

107TH CONGRESS
1ST SESSION

H. R. 2568

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

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2001

Mr. DREIER (for himself, Mr. HOUGHTON, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on International Relations

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—GENERAL AUTHORITY

Sec. 101. Commerce Control List.

Sec. 102. Delegation of authority.

Sec. 103. Public information; consultation requirements.

Sec. 104. Right of export.

- Sec. 105. Export control advisory committees.
- Sec. 106. President's Technology Export Council.
- Sec. 107. Prohibition on charging fees.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

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

Subtitle B—Foreign Availability and Mass-Market Status

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

TITLE III—FOREIGN POLICY EXPORT CONTROLS

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

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

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

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

- Sec. 501. International arrangements.
- Sec. 502. Foreign boycotts.
- Sec. 503. Penalties.
- Sec. 504. Missile proliferation control violations.
- Sec. 505. Chemical and biological weapons proliferation sanctions.
- Sec. 506. Enforcement.
- Sec. 507. Administrative procedure.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

- Sec. 601. Export control authority and regulations.
- Sec. 602. Confidentiality of information.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.

Sec. 702. Technical and conforming amendments.

Sec. 703. Savings provisions.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

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

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

18 (5) **CONTROLLED ITEM.**—The term “controlled
19 item” means an item the export of which is con-
20 trolled under this Act.

21 (6) **COUNTRY.**—The term “country” means a
22 sovereign country or an autonomous customs terri-
23 tory.

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

5 (8) DEPARTMENT.—The term “Department”
6 means the Department of Commerce.

7 (9) EXPORT.—

8 (A) The term “export” means—

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

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

19 (iii) a transfer of an item in the
20 United States to an embassy or affiliate of
21 a country, which shall be considered an ex-
22 port to that country.

23 (B) The term includes a reexport.

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

4 (11) FOREIGN PERSON.—The term “foreign
5 person” means—

6 (A) an individual who is not—

7 (i) a United States citizen;

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

10 (iii) a protected individual as defined
11 in section 274B(a)(3) of the Immigration
12 and Nationality Act. (8 U.S.C.
13 1324b(a)(3));

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

20 (C) any governmental entity of a foreign
21 country.

22 (12) ITEM.—

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

1 (B) OTHER DEFINITIONS.—In this para-
2 graph:

3 (i) GOOD.—The term “good” means
4 any article, natural or manmade substance,
5 material, supply or manufactured product,
6 including inspection and test equipment,
7 including source code, and excluding tech-
8 nical data.

9 (ii) TECHNOLOGY.—The term “tech-
10 nology” means specific information that is
11 necessary for the development, production,
12 or use of an item, and takes the form of
13 technical data or technical assistance.

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

16 (13) MASS-MARKET STATUS.—The term “mass-
17 market status” means the status described in section
18 211(d)(2).

19 (14) MULTILATERAL EXPORT CONTROL RE-
20 GIME.—The term “multilateral export control re-
21 gime” means an international agreement or arrange-
22 ment among two or more countries, including the
23 United States, a purpose of which is to coordinate
24 national export control policies of its members re-
25 garding certain terms. The term includes regimes

1 such as the Australia Group, the Wassenaar Ar-
2 rangement, the Missile Technology Control Regime
3 (MTCR), and the Nuclear Suppliers' Group Dual
4 Use Arrangement.

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

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

9 (A) any individual, or partnership, corpora-
10 tion, business association, society, trust, organi-
11 zation, or any other group created or organized
12 under the laws of a country; and

13 (B) any government, or any governmental
14 entity, including any governmental entity oper-
15 ating as a business enterprise.

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

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

21 (19) UNITED STATES.—The term “United
22 States” means the States of the United States, the
23 District of Columbia, and any commonwealth, terri-
24 tory, dependency, or possession of the United States,
25 and includes the outer Continental Shelf, as defined

1 in section 2(a) of the Outer Continental Shelf Lands
2 Act (42 U.S.C. 1331(a)).

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

5 (A) any United States citizen, resident, or
6 national (other than an individual resident out-
7 side the United States who is employed by a
8 person other than a United States person);

9 (B) any domestic concern (including any
10 permanent domestic establishment of any for-
11 eign concern); and

12 (C) any foreign subsidiary or affiliate (in-
13 cluding any permanent foreign establishment)
14 of any domestic concern which is controlled in
15 fact by such domestic concern, as determined
16 under regulations prescribed by the President.

17 **TITLE I—GENERAL AUTHORITY**

18 **SEC. 101. COMMERCE CONTROL LIST.**

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

22 (1) shall establish and maintain a Commerce
23 Control List (in this Act referred to as the “Control
24 List”) consisting of items the export of which are

1 subject to licensing or other authorization or re-
2 quirement; and

3 (2) may require any type of license, or other
4 authorization, including recordkeeping and report-
5 ing, appropriate to the effective and efficient imple-
6 mentation of this Act with respect to the export of
7 an item on the Control List or otherwise subject to
8 control under title II or III of this Act.

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

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

14 (2) MULTIPLE EXPORTS.—A license that au-
15 thORIZES multiple exports in lieu of a license for each
16 export.

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

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

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

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

9 (2) the after-market service or replacement
10 parts would materially enhance the capability of an
11 item which was the basis for the item being con-
12 trolled.

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

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

22 **SEC. 102. DELEGATION OF AUTHORITY.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b) and subject to the provisions of this Act, the President
25 may delegate the power, authority, and discretion con-

1 ferred upon the President by this Act to such depart-
2 ments, agencies, and officials of the Government as the
3 President considers appropriate.

4 (b) EXCEPTIONS.—

5 (1) DELEGATION TO APPOINTEES CONFIRMED
6 BY SENATE.—No authority delegated to the Presi-
7 dent under this Act may be delegated by the Presi-
8 dent to, or exercised by, any official of any depart-
9 ment or agency the head of which is not appointed
10 by the President, by and with the advice and consent
11 of the Senate.

