enemy Act, the International Emergency Economic Powers Act, or other provision of law; and

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

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

(4) REPORTING REQUIREMENTS.—Notwithstanding paragraphs (1) through (3), the Secretary may require persons to report to the Department of Commerce their proposed calculations and underlying data sufficient for the Department of Commerce to evaluate the adequacy of those calculations and data related to commodities and technology before a reexport may rely upon the exclusions from controls provided in this subsection.

(5) EXCEPTIONS.—Paragraphs (1) and (2) do not require any changes to regulations in effect on the effective date of this title and, notwithstanding paragraphs (1) and (2), controls may be imposed on commodities or technology transferred, after March 1, 1996, from export control under the Arms Export Control Act to control under this title if those commodities or technology are designated by the President for exemption from paragraph (1) or (2), as the case may be.

(k) UNFAIR IMPACT ON UNITED STATES EXPORTER.—

(1) POLICY.—It is the policy of the United States that no United States exporter should be affected unfairly by export control policies or practices unless relief from such controls would create a significant risk to the foreign policy, nonproliferation, or national security interests of the United States.

(2) RELIEF FROM EXPORT CONTROLS.—(A) A person may petition the Secretary for relief from current export control requirements (other than control requirements specifically imposed by this title or other provisions of law) on the basis of foreign availability. A person may also petition the Secretary for approval of an export license application on other grounds which the Secretary, with the concurrence of the Secretary of Defense, shall establish by regulation. The Secretary shall, upon receipt of such petitions, and may, on his or her initiative, conduct assessments for providing relief based upon these grounds.

(B) For purposes of this subsection, foreign availability exists when the controlled item is available in fact, under terms and conditions established by the Secretary with the concurrence of the Secretary of Defense, to controlled countries or end users from sources outside the United States so that the requirement for a license is or would be ineffective in achieving the purpose of the control.

(3) PROVISIONS FOR RELIEF.—The Secretary, in consultation with appropriate departments and agencies, shall make determinations of facts under paragraph (2), addressing, in the case of a petition filed under paragraph (2), each ground for relief asserted in the petition, and, subject to paragraph (4), shall provide at least one of the following forms of relief to persons that meet the criteria in paragraph (2):

(A) Change the control status of, or licensing requirements on, all or some of the items in question so as to eliminate the unfair impact.

(B) Selectively approve the sale of controlled items so as to eliminate the unfair impact.

(C) Seek multilateral support to eliminate the source of unfair impact. If relief under this subparagraph is chosen and if such efforts fail to achieve multilateral support, then the Secretary, not later than 330 days from the date of the Secretary's initiation of the assessment under paragraph (2), shall provide other relief pursuant to subparagraph (A) or (B) or conclude pursuant to paragraph (4) that the granting of such relief

would create a significant risk to United States nonproliferation, foreign policy, or national security interests.

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

(4) EXCEPTIONS FROM RELIEF.—The Secretary shall provide relief under paragraph (3) to a petitioner who qualifies for relief under paragraph (2) unless the Secretary concludes that the granting of such relief would create a significant risk to United States nonproliferation, foreign policy, or national security interests. In the event the Secretary determines to grant such relief, he or she may do so unless the President determines that such relief would create a significant risk to the foreign policy, nonproliferation, or national security interests of the United States.

(5) PROCEDURES.—

(A) PUBLICATION.—In any case in which the President or the Secretary determines that relief under paragraph (3) will not be granted, notwithstanding the existence of facts that constitute a basis for granting relief, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

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

(C) PROCEDURES FOR MAKING DETERMINATIONS.—During the conduct of an assessment under this subsection, the Secretary shall consult with other appropriate departments and agencies concerning the assessment. The Secretary shall make a determination as to whether relief is required under paragraph (2) within 120 days after the date of the Secretary's receipt of the petition requesting relief or the date of the Secretary's initiation of the assessment (as the case may be) and shall so notify the applicant. If the Secretary has determined that relief is appropriate, the Secretary shall, upon making such a determination, submit the determination for review to the Department of Defense and other appropriate departments and agencies for consultations regarding the findings and the relief selected. If the Secretary of Defense or other department or agency head disagrees with the Secretary's determination, he or she may appeal the determination to the President in writing, but only on the basis of the criteria set forth in paragraph (4). The President shall resolve any such disagreement so that, in all cases, not later than 150 days after the date of the Secretary's receipt of the petition requesting relief or the date of the Secretary's initiation of the assessment (as the case may be), the Secretary responds in writing to the petitioner and submits for publication in the Federal Register, that—

(i) unfair impact exists and—

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

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

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

(IV) export controls under this title are to be maintained notwithstanding the finding under paragraph (2); or

(V) the United States recommendation to remove the license requirement or change the control status will be submitted to a relevant multilateral regime for consideration for a period of not more than 180 days beginning on the date of the publication; or

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

The reasons for maintaining export controls under clause (i)(IV) shall be included in the submission to the petitioner and the publication. In any case in which the submission for publication is not made within the 150-day period required by this subparagraph, the Secretary may not thereafter require a license for the export of items that are the subject of the allegation under paragraph (2).

(D) NEGOTIATIONS TO ELIMINATE UNFAIR IMPACT.—(i) In any case in which export controls are maintained under this section pursuant to paragraph (4) despite a determination of unfair impact, the Secretary of State shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating the unfair impact. No later than the commencement of such negotiations, the Secretary of State shall notify the Congress in writing that the Secretary of State has begun such negotiations and why it is important that export controls on the items involved be maintained to avoid a significant risk to the foreign policy, nonproliferation, or national security interests of the United States.

(ii) Whenever the Secretary of State has reason to believe that items subject to export controls by the United States may become available in fact from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the Secretary of State shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(6) SHARING OF INFORMATION.—Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Department of Commerce concerning foreign availability of items subject to export controls under this title. Consistent with the protection of intelligence sources and methods and classification restrictions, each such department or agency shall allow the Department of Commerce access to such information from a laboratory or other facility within such department or agency.

(7) CONGRESSIONAL NOTIFICATION AND REPORTING REQUIREMENTS.—The Secretary shall each year notify the Congress of all petitions for relief under this subsection and the status of all such petitions.

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

- (1) medicine or medical supplies; or
- (2) donations of items that are intended to meet basic human needs, including food, educational materials, seeds, hand tools, water resources equipment, clothing and shelter materials, and basic household supplies.

(m) SANCTITY OF EXISTING CONTRACTS AND LICENSES.—

(I) IN GENERAL.—In the case of a control imposed under section 106 on the export of any items, the President may not prohibit the export of those items—

(A) in performance of a contract, agreement, or other contractual commitment entered into before the date on which the control is initially imposed, or the date on which the President reports to the Congress the President's intention to impose the control, whichever date occurs first, or

(B) under a license or other authorization issued under this title before the date on which the control is initially imposed, or the date on which the President reports to the

Congress the President's intention to impose the control, whichever date occurs first.

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

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

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

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

The authority of the President to make determinations under this paragraph may not be delegated.

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

(I) IN GENERAL.—The Secretary shall publish in the Federal Register, to the greatest extent practicable, actions, procedures, and decisions of the Secretary under this title, taking into account restrictions on disclosure of classified or confidential information. The Secretary shall publish in the Federal Register calculations by the Secretary of commonly-used control index parameters for commodities and technologies, including all officially accepted composite theoretical performance calculations for computers and microprocessors, except in a case in which a private party requested the calculation and asked that it not be published.

(2) NOTICE OF REVISIONS.—Whenever the Secretary makes any revision in the control index with respect to any commodity or technology, or with respect to any country or destination affected by controls imposed under section 105 or section 106, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice under which authority the revision is being made.

(o) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH INDUSTRY; RECORDKEEPING.—

(I) NOTIFICATION OF THE PUBLIC.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted under this title with a view to encouraging trade.

(2) CONSULTATION WITH INDUSTRY.—The Secretary shall meet regularly with export advisory committees appointed under section 104(f) in order to obtain their views on United States export control policy and the foreign availability of commodities and technology.

(p) EXPORT CONTROL DUTIES.—

(I) ASSIGNMENT.—The Secretary shall ensure that at least one full-time representative of the Department of Commerce stationed in the People's Republic of China has duties related to the implementation of export controls under this title. These duties shall include giving priority to conducting postshipment verifications and prelicense checks, and to using other means to ensure that United States exports from the United States of dual use items are not diverted to unauthorized end uses or end users.

