great impact on the economy. A general tax cut that helps lower and middle-income families is one I have supported. I believe, as many do, that we should be very careful in how much of this projected surplus we dedicate to that tax cut until we are certain we have it in hand.

During the campaign, President Bush and many Members of Congress said that when we reached the tough times in the future, one area would be sacred: We would not reach into the Social Security trust fund to fund the ordinary expenses of Government. President Bush, much like his father, who said, ''Read my lips, no new taxes,'' pronounced during the course of his campaign that as President he would not raid the Social Security nor the Medicare trust fund. Now we find ourselves perilously close to that situation after just a few months into the new Presidency.

Many of the conservative Republican writers are saying: Why are you worried about a Social Security trust fund? It is not that important. I think we know better. Those who notice every time we receive a paycheck there is more and more money taken out for Social Security have asked some hard questions. What is this all about? It is to shore up a surplus in Social Security to protect the future, the need for Social Security benefits for baby boomers and others. If we reach into that Social Security trust fund to take that money out now, it could endanger the liquidity and solvency of Social Security in years to come. That is irresponsible. It is wrong. We shouldn't be in this predicament.

Many of the conservative writers who say not to worry about protecting the Social Security trust fund do not have much passion for Social Security anyway. These are people who have criticized it in years gone by as a big government scheme taking too much money, one that we ought to change so people could invest in the stock market without much concern about the impact on those who are relying on it. Some 40 million Americans rely on Social Security. It is a major source of income for many. We should not take it lightly.

We are faced with a predicament as we return: How will we meet the obligations of Government and the requirements for new spending and do it without raiding Social Security and the Medicare trust fund? The President has said through his spokesman, Mitch Daniels of the Office of Management and Budget, that we have the second largest surplus in the history of the United States. He said this publicly, and they have said it many times. It is part of the George W. Bush administration's ''don't worry, be happy'' refrain.

I think Americans ought to think twice. The second largest surplus in our history is the Social Security trust fund surplus. It is money dedicated to Social Security. It is not the general revenue of this country to be spent on everything that we might like. It should be protected. The Republicans come back and say: Wait a minute. In the deep dark days of the deficits, even Democratic Congresses spent the Social Security trust fund.

They are correct. And I can say we did some very desperate things in those years when we were seeing multibillion-dollar deficits, things we vowed we would never do again when we got into the era of the surplus. We came together on a bipartisan basis with over 400 votes in the House, a substantial majority in the Senate, and vowed we would never touch the Social Security trust fund once we had surpluses again.

Here we are, just a few months into the new administration, facing that kind of pressure. How do we take care of our national needs, whether it is the Department of Defense saying they need more modern weaponry to protect the United States or whether it is the needs of public education? The President said he would be an education President; he would find a bipartisan way to deal with it. And now we have a bill languishing in the conference committee because we have not come up with the funds to pay for education.

If you believe, as I do, that education is critical to the future of this country, we certainly should invest in it. But President Bush's decisions on tax cuts and other budget priorities have pushed us in a corner where precious few funds are available for the high priorities.

The same is true on prescription drugs under Medicare. Most promised we would work for a prescription drug benefit under Medicare—universal, voluntary—to help seniors pay for prescriptions, and now we find because of the Bush budget and the Bush tax cut that we have very few dollars available to even dedicate to a bipartisan national priority.

The same thing is true on energy policy. Just a few months ago, President Bush sent a message which said we ought to do something about our dependence on foreign energy sources, so let's invest more money in research to find alternative fuels, sustainable energy, ways to use coal in States such as Illinois in an environmentally responsible way. That takes money. We now turn to find that President Bush's budget and his tax policy have taken those funds off the table.

The same thing is true when it comes to the new farm bill. We hoped to have a new farm bill this fall. I hope we can. I have seen in Illinois and across my State what has happened to the farm economy over the last 4 or 5 years. If we are to have a new farm bill and dedicate resources to it, the obvious question is: Where will they come from?

When we look at the state of the economy in America today, people are rightfully concerned. The President went to speak to members of labor unions yesterday to tell them he felt their pain, their worry, and their anguish over the state of our economy. But what we need is real leadership from the President and from Congress on a bipartisan basis to come up with a roadmap and guidelines, so we can return to the era of economic growth and prosperity.

Over a period of 9 years, we saw a dramatic buildup in the American economy: Over 200 million new jobs, new businesses, more home ownership than any time in our history. Now, of course, we see this correction in our economy. We have lost a half-million jobs this year.

In closing, we have an opportunity in the weeks ahead to come together and concede the obvious. The Bush budget and the Bush tax policy were things that, frankly, should have been put off until we were certain of the surpluses we would have. Now we know those surpluses do not exist.

It is time for us to come together on a bipartisan basis to rewrite this budget to meet our Nation's priorities and protect the Social Security and Medicare trust funds.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXPORT ADMINISTRATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now begin consideration of S. 149, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 149) to provide authority to control exports and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Export Administration Act of 2001''.

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

SEC. 2. DEFINITIONS.

In this Act:

(1) AFFILIATE.—The term ''affiliate'' includes both governmental entities and commercial entities that are controlled in fact by the government of a country.

(2) CONTROL OR CONTROLLED.—The terms ''control'' and ''controlled'' mean any requirement, condition, authorization, or prohibition on the export or reexport of an item.

(3) CONTROL LIST.—The term ''Control List'' means the Commerce Control List established under section 101.

(4) CONTROLLED COUNTRY.—The term ''controlled country'' means a country with respect to which exports are controlled under section 201 or 301.

(5) CONTROLLED ITEM.—The term ''controlled item'' means an item the export of which is controlled under this Act.

(6) COUNTRY.—The term ''country'' means a sovereign country or an autonomous customs territory.

(7) COUNTRY SUPPORTING INTERNATIONAL TERRORISM.—The term ''country supporting international terrorism'' means a country designated by the Secretary of State pursuant to section 310.

(8) DEPARTMENT.—The term ''Department'' means the Department of Commerce.

(9) EXPORT.—

(A) The term ''export'' means—

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

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

(iii) a transfer of an item in the United States to an embassy or affiliate of a country, which shall be considered an export to that country.

(B) The term includes a reexport.

(10) FOREIGN AVAILABILITY STATUS.—The term ''foreign availability status'' means the status described in section 211(d)(1).

(11) FOREIGN PERSON.—The term ''foreign person'' means—

(A) an individual who is not—

(i) a United States citizen;

(ii) an alien lawfully admitted for permanent residence to the United States; or

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

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

(C) any governmental entity of a foreign country.

(12) ITEM.—

(A) IN GENERAL.—The term ''item'' means any good, technology, or service.

(B) OTHER DEFINITIONS.—In this paragraph:

(i) GOOD.—The term ''good'' means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, including source code, and excluding technical data.

(ii) TECHNOLOGY.—The term ''technology'' means specific information that is necessary for the development, production, or use of an item, and takes the form of technical data or technical assistance.

(iii) SERVICE.—The term ''service'' means any act of assistance, help or aid.

(13) MASS-MARKET STATUS.—The term ''mass-market status'' means the status described in section 211(d)(2).

(14) MULTILATERAL EXPORT CONTROL REGIME.—The term ''multilateral export control regime'' means an international agreement or arrangement among two or more countries, including the United States, a purpose of which is to coordinate national export control policies of its members regarding certain tems. The term includes regimes such as the Australia Group, the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), and the Nuclear Suppliers' Group Dual Use Arrangement.

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

(16) PERSON.—The term ''person'' includes—

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

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

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

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

(19) 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 (42 U.S.C. 1331(a)).

(20) UNITED STATES PERSON.—The term ''United States person'' means—

(A) any United States citizen, resident, or national (other than an individual resident outside the United States who is employed by a person other than a United States person);

(B) any domestic concern (including any permanent domestic establishment of any foreign concern); and

(C) 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 prescribed by the President.

TITLE I—GENERAL AUTHORITY

SEC. 101. COMMERCE CONTROL LIST.

(a) IN GENERAL.—Under such conditions as the Secretary may impose, consistent with the provisions of this Act, the Secretary—

(1) shall establish and maintain a Commerce Control List (in this Act referred to as the ''Control List'') consisting of items the export of which are subject to licensing or other authorization or requirement; and

(2) may require any type of license, or other authorization, including recordkeeping and reporting, appropriate to the effective and efficient implementation of this Act with respect to the export of an item on the Control List or otherwise subject to control under title II or III of this Act.

(b) TYPES OF LICENSE OR OTHER AUTHORIZATION.—The types of license or other authorization referred to in subsection (a)(2) include the following:

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

(2) MULTIPLE EXPORTS.—A license that authorizes multiple exports in lieu of a license for each export.

(3) NOTIFICATION IN LIEU OF LICENSE.— A notification in lieu of a license that authorizes a specific export or multiple exports subject to the condition that the exporter file with the Department advance notification of the intent to export in accordance with regulations prescribed by the Secretary.

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

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

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

(2) the after-market service or replacement parts would materially enhance the capability of an item which was the basis for the item being controlled.

(d) INCIDENTAL TECHNOLOGY.—A license or other authorization to export an item under this Act includes authorization to export technology related to the item, if the level of the technology does not exceed the minimum necessary to install, repair, maintain, inspect, operate, or use the item.

(e) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to carry out the provisions of this Act.

SEC. 102. DELEGATION OF AUTHORITY.

(a) IN GENERAL.—Except as provided in subsection (b) and subject to the provisions of this Act, the President may delegate the power, authority, and discretion conferred upon the President by this Act to such departments, agencies, and officials of the Government as the President considers appropriate.

(b) EXCEPTIONS.—

(1) DELEGATION TO APPOINTEES CONFIRMED BY SENATE.—No authority delegated to the President under this Act may be delegated by the President 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.

(2) OTHER LIMITATIONS.—The President may not delegate or transfer the President's 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 Act.

SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIREMENTS.

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

(b) CONSULTATION WITH PERSONS AFFECTED.—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 or mass-market status of controlled items.

SEC. 104. RIGHT OF EXPORT.

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

SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.

(a) APPOINTMENT.—Upon the Secretary's 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 Act or being considered for such controls, the Secretary may appoint export control advisory committees with respect to any such items. Each such committee shall consist of representatives of United States industry and Government officials, including officials from the Departments of Commerce, Defense, and State, and other appropriate departments and agencies of the Government. The Secretary shall permit the widest possible participation by the business community on the export control advisory committees.

(b) FUNCTIONS.—

(1) IN GENERAL.—Export control advisory committees appointed under subsection (a) shall advise and assist the Secretary, and any other department, agency, or official of the Government carrying out functions under this Act, on actions (including all aspects of controls imposed or proposed) designed to carry out the provisions of this Act concerning the items with respect to which such export control advisory committees were appointed.

(2) OTHER CONSULTATIONS.—Nothing in paragraph (1) 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 control advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present information to such committees.

(c) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export control advisory committee appointed under subsection (a), 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.

(d) CHAIRPERSON.—Each export control advisory committee appointed under subsection (a) 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 section. 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.

(e) ACCESS TO INFORMATION.—To facilitate the work of the export control advisory committees appointed under subsection (a), the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security and intelligence sources and methods, 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 control 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.

SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.

The President may establish a President's Technology Export Council to advise the President on the implementation, operation, and effectiveness of this Act.

SEC. 107. PROHIBITION ON CHARGING FEES.

No fee may be charged in connection with the submission or processing of an application for an export license under this Act.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT CONTROLS.

(a) AUTHORITY.—

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

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

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

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

(2) 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, key-enabling technologies, 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.

(3) To deter acts of international terrorism.

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

(d) ENHANCED CONTROLS.—

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

(2) REPORT TO CONGRESS.—The President shall promptly report any determination described in paragraph (1), along with the specific reasons for the determination, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

SEC. 202. NATIONAL SECURITY CONTROL LIST.

(a) ESTABLISHMENT OF LIST.—

(1) ESTABLISHMENT.—The Secretary shall establish and maintain a National Security Control List as part of the Control List.

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

(3) IDENTIFICATION OF ITEMS FOR NATIONAL SECURITY CONTROL LIST.—The Secretary, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, shall identify the items to be included on the National Security Control List provided that the National Security Control List shall, on the date of enactment of this Act, include all of the items on the Commerce Control List controlled on the day before the date of enactment of this Act to protect the national security of the United States, to prevent the proliferation of weapons of mass destruction and the means to deliver them, and to deter acts of international terrorism. The Secretary shall review on a continuing basis and, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, adjust the National Security Control List to add items that require control under this section and to remove items that no longer warrant control under this section.

(b) RISK ASSESSMENT.—

(1) REQUIREMENT.—In establishing and maintaining the National Security Control List, the risk factors set forth in paragraph (2) shall be considered, weighing national security concerns and economic costs.

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

(A) The characteristics of the item.

(B) The threat, if any, to the United States or the national security interest of the United States from the misuse or diversion of such item.

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

(D) The threat to the national security interests of the United States if the item is not controlled.

(E) Any other appropriate risk factors.

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

SEC. 203. COUNTRY TIERS.

(a) IN GENERAL.—

(1) ESTABLISHMENT AND ASSIGNMENT.—In administering export controls for national security purposes under this title, the President shall, not later than 120 days after the date of enactment of this Act—

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

(B) based on the assessments required under subsection (c), assign each country to an appropriate tier for each item or group of items the export of which is controlled for national security purposes under this title.

(2) CONSULTATION.—The establishment and assignment of country tiers under this section shall be made after consultation with the Secretary, the Secretary of Defense, the Secretary of State, the intelligence agencies, and such other departments and agencies as the President considers appropriate.

(3) REDETERMINATION AND REVIEW OF ASSIGNMENTS.—The President may redetermine the assignment of a country to a particular tier at any time and shall review and, as the President considers appropriate, reassign country tiers on an on-going basis. The Secretary shall provide notice of any such reassignment to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

(4) EFFECTIVE DATE OF TIER ASSIGNMENT.— An assignment of a country to a particular tier shall take effect on the date on which notice of the assignment is published in the Federal Register.

(b) TIERS.—

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

(2) RANGE.—Countries that represent the lowest risk of diversion or misuse of an item on the National Security Control List shall be assigned to the lowest tier. Countries that represent the highest risk of diversion or misuse of an item on the National Security Control List shall be assigned to the highest tier.

(3) OTHER COUNTRIES.—Countries that fall between the lowest and highest risk to the national security interest of the United States with respect to the risk of diversion or misuse of an item on the National Security Control List shall be assigned to a tier other than the lowest or highest tier, based on the assessments required under subsection (c).

(c) ASSESSMENTS.—The President shall make an assessment of each country in assigning a country tier taking into consideration risk factors including the following:

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

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

(3) The country's capabilities regarding chemical, biological, and nuclear weapons and the country's membership in, and level of compliance with, relevant multilateral export control regimes.

(4) The country's capabilities regarding missile systems and the country's membership in, and level of compliance with, relevant multilateral export control regimes.

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

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

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

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

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

(10) The designation of the country as a country supporting international terrorism under section 310.

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

SEC. 204. INCORPORATED PARTS AND COMPONENTS.

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

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

(2) are customarily included in sales of the item in countries other than controlled countries, and

(3) comprise 25 percent or less of the total value of the item,

unless the item itself, if exported, would by virtue of the functional characteristics of the item 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, or unless failure to control the item would be contrary to the provisions of section 201(c), section 201(d), or section 309 of this Act.

(b) REEXPORTS OF FOREIGN-MADE ITEMS INCORPORATING UNITED STATES CONTROLLED CONTENT.—

(1) IN GENERAL.—No authority or permission may be required under this title to reexport to a country an item that is produced in a country other than the United States and incorporates parts or components that are subject to the jurisdiction of the United States, if the value of the controlled United States content of the item produced in such other country is 25 percent or less of the total value of the item; except that in the case of reexports of an item to a country designated as a country supporting international terrorism pursuant to section 310, controls may be maintained if the value of the controlled United States content is more than 10 percent of the total value of the item.

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

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

(B) are incorporated into the item; and

(C) would, at the time of the reexport, require a license under this title if exported from the United States to a country to which the item is to be reexported.

SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STATUS.

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

(b) EVALUATIONS AND DETERMINATIONS.—Evaluations and determinations with respect to a petition filed pursuant to this section shall be made in accordance with section 202.

Subtitle B—Foreign Availability and Mass-Market Status

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

(a) IN GENERAL.—The Secretary shall—

(1) on a continuing basis,

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

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

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

(b) PETITION AND CONSULTATION.—

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

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

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

(1) a foreign availability status, or

(2) a mass-market status,

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

(d) CRITERIA FOR DETERMINING FOREIGN AVAILABILITY AND MASS-MARKET STATUS.—

(1) FOREIGN AVAILABILITY STATUS.—The Secretary shall determine that an item has foreign availability status under this subtitle, if the item (or a substantially identical or directly competitive item)—

(A) is available to controlled countries from sources outside the United States, including countries that participate with the United States in multilateral export controls;

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

(C) is available in sufficient quantity so that the requirement of a license or other authorization with respect to the export of such item is or would be ineffective.

(2) MASS-MARKET STATUS.—

(A) IN GENERAL.—In determining whether an item has mass-market status under this subtitle, the Secretary shall consider the following criteria with respect to the item (or a substantially identical or directly competitive item):

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

(ii) The widespread distribution through normal commercial channels, such as retail stores, direct marketing catalogues, electronic commerce, and other channels.

(iii) The conduciveness to shipment and delivery by generally accepted commercial means of transport.

(iv) The use for the item's normal intended purpose without substantial and specialized service provided by the manufacturer, distributor, or other third party.

(B) DETERMINATION BY SECRETARY.—If the Secretary finds that the item (or a substantially identical or directly competitive item) meets the criteria set forth in subparagraph (A), the Secretary shall determine that the item has mass-market status.

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

(A) SUBSTANTIALLY IDENTICAL ITEM.—The determination of whether an item in relation to another item is a substantially identical item shall include a fair assessment of end-uses, the properties, nature, and quality of the item.

(B) DIRECTLY COMPETITIVE ITEM.—

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

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

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

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—

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

(i) decontrolling or failing to control an item constitutes a threat to the national security of the United States, and export controls on the item would advance the national security interests of the United States,

(ii) there is a high probability that the foreign availability of an item will be eliminated through international negotiations within a reasonable period of time taking into account the characteristics of the item, or

(iii) United States controls on the item have been imposed under section 309,

the President may set aside the Secretary's determination of foreign availability status with respect to the item.

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

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

(A) report any set-aside determination described in paragraph (1), along with the specific reasons for the determination, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives; and

(B) publish the determination in the Federal Register.

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

(1) IN GENERAL.—

(A) NEGOTIATIONS.—In any case in which export controls are maintained on an item because the President has made a determination under subsection (a), the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability.

(B) REPORT TO CONGRESS.—Not later than the date the President begins negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that the President has begun such negotiations and why the President believes it is important to the national security that export controls on the item involved be maintained.

(2) PERIODIC REVIEW OF DETERMINATION.—The President shall review a determination described in subsection (a) at least every 6 months. Promptly after each review is completed, the Secretary shall submit to the committees of Congress referred to in paragraph (1)(B) a report on the results of the review, together with the status of international negotiations to eliminate the foreign availability of the item.

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

(A) the date that is 6 months after the date on which the determination is made under subsection (a), if the President has not commenced international negotiations to eliminate the foreign availability of the item within that 6-month period;

(B) the date on which the negotiations described in paragraph (1) have terminated without achieving an agreement to eliminate foreign availability;

(C) the date on which the President determines that there is not a high probability of eliminating foreign availability of the item through negotiation; or

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

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

SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STATUS DETERMINATION.

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—If the President determines that—

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

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

(B) United States controls on the item have been imposed under section 309,

the President may set aside the Secretary's determination of mass-market status with respect to the item.

(2) NONDELEGATION.—The President may not delegate the authority provided for in this subsection.

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

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

(2) PERIODIC REVIEW OF DETERMINATION.—The President shall review a determination made under subsection (a) at least every 6 months. Promptly after each review is completed, the Secretary shall submit a report on the results of the review to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF OFFICE.—The Secretary shall establish in the Department of Commerce an Office of Technology Evaluation (in this section referred to as the ''Office''), which shall be under the direction of the Secretary. The Office shall be responsible for gathering, coordinating, and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability and mass-market status under this Act.

(2) STAFF.—

(A) IN GENERAL.—The Secretary shall ensure that the Office include persons to carry out the responsibilities set forth in subsection (b) of this section that have training, expertise, and experience in—

(i) economic analysis;

(ii) the defense industrial base;

(iii) technological developments; and

(iv) national security and foreign policy export controls.

(B) DETAILEES.—In addition to employees of the Department of Commerce, the Secretary may accept on nonreimbursable detail to the Office, employees of the Departments of Defense, State, and Energy and other departments and agencies as appropriate.

(b) RESPONSIBILITIES.—The Office shall be responsible for—

(1) conducting foreign availability assessments to determine whether a controlled item is available to controlled countries and whether requiring a license, or denial of a license for the export of such item, is or would be ineffective;

(2) conducting mass-market assessments to determine whether a controlled item is available to controlled countries because of the mass-market status of the item;

(3) monitoring and evaluating worldwide technological developments in industry sectors critical to the national security interests of the United States to determine foreign availability and mass-market status of controlled items;

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

(5) conducting assessments of United States industrial sectors critical to the United States defense industrial base and how the sectors are affected by technological developments, technology transfers, and foreign competition; and

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

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

(B) the United States economy in general.

(c) REPORTS TO CONGRESS.—The Secretary shall make available to the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate as part of the Secretary's annual report required under section 701 information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability and mass-market status, during the fiscal year preceding the report, including information on the training of personnel, and the use of Commercial Service Officers of the United States and Foreign Commercial Service to assist in making determinations. The information shall also include a description of determinations made under this Act during the preceding fiscal year that foreign availability or mass-market status did or did not exist (as the case may be), together with an explanation of the determinations.

(d) 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, consistent with the need to protect intelligence sources and methods, furnish information to the Office concerning foreign availability and the mass-market status of items subject to export controls under this Act.

TITLE III—FOREIGN POLICY EXPORT CONTROLS

SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CONTROLS.

(a) AUTHORITY.—

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

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

(b) PURPOSES.—The purposes of foreign policy export controls are the following:

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

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

(3) 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.

(c) FOREIGN PRODUCTS.—No authority or permission may be required under this title to reexport to a country an item that is produced in a country other than the United States and incorporates parts or components that are subject to the jurisdiction of the United States, except that in the case of reexports of an item to a country designated as a country supporting international terrorism pursuant to section 310, controls may be maintained if the value of the controlled United States content is more than 10 percent of the value of the item.

(d) CONTRACT SANCTITY.—

(1) IN GENERAL.—The President may not prohibit the export of any item under this title if that item is to be exported—

(A) in performance of a binding contract, agreement, or other contractual commitment entered into before the date on which the President reports to Congress the President's intention to impose controls on that item under this title; or

(B) under a license or other authorization issued under this Act before the earlier of the date on which the control is initially imposed or the date on which the President reports to Congress the President's intention to impose controls under this title.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply in any case in which the President determines and certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that—

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

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

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

SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.

(a) NOTICE.—

(1) INTENT TO IMPOSE FOREIGN POLICY EXPORT CONTROL.—Except as provided in section 306, not later than 45 days before imposing or implementing an export control under this title, the President shall publish in the Federal Register—

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

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

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

(A) to provide an opportunity for the formulation of an effective export control policy under this title that advances United States economic and foreign policy interests; and

(B) to provide an opportunity for negotiations to achieve the purposes set forth in section 301(b).

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

(c) CONSULTATION.—

(1) REQUIREMENT.—The President shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives regarding any export control proposed under this title and the efforts to achieve or increase multilateral cooperation on the issues or problems underlying the proposed export control.

(2) CLASSIFIED CONSULTATION.—The consultations described in paragraph (1) may be conducted on a classified basis if the Secretary considers it necessary.

SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CONTROLS.

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

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

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

(3) include an assessment by the President that—

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

(B) the achievement of the objectives of the export control outweighs any potential costs of the export control to other United States economic, foreign policy, humanitarian, or national security interests;

(4) be targeted narrowly; and

(5) seek to minimize any adverse impact on the humanitarian activities of United States and foreign nongovernmental organizations in the country subject to the export control.

SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF CONTROL.

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

(b) CONTENT.—The report shall contain a description and assessment of each of the criteria described in section 303. In addition, the report shall contain a description and assessment of—

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

(2) unilateral export controls imposed, and other measures taken, by other countries to achieve the intended objective of the proposed export control;

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

(4) alternative measures to promote the same objectives and the likelihood of their potential success;

(5) any United States obligations under international trade agreements, treaties, or other international arrangements, with which the proposed export control may conflict;

(6) the likelihood that the proposed export control could lead to retaliation against United States interests;

(7) the likely economic impact of the proposed export control on the United States economy, United States international trade and investment, and United States agricultural interests, commercial interests, and employment; and

(8) a conclusion that the probable achievement of the objectives of the proposed export control outweighs any likely costs to United States economic, foreign policy, humanitarian, or national security interests, including any potential harm to the United States agricultural and business firms and to the international reputation of the United States as a reliable supplier of goods, services, or technology.

SEC. 305. IMPOSITION OF CONTROLS.

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

SEC. 306. DEFERRAL AUTHORITY.

(a) AUTHORITY.—The President may defer compliance with any requirement contained in section 302(a), 304, or 305 in the case of a proposed export control if—

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

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

(b) TERMINATION OF CONTROL.—An export control with respect to which a deferral has been made under subsection (a) shall terminate 60 days after the date the export control is imposed unless all requirements have been satisfied before the expiration of the 60-day period.

SEC. 307. REVIEW, RENEWAL, AND TERMINATION.

(a) RENEWAL AND TERMINATION.—

(1) IN GENERAL.—Any export control imposed under this title shall terminate on March 31 of each renewal year unless the President renews the export control on or before such date. For purposes of this section, the term ''renewal year'' means 2003 and every 2 years thereafter.

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

(A) is required by law;

(B) is targeted against any country designated as a country supporting international terrorism pursuant to section 310; or

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

(b) REVIEW.—

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

(2) CONSULTATION.—

(A) REQUIREMENT.—Before completing a review under paragraph (1), the President shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representative regarding each export control that is being reviewed.

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

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

(c) REPORT TO CONGRESS.—

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

(2) FORM AND CONTENT OF REPORT.—The report may be provided on a classified basis if the Secretary considers it necessary. Each report shall contain the following:

(A) A clearly stated explanation of the specific United States foreign policy objective that the existing export control was intended to achieve.

(B) An assessment of—

(i) the extent to which the existing export control achieved its objectives before renewal based on the objective criteria established for evaluating the export control; and

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

(C) An updated description and assessment of—

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

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

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

SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.

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

(1) shall terminate any export control imposed under this title if the President determines that the control has substantially achieved the objective for which it was imposed; and

(2) may terminate at any time any export control imposed under this title that is not required by law.

(b) EXCEPTION.—Paragraphs (1) and (2) of subsection (a) do not apply to any export control imposed pursuant to section 310.

(c) EFFECTIVE DATE OF TERMINATION.—The termination of an export control pursuant to this section shall take effect on the date notice of the termination is published in the Federal Register.

SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGATIONS.

Notwithstanding any other provision of this Act setting forth limitations on authority to control exports and except as provided in section 304, the President may impose controls on exports to a particular country or countries—

(1) of items listed on the control list of a multilateral export control regime, as defined in section 2(14); or

(2) in order to fulfill obligations or commitments of the United States under resolutions of the United Nations and under treaties, or other international agreements and arrangements, to which the United States is a party.

SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

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

(1) the government of such country has repeatedly provided support for acts of international terrorism; and

(2) the export of the item could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(b) NOTIFICATION.—The Secretary and the Secretary of State shall notify the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any license required by subsection (a).

(c) DETERMINATIONS REGARDING REPEATED SUPPORT.—Each determination of the Secretary of State under subsection (a)(1), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

(d) LIMITATIONS ON RESCINDING DETERMINATION.—A determination made by the Secretary of State under subsection (a)(1) 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—

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

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

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

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

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

(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

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

(e) INFORMATION TO BE INCLUDED IN NOTIFICATION.—The Secretary and the Secretary of State shall include in the notification required by subsection (b)—

(1) a detailed description of the item to be offered, including a brief description of the capabilities of any item for which a license to export is sought;

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

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

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

(5) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the item which is the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of the item; and

(6) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the item which is the subject of such export would be delivered.

SEC. 311. CRIME CONTROL INSTRUMENTS.

(a) IN GENERAL.—Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to an individual export license. Notwithstanding any other provision of this Act—

(1) any determination by the Secretary of what goods or technology shall be included on the list established pursuant to this subsection as a result of the export restrictions imposed by this section shall be made with the concurrence of the Secretary of State, and

(2) any determination by the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 401 of this Act, except that, if the Secretary does not agree with the Secretary of State with respect to any determination under paragraph (1) or (2), the matter shall be referred to the President for resolution.

(b) EXCEPTION.—The provisions of this section shall not apply with respect to exports to countries that 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 section and section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304).

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

SEC. 401. EXPORT LICENSE PROCEDURES.

(a) RESPONSIBILITY OF THE SECRETARY.—

(1) IN GENERAL.—All applications for a license or other authorization to export a controlled item shall be filed in such manner and include such information as the Secretary may, by regulation, prescribe.

(2) 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.

(3) CALCULATION OF PROCESSING TIMES.—In calculating the processing times set forth in this title, 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.

(4) CRITERIA FOR EVALUATING APPLICATIONS.—In determining whether to grant an application to export a controlled item under this Act, the following criteria shall be considered:

(A) The characteristics of the controlled item.

(B) The threat to—

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

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

(C) The country tier designation of the country to which a controlled item is to be exported pursuant to section 203.

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

(i) the exporter;

(ii) the method of export;

(iii) the end-user;

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

(v) the end-use.

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

(i) changing the characteristics of the controlled item;

(ii) after-market monitoring by the exporter; and

(iii) post-shipment verification.

(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 information regarding the receipt and status of the application.

(2) INITIAL PROCEDURES.—

(A) IN GENERAL.—Not later than 9 days after receiving any license application, the Secretary shall—

(i) 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 title;

(ii) refer the application, through the use of a common data base or other means, and all information submitted by the applicant, and all necessary recommendations and analyses by the Secretary to the Secretary of Defense, the Secretary of State, and the heads of and other departments and agencies the Secretary considers appropriate;

(iii) ensure that the classification stated on the application for the export items is correct; and

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

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

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

(c) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—

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

(2) RESPONSIBILITY OF REFERRAL DEPARTMENTS AND AGENCIES.—The Secretary of Defense, the Secretary of State, and the heads of other reviewing departments and agencies shall take all necessary actions in a prompt and responsible manner on an application. Each department or agency reviewing an application under this section shall establish and maintain records properly identifying and monitoring the status of the matter referred to the department or agency.

(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 title.