12 (2) OTHER LIMITATIONS.—The President may
13 not delegate or transfer the President's power, au-
14 thority, or discretion to overrule or modify any rec-
15 ommendation or decision made by the Secretary, the
16 Secretary of Defense, or the Secretary of State
17 under this Act.

18 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**
19 **MENTS.**

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

24 (b) CONSULTATION WITH PERSONS AFFECTED.—
25 The Secretary shall consult regularly with representatives

1 of a broad spectrum of enterprises, labor organizations,
2 and citizens interested in or affected by export controls
3 in order to obtain their views on United States export con-
4 trol policy and the foreign availability or mass-market sta-
5 tus of controlled items.

6 **SEC. 104. RIGHT OF EXPORT.**

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

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

11 (a) APPOINTMENT.—Upon the Secretary's own initia-
12 tive or upon the written request of representatives of a
13 substantial segment of any industry which produces any
14 items subject to export controls under this Act or being
15 considered for such controls, the Secretary may appoint
16 export control advisory committees with respect to any
17 such items. Each such committee shall consist of rep-
18 resentatives of United States industry and Government of-
19 ficials, including officials from the Departments of Com-
20 merce, Defense, and State, and other appropriate depart-
21 ments and agencies of the Government. The Secretary
22 shall permit the widest possible participation by the busi-
23 ness community on the export control advisory commit-
24 tees.

25 (b) FUNCTIONS.—

1 (1) IN GENERAL.—Export control advisory
2 committees appointed under subsection (a) shall ad-
3 vise and assist the Secretary, and any other depart-
4 ment, agency, or official of the Government carrying
5 out functions under this Act, on actions (including
6 all aspects of controls imposed or proposed) designed
7 to carry out the provisions of this Act concerning the
8 items with respect to which such export control advi-
9 sory committees were appointed.

10 (2) OTHER CONSULTATIONS.—Nothing in para-
11 graph (1) shall prevent the United States Govern-
12 ment from consulting, at any time, with any person
13 representing an industry or the general public, re-
14 gardless of whether such person is a member of an
15 export control advisory committee. Members of the
16 public shall be given a reasonable opportunity, pur-
17 suant to regulations prescribed by the Secretary, to
18 present information to such committees.

19 (c) REIMBURSEMENT OF EXPENSES.—Upon the re-
20 quest of any member of any export control advisory com-
21 mittee appointed under subsection (a), the Secretary may,
22 if the Secretary determines it to be appropriate, reimburse
23 such member for travel, subsistence, and other necessary
24 expenses incurred by such member in connection with the
25 duties of such member.

1 (d) CHAIRPERSON.—Each export control advisory
2 committee appointed under subsection (a) shall elect a
3 chairperson, and shall meet at least every 3 months at
4 the call of the chairperson, unless the chairperson deter-
5 mines, in consultation with the other members of the com-
6 mittee, that such a meeting is not necessary to achieve
7 the purposes of this section. Each such committee shall
8 be terminated after a period of 2 years, unless extended
9 by the Secretary for additional periods of 2 years each.
10 The Secretary shall consult with each such committee on
11 such termination or extension of that committee.

12 (e) ACCESS TO INFORMATION.—To facilitate the
13 work of the export control advisory committees appointed
14 under subsection (a), the Secretary, in conjunction with
15 other departments and agencies participating in the ad-
16 ministration of this Act, shall disclose to each such com-
17 mittee adequate information, consistent with national se-
18 curity and intelligence sources and methods, pertaining to
19 the reasons for the export controls which are in effect or
20 contemplated for the items or policies for which that com-
21 mittee furnishes advice. Information provided by the ex-
22 port control advisory committees shall not be subject to
23 disclosure under section 552 of title 5, United States
24 Code, and such information shall not be published or dis-

1 closed unless the Secretary determines that the with-
2 holding thereof is contrary to the national interest.

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

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

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

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

11 **TITLE II—NATIONAL SECURITY**
12 **EXPORT CONTROLS**
13 **Subtitle A—Authority and**
14 **Procedures**

15 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**
16 **CONTROLS.**

17 (a) **AUTHORITY.**—

18 (1) **IN GENERAL.**—In order to carry out the
19 purposes set forth in subsection (b), the President
20 may, in accordance with the provisions of this Act,
21 prohibit, curtail, or require a license, or other au-
22 thorization for the export of any item subject to the
23 jurisdiction of the United States or exported by any
24 person subject to the jurisdiction of the United
25 States. The President may also require record-

1 keeping and reporting with respect to the export of
2 such item.

3 (2) EXERCISE OF AUTHORITY.—The authority
4 contained in this subsection shall be exercised by the
5 Secretary, in consultation with the Secretary of De-
6 fense, the intelligence agencies, and such other de-
7 partments and agencies as the Secretary considers
8 appropriate.

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

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

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

19 (A) leading international efforts to control
20 the proliferation of chemical and biological
21 weapons, nuclear explosive devices, missile deliv-
22 ery systems, key-enabling technologies, and
23 other significant military capabilities;

24 (B) controlling involvement of United
25 States persons in, and contributions by United

1 States persons to, foreign programs intended to
2 develop weapons of mass destruction, missiles,
3 and other significant military capabilities, and
4 the means to design, test, develop, produce,
5 stockpile, or use them; and

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

12 (3) To deter acts of international terrorism.

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

18 (d) ENHANCED CONTROLS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provisions of this title, the President may determine
21 that applying the provisions of section 204 or 211
22 with respect to an item on the National Security
23 Control List would constitute a significant threat to
24 the national security of the United States and that
25 such item requires enhanced control. If the Presi-

1 dent determines that enhanced control should apply
2 to such item, the item may be excluded from the
3 provisions of section 204, section 211, or both, until
4 such time as the President shall determine that such
5 enhanced control should no longer apply to such
6 item. The President may not delegate the authority
7 provided for in this subsection.