(2) OTHER RESOURCES.—The Secretary shall ensure that appropriate resources are made available and, if necessary, new procedures established to assist the representative or representatives of the Department of Commerce referred to in paragraph (I) in carrying out their duties and to ensure that sensitive items are not diverted to inappropriate end uses or end users in the People's Republic of China. Efforts to carry out this paragraph shall include appropriate coordination with United States officials in Hong Kong to ensure that sensitive items exported to Hong Kong are protected from diversion.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such

sums as may be necessary to carry out paragraph (I).

(q) AUTHORIZATION FOR TECHNICAL DATA.—A license authorizing the export of any commodities or technology under this title shall also authorize the export of operation technical data related to such commodities or technology, if the technical level of the data does not exceed the minimum necessary to install, repair, maintain, inspect, operate, or use the commodities or technology.

(r) LICENSES FOR SPARE PARTS NOT REQUIRED.—A license shall not be required under this title for replacement parts which are exported to replace on a one-for-one basis parts that were in a commodity that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

#### SEC. 115. ANNUAL REPORT.

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

(1) The implementation of the policies set forth in section 103, including delegations of authority by the President under section 104(d), consultations with the export advisory committees established under section 104(f), and any changes in the exercise of the authorities contained in sections 105(a), 106(a), 107(a), and 108(a).

(2) With respect to multilateral export controls imposed or maintained under section 105, the following:

(A) Adjustments to multilateral export controls.

(B) The exercise of the Secretary's authority under section 105(e).

(3) Determinations made under section 114(k), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to maintain export controls notwithstanding determinations made under paragraph (2) of section 114(k).

(4) Short supply controls and monitoring under section 107.

(5) Organizational and procedural changes undertaken in furtherance of the policies set forth in this title, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 109, including an accounting of appeals received, and actions taken pursuant thereto, under section 109(g).

(6) Violations under section 110 and enforcement activities under section 113.

(7) The issuance of regulations under this title.

(8) The results, in as much detail as may be included consistent with the strategic and political interests of the United States and the need to maintain the confidentiality of proprietary information, of the reviews of the multilateral control list, and any revisions to the list resulting from such reviews, required by section 105.

(b) COMPARATIVE REPORT ON EXPORT CONTROL SYSTEMS AMONG COUNTRIES.—The Secretary shall include, in each annual report under subsection (a), a description of significant differences between the export control laws and regulations of the United States and its major trade competitors, particularly as these differences relate to the implementation of multilateral export control regimes. The Secretary shall include—

(1) an assessment of the impact of these differences on important interests of the United States;

(2) a description of the extent to which the executive branch intends to address these differences; and

(3) a listing of unilateral controls and embargoes imposed by the United States that are in effect, with a quantification of their economic impact, including the effect of such controls and embargoes on employment in the United States.

(c) GAO REPORT.—The Comptroller General shall prepare and submit to the Congress, not later than 120 days after each report under subsection (b) is submitted, an analysis of such report.

#### SEC. 116. DEFINITIONS.

As used in this title:

(1) **AFFILIATE.**—The term “affiliate” includes both governmental entities and commercial entities that are controlled in fact by a country.

(2) **ADHERENT.**—An “adherent” to a multilateral regime is a country that is a member of that regime or that, pursuant to an international understanding to which the United States is a party, controls exports in accordance with the criteria and standards of that regime.

(3) **AUSTRALIA GROUP.**—The term “Australia Group” means the multilateral regime in which the United States participates that seeks to prevent the proliferation of chemical and biological weapons.

(4) **CHEMICAL WEAPONS CONVENTION.**—The term “Chemical Weapons Convention” refers to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 1992.

(5) **COMMODITY.**—The term “commodity” means any article, natural or manmade substance, material, software, source code, supply, or manufactured product, including inspection and test equipment, and excluding technical data.

(6) **CONTROL OR CONTROLLED.**—The terms “control” and “controlled” refer to a licensing requirement, a written reexport authorization requirement, or a prohibition on an export.

(7) **CONTROL INDEX.**—The term “control index” means the United States Commodity Control Index established under section 104(b)(1).

(8) **CONTROLLED COUNTRY.**—The term “controlled country” means a country to which exports are controlled under section 105 or 106.

(9) **EXPORT.**—(A) The term “export”—

(i) means—

(I) an actual shipment, transfer, or transmission of items out of the United States; and

(II) a transfer to any person of items either within the United States or outside of the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted outside the United States; and

(ii) includes the term “reexport”.

(B) The Secretary may further define the term export by regulation to include, among other concepts, that—

(i) a transfer of items in the United States to an embassy or affiliate of a country is an export to the country,

(ii) disclosure of technology to a foreign person is deemed to be an export to the country of which he or she is a national, and

(iii) transfer of effective control from one country to another over a satellite above the earth is an export from one country to another.

(C) As used in this paragraph, the term “foreign person” means—

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

(ii) any corporation, partnership, business association, society, trust, organization, or other nongovernmental entity created or or-

ganized under the laws of a foreign country or that has its principal place of business outside the United States; and

(iii) any governmental entity of a foreign country that is operating as a business enterprise.

(10) **EXPORT CONTROL REGIME, MULTILATERAL EXPORT CONTROL REGIME, MULTILATERAL REGIME, AND REGIME.**—The terms “export control regime”, “multilateral export control regime”, “multilateral regime”, and “regime” each means an international agreement or an arrangement among two or more countries, including the United States, a purpose of which is to coordinate national export control policies of participating countries regarding certain items. Such terms include the Australia Group, the Wassenaar Arrangement, the MTCR, and the Nuclear Suppliers Group.

(11) **FOREIGN AVAILABILITY, AVAILABLE IN FACT TO CONTROLLED COUNTRIES.**—The terms “foreign availability” and “available in fact to controlled countries” each include production or availability of any item from any country—

(A) in which the item is not restricted for export to any controlled country; or

(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of items on a list of items subject to export controls imposed pursuant to a multilateral export control regime shall not alone constitute credible evidence that the government of a country provides an effective means of controlling the export of such items to controlled countries.

(12) **ITEM.**—The term “item” means any commodity, technology, or other information.

(13) **LICENSING REQUIREMENT.**—The term “licensing requirement” includes any restriction or condition, including record-keeping and reporting, imposed by the Secretary under this title in licensing the export of a commodity, technology, or other information.

(14) **MEMBER OF AN EXPORT CONTROL REGIME.**—A “member” of an export control regime, multilateral export control regime, multilateral regime, or regime is a country that participates in that regime.

(15) **MISSILE.**—The term “missile” means any missile system or component listed in category I of the MTCR Annex, and any other unmanned delivery system or component of similar capability, as well as the specially designed production facilities for these systems.

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

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

(18) **NUCLEAR EXPLOSIVE DEVICE.**—The term “nuclear explosive device” means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

(19) **NUCLEAR SUPPLIERS’ GROUP.**—The term “Nuclear Suppliers’ Group” means the multilateral arrangement in which the United

States participates whose purpose is to restrict the transfers of items with relevance to the nuclear fuel cycle or nuclear explosive applications.

(20) **PERSON.**—Except as provided in section 111, the term “person” includes—

(A) the singular and the plural and any individual, 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 body, corporation, trust, agency, department, or group, operating as a business enterprise.

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

(22) **SECRETARY.**—The term “Secretary” means the Secretary of Commerce or any successor officer performing functions of the Secretary of Commerce under this title.

(23) **TECHNOLOGY.**—The term “technology” means specific information that is necessary for the development, production, or use of a commodity, including source code, and that takes the form of technical data or technical assistance.

(24) **UNILATERAL AND UNILATERALLY.**—The terms “unilateral” and “unilaterally”, with respect to an export control on a commodity or technology, refer to a control that is not similarly imposed in similar circumstances by any country other than the United States, and that materially restricts the export of the commodity or technology.

(25) **UNITED STATES.**—The term “United States” means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(26) **UNITED STATES PERSON.**—The term “United States person” means any United States citizen, resident, or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(27) **WASSENAAAR ARRANGEMENT.**—The term “Wassenaar Arrangement” means the multilateral regime in which the United States participates that seeks to promote transparency and responsibility with regard to the transfers of conventional armaments and sensitive dual-use goods and technologies.

(28) **WEAPON OF MASS DESTRUCTION.**—The term “weapon of mass destruction” means any chemical, biological, or nuclear weapon, including a nuclear explosive device.

#### SEC. 117. EFFECTS ON OTHER ACTS.

(a) **COMMODITY JURISDICTION.**—

(1) **COORDINATION OF CONTROLS.**—The authority granted under this title and under section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be exercised in such a manner as to achieve effective coordination between the licensing systems under this title and such section 38 and to share information regarding the trustworthiness of parties.

(2) **ELIMINATION OF OVERLAPPING CONTROLS.**—Notwithstanding any other provision of law, no item may be included on both the control index and the United States Munitions List after the date of the enactment of this Act.