(4) TIME PERIOD FOR ACTION BY REFERRAL DEPARTMENTS AND AGENCIES.—Within 30 days after the Secretary refers an application under this section, each department or agency to which an application has been referred 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 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) ACTION BY THE SECRETARY.—Not later than 30 days after the date the application is referred, the Secretary shall—

(1) if there is agreement among the referral departments and agencies to issue or deny the license—

(A) issue the license and ensure all appropriate personnel in the Department (including the Office of Export Enforcement) are notified of all approved license applications; or

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

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

(e) CONSEQUENCES OF APPLICATION DENIAL.—

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

(A) the determination;

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

(C) what, if any, modifications to, or restrictions on, the items for which the license was sought would allow such export to be compatible with export controls imposed under this Act, and which officer or employee of the Department 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;

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

(E) the availability of appeal procedures.

(2) PERIOD FOR APPLICANT TO RESPOND.—The applicant shall have 20 days from the date of the notice of intent to deny the application to respond in a manner that addresses and corrects the reasons for the denial. If the applicant does not adequately address or correct the reasons for denial or does not respond, the license shall be denied. If the applicant does address or correct the reasons for denial, the application shall be considered in a timely manner.

(f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

(1) IN GENERAL.—The Secretary shall establish appropriate procedures for an applicant to appeal to the Secretary the denial of an application or other administrative action under this Act. In any case in which the Secretary proposes to reverse the decision with respect to the application, the appeal under this subsection shall be handled in accordance with the interagency dispute resolution process provided for in section 402(b)(3).

(2) ENFORCEMENT OF TIME LIMITS.—

(A) IN GENERAL.—In any case in which an action prescribed in this section is not taken on an application within the time period established by this section (except in the case of a time period extended under subsection (g) 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.

(B) BRINGING COURT ACTION.—If, within 20 days after a petition is filed under subparagraph (A), the processing of the application has not been brought into conformity with the requirements of this section, or the processing of 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.

(g) 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 (for a period not to exceed 60 days) that may be required to establish the identity and reliability of the recipient of items controlled under this Act, if—

(A) the need for the prelicense check is determined by the Secretary or by another department or agency in any case in which the request for the prelicense check is made by such department or agency;

(B) the request for the prelicense check is initiated 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.

(4) EXCEPTION.—Whenever a prelicense check described in paragraph (2) or assurances described in paragraph (3) 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.

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

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

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

(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 List or the applicability of licensing requirements under this title, the Secretary shall promptly notify the Secretary of Defense and the head of any department or agency the Secretary considers appropriate. 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 under this Act, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.

SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.

(a) IN GENERAL.—All license applications on which agreement cannot be reached shall be referred to the interagency dispute resolution process for decision.

(b) INTERAGENCY DISPUTE RESOLUTION PROCESS.—

(1) INITIAL RESOLUTION.—The Secretary shall establish, select the chairperson of, and determine procedures for an interagency committee to review initially all license applications described in subsection (a) with respect to which the Secretary and any of the referral departments and agencies are not in agreement. The chairperson shall consider the positions of all the referral departments and agencies (which shall be included in the minutes described in subsection (c)(2)) and make a decision on the license application, including appropriate revisions or conditions thereto.

(2) INTELLIGENCE COMMUNITY.—The analytic product of the intelligence community should be fully considered with respect to any proposed license under this title.

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

(A) provide for decision-making based on the majority vote of the participating departments and agencies;

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

(C) provide that any decision of an interagency committee established under paragraph

(1) or interagency dispute resolution process established under this paragraph may be escalated to the next higher level of review at the request of an official appointed by the President, by and with the advice of the Senate, or an officer properly acting in such capacity, of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary.

(c) FINAL ACTION.—

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

(A) issue the license and ensure that all appropriate personnel in the Department (including the Office of Export Enforcement) are notified of all approved license applications; or

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

(2) MINUTES.—The interagency committee and each level of the interagency dispute resolution process shall keep reasonably detailed minutes of all meetings. On each matter before the interagency committee or before any other level of the interagency dispute resolution process in which members disagree, each member shall clearly state the reasons for the member's position and the reasons shall be entered in the minutes.

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

SEC. 501. INTERNATIONAL ARRANGEMENTS.

(a) MULTILATERAL EXPORT CONTROL REGIMES.—

(1) POLICY.—It is the policy of the United States to seek multilateral arrangements that support the national security objectives of the United States (as described in title II) and that establish fairer and more predictable competitive opportunities for United States exporters.

(2) PARTICIPATION IN EXISTING REGIMES.—Congress encourages the United States to continue its active participation in and to strengthen existing multilateral export control regimes.

(3) PARTICIPATION IN NEW REGIMES.—It is the policy of the United States to participate in additional multilateral export control regimes if such participation would serve the national security interests of the United States.

(b) ANNUAL REPORT ON MULTILATERAL EXPORT CONTROL REGIMES.—Not later than February 1 of each year, the President shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives a report evaluating the effectiveness of each multilateral export control regime, including an assessment of the steps undertaken pursuant to subsections (c) and (d). The report, or any part of this report, may be submitted in classified form to the extent the President considers necessary.

(c) STANDARDS FOR MULTILATERAL EXPORT CONTROL REGIMES.—The President shall take steps to establish the following features in any multilateral export control regime in which the United States is participating or may participate:

(1) FULL MEMBERSHIP.—All supplier countries are members of the regime, and the policies and activities of the members are consistent with the objectives and membership criteria of the multilateral export control regime.

(2) EFFECTIVE ENFORCEMENT AND COMPLIANCE.—The regime promotes enforcement and compliance with the regime's rules and guidelines.

(3) PUBLIC UNDERSTANDING.—The regime makes an effort to enhance public understanding of the purpose and procedures of the multilateral export control regime.

(4) EFFECTIVE IMPLEMENTATION PROCEDURES.—The multilateral export control regime has procedures for the uniform and consistent interpretation and implementation of its rules and guidelines.

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

(A) cooperate with governments outside the regime to restrict the export of items controlled by such regime; and

(B) establish an ongoing mechanism in the regime to coordinate planning and implementation of export control measures related to such cooperation.

(6) PERIODIC HIGH-LEVEL MEETINGS.—There are regular periodic meetings of high-level representatives of the governments of members of the multilateral export control regime for the purpose of coordinating export control policies and issuing policy guidance to members of the regime.

(7) COMMON LIST OF CONTROLLED ITEMS.—There is agreement on a common list of items controlled by the multilateral export control regime.

(8) REGULAR UPDATES OF COMMON LIST.—There is a procedure for removing items from the list of controlled items when the control of such items no longer serves the objectives of the members of the multilateral export control regime.

(9) TREATMENT OF CERTAIN COUNTRIES.—There is agreement to 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.

(10) HARMONIZATION OF LICENSE APPROVAL PROCEDURES.—There is harmonization among the members of the regime of their national export license approval procedures, practices, and standards.

(11) UNDERCUTTING.—There is a limit with respect to when members of a multilateral export control regime—

(A) grant export licenses for any item that is substantially identical to or directly competitive with an item controlled pursuant to the regime, where the United States has denied an export license for such item, or

(B) approve exports to a particular end user to which the United States has denied export license for a similar item.

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

(1) EXPORT CONTROL LAW.—Enforcement authority, civil and criminal penalties, and statutes of limitations are sufficient to deter potential violations and punish violators under the member's export control law.

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

(3) ENFORCEMENT.—The enforcement mechanism provides authority for trained enforcement officers to investigate and prevent illegal exports.

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

(5) INFORMATION.—There are procedures for the coordination and exchange of information concerning licensing, end users, and enforcement with other members of the multilateral export control regime.

(6) RESOURCES.—The member has devoted adequate resources to administer effectively the authorities, systems, mechanisms, and procedures described in paragraphs (1) through (5).

(e) OBJECTIVES REGARDING MULTILATERAL EXPORT CONTROL REGIMES.—The President shall seek to achieve the following objectives with regard to multilateral export control regimes:

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

(A) by creating a requirement to share information about export license applications among members before a member approves an export license; and

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

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

(A) national security concerns;

(B) the controllability of items; and

(C) the costs and benefits of controls.

(3) ENCOURAGE COMPLIANCE BY NONMEMBERS.—Encourage nonmembers of the multilateral export control regime—

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

(B) to adhere to the appropriate multilateral export control regime; and

(C) not to undermine an existing multilateral export control regime by exporting controlled items in a manner inconsistent with the guidelines of the regime.

(f) TRANSPARENCY OF MULTILATERAL EXPORT CONTROL REGIMES.—

(1) PUBLICATION OF INFORMATION ON EACH EXISTING REGIME.—Not later than 120 days after the date of enactment of this Act, the Secretary shall, for each multilateral export control regime, to the extent that it is not inconsistent with the arrangements of that regime (in the judgment of the Secretary of State) or with the national interest, publish in the Federal Register and post on the Department of Commerce website the following information with respect to the regime:

(A) The purposes of the regime.

(B) The members of the regime.

(C) The export licensing policy of the regime.

(D) The items that are subject to export 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 export controls of the regime.

(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.—Not later than 60 days after the United States joins or organizes a new multilateral export control regime, the Secretary shall, to the extent that it is not inconsistent with arrangements under the regime (in the judgment of the Secretary of State) or with the national interest, publish in the Federal Register and post on the Department of Commerce website the information described in subparagraphs (A) through (H) of paragraph (1) with respect to the regime.

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

(g) SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL SYSTEMS.—The Secretary is encouraged to continue to—

(1) participate in training of, and provide training to, officials of other countries on the principles and procedures for implementing effective export controls; and

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

SEC. 502. FOREIGN BOYCOTTS.

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

(1) 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.

(2) To encourage and, in specified cases, require United States persons engaged in the export of items 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.

(b) PROHIBITIONS AND EXCEPTIONS.—

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

(A) Refusing, or requiring any other 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, or requirement of, or a request from or on behalf of the boycotting country (subject to the condition that the intent required to be associated with such an act in order to constitute a violation of the prohibition is not indicated solely by the mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person).

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminate 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 (other than furnishing normal business information in a commercial context, as defined by the Secretary) 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.

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

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

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

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

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

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

(B) compliance, or agreement to comply, with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment, or the name of the provider of other services, except that, for purposes of applying any exception under this subparagraph, no information knowingly furnished or conveyed in response to such requirements may be stated in negative, 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) compliance, or agreement to comply, in the normal course of business with the unilateral and specific selection by a boycotting country, or a national or resident thereof, or carriers, insurers, suppliers of services to be performed within the boycotting country, or specific items which, in the normal course of business, are identifiable by source when imported into the boycotting country;

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

(E) compliance by an individual, or agreement by an individual to comply, with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of 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 a person to comply, with the laws of the country with respect to the person's activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of the foreign 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.

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

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

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

(c) ADDITIONAL REGULATIONS AND REPORTS.—

(1) REGULATIONS.—In addition to the regulations issued pursuant to subsection (b), regulations issued pursuant to title III shall implement the purposes set forth in subsection (a).

(2) REPORTS BY UNITED STATES PERSONS.—The regulations shall require that any United States person receiving a request to furnish information, enter into or implement an agreement, or take any other action referred to in subsection (a) shall report that request to the Secretary, together with any other information concerning the request that the Secretary determines appropriate. The person shall also submit to the Secretary a statement regarding whether the person intends to comply, and whether the person has complied, with the 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 item to which such report relates may be treated as confidential if the Secretary determines that disclosure of that information would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate to carry out the purposes set forth in subsection (a).

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

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

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

SEC. 503. PENALTIES.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Any individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports involved or $1,000,000, whichever is greater, imprisoned for not more than 10 years, or both, for each violation.

(2) VIOLATIONS BY A PERSON OTHER THAN AN INDIVIDUAL.—Any person other than an individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports involved or $5,000,000, whichever is greater, for each violation.

(b) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—

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

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

(B) any of that person's security or other interest in, claim against, or property or contractual rights of any kind in the 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 (relating to criminal forfeiture), 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 up to $500,000 for each violation of a provision of this Act or any regulation, license, or order issued under this Act. A civil penalty under this paragraph may be in addition to, or in lieu of, any other liability or penalty which may be imposed for such a violation.

(2) DENIAL OF EXPORT PRIVILEGES.—The Secretary may deny the export privileges of any person, including the suspension or revocation of the authority of such person to export or receive United States-origin items subject to this Act, for a violation of a provision of this Act or any regulation, license, or order issued under this Act.

(3) EXCLUSION FROM PRACTICE.—The Secretary may exclude any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity from participating before the Department with respect to a license application or any other matter under this Act.

(d) PAYMENT OF CIVIL PENALTIES.—

(1) PAYMENT AS CONDITION OF FURTHER EXPORT PRIVILEGES.—The payment of a civil penalty imposed under subsection (c) may be made a condition for 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. The period for which the payment of a penalty may be made such a condition may not exceed 1 year after the date on which the payment is due.

(2) DEFERRAL OR SUSPENSION.—

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

(B) NO BAR TO COLLECTION OF PENALTY.—A deferral or suspension under subparagraph (A) shall not operate as a bar to the collection of the penalty concerned in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

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

(e) REFUNDS.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, refund any civil penalty imposed under subsection (c) on the ground of a material error of fact or law in imposition of the penalty.

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

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

(f) EFFECT OF OTHER CONVICTIONS.—

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

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

(B) a provision of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.),

(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 (22 U.S.C. 2778),

(F) section 16 of the Trading with the Enemy Act (50 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),

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

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

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

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

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

may, at the discretion of the Secretary, be denied export privileges under this Act for a period not to exceed 10 years from the date of the conviction. The Secretary may also revoke any export license under this Act 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 a person convicted of any violation of a law set forth in paragraph (1) upon a showing of such relationship with the convicted person. The Secretary shall make such showing only after providing notice and opportunity for a hearing.

(g) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a 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 later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) EXCEPTION.—

(A) TOLLING.—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

(B) DURATION.—The tolling of the limitation with respect to a defendant under subparagraph (A) as a result of a criminal indictment shall continue for a period of 6 months from the date on which the conviction of the defendant becomes final, the indictment against the defendant is dismissed, or the criminal action has concluded.

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

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

(1) the availability of other administrative or judicial remedies with respect to a violation of a provision of this Act, or any regulation, order, or license issued under this Act;

(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)).

SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.

(a) VIOLATIONS BY UNITED STATES PERSONS.—

(1) SANCTIONS.—

(A) IN GENERAL.—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, title II or III of this Act, 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 subparagraph (B).

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

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

(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 Act.

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

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

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

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

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

(1) SANCTIONS.—

(A) IN GENERAL.—Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of 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 MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(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 subparagraph (B).

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

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

(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 Act.

(iii) If, in addition to actions taken under clauses (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 MTCR adherent, 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.

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

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

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

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

(4) 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 subsection. 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.

(5) WAIVER AND REPORT TO CONGRESS.—

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

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

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

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

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

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

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

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

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

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

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

(C) to—

(i) spare parts,

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

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

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

(c) DEFINITIONS.—In this section:

(1) MISSILE.—The term ''missile'' means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems.

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

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

(4) MTCR ANNEX.—The term ''MTCR Annex'' means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto.

(5) MISSILE EQUIPMENT OR TECHNOLOGY; MTCR EQUIPMENT OR TECHNOLOGY.—The terms ''missile equipment or technology'' and ''MTCR equipment or technology'' mean those items listed in category I or category II of the MTCR Annex.

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

(7) PERSON.—

(A) IN GENERAL.—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.

(B) IDENTIFICATION IN CERTAIN CASES.—In the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term ''person'' means—

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

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

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

SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any item that is subject to the jurisdiction of the United States under this Act, or

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

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

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

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

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

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

(B) any foreign country whose government is determined for purposes of section 310 to be a government that has repeatedly provided support for acts of international terrorism; or

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

(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

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

(B) any successor entity to that foreign person;

(C) 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

(D) 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.

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

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, 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 section.

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

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

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) 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 subsection (a)(3).

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

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

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

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

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

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

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

(C) to—

(i) spare parts,

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

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

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

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section 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 subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

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

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term ''foreign person'' means—

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

(2) 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.

SEC. 506. 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 departments and agencies that the Secretary considers appropriate, shall be responsible for providing policy guidance on the enforcement of this Act.

(2) GENERAL AUTHORITIES.—

(A) EXERCISE OF AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act, officers and employees of the Department designated by the Secretary, officers and employees of the United States Customs Service designated by the Commissioner of Customs, and officers and employees of any other department or agency designated by the head of a department or agency exercising functions under this Act, may exercise the enforcement authority under paragraph (3).

(B) CUSTOMS SERVICE.—In carrying out enforcement authority under 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 ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to carry out law enforcement responsibilities. Subject to paragraph (3), the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize items at the ports of entry into or exit from the United States where officers of the United States Customs Service are authorized by law to conduct searches, detentions, and seizures, and at the places outside the United States where the United States Customs Service, pursuant to agreement or other arrangement with other countries, is authorized to perform enforcement activities.

(C) OTHER EMPLOYEES.—In carrying out enforcement authority under paragraph (3), the Secretary and officers and employees of the Department designated by the Secretary may make investigations within the United States, and may conduct, outside the United States, pre-license and post-shipment verifications of controlled items and investigations in the enforcement of section 502. The Secretary and officers and employees of the Department designated by the Secretary are authorized to search, detain (after search), and seize items at places within the United States other than ports referred to in subparagraph (B). The search, detention (after search), or seizure of items at the ports and places referred to in subparagraph (B) may be conducted by officers and employees of the Department only with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

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

(3) SPECIFIC AUTHORITIES.—

(A) ACTIONS BY ANY DESIGNATED PERSONNEL.—Any officer or employee designated under paragraph (2), in carrying out the enforcement authority under this Act, may do the following:

(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 allowance as paid witnesses in the district courts of the United States.

(B) ACTIONS BY OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—

(i) OFFICE OF EXPORT ENFORCEMENT AND CUSTOMS SERVICE PERSONNEL.—Any officer or employee of the Office of Export Enforcement of the Department of Commerce (in this Act referred to as ''OEE'') 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 Act:

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

(II) Make arrests without warrant for any violation of this Act 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) OEE PERSONNEL.—Any officer or employee of the OEE designated by the Secretary under paragraph (2) shall exercise the authority set forth in clause (i) pursuant to guidelines approved by the Attorney General.

(C) OTHER ACTIONS BY CUSTOMS SERVICE PERSONNEL.—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 Act:

(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 Act.

(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 Act.

(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 Act.

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

(b) FORFEITURE.—

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

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

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

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

(C) the remission or mitigation of such forfeitures; and

(D) 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 Act.

(3) FORFEITURES UNDER CUSTOMS LAWS.—Duties that are imposed upon a 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 any officer or employee of the Department that may be authorized or designated for that purpose by the Secretary (or by the Commissioner of Customs or any officer or employee of the United States Customs Service designated by the Commissioner), 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 Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 503 or to the Attorney General for criminal action in accordance with this Act 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 OEE that is necessary for the detection and prosecution of violations of this Act—

(A) funds made available for export enforcement under this Act may be used to purchase property, buildings, and other facilities, and to lease equipment, conveyances, and 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), subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a) and (c)), and section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);

(B) funds made available for export enforcement under this Act 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 sections 1341, 3324, and 9102 of title 31, United States Code;

(C) funds made available for export enforcement under this Act 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 has a net value of more than $250,000 and is to be liquidated, sold, or otherwise disposed of, the Director of OEE shall report the circumstances to the Secretary and the Comptroller General of the United States as much in advance of such disposition as the Director of the OEE (or the Director's 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. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

(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 needed for the conduct of such operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) AUDIT AND REPORT.—

(A) AUDIT.—The Director of OEE shall conduct a detailed financial audit of each closed OEE undercover investigative operation 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 Congress a report on the results of the audit.

(B) REPORT.—The Secretary shall submit annually to Congress a report, which may be included in the annual report under section 701, 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 to the operation.

(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; and

(B) the terms ''undercover investigative operation'' and ''undercover operation'' mean any undercover investigative operation conducted by the 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 Congress required by paragraph (4)(B).

(e) WIRETAPS.—

(1) AUTHORITY.—Interceptions of communications in accordance with section 2516 of title 18, United States Code, are authorized to further the enforcement of this Act.

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

''(q)(i) any violation of, or conspiracy to violate, the Export Administration Act of 2001 or the Export Administration Act of 1979.''.

(f) POST-SHIPMENT VERIFICATION.—The Secretary shall target post-shipment verifications to exports involving the greatest risk to national security.

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

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

(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 end-user refusing to allow post-shipment verification of a controlled item.

(3) REFUSAL BY COUNTRY.—If the country in which the end-user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a license for the export of that item or any substantially identical or directly competitive item or class of items to all end-users in that country until such post-shipment verification is allowed.

(h) FREIGHT FORWARDERS BEST PRACTICES PROGRAM AUTHORIZATION.—There is authorized to be appropriated for the Department of Commerce $3,500,000 and such sums as may be necessary to hire 20 additional employees to assist United States freight forwarders and other interested parties in developing and implementing, on a voluntary basis, a ''best practices'' program to ensure that exports of controlled items are undertaken in compliance with this Act.

(i) END-USE VERIFICATION AUTHORIZATION.—

(1) IN GENERAL.—There is authorized to be appropriated for the Department of Commerce $4,500,000 and such sums as may be necessary to hire 10 additional overseas investigators to be posted in the People's Republic of China, the Russian Federation, the Hong Kong Special Administrative Region, the Republic of India, Singapore, Egypt, and Taiwan, or any other place the Secretary deems appropriate, for the purpose of verifying the end use of high-risk, dual-use technology.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Department shall, in its annual report to Congress on export controls, include a report on the effectiveness of the end-use verification activities authorized under subsection (a). The report shall include the following information:

(A) The activities of the overseas investigators of the Department.

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

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

(3) ENHANCEMENTS.—In addition to the authorization provided in paragraph (1), there is authorized to be appropriated for the Department of Commerce $5,000,000 to enhance its program for verifying the end use of items subject to controls under this Act.

(j) ENHANCED COOPERATION WITH UNITED STATES CUSTOMS SERVICE.—Consistent with the purposes of this Act, the Secretary is authorized to undertake, in cooperation with the United States Customs Service, such measures as may be necessary or required to enhance the ability of the United States to detect unlawful exports and to enforce violations of this Act.

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

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

(m) AUTHORIZATION FOR BUREAU OF EXPORT ADMINISTRATION.—The Secretary may authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement in accordance with section 9703 of title 31, United States Code (as added by Public Law 102–393). The Secretary may also authorize, without fiscal year limitation, the expenditure of funds transferred to, paid to, received by, or made available to the Bureau of Export Administration as a reimbursement from the Department of Justice Assets Forfeiture Fund in accordance with section 524 of title 28, United States Code. Such funds shall be deposited in an account and shall remain available until expended.

(n) AMENDMENTS TO TITLE 31.—

(1) Section 9703(a) of title 31, United States Code (as added by Public Law 102–393) is

amended by striking ''or the United States Coast Guard'' and inserting '', the United States Coast Guard, or the Bureau of Export Administration of the Department of Commerce''.

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

(A) by striking ''or'' at the end of subclause (I);

(B) by inserting ''or'' at the end of subclause (II); and

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

''(III) a violation of the Export Administration Act of 1979, the Export Administration Act of 2001, or any regulation, license, or order issued under those Acts;''.

(3) Section 9703(p)(1) of title 31, United States Code (as added by Public Law 102–393) is amended by adding at the end the following: ''In addition, for purposes of this section, the Bureau of Export Administration of the Department of Commerce shall be considered to be a Department of the Treasury law enforcement organization.''.

(o) AUTHORIZATION FOR LICENSE REVIEW OFFICERS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Department of Commerce $2,000,000 to hire additional license review officers.

(2) TRAINING.—There is authorized to be appropriated to the Department of Commerce $2,000,000 to conduct professional training of license review officers, auditors, and investigators conducting post-shipment verification checks. These funds shall be used to—

(A) train and certify, through a formal program, new employees entering these positions for the first time; and

(B) the ongoing professional training of experienced employees on an as needed basis.

(p) AUTHORIZATION.—

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

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

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

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

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

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

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

(A) Provides to Congress a detailed report on—

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

(ii) the operation of United States export controls in general.

(B)(i) Provides to Congress legislative reform proposals in connection with the report described in subparagraph (A); or

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

SEC. 507. ADMINISTRATIVE PROCEDURE.

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

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

(1) ADMINISTRATIVE PROCEDURES.—Any administrative sanction imposed under section 503 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, except that the review shall be initiated in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the review.

(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 502 shall be made available for public inspection and copying.

(c) COLLECTION.—If any person fails to pay a civil penalty imposed under section 503, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States 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 Act, or any regulation, order, or license issued under this Act, including any diversion of goods or technology from an authorized end use or end user, and in any case in which a criminal indictment has been returned against a person alleging a violation of this Act or any of the statutes listed in section 503, the Secretary may, without a hearing, issue an order temporarily denying that person's United States export privileges (hereafter in this subsection referred to as a ''temporary denial order''). A temporary denial order shall be effective for such period (not in excess of 180 days) as the Secretary specifies in the order, 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, modifying, 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 that constitutes or would constitute a violation of this Act, or any regulation, order, or license issued under this Act; or

(B) a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or any of the statutes listed in section 503.

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 that constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this Act, or whether a criminal indictment has been returned against the person subject to the order alleging a violation of this Act or of any of the statutes listed in section 503. 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.

(e) LIMITATIONS ON REVIEW OF CLASSIFIED INFORMATION.—Any classified information that is included in the administrative record that is subject to review pursuant to subsection (b)(1) or (d)(3) may be reviewed by the court only on an ex parte basis and in camera.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

SEC. 601. EXPORT CONTROL AUTHORITY AND REGULATIONS.

(a) EXPORT CONTROL AUTHORITY.—

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

(2) DELEGATION OF FUNCTIONS OF THE SECRETARY.—The Secretary may delegate any function under this Act, unless otherwise provided, to the Under Secretary of Commerce for Export Administration or to any other officer of the Department.

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

(1) UNDER SECRETARY OF COMMERCE.—There shall be within the Department an Under Secretary of Commerce for Export Administration (in this section referred to as the ''Under Secretary'') who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall carry out all functions of the Secretary under this Act and other provisions of law relating to national security, as the Secretary may delegate.

(2) ADDITIONAL ASSISTANT SECRETARIES.—In addition to the number of Assistant Secretaries otherwise authorized for the Department of Commerce, there shall be within the Department of Commerce the following Assistant Secretaries of Commerce:

(A) An Assistant Secretary for Export Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall assist the Secretary and the Under Secretary in carrying out functions relating to export listing and licensing.

(B) An Assistant Secretary for Export Enforcement who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall assist the Secretary and the Under Secretary in carrying out functions relating to export enforcement.

(c) ISSUANCE OF REGULATIONS.—

(1) IN GENERAL.—The President and the Secretary may issue such regulations as are necessary to carry out this Act. Any such regulations the purpose of which is to carry out title II or title III 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 control advisory committee

appointed under section 105(a) 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.

(2) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations 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 control advisory committees appointed under section 105(a) in amending regulations issued under this Act.

SEC. 602. CONFIDENTIALITY OF INFORMATION.

(a) EXEMPTIONS FROM DISCLOSURE.—

(1) INFORMATION OBTAINED ON OR BEFORE JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under the Export Administration Act of 1979, or any predecessor statute, on or before June 30, 1980, which is deemed confidential, including Shipper's Export Declarations, or with respect 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.

(2) INFORMATION OBTAINED AFTER JUNE 30, 1980.—Except as otherwise provided by the third sentence of section 502(c)(2) and by section 507(b)(2), information obtained under this Act, under the Export Administration Act of 1979 after June 30, 1980, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), 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 (or recordkeeping or reporting requirement) under the Export Administration Act of 1979, under this Act, or under the Export Administration regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1706), including—

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

(B) classification requests described in section 401(h),

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

(D) information obtained or furnished under title V in connection with any international agreement, treaty, or other obligation, and

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

and information obtained in any investigation of an alleged violation of section 502 of this Act except for information required to be disclosed by section 502(c)(2) or 507(b)(2) of this Act, 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.

(b) INFORMATION TO CONGRESS AND GAO.—

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

(2) AVAILABILITY TO THE CONGRESS—

(A) IN GENERAL.—Any information obtained at any time under this title or under any predecessor Act 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 Act or any predecessor Act 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 subsection (a), information described 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 Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(c) INFORMATION EXCHANGE.—Notwithstanding subsection (a), the Secretary and the Commissioner of Customs shall exchange licensing and enforcement information with each other as necessary to facilitate enforcement efforts and effective license decisions.

(d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—

(1) DISCLOSURE PROHIBITED.—No officer or employee of the United States, or any department or agency thereof, may publish, divulge, disclose, or make known in any manner or to any extent not authorized by law any information that—

(A) the officer or employee 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 section.

(2) CRIMINAL PENALTIES.—Any such officer or employee who knowingly violates paragraph (1) shall be fined not more than $50,000, imprisoned not more than 1 year, or both, for each violation of paragraph (1). Any such officer or employee may also be removed from office or employment.

(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The Secretary may impose a civil penalty of not more than $5,000 for each violation of paragraph (1). Any officer or employee who commits such violation may also be removed from office or employment for the violation of paragraph (1). Sections 503 (e), (g), (h), and (i) and 507 (a), (b), and (c) shall apply to violations described in this paragraph.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. ANNUAL REPORT.

(a) ANNUAL REPORT.—Not later than February 1 of each year, the Secretary shall submit to Congress a report on the administration of this Act during the fiscal year ending September 30 of the preceding calendar year. All Federal agencies shall cooperate fully with the Secretary in providing information for each such report.

(b) REPORT ELEMENTS.—Each such report shall include in detail—

(1) a description of the implementation of the export control policies established by this Act, including any delegations of authority by the President and any other changes in the exercise of delegated authority;

(2) a description of the changes to and the year-end status of country tiering and the Control List;

(3) a description of the petitions filed and the determinations made with respect to foreign availability and mass-market status, the set-asides of foreign availability and mass-market status determinations, and negotiations to eliminate foreign availability;

(4) a description of any enhanced control imposed on an item pursuant to section 201(d);

(5) a description of the regulations issued under this Act;

(6) a description of organizational and procedural changes undertaken in furtherance of this Act;

(7) a description of the enforcement activities, violations, and sanctions imposed under this Act;

(8) a statistical summary of all applications and notifications, including—

(A) the number of applications and notifications pending review at the beginning of the fiscal year;

(B) the number of notifications returned and subject to full license procedure;

(C) the number of notifications with no action required;

(D) the number of applications that were approved, denied, or withdrawn, and the number of applications where final action was taken; and

(E) the number of applications and notifications pending review at the end of the fiscal year;

(9) summary of export license data by export identification code and dollar value by country;

(10) an identification of processing time by—

(A) overall average, and

(B) top 25 export identification codes;

(11) an assessment of the effectiveness of multilateral regimes, and a description of negotiations regarding export controls;

(12) a description of the significant differences between the export control requirements of the United States and those of other multilateral control regime members, and the specific differences between United States requirements and those of other significant supplier countries;

(13) an assessment of the costs of export controls;

(14) a description of the progress made toward achieving the goals established for the Department dealing with export controls under the Government Performance Results Act; and

(15) any other reports required by this Act to be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives.

(c) FEDERAL REGISTER PUBLICATION REQUIREMENTS.—Whenever information under this Act is required to be published in the Federal Register, such information shall, in addition, be posted on the Department of Commerce or other appropriate government website.

SEC. 702. TECHNICAL AND CONFORMING AMENDMENTS.