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

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

16 (a) ESTABLISHMENT OF LIST.—

17 (1) ESTABLISHMENT.—The Secretary shall es-
18 tablish and maintain a National Security Control
19 List as part of the Control List.

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

24 (3) IDENTIFICATION OF ITEMS FOR NATIONAL
25 SECURITY CONTROL LIST.—The Secretary, with the

1 concurrence of the Secretary of Defense and in con-
2 sultation with the head of any other department or
3 agency of the United States that the Secretary con-
4 siders appropriate, shall identify the items to be in-
5 cluded on the National Security Control List pro-
6 vided that the National Security Control List shall,
7 on the date of enactment of this Act, include all of
8 the items on the Commerce Control List controlled
9 on the day before the date of enactment of this Act
10 to protect the national security of the United States,
11 to prevent the proliferation of weapons of mass de-
12 struction and the means to deliver them, and to
13 deter acts of international terrorism. The Secretary
14 shall review on a continuing basis and, with the con-
15 currence of the Secretary of Defense and in con-
16 sultation with the head of any other department or
17 agency of the United States that the Secretary con-
18 siders appropriate, adjust the National Security
19 Control List to add items that require control under
20 this section and to remove items that no longer war-
21 rant control under this section.

22 (b) RISK ASSESSMENT.—

23 (1) REQUIREMENT.—In establishing and main-
24 taining the National Security Control List, the risk
25 factors set forth in paragraph (2) shall be consid-

1 ered, weighing national security concerns and eco-
2 nomic costs.

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

6 (A) The characteristics of the item.

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

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

16 (D) The threat to the national security in-
17 terests of the United States if the item is not
18 controlled.

19 (E) Any other appropriate risk factors.

20 (c) REPORT ON CONTROL LIST.—Not later than 90
21 days after the date of enactment of this Act, the Secretary
22 shall submit a report to Congress which lists all items on
23 the Commerce Control List controlled on the day before
24 the date of enactment of this Act to protect the national
25 security of the United States, to prevent the proliferation

1 of weapons of mass destruction and the means to deliver
2 them, and to deter acts of international terrorism, not in-
3 cluded on the National Security Control List pursuant to
4 the provisions of this Act.

5 **SEC. 203. COUNTRY TIERS.**

6 (a) IN GENERAL.—

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

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

15 (B) based on the assessments required
16 under subsection (c), assign each country to an
17 appropriate tier for each item or group of items
18 the export of which is controlled for national se-
19 curity purposes under this title.

20 (2) CONSULTATION.—The establishment and
21 assignment of country tiers under this section shall
22 be made after consultation with the Secretary, the
23 Secretary of Defense, the Secretary of State, the in-
24 telligence agencies, and such other departments and
25 agencies as the President considers appropriate.

1 (3) REDETERMINATION AND REVIEW OF AS-
2 SIGNMENTS.—The President may redetermine the
3 assignment of a country to a particular tier at any
4 time and shall review and, as the President con-
5 siders appropriate, reassign country tiers on an on-
6 going basis. The Secretary shall provide notice of
7 any such reassignment to the Committee on Bank-
8 ing, Housing, and Urban Affairs of the Senate and
9 the Committee on International Relations of the
10 House of Representatives.

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

15 (b) TIERS.—

16 (1) IN GENERAL.—The President shall establish
17 a country tiering system consisting of not less than
18 3 tiers for purposes of this section.

19 (2) RANGE.—Countries that represent the low-
20 est risk of diversion or misuse of an item on the Na-
21 tional Security Control List shall be assigned to the
22 lowest tier. Countries that represent the highest risk
23 of diversion or misuse of an item on the National
24 Security Control List shall be assigned to the high-
25 est tier.

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

8 (c) ASSESSMENTS.—The President shall make an as-
9 sessment of each country in assigning a country tier tak-
10 ing into consideration risk factors including the following:

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

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

17 (3) The country’s capabilities regarding chem-
18 ical, biological, and nuclear weapons and the coun-
19 try’s membership in, and level of compliance with,
20 relevant multilateral export control regimes.

21 (4) The country’s capabilities regarding missile
22 systems and the country’s membership in, and level
23 of compliance with, relevant multilateral export con-
24 trol regimes.

1 (5) Whether the country, if a NATO or major
2 non-NATO ally with whom the United States has
3 entered into a free trade agreement as of January
4 1, 1986, controls exports in accordance with the cri-
5 teria and standards of a multilateral export control
6 regime as defined in section 2(14) pursuant to an
7 international agreement to which the United States
8 is a party.

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

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

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

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

19 (10) The designation of the country as a coun-
20 try supporting international terrorism under section
21 310.

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

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

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

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

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

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

13 unless the item itself, if exported, would by virtue of the
14 functional characteristics of the item as a whole make a
15 significant contribution to the military or proliferation po-
16 tential of a controlled country or end user which would
17 prove detrimental to the national security of the United
18 States, or unless failure to control the item would be con-
19 trary to the provisions of section 201(c), section 201(d),
20 or section 309 of this Act.

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

23 (1) IN GENERAL.—No authority or permission
24 may be required under this title to reexport to a
25 country an item that is produced in a country other
26 than the United States and incorporates parts or

1 components that are subject to the jurisdiction of
2 the United States, if the value of the controlled
3 United States content of the item produced in such
4 other country is 25 percent or less of the total value
5 of the item; except that in the case of reexports of
6 an item to a country designated as a country sup-
7 porting international terrorism pursuant to section
8 310, controls may be maintained if the value of the
9 controlled United States content is more than 10
10 percent of the total value of the item.

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

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

17 (B) are incorporated into the item; and

18 (C) would, at the time of the reexport, re-
19 quire a license under this title if exported from
20 the United States to a country to which the
21 item is to be reexported.