(3) COMMODITY JURISDICTION DISPUTE RESOLUTION.—The President shall establish procedures for the resolution of commodity jurisdiction disputes among departments and agencies of the United States. Such disputes shall normally be resolved within 60 days, and the procedures shall allow disputes to be referred to the President normally within 90 days. These procedures shall also—

(A) require the Secretary and the Secretary of State to refer matters to each other in accordance with their respective jurisdictions;

(B) require transparency, among the Secretary, the Secretary of State, and the Secretary of Defense, in commodity jurisdiction cases and commodity classification requests and determinations;

(C) provide for interagency meetings and consultations to permit the free exchange of views regarding significant jurisdictional issues; and

(D) provide deadlines for action and standards for decision, and ensure that disputes that cannot be resolved may be referred to the President by the Secretary of State, the Secretary of Defense, or the Secretary.

(b) IN GENERAL.—Except as otherwise provided in this title, nothing in this title shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodities, technology, or other information.

(c) LICENSING PROCESS.—The provisions of section 109 shall supersede the procedures published pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2139a(c)) to the extent such procedures are inconsistent with the provisions of section 109.

(d) AMENDMENTS TO THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—

(1) EXERCISE OF PRESIDENTIAL AUTHORITY.—(A) Section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703(b)) is amended—

(i) by striking “and” at the end of paragraph (4);

(ii) by striking the period at the end of paragraph (5) and inserting “; and”; and

(iii) by adding at the end the following:

“(6) if the action is being taken unilaterally—

“(A) why the President believes the action is necessary to meet the unusual and extraordinary threat referred to in paragraph (2); and

“(B) what steps the President is taking to gain multilateral support for the action.”.

(B) Section 204(c) of that Act (50 U.S.C. 1703(c)) is amended—

(i) by striking “(5)” and inserting “(6)”; and

(ii) by striking the period and inserting “, and, in the case of controls referred to in paragraph (6) of subsection (b), the President shall report to the Congress on the economic losses that have occurred as a result of the unilateral action”.

(2) CONFIDENTIALITY OF INFORMATION.—The International Emergency Economic Powers Act is amended—

(A) by redesignating section 208 as section 209; and

(B) by inserting after section 207 the following:

**“SEC. 208. CONFIDENTIALITY OF INFORMATION.**

“(a) EXEMPTIONS FROM DISCLOSURE.—Information obtained under this title before or after the enactment of this section may be withheld only to the extent permitted by statute, except that information submitted, obtained, or considered in connection with any transaction that would otherwise be prohibited under this title, including—

“(1) the license or other authorization itself,

“(2) classification requests or other inquiries on the applicability of export license requirements to a proposed transaction or series of transactions,

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

“(4) information obtained or furnished under this title in connection with international agreements, treaties, or obligations,

shall be withheld from public disclosure, and shall not be subject to disclosure under section 552 of title 5, United States Code, unless the release of such information is determined by the Secretary of Commerce or the Secretary of the Treasury to be in the national interest. In the case of information obtained or furnished under this title in connection with international agreements, treaties, or obligations, such a determination may be made only after consultation with the Secretary of State.

“(b) INFORMATION TO CONGRESS AND GAO.—

“(1) IN GENERAL.—Nothing in this title shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office.

“(2) AVAILABILITY TO THE CONGRESS.—

“(A) IN GENERAL.—All information obtained at any time under this title regarding the control of exports, including any report or license application required under this title, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon the request of the chairman or ranking minority member of such committee or subcommittee.

“(B) PROHIBITION ON FURTHER DISCLOSURE.—No committee, subcommittee, or Member of Congress shall disclose any information obtained under this title or previous Acts regarding the control of exports which is submitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

“(3) AVAILABILITY TO THE GAO.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), information referred to in paragraph (2) shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

“(B) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this subsection, any such information which is submitted on a confidential basis and from which any individual can be identified.

“(C) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—Any officer or employee of the United States, or any department or agency thereof, who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information that—

“(1) he or she obtains in the course of his or her employment or official duties or by reason of any examination or investigation made by, or report or record made to or filed with, such department or agency, or officer or employee thereof, and

“(2) is exempt from disclosure under this section,

shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, shall

be removed from office or employment, and shall be subject to a civil penalty of not more than \$1,000.”.

(3) PENALTIES.—Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended—

(A) in subsection (a) by inserting “, or attempts to violate,” after “violates”; and

(B) in subsection (b) by inserting “, or willfully attempts to violate,” after “violates”.

(e) AMENDMENTS TO THE TRADING WITH THE ENEMY ACT.—Section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16) is amended—

(1) in subsection (a)—

(A) by inserting “, or attempt to violate,” after “violate” the first place it appears; and

(B) by inserting “attempt to violate,” after “violate,” the second place it appears; and

(2) in subsection (b)(1) by inserting “, or attempts to violate,” after “violates”.

(f) REPORT ON OFAC AND ODTIC.—

(1) STUDY ON OFAC.—The Secretary of the Treasury shall study ways to make the operations of the Office of Foreign Assets Control of the Department of the Treasury more effective and efficient in responding to licensing requests and other inquiries of United States exporters, including through the upgrading of technology in that office.

(2) STUDY ON ODTIC.—The Secretary of State shall study ways to make the Office of Defense Trade Controls of the Department of State more effective and efficient in responding to licensing requests and other inquiries of United States exporters, including through the upgrading of technology in that office.

(3) SUBMISSION OF REPORTS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Congress a report on the study conducted under paragraph (1) and the Secretary of State shall submit to the Congress a report on the study conducted under paragraph (2).

**SEC. 118. SECONDARY ARAB BOYCOTT.**

(a) SENSE OF CONGRESS.—

(1) ENDING SECONDARY BOYCOTT.—It is the sense of the Congress that the countries of the Arab League should end the secondary Arab boycott.

(2) ACTIONS TO END SECONDARY BOYCOTT.—The United States will consider the secondary Arab boycott to have ended when—

(A) the Arab League issues a public pronouncement that the Arab League has ended the secondary Arab boycott;

(B) all activities carried out by the Central Office for the Boycott of Israel in support of the secondary Arab boycott have been terminated;

(C) the Arab League and the individual countries that are members of the Arab League have terminated the practice of barring United States persons and foreign companies that do not comply with the secondary Arab boycott from doing business with countries that are members of the Arab League, and have declared null and void any existing list of such barred persons and companies; and

(D) the Arab League, and the individual countries that are the members of the Arab League, have ceased requesting United States persons to take actions prohibited under section 108(a).

(b) DEFINITION.—For purposes of this section, the term “secondary Arab boycott” means the refusal to do business with persons who do not comply with requests to take any action prohibited under section 108(a) with respect to Israel.

**SEC. 119. CONFORMING AMENDMENTS.**

(a) ARMS EXPORT CONTROL ACT.—

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(A) in subsection (e)—

(i) in the first sentence by striking “subsections (c)” and all that follows through “12 of such Act” and inserting “subsections (b), (c), (d) and (e) of section 110 of the Export Administration Act of 1996, by subsections (a) and (b) of section 113 of such Act, and by section 114(g) of such Act”; and

(ii) in the third sentence by striking “11(c) of the Export Administration Act of 1979” and inserting “110(c) of the Export Administration Act of 1996”; and

(B) in subsection (g)(1)(A) by striking clause (ii) and inserting the following:

“(ii) section 110 of the Export Administration Act of 1996.”

(2) Section 39A(c) of the Arms Export Control Act, as added by the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, is amended—

(A) by striking “(c),” and all that follows through “12(a) of such Act” and inserting “(c), (d), and (e) of section 110, section 112(c), and subsections (a) and (b) of section 113, of the Export Administration Act of 1996”; and

(B) by striking “11(c)” and inserting “110(c)”.

(3) Section 40(k) of the Arms Export Control Act (22 U.S.C. 2780(k)) is amended—

(A) by striking “11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979” and inserting “110(b), 110(c), 110(e), 113(a), and 113(b) of the Export Administration Act of 1996”; and

(B) by striking “11(c)” and inserting “110(c)”.

(4) Section 73A of the Arms Export Control Act, as added by the Foreign Relations Authorization Act, Fiscal Years 1995 and 1995, is amended by striking “a MTCR adherent” and inserting “an MTCR adherent”.

(b) OTHER PROVISIONS OF LAW.—

(1) Section 5(b)(4) of the Trading with the Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App. 5(b)(4)) is amended by striking “section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States” and inserting “the Export Administration Act of 1996”.

(2) Section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the second sentence—

(A) by striking “Export Administration Act of 1979” the first place it appears and inserting “Export Administration Act of 1996”; and

(B) by striking “Act of 1979” and inserting “Act of 1996”.