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

(b) ENERGY POLICY AND CONSERVATION ACT.—

(1) Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212) is repealed.

(2) Section 251(d) of the Energy Policy and Conservation Act (42 U.S.C. 6271(d)) is repealed.

(c) ALASKA NATURAL GAS TRANSPORTATION ACT.—Section 12 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719j) is repealed.

(d) MINERAL LEASING ACT.—Section 28(u) of the Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

(e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Section 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s)) is repealed.

(f) DISPOSITION OF CERTAIN NAVAL PETROLEUM RESERVE PRODUCTS.—Section 7430(e) of title 10, United States Code, is repealed.

(g) OUTER CONTINENTAL SHELF LANDS ACT.—Section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354) is repealed.

(h) 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 503 of the Export Administration Act of 2001, by subsections (a) and (b) of section 506 of such Act, and by section 602 of such Act,''; and

(ii) in the third sentence, by striking ''11(c) of the Export Administration Act of 1979'' and inserting ''503(c) of the Export Administration Act of 2001''; and

(B) in subsection (g)(1)(A)(ii), by inserting ''or section 503 of the Export Administration Act of 2001'' after ''1979''.

(2) Section 39A(c) of the Arms Export Control Act (22 U.S.C. 2779a(c)) is amended—

(A) by striking ''subsections (c),'' and all that follows through ''12(a) of such Act'' and inserting ''subsections (c), (d), and (e) of section 503, section 507(c), and subsections (a) and (b) of section 506, of the Export Administration Act of 2001''; and

(B) by striking ''11(c)'' and inserting ''503(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 ''503(b), 503(c), 503(e), 506(a), and 506(b) of the Export Administration Act of 2001''; and

(B) by striking ''11(c)'' and inserting ''503(c)''.

(i) OTHER PROVISIONS OF LAW.—

(1) Section 5(b)(4) of the Trading with the Enemy Act (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 ''titles II and III of the Export Administration Act of 2001''.

(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 2001''; and

(B) by striking ''Act of 1979)'' and inserting ''Act of 2001)''.

(3) Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)) is amended—

(A) in paragraph (1)(B), by inserting ''or section 310 of the Export Administration Act of 2001'' after ''Act of 1979''; and

(B) in paragraph (2), by inserting ''or 310 of the Export Administration Act of 2001'' after ''6(j) of the Export Administration Act of 1979''.

(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 ''section 6(j)(1) of the Export Administration Act of 1979'' and inserting ''section 310 of the Export Administration Act of 2001''.

(5) Section 205(d)(4)(B) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 305(d)(4)(B)) is amended by striking ''section 6(j) of the Export Administration Act of 1979'' and inserting ''section 310 of the Export Administration Act of 2001''.

(6) 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 2001''.

(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 2001''.

(8) Section 1605(a)(7)(A) of title 28, United States Code, is amended by striking ''section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))'' and inserting ''section 310 of the Export Administration Act of 2001''.

(9) Section 2332d(a) of title 18, United States Code, is amended by striking ''section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405)'' and inserting ''section 310 of the Export Administration Act of 2001''.

(10) Section 620H(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended by striking ''section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))'' and inserting ''section 310 of the Export Administration Act of 2001''.

(11) Section 1621(a) of the International Financial Institutions Act (22 U.S.C. 262p–4q(a)) is amended by striking ''section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))'' and inserting ''section 310 of the Export Administration Act of 2001''.

(12) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking ''section 11 (relating to violations) of the Export Administration of 1979'' and inserting ''section 503 (relating to penalties) of the Export Administration Act of 2001''.

(13) Subsection (f) of section 491 and section 499 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620c(f) and 620j) are repealed.

(14) Section 904(2)(B) of the Trade Sanctions Reform and Export Enhancement Act of 2000 is amended by striking ''Export Administration Act of 1979'' and inserting ''Export Administration Act of 2001''.

(15) Section 983(i)(2) of title 18, United States Code (as added by Public Law 106–185), is amended—

(A) by striking the ''or'' at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting ''; or''; and

(C) by inserting the following new subparagraph:

''(F) the Export Administration Act of 2001.''.

(j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product that—

(1) is standard equipment, certified by the Federal Aviation Administration, in civil aircraft, and

(2) is an integral part of such aircraft, shall be subject to export control only under this Act. Such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act (22 U.S.C. 2778(b)).

(k) REPEAL OF CERTAIN EXPORT CONTROLS.—Subtitle B of title XII of division A of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note) is repealed.

SEC. 703. 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, the Export Administration Act of 1979, or the International Emergency Economic Powers Act when invoked to maintain and continue the Export Administration regulations, or

(2) those provisions of the Arms Export Control Act which are amended by section 702,

and are in effect on the date of enactment of this Act, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act or the Arms Export Control Act.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—

(1) EXPORT ADMINISTRATION ACT.—This Act shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979 or pursuant to Executive Order 12924, which is pending at the time this Act 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 Act shall not affect any administrative or judicial proceeding commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 702, if such proceeding or application is pending at the time this Act takes effect. Any such proceeding, and any action on such application, shall continue under those provisions as if those provisions had not been amended by section 702.

(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, or Executive Order 12924, that is in effect on the day before the date of enactment of this Act, shall, for purposes of this title or any other provision of law, be deemed to be made under section 310 of this Act until superseded by a determination under such section 310.

(d) LAWFUL INTELLIGENCE ACTIVITIES.—The prohibitions otherwise applicable under this Act do not apply with respect to any transaction subject to the reporting requirements of title V of the National Security Act of 1947. Notwithstanding any other provision of this Act, nothing shall affect the responsibilities and authorities of the Director of Central Intelligence under section 103 of the National Security Act of 1947.

(e) IMPLEMENTATION.—The Secretary shall make any revisions to the Export Administration regulations required by this Act no later than 180 days after the date of enactment of this Act.

Mr. SARBANES. Mr. President, I rise in very strong support of S. 149, the Export Administration Act of 2001.

Earlier this year, I was pleased to join with my colleagues, Senator ENZI, Senator JOHNSON, and Senator GRAMM, in introducing this legislation.

This legislation was reported out of the Senate Banking, Housing, and Urban Affairs Committee by a vote of 19–1. It was a bipartisan vote, obviously, of 19–1. The legislation has been very strongly endorsed by the administration. That was in early April of this year. The Export Administration Act provides for the President to control exports for reasons of national security and foreign policy.

Let me begin by saying I believe there is a very strong national interest in reauthorizing the Export Administration Act. I think that is a view held by a clear majority of the Congress.

It is important to understand a bit about the historical situation as we consider this legislation. Regrettably, the Export Administration Act has not been reauthorized since 1990, except for three temporary extensions in 1993, in 1994, and again last year. At the end of the last Congress, we passed a temporary extension of the Export Administration Act that expired on August 20 of this year, just a few weeks ago.

Prior to this most recent temporary extension and since the EAA expired on August 20, the authority of the President to impose export controls has been exercised pursuant to the International Economic Emergency Powers

Act, the so-called IEEPA. This is generally how we have been functioning throughout this decade with respect to export controls.

I believe strongly that Congress should put in place a permanent statutory framework for the imposition of export controls. They should not be imposed pursuant to an emergency economic authority of the President. It can be done that way. It has been done that way. That is the currently existing situation. But I don't think that is the most desirable way to proceed. It doesn't give you the most substantial statutory framework, obviously. It doesn't introduce an element of stability and permanency into the arrangements. In fact, I believe strongly that this legislation provides greater protection for national security and foreign policy concerns than is provided under IEEPA or provided under the previous Export Administration Act.

Just one example: The penalties that can be imposed under IEEPA for violation of export controls are significantly less than the penalties that are provided for in the legislation that is before us. Let me repeat that.

Under the current arrangement in which the export control regime has been put in place by the President's invoking of his economic emergency powers, the penalties for violation are substantially less than the penalties which we provide in this legislation. This legislation is a carefully balanced effort to provide the President authority to control exports for reasons of national security and foreign policy while also responding to the need of U.S. exporters to compete in the global marketplace.

I point out that effective competition by U.S. exporters in the global marketplace, which will strengthen their economic position—that is, the economic position of U.S. exporters—and thereby strengthen the economic position of the United States in the global marketplace, also has important national security and foreign policy implications for the United States. In the end, our national security and foreign policy strength rests in part on our economic strength. I think we need to keep that in mind as we consider this legislation.

In preparation for acting on this legislation, the Banking Committee this year held two hearings with representatives of industry groups and former Defense Department officials.

I might note that the committee held extensive hearings in the prior Congress with respect to this issue. So there has been a continual period now, over a number of years, of very careful examination of export controls and how to address this matter. Extensive consultation took place with representatives of the new administration, including the Commerce Department, the Defense Department, the State Department, the intelligence agencies, and the National Security Council.

Prior to the markup of the legislation in the Banking Committee earlier this year, Dr. Rice, the Assistant to the President for National Security Affairs, sent a letter to the committee dated March 21 of this year, which I quote:

> The Administration has carefully reviewed the current version of S. 149, the Export Administration Act of 2001, which provides authority for controlling exports of dual-use goods and technologies. As a result of its review, the Administration has proposed a number of changes to S. 149. The Secretary of State, Secretary of Defense, Secretary of Commerce, and I agree that these changes will strengthen the President's national security and foreign policy authorities to control dual-use exports in a balanced manner, which will permit U.S. companies to compete more effectively in the global market place. With these changes, S. 149 represents a positive step towards the reform of the U.S. export control system supported by the President. If the Committee incorporates these changes into S. 149, the Administration will support the bill.

Mr. President, a major effort was made to work through the list of proposals by the administration. That resulted in those proposals being incorporated into the bill during the Banking Committee's markup. As a consequence, in effect we met the standard that the administration set for us. They were incorporated in the markup.

The administration is supportive of this bill. It has expressed that support on more than one occasion. They have been in constant communication with us about this matter. We are obviously proceeding not only in accordance with our own judgment, but it also represents the judgment of the administration as well. In fact, in late March President Bush, in speaking to high-tech leaders in the White House, urged quick passage of the bill by the Senate. He reiterated that support in May in a speech he gave in Washington.

In April, the Office of Management and Budget submitted to the Congress a statement of administration policy on S. 149, which said in part:

> The Administration supports S. 149, as reported by the Senate Banking Committee. The bill provides authority for controlling exports of dual-use goods and technologies. The Administration believes that S. 149 would allow the United States to successfully meet its national security and foreign policy objectives without impairing the ability of U.S. companies to compete effectively in the global marketplace.

As reported, S. 149 includes a number of changes that the administration sought to strengthen the President's national security and foreign policy authorities to control dual-use exports.

Let me underscore: changes they sought to strengthen the President's national security and foreign policy authorities to control dual-use exports.

> The Administration will continue to work with Congress to ensure that our national security needs are incorporated into a rational export control system.

Mr. President, I ask unanimous consent that the Statement of Administration Policy submitted by the Office of Management and Budget with respect to S. 149 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, April 26, 2001.

STATEMENT OF ADMINISTRATION POLICY

S. 149—EXPORT ADMINISTRATION ACT OF 2001

The Administration supports S. 149, as reported by the Senate Banking Committee. The bill provides authority for controlling exports of dual-use goods and technologies. The Administration believes that S. 149 would allow the United States to successfully meet its national security and foreign policy objectives without impairing the ability of U.S. companies to compete effectively in the global marketplace. As reported, S. 149 includes a number of changes that the Administration sought to strengthen the President's national security and foreign policy authorities to control duel-use exports. The Administration will continue to work with Congress to ensure that our national security needs are incorporated into a rational export control system.

Pay-As-You-Go Scoring

S. 149 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimates is that the PAYGO effect of this bill is minimal. Final scoring of this legislation may deviate from this estimate.

Mr. SARBANES. Mr. President, I commend Senator GRAMM, who was actually chairman of the committee at the time that we brought the legislation forward. And I commend Senator ENZI and Senator JOHNSON. Senator ENZI and Senator JOHNSON, respectively, were the chairman and ranking member of the Subcommittee on International Trade and Finance of the Banking Committee in the last Congress. They carried forward their strong interest in this legislation in this Congress and have played an instrumental role in helping to shape the legislation. I thank them for their very dedicated efforts, and the efforts of their staff which contributed so much to developing a bipartisan consensus on this legislation.

Also, I acknowledge the significant contributions made by Senator BAYH and by Senator HAGEL, who are the chairman and ranking member of the International Trade and Finance Subcommittee in this Congress, for their contributions in moving the legislation forward this year.

The legislation generally tracks the authorities provided the President under the Export Administration Act which expired in 1990. However, a significant effort was made, with the assistance of the legislative counsel's office, to provide these authorities in a more clear and straightforward manner. We believe this will make the statute both easier for the executive branch agencies to administer and for exporters to comply with.

The bill also makes a number of significant improvements to the EAA. I would like to mention a few. The legislation provides, for the first time, a

statutory basis for the resolution of interagency disputes over export license applications. The intent is to provide an orderly process for the timely resolution of disputes while allowing all interested agencies a full opportunity to express their views. This was an issue of significant concern to the administration, to the national security community, and to industry. And I believe we have reached a reasonable resolution of this issue in the bill.

One of the things that industry was seeking was a process whereby they would get an ultimate decision. This bill sets out a process of interagency consultation that provides for moving it up to the next level, if there is not agreement, so that it keeps moving forth. In the end, it can reach the President for decision. But at least it works within a framework in which the industry knows that at the end they will get a decision; it will not simply disappear into the great void with no decision of any sort forthcoming.

We think this is a very reasonable way to structure the situation. I simply note that it is still reserved to the President, in the end, the ultimate authority to rule on the matter with respect to export controls.

As I mentioned earlier, the bill significantly increases both criminal and civil penalties for violations of the Export Administration Act, reflecting the seriousness of such violations.

The bill provides new authority to the President to determine that a good has mass market status in the United States. And because it has mass market status—in other words, there is a set of criteria, but essentially generally available in the marketplace—it should be controlled. But the President retains authority to set aside a mass market determination if he determines that it would constitute a serious threat to national security and that continued export controls would be likely to advance the national security interests of the United States.

We have tried to recognize changes that are taking place in the marketplace, to factor them into the thinking, but even so in the last analysis reserving to the President the authority to set aside a mass market determination. I think this is, again, another example of the concern of those of us who have helped to shape this legislation to make sure that we are able to protect national security and foreign policy interests. We are trying to, in effect, accommodate the market changes and the needs of our exporters in terms of participating effectively and competitively in the global marketplace but, at the same time, making sure the President retains the power and the authority that might be necessary, under certain circumstances, to protect our national security interests and our foreign policy interests.

At the urging of Senator ENZI, who has been a very thoughtful and dedicated exponent of this legislation—and in my perception has bent over backwards to try to accommodate concerns in shaping this legislation—the bill contains a provision that would require the President to establish a system of tiers to which countries would be assigned based on their perceived threat to U.S. national security. The legislation requires that there be at least three such tiers. The intent is to provide exporters a clear guide as to the licensing requirements of the export of a particular item to a particular country.

The bill would also require that any foreign company that declined a U.S. request for a postshipment verification of an export would be denied licenses for future exports. The President would have authority to deny licenses to affiliates of the company and to the country in which the company is located as well.

Overall, I believe this bill is a very balanced piece of work. As I mentioned at the outset, it commanded overwhelming bipartisan support in the committee. It has the strong support of the administration. It is my belief it will receive broad bipartisan support in the full Senate.

In criticizing this bill when it was brought up in this Chamber in April—it was up for 1 day; we had 1 day of debate on the legislation—some of my colleagues registered objections. They thought that the bill tipped the balance towards meeting commercial needs versus national security needs, that it placed an emphasis on export decontrol without an adequate assessment of the national security implications of that decontrol. Others said that the bill's restriction on Presidential authorities to regulate national security-related exports, the liberalization of exports of all goods, poses a problem and needs to be resolved. And we had other comments in that vein.

I want to take a moment to respond to these assertions because I respectfully disagree with them. First of all, it is very important to note that the alternative to reauthorizing the Export Administration Act is the International Emergency Economic Powers Act.

As we indicated earlier, that is really not a satisfactory framework under which to operate.

This was made clear in letters that Dr. Rice, Assistant to the President for National Security Affairs, sent to Senator GRAMM and myself on August 2. In the course of that letter she stated:

> I am pleased that the Senate plans to take up S. 149. Because the current Export Administration Act (EAA) will expire on August 20, 2001, the President is prepared to use the authorities provided to him under the International Emergency Economic Powers Act (IEEPA) to extend the existing dual-use export control programs. As you know, IEEPA authority has previously been used to administer our export control programs. Since a new EAA will provide us the strongest authority to administer dual-use export controls, particularly as related to enforcement, penalties for export control violations, and the protection of business proprietary information, we support swift enactment of S. 149.

Mr. President, I ask unanimous consent to print the full text of the letter in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, August 2, 2001.

Hon. PAUL SARBANES,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your efforts to advance the Senate's consideration of S. 149, the Export Administration Act of 2001. This bill has the Administration's strong support.

I am pleased that the Senate plans to take up S. 149 on September 4, 2001. Because the current Export Administration Act (EAA) will expire on August 20, 2001, the President is prepared to use the authorities provided to him under the International Emergency Economic Powers Act (IEEPA) to extend the existing dual-use export control program. As you know, IEEPA authority has previously been used to administer our export control programs. Since a new EAA will provide us the strongest authority to administer dual-use export controls, particularly as related to enforcement, penalties for export control violations, and the protection of business proprietary information, we support swift enactment of S. 149.

I look forward to continuing to work with you on these important national security issues.

Sincerely,

CONDOLEEZZA RICE,
Assistant to the President for National Security Affairs.

Mr. SARBANES. Aside from the issue that the Export Administration Act is better than IEEPA, which I think is clear, let me address the assertions that S. 149 would weaken the national security protections in the previous Export Administration Act.

I believe quite strongly that just the opposite is the case, as witnessed by the support the administration and the national security community have extended to this legislation. We have already talked about the increased civil and criminal penalties for violations of the EAA. The penalties are stronger in this legislation, not only with respect to the existing ones in IEEPA but also with respect to the penalties in the previously existing Export Administration Act.

Let me mention some other provisions that significantly expand the President's authority to impose export controls on dual-use goods and technology in regard to the EAA.

Section 201(c) of this legislation states:

> Notwithstanding any other provision of this title, controls may be imposed, based on the end use or end user, on the export of any item, that could contribute to the proliferation of weapons of mass destruction or the means to deliver them.

This authority did not exist in the EAA. It is the so-called enhanced proliferation control initiative which until now has been implemented through an executive order. This provision would give the President broad

statutory authority to impose controls on any export that could contribute to proliferation or delivery of weapons of mass destruction, if there was a concern about the end use or the end user of the export.

Section 201(d) of this legislation, the so-called enhanced controls provision, provides:

> Notwithstanding any other provision of this title, the President may determine that applying the provisions of section 204 or 211 with respect to an item on the National Security Control List would constitute a significant threat to the national security of the United States and that such item requires enhanced control.

It goes on to say:

> If the President determines that enhanced control should apply to such item, the item may be excluded from the provisions of section 204, section 211, or both, until such time as the President shall determine that such enhanced control should no longer apply to such item.

Section 204 is a section on containing parts and components that says you can't put on controls if the parts and components are less than 25 percent of the total value of the export. But the President will be given the power, in effect, to ignore that restriction and impose the controls. Under the previous EAA, the President did not have the authority to set aside the parts and components or the foreign availability provisions, which is what 211 requires refers to. So this represents a very significant expansion of the President's export control authority.

We have had a lot of discussions about foreign availability, mass market provisions and the President's standards to set aside this authority. It should be clear that this broad setaside power, separate and apart from the powers the President has in the foreign availability and mass market provisions themselves, is a very important addition to Presidential authority and one that was important to the national security community.

Furthermore, the legislation provides that notwithstanding any other provisions of the act setting forth limitations on the authority to control exports, the President may impose controls listed on a control list of a multilateral export control regime.

This is a very broad authority for the President to set aside all the requirements of the EAA and impose controls on any export that is on a control list pursuant to an international agreement.

This is an important provision because export controls are most effective when they are implemented in concert with the controls of other supplier nations. One of the things we seek to do in this legislation is encourage the development of such multilateral export control regimes. Actually, the majority of items today subject to export controls in the U.S. are controlled by most of the other supplier nations through four multilateral export control regimes: the Waasenaar agreement, which relates to arms and dual-use items useful for conventional arms purposes; the nuclear suppliers group; the missile technology control regime; and the Australia group, which relates to items useful for chemical and biological weapons. These four regimes form the multilateral basis for export controls, and they are obviously an important element for effective nonproliferation.

One of our objectives here, of course, is to work closely with others in further developing multilateral cooperation and strengthening the contribution of these regimes to the nonproliferation objectives.

Let me point out, we are constantly encouraging other countries to put in place a thoroughly considered, rational export control regime. We go to other countries and say: We need you to put this in place. We want you to join the multilateral regimes, and we want you to establish your own bilateral control systems so we can get a handle on this problem worldwide. I am very supportive of those efforts.

What position does it put our interlocutors and our negotiators in when they go to these countries and then they say, ''You don't seem to have established your own regimes''? What is the U.S. regime?

It is another argument for putting this legislation into place so that the U.S. has a fully developed, rational, comprehensive framework dealing with export controls, and then we, in a sense, try to pull other countries towards it or in that direction in order to enhance the multilateral controls that exist worldwide.

Now one other point I want to underscore is, of course, the regime is designed to prevent exporters from moving out, moving overseas, exports with dual-use technology. When we make the judgment and go through this process, it has a negative effect on our national security or foreign policy interests, and of course you are going to have people trying to get around this all the time—some few people.

We have enforcement provisions now that are much tougher. One of the things in this bill is a significant increase in the authorization levels for the Department of Commerce in a whole host of areas in order to try to tighten up the enforcement of this regime. In fact, we have a number of various provisions that are designed to strengthen our various export controls and to ensure that the resources the Department needs are available to it in order to carry out the provisions of the legislation.

Now most exporters want to comply with the regime. They are not out to try to send abroad technology that can be abused to the harm of American interests. A number of them invest significant amounts of money in trying to comply with the regime's reporting and recording requirements. So it is important to the export community to have a comprehensive, rational statutory framework. They know, then, what the rules of the game are. I think it encourages compliance; it draws, in a sense, on the business community to help implement this matter. So I think that also represents an important step.

Let me draw to a conclusion by once again saying this is a balanced effort to address a complex area of national security concerns that also impact U.S. trade interests. We received just this morning a letter sent to Senator DASCHLE, the majority leader of the Senate, signed by Secretary of State Powell, Secretary of Defense Rumsfeld, and Secretary of Commerce Evans. Mr. President, I think this letter is of sufficient import that I am going ask unanimous consent it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 4, 2001.

Hon. THOMAS A. DASCHLE,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR DASCHLE: We would like to bring to your attention proposed legislation that will be before you shortly for consideration: S. 149, the Export Administration Act of 2001. This bill addresses the subject of export controls, which is very important to the President. He spoke definitively about reforming our export control policies and process during his campaign.

Earlier this year, our agencies conducted an intensive review of S. 149, as proposed by Senators Gramm, Enzi, Sarbanes, and Johnson. As a result of the review, we recommended that the Senate Banking Committee make a number of changes to the bill to strengthen the President's ability to control sensitive dual-use goods and technology. The Committee made the requested changes. Accordingly, we strongly support the bill passed by the Senate Banking Committee.

S. 149 is an important step in our efforts to improve the effectiveness and efficiency of our export control system. S. 149 will provide the President with the authority and flexibility he needs to administer a stronger, updated export control system. The Administration will continue to review our policies and procedures in this area and will consult with Congress as we identify any additional necessary changes.

President Bush strongly supports the bill as passed by the Senate Banking Committee and wants to move forward in this important area. We urge you to support S. 149 so that the President will be able to sign a new export control law soon.

Sincerely,

COLIN L. POWELL,
Secretary of State.
DONALD H. RUMSFELD,
Secretary of Defense.
DONALD L. EVANS,
Secretary of Commerce.

Mr. SARBANES. Mr. President, as we move forward in the debate, I presumably will have a chance to examine in greater detail the provisions of the legislation. I read through this legislation again over the weekend, from start to finish. I must say to you, on this issue I have always been sensitive to the national security and foreign policy arguments. In the past, in considering this legislation, I have never been one who sort of willy-nilly wanted to remove export controls. I think they have a very important role to play.

I think this legislation substantially strengthens the ability of the President and the administration to exercise export controls on behalf of national security and foreign policy interests. So I very much hope my colleagues will be supportive of this legislation as we move ahead.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I rise in support of S. 149, the Export Administration Act of 2001. Consideration and passage of this bill are essential for the advancement of our national security, our foreign policy, and our economic interests.

I am very excited that today is here. This is the culmination of a lot of effort on the part of Senator JOHNSON, myself, Senator SARBANES, and Senator GRAMM. Almost 3 years ago now, Senator JOHNSON and I, as chairman and ranking member of the International Finance Trade Subcommittee of the Banking Committee, were given the task of looking at the Export Administration Act to see if it could be renewed. It had expired in 1994, and there was recognition that there was a huge gap in our national security. That was brought to light a lot, of course, by the Cox commission, which looked at some of the ways China was stealing secrets from the United States. A very extensive document during the original part of this process was a top secret document, and later a public version was put out; it brought a lot of attention to the issue. There had been 12 previous attempts to renew the Export Administration Act. They had failed. Only one version in the House had even gotten out of committee.

It is an interesting bill because here in the Senate there are 100 Senators who are concerned about national security. There are also 100 Senators who are concerned about the economic interests of the United States. When a bill is balanced, it will have more than 50 percent in favor, but we have found that the way these coalitions merge, there are more than a majority in opposition to everything that has happened. We faced the unique challenge of trying to do what the other 12 bills had not been able to do. To do that, Senator JOHNSON and I went through a process and saw exactly how the whole process worked. We visited each stage of the licensing process.

It occurs to me at this moment that there may be people who don't understand the licensing process. There is a lot of confusion among people about the different licensing processes because there isn't just one. We are only talking about the Export Administration Act.

The Export Administration Act is different from the Arms Export Control Act. It is different by way of what is controlled. The Arms Export Control Act, of course, handles defense articles and services. The Export Administration Act, on the other hand, handles dual-use products. That could be very confusing. Dual-use products are primarily not used for a military purpose but could have a military purpose. That is the main distinction between the Arms Export Control Act and the Export Administration Act.

The jurisdiction between these two acts is different because the State Department and the Defense Department, of course, have a much greater interest and need to control the defense articles and services. The Commerce Department has been given the jurisdiction over dual-use products provided they are involved with the Department of Defense, the Department of State, and the security agencies, all of which have some voice in the licensing process.

One of the big changes in this bill is the way that licensing process happens so that each of those agencies has a little greater role in being able to object to a license.

At any rate, the Republicans and the Democrats on the Banking Committee and on the subcommittee went through a bipartisan process and worked together to reach a point of balance with a majority of the security folks who are interested in the bill and a majority of the economic interest folks who are interested in the bill. And there is overlap. That is how it is possible to have a vast majority from both sides. I am pleased to have a bill before us today that, after a lot of changes, I think has reached that point.

I have to thank Senator SARBANES and Senator GRAMM for giving us the opportunity to pursue this. I know it is not the most exciting bill in the world. In fact, some people would say it is an accounting sort of thing, a boring sort of thing. But it is one of the most important bills that will pass. It is just very detailed. That makes it difficult to consider.

Over the last 3 years, a lot of people have looked at this, a lot of people have given suggestions and, in fact, the handful of people who have provided the most opposition have also provided the most change. We have put in 59 changes based on their suggestions for how we needed to increase national security. We have been working with everyone. We are still willing to work with everyone. Of course, the latest one we worked with is the President. The President suggested 16 changes that are also included in the bill.

At this point, we appear to have a balance that still has a vast working majority to pass the bill and I think a bill that will provide national security. Of course, the best evidence that it will provide national security is the President himself. The President has strongly urged the Senate to pass it quickly.

I have a chart of President Bush's support:

In working with the Senate, we're working to tighten control of sensitive technology products with unique military applications, and to give our industry an equal chance in world markets. I believe we've got a good bill, and I urge the Senate to pass it quickly.

That was March 28. Later:

During the campaign, I promised to lead an effort to reform our export control system, so that it safeguards genuine military technology while letting American companies sell items that are already widely available. I'm pleased to report the Senate Banking Committee passed a revised EAA, which my administration strongly supports. It's now time to pass it for the House, so I can sign it into law.

There have been numerous statements by the President. He has had an interest in this bill, clear back to when he was campaigning and this was part of his Web site. Since August 20, we have been operating under the International Economic Emergency Powers Act, IEEPA, that was referred to by the chairman of the committee, Senator SARBANES, due to the expiration of the EAA. It is one of those temporary extensions we passed.

Operating EAA under IEEPA is unacceptable. IEEPA applies minimal penalties to exporters of unlicensed technologies and puts confidential business records of the business community at risk of exposure. I want to mention some of the changes and the differences between penalties because that is a big security portion of this bill.

Under criminal penalties, for companies that willfully violate under IEEPA, there is a penalty of $50,000 per violation. Under the old EAA of 1979, which has been extended a few times, there is a $1 million penalty, considerably greater than the $50,000 penalty, or five times the value of the exports, whichever is greater.

Under the bill we are considering, instead of even the $1 million fine under EAA, it will be $5 million per violation or 10 times the value of the exports, whichever is greater.

Persons who willfully violated under the IEEPA would have gotten a $50,000 penalty or 10 years imprisonment or both. Under the EAA, they would get $250,000 or 10 years imprisonment or both. But under the bill we are considering at the present time, instead of the $250,000, it will be $1 million or 10 times the value of the exports, whichever is greater, or 10 years imprisonment, or both. We have considerably increased the penalties.

Under IEEPA, the penalties are almost the cost of doing business or perhaps less than that. Under the EAA, the amount of the violations has been bypassed by inflation, but that has been easily taken care of in this bill.

Under civil penalties, it is the same situation. Under IEEPA a civil penalty is $10,000, and under EAA a civil penalty is $100,000. Under this bill, a civil penalty will be $500,000.

The last major revision to the EAA came when the Soviet Union was still in existence and considered a threat to our national security. That revision of the EAA of 1979 occurred before the Berlin Wall came crumbling down and freedom was unleashed for the first time in almost a generation for millions of Europeans.

At that time, almost all of the new invention development was also Government funded. Today most of it is done by the private sector which is forging ahead without Government money involved. There is no need to postpone passage of this critical legislation any further.

The issues surrounding the reauthorization of the EAA have been studied and studied and restudied. The President, Secretary Rumsfeld, Secretary Powell, Secretary Evans, and National Security Adviser Condoleezza Rice have endorsed this bipartisan and responsible legislation.

Here is one of the messages from Condoleezza Rice, National Security Adviser:

The Secretary of State, Secretary of Defense, Secretary of Commerce, and I agree that [S. 149 as reported] will strengthen the President's national security and foreign policy authorities to control dual-use exports in a balanced manner, which will permit U.S. companies to compete more effectively in the global marketplace. S. 149 represents a positive step towards the reform of the U.S. export control system supported by the President.