22 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**
23 **STATUS.**

24 (a) ESTABLISHMENT.—The Secretary shall establish
25 a process for interested persons to petition the Secretary

1 to change the status of an item on the National Security
2 Control List.

3 (b) EVALUATIONS AND DETERMINATIONS.—Evaluations and determinations with respect to a petition filed
4 pursuant to this section shall be made in accordance with
5 section 202.
6

7 **Subtitle B—Foreign Availability** 8 **and Mass-Market Status**

9 **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND** 10 **MASS-MARKET STATUS.**

11 (a) IN GENERAL.—The Secretary shall—

12 (1) on a continuing basis,

13 (2) upon a request from the Office of Tech-
14 nology Evaluation, or

15 (3) upon receipt of a petition filed by an inter-
16 ested party,

17 review and determine the foreign availability and the
18 mass-market status of any item the export of which is con-
19 trolled under this title.

20 (b) PETITION AND CONSULTATION.—

21 (1) IN GENERAL.—The Secretary shall establish
22 a process for an interested party to petition the Sec-
23 retary for a determination that an item has a for-
24 eign availability or mass-market status. In evalu-
25 ating and making a determination with respect to a

1 petition filed under this section, the Secretary shall
2 consult with the Secretary of Defense, Secretary of
3 State, and other appropriate Government agencies
4 and with the Office of Technology Evaluation (estab-
5 lished pursuant to section 214).

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

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

16 (1) a foreign availability status, or

17 (2) a mass-market status,

18 the Secretary shall notify the President (and other appro-
19 priate departments and agencies) and publish the notice
20 of the determination in the Federal Register. The Sec-
21 retary's determination shall become final 30 days after the
22 date the notice is published, the item shall be removed
23 from the National Security Control List, and a license or
24 other authorization shall not be required under this title
25 with respect to the item, unless the President makes a

1 determination described in section 212 or 213, or takes
2 action under section 309, with respect to the item in that
3 30-day period.

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

6 (1) FOREIGN AVAILABILITY STATUS.—The Sec-
7 retary shall determine that an item has foreign
8 availability status under this subtitle, if the item (or
9 a substantially identical or directly competitive
10 item)—

11 (A) is available to controlled countries
12 from sources outside the United States, includ-
13 ing countries that participate with the United
14 States in multilateral export controls;

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

20 (C) is available in sufficient quantity so
21 that the requirement of a license or other au-
22 thorization with respect to the export of such
23 item is or would be ineffective.

24 (2) MASS-MARKET STATUS.—

1 (A) IN GENERAL.—In determining whether
2 an item has mass-market status under this sub-
3 title, the Secretary shall consider the following
4 criteria with respect to the item (or a substan-
5 tially identical or directly competitive item):

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

9 (ii) The widespread distribution
10 through normal commercial channels, such
11 as retail stores, direct marketing cata-
12 logues, electronic commerce, and other
13 channels.

14 (iii) The conduciveness to shipment
15 and delivery by generally accepted commer-
16 cial means of transport.

17 (iv) The use for the item's normal in-
18 tended purpose without substantial and
19 specialized service provided by the manu-
20 facturer, distributor, or other third party.

21 (B) DETERMINATION BY SECRETARY.—If
22 the Secretary finds that the item (or a substan-
23 tially identical or directly competitive item)
24 meets the criteria set forth in subparagraph

1 (A), the Secretary shall determine that the item
2 has mass-market status.

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

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

10 (B) DIRECTLY COMPETITIVE ITEM.—

11 (i) IN GENERAL.—The determination
12 of whether an item in relation to another
13 item is a directly competitive item shall in-
14 clude a fair assessment of whether the
15 item, although not substantially identical
16 in its intrinsic or inherent characteristics,
17 is substantially equivalent for commercial
18 purposes and may be adapted for substan-
19 tially the same uses.

20 (ii) EXCEPTION.—An item is not di-
21 rectly competitive with a controlled item if
22 the item is substantially inferior to the
23 controlled item with respect to characteris-
24 tics that resulted in the export of the item
25 being controlled.

1 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**
2 **ABILITY STATUS DETERMINATION.**

3 (a) **CRITERIA FOR PRESIDENTIAL SET-ASIDE.—**

4 (1) **GENERAL CRITERIA.—**

5 (A) **IN GENERAL.—**If the President deter-
6 mines that—

7 (i) decontrolling or failing to control
8 an item constitutes a threat to the national
9 security of the United States, and export
10 controls on the item would advance the na-
11 tional security interests of the United
12 States,

13 (ii) there is a high probability that the
14 foreign availability of an item will be elimi-
15 nated through international negotiations
16 within a reasonable period of time taking
17 into account the characteristics of the
18 item, or

19 (iii) United States controls on the
20 item have been imposed under section 309,
21 the President may set aside the Secretary's de-
22 termination of foreign availability status with
23 respect to the item.

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

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

3 (A) report any set-aside determination de-
4 scribed in paragraph (1), along with the specific
5 reasons for the determination, to the Committee
6 on Banking, Housing, and Urban Affairs of the
7 Senate and the Committee on International Re-
8 lations of the House of Representatives; and

9 (B) publish the determination in the Fed-
10 eral Register.

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

13 (1) IN GENERAL.—

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

21 (B) REPORT TO CONGRESS.—Not later
22 than the date the President begins negotiations,
23 the President shall notify in writing the Com-
24 mittee on Banking, Housing, and Urban Affairs
25 of the Senate and the Committee on Inter-

1 national Relations of the House of Representa-
2 tives that the President has begun such nego-
3 tiations and why the President believes it is im-
4 portant to the national security that export con-
5 trols on the item involved be maintained.