(3)(A) Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)) is amended—

(i) in paragraph (1)(B) by inserting “or section 106(i) of the Export Administration Act of 1996” after “Act of 1979”; and

(ii) in paragraph (2) by striking “6(j) of the Export Administration Act of 1979” and inserting “106(i) of the Export Administration Act of 1996”.

(B) For purposes of the report required by March 31, 1996, under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, the reference in paragraph (2) of such section to “section 106(i) of the Export Administration Act of 1996” shall be deemed to refer to “section 6(j) of the Export Administration Act of 1979 or section 106(i) of the Export Administration Act of 1996”.

(4) Section 40(e)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1)) is amended by striking “6(j)(1) of the Export Administration Act of 1979” and inserting “106(i)(1) of the Export Administration Act of 1996”.

(5) Section 110 of the International Security and Development Cooperation Act of

1980 (22 U.S.C. 2778a) is amended by striking “Act of 1979” and inserting “Act of 1996”.

(6) Section 205(d)(4)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4305(d)(4)(B)) is amended by striking “6(j) of the Export Administration Act of 1979” and inserting “106(i) of the Export Administration Act of 1996”.

(7) Section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)) is amended by striking “section 5 of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States” and inserting “the Export Administration Act of 1996”.

(8) Section 491(f) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620c(f)) is repealed.

(9) Section 499 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620j) is amended by striking “section 7 of the Export Administration Act of 1979” and inserting “section 107 of the Export Act of 1996”.

(10) Section 1605 (a)(7)(A) of title 28, United States Code, is amended by striking “6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))” and inserting “106(i) of the Export Administration Act of 1996”.

(11) Section 2332d(a) of title 18, United States Code, is amended by striking “6(j) of the Export Administration Act (50 U.S.C. App. 2405)” and inserting “106(i) of the Export Administration Act of 1996”.

(12) Section 620H (a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended by striking “6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))” and inserting “106(i) of the Export Administration Act of 1996”.

(13) Section 1621(a) of the International Financial Institutions Act (22 U.S.C. 262p-4q(a)) is amended by striking “6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))” and inserting “106(i) of the Export Administration Act of 1996”.

(c) REPEAL.—The Export Administration Act of 1979 is repealed.

#### SEC. 120. EXPIRATION DATE.

This title expires on June 30, 2001.

#### SEC. 121. SAVINGS PROVISIONS.

(a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under—

(1) the Export Control Act of 1949, the Export Administration Act of 1969, or the Export Administration Act of 1979, or

(2) those provisions of the Arms Export Control Act which are amended by section 119,

and are in effect at the time this title takes effect, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this title or the Arms Export Control Act.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—

(1) EXPORT ADMINISTRATION ACT.—This title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979, which is pending at the time this title takes effect. Any such proceedings, and any action on such application, shall continue under the Export Administration Act of 1979 as if that Act had not been repealed.

(2) OTHER PROVISIONS OF LAW.—This title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 119, if such proceed-

ings or application is pending at the time this title takes effect. Any such proceedings, and any action on such application, shall continue under those provisions as if those provisions had not been amended by section 119.

(c) TREATMENT OF CERTAIN DETERMINATIONS.—Any determination with respect to the government of a foreign country under section 6(j) of the Export Administration Act of 1979, that is in effect at the time this title takes effect, shall, for purposes of this title or any other provision of law, be deemed to be made under section 106(i) of this Act until superseded by a determination under such section 106(i).

### TITLE II—NUCLEAR PROLIFERATION PREVENTION

#### SEC. 201. REPEAL OF TERMINATION OF PROVISIONS OF THE NUCLEAR PROLIFERATION PREVENTION ACT OF 1994.

(a) REPEAL.—Part D of the Nuclear Proliferation Prevention Act of 1994 (part D of title VIII of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; Public Law 103-236; 108 Stat. 525) is hereby repealed.

(b) PRESIDENTIAL DETERMINATIONS.—Section 824(c) of the Nuclear Proliferation Prevention Act of 1994 is amended by striking “, in writing after opportunity for a hearing on the record.”

(c) JUDICIAL REVIEW.—Section 824 of the Nuclear Proliferation Prevention Act of 1994 is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) through (k) as subsections (e) through (j), respectively.

(d) CONFORMING AMENDMENT.—Section 102(b)(2)(G) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)(2)(G)) is amended by striking “section 6 of the Export Administration Act of 1979” and inserting “section 105 or 106 of the Export Administration Act of 1996”.

#### SEC. 202. SEEKING MULTILATERAL SUPPORT FOR UNILATERAL SANCTIONS.

The Secretary of State, in consultation with appropriate departments and agencies, shall seek the support of other countries for sanctions imposed under the Nuclear Proliferation Prevention Act of 1994 or the amendments made by that Act.

#### SEC. 203. SANCTIONS UNDER THE NUCLEAR PROLIFERATION PREVENTION ACT OF 1994.

Section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)(2)) is amended—

(1) in subparagraph (D) by striking “shall not apply—” and all that follows through the end of clause (ii) and inserting “shall not apply to humanitarian assistance.”;

(1) in subparagraph (G) by striking “, except that” and all that follows through the end of the subparagraph and inserting a period; and

(3) by adding at the end the following:

“(H)(i) The President shall prohibit the importation into the United States of specific products produced in that country by persons who have engaged in the activities described in paragraph (1) that were the basis of the President’s determination under such paragraph.

“(ii) In the event that it is not possible to identify the persons who have engaged in the activities described in paragraph (1) that were the basis of the President’s determination under such paragraph, the President shall prohibit the importation into the United States of products produced in that country by those persons that the President shall designate as most closely identified with those activities.

"(iii) For purposes of this subparagraph, the term 'person' means—

"(I) a natural person;

"(II) a corporation, business association, partnership, society, or trust, or any other nongovernmental entity, organization, or group;

"(III) a governmental entity operating as a business enterprise;

"(IV) a division or office of a governmental department; or

"(V) a military unit or successor to such unit.

"(iv) The prohibition on imports imposed under this subparagraph shall be in addition to any other prohibition on imports in effect before the President's determination under paragraph (I) is made.

The prohibitions contained in subparagraphs (D), (G), and (H) shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin [Mr. ROTH] and the gentleman from Connecticut [Mr. GEJDENSON] will each be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill before us is a result of an enormous amount of work by many, many people. As this session began, I spoke to President Clinton and with the gentleman from New York, Chairman GILMAN, and the gentleman from South Carolina, Chairman SPENCE, and many others about working together for a good, balanced reform bill that we could all support.

We spent 14 months in bipartisan discussion, talks involving our committee, and the administration, and the Committee on National Security.

We knew that we needed to respond to new challenges: There is a new added urgency to our fight against the proliferation and international terrorism; COCOM has disappeared and cooperation among our allies is far more difficult; our Government is resorting to unilateral controls, all too frequently, often at the expense of U.S. workers; and technological progress in many areas has accelerated, putting many products beyond the effective control of governments.

Mr. Speaker, we have successfully met these challenges in this bill, H.R. 361. The bill strikes a careful balance, replacing an expired cold-war law with a new statute that focuses on today's challenges.

Let me list some of the bill's key provisions.

First, the bill creates a new emphasis on strengthening multilateral export controls and on reducing U.S. reliance on unilateral controls. While unilateral controls are permitted, the President must annually justify them.

The President must also annually estimate and justify their cost to the U.S. economy, and he must identify what is being done to make the controls multilateral.

Second, the bill combats the proliferation of weapons of mass destruc-

tion and the missiles to deliver them. This includes tough prohibitions on the exports to countries not supporting multilateral efforts on nonproliferation. It also includes strengthened sanctions on persons who aid international proliferations.

Third, the bill cracks down on dual-use exports and reexports to terrorist countries. Sensitive exports are simply prohibited. Plus, the Secretary of State is given new duties to ensure greater multilateral support for these tough controls.

Fourth, the bill removes unneeded bureaucracy and cold-war impediments to export competitiveness. For instance, the bill streamlines the procedures and reduces, in half, licensing time lines. It provides new procedures for ensuring that U.S. exporters are treated fairly and that U.S. controls are clear and understandable.

It establishes new rights for exporters to seek administrative and judicial review. The bill codifies new principles for deciding issues of jurisdiction between the State Department munitions list and the Commerce Department dual-use list.

Mr. Speaker, these are just the highlights. I should also note that compromises have been made. The bill does not do everything that I or the gentleman from Connecticut [Mr. GEJDENSON], or anyone on our committee would prefer. For example, I wish we would have been able to do something more on encryption and the like, but it can and should become law, this bill.