In listening to the arguments of the critics of this reasonable bill, there seems to be a misunderstanding about what the current law is. If a comparison of the 1979 EAA and S. 149 were made, one would find numerous similarities, as were pointed out by Senator SARBANES, chairman of the committee. In addition, one would find several new and more extensive national security control authorities included in S. 149 that allow the President to restrict the export of technologies critical to our national security.

Senator SARBANES has covered that in his remarks. Contrary to what the critics would have you believe, this bill is not a radical new approach to export controls or a radical departure from the current export control system. It updates and simplifies certain aspects of the act that are outdated or unnecessary but keeps the basic structure of the 1979 act.

There are reasons why this administration's national security experts are unified in their support of S. 149. It builds upon the framework of the current law, or the 1979 act, while modernizing, simplifying, and streamlining the act and export control processes, again involving all of the people who have been involved in it in the past in this administration and the previous administration to come up with a balanced proposal.

It requires a risk analysis of proposed exports and emphasizes transparency and accountability to both the Congress and the exporter. With transparency and accountability, we and the people trying to put products out will have a better opportunity to follow the process and stay within the law.

S. 149 embraces national security and foreign policy export controls even going well beyond the 1979 act in several respects. For example, the bill grants to the President special control authorities for cases involving national security and international terrorism, as well as international commitments made by the United States. Section 201(c) allows controls to be imposed based on end user and end use of an item if it would contribute to the proliferation of weapons of mass destruction. Section 201(d) adds enhanced controls which allow the President to impose controls on any item, including those items with incorporated parts for national security purposes.

These two national security protections are not in current law and could be used regardless of the foreign availability or mass market status of the item. In addition, the bill retains the Presidential set-aside authority in the case of foreign availability determination, section 212, as well as unlimited set-aside authority for mass market determination.

Those are two determinations. Foreign availability, of course, is if the same product of the same quality is available from other countries that can compete with our industry and do not have to follow our export laws, under some very careful criteria that has been outlined in the bill, then they have the right to export those properties. The President has the right to override it.

Mass market, of course, has already been explained as those items you can go to the store and buy at a relatively low price anywhere in the country, which makes any regulation over their export very difficult. A tourist coming to the country can go to the store, pick up the item, put it in their suitcase, and take it home. If it is that widely available, then it is very difficult to control.

The purpose of our bill, of course, is to build a higher fence around fewer items and really concentrate on those things that can be controlled and need to be controlled and put more effort and resources into it. The general authorities contained throughout the bill are entirely consistent with the current law. The bill requires concurrence with the Secretary of Defense for identifying which items are to be included on the control list for national security purposes.

There are three stages to this. There is a control list which gives people an idea of what kinds of items need to be licensed. There is a country tiering system. This is the one that evaluates countries in the world. No countries are named specifically, but the President, in cooperation with the experts that he has, would rank these people through three tiers from bad to good, with a whole bunch in the middle, which would all have different rights to access things on the control list based on their sensitivity. Then, of course, if it has to be licensed, it has to go through a licensing process.

So we are talking about concurrence of the Secretary of Defense for identifying items to be included on the control list for national security purposes, and this is consistent with current law.

The foreign policy export control authorities in title III are exercised by the Secretary of Commerce in consultation with the Secretary of State. This is also identical to current law. In addition, the authority for the issuance of regulations is the same as the EAA of 1979.

The Banking Committee determined that a flexible but transparent process was essential to keep the export control system from becoming obsolete the day after it becomes law. S. 149 allows flexibility for the administration in implementation of export controls because technology is changing at a phenomenal rate. Business models are very different from those employed a decade ago and, of course, globalization is breaking down some of the traditional barriers to trade and investment.

As a result, it is vital that Congress resist the temptation to lock into a statute policy toward a specific country or a specific item. Experience has shown that this is not an advisable course of action in most cases. Flexibility is needed in the light of rapid technological change. To illustrate this point, the Congress placed in fiscal year 1998 the National Defense Authorization Act provisions relating to high-performance computers. Concerns were genuine about the export of computers to potentially dangerous end users. However, to my knowledge, never before had the Congress locked into statute a specific parameter of control for an item.

In addition, the Congress initially required a 180-day waiting period before the President could change the MTOPS control threshold, the speed of the computers. As we all know, this was in the midst of some of the most rapid advancements in computing power constraining the administration's ability to keep pace with technological progressions.

In keeping with the need for flexibility, the Banking Committee adopted an amendment offered by Senator BENNETT that would repeal the MTOPS 180-day waiting period. This does not mean computers would not be controlled. Instead, it means the President may control computer exports in a way that is more effective, more updated.

S. 149 emphasizes the need for strengthened multilateral export control regimes. Multilateral controls are the most desirable because they are the most effective. This is where we get our allies and our friends, again any country that we can talk into it, to join us in the control effort. As Senator Sarbanes pointed out, we have been emphasizing to other countries they need to have a good export control act, a good export licensing process. We are the ones who are behind the curve on doing that.

The multilateral controls need to be more emphasized. We used to have a process, a regime, called COCOM, and it was a mandatory group of our allies that under agreement would eliminate

exports on which they agreed across the board.

After the fall of the Berlin Wall, COCOM disappeared. We have a process called Wassenaar now, the Wassenaar Arrangement, which is more of a voluntary effort. Section 501 of this act urges the President to undertake efforts to strengthen or build upon multilateral export control regimes.

I had the distinct pleasure of serving as a cochair with Senator BINGAMAN and Congressman COX and Congressman BERMAN on the congressionally mandated Study Group on Enhancing Multilateral Export Controls for U.S. National Security. The study group, with the assistance of the Stimson Center, came to the conclusion that reform of the export control system is vital to U.S. national security objectives. Now we recommend that the U.S. should seek to improve the Wassenaar Arrangement with the long-term goal of merging existing multilateral regimes.

Additionally, the study group recommended that the U.S. should reform its export control laws to build confidence and support among allies and friends for improving multilateral export control regimes. The provisions in S. 149 are consistent with these recommendations and should help to guide the administration as it seeks to strengthen the multilateral efforts and arrangements so we do not unnecessarily punish U.S. firms with unilateral controls.

Finally, and importantly, the bill greatly enhances enforcement. It substantially increases criminal and civil penalties for violators, and I went through some of those differences between what happens with the Executive order we are under now and the previous EAA act of 1979 and the present one. It adds new resources for enforcement activities including an additional $4.5 million for end-use checks.

It strengthens postshipment verifications, checking to see if the product actually went where the product was supposed to go.

By targeting resources to exports involving the greatest risk rather than focusing solely on computers—there are other things out there that need to be checked on—this puts more money into the checking and targets those things that create the greatest risk to the United States.

The Banking Committee took a tough stand on violators of postshipment verifications. We do not believe we should reward those entities that deny postshipment verifications. Therefore, the bill requires the Secretary to deny licenses to end users that do not allow postshipment verification for a controlled item. That is pretty well nailed down with the company involved, any subsidiaries of the company. I think it keeps them from getting around any provision of that. It strengthens postshipment verification, which is something that needed to be done.

In conclusion, I offer a couple of quotes from a general and a former National Security Adviser, Brent Scowcroft. On June 8, 2001, when the Center for Strategic and International Studies publicly released its report on computer exports and national security in the global era, General Scowcroft said that some seem chained to the same policies that are largely not useful, and that there is a natural bureaucratic tendency to cling to the current rules.

As we consider S. 149, I urge my colleagues to be mindful of General Scowcroft's comment and do the right thing and support passage of the Export Administration Act of 2001. Export control issues have been intensely reviewed and all the results of the studies come to the same conclusion. It is best for Congress to reauthorize the EAA now. The Senate should act now and pass this bill.

I express thanks to the chairman, Senator SARBANES, and Senator GRAMM, to my coworker on this, Senator JOHNSON, and the new chairman and ranking member of the Subcommittee on International Trade and Finance, Senators BAYH and HAGEL who have done a great job.

I would be remiss if I did not mention some of the staff people: Katherine McGuire; my legislative director, Amy Dunathan; the Banking Committee staff, Joel Oswald, who used to be on my staff. There was a 3-year time and there has been some transition. Paul Nash, Naomi Campbell, and Marty Gruenberg have done a tremendous job working around the clock in putting together this bill. They have been good at coordinating our efforts so we could get together with everybody.

As I mentioned, we are still willing to talk to anybody about any of the provisions but think that a bill has been put in place now that has some balance to it. Of course, 16 changes we made on behalf of the President incorporated a number of issues that some of the security chairmen had been concerned about. We think we have a bill that should and can be passed.

I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise today in support of S. 149, the Export Administration Act of 2001. It is difficult to overstate the urgency of reauthorizing EAA, which expired on August 20. We are now operating under the International Emergency Economic Powers Act, an improvised export control measure that has weak enforcement powers and that has been challenged in the courts. President Bush and his national security team have repeatedly urged Congress to pass S. 149, and I rise today to urge my colleagues to do just that.

S. 149 is both a national security and a trade bill. It is one of the best examples that I have seen of a law that accounts for the vast geopolitical and commercial changes of the past decade and at the same time provides flexibility for the continued changes we must expect over the coming decades.

The Export Administration Act has seen no major revisions since 1985. Since that time, the Soviet Union has collapsed, the cold war has ended and a new world order, including new threats, have emerged. At the time the political landscape has changed dramatically, so too has the commercial landscape. A global marketplace for goods, services and technology has developed, and once unimaginable technological advancements are now available on a widespread basis. The high tech sector is largely responsible for the remarkable change in our access to computers and the Internet, and we must take great care not to jeopardize that economic vitality.

I have spent the last few years working on EAA with my colleagues across the aisle. When we started this effort, Senator ENZI and I were, respectively, the ranking member and chairman of the International Trade and Finance Subcommittee of the Banking Committee. From the beginning, we have had the full support of Chairman SARBANES and Senator GRAMM, and I am hard pressed to recall a situation in my 15 years in Congress where a bipartisan team was completely cohesive. There is a reason why our team of unlikely bedfellows has held together so well, and the reason is that S. 149 is a very good bill.

I believe in this bill. I believe it will help our nation. It will strengthen our national security. It will create an environment that promotes further technological advancement and fosters economic vitality. And it provides a structure that can grow and change into the future.

S. 149 creates a new framework for export controls on dual-use items. By targeting enforcement efforts on problem areas, this more focused approach is just good, common sense. S. 149 will make exporting some items easier, and make exporting other items much more difficult. As Representative COX has stated, ''We ought not to have export controls to pretend to make ourselves safe as a country. We ought to have export controls that work.'' At the same time, S. 149 will impose real costs and penalties on those who violate the law. Some violators will serve prison terms along with their hefty fines.

While no one has more respect than I do for the deliberative process that allows the Senate to create thoughtful and responsible laws, I am struck by the irony of today's debate. I understand that several of my distinguished colleagues will object to reauthorization of EAA on the grounds that S. 149 will somehow compromise our national security. They will urge us to delay passage of EAA in the interest of our national security. They will demand further study before we move forward

with S. 149, which has nearly unanimous support of both industry and government, including the national security community. I look forward to hearing from those colleagues because I am having some difficulty understanding how delaying passage of EAA does anything but harm our nation and our national security. I must remind my colleagues that EAA has expired. We are operating under IEEPA and will continue to do so until we enact S. 149. This is the real national security threat.

The argument that S. 149 compromises our national security is, I believe, based on a false premise. That premise is that national security and a strong export economy are incompatible. In fact, our national security depends on a strong export economy and America's continued leadership in the high tech field. I agree with the way Senator GRAMM framed the question last year:

> Is our security tied to our being the leader in technology, or is it tied to our ability to hold onto the technology we have and not share it with anybody?

Clearly, our security is tied to being the leader in technology, and security experts confirm this point.

As Dr. Donald A. Hicks, former Under Secretary of Defense for Research & Engineering and chairman of the Defense Science Board Task Force on Globalization and Security testified before the Banking Committee on February 14, 2001:

> Today, the ''U.S. defense industrial base'' no longer exists in its Cold War form . . . DoD is relying increasingly on the U.S. commercial advanced technology sector to push the technological envelope and enable the Department to ''run faster'' than its competitors. DoD is not a large enough customer, however, to keep the U.S. high-tech sector vibrant. Exports are now the key to growth and good health. . . . If U.S. high-tech exports are restricted in any significant manner, it could well have a stifling effect on the U.S. military's rate of technological advancement.

Without a vibrant high technology sector, our national security will suffer. And without the ability to export dual-use items, the high tech sector will simply not be able to support our national security needs. We must not lose sight of this critical point.

This is not to say that we should never restrict exports of our goods, services and technologies. On the contrary. In fact, S. 149 is largely about establishing the most effective mechanism for restricting the export of dual-use items that pose a potential national security or foreign policy threat. Based on recommendations from national security experts, including the Cox Committee and the WMD Commission, S. 149 takes a risk-based approach to export control. This approach is sensible, and allows resources to be used where they are most effective.

More specifically, S. 149 targets export controls on those items and destinations that the U.S. determines to pose the greatest risk to national security and foreign policy, while removing ineffective controls that serve as unnecessary barriers to trade. This so-called ''tiering'' approach is an ingenious solution to the current situation. Today, 99.4 percent of all export applications are approved. This leads me to believe that the current system is not making effective use of our export control resources.

My colleagues on the Banking Committee determined that the U.S. export control regime should focus on controlling those items that pose the greatest risk to national security. A useful way of thinking about the right approach was voiced by Dr. Hicks before our committee. He said the U.S. ''must put up higher walls around a much smaller group of capabilities and technologies.''

We on the Banking Committee identified two categories of exports whose control does little to enhance our national security, and the control of which could in fact undermine our security interests by endangering America's technology leadership. We determined that it is best to heed the wise counsel of former Secretary of Defense and National Security Advisor Frank Carlucci that ''we should do only that which has an effect, not that which simply makes us feel good. . . .''

Based on this principle, we concluded that there is little national security benefit derived from controlling U.S. items if substantially identical items can be acquired through another source or if such items are produced and available for sale in large volume to multiple purchasers. For these reasons, we created the so-called ''foreign available'' and ''mass market'' exceptions to export controls.

Specifically, the foreign available exception acknowledges that unilateral control on items that are readily available from foreign sources are ineffective, and in fact may be counterproductive. The Defense Science Board Task Force on Globalization and Security noted in its final report that:

> Shutting U.S. companies out of markets served instead by foreign firms could inhibit the competitiveness of the U.S. commercial advanced technology and defense sectors upon which U.S. economic security and military-technical advantage depend.

Stated another way, Mr. John Douglass, president of the Aerospace Industries Association, noted before our committee that such unilateral measures punish the exporter rather than the importer.

The ''mass market'' exception likewise acknowledges the futility of trying to control items that are virtually uncontrollable by the nature of their wide distribution channels, large volumes, and general purposes.

While S. 149 strives to be as targeted as possible, it also provides appropriate flexibility by recognizing that the President should have the ability to impose controls in certain critical circumstances, including cases involving national security, international obligations, and international terrorism. At the same time, the bill promotes accountability, discipline and transparency in the decision-making process through review and other procedures.

Some have criticized S. 149 for reducing the power of the President in a way that I believe is, frankly, misleading. In fact, S. 149 grants the President unprecedented authority to set aside foreign availability or mass market determinations. President Bush and his national security team themselves believe that S. 149 as reported gives the President full and sufficient authority to maintain controls when it is in America's national security or foreign policy interest.

One other aspect of the bill worthy of note involves how risk management techniques can be used to target our export control resources. First, the bill's system builds in controls for technological and political change by imposing a risk analysis requirement and continual review of controlled items. In addition, S. 149 establishes a country tiering system that assigns items and countries to tiers according to their potential threat to U.S. national security. This flexibility to classify risk by both destination and product will be highly effective in targeting our efforts. In addition, a new Office of Technical Evaluation would be established in the Department of Commerce to assess, evaluate and monitor technological and other developments. And finally, S. 149 places a great emphasis on post-shipment verification resources of exports posing the greatest risk to U.S. national security.

As a final matter, I would like to discuss the role of penalties in S. 149. Under the 1979 act, and especially under IEEPA, which we currently operate under, penalties are modest from any perspective. In fact, penalties are modest enough that businesses intent on violating our export laws simply factor the penalties in as a cost of doing business. That is how inadequate, how modest, how unsatifactory the current regime, both under the old 1949 act and under IEEPA are. A company that willfully violates export laws today is liable for a mere $50,000 per violation—chicken feed. Under S. 149, that company would pay a minimum penalty of $5 million per violation, and could owe significantly more. Individuals who willfully violate the law will owe a minimum penalty of $1 million and could serve up to a 10-year prison sentence. Civil penalties for any violation of export law rise from $10,000 per violation under IEEPA to $500,000 per violation under S. 149.

My distinguished colleagues, reauthorization of EAA is critical to our nation's interests.

We are now operating under a grossly inadequate emergency control system, IEEPA, and that situation will not change until we enact S. 149. Our situation is urgent. Under current law, exporters face anemic penalties for violations, and in fact the entire structure

is vulnerable to court challenge. Until we pass EAA, we do indeed face a national security crisis.

In addition, we must not lose sight of the impact our export control system on dual-use items could have on our high tech sector. The American economy has achieved unprecedented growth largely as a result of high tech innovations. In addition to creating wealth for our citizens, new technologies have enhanced our national security by giving us a competitive edge in development of our own security systems. The bill beefore us does nothing to compromise our security. On the contrary, S. 149 takes a common sense approach to export controls that significantly enhances our national security and economic vitality.

S. 149 is bipartisan, and has the strong support of the administration, the national security community, and business organizations.

This morning, our chairman, Chairman SARBANES, submitted for the RECORD the most recent letter expressing support for the passage of this bill from President Bush, Secretary of Defense Rumsfeld, Secretary of State Powell, Secretary of Commerce Evans, and National Security Adviser Condoleezza Rice previously indicated her support for this bill—not the concept but this bill.

I thank many for the extraordinary effort they have given to the creation of this bipartisan legislation. This kind of legislation has the support of Republicans and Democrats. It passed the Senate Banking Committee on a vote of 19–1. It has the support of the administration as well as the Senate.

A lot of significant work ought to be credited to Marty Gruenberg of Senator SARBANES' staff; Amy Dunathan of Senator GRAMM's staff; Katherine McGuire of Senator ENZI's staff; Joel Oswald, Senator ENZI's former Banking Committee staff; Paul Nash, my former Banking Committee staffer; Naomi Campbell of my staff; and certainly Senator BAYH of Indiana and Senator HAGEL of Nebraska have made significant contributions as well to the furthering of this legislation.

This legislation has been reviewed by the Bush administration. They state in their letters there is intensive review of S. 149. They express their strong support. I express my strong support. It is my hope that this debate will proceed in an expedited fashion and that we will very quickly pass this legislation by the overwhelming bipartisan margin it deserves, and that it will go to the President who asked that it be presented to him for his signature.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I would like to address S. 149. I believe my colleagues who have spoken are correct in that they have substantial support for this legislation. I do not doubt they have a majority of the Democrats and a majority of the Republicans. I do not doubt they have the support of the administration. My understanding was that the President made a campaign statement or commitment with regard to this issue during the last campaign. President Clinton made the same commitment during his campaign for President.

The President had a group of high-tech executives to the White House, just as President Clinton did, to promote this sort of legislation. My colleagues are correct in that the President now supports essentially a continuation of the Clinton policy with regard to the liberalization or loosening of our export controls law. I disagreed with it when President Clinton was President. I disagree with it now.

While we need an Export Administration Act and while we need to take into consideration commercial circumstances and changes in the world, I think the balance between our national security interests and our commerce interests is not there.

This is not really a bill, as I think about it, that is supposed to balance as such. It is a bill that has very specific purposes. It is consistent with our export administration process that we have had for decades in this country. It is based on the notion that there are some items we need to try to keep out of the hands of some people for as long as we can. The most ardent proponents of liberalized trade restrictions, of course, would acknowledge that. We have the so-called rogue nations, and so forth, to which, we all acknowledge, we should not let any of this high-tech stuff get through. If we were really in a world where the technology genie were totally out of the bottle, I suppose we would not bother ever making the distinctions between really bad countries and pretty bad countries and friends because it would be out there for all to have. This is based on the proposition that is not the case, that there are some things controllable and that we should try to keep these things out of the hands of some entities and some countries for as long as we can.

When you look at the purpose of the act we are dealing with today, I think it correctly states that the purpose is about national security export controls, it is not about enhancing exports. In fact, you might say it is kind of anti-export. I think the norm is and should be that this country is for free trade. I certainly have tried to be one of the leaders in that area. I think the President ought to have trade promotion authority. I think we need to do more in that area. I think it is the basis for a large segment of our economic security and prosperity in this country.

We had a debate with regard to a section of NAFTA recently. I think most of us are very committed to the process. But the fact that we have an export administration process and an Export Administration Act acknowledges that, be that as it may, there are some things that bring in extremely serious national security considerations.

I refer to S. 149. It says the purposes of this act are to restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States. It further says the purpose is to stem the proliferation of weapons of mass destruction. It doesn't really talk about a balance of those grave and primary considerations that we all must acknowledge are, more than anything else, against some commercial considerations. Here we are talking about I think our total exports to these control countries, which are about 3 percent of our exports. So we are talking about a small fraction—3 percent of our exports as balanced against what I just described in the act.

I am not for some kind of equipoise, or some kind of a balance, when it comes to these things. We shouldn't control things that are uncontrollable. We shouldn't be foolish about it. But we ought to have a very careful process that is not weighted or prejudiced in any way by those whose interest it is to get things out the door, whose interest is to export, whose interest is to come to the White House and come to the Congress and lobby on behalf of more and more exports for economic reasons. You don't have the average man on the street with a lobbying team coming up here saying be very, very careful about how you liberalize our export control laws because we are concerned about what we read about what is going on in the world in terms of proliferation.

The world has changed a lot. We should look at these matters from time to time to see whether or not we are operating in the right century. We don't have the old Soviet Union anymore. We don't have the threat that posed. But in its place are several new threats which, in many cases, are more dangerous than the ones we had.

We know, for example, that with the development of technology, weapons of mass destruction can now kill many, many more people than they otherwise could. There are ways of delivering weapons of mass destruction that did not exist a short time ago to countries such as the United States.

We have biological weapons that stagger the imagination with the description of the devastation that just a small amount of it can wreak, again, accompanying that with the means to deliver them, the means that did not exist a short time ago. That is the other side of the technological coin, the technology that has helped us in so many ways and has made the world a better place. That is the other side of that coin. It is real.

Of course, the world has changed in another way. My colleagues are correct when they say that more of this technology is available around the world. In some cases, to some extent perhaps, there is nothing we can do about it. But in some cases, to some extent, there is something we can do about it.

Therein lies what we are trying to deal with here with regard to our export administration policy; that is, being very careful in making sure, with regard to the things we can have some control over, even if it is just to slow down the bad actors that wish our country and our national security ill, that it is a good thing to do. If we are not willing and committed to doing that, regardless of what it does to trade in a certain segment of exports, then we should not have any export policy at all; we should not have any export restrictions at all. I do not think we are there. I do not think that anyone would advocate that.

But it concerns me to hear that my colleagues think by passing this bill we are in some way enhancing our security. We are not. You can make a case that it is out of balance the other way, that we are trying to control things that are uncontrollable, and it is hurting our exports to the extent we need a new balance. I disagree with that strongly, but you can make that case. But I do not think you can have your cake and eat it, too.

I do not think you can liberalize trade so people do not have to have licenses anymore for some of this dangerous stuff while at the same time claiming you are enhancing national security. It is just not the case. And it is not as if I have the answer as to where to draw the line. It is not as if my colleagues have the answer as to where to draw the line. Reasonable export controls that do not do any more harm than is necessary but protect us to the extent possible: It is very difficult to draw that line.

What is important is that we have a process because that line has to be drawn every day. There are thousands of applications—15,000 to 20,000 applications—for exports on an annual basis. We must have a very carefully thought-out process where responsible people, in all objectivity, with requisite expertise, have an opportunity to pass on these things and make those judgments. That is what this is all about: whether or not we are setting up the right responsible framework, not to be so irresponsible that we shut things down, but, on the other hand, that we recognize that the world is a much more dangerous place, that countries have the ability to harm us and harm our allies, which would directly involve us immediately, more so than ever before, and that we must do what is reasonably necessary to keep these things out of the hands—as the world's leading manufacturer in the creative genius behind most of the advanced technology that is going on in the world in so many areas now, that we have a stewardship, we have a responsibility to use that in a proper and correct way.

As I said, it may be difficult to draw that line, but we must have a procedure that errs, if it is to err, on the side of national security. Because even the bill, as drafted, points out that this is the purpose of the Export Administration Act. This is the fundamental purpose of an Export Administration Act.

So does this act take into consideration sufficiently the matters of national security? And does it take into consideration sufficiently the matters of commerce and exports?

If we are going to talk about balance, let's talk for a minute about the side where we have our concern, the things that we are trying to address. In many different ways this is just a part of an overall policy of recognizing we live in a more dangerous world. But while realizing that genie is out of the bottle, we are trying to—through our policies, through our diplomacy, and through our policies—mitigate somewhat the danger that we see.

As I have stated, because of the proliferation of weapons of mass destruction, the world is a more dangerous place in many respects than ever before. Numerous reports have confirmed that a ballistic missile strike on the United States is not a distant but an imminent threat.

The Rumsfeld report, published in July of 1998, concluded that emerging ballistic missile powers such as Iran and North Korea could strike the United States within 5 years of deciding to acquire missile capability.

Shortly after that, North Korea surprised our intelligence agencies by successfully launching a three-stage rocket over Japan, essentially confirming the Rumsfeld conclusions. Certainly they, along with Iraq, Syria, Libya, and others, can strike our allies and our troops stationed abroad today.

In September of 1999, the national intelligence estimate of the ballistic missile threat concluded that the United States would ''most likely'' face ICBM threats from Russia, China, North Korea, and possibly from Iran and Iraq over the next 15 years, and that North Korea could deliver a light payload sufficient for biological or chemical weapons to the United States right now. It has also said that some rogue states may have some ICBMs much sooner than previously thought, and those missiles would be more sophisticated and dangerous than previously estimated.

The classified briefings are even more disconcerting. Perhaps the most alarming report from these commissions and intelligence sources is that, despite the urgency of this problem, the United States' lax export controls are contributing to the proliferation of weapons of mass destruction by global bad actors—our own export policies. The Cox commission concluded that U.S. export control policies have facilitated, rather than impeded, China's ability to acquire military-useful technology. The Rumsfeld commission has said the U.S. export control policies make it a major, albeit unintentional, contributor to the proliferation of ballistic missiles and associated weapons of mass destruction.

There you have it. I do not know how it can be stated much plainer than that and with more authority than that; that we have a serious problem on our hands and that our own policies are contributing to that problem.

Nowhere is it more clear than in the case of China, which is really the country that stands to benefit from changes to our export control laws the most, and, ironically, is also the country of greatest proliferation concern.

China was described by the Rumsfeld commission as a significant proliferator of ballistic missiles, weapons of mass destruction, and enabling technologies. The PRC has sold missiles to Pakistan, missile parts to Libya, cruise missiles to Iran, and shared sensitive technologies with North Korea. All these actions have occurred despite the PRC's public assurances and commitments to several international proliferation regimes.

Within the last few days, this Government sanctioned a Chinese company again for transferring missile components to Pakistan. Even more disturbing is that many of the items that China is proliferating to rogue nations around the world may have been legally acquired from the United States. The Cox commission notes that China has deliberately taken advantage of our lax export enforcement policies to further its proliferation efforts.

China has illegally diverted or misused many sensitive dual-use technologies or items to further their military modernization. In January of 2000, the licensing threshold for high-performance computers was 2,000 MTOPS. In January of 2001, the licensing threshold was 75,000 MTOPS, a fortyfold increase in a 12-month period.

(Mr. NELSON of Nebraska assumed the chair.)

Mr. THOMPSON. As the Cox committee points out, no threat assessment was ever conducted. As we have seen the rapid decontrol of supercomputers in this country to countries such as China, under the notion that, well, MTOP is not a valid criteria anymore and they will get it from somebody else anyway, the defense authorization bill in 1998 required that if we are going to do this rapid decontrol of our computers, that we do a national security assessment as a part of that, because the real bottom line is, we don't know what the effects of this rapid decontrol are. We don't know what the significance to national security is.

We operated for a long time under the notion that it was very important—and the Cox committee will bear this out—to try to keep the supercomputers at a certain level out of the hands of Russia and China and countries such as that because they use them for nuclear simulation, their stockpile enhancement programs, things of that nature. We have totally changed our view about that based on no study, based on anecdotal comments by people who come and testify before these committees who have a direct or indirect interest in companies or represent companies that are interested in

exporting in many cases—not all of them, but many—time after time. We have not really had any in-depth study or analysis by this Government as to what the effect of this substantial change in our policy is to our national security.

I am not saying I know the answer. I rest assured that no one else, even in this body, has the answer. It is extremely complex, but it is extremely important. I know of no other change of that importance in that short period of time that has undergone less assessment. That is one of the things we should address.

The PRC diverted and used these American supercomputers to improve their nuclear weapons. The Cox commission notes that in 1992, U.S. satellite manufacturers transferred missile design information to the PRC without obtaining the legally required license, and China used that information to improve the reliability of its rockets.

We are all familiar with the Hughes-Loral problem. I noticed the report in the Wall Street Journal the other day that Loral apparently is about to cut a deal with the State Department and Justice to pay a fine and still be allowed to go ahead and launch Chinese rockets in the future, going back to their business. I will be interested in comparing the amount of that civil fine with the profit they make over the subsequent launches that they have in their deals with the Chinese.

In 1993, China diverted six high-precision machine tools it obtained from McDonnell-Douglas and used them to manufacture military aircraft and cruise missile components. Just months ago we learned that Chinese technicians were installing fiber optic cable for Iraqi air defense in violation of U.N. sanctions. This fiber optic system is based on U.S. technology sold to China in the mid-1990s.

According to published reports, we have discovered twice that companies in China were assisting Saddam Hussein with regard to his antiaircraft capability, which is what this fiber optic cable is used for, in order to help him shoot down our aircraft in the no-fly zone. There have been over 300 incidents where Saddam's troops have shot at our aircraft over that no-fly zone. I hope and pray they never hit one. I hope and pray that if they do, we don't discover that the technology used to shoot that airplane down did not originally emanate from the United States of America. I would not want to be the one to try to tell the mother of that pilot who was shot down: Ma'am, we are sorry about your son, but they probably could have gotten this ability from someone else if we hadn't given it to them.

The Cox commission informs us that China pursues a deliberate policy of using commercial contacts to advance its efforts to obtain U.S. military technology. The commission states that China uses access to its markets to induce U.S. businesses to provide military-related technology and to lobby on behalf of liberalized export standards, a policy that has had significant success.

We see from the Rumsfeld report, the Deutch commission, the biennial CIA reports, the nature of this threat and the fact that it is based on technology, technology in some cases where we are certainly the leader. We know that a lot of this proliferation activity from these rogue nations, a lot of their assistance comes from China. We claim we need a missile defense system. I believe we do because of the threats these rogue nations present to us. They, in turn, are getting their capability in significant part from countries such as China and Russia. We simultaneously, with all of that liberalizing of our export laws, make it easier to sell high tech items and equipment to China and Russia. That does not make sense.