6 (2) PERIODIC REVIEW OF DETERMINATION.—

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

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

19 (A) the date that is 6 months after the date
20 on which the determination is made under sub-
21 section (a), if the President has not commenced
22 international negotiations to eliminate the for-
23 eign availability of the item within that 6-month
24 period;

1 (B) the date on which the negotiations de-
2 scribed in paragraph (1) have terminated with-
3 out achieving an agreement to eliminate foreign
4 availability;

5 (C) the date on which the President deter-
6 mines that there is not a high probability of
7 eliminating foreign availability of the item
8 through negotiation; or

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

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

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

22 (a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

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

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

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

7 (B) United States controls on the item
8 have been imposed under section 309,
9 the President may set aside the Secretary's deter-
10 mination of mass-market status with respect to the
11 item.

12 (2) NONDELEGATION.—The President may not
13 delegate the authority provided for in this sub-
14 section.

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

17 (1) IN GENERAL.—In any case in which export
18 controls are maintained on an item because the
19 President has made a determination under sub-
20 section (a), the President shall promptly report the
21 determination, along with the specific reasons for
22 the determination, to the Committee on Banking,
23 Housing, and Urban Affairs of the Senate and the
24 Committee on International Relations of the House
25 of Representatives, and shall publish notice of the

1 determination in the Federal Register not later than
2 30 days after the Secretary publishes notice of the
3 Secretary's determination that an item has mass-
4 market status.

5 (2) PERIODIC REVIEW OF DETERMINATION.—

6 The President shall review a determination made
7 under subsection (a) at least every 6 months.
8 Promptly after each review is completed, the Sec-
9 retary shall submit a report on the results of the re-
10 view to the Committee on Banking, Housing, and
11 Urban Affairs of the Senate and the Committee on
12 International Relations of the House of Representa-
13 tives.

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

15 (a) IN GENERAL.—

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

25 (2) STAFF.—

1 (A) IN GENERAL.—The Secretary shall en-
2 sure that the Office include persons to carry
3 out the responsibilities set forth in subsection
4 (b) of this section that have training, expertise,
5 and experience in—

- 6 (i) economic analysis;
7 (ii) the defense industrial base;
8 (iii) technological developments; and
9 (iv) national security and foreign pol-
10 icy export controls.

11 (B) DETAILEES.—In addition to employees
12 of the Department of Commerce, the Secretary
13 may accept on nonreimbursable detail to the
14 Office, employees of the Departments of De-
15 fense, State, and Energy and other departments
16 and agencies as appropriate.

17 (b) RESPONSIBILITIES.—The Office shall be respon-
18 sible for—

19 (1) conducting foreign availability assessments
20 to determine whether a controlled item is available
21 to controlled countries and whether requiring a li-
22 cense, or denial of a license for the export of such
23 item, is or would be ineffective;

24 (2) conducting mass-market assessments to de-
25 termine whether a controlled item is available to

1 controlled countries because of the mass-market sta-
2 tus of the item;

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

8 (4) monitoring and evaluating multilateral ex-
9 port control regimes and foreign government export
10 control policies and practices that affect the national
11 security interests of the United States;

12 (5) conducting assessments of United States in-
13 dustrial sectors critical to the United States defense
14 industrial base and how the sectors are affected by
15 technological developments, technology transfers,
16 and foreign competition; and

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

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

22 (B) the United States economy in general.

23 (c) REPORTS TO CONGRESS.—The Secretary shall
24 make available to the Committee on International Rela-
25 tions of the House of Representatives and the Committee

1 on Banking, Housing, and Urban Affairs of the Senate
2 as part of the Secretary's annual report required under
3 section 701 information on the operations of the Office,
4 and on improvements in the Government's ability to assess
5 foreign availability and mass-market status, during the
6 fiscal year preceding the report, including information on
7 the training of personnel, and the use of Commercial Serv-
8 ice Officers of the United States and Foreign Commercial
9 Service to assist in making determinations. The informa-
10 tion shall also include a description of determinations
11 made under this Act during the preceding fiscal year that
12 foreign availability or mass-market status did or did not
13 exist (as the case may be), together with an explanation
14 of the determinations.

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

1 **TITLE III—FOREIGN POLICY**
2 **EXPORT CONTROLS**

3 **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**
4 **TROLS.**

5 (a) **AUTHORITY.**—

6 (1) **IN GENERAL.**—In order to carry out the
7 purposes set forth in subsection (b), the President
8 may, in accordance with the provisions of this Act,
9 prohibit, curtail, or require a license, other author-
10 ization, recordkeeping, or reporting for the export of
11 any item subject to the jurisdiction of the United
12 States or exported by any person subject to the ju-
13 risdiction of the United States.

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

19 (b) **PURPOSES.**—The purposes of foreign policy ex-
20 port controls are the following:

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

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

1 (3) To use export controls to deter and punish
2 acts of international terrorism and to encourage
3 other countries to take immediate steps to prevent
4 the use of their territories or resources to aid, en-
5 courage, or give sanctuary to those persons involved
6 in directing, supporting, or participating in acts of
7 international terrorism.

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

18 (d) CONTRACT SANCTITY.—

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

22 (A) in performance of a binding contract,
23 agreement, or other contractual commitment
24 entered into before the date on which the Presi-
25 dent reports to Congress the President's inten-

1 tion to impose controls on that item under this
2 title; or

3 (B) under a license or other authorization
4 issued under this Act before the earlier of the
5 date on which the control is initially imposed or
6 the date on which the President reports to Con-
7 gress the President's intention to impose con-
8 trols under this title.

9 (2) EXCEPTION.—The prohibition contained in
10 paragraph (1) shall not apply in any case in which
11 the President determines and certifies to the Com-
12 mittee on Banking, Housing, and Urban Affairs of
13 the Senate and the Committee on International Re-
14 lations of the House of Representatives that—

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

17 (B) the prohibition of exports under each
18 binding contract, agreement, commitment, li-
19 cense, or authorization will be instrumental in
20 remedying the situation posing the serious
21 threat; and

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

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

25 (a) NOTICE.—

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

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

7 (B) provide for a period of not less than
8 30 days for any interested person to submit
9 comments on the export control proposed under
10 this title.