Mr. Speaker, I want to pay special tribute to the gentleman from New York [Mr. GILMAN], the full committee chairman, and the gentleman from Indiana [Mr. HAMILTON] and the gentleman from Connecticut [Mr. GEJDENSON], our minority side, for their work, and especially the staffs who worked with us for 14 months in negotiation on this piece of legislation. Without their stalwart efforts over many years of reform, we would not be here today.

I also want to acknowledge the work of the National Security Advisor Tony Lake and his team at the NSC. They have been tireless in their support.

Mr. Speaker, I would like to acknowledge the contributions of other committees with jurisdiction. As I have mentioned, the gentleman from South Carolina [Mr. SPENCE] and his committee staff have been an invaluable part of these discussions in coming to a good resolution on this bill.

I would like to thank the gentleman from Texas [Mr. ARCHER], chairman of the Committee on Ways and Means, who reported the import sanctions provision retained in both section 1711 and section 203; the gentleman from New York [Mr. SOLOMON], the Committee on Rules, and his staff, who have contributed important technical improvement, especially on section 107; and the staff of the Permanent Select Committee on Intelligence. They all have provided key assistance on provisions affecting the intelligence community.

We have been helped greatly by such industry leaders as Mike Armstrong of Hughes Electronics and Mike Jordan of Westinghouse Electric. Their testimony and their advice have been invaluable. There have been so many CEO's in America who have contacted us on this legislation.

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I also want to thank all the associations who have worked closely with us and their support in making today possible: the Association of Manufacturing Technology [AMT] and its 356 machine tool companies. I want to thank the aerospace industry, and I want to thank the Chemical Manufacturers Association, the Agricultural Export Alliance and the American Farm Bureau.

Mr. Speaker, in conclusion, I recall introducing this bill, H.R. 361, on the first day of the Congress. My goal was simple, to reform our outdated export control system and to help our high-technology industry to create new jobs, good paying jobs, for American workers. This bill does that. It replaces a 17-year-old dinosaur with a law that is updated and forward looking.

With H.R. 361's passage, we will help the United States enter the 21st century as the most successful and the most responsible exporting state in the world, and I urge all my colleagues to adopt and to vote for this legislation.

Mr. GEJDENSON. Mr. Speaker, I yield myself such time as I may consume.

First, I would like to express my profound regret that the gentleman from Wisconsin will not be seeking a return to this Chamber. It has befuddled some, but the gentleman and I have had a great working relationship for a number of years, both when I was chairman and now under his chairmanship.

I have always found him to be honorable and hard-working and straightforward. Sometimes he would get it wrong, but I am sure he felt the same way about me. So it has been a great pleasure to work with him, and I look forward to many years of friendship. I think he is a terrific Member, and I think he has made a valiant effort, and I know, having brought this bill out on a number of occasions. It is a difficult challenge to get a real change through the Congress.

We can remember in 1989, the Bush administration found itself in a horrendous battle between Secretary of Defense Cheney and Secretary of Commerce Mosbacher. Secretary Mosbacher decontrolled 286 computers. Secretary Cheney seemed to be ready to assure us that this would give the Soviet Union the ability to rejuvenate itself and pass us militarily. There was this great debate in Washington whether Mosbacher had gone too far. Of course, I do not know what one could do with a 286 computer today except for using it as a paperweight, but that is part of the problem with this bill.



This bill is going to pass, Mr. Speaker, and I will not oppose it. While I am not going to oppose it, however, I cannot endorse it. I think what we do here is we do very little really to grab hold of the kinds of initiatives we need to deal with the terrorism and the spread of the kind of technologies, choke point technologies, that we might be able to control if we were more serious. At the same time, we hobble the American export market which has a direct impact on our workers and the vitality of our economy because these modern technologies are our future. They are where we are most competitive.

We give ourselves, as this legislation does, as much as half a year to get an export license, while in Germany, France, Japan and the rest of the countries around the globe, who have the exact same technology, they will just walk through an agency and in many, many instances not need any license at all.

The problem with this new agreement that replaces COCOM is that, frankly, it all ends up being unilateral controls. We end up in a situation where it will be controlled in the United States, but the Germans and the Japanese will make no effort to control it. The reason here is, I think, we have to focus on what is doable. We have to focus on getting cooperative agreements on critical technologies, on choke point technologies. But we also have to have the understanding that, while we ought not be racing to provide sensitive technologies to dangerous countries, frankly, the gentleman from Wisconsin and I have worked together, and the gentleman from New York [Mr. GILMAN] and I have worked on the terrorism legislation to deny all technologies to the Libyas and Irans of this world who are leaders in the kind of terrorism that exists today. But the reality is we do not make the kind of definitions that are necessary.

We do not deal with foreign availability. If it can be bought in Radio Shack in Beijing, it is too late to try to control it as an export product from the United States. We found that through the years we would fight for export license for 386 chips while they could be bought in stores in China.

The failure to deal with the difference between a dual-use item and a munition will leave us where we are and where we have been in the past, where at one point an American company could not sell bank smart cards to a British bank. Not that they were not available, not that it was not clearly a nonmilitary use, but because there was encryption involved that ended getting dragged into the same category as bullets and bombs.

This bill does not give American exporters the kind of platform to challenge bureaucratic insanity. If you are down there buried in the bowels of the government, most people do great work; but the instinct is why take a chance, and not taking a chance may cripple America's economy because

these are the jobs of the future. It is not simply profits we are talking about, we are talking about the vitality of American industry, the vitality of our work force, and the vitality of our economy.

I commend the chairman for doing what he has done, though, because this is a very tough Congress. With the extreme nature of some of the politics of this Congress, the gentleman probably would have never gotten it through some of the other committees. My admiration for the gentleman from Wisconsin, Chairman ROTH, continues. I am just frustrated, frankly, that we have not been able to do more.

That is basically not a tricky decision. It is a rational process. If we can buy it in every other country in the globe, American control does not achieve anything. If we have something that is dual use, it ought not be dealt with as if it was a missile system. So we have made some progress here; we have not made enough.

These are the critical industries for the future. We ought to be nurturing them and doubling our efforts to fight terrorism, not leaving them hobbled in what may be 6 months of bureaucracy while purchasers of these products are running into Germany and Japan and walking out without any waiting period.

Mr. Speaker, I reserve the balance of my time.

Mr. ROTH. Mr. Speaker, I yield myself such time as I may consume to say that, first of all, I want to thank the gentleman from Connecticut [Mr. GEJDENSON] for his strong support of this legislation and for backing the legislation. I do not know of anyone in this body who has a greater understanding of the legislation than Mr. GEJDENSON does, so I appreciate his support very much.

#### GENERAL LEAVE

Mr. ROTH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 361.

The SPEAKER pro tempore. (Mr. GUTKNECHT). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. ROTH. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. GILMAN], chairman of our full committee. In doing that, I again want to thank him for his strong support and his help and the staff's help on this legislation.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in strong support of the Export Administration Act of 1996, the first significant reform of our export control laws in the past two decades. It will bring our export control statutes in conformity to the post-cold war era

and will strengthen our export controls in such key markets as China.

I want to congratulate the distinguished gentleman from Wisconsin, the chairman of the Subcommittee on International Economic Policy and Trade, for his outstanding work on this legislation as well as his support of the gentleman from Connecticut [Mr. GEJDENSON] the committee's distinguished ranking member.

The gentleman from Wisconsin [Mr. ROTH] has been unwavering in his determination to move this bill, and the successful negotiations with the Committee on National Security and with the administration have enabled our committee to bring this bill to the House floor today under a suspension of the rules.

During our committee's markup on this vitally important legislation, the Committee on International Relations considered an export control text that greatly tightened statutory restrictions on exports to terrorist nations, specifically prohibiting all proliferation-related and dual-use exports and reexports to such countries providing a Presidential waiver if an export is essential to the national interest.

Enactment of this legislation, Mr. Speaker, will require the Secretary of State to seek support of these antiterrorism controls from other nations and from the various export control regimes. It will help to make certain that the same stringent export control regime will be applied to all terrorist states, including Syria.

During its markup, the committee adopted an amendment that I proposed providing greater scrutiny and monitoring to the billions of dollars of dual-use equipment and technology licensed annually for export from our Nation to the People's Republic of China.

As we learned during the recent debate on the House floor in providing most-favored-nation to China, we are going to have to pay greater attention to China's rapid military buildup and modernization of its Armed Forces.

Enactment of this bill will help to accomplish that objective by ensuring that our dual-use exports to the People's Republic of China are not going to be put to use for those purposes by companies controlled by the Chinese People's Liberation Army.