Where is the balance? What do we balance that threat against? What is the concern—that our export licensing procedure is too onerous? It is not like we are stopping these exports. As was said, 99 percent of them are approved. It is just the ones that are disapproved that are really important, important to our national security. It is not like we are trying to stop a great many exports because we are not. We are trying to have a procedure where we are more likely to not let something important slip through the cracks.

Let's be clear about how much business is at stake. The total value of goods subject to export controls in 1998 was approximately $20 billion, less than 3 percent of U.S. exports. The fact that an item is controlled does not mean that it can't be exported. It only means that it has to go through a review process. The overwhelming majority of them are approved.

But what this legislation does is take certain categories, incorporated parts, mass marketing, foreign availability, and says, with regard to those items, with regard to those matters, if someone within the bowels of the Department of Commerce essentially decides that they fit into these categories, you don't have to have a license at all. You don't have to go through that process. It decontrols those matters and takes them outside of the regulatory process altogether.

They say the President can stop it. We will talk about that in a minute.

First of all, let's understand what we are doing here. In the past there was no such animal as the one I just described. In the past, foreign availability was legitimate as a consideration, and it ought to be. When the licensers looked at the matter, if there was foreign availability, that was something they could take into consideration in issuing the license. Now it is taken out of their hands. If someone in commerce, their technical evaluation team, decides that there is foreign availability, it doesn't even come through the process anymore.

Mass marketing is a whole new concept. Mass marketing was not even used, that concept was not even used in prior administrations.

Now I am sad to say that the embedded component was, but it makes less sense of all. If an item is controlled and deemed to be significant from a potential national security purpose, under this bill if it constitutes 25 percent or less of the item that it is incorporated in, then it is decontrolled.

So if you have a controlled item and it is put into an item that is bigger and worth more, that is not controlled, that makes the item that is controlled decontrolled. Of course, all an importer has to do, in some cases, is to buy the larger item and take out the item that perhaps he wants, which is the embedded part.

If it is significant from a national security standpoint before it goes into the larger item, it is significant from a national security standpoint after it is put into it. What does money have to do with it? What is the fact that it is or is not 25 percent of the price of a larger item? Of what significance is that? Especially from a national security standpoint. That makes no sense whatsoever.

So when we talk about building higher walls around fewer things, point out the higher walls to me. When we talk about making it more difficult to export some things, making it easier for some and harder for others, somebody point out to me the things that this bill makes it more difficult to export.

This legislation provides broad and sometimes exclusive authority to the Secretary of Commerce on important procedural issues such as commodity classifications, license and dispute referrals, license exemptions, and development of export administration regulations.

I have a lot of faith in our new Secretary of Commerce. I think he is a fine man, excellent choice, and is doing a great job. But the fact remains that the mission of the Department of Commerce is to promote exports. We used to criticize Secretary Ron Brown for his export policies and getting items changed from one list to another to make it easier to export, and things of that nature. The Commerce Department simply doesn't have the personnel and expertise to protect national security. It should not have to. That is not their job. Somehow we have set it up this way.

We are letting the tail wag the dog. If national security concerns ought to be given adequate consideration in an export decision, the Departments of State and Defense must be given greater authority and a greater role in this process. This legislation doesn't do that. Really, to the contrary, it increases the authority of the Department of Commerce.

Let me go over a few things here, and keep in mind, first of all, the purposes of this bill, the stated purposes of this bill. I didn't hear it discussed much

when we were talking about the details of it. I think it is probably the most important part:

To restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States.

And also:

To stem the proliferation of weapons of mass destruction. . . .

That is the stated purpose. Whose job is it to do that? Well, we are going to give it to the guy who is in charge of commercial activities.

Look at some of these areas. The Secretaries of Commerce and Defense must concur in order to add items to the control list. While this is an improvement over the previous draft of S. 149, which left sole discretion to the Department of Commerce, S. 149 still gives the Department of Commerce a veto over the Department of Defense if the Secretary of Defense believes an item should be controlled on the national security control list.

Secondly, on commodity classification, the Secretary of Commerce has sole discretion over classifying items when exporters make commodity classification requests. These classifications determine whether items will require license or not and are particularly critical for new technologies. Commerce must notify Defense, but it is not required to solicit any input.

What about the interagency dispute resolution process? Well, S. 149 gives the Secretary of Commerce sole authority to select a chairperson of, and determine procedures for, the interagency committee to review license applications. The chairperson considers the positions of all the reviewing agencies but then makes the final decision on the license application. The only role of the Department of Defense is to provide a position, and additional levels of review are resolved by a majority vote.

What about foreign availability and mass marketing? The Secretary of Commerce has sole authority to determine whether items are foreign available or mass marketed. He must consult with other agencies, including the Department of Defense. Since items determined to be foreign available and mass marketed are automatically removed from the national control list and decontrolled, this authority to Commerce essentially creates a loophole around the Department of Defense veto over removing items from the national security control list.

What about issuing regulations? The Department of Commerce and the President have the authority to issue regulations. These regulations must be submitted for review to any department or agency the President considers appropriate, but the legislation explicitly notes that the requirement to submit the regulations for review doesn't require the concurrence or approval of any reviewing department.

Finally, the catch-all provision in S. 149 provides that unless otherwise reserved to the President or department or agency in the United States, all power, authority, and discretion conferred by this act shall be exercised by the Secretary of Commerce.

Mr. President, that is substantial authority and control by the Office of the Secretary of Commerce. Regarding matters of national security, they should not have to bear that much responsibility. So now in the act here, we are not really building higher walls around anything. We are not trying to come up with a procedure to determine the national security implications of what we are about to do. We recognize that there is more dangerous technology out there than ever before, and we are providing it to people who are misusing it, but we want to continue to do that at a more efficient rate.

With regard to the increased penalties on exporters, I think by and large that is an improvement. But the act totally decontrols large segments of exports. So if you are decontrolled, how are you going to get in trouble? If I were an exporter, I would make that tradeoff, too. Give me a penalty on something that there is no way I could ever be accused of violating if it falls under one of these items that don't even require a license. How do you violate something like that? We are going to make a higher, more onerous penalty on you for violating this, but we are going to amend the law so it doesn't apply to you.

The Presidential override: It is true that there is a section here that, as the proponents indicate, really does override both the incorporated parts provision and the mass marketing and foreign availability provisions. In other words, the President can step in regardless of any of those provisions. To me, it is inconsistent with and renders a nullity many of the provisions in the foreign availability section, for example, because that section says the President must jump through all these hoops and go negotiate with all these countries and report back to Congress.

In other words, Mr. President, if you are going to step in on behalf of national security, we are going to make it awfully tough on you; you have to jump through all these hoops. They are saying: Enhanced control provisions, no, no; the President, if he wants to use this section, does not have to do all that; in other words, if there is a significant threat, not just a threat to national security but a significant threat to national security.

I am not sure how all that operates. I think it bears more studying. I think we are going to have to look at those sections together. If it does what is suggested, I still think we need to ask ourselves: Do we want to create whole new categories that are essentially determined by the Secretary of Commerce to decontrol and then say to our President: Catch me if you can?

If we have made a mistake out of these thousands of applications we get every year—another section says the President cannot delegate this authority, so let's make it as tough on him as we can; he does not have many other responsibilities; let's create these whole new avenues of decontrol and then say to the President: You have the authority if you can come up with something.

I do not know how much longer he is going to sit over there with a skeletal staff in some of these departments. Some people are estimating it will be 14 months before he gets his full team together, as far as his government is concerned.

Assuming the President does have the authority ultimately to step in, is that a wise idea? We are not just giving him new authority to step in with regard to an old situation. We are creating a whole new situation, a much more decontrolled situation, and giving him the invitation without delegating any authority. If he personally wants to step into one of these situations, he has the authority to do that. He did not need this authority before because we did not have a concept such as foreign availability except as something to be considered. We did not have a concept of decontrol based on foreign availability or mass marketing up until this bill.

Under those sections, if a company can persuade the Department of Commerce that it ought to be decontrolled, then it is decontrolled; there is no license requirement. We cannot even keep up with the number of computers we are sending to China or anywhere else. We do not even have a list to make some cumulative effect assessment if we wanted to.

The business community ought to have their say. I get the top rankings from the businesses and small businesses. I do pretty good by them. But I must say, when it comes to matters of export controls based on national security in a world where we are being threatened as we speak by weapons of mass destruction, it irritates me somewhat when I see in this export bill ''the Secretary shall permit the widest possible participation by the business community on the export control advisory committees.''

This bill allows the Secretary to appoint advisory committees to advise the Secretary on these matters—quite objectively, I am sure. It also says the Secretary has to disclose to them information consistent with national security and intelligence sources and methods pertaining to the reasons for the export controls which are in effect or contemplated.

If you want to impose any export controls for national security purposes, you have to go to these business entities and explain what you are doing and why you are doing it. Not only is that unnecessary, I am afraid it gives an indication or it belies the purposes of this act.

This bill is going to pass, and we all know that. The forces behind it are strong. When you have the administration and probably the majority of both

parties supporting it, that is a pretty fair indicator. I understand that. But for some time now, starting back a couple of years ago, the chairman of the Intelligence Committee, the chairman of the Foreign Relations Committee, the chairman of the Armed Services Committee, the chairman of the Governmental Affairs Committee, and the chairman of the Commerce Committee, along with Senator KYL, who is an expert in these matters, have had grave concerns about the balance we are striking; that we are continuing a policy based upon the tremendous pressures that are being brought to bear and based on campaign commitments that were made. It is not in the best long-term interests of this Nation.

I do not think any of us can say for sure to what extent it is not or in what way our security might be harmed, but we are concerned that the process is not properly weighted. We are concerned that if we are going to err, we err on the part of national security; that when we are willing to engage in such debate to take on our European allies, to take on Russia and China all for the sake of a national missile defense system, based on the concept of tremendous threats this country faces—and I believe in the system—we must move forward on it because I believe in the threats, but we are refusing to acknowledge and recognize what is right before us and that we are helping to create the threat.

When we are exporting high-tech items to countries that have already shown that they will take them legally or illegally, that they will divert them for military purposes, that they will send them to rogue nations, and we come up with a concept to make it even easier because it takes 40 days to go through a licensing process—we do not want our companies to have to wait 40 days for people take an adequate look at this before they do that—I do not think we have our values in the right place; I do not think we are looking at what is right before us.

I am not suggesting we not reauthorize the Export Administration Act. I am not suggesting we build a wall around our technology. We know we cannot do that. But we must have a procedure that is not dominated by commercial interests, either outside Government or inside Government. And those in the Department of Commerce who are rightfully concerned about our commercial interests, that is their job. It cannot be dominated that way. We have to have a fair shot. All this is weighted too heavily on the side of people who have vested interests in foreign commercial relationships.

We have a $100 billion trade deficit with China today. I just got back from China with the distinguished chairman of the Banking Committee. The biggest meeting we had was with the American Chamber of Commerce in Shanghai. We have tremendous foreign investment over there. That is fine. That is well and good. But surely to goodness we are not going to let that cause us, when we are considering matters of this nature, to come down too heavily on making the process more efficient for exports of potentially sensitive materials.

Again, we are not even talking about stopping exports. What we are talking about is a procedure where, more likely than not, we can stop from making one substantial mistake. We should not back end load this process and put all that responsibility on the President, if he or his people are fortunate enough to catch something on which those who, with good intentions, just simply do not have the expertise to make a call.

That is what we are concerned about. So I hope in the rush to get this bill approved and passed, which will eventually happen, we will have an opportunity to get some fair considerations for some amendments. I would overhaul this whole bill if it were left up to me, but it is not, and I do not have the votes. I am not going to stand in the way any longer. We have held this up now for a couple of years, and we cannot do it any longer. The votes are too great, and I see that. We could not filibuster it successfully if we wanted.

Surely we can consider some amendments that just as an example might give a little bit more time to an agency to review a complicated export request based on the potential impact of the export on national security. An agency now only has 30 days. If they do not get back within 30 days, it is deemed to be approved. Thirty days is fine for most things, but they ought to be able to have 60 days, if they need it, for the complexity of the analysis or if the reviewing agency requires additional time based on the potential impact of export on national security, a bit of additional time under those circumstances.

I hope we consider an amendment requiring the Secretary of Commerce to refer commodity classification requests to the Secretary of Defense and the Secretary of State. The current draft of the bill requires the Secretary of Commerce to notify the Secretary of Defense of commodity classification requests, but there is no referral, and the Secretary of State is not even required to be notified.

That is a prudent addition, an improvement. We should have unanimous consent of all the reviewing agencies on a license application. The Cox committee recommended that. It can still be taken up and ultimately approved if need be, but if the Department of Defense, for example, objects and no one else does, or the CIA or whoever, should that not require their sign-off?

As to postshipment verification, S. 149 says the Secretary of Commerce may deny licenses to countries that deny postshipment verification, although it says the Secretary shall deny licenses to particular end users. I suggest we add to that language that the Secretary of Commerce shall deny licenses to countries. Why do we mandate denying a license to an end user that will not let you verify it but leave it discretionary with the Secretary of Commerce to deny to a country that will not let you verify, when in many, if not all, of these cases it is a country policy?

We have an agreement, for example, with the country of China. If we are being denied the right to go in and do our postshipment verification, it makes no sense to blame it on a company. It is the country that is denying us. So why should we make it mandatory on a company but discretionary with the country that is calling the shots?

As to foreign availability, the definition of ''foreign availability'' requires only that an item or substantially identical or directly competitive item be available to control countries from sources outside the United States in sufficient quantities at a price not reasonably excessive. This definition does not speak to relative quality. In other words, if it is out there, if other countries can supply it but if it is not the same quality as that of the United States, and it is potentially dangerous and it is something that can potentially be used for military purposes to a country of some concern, would we not want to take into consideration the fact we are liberalizing or loosening our standards because they have access to a similar item even though it is not of the same quality as our item? We ought to consider that carefully.

The deemed export issue, the definition of ''exports'' in S. 149 includes transfers of items out of the country or transfers of items within the country with the knowledge and intent that a person will take the item out of the country, but it does not cover any transfer of technology to a foreign national.

We have had a concept of deemed exports in this country for a long time, and that is if you give a foreign national the same kind of controlled information that is sent abroad, it ought to operate under the same rules if it is the same information because of the potentiality of it getting back, and we know that happens.

Under the current definition of the statute, the Secretary of Commerce has discretion over whether to control deemed exports. I do not think the Secretary of Commerce ought to have that discretion.

Now my concern here is that there has been pressure from the business community to eliminate the deemed export requirement altogether, and S. 149 includes language stating it is the committee's understanding that the administration will be reviewing the deemed export process with a view toward clarifying its application. I do not have any idea what that means. What I think it means is that we are going to work to get rid of this sucker, but we need a deemed export rule and we need it to be mandatory.

We had hearings and heard countless hours of testimony about what was happening in our National Laboratories when we were concerned about the information was getting out, and we saw the thousands of hours and thousands of people who were coming in from other countries who had access to information. Private industry was doing much better than the Government, but our own Government people were not submitting the necessary documentation for deemed exports to tell our people what information these folks had access to. It was common sense. We do not want to cut off foreign students. We do not want to cut off foreign experts, the technology; it benefits our own economy; we need that interplay. But it is common sense to protect yourself a little bit. We need to do that.

There are others we might consider, but those are some I hope within the next couple of days we have the opportunity to consider in some detail with an idea toward tightening it up some, and making it so when we leave this, having passed it, we have not unwittingly done something that made it more difficult in the operation of this process. It all sounds pristine when we describe it.

It goes here and here and here, and then someone has this right and the other fellow has the other right and these thousands of things that come rushing through, but in actual application it is not always quite that smooth. This bill, thank goodness, devotes some additional funding for this licensing process, which I think is a good thing. Let us make sure that in all of this we do what we can, at least around the edges, is the way I would look at it, to make sure we give enough time to properly consider these things, and we have them considered by the entities that ought to be looking at it and not being totally weighted or unduly weighted toward the commercial side.

So I look forward to the discussion. I congratulate my colleagues on their perseverance to get this bill this far. We have been arguing and discussing this bill for a long time. It is one of those cases where people have strong feelings on both sides and make valid points on both sides. Everyone is trying to strive for the right thing and the proper balance, and hopefully at the end of the day we will have something that will not produce grave concern among the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I will take a few moments to make a brief response to my able colleague from Tennessee. I know the distinguished Senator from Wyoming also wants to speak.

Much of what was contained in my colleague's statement I agree with regarding concerns and how to address them. I think there are basic differences of perception of this bill and what it does. As I said at the outset, I am frank to say I think the bill provides greater protection for national security and foreign policy interests than either the previous Export Administration Act or the regime in place under IEEPA.

In my opening statement I didn't have the material at hand and I made reference to the significant improvement in the commitment of resources for enforcement which is extremely important in any regime. You can have a nice paper regime, and if you do not have the resources for enforcement it does not have any reality. I will go through those quickly.

Beginning on page 296, we have a number of provisions of additional resources for enforcement programs. I want those in the RECORD because I think they are important: $3.5 million additional authorization to the Department of Commerce to hire 20 additional employees to assist U.S. freight forwarders and other interested parties in developing and implementing on a voluntary basis, a ''best practices'' program to ensure that exports of controlled items are undertaken in compliance with this act.

We are trying to draw on the export community, in effect, to become an active partner in trying to maintain the controls and support the regime. The freight forwarders are an integral aspect of the export process. This provision would be very important.

We go on to $4.5 million to hire new investigators to be posted abroad in order to verify the end use of high-risk dual-use technology; $5 million for the end-use verification program. That is in addition to the authorization I was just talking about. The station oversees investigators. There is $5 million for upgrading the computer licensing and enforcement system within the Department of Commerce; $2 million for additional license review officers, and $2 million to train license review officers, auditors, and investigators. That is a total of $22 million in additional enforcement programs. It significantly boosts the budget by about 50 percent. We are talking about a 50-percent increase in the commitment of resources.

I listened carefully to my colleague. A fair amount of what the Senator discussed involved matters that are not affected in the export control regime. If a nation is transferring military technology, that is not part of the export regime which deals with dual-use technology. We confront that situation in some instances.

I was interested by the reference of the Senator to these various commissions. My colleague from Wyoming, in fact, was the cochair of one of those commissions investigating some of the problems. There were a number of references to the commission chaired by Rumsfeld in terms of our export program. I point out to my colleague we have a letter today from the same Rumsfeld, as far as I understand it, endorsing this legislation and urging Members to act on it. That is the very Rumsfeld, unless I am mistaken, being cited in terms of a particular point of view with respect to export controls.

One item the Senator mentioned as a possible amendment, the notion that there had to be a unanimous decision of the interagency group with respect to a license approval. What that means is the issue then would never get off of the first tier in terms of going up the appeals process because any one of the departments or agencies involved in the interagency review could, in effect, stop it at that level.

That is not the scheme of the legislation. The scheme of the legislation is that the matter can move forward as long as there is a majority decision, but the dissenting voice in the majority decision can take it to the next level for review so it can be moved up the line in terms of the officials examining this matter, and eventually, of course, can be taken right to the President for an ultimate decision that will resolve a dispute between one department and another with respect to the issuance of a license. If they all agree that the license should be issued, it will be issued; if they all agree it should not be issued, it will not be issued.

What do you do if they differ? If they differ and you require unanimity for issuing the license, in effect, it is blocked at that level. What this arrangement provides is that you can continue to move forward, but an appeal can be taken to the next level and to the level beyond that and eventually to the President for a determination. I think that is a much fairer process. It is a more open process. It is a more transparent process and that means that the exporters at least will get a decision and will not simply disappear into the great void where they are left without any decision.

Much of what has motivated the business community is the argument that ''we need to know, we need a judgment.'' If we can't do the license, let us know we cannot do the license within a limited period of time and we will go on about our business in other ways. If we can do the license, let us know within a period so we are in the bidding or competitive process in terms of trying to land this contract.

I don't think we can go from the majority to unanimity because then we are right back where we were. One of the old problems we have confronted is an impediment and a burden on trade without making a contribution to national security that can't be achieved according to the procedures in this legislation. It is not as though we say if there is a majority decision at the lowest level, that decides the matter. That only begins the process and the department that has been outvoted can appeal the matter and take it up the line.

It seems to me that is a much more sensible way in which to proceed. I think one of the things this bill provides to industry, which I think they

are reasonable in seeking, is a defined process within a limited time period that in the end gives them an answer, yes or no. But it gives them an answer.

That is an improvement over current arrangements where they may well be simply left in limbo. It is reasonable to expect the Government decisionmakers and the Government process to work in such a way that in the end they get a decision.

One of the premises on tightening up is that if you have foreign availability or mass market, that you are not contributing in any significant way to stemming the spread of technology by inhibiting it because it is available from other sources generally available. So it seems sensible to try to take those goods and services out of the surveillance as a starter. We do not do that anywhere near completely because in both instances we provide authorities whereby that can be suspended.

The reason we have the double Presidential authority—for example, on foreign availability—is the part in the foreign availability section is designed to get the executive to try to negotiate and arrive at a multilateral restraint. This technology is available, foreign available, so it can be acquired there—comparable technology. If that is so, we are saying to the President: You should try to see if you can negotiate an agreement. We have the three 6-month periods, the 18-month period, in which if he has not been successful in doing that, that authority, in effect, comes to an end. But we have the general catch-all authority which enables the President to, in effect, limit or control it or prohibit it on the basis of the general authority.

The mass marketing does not have that. He can keep rolling that over, if he chooses. But, in any event, he has this reserve power under the enhanced control that enables him to deal with parts and components. It enables him to deal with foreign availability. It enables him to deal with mass marketing in which, in effect, a very, very broad authority and power has been committed to the President. That is one of the reasons it seems to me clear that the administration and the various officials are supportive of this legislation.

We are trying to improve the process, provide some certainty in how it works, make sure the private sector gets answers, and at the same time reserve to the President the ultimate authority to make control decisions based on national security and foreign policy interests. So I think the basic scheme, the basic arrangement is one that, in fact, deals more adequately with national security and foreign policy interests than either the existing regime now under IEEPA or the previous Export Administration Act.

Mr. THOMPSON. Will the Senator yield?

Mr. SARBANES. Surely.

Mr. THOMPSON. I would appreciate a clarification on comparing the Presidential set-aside on foreign availability with the enhanced controls; the former section, section 212, and enhanced controls is under 201.

I will ask a question in a moment. I know the Senator knows that under 212, the Presidential set-aside, if he determines that failing to control an item would constitute a threat to the national security, the President can set aside the Secretary's determination of foreign availability. Then it requires the President to pursue negotiations, as the Senator has described. It requires the President to notify Congress that he has begun such negotiations. The President shall review a determination at least every 6 months and notify the committees. Then, 18 months after the date, the determination is made; if the President has been unable to achieve an agreement to eliminate foreign availability with these other countries he is negotiating with within the 18 months, then the set-aside is lifted. But when you come over here to enhanced controls, it seems to give the President broad authority to lift the application of provisions of, in this case, foreign availability.

I take it from what the Senator said a moment ago he thinks with enhanced controls the President would still be required to enter into the negotiations with foreign countries, for example. And, if so, which of these other provisions—the notifying Congress—presumably the cutoff would not apply, the 18-month cutoff.

I am a little curious, if the President has enhanced controls, you would think that would obviate all of these other reporting conditions and negotiation requirements and things of that nature because that 18-month requirement certainly would be obviated, and it would make the requirements under the set-aside unnecessary.

Will the Senator comment or give me his view on that? There is a lot of legislation here. I have referred to it once. We will have an opportunity to discuss it.

Mr. SARBANES. I understand exactly what the Senator is referring to. The Presidential set-aside of foreign availability status determination, which is section 212, is designed to encourage the President, in a foreign availability issue, to achieve, if possible, a multilateral agreement through international negotiations. And that is sort of spelled out in there as part of the purpose. You know, we emphasize negotiations, the reports to the Congress, the periodic review of determination, and the expiration of the set-aside at a certain period, although he can renew it for 6 months over three times, for an 18-month period.

Over and above that, the President is given an enhanced control authority in section 201(d). That is on page 183, section 201(d). Let me read that because I think it makes it clear that, without being bound up in the process of section 211:

Notwithstanding any other provisions of this title, the President may determine that applying the provisions of section 204 or 211—

Section 204 is the parts and components section. ''Incorporated Parts and Components,'' is section 204.

Section 211 is, of course, the ''Foreign Availability and Mass-Market Status'' section—

the President may determine that applying the provisions of sections 204 or 211 with respect to an item on the National Security Control List would constitute a significant threat to the national security of the United States and that such item requires enhanced control. If the President determines that enhanced controls should apply to such item, the item may be excluded from the provisions of section 204, section 211, or both until such time as the President shall determine that such enhanced control should no longer apply to such item. The President may not delegate the authority provided for in this section.

That is a pretty far-reaching authority. We seek the President's determination on that. Then the only report is, the President shall promptly report any determination described in paragraph 1 along with specific reasons for the determination to the Banking Committee in the Senate and the International Relations Committee in the House.

Mr. THOMPSON. Will the Senator yield for a moment?

Mr. SARBANES. Sure.

Mr. THOMPSON. I just noticed when the Senator was reading under enhanced control that it refers to control 204, incorporated parts, 211, which has to do with the determination of foreign availability along with mass marketing. But it does not refer to 212. Enhanced control does not refer to 212; it refers to 211, which has to do with making the determination of foreign availability, but it does not refer to 212, which has to do with Presidential set-aside.

The first question would be, Do in fact the enhanced controls override 212?

Mr. SARBANES. Surely 212 defines how the President can carve out from 211 foreign availability, and 213 defines how the President can set aside mass market status determinations, both of which are in section 211. So 211 sets out these things, and then 212 and 213 provide the Presidential carve-out from the requirements of 211. This isn't relevant if the President invokes section 201(d) because 201(d) in effect negates section 211. So there is no reason to go to the carve-outs in 212 or 213. The President doesn't have to invoke 201(d). And he can do the carve-outs according to 212 and 213, depending on whether it is foreign availability or mass market.

Mr. THOMPSON. I see what the Senator is saying. If you are assuming that the determination made by the Secretary of foreign availability and the President's decision to set that aside were made simultaneously, I am wondering whether or not there could be a situation where that would not be the case, that a determination could be

made of foreign availability by the Secretary. The President doesn't have anything to do with that. Then at a later date the President makes a determination that this is not working out very well and he wants to use his enhanced authority. But enhanced authority doesn't refer to 212, which gives him the right to set aside which foreign availability would subsume.

Mr. SARBANES. No. I don't want to bring in 201(d) under 212 or 213 because 201(d) is over and above 212 and 213. This is a tremendous authority to give to the President. It is over and above. If you subsumed them under, then you would be creating problems.

Mr. THOMPSON. That gets to my second point, if I may. I go back to my original question. If that is the case, then why is the section under 212—the set-aside that has to do with the President's actions in the case of set-aside, which has to do with pursuing negotiations with foreign governments, notifying Congress, periodic review, exploration of Presidential set-aside —if the President did in fact decide to use his enhanced control authority, why would any of that be applicable? Certainly the exploration of the Presidential set-aside would not be applicable. Or would it?

Mr. SARBANES. Why do you have it at all? It is a reasonable question. Here is the answer as I perceive it. You are trying to set up a framework and a regime in the way of proceeding. As a general proposition, for the sake of transparency, for rationality, for understanding in the export community what is being done, the sort of standard way of proceeding, so to speak, on both foreign availability and mass marketing would be to follow the procedures in 212 and 213 which have been worked out and are designed, as I said, certainly in the case of foreign availability, to accomplish the objective of trying to develop multilateral negotiations.

So this is the process you set out to be followed. Conceivably, that is the process which, generally speaking, the executive branch would pursue. But in a sense, in an abundance of caution, with respect to national security and foreign policy interests, we give the enhanced control power to the President contained in 201(d). There he doesn't have to go through these notices. He doesn't have to go through these procedures. He is not bound into a timeframe.

But you don't simply do that. If you just did that and nothing else, you would have, in a sense, sort of a process without any sort of standards or review.

We have a process of standards and review. But then we go on to say, as I said, with an abundance of caution, that in any event the President can exercise the 201(d) authority. That is essentially to take care of the argument—actually, I think the Senator used the phrase earlier in his statement about unintended consequences. This is really to foreclose any unintended consequences in sections 212 and 213 by giving the President this broad authority contained in 201(d) on enhanced controls.

Mr. THOMPSON. It seems to me what we are getting down to is that if a foreign availability determination has been made, the President has the discretion of operating under 211, going through the notice requirements, going through the consultation requirements, and going through the negotiation with foreign governments——

Mr. SARBANES. It is 212.

Mr. THOMPSON. Yes.

Mr. SARBANES. It is not 211?

Mr. THOMPSON. That is correct. But he may not proceed linearly. When a determination is made of foreign availability, if he at the outset wants to use his enhanced control authority under 201, he may do that. Then none of the provisions having to do with 212 would apply. Would that be correct?

Mr. SARBANES. Yes. The President could do that. Generally speaking, the President would use 212 and 213 in addressing foreign availability and mass marketing, because that is the process, as I spelled out, that has certain benefits that flow from its use. But he would not have to do that. He could invoke 201(d). That is why I said earlier in my opening statement that I thought this legislation gave very significant authorities to the President to make these judgments about national security and foreign policy interests, and it is one of the reasons that I think the administration, after very careful review of this legislation, is so supportive of it.

Mr. THOMPSON. I thank the Senator.

Mr. SARBANES. I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Wyoming.

Mr. ENZI. Madam President, I will make brief comments while my colleagues are preparing to speak.

I am pleased we have had the opening statements that we have had so far, and particularly I am pleased with this colloquy we have just had which shows that we have built some supreme authority into the Presidential position that gives the President the right to trump the other provisions that are in the bill but that still puts a process in place which we hope will be followed because foreign availability will definitely bite us if we do not work with other countries to control it.

Mr. SARBANES. Right.

Mr. ENZI. That is why we are concentrating on the multilateral control as opposed to the way we have been doing it which is the unilateral control. Unilateral control does not work. Every report shows that.

I also thank the Senator from Tennessee for his comments about the commission that was chaired by Mr. Rumsfeld and the expertise that he alluded to—and I would confirm—that Mr. Rumsfeld has on weapons of mass destruction. Of course, one of the reasons that I am very willing to point that out is to reemphasize the letter that we had printed in the RECORD this morning from the Secretary of State, Colin Powell, the Secretary of Defense, Donald Rumsfeld, and the Secretary of Commerce, Donald Evans, which is dated today, and was delivered to us, that shows the support of these three Secretaries for S. 149. It isn't a hedged support; it is a very specific support. We appreciate the expertise of Mr. Rumsfeld in the area of weapons of mass destruction and, while these are dual-use items, he gives the same level of credence to our bill as to his report.

Another fine line that needs to be pointed out is that in our bill one of the things we did not do was turn the process over to the bureaucrats. We turned the process over to the elected officials. We went to the power at the top. The reason we did that is because there is a tendency among bureaucrats to pigeonhole things, to avoid decisions; and if you build a process that allows them to avoid decisions, they will avoid decisions. That is why we put some of the time limits that are in here in here. But there is, at any step of the process, the capability of stopping the whole process. And that is also built in this bill.