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

13 (A) to provide an opportunity for the for-
14 mulation of an effective export control policy
15 under this title that advances United States
16 economic and foreign policy interests; and

17 (B) to provide an opportunity for negotia-
18 tions to achieve the purposes set forth in sec-
19 tion 301(b).

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

1 (c) CONSULTATION.—

2 (1) REQUIREMENT.—The President shall con-
3 sult with the Committee on Banking, Housing, and
4 Urban Affairs of the Senate and the Committee on
5 International Relations of the House of Representa-
6 tives regarding any export control proposed under
7 this title and the efforts to achieve or increase multi-
8 lateral cooperation on the issues or problems under-
9 lying the proposed export control.

10 (2) CLASSIFIED CONSULTATION.—The con-
11 sultations described in paragraph (1) may be con-
12 ducted on a classified basis if the Secretary con-
13 siders it necessary.

14 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
15 **TROLS.**

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

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

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

22 (3) include an assessment by the President
23 that—

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

4 (B) the achievement of the objectives of
5 the export control outweighs any potential costs
6 of the export control to other United States
7 economic, foreign policy, humanitarian, or na-
8 tional security interests;

9 (4) be targeted narrowly; and

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

14 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**
15 **CONTROL.**

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

23 (b) CONTENT.—The report shall contain a descrip-
24 tion and assessment of each of the criteria described in

1 section 303. In addition, the report shall contain a descrip-
2 tion and assessment of—

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

6 (2) unilateral export controls imposed, and
7 other measures taken, by other countries to achieve
8 the intended objective of the proposed export con-
9 trol;

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

12 (4) alternative measures to promote the same
13 objectives and the likelihood of their potential suc-
14 cess;

15 (5) any United States obligations under inter-
16 national trade agreements, treaties, or other inter-
17 national arrangements, with which the proposed ex-
18 port control may conflict;

19 (6) the likelihood that the proposed export con-
20 trol could lead to retaliation against United States
21 interests;

22 (7) the likely economic impact of the proposed
23 export control on the United States economy, United
24 States international trade and investment, and

1 United States agricultural interests, commercial in-
2 terests, and employment; and

3 (8) a conclusion that the probable achievement
4 of the objectives of the proposed export control out-
5 weighs any likely costs to United States economic,
6 foreign policy, humanitarian, or national security in-
7 terests, including any potential harm to the United
8 States agricultural and business firms and to the
9 international reputation of the United States as a
10 reliable supplier of goods, services, or technology.

11 **SEC. 305. IMPOSITION OF CONTROLS.**

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

16 **SEC. 306. DEFERRAL AUTHORITY.**

17 (a) **AUTHORITY.**—The President may defer compli-
18 ance with any requirement contained in section 302(a),
19 304, or 305 in the case of a proposed export control if—

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

23 (2) the requirement is satisfied not later than
24 60 days after the date on which the export control
25 is imposed under this title.

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

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

7 (a) RENEWAL AND TERMINATION.—

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

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

16 (A) is required by law;

17 (B) is targeted against any country des-
18 ignated as a country supporting international
19 terrorism pursuant to section 310; or

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

22 (b) REVIEW.—

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

1 (2) CONSULTATION.—

2 (A) REQUIREMENT.—Before completing a
3 review under paragraph (1), the President shall
4 consult with the Committee on Banking, Hous-
5 ing, and Urban Affairs of the Senate and the
6 Committee on International Relations of the
7 House of Representative regarding each export
8 control that is being reviewed.

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

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

20 (c) REPORT TO CONGRESS.—

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

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

5 (A) A clearly stated explanation of the spe-
6 cific United States foreign policy objective that
7 the existing export control was intended to
8 achieve.

9 (B) An assessment of—

10 (i) the extent to which the existing ex-
11 port control achieved its objectives before
12 renewal based on the objective criteria es-
13 tablished for evaluating the export control;
14 and

15 (ii) the reasons why the existing ex-
16 port control has failed to fully achieve its
17 objectives and, if renewed, how the export
18 control will achieve that objective before
19 the next renewal year.

20 (C) An updated description and assess-
21 ment of—

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

1 (ii) each matter required to be re-
2 ported under section 304(b) (1) through
3 (8).

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

9 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, the President—

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

16 (2) may terminate at any time any export con-
17 trol imposed under this title that is not required by
18 law.

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

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

1 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**
2 **TIONS.**

3 Notwithstanding any other provision of this Act set-
4 ting forth limitations on authority to control exports and
5 except as provided in section 304, the President may im-
6 pose controls on exports to a particular country or
7 countries—

8 (1) of items listed on the control list of a multi-
9 lateral export control regime, as defined in section
10 2(14); or

11 (2) in order to fulfill obligations or commit-
12 ments of the United States under resolutions of the
13 United Nations and under treaties, or other inter-
14 national agreements and arrangements, to which the
15 United States is a party.

16 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**
17 **INTERNATIONAL TERRORISM.**

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

23 (1) the government of such country has repeat-
24 edly provided support for acts of international ter-
25 rorism; and

1 (2) the export of the item could make a signifi-
2 cant contribution to the military potential of such
3 country, including its military logistics capability, or
4 could enhance the ability of such country to support
5 acts of international terrorism.

6 (b) NOTIFICATION.—The Secretary and the Sec-
7 retary of State shall notify the Committee on International
8 Relations of the House of Representatives and the Com-
9 mittee on Banking, Housing, and Urban Affairs and the
10 Committee on Foreign Relations of the Senate at least 30
11 days before issuing any license required by subsection (a).

12 (c) DETERMINATIONS REGARDING REPEATED SUP-
13 PORT.—Each determination of the Secretary of State
14 under subsection (a)(1), including each determination in
15 effect on the date of the enactment of the Antiterrorism
16 and Arms Export Amendments Act of 1989, shall be pub-
17 lished in the Federal Register.