In sum, this bill not only undertakes the long overdue reform of the Export Administration Act but also reestablishes our statutes on dual-use exports and reasserts the prerogatives of this committee over this important body of law. While it provides greater transparency on U.S. export control laws and greatly reduces the number of days needed for issuing export licenses, it also adds controls on countries not supporting multilateral efforts to counter the proliferation of weapons of mass destruction.

In short, this is a well balanced bill addressing regional and global proliferation threats while, at the same

time, streamlining and modernizing antiquated export control procedures of the cold war era.

To those Members concerned about the impact of its provisions on American industry, I would point out that it subjects export controls to new oversight procedures and gives our exporters an improved appeals process for controls they believe are unfair.

Accordingly, I urge my colleagues to support this historic legislation, the Roth bill on export controls, and I again commend him and the gentleman from Connecticut [Mr. GEJDENSON] for their work on this measure.

Mr. ROTH. Mr. Speaker, I yield myself such time as I may consume to again thank the gentleman from New York, the chairman of our full committee, for his strong support of this legislation and for all the help he has given me in making today possible.

Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER] who has worked on this subcommittee with me for many, many years and I have always appreciated his support.

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, this Member rises in strong support of H.R. 361, the Export Administration Act of 1996. Our current export licensing framework is grossly out of date—not having been significantly revised in 17 years. We desperately need to pass this legislation if Congress is to have any influence over the delicate balancing act between national security and commercial interests that the President currently performs under the broad powers of the International Emergency Economic Powers Act.

First however, this Member would like to congratulate the distinguished gentleman from Wisconsin [Mr. ROTH], chairman of the International Relations Subcommittee on International Economic Policy and Trade, for his exceptional work in crafting legislation that not only revises an out-of-date statutory framework but provides us with a rational system for export controls that can evolve well during the 21st century. This Member regrets that we are losing Chairman ROTH's excellent stewardship on issues of great importance to American commercial interests. It has been this Member's pleasure to serve with Chairman ROTH on this subcommittee for the last 14 years. However, this Member is grateful that Chairman ROTH leaves his post with a good, bipartisan House compromise that the Senate would be wise to consider and pass.

On March 3, 1795, Congress gave the President authority to permit the exportation of arms, cannons and military stores in "cases connected with the security of the commercial interest of the United States, and for public purposes only." That act was one of the first export administration acts and no doubt an ancestor to the legislation currently before us today.

Despite his best efforts during his tenure in Congress to eliminate red tape and bureaucracy, Chairman ROTH presents us with a bill 201 years later that is 202 pages longer than its precursor. That amounts to a page of legislation for each birthday of this great country.

Obviously, despite that facetious comparisons, Mr. Speaker, the world is a much more complicated place than it was in 1795, but the underlying principles for export regulations are the same. Then, we did not want our enemies to be able to acquire the cannons that could damage our ships of commerce. Now, for example, we seek to deny them the precision tools from constructing weapons of mass destruction.

Mr. Speaker, this legislation is not perfect; no compromises are. But the current export control authority for our Nation is badly in need of reform. This legislation will importantly reestablish U.S. statutory authority and eliminate the necessity of the President using overly broad emergency administrative powers to implement our Nation's export control laws. While tightening restrictions on dual-use exports to rogue regimes and terrorist countries, it emphasizes strengthening multilateral export controls. Also it provides strong incentives for the President to negotiate with our allies before unilateral controls are imposed.

Mr. Speaker, this Member would like to again congratulate Chairman ROTH for his hard work on striking an appropriate balance between U.S. national security and commercial interests. If the Senate wisely follows his lead and passes this legislation, part of the Roth legacy will be a rational export control system that is responsive to U.S. industry while protecting the national security.

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Mr. ROTH. Mr. Speaker, I thank the gentleman from Nebraska [Mr. BEREUTER] for his excellent comments. I want to say I have enjoyed working with him for the last 14 years on this subcommittee. I appreciate all his creative thinking in the committee also.

Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. MANZULLO], vice chairman of our subcommittee.

Mr. MANZULLO. Mr. Speaker, many people are legitimately concerned about the large U.S. trade deficit, which reached \$111 billion in 1995. But few people know that the U.S. Government maintains barriers to American exports to willing customers overseas. In 1993, the respected Institute for International Economics measured this barrier, totaling up to \$40 billion in lost U.S. sales abroad. Even if you use the most conservative estimate, the current export control system stymies the creation of 600,000 high-paying, highly skilled jobs.

We have entered a new post-cold-war era where our national security threats

have fundamentally changed from the large Soviet menace to a select group of smaller national dedicated to developing weapons of mass destruction and to the promotion of state-sponsored terrorism. We need a revised export control system that recognizes these new threats to our national interests while balancing our economic interests. This bill meets that challenge.

The new Export Administration Act brings more rationality into the system to provide more predictability and transparency for U.S. exporters. It emphasizes coordination with other nations, as opposed to our usual unilateral sanction, "shoot ourselves in the foot strategy."

The new Export Administration Act reduces by almost in half the number of days allowed for issuing export licenses. As chairman of the Small Business Exports Subcommittee, I especially know how delays in the export licensing process can hurt a small exporter. H.R. 361 is needed so that bureaucrats do not unnecessarily delay an important sale.

I also want to extend my appreciation to the chairman of the International Economic Policy and Trade Subcommittee, Mr. TOBY ROTH of Wisconsin. For the past few years, we were unable to pass a comprehensive Export Administration Act reform. This year, the chairman adopted a different tactic to include the National Security Committee in the drafting of this legislation.

The results speak for themselves today: H.R. 361 is on the noncontroversial suspension calendar.

I also want to thank the administration for moving many export control reforms internally through regulatory changes. Increasing the MTOP levels on computers to 2,000 to most every country in the world and 10,000 to our strongest allies was a welcome move because our competitors, even in Brazil and Taiwan, are making functional equivalents of these computer systems.

Because of these administrative changes, we do not have to include these reforms in this legislation. I hope that same spirit of reform will continue because this legislation provides discretion to the administration to resolve some of the most contentious issues in export control reform such as a dual-use definition and foreign availability criteria.

I urge my colleagues to adopt this landmark job-creating reform and that the other body act expeditiously on this bill.

Mr. ROTH. Mr. Speaker, I yield 3 minutes to the gentlewoman from Kansas [Mrs. MEYERS], chairman of the Committee on Small Business.

(Mrs. MEYERS of Kansas asked and was given permission to revise and extend her remarks.)

Mrs. MEYERS of Kansas. Mr. Speaker, I rise in strong support of H.R. 361. I feel that this Congress and the American people owe a debt of gratitude to chairman ROTH for the way he has

crafted this legislation. In previous Congresses this legislation foundered in bitter controversy between the national security community and the business community. Under the leadership of the gentleman from Wisconsin, the legitimate interest in preventing proliferation of technology that can be misused has been reconciled with the legitimate interest in allowing our companies a level playing field with their foreign competitors. And he has done it in a way that allows this bill to be considered under suspension of the rules.

The rationale and need for export controls has changed because of the end of the cold war. Before, we were contending with an adversary with considerable indigenous industrial and scientific capabilities, but lagging behind in technical innovation. The Soviets could develop high technology weapons on their own through their own capabilities plus espionage, but they were one or two generations behind us. Our goal was to keep them from getting state-of-the-art technology, but we knew it was useless to try and keep them from getting older technology.

Before, the key objective of our export controls was to keep the technology away from the Soviets that could allow them to develop more accurate missiles or quieter submarines. But we couldn't prevent them from building subs or rockets, they already knew how to do that. We had to keep our qualitative advantage that made up for our quantitative disadvantage, that would have allowed us to prevail in a stand-up fight and made our deterrent credible. Now, to counter the proliferation threat from rogue and terrorist nations, our focus has to change. We want to prevent the irons and Libyas of the world from getting any kind of missile or weapon of mass destruction. The dangerous countries now do not have the indigenous capability to produce these weapons; they have to purchase the necessary technology and know-how. It doesn't matter if what they build is obsolete in a purely military sense; these obsolete weapons are still dangerous in terms of their utility for terrorist purposes. We have to focus our export control resources to target those outlaw nations specifically, and keep them from getting the technology necessary to build any weapons of mass destruction.

There are two ways to do this. We can put tougher unilateral controls on ever type of industrial technology, because even the lower tech items can still be used to build crude weapons suitable for terrorist purposes. Or, we can concentrate on uniting the entire industrialized world to prevent the real threshold technology from getting to the nations that are truly dangerous. I believe the second approach is the more useful and effective one, and it is the approach taken in this legislation.

Finally, the bill's provision allowing import sanctions to be imposed upon

countries that engage in nuclear proliferation puts a real deterrent to this activity in the hands of the President. It makes it much more likely that we will be able to threaten a sanction that will actually hurt the offending country more than it does us.