Mr. THOMPSON. Would the Senator yield for a moment?

Mr. ENZI. Yes.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. I am supposed to be a witness in the Judiciary Committee. I wonder if I could be allowed to lay down an amendment before I leave the Chamber.

Mr. ENZI. I appreciate that. I was hoping we would get to amendments. I yield for that purpose.

AMENDMENT NO. 1481

Mr. THOMPSON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON] proposes an amendment numbered 1481.

Mr. THOMPSON. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To modify the exceptions for required time periods)

On page 232, strike lines 16 through 18, and insert the following:

(1) AGREEMENT OF THE APPLICANT; COMPLEXITY OF ANALYSIS; NATIONAL SECURITY IMPACT.—

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

(B) COMPLEXITY OF ANALYSIS.—The reviewing department or agency requires more time due to the complexity of the analysis, if the additional time is not more than 60 days.

(C) NATIONAL SECURITY IMPACT.—The reviewing department or agency requires additional time because of the potential impact

on the national security of foreign policy interests of the United States, if the additional time is not more than 60 days.

Mr. THOMPSON. Madam President, the amendment I have offered makes a small but significant change in the license application review process.

This amendment allows executive branch agencies such as the Department of Defense or the Department of State that are reviewing licensing applications to have an extension of up to 60 days to review the license if the analysis involved in reviewing the license is complex or based on the potential impact of the export on the national security or foreign policy interests of the United States. This amendment should not be controversial. The amendment is simple and easy to understand and, in my view, it is very hard to oppose. For example, if the Department of Defense is reviewing a license application for sensitive dual-use technologies that are controlled under our export control process, it should be able to get additional time if the analysis is complex or if the export presents particularly sensitive national security concerns.

This change is small but very important. The House International Relations Committee accepted this amendment unanimously by voice vote in its recent markup of the Export Administration Act of 2001. And this amendment reflects a recommendation made by the Cox commission on U.S. National Security and Military/Commercial Concerns with the People's Republic of China. The Cox commission report concluded that U.S. export control policies and practices have ''facilitated the PRC's efforts to obtain militarily useful technology.'' One of the issues the Cox commission discussed was the fact that in 1995, the U.S. reduced the time available for national security agencies to consider export licenses. The commission said that these new deadlines placed national security agencies under ''significant time pressures.'' It concluded that the time allowed for consideration of licenses was ''not always sufficient for the Department of Defense to determine whether a license should be granted, or if conditions should be imposed.'' The Cox commission recommends:

> With respect to those controlled technologies and items that are of greatest national security concern, current licensing procedures should be modified. . .to provide longer review periods when deemed necessary by any reviewing Executive department or agency on national security grounds.

The current version of the legislation contains strict time restrictions. Reviewing agencies, such as the Department of Defense, the Department of State, or the Department of Energy, have 30 calendar days to provide a recommendation to the Department of Commerce. If they do not provide a recommendation within 30 days, they are deemed not to have any objection. This means that if the Department of Defense, for example, has inadequate time to complete a complex review, the license application is automatically granted and sensitive dual-use technology is exported. Allowing additional time in particularly complex or sensitive cases would protect our national security at little cost to any economic interests.

Under the current draft of the legislation, the longest time an applicant could wait for an answer under the legislation is 129 days. The Secretary of Commerce has 9 days from receipt of the license application to refer it to the appropriate reviewing agencies. These agencies have 30 days to respond. If there is an interagency dispute regarding whether to grant the license, it is referred to the interagency dispute resolution process. The interagency process must resolve the issue or refer it to the President within 90 days after the license application is referred to the interagency process by the Secretary of Commerce. In fiscal year 1999, average processing time for all applications was 40 days. Applications that did not need to be referred to another agency, which comprised 14 percent of all applications, had an average processing time of 20 days, and applications that were referred to reviewing agencies had an average processing time of 43 days. This amendment would provide up to 60 additional days of review for export license applications that are complex or based on the potential impact on U.S. national security or foreign policy interests. While this could lengthen the process somewhat in the most sensitive cases, it would have little or no impact on the majority of export licenses.

Madam President, this change to the legislation is small, but significant. It is designed to address a national security issue identified by the Cox commission and it implements one of the Cox commission's recommendations. The House International Relations Committee accepted this amendment unanimously during its markup of the Export Administration Act. I hope that my colleagues will join me in supporting this important amendment.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. SARBANES. Will the Senator yield for just a moment?

Mr. HELMS. Yes, of course.

Mr. SARBANES. Madam President, we have an amendment pending. I would just hold it pending because I believe a number of Members wish to make opening statements on the legislation. I invite Members who have opening statements to come to the Chamber so we can get the opening statements done, and then presumably later in the afternoon we will revert back to the amendment.

Mr. THOMPSON. My understanding is that this will probably be the vote at 5 o'clock.

Mr. SARBANES. In between, I was hoping we would get the opening statements out of the way.

Mr. THOMPSON. Yes.

Mr. SARBANES. A number of Members have gotten in touch with us and have indicated they wish to do so. I just wanted to set out the procedure.

Mr. THOMPSON. I say to my colleague also that if, by chance, after reviewing this, we could come to an agreement on this amendment, I will tell the leadership that we would have another amendment which we could vote on by 5 o'clock. So we would still have a vote at 5 o'clock, as the leadership wishes.

Mr. SARBANES. Does the Senator from Tennessee have a total list of amendments he is thinking of offering so we can put these amendments in context? That helps to make a judgment as to whether we are simply unraveling carpet step by step or whether there is a finite picture we can look at to make some determination.

Mr. THOMPSON. If I may respond, the Senator has a floating list that I would be glad, when I get back, to sit down and go over with him. Frankly, I am evaluating several that I have prepared based on the debate and the remarks that are made. I would enjoy the opportunity to sit down and discuss with him and other Members some of the ones I probably will introduce in the next day or two.

Mr. SARBANES. I thank the Senator, and I thank the Senator from North Carolina for his usual courtesy in allowing us to have this exchange.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. Madam President, I ask unanimous consent that at a time deemed to be appropriate by the managers of the bill I be recognized to be heard for 30 minutes on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from North Carolina is recognized for 30 minutes.

Mr. HELMS. Madam President, I ask unanimous consent that it be in order for me to deliver my remarks seated at my desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Madam President, I feel obliged to voice my strong opposition to S. 149, the pending Export Administration Act of 2001.

I do this because this bill does not protect the national security of the American people. It does not control the export of our most sensitive dual-use items. It does not promote U.S. foreign policy.

Instead, this is an indiscriminate trade promotion bill, and I am obliged to state that I am troubled by the fact that this bill, S. 149, was written in fact, by the business community to maximize future sales to Communist China, and to other such countries that represent the highest risk of technology diversion and proliferation.

Make no mistake about it, this legislation will enable dangerous regimes around the world to arm themselves through the use of the best dual-use technology America has to offer.

This bill's sponsors argue that because the cold war is over, the world is a much safer place and that we need to rid ourselves of outdated export controls that inhibit trade and harm the economy. These Pollyannas could not be more mistaken.

As the ranking Republican on the Foreign Relations Committee, I feel obliged to make clear that I hold a very different view. It is a view based on years of experience in foreign policy and national security matters, and sharpened by ongoing intelligence assessments. My view is shared by the other ranking members of the national security committees of the Senate; that is why we have joined together in opposing this legislation.

The fact is, despite the fall of the Soviet Union, the world is actually a far more complicated and dangerous place due to the proliferation of weapons of mass destruction and ballistic missiles. During the past 30 years alone, the number of countries pursuing nuclear weapons programs has doubled, the number of countries pursuing ballistic missile programs has tripled, and more than a dozen countries, including most state sponsors of terrorism, have offensive biological and chemical weapons programs.

Even worse, this activity is being fueled by Russia and Communist China, two members of the United Nations Security Council who are illicitly selling to rogue countries the dual-use technologies so critical to their weapons of mass destruction and missile programs.

For years, some other Senators and I have cautioned the Senate about these growing threats; we have argued forcefully for a national missile defense system to make the United States less vulnerable to blackmail or missile attack itself. But missile defense cannot alone keep us safe. What we desperately need, and don't have, is a comprehensive strategy that ranges from a credible strategic deterrent to rigorus export controls as our first line of defense.

At a time when the United States of America is becoming increasingly vulnerable to rogue states and others armed with WMD-tipped ballistic missiles, it makes absolutely no sense for the United States to liberalize its export controls over the technology and know-how so critical to these weapons programs. Moreover, doing so sends all of the wrong signals to our allies, and others, about our commitment to nonproliferation.

I have also tried as best I can to make clear my view about the need to deal firmly with Communist China, which is dramatically increasing its military spending and modernizing and expanding its nuclear forces. China's leaders talk openly about preparing for a future conflict with the United States. Meanwhile, Communist China is making every effort to acquire U.S. technology and know-how, through theft, circumvention of export laws, or legitimate commercial activity.

In the past year and a half alone, Communist China illegally used U.S. supercomputers to improve its nuclear weapons. And just a few months ago, we learned that Chinese technicians were installing fiber optic cable for Iraq's air defenses, a clear violation of U.N. sanctions. Worse yet, this assistance and technology—which was provided to Chinese companies by American business firms when the previous administration mistakenly decontrolled this equipment over—and I must emphasize ''over''—the objections of the National Security Agency in 1994—has been of great help to Saddam Hussein in his quest to shoot down American pilots.

Seven months ago, a CIA report made clear that China continues ''to take a very narrow interpretation of their non-proliferation commitments with the United States.'' Just recently, we learned that the Communist Chinese are continuing to ship missile parts and components to Pakistan despite Beijing's pledge in November 2000 to stop all such transfers and set up an export control system.

Consideration of this bill by the Senate sends all of the wrong signals, wrong messages, to China. It reminds Beijing that the United States is all too willing to place profit before principle.

Let me address some of the major elements of this legislation that have convinced me that its passage will seriously jeopardize the national security of the United States.

To begin, no one—and I repeat no one—has conducted a thorough national security risk assessment to determine the possible impact of this bill's sweeping changes on our national security. Rather, many have blindly accepted the anecdotes and assertions of industry as the basis for changes in the bill.

Second, this bill does not adequately cover ''deemed exports,'' more commonly understood as the transfers of sensitive knowledge from one person to another within the United States. Under this bill, the information and know-how passed to visiting scientists and others does not appear to be illegal.

Third, this bill creates a new licensing exemption category called mass marketed items, which allows companies to produce their products off of the control lists, notwithstanding the sensitivity of the item. If an item is widely available in the United States, then the bill's authors argue that it shouldn't be controlled.

Fourth, when coupled with a new definition of foreign availability that further loosens controls, this bill has the potential to decontrol large numbers of items. For example, according to one outside expert, under S. 149, the high-precision electronic switches needed to detonate atomic bombs could be up for sale by claiming that they are needed as spare parts for medical equipment; this is what Iraq tried as recently as 1998.

Fifth, despite the fact that the purpose of the EAA is to safeguard our nation's security, the various advisory committees and consultative requirements placed on the administration in the bill do not require that national security or non-proliferation experts be included, while labor organizations and the business community are clearly mentioned.

Sixth, this legislation prohibits export controls on sensitive parts if they are incorporated into more expensive commercial items or if the controlled item in shipping overseas for final assembly. In other words, despite the national security importance of an item, whether or not it's controlled depends to some degree on its relative monetary value and where it is produced. So if a special airborne navigation or radar system requires a license when exported individually, a license would not be required if it were merely a part of an expensive aircraft.

And last, but certainly not least, S. 149 provides extraordinary authority to the Secretary of Commerce on important procedural issues such as commodity classifications, license referrals, dispute resolutions, and the development of export administration regulations. If national security concerns are to be given adequate consideration in export decisions, then the Departments of State and Defense must be given greater authority in the export licensing process. And if these two departments are found already to have sufficient authority under current practice, then why not codify it?

The bottom line is that there seem to be more loopholes and exemptions from export controls in this bill than there are export controls. Could it be that the drafters of this legislation assume that any effort to obtain a license will meet with failure, and that no effort should therefore be spared in ensuring that companies need not bother to ask for one.

I cannot understand why the bill goes to such great lengths to ensure that no exporter will ever be required to tell the U.S. government what he proposes to export, and to whom he intends to sell it. Just because an exporter is required to obtain a license for a sale does not mean that the sale is going to be denied. In fact, over 80 percent of all license applications are approved.

At the same time, the requirement for a license enables the United States Government to ensure that U.S. companies do not contribute, either intentionally or unintentionally, to the arming of potentially hostile regimes. Licenses also allow the government to track acquisition efforts by various countries and groups. Without the licensing of dual-use commodities, the U.S. will know less about the potential proliferation of dangerous technologies, will be less able to combat that proliferation, and will lose the ability to exhort other nations to take steps to strengthen their regimes.

Notwithstanding these facts, the bill's authors will argue that they have

made considerable changes to the bill that address many of the concerns my colleagues and others have raised in the past. For example, the Banking Committee will argue that:

Penalties for violations of this Act have been raised in order to punish violators and deter others. While this is true, this bill also raises the evidentiary standard for illicit transfers. Moreover, raising penalties doesn't make much difference when fewer items are being controlled, or when enforcement procedures—such as the mandatory conduct of post-shipment verifications on high-performance computers—are stripped from the law.

An Executive order will be issued to cover deemed exports, give the Department of Defense more visibility and a larger role in the commodity classification process, and strengthen the voice and role of other agencies. However, to date, a draft of the Executive order has yet to be provided for review. But more importantly, given the significance of these matters, doesn't it make sense to make these changes part of the law?

It doesn't make sense to control mass marketed items that can be purchased at Radio Shack and carried out of the country. The problem with this argument is that if items were controlled, they wouldn't be available for purchase at Radio Shack. But beyond that, acquiring widely available items illegally denies end-users the parts, maintenance, and servicing agreements essential to their long-term operation.

Since most licenses are approved anyway, requiring a licensing only harms U.S. companies by slowing them down. The fact is, DoD and the intelligence community benefit greatly from the opportunity to look at and understand complex dual-use items before they are shipped abroad, and the licensing data provides an important audit trail that is useful for conducting cumulative effects analyses and other follow-ups.

This bill addresses all of the major findings and recommendations of the Cox commission report. Upon closer examination, many of the Cox commission's conclusions are not addressed, but are simply explained away. For example, the Cox commission recommended that the government conduct a comprehensive review of the national security implications of exporting high-performance computers to the PRC, yet S. 149 does away with that requirement. The Cox commission also recommended that current licensing procedures be modified to provide longer review periods when deemed necessary by any reviewing department or agency on national security grounds, and require a consensus by all reviewing departments and agencies for license approval. Unfortunately, S. 149 also fails to fully adopt these proposals as well.

The Wassenaar arrangement is a weak multilateral regime that fails to control many dual-use items to the advantage of our European partners. It is true that Wassenaar is an inadequate agreement, but it is also true that the U.S. government has contributed to its weakness by making changes to our export control laws that seemed to undercut our Wassenaar partners. But rather than pushing for greater decontrol, we should follow up on President Bush's statement that we need a stronger regime—closer to what we had under COCOM—to prevent the proliferation of sensitive dual-use items to rogue states. It is unfortunate that the United States is giving up its leadership role on this issue and walking away from years of progress in the export control and nonproliferation field.

Finally, some have argued that failure to pass S. 149 will result in economic harm to our country and the loss of thousands of U.S. jobs. These claims ignore the fact that, according to the Congressional Research Service, controlled exports represented less than 3 percent of total U.S. exports in 1998. And since over 80 percent of all licenses are approved, only a few billion dollars in sales were lost due to denied licenses—an extremely low percentage of the United States' $10 trillion GDP. These numbers also demonstrate that while exports are being controlled—and mainly to embargoed countries or those at high risk of diversion, such as China—American firms are not losing out to foreign competition.

Industry simply does not want the U.S. government reviewing the export of sensitive dual-use items, even if it is for national security purposes. If current licensing procedures are cumbersome for business, then the solution is to improve the efficiency and operations of the export process, not decontrol sensitive items simply to avoid the process altogether.

Despite all of these dubious arguments by the drafters and supporters of this flawed bill, the core problem with S. 149 is its fundamental refusal to recognize that sometimes the United States must go it alone to make a point. The structure of S. 149 fails to take into account the ability of the U.S. to lead other nations by demonstrating self-restraint and a commitment to principle. It restricts the U.S. ability to control exports unless other nations are already doing likewise, or can be guaranteed to do the same in the near term.

I do not believe in the contrived arguments of those who say if you can't beat them, join them. Industry reasons that if America cannot stop rogue states from acquiring weapons of mass destruction, then why should we be ceding market share to our competitors? They say that the United States cannot stop dictators or communist governments from denying their people certain basic rights and freedoms, so why not conduct business as usual with them?

Well, that is not the American way. Americans do not support profit at any price, especially if that price is our national security or our moral dignity. The American people will not support the prospect of fueling our economy by selling sensitive technologies to tyrants and potential adversaries. This is what we witnessed in the eight years of the Clinton-Gore administration, and it is time for this type of nonsense to stop.

We don't need another eight years of intelligence reports that are leaked to the press, outlining in great detail how the PRC is using American technology to improve its armed forces; how Russian and Communist Chinese entities are transferring American technology to rogue states around the world; how American security, interests and friends have been jeopardized; and how it is completely legal thanks to the Export Administration Act of 2001.

Rather, the Senate should follow the wisdom and courage of the House International Relations Committee. Under the fine leadership of Chairman HENRY HYDE and TOM LANTOS, the HIRC was able to pass, with overwhelming bipartisan support, numerous amendments—similar to the ones my colleagues and I will offer this week—that put national security back into this legislation.

While the United States does need a new Export Administration Act, the bill should protect our national security, not jeopardize it at the expense of marginal increases in trade. The bill should give every government department a role commensurate with its expertise and responsibilities. And the bill should send the right message to our allies, friends and adversaries, that United States takes non-proliferation issues seriously, and will continue to take the lead in the efforts. We need a new EAA but not this one.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, I understand the Senator from Virginia wishes to speak. He will be ready in about 5 or 6 minutes. In the meantime, I thought I might respond, if it is in the schedule of the ranking member and chairman, to a point that was the subject of a colloquy with the Senator from Maryland and Senator THOMPSON. Is that all right?

Mr. SARBANES. Certainly.

Mr. KYL. I noted that one of the subjects of discussion in the colloquy between the Senator from Maryland and the Senator from Tennessee had to do with the President's authority under this legislation to waive certain provisions, important provisions, because they deal with a question of whether or not an item that is on the control list—so-called commerce control list—should be waived or whether there should be a waiver of either the embedded product rule or the foreign availability and mass market rule under sections 204 and 211 of the act.

The point was made by the Senator from Maryland that if there were a problem with one of the dual-use items on the list, the President had the authority to waive that. Therefore, those

of us who have concerns about the legislation need not be concerned. The Senator from Wyoming made the further point that in this case we didn't want to turn this matter over to the bureaucrats so we gave the authority directly to the President.

I appreciate the sentiment behind those vows. There is a problem with them however. That is, the President, with all of his other responsibilities, can't possibly exercise this authority without the help of the so-called bureaucrats, without the help of a staff.

I have in my hand just a partial list of the commerce control list items. It specifically says at the top: This index is not an exhaustive list of the controlled items.

I haven't bothered to count these. There are hundreds and hundreds of items. I don't know how many pages. It is single spaced, and there must be 60 or 80 items per page and probably 20, 30, 40 pages of an awful lot of items that could be the subject of the export regulations that are the subject of this bill. It would be impossible for the President to be able to devote his attention to this list and intelligently deal with it. In fact, it would be bad public policy for us to require that the President be the only person permitted to exercise the authority. Yet that is exactly what this proposed legislation does.

A provision of the section being discussed that was not quoted occurs on page 184 of the printed version of S. 149. At the end of the section on enhanced controls, it reads as follows:

The President may not delegate the authority provided for in this subsection.

Well, usually we provide that the President may delegate responsibility because, frankly, he has better things to do than be a staffer going through all of these items with the background to know whether or not some of them should be taken off the list or not. It is simply unrealistic to expect any President, despite a President's intelligence and willingness to get into the details, to be able to exercise that authority with the limitation here. That is the primary reason for our concern.

We appreciate the fact that the President has a waiver authority. But in most cases the President's waiver authority can be realistically administered and utilized. I think it is unrealistic to expect the President to be able to do that in this case.

One of the possible amendments, I advise the Senator from Maryland, I will present—if not I, another Member will—is an amendment to try to solve this particular problem and conform this provision of the bill more to the type of legislation that ordinarily accompanies a Presidential waiver authority. We think that would improve the administration of this act and make the waiver authority really meaningful. I advise the Senator of that point. I intend to make a statement that generally speaks to this issue of the Export Control Administration reauthorization.

I also want to speak specifically to the amendment offered by the Senator from Tennessee before we have a vote on that amendment. Given the fact that there are a couple of other Senators prepared to make remarks at this time, I am willing to stand back and let those Senators make those remarks and then I will come and make mine later.

If there is anything I have just said that is subject to correction, I would be happy to stand for any questioning with respect to my comments, but perhaps we will have an opportunity to debate that at the time I offer an amendment, unless there is a possibility we might work that out between the proponents and opponents of the legislation in the meantime.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I say very briefly to my distinguished colleague from Arizona, this is quite a broad sweeping power we are providing to the executive branch. I think it is reasonable to expect the decision will be made by the President. That does not mean the President has to staff his own decision. It will obviously be staffed for him. But the determination to provide the enhanced controls ought to be a Presidential determination.

We do not expect that is going to be before him very often, but when that sort of issue arises, it seems to us it is reasonable that the President should make that judgment.

One of the difficulties we have been experiencing all along is the way the export control regime gets bound up down the line and the decisions never go to the top to be made in those instances in which there are differences of opinion. In most instances, you have unanimity below either for the license or against the license. That is over and done with. But in those instances in which that is not the case and the President is going to exercise his sweeping authority, we do not think it is unreasonable to expect a determination to be the President's.

I am very frank to say, I do not know to whom you would otherwise delegate it, since he represents the ultimate arbiter amongst the departments and agencies, and I do not see any way you can give that role to anybody else because anybody else would be out of one or another, presumably out of one or another of the departments or agencies. You are not, as it were, above it making this separate and independent determination which the President will make.

The other point I want to note is that the President and his team support this legislation, so they obviously do not see in it the kind of extended practical problems which the Senator has—presumably they do not see that in the bill; otherwise, they not only would not have supported it, but they have been very strong in their support. It is fair to say that their support is anything but pro forma. It is very active and very vital, and they have gone over this legislation very carefully over an extended period of time and reached the judgment they are very much behind it. That is, of course, what they urged on the Senate, including, of course, the receipt this morning—I do not know if the Senator has yet had an opportunity to see it—a letter from Secretary Powell, Secretary Rumsfeld, and Secretary Evans in very strong support of the legislation.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I say to the Senator from Maryland, yes, I have seen the letter. I agree with him the support is much more than pro forma; it is sincere and thought-out support. I do not know how many pages of this very complex legislation there are. There are numerous areas that represent room for improvement, and support for any legislation generally does not obviate the possibility of improvements and compromises.

I hope, as this debate goes forward, we might consider the possibility that in this particular area a mechanism be found to provide for a waiver that is more realistic in its ability to be practically used than to require the President, not delegated to anyone else, as being the only person who could grant such a waiver.

We will talk more about that later. The Senator from Virginia is here, and I do not want to impinge upon his time. Perhaps we can work that out. If we cannot, perhaps we will need to offer an amendment.

I thank the Senator.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Madam President, I am pleased to rise in support of S. 149, the Export Administration Act of 2001. Back on June 28, 2001, I joined my colleagues of the Republican Senate high-tech task force, Senators ALLARD, BENNETT, BROWNBACK, BURNS, GRASSLEY, HATCH, and HUTCHISON, in sending a letter to majority leader TOM DASCHLE urging him to bring S. 149 to the Senate floor as early as possible. I am grateful to the majority leader for heeding our request and permitting the Senate to consider this very important legislation.

I ask unanimous consent that the letter my colleagues and I sent to Senator DASCHLE be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

HIGH TECH TASK FORCE, JUNE 28, 2001.

Hon. TOM DASCHLE,

Senate Majority Leader, The Capitol, Washington, DC.

DEAR MR. LEADER: As members of the Senate Republican High Tech Task Force, we write to ask you to schedule floor consideration of S. 149, the Export Administration Act of 2001 (''EAA''), as the next piece of business on the Senate floor following conclusion of the pending health care bill. Prompt consideration of this bipartisan bill would be a welcome sign of your willingness to pursue a bipartisan agenda.

As you know, Senators Gramm and Enzi have worked diligently to craft the broadly-supported pending EAA bill which was reported out of the Banking Committee by a 19–1 vote. The Bush Administration also deserves great credit for weighing in to support this critical piece of legislation. President Bush himself last month stated publicly that he hopes the Congress will send him the EAA bill for his signature.

The proposed EAA legislation represents a logical improvement over the outdated EAA Act passed in 1979 and the current patchwork of executive orders regulating export controls issued under the International Emergency Economic Powers Act. The bill dramatically enhances our national security needs by increasing penalties, focusing attention on truly sensitive items, and granting the President new authority in cases involving national security and terrorism. At the same time, the legislation will remove punitive regulatory controls on mass market and foreign availability technology products that have hindered the competitiveness of our technology industries. Study after study have concluded that the present system of export controls has the unenviable distinction of harming private enterprise without enhancing security.

At a time when our technology industries are seeing declining sales, it is imperative that the Congress remove unnecessary and ineffective barriers to exports that will keep technology jobs in this country.

The current extension of the 1979 EAA Act will expire on August 20, 2001. Given this bill's strong bipartisan support, we believe it could be quickly considered and passed by the full Senate, thereby minimizing the interruption of the Senate schedule for other business. Therefore, we look forward to your prompt scheduling of floor action on this important legislation.

Sincerely,

Sam Brownback, George Allen, Chuck Grassley, Kay Bailey Hutchison, Robert F. Bennett, Orrin Hatch, Conrad Burns, Wayne Allard.

Mr. ALLEN. Madam President, I congratulate Senator GRAMM, Senator ENZI, and Senator SARBANES who have worked diligently to craft this broadly supported measure. President Bush and his team also deserve a great deal of credit for weighing in, in support of this legislation.

This bill represents a logical improvement over the outdated Export Administration Act that was passed in 1979 and the current patchwork of Executive orders regulating export controls issued under the International Emergency Economic Powers Act. S. 149 dramatically enhances our national security needs by increasing penalties, by focusing attention on truly sensitive items, and granting the President new control authority in cases involving national security and terrorists.

At the same time, this legislation will remove unnecessarily burdensome punitive regulatory controls on mass market and readily available foreign technology products that have hindered the competitiveness of U.S. technology industries.

Many studies have concluded that the present system of export controls has the unenviable distinction of harming American private enterprise without enhancing our security. At a time when our technology industries are seeing declining sales—and, indeed, the technology sector of our economy is in a recession—it is imperative that the Congress remove unnecessary and ineffective barriers to exports and, by doing so, help keep technology jobs in our country.

Current U.S. policy on export controls is harming good paying jobs for Americans, and it is time that Congress acts to remedy this situation.

Existing export controls which aim to keep our computing power out of the hands of potential U.S. adversaries do not work given the technological and global realities of the 21st century. These policies must be reformed. One may ask why. There are five main reasons. No. 1, they are outdated; No. 2, they are ineffective; No. 3, they are unrealistic; No. 4, they are potentially dangerous; and No. 5, these current laws are bad economics.

Let me expand on that and actually cite some studies that point out the inefficiencies and ineffectiveness of these current laws.

They are outdated: The current policy was formulated during the cold war when we once had a very clear adversary, the U.S.S.R., and when computers were the size of a dorm room.

Today's international makeup is much more vague. Our potential adversaries or enemies are not as easily identified, and computers are now the size of a large remote control. There are some computers, such as Zybernaut's Mobile Assistant, which you can wear on your belt. They weigh a couple of pounds at most.

The export controls we have now are ineffective. Access to high-performance computing capability cannot be restricted. Almost anyone, whether they are in Vienna or Venezuela or Virginia, can download computing power off the Internet or link lower level computers together to perform certain calculations.

These current laws are unrealistic. The United States cannot attempt to control access to computer hardware or components when foreign competitors are producing the same types of technology as domestic firms.

In today's global economy, the United States no longer has a clear monopoly on technological innovation. These rules are potentially dangerous. By struggling to control access to computers and computer hardware that is readily available worldwide, we are diverting resources from policing the truly sensitive capabilities. All the while, our military is way behind the curve when it comes to taking advantage of the very technologies we are trying to restrict.

Finally, these current laws are just bad economics. As high-tech industry suffers a dramatic downshift, we are limiting their access to the fastest growing consumer markets in the world. In the new global economy, being first to market is a critical advantage. Currently our companies are not on a level playing field. This hurts their ability to make inroads into millions of potential new customers, not to mention reducing how much U.S. firms can spend on continued R&D, or research and development, to maintain our competitive and innovative leadership.

I say to my colleagues in the Senate, the time is right to modernize and reform export controls. Leading members of the Senate Banking Committee have worked closely to develop a thoughtful, reasonable approach to balancing U.S. national security and economic interests. There is broad bipartisan support for reform, including among the national security establishment.

President Bush and his national security advisers, including Secretary of State Colin Powell, and Condoleezza Rice, Commerce Secretary Don Evans, Defense Secretary Donald Rumsfeld, former President Clinton, four former Secretaries of Defense, the Pentagon, the Defense Science Board, and the General Accounting Office, Democrats and Republicans alike, have all drawn the same conclusions: The current system is broken.

For example, under the current law, the President is required to use an outmoded standard called MTOPS, millions of theoretical operations per second, to measure computer performance and set export control thresholds based on country tiers.

A recent report on ''Computer Exports and National Security in the Global Era'' issued by the Center for Strategic and International Studies reflects the widespread consensus amongst those in the U.S. defense and security communities that MTOPS-based computer hardware controls are ''ineffective given the global diffusion of information technology and rapid increases in performance.''

The report explains, for example, while various U.S. computer systems are currently subject to controls based on their MTOPS ratings, the equivalent computing power can be easily achieved by clustering several widely available low-level systems.

A recent report from the Department of Defense itself also concludes, ''MTOPS has lost its effectiveness as a control measure due to rapid technology advances.'' The General Accounting Office's report to the Senate Armed Services Committee similarly concludes that the MTOPS standard is outdated and invalid and the current export control system for high-performance computers which focuses on controlling individual machines is ineffective because it cannot prevent countries of concern from linking or clustering many lower performance uncontrolled computers to collectively perform at higher levels than current export controls allow.

The Defense Science Board echoes this same analysis, warning that ''clinging to a failing policy of export controls has undesirable consequences beyond self-delusion.''

Finally, a multilateral export control study recently released by the security-minded Harry Stimson Center reflects the overall consensus view that:

[T]he system of controlling the export of militarily sensitive goods is increasingly at odds with the world characterized by rapid technological innovation, the globalization of business and the internationalization of the industrial base, including that of defense companies. Although efforts have been made to adapt Cold War processes and regulations to changed circumstances, the current approach to controlling militarily relevant trade has failed to keep pace with changing international conditions and often falls short of adequately protecting U.S. national security interests.