18 (d) LIMITATIONS ON RESCINDING DETERMINA-
19 TION.—A determination made by the Secretary of State
20 under subsection (a)(1) may not be rescinded unless the
21 President submits to the Speaker of the House of Rep-
22 resentatives and the Chairman of the Committee on Bank-
23 ing, Housing, and Urban Affairs and the Chairman of the
24 Committee on Foreign Relations of the Senate—

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

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

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

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

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

14 (A) the government concerned has not pro-
15 vided any support for international terrorism
16 during the preceding 6-month period; and

17 (B) the government concerned has pro-
18 vided assurances that it will not support acts of
19 international terrorism in the future.

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

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

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

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

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

14 (5) an analysis of the manner in which the pro-
15 posed export would affect the relative military
16 strengths of countries in the region to which the
17 item which is the subject of such export would be de-
18 livered and whether other countries in the region
19 have comparable kinds and amounts of the item; and

20 (6) an analysis of the impact of the proposed
21 export or transfer on the United States relations
22 with the countries in the region to which the item
23 which is the subject of such export would be deliv-
24 ered.

1 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

2 (a) IN GENERAL.—Crime control and detection in-
3 struments and equipment shall be approved for export by
4 the Secretary only pursuant to an individual export li-
5 cense. Notwithstanding any other provision of this Act—

6 (1) any determination by the Secretary of what
7 goods or technology shall be included on the list es-
8 tablished pursuant to this subsection as a result of
9 the export restrictions imposed by this section shall
10 be made with the concurrence of the Secretary of
11 State, and

12 (2) any determination by the Secretary to ap-
13 prove or deny an export license application to export
14 crime control or detection instruments or equipment
15 shall be made in concurrence with the recommenda-
16 tions of the Secretary of State submitted to the Sec-
17 retary with respect to the application pursuant to
18 section 401 of this Act,

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

23 (b) EXCEPTION.—The provisions of this section shall
24 not apply with respect to exports to countries that are
25 members of the North Atlantic Treaty Organization or to
26 Japan, Australia, or New Zealand, or to such other coun-

1 tries as the President shall designate consistent with the
2 purposes of this section and section 502B of the Foreign
3 Assistance Act of 1961 (22 U.S.C. 2304).

4 **TITLE IV—PROCEDURES FOR EX-**
5 **PORT LICENSES AND INTER-**
6 **AGENCY DISPUTE RESOLU-**
7 **TION**

8 **SEC. 401. EXPORT LICENSE PROCEDURES.**

9 (a) RESPONSIBILITY OF THE SECRETARY.—

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

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

22 (3) CALCULATION OF PROCESSING TIMES.—In
23 calculating the processing times set forth in this
24 title, the Secretary shall use calendar days, except
25 that if the final day for a required action falls on a

1 weekend or holiday, that action shall be taken no
2 later than the following business day.

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

7 (A) The characteristics of the controlled
8 item.

9 (B) The threat to—

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

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

16 (C) The country tier designation of the
17 country to which a controlled item is to be ex-
18 ported pursuant to section 203.

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

21 (i) the exporter;

22 (ii) the method of export;

23 (iii) the end-user;

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

1 (v) the end-use.

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

4 (i) changing the characteristics of the
5 controlled item;

6 (ii) after-market monitoring by the ex-
7 porter; and

8 (iii) post-shipment verification.

9 (b) INITIAL SCREENING.—

10 (1) UPON RECEIPT OF APPLICATION.—Upon re-
11 ceipt of an export license application, the Secretary
12 shall enter and maintain in the records of the De-
13 partment information regarding the receipt and sta-
14 tus of the application.

15 (2) INITIAL PROCEDURES.—

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

19 (i) contact the applicant if the appli-
20 cation is improperly completed or if addi-
21 tional information is required, and hold the
22 application for a reasonable time while the
23 applicant provides the necessary correc-
24 tions or information, and such time shall

1 not be included in calculating the time pe-
2 riods prescribed in this title;

3 (ii) refer the application, through the
4 use of a common data base or other
5 means, and all information submitted by
6 the applicant, and all necessary rec-
7 ommendations and analyses by the Sec-
8 retary to the Secretary of Defense, the
9 Secretary of State, and the heads of and
10 other departments and agencies the Sec-
11 retary considers appropriate;

12 (iii) ensure that the classification stat-
13 ed on the application for the export items
14 is correct; and

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

17 (B) REFERRAL NOT REQUIRED.—In the
18 event that the head of a department or agency
19 determines that certain types of applications
20 need not be referred to the department or agen-
21 cy, such department or agency head shall notify
22 the Secretary of the specific types of such appli-
23 cations that the department or agency does not
24 wish to review.

1 (3) WITHDRAWAL OF APPLICATION.—An appli-
2 cant may, by written notice to the Secretary, with-
3 draw an application at any time before final action.

4 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
5 CIES.—

6 (1) REFERRAL TO OTHER AGENCIES.—The Sec-
7 retary shall promptly refer a license application to
8 the departments and agencies under subsection (b)
9 to make recommendations and provide information
10 to the Secretary.

11 (2) RESPONSIBILITY OF REFERRAL DEPART-
12 MENTS AND AGENCIES.—The Secretary of Defense,
13 the Secretary of State, and the heads of other re-
14 viewing departments and agencies shall take all nec-
15 essary actions in a prompt and responsible manner
16 on an application. Each department or agency re-
17 viewing an application under this section shall estab-
18 lish and maintain records properly identifying and
19 monitoring the status of the matter referred to the
20 department or agency.