However, I am afraid that this current language may be too narrow. It restricts the import sanction to the entities responsible for or most closely identified with the illegal proliferation. There will be situations where it would be most effective to target imports that may not be from the entity that engaged in the proliferation but would cause the foreign country much much more pain if cut off.

We must remember that any trade sanction we impose will cause some hardship to Americans, since after all no trade occurs without mutual benefit. We should allow the administration enough flexibility to pick an appropriate trade sanction that causes more pain to the offending foreign country than it does to American citizens. I hope we can further modify this provision as this bill moves through the legislative process.

All in all, Mr. Speaker, this bill is vitally needed. I urge its swift passage.

Mr. ROTH. Mr. Speaker, I yield the balance of my time to the gentleman from California [Mr. CAMPBELL] who is the newest member of our subcommittee and by far one of the brightest and most astute.

Mr. GEJDENSON. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. CAMPBELL].

The SPEAKER pro tempore (Mr. GUTKNECHT). The gentleman from California [Mr. CAMPBELL] is recognized for 3 minutes.

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Speaker, I thank the gentleman for those overly generous comments, and I thank the gentleman from Connecticut for his generous gift of time. I rise in support of the bill.

Mr. Speaker, the bill is essential. I only wish it did more. In this regard, I agree with my colleague that we are making a good start. It is my hope that we will do more as the bill moves into conference. But, Lord knows, it has to be viewed as a first step which would not have taken place but for the exceptional efforts of our colleague and chairman from Wisconsin.

There are two points I would like to stress. First of all is regarding the private right of action which is created in this bill. I am always very concerned whenever there is a new private right of civil action created where people can go to a court of law and bring a lawsuit. That is the case here. Where an enterprise is alleged to be violating the rules about the diversion of weapons and technology, private right of action is created.

I think it would have been wiser to require that before that civil lawsuit

be commenced that there be a criminal conviction. The reason is that if otherwise it is possible that diplomatic efforts to work out a disagreement can be impeded by the civil lawsuit that is pending. At the very least, however, the bill did include a provision on an English rule that the attorney's fees be paid for by the losing side in such civil litigation, and I think it is essential that that remain.

My second and last point is that the bill should have done more on encryption and so I will take the remaining minute to say that I am hopeful that even possibly within this Congress there may be a way to address encryption, possibly our colleague from Washington State's own bill on encryption, Mr. WHITE, possibly an amendment as this bill goes into conference. The administration can do a whole lot on its own regarding the export of encryption software and hardware. Simply by reclassifying this a dual-use rather than munition, it would bring its review process out of the State Department and over to commerce where I think it would be much more realistic.

The importance of the encryption export is not simply in its own right as a market for American entrepreneurship and or research and development, but also this: As more and more computers are being used in commerce and as we go to virtual banking and international finance, the ability to encrypt is going to be an essential part of any computer system you buy. If American computers cannot have embedded in them reliable encryption, then nobody is going to buy the computer system. And then we move from a loss of maybe a billion or two to tens of billions of dollars. Indeed, the computer systems policy project estimates a \$60 billion loss to our country by the year 2000.

Those are two points that should be emphasized as the bill goes to conference. I conclude with a word of personal appreciation to the chairman, how much I have enjoyed working with him for 5 years in several Congresses.

Mr. Speaker, I want to take this opportunity to speak in support of H.R. 361, the Omnibus Export Administration Act of 1996. In committee, I offered an amendment to apply the English rule on attorneys' fees to the private right of action this bill contains. I want to emphasize that my willingness to vote for this bill is conditioned upon this provision staying in the bill; if it is removed, but the private right of action stays, I would have to reconsider my support for this legislation.

I have also expressed my concerns to Chairman ROTH about the competitive disadvantage provision within the foreign availability section. I believe that there is a real danger that U.S. companies will suffer significant disadvantages within CoCom's successor, the new Wassenaar Arrangement, if the U.S. Government rigorously enforces the new internationally agreed upon export control lists while its allies and other nations within Wassenaar rubber stamp their licenses or give those licenses only cursory reviews.

I want to take time today, however, to discuss an omission from H.R. 361. That issue is

encryption. It is not a part of H.R. 361, in part, because it is too controversial and might have killed the last chance that the bill has for passage during the 104th Congress. But within the category of export controls, encryption is the most important issue facing us today, and I believe that Congress would be abdicating its responsibility by not taking it up during the current session. By speaking today, I hope to build a record for early consideration of encryption legislation in the next Congress, or even for consideration in the remaining days of this Congress.

As data become more available, data become more vulnerable. The more information is passed along both public and private networks, the greater is the demand for information security. Financial losses from system penetrations have increased, and users feel more vulnerable to interception or corruption of their data. Both companies and individuals want to avoid the losses and the system shutdowns that occur when outsiders are able to browse within their data. They view information as property, and they believe that they have a right to put as strong a lock on that property as they see fit. I agree with them. Information must be protected.

Encryption is the ability to scramble communications sent out along computer networks. There is no restriction on encryption when it is applied domestically, but under current law, it cannot be exported except under very limited conditions.

The current export controls prevent U.S. companies from meeting the market demand for encryption. Our overseas competitors, however, will meet that demand. Only last month, there were news reports of a new Nippon Telephone and Telegraph encryption chip, which provides a strength of encryption unavailable from any U.S. vendor.

This creates a real problem for two of the most successful industries in the United States today, the computer and software industries. Because they are of such high quality, U.S. computers and software dominate the world market and set the international standard. This results in a significant competitive advantage for both industries and it has been a major benefit to national security, as militarily useful products and technologies have spun off to benefit our increasingly automated weapons systems. That advantage, however, is under serious challenge. U.S. computers and software cannot continue to be world leaders if an important aspect of their competitiveness is denied to them.

It is ill advised to continue the current U.S. Government encryption policy. A recent Department of Commerce study documented that there are hundreds of foreign firms that produce encryption products that serve the market denied to U.S. companies. As a consequence, the current policy results in handing the encryption market to our trade competitors. Worse still, however, is the fact that in today's world, customers tend to buy complete packages for their computer networks and they want information security to be a part of that package. In 1996, the market loss for encryption products alone may be estimated in the billions; but the market for computer and software systems amounts to hundreds of billions. It is that total systems market, as well, which is imperiled by a U.S. Government export control policy that refuses to face the reality of the international marketplace by refus-

ing to allow encryption to be included as a part of the total network systems offered by U.S. companies. The Computer Systems Policy Project estimates that, unless the United States relaxes export controls on encryption, the U.S. technology industry will lose \$60 billion in revenue and 200,000 jobs by the year 2000.

A company from Silicon Valley, Hewlett-Packard, illustrates the difficulties encountered by the entire industry. Hewlett-Packard has developed a number of products that require encryption for their operation. For example, emerging smart card technology promises to bring individuals unprecedented access and control over digital information and assets. Last year 500 million smart cards were issued and more than 4 billion are expected to be in use by the 2000. With all that critical information stored on a smart card, the network system supporting use of the card would require significant encryption capability. Although the use of this new personal information card is entirely benign and poses no national security risk, currently, the restrictions on the export of cryptography make it extremely difficult to market this product abroad. Such a policy restriction has minimal benefits and high long-term costs.

The current encryption export control system is both anachronistic and inefficient. It denies U.S. companies the right to export products containing encryption that is widely available from foreign vendors, and those few licenses that are granted take so long in the approval process that customers who might buy American technology are tempted to turn to foreign suppliers to satisfy their needs. It makes no sense to control commercial encryption as though it is a munitions item. It has been decades since the military was the primary user of encryption. At the very minimum, encryption control parameters ought to be raised to the level commercially available from foreign vendors, and encryption ought to be controlled as a dual-use commercial item rather than a munitions item. This change alone would replace the current cumbersome State Department bureaucracy with a Commerce licensing system that is likely to be more efficient and more responsive to commercial exigencies while not excluding the role of defense agencies within the new process. The pending Export Administration Act accomplishes a similar balance for the items it controls.

The administration has indicated that it is at least considering this authority transfer. But the last encryption policy change it allowed took 2 years to execute. Industries as fast-moving as computers and software cannot afford such glacial change. The administration has to respond quickly to changed conditions, or the Congress should make the change for them through the legislative process.

There is no market for the weak encryption that U.S. companies are allowed to export under current regulations when strong encryption is widely available from foreign vendors. Nor can U.S. companies follow the recent proposal of the U.S. Government and force their customers to escrow the key to their encryption systems with a third party, when foreign vendors offer the same strength of encryption without any cumbersome requirements. If such a requirement could be imposed throughout the world, U.S. companies would suffer no disadvantage. But that is unlikely to occur.