In effect, the Center for Strategic and International Studies, the Department of Defense, the General Accounting Office, and the Defense Science Board all agree that while the most advanced stand-alone high-performance computers may be controllable, high-performance computing is not. Thus, by struggling to control the uncontrollable, the Federal Government is diverting our attention away from the export of truly sensitive technologies. By keeping ineffective export controls in place, the Federal Government is restricting U.S. industry's access to the fastest growing consumer markets around the world without achieving any significant national security advantage. In the process, the Federal Government is creating an unlevel playing field for U.S. companies and stifling future research and development efforts upon which U.S. technological and military supremacy demands and depends.

For the U.S. computer industry to maintain its preeminence in innovation and business, we must promote policies that encourage investment in R&D, not hinder it. S. 149 represents a solid stride toward an export control system that effectively balances our Nation's economic and national security interests.

As it relates to computer exports, this bill removes the MTOPS regulatory straitjacket and empowers the President, the Secretary of Commerce, and the Secretary of Defense to review the national security control lists and determine both what computers should be controlled and how they may be controlled. The bill does not alter the way in which computer exports are currently controlled under existing regulations. Rather, it simply gives the President, the Secretary of Commerce, and the Secretary of Defense the flexibility to reassess the effectiveness of these controls in the future, taking into account all relevant risk assessment factors, including the factors affecting an item's controllability, such as foreign availability and mass market status, as well as other relevant factors such as, in the case of computers, whether the capability or performance provided by the item can be effectively restricted.

Passage of S. 149 does not in any way equal decontrol of computer hardware sales. Many levels of restrictions will still exist to protect U.S. national security interests if the EAA becomes law, such as rogue country embargoes. Those rogue country embargoes will remain in place, and user restrictions will allow the Government to prevent specific sale of computer technology to certain organizations or individuals, and protections over highly specialized military hardware and software applications will still exist.

The success of export control efforts depends on vigorous enforcement of the law, with meaningful punishment of violators. For many potential violators, the monetary penalties associated with the current Export Administration Act pose no compelling deterrent. The Weapons of Mass Destruction Commission noted that under current law, ''an export control violator could view the risk and burden of penalty for a violation as low enough to merely be a cost of doing business, to be balanced against the revenue received from an illegal transaction.''

The Cox committee recommended that particular attention be given to reestablishing higher penalties for export control violations. Toward that end, S. 149 significantly enhances criminal and civil penalties for export control violations.

Section 503 of the bill imposes a criminal fine of up to 10 times the value of the exports or $1 million for each violation, whichever is greater, for willfully violating or willfully conspiring to violate the provisions of S. 149 or any regulation issued under it.

In addition, individuals may be imprisoned for a period of up to 10 years, and companies can be fined up to 10 times the value of the export, or $5 million, whichever is greater, for each violation.

Additionally, the Secretary of Commerce may impose on a violator, in addition to or in lieu of the criminal penalties, a maximum civil fine of $500,000 for each export control violation. This bill gives the Secretary of Commerce the discretion he or she needs to take into account the aggravating and mitigating factors that may be present in any given case.

Finally, the Government will be able to focus its resources on those critical technologies it must protect, rather than wasting time and money on the futile exercise of attempting to control access to commodity computing power and technology.

I say to Members of the Senate, Senators ENZI, GRAMM, and SARBANES have worked diligently in crafting an outstanding bill. The passage of S. 149 is important to the future of national security and economic interests of the people of the United States of America. I thank Members for their efforts and urge support of S. 149.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I held in August, in Reno, NV, a high-tech townhall meeting. I have held a number in Nevada. Although we do not manufacture a lot of computers and computer equipment in Nevada, we have a high-tech industry. There is no issue more important to them than passing this legislation. If it is important to people in the high-tech industry in Nevada, it is also important in the high-tech industry around the country. I have had numerous calls over the last year and a half from companies around America indicating the importance of this legislation. It is high time we did something about this.

I applaud and commend Senators SARBANES and GRAMM, the chairman and ranking member of the committee of jurisdiction, for their advocacy for the last many months on this issue. Of course, members of the committee, Senators ENZI and JOHNSON, have worked extremely hard and have done exemplary work in helping move the legislation.

I strongly support passage of S. 149. This bill is a product of many years of hard work. A number of people have worked on this. I worked with my friend, Senator BENNETT of Utah, on the appropriations level making sure, especially last year, we had some legislation impacting on this. This bill represents a well-crafted, appropriate balance between a more modern, effective export control system and the U.S. national security interests.

I talked about this high-tech meeting held in Reno at the University of Nevada. It was a hearing to determine what is going on in Nevada and around the country with the high-tech industry. It is very clear at this time in the history of the United States there is hemorrhaging taking place. There are many examples. We have a high-tech company on the front page of the Reno paper today trying to maintain their listing with NASDAQ. One year ago their stock was about $35 a share; it is now at 40 cents a share. There are many other examples of this. This is a high-tech company mentioned on the front page of the Gazette Journal today. There are companies such as this all over America.

We as a country need to maintain our competitive edge. If this legislation does not pass, this equipment will be manufactured someplace else using non-Americans and it will be the same product. We need to do it here. That is what this is about. You can talk about what percentage moves through and how little it matters. It is something we need to do. Many business coalitions, including the Computer Systems Policy Project, the Business Roundtable, the American Electronics Association, the Electronics Industry Association, the Association of Manufacturing Technology, and the Computer Coalition of Responsible Exports are supportive of S. 149. Among the members are Apple, AT&T, Boeing, Compaq, Dell, Hewlett-Packard, IBM, Intel, SGI, Sun Microsystems, Unisys, and United Technology. These are extremely important businesses in America. They

are important employers in America. They are important on a worldwide scene. That they are joining with us in maintaining how important it is to pass this legislation says a lot.

I throw a bouquet to the Bush administration for having three of their top Cabinet officers write a letter saying how important this legislation is. It is important. We heard from the Secretary of State, the Secretary of Defense, and the Secretary of Commerce indicating this legislation is critically important. This is bipartisan legislation.

Having worked this floor the past couple years or more, I have never seen a piece of legislation with so much support held up by so few people. Everybody wants this to pass. But in the Senate, it is difficult to get this to the point where it will pass. And it will pass. It will. It is hard to find someone who does not believe the current system of export controls in the United States is broken and needs to be fixed. We cannot continue with what we now have.

We have four former Secretaries of Defense who support this legislation. The Pentagon supports this legislation. The Defense Science Board and General Accounting Office, Democrats and Republicans alike, have drawn the same conclusion: Existing export controls aimed to keep computing power out of the hands of U.S. adversaries has not worked and must be reformed.

Why? No. 1, what we have is outdated. Everyone knows how rapidly the computer industry is changing. In the Clark County Courthouse in Las Vegas, NV, one floor was dedicated to taking care of the computer needs of Clark County. That same work can be done in a very small office now, not one whole floor. We had to have the temperature controlled to a certain degree; no longer is that necessary. In fact, I bet we can do on my laptop most everything that could be done on the vast floor 25 years ago.

This is important. The present law is outdated. The current policy was formulated during the cold war. The cold war is over, when we had one obvious adversary, when computers were the size of a dorm room, and some the size of dormitories. Today's international makeup is much more vague. Potential enemies are not as easily identified, and computers are now the size of a remote control for a television set.

Another reason we must change this law is the present law is ineffective. Access to high-performance computing capability cannot be restricted. Anyone, whether Indonesia or Indiana, can download computing power off the Internet or link lower level computers together to form certain calculations. You do not have to have a degree from Harvard in computer science to do that. High school kids can do it. Probably my grandchildren in the sixth grade can do a lot of this. Why does the law need to be changed?

The current law is unrealistic. The United States cannot attempt to control access to computer hardware components when foreign competitors are producing the same types of technology as domestic firms. In today's global economy, the United States no longer has a clear monopoly in technology innovations. We must change because the present law provides potential dangers. By struggling to control access to computers and computer hardware that is readily available worldwide, we revert resources from the true areas we need to police. All the while, our military is way behind the curve when it comes to taking advantage of the very technologies we are trying to restrict.

Finally, it is just bad economics to keep the present law in force. As the high-tech industry suffers a dramatic downshift, we are limiting their access to the fastest growing consumer markets in the world. In the new global economy, being first to market is a critical advantage. Currently our companies are not on a level playing field. The computer made in France can get there much quicker than a computer made in the United States. This hurts our companies' ability to make inroads with millions of potential new customers, not to mention how much U.S. firms can spend on continued R&D, research and development, to maintain our competitive and innovative leadership.

The current law requires the President to use an outmoded metric, MTOPS, which stands for millions of theoretical operations per second—MTOPS. The current law requires the President to use MTOPS to measure computer performance and set computer thresholds based on country tiers. What does this mean?

A recent report on ''Computer Exports and National Security in the Global Era'' issued by the Center for Strategic and International Studies, CSIS, reflects the widespread consensus among those in the U.S. defense and security community that MTOPS-based computer hardware controls are ''ineffective given the global diffusion of information technology and rapid increases in performance.'' The report continues and explains that while various U.S. computer systems are currently subject to controls based on their MTOPS rating, the equivalent computing power can be easily achieved by clustering several widely available low-level systems: Radio Shack.

The conclusion of the CSIS report could not be more clear. No. 1, MTOPS are a useless measure of performance; No. 2, MTOPS cannot currently measure performance of current microprocessors or sources of supercomputering like clustering; and third, this makes MTOPS-based hardware controls irrelevant. The best choice is to eliminate MTOPS.

This study is only the most recent of a host of export reports to identify the system governing computer exports is broken. A recent report from the Department of Defense concludes, for example, that:

> MTOPS has lost its effectiveness as a control measure . . . due to rapid technology advances.

On this point, the Department of Defense has emphasized that:

> Controls that are ineffective due to market and technology realities do not benefit national security. In fact, they can harm national security by giving a false sense of protection; by diverting people and other finite export controls resources from areas in which they can be effective; and by unnecessarily impeding the U.S. computer industry's ability to compete in global markets.

Those who oppose this legislation are living in a dream world, a world of more than two decades ago. In reality, there is every reason to pass this legislation. Four Secretaries of Defense, I repeat, current Cabinet officers, scientists all over the world—scientists in the United States—America's burgeoning high-tech industry, without question or qualification, support this legislation.

The General Accounting Office's report to the Senate Armed Services Committee similarly concluded, with the CSIS report, that the MTOPS standard is ''outdated and invalid'' and:

> The current export control system for high performance computers, which focuses on controlling individual machines, is ineffective because it cannot prevent countries of concern from linking or clustering many lower performance uncontrolled computers to collectively perform at a higher level than current export controls allow.

Finally, in this regard the Defense Science Board echoes this same analysis, warning that ''clinging to a failing policy of export controls has undesirable consequences beyond self-delusion.''

We could go on literally all afternoon, reading from reports and studies, scientific analysis that says the present system is worthless, it is broken; all it does is hurt our economy. It doesn't do anything to protect our security. In effect, the Department of Defense, the General Accounting Office, the Defense Science Board, the Center for Strategic International Studies, and a multitude of other entities and organizations all agree that while the most advanced stand-alone high-performance computers may be controllable, high-performance computing is not.

By struggling to control the uncontrollable, we are diverting our attention from the export of truly sensitive capabilities. By keeping ineffective export controls in place, we are unnecessarily restricting U.S. industry's access to consumer markets around the world. In the process, we create an unlevel playing field for U.S. companies and we stifle future R&D efforts on which U.S. technological and military supremacy depends.

What does this all mean? Should we throw away any attempt to control technology and ''sell, sell, sell''? Of course not. We must develop a new,

more effective system that better balances our economic priorities with national security interests. S.149 represents a critical step forward toward this very worthwhile goal. As it relates to computer exports, the bill removes the MTOPS straitjacket and empowers the President of the United States, his Secretary of Commerce, and his Secretary of Defense to review the National Security Control List and determine both what computers should be controlled and how they may be controlled.

This bill does not eliminate controls. It just sets up a modern standard of controlling what we are going to do with exporting computers. This bill does not—and I think we need to be very clear on this point—alter the way in which computer exports are currently controlled under existing regulations. Rather, it simply gives the President, the Secretary of Commerce, and the Secretary of Defense the flexibility to reassess the effectiveness of these controls in the future, taking into account all relevant risk assessment factors, including the factors affecting an item's controllability, such as foreign availability, mass market status, as well as other relevant factors such as, in the case of computers, whether the capability of performance provided by that item can be effectively restricted.

The chairman of the Banking Committee, Senator SARBANES, I think has done an excellent job explaining this today. We have a lot of very talented people in the Senate. But as far as your basic intelligence and someone who understands what goes on around here, there is no one I have more confidence in than the Senator from Maryland. He is a Rhodes scholar in more than name only. He is somebody who is truly very intelligent. And when he said today—I talked to him before he came to the floor, and then I heard him say it on on the floor—he read this bill from cover to cover, that says a lot. This is a heavy piece of legislation. This is a bill that would take a long afternoon of reading if it could be done. It is about 350 pages long. If you wanted to have somebody who knew the bill better than he—and I don't know who that would be—to give him a test on it, either essay or multiple choice, he would pass it with a great score.

He has certainly stated on several occasions today, this bill is going to improve the security of this country and allow our commercial interests to be more competitive. I think it is important we keep that in mind. Two considerations: Our security is going to be maintained, and we are going to be able to be commercially more effective than we have been. We are going to continue leading the world in selling these computers that our scientists have developed.

The bill we are considering takes all challenges into account and will allow, I repeat, the United States to move forward and formulate an export control policy that recognizes the technological, trade, and political realities of the 21st century. In so doing, this bill will effectively promote U.S. economic and national security interests, a goal we should all agree is important.

It is not as if computer companies will be able to sell willy-nilly to anyone who comes calling in search of, for example, a submarine detection system. This legislation applies several levels of restrictions to protect our national security interests, including, but not limited to, total embargoes on shipping products to rogue nations such as Iran and Iraq at the present time; end-user restrictions that identify specifically who in certain countries the United States can and cannot sell to; and, finally, controls over the most critical technologies, highly specialized, military-designed software and hardware applications.

That is pretty strong.

By focusing our resources in these areas, instead of wasting our time and money on trying to control commercial computing power, the government will be able to better keep the most critical applications out of the wrong hands.

I want to stress to my colleagues that the need for export control reform is widely supported.

To quote an esteemed member of our country's National Security community, former National Security Advisor Brent Scowcroft, ''It's a whole new world. And I think it's past time we respond to that world. The genesis of invention and innovation used to be the military-industrial complex but the government doesn't control technology the way it used to.''

The bill we are considering takes all of these challenges into account and will allow the United States to move forward and formulate an export control policy that recognizes the technological, trade and political realities of the 21st century.

I say again that the Department of Defense, the General Accounting Office, the Defense Science Board and the Center for Strategic and International Studies have all concluded that MTOPS is an ''outdated and invalid'' metric and that the current system is ineffective. Repeal of the National Defense Authorizing Act language would give the President the flexibility to develop a more modern and effective system.

This is a good bill for Nevada. It is a good bill for the country. It is a good bill for the world. I urge my colleagues to follow the lead of the managers of this bill, the Senator from Maryland and the Senator from Wyoming, and move forward. Defeat the amendments that will be offered by just a small number of Members. Defeat them overwhelmingly. This is important legislation. We need to send a message to the world that we mean business in maintaining our superiority in the production of computers.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise in opposition to the amendment to S. 149 proposed by the Senator from Tennessee. This amendment contains substantial changes that will not only upset the delicate balance of control between agencies established in S. 149, but it will create a burdensome licensing, classification and regulatory process and further fuel the turf battles between agencies.

This amendment would allow a reviewing agency to stop the clock during the licensing application process ''due to the complexity of the analysis'' or ''because of the potential impact on the national security or foreign policy interests of the United States.'' Simply put, it would unnecessarily delay licensing decisions and, ultimately, reduce the competitiveness of U.S. exports.

This amendment is unneeded at best and harmful to national security and the economy at worst. The danger of this amendment lies in that it would enable a single agency to delay the approval of a license for up to 60 days due to the ''complexity of the analysis.'' Used effectively as a delay tactic, a reviewing agency could bury an application in the ''complex analysis required'' bin and walk away for 2 months. The natural bureaucratic tendency to avoid risk would cause unprocessed license applications to languish for days weeks or even months without any action. This extended delay would not only greatly increase the overall processing time, but it could bring the entire process to a grinding halt and destroy an exporters ability to meet market demand quickly and efficiently. Furthermore, at this point, the exporter is in limbo, as she or he neither has the approval needed to move forward or the denial needed to make improvements.

One exception would allow for 60 days, but there are two exceptions in here. So it can be read that an agency would get 120 days by utilizing the two exceptions one right after the other.

Although proponents argue that this amendment would ensure ample time for the Department of Defense, the Department of State or other reviewing agencies to conduct their investigations, it is, in reality, a solution in search of a problem. Never has there been a case where the Departments of State and Defense have not had enough time to adequately review a license application. In fact, Fiscal Year 2000 data from the Department of Commerce indicates that the average time for the review of a license by the Department of Defense was only 13 days. The Department of Energy averaged 22 days, while the State Department averaged 9 days. All three agencies demonstrated that the 30 days currently permitted to review a license is more than adequate. Exporters lose their customers when faced with uncertainty about delivery times. This amendment could place all export licenses in virtual limbo for five

months—surely enough time for competitors to easily step in and fill our exporters orders.

Moreover, any agency that might conceivably require more time to review an application is fully protected under S. 149. First, an agency may exercise any of the carefully thought-out exceptions listed in Section 401(g). For example, under Sec. 401(g)(1), the applicant might be willing to provide additional time in order to have a better chance at approval. Second, an agency is always free to return a recommendation of disapproval, thereby kicking the application into the interagency dispute resolution process. Third, once within the interagency process, an agency can escalate a decision to a higher level.

Second, the amendment undoes the discipline of the entire system. A key recommendation of the various commissions that have studied our export control system is to increase discipline in the export control system. Without strict deadlines, discipline disappears. And without discipline, the system is unworkable. An undisciplined system is the same as no system at all. The consequences for both our national security and economic interests would be severe.

It was mentioned in the arguments in favor that the Cox commission had taken a look at this and proponents argue that the longer review periods were provided for by the Cox commission.

The Banking Committee extensively reviewed the recommendations of the Cox committee, and indeed adopted virtually all of their dual-use-related suggestions. Recommendation 31 of the Cox committee did suggest longer review periods for national security purposes. However, the Cox committee made that recommendation only with regard to items that are of the greatest national security concern. For other items, the Cox committee strongly recommended streamlining the process and providing greater transparency, predictability, and certainty.

S. 149 does not classify items as of ''greatest national security concern'' or ''lesser national security concern.'' Instead, it sets up a risk-based system that allows the administration to make such determinations within the bill's guidelines. Based on past experience and demonstrated agency data, both the administration and the bill sponsors believe that S. 149's system—by setting mandatory time periods with the existing ''stop the clock'' exceptions—is the most effective framework for operating export controls.

In conclusion, this amendment, although it is portrayed as simple and common-sense, undoes the key element of discipline of S. 149. It would result in a application system bogged down by bureaucracy and politics, a system in which delays are the rule rather than the exception. It is not simple or technical, but would undo the careful balance of the bill. I urge its rejection.

I thank the President. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I apologize to my colleagues for being late; I was busy on a matter important to my State. I wanted to come over today both to oppose the amendment that is before us and to speak on behalf of the bill itself. Let me do those in reverse order.

First of all, our colleagues can be proud of the fact that the bill before us today is truly bipartisan, and I want to congratulate Senator SARBANES for his leadership on this bill, both as chairman of the Banking Committee now and as ranking member when the bill was originally written. I also want to thank Senator JOHNSON and Senator ENZI for their leadership on this bill.

This bill tries to deal with an inherent conflict that we face as a nation. On the one hand, we want to be the greatest technological giant in the world. We want to dominate the world in producing everything that embodies new technology because the country that controls that technology ultimately dominates the world economically. It has the highest wages, and the brightest future. So, we have not only a goal but a passion to see that when new tools are produced, when new technology is implemented in the marketplace, that it is American technology, implemented by Americans.

We are the most technologically and scientifically friendly society in history, which is one of the reasons we are the greatest country in the history of the world. This bill is very much about that, but it is also about our other objective, which is to try to see, to the maximum extent we can, that new technology does not get into the hands of those who would use it to harm America or her interests and to engage in terrorist activities around the world. And that is the inherent conflict between these two goals.

What this bill is trying to do is to find a way to deal with this inherent conflict. I personally believe, after having now spent some 2½ years working on this bill, that we have come to a good solution. We have come as close as you can come to reconciling these differences. Let me try to explain how.

I know some of our colleagues are concerned that we have gone too far in trying to promote American sales of technologically advanced products. I believe, upon close scrutiny of this bill, objective observers will conclude that charge is not true. This bill tries to recognize something that we do not like to admit but that everybody has to admit is true: if a technology is generally available, if you can go to Radio Shack and buy something, if it is mass marketed all over the world—it may have defense implications; it may be something you would want to prevent a terrorist or terrorist state from getting—but if something is mass marketed, then would-be terrorists can go to Radio Shack and buy it. Would-be terrorist nations could get access to something that is mass marketed.

One of the great strengths of the bill is that we introduce a new concept into American law—the concept of mass marketing. What we say is, if a technology is available on a mass market basis, if you can buy it all over the world, it is too late to protect it. So we propose building a higher wall around a smaller number of items. That is the logic of this bill. It is a very simple logic.

The second component of the bill recognizes that it is very difficult to prove somebody knowingly sold or transferred technology that is protected. And since it is very difficult to prove that—very difficult to catch bad actors—we want the penalties to be extraordinarily stiff. Penalties in current law are so small as to be irrelevant to a modern corporate entity.

Our penalties, which can run into the tens and hundreds of millions of dollars, can, for repeat offenses and a pattern of behavior, result in imprisonment or life imprisonment or penalties that affect anybody's behavior.

So we build a higher wall around a smaller number of items. We recognize it is certainly true that you can go into any Radio Shack and buy a computer that is more powerful than the most powerful computer that existed in the world when I was a college professor.

I remember running multiple regressions which people now run on calculators. I had these punchcards that had all this data—more precious than life, almost. You would tote big boxes of these punchcards over to the computer center at 4:30 in the morning. They had an entire building that had an analog computer—an entire building. And it had so little storage capacity that my little multiple regression took the entire memory of the entire computer. And this whole building was devoted to running this computer. Now any college student taking college statistics can perform the same transaction on a modern calculator.

Obviously modern technology can be put to defense use. But the point is, if our purpose is just to feel good, then we could do a lot of different things. But in writing this bill, we want to have a meaningful impact in the law. So for technologies that are readily available, that can be purchased anywhere, we decided to take them off the list of restricted export items.

We have put together a system where the security agencies have the strongest voice they have ever had in the process. We have put together a procedure whereby an agency that has doubt can buck the decision up to a higher level, if they can get approval by a Senate-confirmed person in their department.

We make it easier to say no. We give the President an all-encompassing power: if the President of the United States, having reviewed all the data,

concludes that the sale of an item represents a national security threat, no matter whether it is mass marketed or anything else, then the President can intervene and say no. Now, the President himself has to do it. This cannot be delegated to somebody else, removing the President's responsibility to answer whether it is wise or promotes the public interest. That is the basic structure of this bill.

This bill is strongly supported by the administration. It is supported by the Defense Department. It embodies the recommendations from the Cox Commission, whose key recommendation was that Congress quit trying to do things that only make it look as if it is concerned about national security, and instead focus on national security. We have done that.

Some of our colleagues have concerns. I am hopeful, perhaps as early as in the morning, that I will get a chance to sit down with them to see whether, even at this late date, we might work something out that could give them greater confidence in what we are doing. But regardless, we have a good bill. It is a bill the country needs, and it is important.

Let me add, my trusty staff has just passed me a note reminding me that we made no less than 59 changes in trying to deal with the concerns some of our colleagues raised in the last Congress. It is not as if the chairman of the Banking Committee, Senator SARBANES, and I have been deaf in terms of listening to their concerns. We have listened to them, and we have responded. We have made 59 changes in the bill and worked with the previous administration. And when the new administration came, we gave the bill to them, and they made suggested changes which we made. So, I think we have tried to work with everybody. But the point is, we are not through working. If we can improve the bill, we want to do it.

Let me address a central point, though. I think it is important that people understand the logic of the bill. I then want to talk very briefly about the Thompson amendment.

Ultimately, you have to ask yourself a question: Is America's security enhanced by our being the dominant economic power in the world that generates the great bulk of modern technology and that implements it first? Or could we promote our national security by freezing things as they are, by stopping the production and the export and the utilization of technology that might in the future have national security ramifications?

Some people still seem to have this vision of the Cold War—that Ivan is at the gate, that technology is coming out of defense research establishments and into the American private sector, and then into the world private sector, and it is then absorbed by would-be adversaries.

The plain truth is, that concept of the world is no longer valid. Most of the modern technology is coming from the private sector. In a sense, we are back to where we were in World War I, where one of the things we tried to do was take modern technology and implement it for military use. Then, as we developed what Eisenhower called the military industrial complex and redeveloped basically this university defense industry consortium, it was the engine for new technology.

But today technology comes from the private sector, from international companies. If we don't let them implement the technology and put it to work and produce products here, they will produce them elsewhere. The net result is that we will have less control than we do now.

Ultimately, the security of America is based on our ability to produce new technology, not on the technology that exists today. It is based on the technology we are going to generate in the future and that we are going to implement before anyone else. The only way we can keep that system intact is by allowing American industry to use modern technology.

AMENDMENT NO. 1481

Mr. GRAMM. The Thompson amendment on its face looks desirable. But in reality, it assaults a system that we have put into place that forces a decision. Let's say I am Texas Instruments, and I want to export a technology. I have to file an application. Now, if I can prove that the technology is mass marketed that it is readily available or if we find that the technology is going to be mass marketed in the future, then all of those factors can come into play in making the export decision. But if at any point in the process an official believes there is a national security concern, then all he has to do is say no.

The only thing that any one person on the whole panel representing all of these national security agencies—the Department of Defense, the Department of State, the Department of Commerce—has to do to stop the process is to utter the magic word ''no.'' And when they say no, the process is stopped, and the decision can be appealed to the next highest level—ultimately, to the President himself. But there is no lack of ability to stop a sensitive product from being exported.

What I am concerned about—I have no question in my mind whatsoever of the good intent of this amendment—is that if we make it easy to not say ''no'' but just say ''let's wait,'' if we make it easy for someone to avoid making a decision, no politician and nobody governed by politicians will ever make a hard decision as long as there is any viable alternative. That is a chiseled-in-stone law of public behavior. And if we make it possible for people to delay because it is complex or because they say it has the potential of having national security interest, then what is going to happen? The whole process is going to get tied up. This bill, which tries to achieve a delicate balance between jobs and security, will end up being destroyed.

I want my colleagues to know, in asking them to vote against this amendment, that any representative of any agency who is serving on the review panel has a right to stop the process by saying no. What they don't have the right to do is to say: Well, let's think about this for 6 months, or let's wait for a year while some foreign competitor is developing the same technology. They have to say yes or no, but they can say no.

Secondly, I remind my colleagues that in part in response to concerns that were raised by Senator THOMPSON and others, we put a Presidential waiver in the bill where the President. Even if the review process says yes, even if under the law the export is exempt from the review, if the President finds that the product poses a national security concern, then the President has the right to intervene.

Some people are going to say: Well, you made it so the President can't use it because how can the President do all these things? But we already know that the President doesn't do all these things. The practical implication of this waiver is that when a process is stopped that has otherwise been approved or that would otherwise be exempt, the decision is not going to be made by a deputy assistant secretary in the Commerce Department or an unknown person in the Defense Department. The person who will have to answer to the public for the decision is the President.

What does that do? It guarantees that the agency representatives are not going to make this decision to circumvent the process for a light or transient reason. But if the President believes, based on the best advice he is given, that the product should not be exported, then the decision is made and it is not exported.

I do believe we have put together a good system of checks and balances. The Thompson amendment makes it too easy to bail out of the system. An agency representative can always say no if he objects, but what he cannot do is cause delay after delay. That is what we are trying to deal with here, and I hope my colleagues will vote no on the Thompson amendment.

Let me repeat, since I see that our distinguished colleague has come to the Chamber, I am hopeful we can get together, perhaps in the morning, with those who still have concerns about the bill to see if there is anything we can do to deal with those concerns. I know some suggestion has been made that we might have a blue ribbon panel to evaluate the entire process. I haven't talked to Chairman SARBANES in any detail about that. But I think that is something we would be willing to look at as an addition to what we are doing.

What we want to do is pass a good bill that I believe America needs.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I take this opportunity while Senator GRAMM is still with us on the floor to depart from the debate on S. 149 for a moment and say a few words about my very able and distinguished colleague who announced earlier this afternoon that he will not be seeking re-election next year in 2002. I think that comes as a surprise to many of us. We heard the stories, but no one ever assumed they would amount to anything. All of a sudden, they have.

I just want to say a few words about our working relationship and also, of course, to wish Senator GRAMM the very best. I know that this decision was influenced by his desire, in a sense, to begin a new career and by some family considerations. Of course, I respect those. Obviously his presence here in the Senate—a very strong presence, I might observe—will be missed post-2002 or post-January 3, 2003.

Just as we are co-managing this reauthorization of the Export Administration Act today, I think we have accomplished a great deal working together in our respective roles on the Senate Banking, Housing, and Urban Affairs Committee.

Senator GRAMM was Chairman of the Committee from January 1999 to June 2001. I have to say that virtually every major piece of legislation that came out of our Committee came out either unanimously or very close to it with one exception. We had a big dust-up, as it were, over the financial services modernization bill, essentially over the CRA provisions.

We subsequently worked it out with the Administration and the bill finally passed on the Senate floor in November of 1999 by a vote of 90–8. In the end, we found our way through and reached an understanding and an accommodation.

I want to acknowledge Senator GRAMM for his leadership during his chairmanship on the following bills: the Competitive Market Supervision Act, the International Monetary Stability Act, the Manufactured Housing Improvement Act, and the Public Utility Holding Company Act. In the area of housing and urban affairs, we have passed into law elderly housing legislation; reforms to the rural housing program; and reforms to the Native American housing program. This year we passed Market-to-Market reform and reauthorization legislation through the Committee. The President also signed into law the Iran-Libya Sanctions Extension Act on August 3, 2001. I think the Committee has had a very good track record under his leadership in the last Congress and at the beginning of this Congress.

I also want to acknowledge that without Senator GRAMM's active leadership on the Export Administration Act, we actually would not be on the floor today. I also look forward to working closely with him on the reauthorization of the Export-Import Bank and the Defense Production Act.

I have to say we are going to miss Senator GRAMM. I think that is obvious. I want to say that despite what the President wanted to report about our working relationship, I think we have had a very positive and constructive relationship. It happens that we differ from time to time on an issue—but what is this place about if it doesn't allow room for those sorts of differences? Yet as I indicated, in virtually every instance we were able to accommodate those differences, work through them in a rational fashion, and reach good decisions on behalf of the public.

I know of the determination and commitment with which Senator GRAMM has represented the people of Texas as one of their two U.S. Senators in this body. I know of his own very strong commitment to a peaceful and prosperous America, and his keen interest in economic policy. We have had a lot of very good discussions in the Committee on that very subject. I didn't want the occasion of his announcement just a little earlier this afternoon to pass without taking the floor and making a few comments. I look forward to continuing to work very closely and cooperatively with Senator GRAMM over the balance of this year and all of next year. I hope we can continue to cooperate together and do good things for the country. I say this to my colleague with all respect and affection.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say that I appreciate Senator SARBANES' remarks. When your mama says something nice about you, people expect it. I do think Senator Sarbanes is correct, and I don't think I will do him any harm in Maryland by saying that he and I differ on a lot of subjects. In fact, it might well help him politically by saying that. But when we ended up running the Banking Committee—Senator Sarbanes as a Democrat and me as a Republican—everybody assumed that people who differed on as many issues as we differed on would never get anything done. I appreciate very much his kind comments, and I appreciate his pointing out the plain truth, which is that we have gotten a near record amount done. We have achieved that by recognizing that under our system you get things done by working with people instead of running over people. I have been chairman and Senator SARBANES has been chairman, and I assume he will be chairman for the remainder of my time, but you never know. Maybe Senator REID will have a change of heart and decide to come join us. Who knows?

In any case, I am very proud of our record, and I am very proud to have Senator SARBANES' friendship. Thank you.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, if I may take a minute, I have been fortunate in the last 3 years or so to spend most of my time here on the floor. Every time Senator GRAMM of Texas comes to the floor I always anticipate a good experience. I may not agree with what he is saying, but nobody is more in tune with the subject matter and more entertaining than Senator GRAMM.

I have not served on committees with Senator GRAMM. He served in the House, as I did, and we have served in the Senate together. We have never worked on committees together, as you do a lot of times, where you really get to know people. But I have gotten to know PHIL GRAMM by virtue of the fact that I have such great respect for what he says. I, like Senator SARBANES, don't agree all the time with what he says, but I have to tell you I have great appreciation for the way Senator GRAMM says it and the fact that he is a man of conviction. He talks about what he believes is the way it should be.

He is a person who got an education not in an easy fashion. Senator GRAMM may not want a lot of people to know, but I have heard him saying this, so I am not speaking out of school. He had some learning disabilities. Yet he turned out to be one of the finest scholars Texas had and one of the finest scholars the Senate has ever had. He is a Ph.D., a professor.

I am going to enjoy very much the next 18 months with Senator GRAMM, as I have the prior 19 years or so I have spent in Washington with him. But there will never be another PHIL GRAMM. He is one of a kind. He has really dedicated his life to public service, for which I have no doubt the State of Texas is a better place.

PHIL GRAMM is virtually unbeatable in Texas. It is bad news for the people of the State of Texas that he is leaving. The good news for us in Washington is that he is leaving and we are going to have an opportunity to take the Senate seat. We could never do that with Senator GRAMM here. We know it is an uphill battle he left there.

I wish words could connote the warm feeling that I have for PHIL GRAMM. I just think the world of him. I like him a lot. He is a fine person, and I hope his family is proud of him and also the people of Texas, as they should be.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I suppose I am going to have to say something nice about Senator GRAMM. In all honesty, I have a tremendous amount of admiration for Senator GRAMM, and it was with great sadness that I learned a short time ago he decided not to run again. Regardless of what anybody else does here, I think this institution needs a PHIL GRAMM. The institution is going to have to come up with another one now, it looks like. But the institution has been better for his having been here.

I know of no one who has more intellectual honesty and who is more fearless in the pursuit of the things in which he believes. More often than not,

they are the things in which I believe. But that is almost beside the point. I want to express publicly to him my tremendous admiration for him and for the service he has rendered the State of Texas and our country.

I will yield to anyone else at any time who wants to speak to this subject. But if not, I will continue on with the business at hand. I believe Senator ENZI wants to speak.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, it is with a lot of regret and sadness that I learned of this decision this afternoon. I came to the Senate just 4½ years ago, which would be about the equivalent of the college degree.

During that time, I have gotten to study under PHIL GRAMM. There have been a lot of times that I really thought I ought to be paying him tuition. It has been a tremendous educational process. If we could just get him to be a little more outspoken.

I do recall he said when he retires he is going to retire to a town in the United States that does not have a single traffic light. I assume there are still some of those in Texas. If there are not, Wyoming would welcome the Senator with open arms. We would love to have him there and, of course, we are looking forward to the game against his alma mater, Texas A&M, the team the Senator follows day in and day out, and we are looking forward to a good contest.

I thank the Senator for all of the instruction that he has given, for the education he has provided for America. I have appreciated the stands he has taken and the ferocity with which he has taken them. Thanks again for the education.

Mr. GRAMM. Thank you, MIKE.

Mr. REID. Mr. President, I ask unanimous consent that the Senate vote in relation to the Thompson amendment No. 1481 at 5:15 p.m. today, with no second-degree amendments in order to the Thompson amendment; that prior to the vote there be 4 minutes for debate equally divided in the usual form, with no other intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMPSON. So we will vote at 5:15 on this amendment that we are discussing right now.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I will address the issue concerning the amendment I have submitted having to do with the amount of time agencies would have to consider a license application. This amendment provides additional exceptions from acquired time periods for processing license applications if the reviewing agency requires more time due to the complexity of the analysis or if the reviewing agency requires additional time based on the potential impact of the export on national security or foreign policy interests of the United States. It limits any additional time to not more than 60 days.

In other words, what this amendment does—first of all, as it is currently drafted, it gives an agency 30 days to look over this license application and to come to a decision as to whether or not it wants to go along with it or try to oppose it. If the agency is not heard from within 30 days, then it is deemed the agency waives its rights and the agency approves it.

What this amendment does is it takes a particular set of circumstances where there are national security implications; in other words, the Department of Defense takes a look at something and says: Perhaps this is a very complex application, and it very well may have national security implications. We simply cannot get this done in 30 days. We need additional time.

As to the Cox Commission, I hope my friends who are sponsoring this legislation will not choose the Cox Commission as authority when it chooses and ignore the Cox Commission when it makes recommendations that oppose it because the Cox Commission concluded in its determination that there were undue time pressures brought to bear on these agencies sometimes. We needed to get the merchandise out the door when these agencies were trying to make these national security determinations, so they came up with recommendations that are consistent with what we are talking about here.

The amendment was accepted unanimously by voice vote in the House International Relations Committee markup of the Export Administration Act. The Cox Commission recommended this: With respect to those controlled technologies and items that are of greatest national security concern, current licensing procedures should be modified to provide longer review periods when deemed necessary by the reviewing executive department or agency on national security grounds.

I have heard it said this is when there is great national security concern.

As I indicated, the Cox committee recommended additional time be given under appropriate circumstances, and these are appropriate circumstances. Opponents of this amendment say these are just circumstances where there is substantial national security concern.

I ask my colleagues, how do we know whether or not there is a substantial national security concern if the agencies that are determining that do not have sufficient time enough to investigate it? Are we going to decide if the Department of Defense believes it needs additional time and believes there may be national security concerns? Are we going to cut them off prematurely because they cannot make out a prima facie case at that point?

Should they not, as the agency dealing with this and having the expertise, be given, in a matter of national security—as we are trying to get the merchandise out the door, let us remember what we are talking about—national security. Do we not let the Department of Defense have a little additional time to make sure we are not sending something dangerous to somebody dangerous?

I do not fully appreciate the talk of the balance between jobs and security. We are not dealing with a jobs bill. We are dealing with a bill that is designed to protect national security. We are not balancing off how much money somebody could make. Three percent of our total exports are exports to these controlled companies, so we are talking about most all of them are approved. We are talking about a fraction of 3 percent.

They have a very effective lobby and they have been doing their job well, but let us not lose sight of the smallness of the exports we are talking about in terms of the total economic picture. Even if it were large, I would think the same way about it. If we want to talk about a balance or a tradeoff, are we not willing to trade off a fraction of 3 percent over against, say, the Department of Defense when it has a national security concern, having an additional 60 days to take a look at it? Are we that eager to get the merchandise out the door when we are being told on a regular basis these rogue nations are developing this additional technology; that they are developing weapons of mass destruction; that China and Russia are supplying them with technology that will assist them in their weapons of mass destruction; that China, which will greatly benefit from this bill, is taking our technology and using it for military purposes; when our commissions and agencies are telling us in their reports, whether it be Rumsfeld, Deutch, or our own intelligence agencies that report on a biannual basis, that these threats are growing and that they are using American technology; when we hear things like Saddam Hussein has been furnished by a Chinese company with technology that will assist him in his fiber optic cable network that will actually assist him in shooting down American airplanes—we have caught him twice at it now—and it is being supplied by a company that has a relationship with a company in the United States?

I hope if one of our boys gets shot down over there it is not determined it is with American technology. It is not farfetched. I am not claiming I can suggest anything that would forever prohibit that, but we can surely give the Department of Defense an extra 60 days if it believes it has a national security concern.

We have gotten past, I suppose, the debate on things such as foreign availability. We are going to have somebody down in the bowels of the Department of Commerce determine all that needs to be deregulated and it is out the door; anything they say is foreign

available. Mass marketing: Somebody within the bowels of the Department of Commerce decides it is mass marketed so all of that goes out the door. Embeded components: If something is regulated and considered to be sensitive because it can be used potentially for military purposes, it is regulated, you have to have a license. But if somebody puts it in a bigger component, you do not have to have a license for it or the bigger component if the bigger component is worth more than 75 percent of the total value of what is being shipped. It makes no sense at all. It makes no national security sense. It might make economic sense for some folks. But all that is by the board. We passed that. We will do that and tell the President, catch him if you can, fixing it so the President can't delegate any of this. The President has to make the determination that he wants to come in with oversight action that will go against this entire regulatory process when we have thousands of these applications a year. We are not going to be able to do anything with that. The train left the station. I can count votes.

Apparently, we have decided in this Nation to turn a blind eye to the proliferation activities in this world, to the fact that we are now subject to being hit from some of the smaller rogue nations, countries that are starving their own people to death, putting their money into missile and nuclear capability, to now hit us, our allies, or our troops in the field, and we are opening the door wider to send stuff to countries that are supplying the rogue nations. We have apparently made that decision.

For goodness' sake, can't we give the Department of Defense a little more time when they are asking us to hold up a little bit and make sure we are not hurting our country? Do we have to draw the line at an additional 60 days for that kind of consideration? If we can't do this, we might as well fold up our tent and do anything that exporters want to do. I don't see why we ought to have an export process anymore. It clearly will not be designed to protect this country, which was its original design.

I hope history does not prove this is an even more unwise decision than I fear it might be. The cold war certainly is over, and it has left a country that is more vulnerable than ever to our own technology. Most of it we are not dealing with today. We are not dealing with nontechnology matters. We are dealing with limited items in a very narrow regulatory process. We approve 98 percent of them anyway, even in the regulatory process. The average time it takes is 40 days. We can't stop and take a deep breath long enough to make sure we are not hurting our country, when it takes 40 days on average to get this done? And the overwhelming majority are already approved.

We need to reauthorize the Export Administration Act. We need to tighten it up, instead of loosening it. But that will not happen. It will be loosened. I ask, can't we at least consider the agencies involved, as the Cox commission suggested?

It has been said if there is a national security concern, they can raise it later in the review process. If the Department of Defense has not had time to adequately investigate the matter, it is already in the interagency review process and they will not have the information on which to base an objection. Do we want to force the process along so fast we ensure the Department of Defense or the affected agency does not have sufficient time to make an objection, had they known the full extent of the nature of the export and perhaps the end user and how it would be used and the potential uses for it?

We may have to go down this road, but we don't have to get in the jetstream. We don't have to do it with blinders. I suggest this is a minimalist amendment that we would want to pass to benefit the process and to show the world we are not so intent on trade and money that we will not even take modest measures to make sure we are not making a mistake with regard to something important to our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. While the parties have been speaking, and we have been in contact with the White House to see how difficult the time schedule in the S. 149 bill would be to meet, I have been told there is no problem meeting those time schedules, that the agencies can do that, the agencies have done that; that the records show they have been able to meet those time deadlines, and the administration is opposed to this amendment.

This amendment allows the reviewing agency to stop the clock during the licensing application process. One of our difficulties in arriving at a bill has been to eliminate turf battles. The agencies are working very cooperatively, but there is the potential of who will be in charge of what and how long the delay and who can cause them, which changes the balance between the agencies. This bill has that balance between agencies.

The agencies agree—and there will be a letter on everyone's desk—that they have the capability of operating 60 days under this bill. This bill does not just give 60 days. It could give 120 days the way it is written, which in addition to the 30 is 150 days for a process that has been workable in less than 30 days by each of the three main agencies that have been reviewing the bill.

Under this amendment, a single agency could further delay the approval of the license based on the complexity of analysis and then potentially use the other excuse to delay it another 60 days. The bill already provides for several different ways to stop the clock on any bill. The license applicant and the Secretary of Commerce mutually agree more time is necessary to process the application, or if more time is needed to verify and identify the reliability of an end user, or if additional time is necessary to secure government to government assurances regarding item end use, or if more time is required for multilateral review if applicable or if additional time is needed to allow for congressional notification, if that is required, if more time is necessary to permit consultation with foreign governments, then, of course, we have the essential provisions of the bill. First, an agency could exercise any of these thought-out exceptions that are very carefully defined in the bill. The two provisions in this amendment are not carefully defined. So they give a very broad, general, bureaucratic approach that allows people to pigeon hole a bill and walk away from it for at least 60 to 120 days. They could use the carefully thought-out defined provisions in section 401(g).

Second, any of the agencies are free to return a recommendation of disapproval. That kicks the application into the interagency dispute resolution process which would give additional time for the review.

Third, once within the interagency process, the agency can escalate a decision to the higher level.

In practicality, after you and I have watched the process, Mr. President, and seen how it works, it also works if the agency calls and says we can give you a disapproval right now unless you can provide additional time or information. That same process is an effective way of stopping the clock, provided the application doesn't have to go back to ground zero when it comes back in again. That is a mechanism that has been used.

This amendment unravels the discipline of the system that has been set out. With its capability of escalating clear up to the President, there is a recognition that this can take a lot more time. That is how the time element was addressed under the recommendations we had from the different commissions.

A key recommendation of the various commissions that study our export system is to increase the discipline in the export system. Without deadlines, discipline disappears. Without discipline, the system is unworkable. An undisciplined system is the same as no system at all. The consequences for both our national security and economic interests would be severe.

My colleague mentioned the Cox report. The Cox report was done before S. 149 was done, or even S. 1712 was done. We reviewed those recommendations. Recommendation No. 31 did suggest longer review periods for national security purposes. The Cox Commission made that recommendation only with items that are of the greatest national security concern. For other items, the Cox Commission strongly recommended streamlining the process and providing greater transparency,

predictability, and certainty. We did that, plus building into the system this system of referrals, that easier process of resolving interagency disputes or interagency concerns, the ability to escalate in the process. So that got built into the system at the same time, which answers some of those concerns.

S. 149 does not classify items as being ''of greatest national security concern'' or ''of lesser national security concern.'' It sets up a risk-based system that allows the administration to make such determinations within the bill's guidelines. Based on past experience and demonstrated agency data, both the administration and the bill's sponsors believe that S. 149's system, by setting mandatory time periods with the existing ''stop the clock'' exceptions, is the most effective framework for operating export controls. For that reason, the bill does not include that particular and specific aspect of the Cox Commission recommendation.

This amendment, although it is portrayed as simple and common sense, undoes the key element of the discipline in S. 149. It would result in an application system bogged down by bureaucracy and politics, a system in which delays are the rule rather than the exception. It is not a simple or technical change but would undo the careful balance of the bill.

I have mentioned what can be a tendency. What we tried to do with the bill was escalate the decisions up to the higher levels of government rather than have the decisions made at the bureaucratic level. We have tried to eliminate possibilities that, rather than make a decision, people would pigeonhole things. This is one of those opportunities to pigeonhole things for 60 to 120 days, with an undefined but good-sounding concern.

I do urge rejection of this amendment and ask colleagues on behalf of the administration to join me in that rejection.

Mr. REID. I suggest the absence of quorum.

The PRESIDING OFFICER (Mr. JOHNSON). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I had indicated earlier that I wanted to speak in favor of the Thompson amendment. I do that at this time.

It has been explained by the Senator from Tennessee. The point is, there are some matters that would be very complicated, very complex. Everyone acknowledges that. It may be that a 30-day time for review in that circumstance would be inadequate.

All this amendment does is to say that the department, in that case, could ask for an additional period of time, up to 60 days, to review and be able to make its recommendation for export license under the legislation.

This was the recommendation of the Cox committee report in 1999, when it indicated that the existing 30-day limit for departmental license review may be inadequate for complex requests that could have a lasting national security impact. And since the legislation before us allows only for extensions on a limited basis, and we think that it would be appropriate, for, for example, the Defense Department, should it deem it necessary to have a little more time, that that at least be written into the bill as a possibility. That is what Senator THOMPSON has sought to accomplish through his amendment. It seems to me to be eminently reasonable. Therefore, I urge my colleagues to support this very reasonable amendment.

The primary argument I have heard about it relates to a political matter; that is, that the White House supports the legislation. We have been advised that the White House supports the legislation without change. I want to comment on that a moment.

My friends on the Democratic side of the aisle, the Senator from Maryland, for example, in response to something I said earlier, wanted to be sure I was aware of the administration's support. Indeed, I was. I would like to make this offer to any of my Democratic colleagues. I will support this legislation based upon the fact that the administration supports it if my Democratic colleagues will commit to me today that they will do the same for legislation that the administration supports.

In other words, if I can get a letter from the Secretary of Defense or the Secretary of Commerce or the Secretary of State on a matter that will come before the Senate in the future, since they regard the administration so highly with respect to the EAA and suggest that is the reason why this legislation should be adopted without change, then it seems to me, unless they are picking and choosing which opinion of the administration they regard so highly, they should also regard highly other opinions of the administration and be equally willing to support those positions.

I am sure that as Senators we all like to pick and choose the things on which we agree or don't agree with any administration. I am a Republican. I happen to have a disagreement with the administration now and then—not very often; in fact, very seldom. On this matter I do have some disagreement.

I think it is not a sufficient argument in and of itself to say that because the administration supports something, therefore we should vote for it and then turn around on a subsequent matter which the administration strongly supports and vote against them. I suspect that my Democratic friends more often than not will find themselves in that position in the future.

Mr. SARBANES. Will the Senator yield?

Mr. KYL. I am delighted to yield to the Senator from Maryland.

Mr. SARBANES. Earlier in the day when I first spoke on this bill, I don't think the Senator was in the Chamber. I was very careful to make the point that I supported this bill on the basis of my own judgment about its contents. I then went on to add the point that the administration was supportive of this bill, and obviously one finds some comfort in that since much of what is in the bill involves the executive branch making it work. So particularly on a bill such as this, if they were against it, that would give one pause for thought.

I simply say to my colleague, it is a very interesting challenge he puts forward. Without anticipating that he would make such a challenge, I was very careful in my opening statement to make the point that my support for the bill was based on my own judgment about its provisions having worked through it very carefully. Over and above that judgment, I also, of course, alluded to the fact that the administration was very supportive of it.

Mr. KYL. Mr. President, I very much appreciate that comment from the Senator from Maryland because that is the basis on which we should approach this legislation—our own evaluation. I know that because of the Senator's work on this issue. Prior to the strong expressions from the administration, the Senator from Maryland was very supportive of the legislation. I know that he is very truthful in what he just said. I appreciate that. That is the position each of us should take with respect to legislation regardless of which administration is in power at the time and whether or not that administration supports the legislation.

My point is that it is not a sufficient argument that we should reject all the amendments because the administration supports the bill. We should debate each on the merits. And on the merits of this amendment, I see no real opposition. If because these matters of national security are so important to the United States and there is such a background of violations, particularly in this area of dual-use technology, of countries acquiring things and then selling them to somebody else or providing them in some other way to another country to proliferate weapons of mass destruction inimical to the interests of the United States, because we have such a history of that, so many examples of it, we should be bending over backward to ensure that we have proper control over the export of these dual-use technologies. And we should not simply be opening it up to essentially free license, and if an agency isn't able to complete its review within a 30-day period, the clock runs out and you are deemed to have supported the export of this particular item.

That is putting it exactly backward because matters of national security should be our highest test. The rule should be exactly the opposite. If you can't complete the review in 30 days, then you should get a little more time

to complete the review, not to be told: Sorry, the clock ran out; if you could not get it done in 30 days, no matter how complicated, no matter how important the national security interest, the export is allowed.

That is the problem with taking an approach that if the administration supports the bill, it can't be changed in any respect.

There are some things about this bill that should be changed. Representatives of the administration have made it clear to the Senator from Tennessee and myself and others that they recognize there will have to be implementation of this legislation by executive order. Some of the concerns we have expressed, they assured us, would be dealt with in this executive order in some way or other. I have absolute confidence in the administration with respect to that. Obviously, they have not issued any executive order yet. It would be premature to do so.

But failing to understand what specific things might be addressed, we think it is important to try to fix those problems now, and one of the problems deals with this question of possibly needing a little more time. I just ask my colleague, what could be lost, what could be wrong with having a department—let's say the Department of Defense, if it says it needs more time—get a little more time? This is too serious to put an arbitrary 30-day clock on and say: Sorry, time is up, national security be damned; the 30 days ran out, and the export is allowed to go forward. This is the problem with this strict provision in the law with no ability to move out of it.

That is why the Thompson amendment makes sense. That is why I hope my colleagues support the Thompson amendment. It is specifically recommended by the Cox Commission report. I believe—and I ask my colleague from Tennessee if my recollection is correct—the House of Representatives has already incorporated this recommendation of the Cox committee report in its legislation. I am not certain. I ask the Senator from Tennessee for his understanding of that.

Mr. THOMPSON. Yes. The House committee reported this out with unanimous consent.

Mr. KYL. Mr. President, that includes the provision of the Senator's amendment in it; is that correct?

Mr. THOMPSON. I believe it is essentially the same.

Mr. KYL. Very similar thereto. There you have it. It seems to me we are already making changes to the legislation. We should not be so hidebound to every specific jot and tittle in a bill which is now 327 pages long, very complicated, that we can't make a few changes in this legislation.

I urge my colleagues to consider exactly what Senator THOMPSON is proposing. It is simple and straightforward. It seems to me that for us to just say, no, there is going to be no extra time, no matter how complex the issue or how strongly the Department of Defense may want it, they are not going to get any more time, is not wise public policymaking. I urge my colleagues to support the Thompson amendment.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. What was the unanimous consent with regard to the provision of time right before the vote?

The PRESIDING OFFICER. Four minutes evenly divided prior to the vote.

Mr. THOMPSON. All right. That was my understanding, 2 minutes per side.

The PRESIDING OFFICER. The Senator is correct.

The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I want to take advantage of these few minutes to address a couple of the points the Senator from Arizona raised.

First of all, in fiscal year 2000, the data indicates that the average time for the review of a license by the Department of Defense was 13 days. The Department of Energy averaged 22 days. The State Department averaged 9 days. The 30-day time period that is in the bill is identical to the current practice under the Executive order. The amendment would add an additional 60 days in each of two separate circumstances.

Of course, one of the things we were trying to do here was to set up a process whereby applicants could get a definitive decision within a defined timeframe. Now there are provisions in the bill to stop the running of a clock, a couple of which directly go to the end user issue which the Senator from Arizona raised, as requiring further time to ascertain the end user issue.

There are these exceptions that stop the clock, as it were, on the time period. That involves the identity and reliability of the end user in one instance and additional time to secure the government-to-government assurances regarding end item use. So the very concern that the Senator raised is actually addressed in the legislation in terms of stopping the clock and providing extra time.

I think it is important to underscore that one of the things we were trying to provide to the exporters, which we think is important, was that they could get an answer within a defined period of time. Often they are more concerned in some instances in getting an answer. They need to know, yes or no. They are often competing in an environment in which they have to find out whether they can move forward or not. A department having difficulty with the application can simply say: We think it should be denied. Of course, if they say that, you can then start the interagency appeal process working. But of course that extends over a sustained period of time.

So we think the framework that is in the legislation really adequately addresses these concerns. It does represent a balance, and, as I indicated earlier, we are giving quite extensive powers to the executive branch in here.

One of the things the business community was concerned to get was a framework with some discipline in it into which they could get an answer. If you are left hanging, you don't know what to do.

So given the provisions for stopping the clock that are in there, we think to add another 60 days on top of this period would extend the process to such an extent that the exporters really could not function in the real world.

Now if the time period was taking a lot longer to get agency response, we could be sensitive to that argument. But that is not the case. In any event, the very people who are concerned with making this work, upon whom the burden would fall, have indicated that they find the time periods that are in the bill quite acceptable and, in fact, are in opposition to the proposed amendment. They are the very ones who would have to make the process work. So I think that is also an important consideration to take into account.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, this amendment does nothing to lessen the certainty for the exporters. Under the old law, it is 30 days the agencies have. Under the new law, it will be 30 days. The only difference is that in the case of potential national security, an agency would have additional time. The agency doesn't have to take that time. If the average time for these licenses, as the Senator described, was 13 days, it certainly doesn't sound like that bureaucratic mess we heard described earlier.

The PRESIDING OFFICER. I remind the Senator that we are now under controlled time.

Mr. THOMPSON. I will use my 2 minutes. It doesn't sound like that bureaucratic mess we had earlier. These 14-day cases are streamlined where there is no controversy. We are trying to deal with a situation where national security might be involved. You don't know whether or not you want to object, if you are an agency, until you get into it.

I have heard it referred to again that the agencies apparently do not want this, and it may be politically incorrect for me to say this, but it is quite obvious the administration has passed the word they want this bill passed without amendments, even to the point where they do not want agencies to be given the opportunity to ask for another 60 days, even in a matter of national security. I think that is extremely unfortunate.

It is surprising to me, but apparently that is the case. However, it does not make it right.

I ask my colleagues, in light of the proliferation concerns that this country has, in light of the developing technology, the fact that it is being proliferated around the world and posing a danger to us, that certainly in this export licensing process we can afford to give our agencies, such as the Department of Defense, a little additional time if they have a national security concern.

It is not going to put anybody out of business, and it is not going to hurt the overall export process. And what if it does if we are saving something from being exported that otherwise should not be? It is a very simple matter to dispose of, but it is a very important matter to get right.

I yield the floor.

Mr. GRAMM. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I have no question about the sincerity of Senator THOMPSON's amendment. He has worked with us on this bill, and against us to some extent. We have made 59 changes in the bill to accommodate Senator THOMPSON and people who share his concerns, but let me explain to my colleagues why this amendment is not good.

We have established a system that for the first time is giving the security agencies a voice in this process. We have changed the system so one member of the panel, from any one agency, can vote no, and the process at that point is denied and it has to be appealed to a higher level.

It is not like the old system, where the person from the Department of Defense could express concern but they could be overridden. Under the current system, you just have to have one person say no and the process either ends or it is bumped up to the next level.

Finally, we give the President a new national security power that says no matter what the circumstances are, no matter whether a product is mass marketed or not, no matter whether a terrorist group or a terrorist nation or a would-be adversary could get the product from any other source, if the President believes it threatens national security, it is stopped.

What this amendment would do would basically terminate the effectiveness to the system by saying that at any point anybody believes there is complexity in the analysis or there is a potential impact on national security or foreign policy interest, they could indefinitely delay. What we want is a decision. Remember, the reviewing officers can vote no, but we want them to vote yes or no. That is what the process is about.

I urge my colleagues to defeat this amendment.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mrs. MURRAY), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SANTORUM), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas, 74, nays 19, as follows:

[Rollcall Vote No. 274 Leg.]

YEAS—74

Akaka	Craig	Leahy
Allard	Crapo	Levin
Allen	Daschle	Lieberman
Baucus	Dayton	Lincoln
Bayh	Dodd	Lott
Bennett	Domenici	Lugar
Biden	Dorgan	McConnell
Bingaman	Durbin	Mikulski
Bond	Edwards	Miller
Boxer	Ensign	Nelson (FL)
Breaux	Enzi	Nelson (NE)
Brownback	Feinstein	Nickles
Bunning	Fitzgerald	Reed
Burns	Graham	Reid
Byrd	Gramm	Roberts
Campbell	Hagel	Rockefeller
Cantwell	Harkin	Sarbanes
Carnahan	Hatch	Schumer
Carper	Hollings	Smith (OR)
Chafee	Hutchison	Stabenow
Cleland	Inouye	Stevens
Clinton	Johnson	Thomas
Collins	Kerry	Wellstone
Conrad	Kohl	Wyden
Corzine	Landrieu	

NAYS—19

Cochran	Inhofe	Specter
DeWine	Kyl	Thompson
Feingold	McCain	Thurmond
Frist	Sessions	Voinovich
Grassley	Shelby	Warner
Helms	Smith (NH)	
Hutchinson	Snowe	

NOT VOTING—7

Gregg	Murkowski	Torricelli
Jeffords	Murray	
Kennedy	Santorum	

The motion was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. ENZI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, we are prepared to continue debate on this measure.

Mr. President, that is the last vote today. If there are Members who wish to speak on the bill—earlier I thought there were and I am now not certain—we would be prepared to stay on in order to get that done and thereby help to clear the deck so we can move ahead tomorrow with respect to other amendments and towards final passage of this legislation. I have no one at the moment indicating any desire to speak.

MORNING BUSINESS

Mr. SARBANES. Mr. President, I ask unanimous consent that the Senate go into a period of morning business with Senators allowed to speak therein for up to 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MARK TO MARKET EXTENSION ACT OF 2001

Mr. SARBANES. Madam President, on August 1, 2001, the Committee on Banking, Housing and Urban Affairs took up the Mark-to-Market Extension Act of 2001.

I introduced the Mark-to-Market Extension Act of 2001 along with Senators REED and ALLARD, the chair and ranking member of the Housing and Transportation Subcommittee. The bill passed the committee by a 21–0 vote with an amendment offered by Senator ALLARD. The amendment would require the GAO, through a series of reports, to update Congress on the performance of the mark-to-market program.

The bill makes some modest changes in the program, which was originally passed in 1997 on a bipartisan basis. The changes incorporate almost all of the suggestions made by HUD's Office of Multifamily Housing Assistance Restructuring (OHMAR) as well as a number provided by other stakeholders at our June 19 hearing, including the General Accounting Office (GAO). The GAO's thorough review of the program has proven invaluable, and we will look to them to continue to work with us to keep things on track.

As my colleagues know, we passed the original Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA) in order to bring down the rising costs of project-based section 8 rental assistance contracts. In many markets these section 8 contract rents were higher than the real market rent in the neighborhood in which the project was located. In order to save money on these contracts, the committee and the Congress chose to reset those contract rents at the lower market levels.

However, in many cases, these new, lower rents were inadequate to pay the federally insured mortgages. So the committee also created a number of tools that allow the mortgages to be restructured proportionately. The restructuring process includes a thorough review of the physical condition of the building, provides that it be adequately rehabilitated and that adequate reserves be built in as part of the building's new underwriting. This is important because, as part of the deal, the owner makes a long-term commitment to continue to serve low income families.

After getting off to a slow start, the GAO and most other stakeholders agree that the program has finally gotten moving, and a much larger number