Congressman WHITE has drafted, and I have cosponsored, legislation that would begin to address the problems engendered by our current encryption policy. That legislation would bring our licensing parameters for encryption up to the levels widely available abroad and also transfer encryption export licensing authority from the State Department to Commerce. It is still my hope that this legislation can be taken up during this session of Congress. Encryption could also be addressed by the Clinton administration by simply undertaking regulatory reforms. Those reforms should have been undertaken years ago, so that U.S. companies would not be facing the competitive disadvantages that they are today.

Mr. GEJDENSON. Mr. Speaker, I would like to again commend my colleagues, the gentleman from Wisconsin [Mr. ROTH] for his work on this issue and so many others, having been such a valuable Member of the Congress. We are truly going to miss him as a legislator and as a friend. We will not miss him as a friend. We will see him long after his time in Congress. I commend him for his work. I agree with the gentleman from California on the encryption issue and others that need to be dealt with rapidly.

Mr. ROTH. Mr. Speaker, I thank the gentleman for his kind remarks and I have also enjoyed working with the gentleman from Connecticut [SAM GEJDENSON]. The feeling is mutual.

Mr. HAMILTON. Mr. Speaker, I urge the House to suspend the rules and pass H.R. 361, the Omnibus Export Administration Act of 1996, as amended.

#### COMMUNICATIONS

I want to commend Congressman ROTH, the principal drafter of this bill, for the excellent work he has done to bring it before the House today.

This is an extraordinarily complicated measure. Since the end of the cold war, three previous export administration bills have failed to pass the House.

Congressman ROTH deserves a lot of credit for the fact that H.R. 361 stands a better chance of being approved by the House than its predecessors.

As Mr. ROTH has acknowledged, however, this bill would not be on the floor today were it not for the creativity and hard work of Congressman GEJDENSON, ranking Democrat on our Economic Policy Subcommittee. Much of H.R. 361 is based on the bill Mr. GEJDENSON drafted, with Mr. ROTH's help, in 1994. No Member of Congress has done more to promote reform of the U.S. system for controlling dual-use exports than has Mr. GEJDENSON.

Let me also commend the administration and the bipartisan leaderships of the National Security, Ways and Means, Rules and Judiciary Committees for their constructive work on this bill. The progress of this bill so far has been a model of bipartisanship.

#### A BALANCED BILL

An effective export control system must carefully balance U.S. national security and economic interests.

This bill strikes a decent balance.

On the national security side, it toughens nonproliferation sanctions, tightens restrictions on exports to terrorist nations, and strengthens multilateral nonproliferation regimes.

On the economic side, it shortens export licensing deadlines, makes the licensing system more transparent, and gives exporters better access to administrative and judicial review of licensing decisions.

I am also pleased that the bill includes language protecting U.S. farmers from economic embargoes. These protections will reassure both farmers and our trading partners about our commitment to expanding export markets.

Nobody considers this a perfect bill. In his effort to gain the support of the National Security Committee, Mr. ROTH agreed to make changes in H.R. 361 that some American exporters opposed. I share the concerns of these exporters, and I am hopeful that several of the reforms they favor can be reinstated at a later stage in the legislative process, to better serve all U.S. national interests.

#### WHY WE NEED A BILL

Mr. Speaker, this bill needs to move forward today if we are to have a chance of enacting it this year.

Our dual-use export control system has operated under Executive order since the old Export Administration Act expired in August 1994.

We need an export administration statute for several reasons.

First, a regulatory system does not provide as sound a basis for business or policy decisions as would a statute. U.S. exporters and the U.S. Government will both benefit from the increased predictability and transparency of a statute.

Second, without a statute we cannot adequately enforce our antiboycott policies, which help protect Israel from economic pressure.

Third, our current export control system reflects the East-West security focus of the expired Export Administration Act. H.R. 361 will give us a system that more closely corresponds to the economic and security circumstances of the post-cold-war era.

#### CONCLUSION

Mr. Speaker, export controls impact a wide range of U.S. national interests. That makes it difficult to draft an Export Administration Act that fully satisfies all interested parties.

But the bill before us today strikes a good compromise, and after 2 years under Executive order, it is time to put our export control system on a statutory foundation.

I urge Members to vote to suspend the rules and pass H.R. 361.

Mr. SPENCE. Mr. Speaker, I rise in support of H.R. 361, the Omnibus Export Administration Act of 1996.

This act would supersede the original Export Administration Act, which expired in 1994, and is the result of many months of negotiation and hard work between the International Relations and National Security Committees. I believe it strikes a responsible balance between the desire to promote U.S. exports and the need to prevent sensitive technologies for falling into the wrong hands. I commend my colleagues, Mr. GILMAN, the chairman of the International Relations Committee, and Mr. ROTH, the chairman of the International Economic Policy and Trade Subcommittee, for their commitment to work cooperatively on this issue.

Since the fall of 1994, the Clinton administration has been operating under emergency authorities contained in the International Emergency Economic Powers Act. This piecemeal approach to export control is neither satisfac-

tory nor prudent and has resulted in poor decisions with detrimental impact on U.S. national security.

The Export Administration Act accomplishes several important objectives. For example:

It removes the ad hoc nature of current export control policy decisionmaking by codifying in statute procedures for determining whether exports of sensitive dual-use technologies are consistent with U.S. national security interests. While directing continued efforts to work with our allies to harmonize their export control policies with our own, it allows us to control unilaterally the export of critical items for important national security or foreign policy reasons.

It grants the Secretary of Defense statutory authority to participate in the formulation and review of multilateral, unilateral, missile technology, chemical, and biological export control lists. This is a significant and important increase in the authority of the Secretary of Defense.

It allows the Department of Defense to specify limitations on how, to what countries, and to what end-uses controlled items may be exported. This grants DOD new statutory authority to help ensure that sensitive technologies do not end up in the wrong hands.

It ensures that the Department of Defense will have the opportunity to review all export license applications submitted to the Department of Commerce. This will prevent situations, as has happened in the past, where the Commerce Department approves the export of a sensitive dual-use technology with military application without the knowledge of the Department of Defense.

It establishes a procedural mechanism whereby the Secretary of Defense can escalate disputes regarding the approval of license applications to the President for resolution.

It prohibits any item whose export is strictly controlled as a munition from being placed simultaneously on the less-restrictive list of dual-use commodities for export.

It properly focuses our export control efforts on stemming the proliferation of dangerous technologies to potentially hostile regimes by prohibiting any export that would materially contribute to a weapons of mass destruction program in a country that is not a member or adherent to a multilateral export control regimes. And it prohibits the export of any controlled items to terrorist countries.

Mr. Speaker, the Export Administration Act of 1996 is a balanced compromise that goes a long way toward updating this country's export control process in a way that conforms to the new national security challenges we face today.

I urge my colleagues to join me in support of H.R. 361.

Mr. GEJDENSON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin [Mr. ROTH] that the House suspend the rules and pass the bill, H.R. 361, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1500

#### EXTENDING MOST-FAVORED-NATION STATUS TO ROMANIA

Mr. CRANE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3161) to authorize the extension of nondiscriminatory treatment—most-favored-nation treatment—to the products of Romania.

The Clerk read as follows:

H.R. 3161

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. FINDINGS.

The Congress finds that—

(1) Romania emerged from years of brutal Communist dictatorship in 1989 and approved a new Constitution and elected a Parliament by 1991, laying the foundation for a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and respect for private property;

(2) local elections, parliamentary elections, and presidential elections have been held in Romania, and 1996 will mark the second nationwide presidential elections under the new Constitution;

(3) Romania has undertaken significant economic reforms, including the establishment of a two-tier banking system, the introduction of a modern tax system, the freeing of most prices and elimination of most subsidies, the adoption of a tariff-based trade regime, and the rapid privatization of industry and nearly all agriculture;

(4) Romania concluded a bilateral investment treaty with the United States in 1993, and both United States investment in Romania and bilateral trade are increasing rapidly;

(5) Romania has received most-favored-nation treatment since 1993, and has been found by the President to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974;

(6) Romania is a member of the World Trade Organization and extension of unconditional most-favored-nation treatment to the products of Romania would enable the United States to avail itself of all rights under the World Trade Organization with respect to Romania; and

(7) Romania has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

#### SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ROMANIA

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title shall no longer apply to Romania; and

(2) after making a determination under paragraph (1), proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Romania, title IV of the Trade Act of 1974 shall cease to apply to that country.

The SPEAKER pro tempore. (Mr. GUTKNECHT). Pursuant to the rule, the gentleman from Illinois [Mr. CRANE] and the gentleman from Florida [Mr. GIBBONS] each will control 20 minutes.