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

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

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

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

4 (1) if there is agreement among the referral de-
5 partments and agencies to issue or deny the
6 license—

7 (A) issue the license and ensure all appro-
8 priate personnel in the Department (including
9 the Office of Export Enforcement) are notified
10 of all approved license applications; or

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

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

17 (e) CONSEQUENCES OF APPLICATION DENIAL.—

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

23 (A) the determination;

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

1 (C) what, if any, modifications to, or re-
2 strictions on, the items for which the license
3 was sought would allow such export to be com-
4 patible with export controls imposed under this
5 Act, and which officer or employee of the De-
6 partment would be in a position to discuss
7 modifications or restrictions with the applicant
8 and the specific statutory and regulatory bases
9 for imposing such modifications or restrictions;

10 (D) to the extent consistent with the na-
11 tional security and foreign policy interests of
12 the United States, the specific considerations
13 that led to the determination to deny the appli-
14 cation; and

15 (E) the availability of appeal procedures.

16 (2) PERIOD FOR APPLICANT TO RESPOND.—

17 The applicant shall have 20 days from the date of
18 the notice of intent to deny the application to re-
19 spond in a manner that addresses and corrects the
20 reasons for the denial. If the applicant does not ade-
21 quately address or correct the reasons for denial or
22 does not respond, the license shall be denied. If the
23 applicant does address or correct the reasons for de-
24 nial, the application shall be considered in a timely
25 manner.

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

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

11 (2) ENFORCEMENT OF TIME LIMITS.—

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

24 (B) BRINGING COURT ACTION.—If, within
25 20 days after a petition is filed under subpara-

1 graph (A), the processing of the application has
2 not been brought into conformity with the re-
3 quirements of this section, or the processing of
4 the application has been brought into con-
5 formity with such requirements but the Sec-
6 retary has not so notified the applicant, the ap-
7 plicant may bring an action in an appropriate
8 United States district court for an order requir-
9 ing compliance with the time periods required
10 by this section.

11 (g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—

12 The following actions related to processing an application
13 shall not be included in calculating the time periods pre-
14 scribed in this section:

15 (1) AGREEMENT OF THE APPLICANT.—Delays
16 upon which the Secretary and the applicant mutu-
17 ally agree.

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

22 (A) the need for the prelicense check is de-
23 termined by the Secretary or by another depart-
24 ment or agency in any case in which the re-

1 quest for the prelicense check is made by such
2 department or agency;

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

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

10 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
11 MENT ASSURANCES.—Any request by the Secretary
12 or another department or agency for government-to-
13 government assurances of suitable end-uses of items
14 approved for export, when failure to obtain such as-
15 surances would result in rejection of the application,
16 if—

17 (A) the request for such assurances is sent
18 to the Secretary of State within 5 days after
19 the determination that the assurances are re-
20 quired;

21 (B) the Secretary of State initiates the re-
22 quest of the relevant government within 10
23 days thereafter; and

1 (C) the license is issued within 5 days
2 after the Secretary receives the requested assur-
3 ances.

4 (4) EXCEPTION.—Whenever a prelicense check
5 described in paragraph (2) or assurances described
6 in paragraph (3) are not requested within the time
7 periods set forth therein, then the time expended for
8 such prelicense check or assurances shall be included
9 in calculating the time periods established by this
10 section.

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

15 (6) CONGRESSIONAL NOTIFICATION.—Such
16 time as is required for mandatory congressional noti-
17 fications under this Act.

18 (7) CONSULTATIONS.—Consultation with for-
19 eign governments, if such consultation is provided
20 for by a relevant multilateral regime as a pre-
21 condition for approving a license.

22 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
23 IES.—

24 (1) CLASSIFICATION REQUESTS.—In any case
25 in which the Secretary receives a written request

1 asking for the proper classification of an item on the
2 Control List or the applicability of licensing require-
3 ments under this title, the Secretary shall promptly
4 notify the Secretary of Defense and the head of any
5 department or agency the Secretary considers appro-
6 priate. The Secretary shall, within 14 days after re-
7 ceiving the request, inform the person making the
8 request of the proper classification.

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

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

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

18 (b) INTERAGENCY DISPUTE RESOLUTION PROC-
19 ESS.—

20 (1) INITIAL RESOLUTION.—The Secretary shall
21 establish, select the chairperson of, and determine
22 procedures for an interagency committee to review
23 initially all license applications described in sub-
24 section (a) with respect to which the Secretary and
25 any of the referral departments and agencies are not

1 in agreement. The chairperson shall consider the po-
2 sitions of all the referral departments and agencies
3 (which shall be included in the minutes described in
4 subsection (c)(2)) and make a decision on the license
5 application, including appropriate revisions or condi-
6 tions thereto.

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

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

16 (A) provide for decision-making based on
17 the majority vote of the participating depart-
18 ments and agencies;

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

24 (C) provide that any decision of an inter-
25 agency committee established under paragraph

1 (1) or interagency dispute resolution process es-
2 tablished under this paragraph may be esca-
3 lated to the next higher level of review at the
4 request of an official appointed by the Presi-
5 dent, by and with the advice of the Senate, or
6 an officer properly acting in such capacity, of a
7 department or agency that participated in the
8 interagency committee or dispute resolution
9 process that made the decision; and

10 (D) ensure that matters are resolved or re-
11 ferred to the President not later than 90 days
12 after the date the completed license application
13 is referred by the Secretary.

14 (c) FINAL ACTION.—

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

18 (A) issue the license and ensure that all
19 appropriate personnel in the Department (in-
20 cluding the Office of Export Enforcement) are
21 notified of all approved license applications; or

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

24 (2) MINUTES.—The interagency committee and
25 each level of the interagency dispute resolution proc-

1 ess shall keep reasonably detailed minutes of all
2 meetings. On each matter before the interagency
3 committee or before any other level of the inter-
4 agency dispute resolution process in which members
5 disagree, each member shall clearly state the reasons
6 for the member's position and the reasons shall be
7 entered in the minutes.

8 **TITLE V—INTERNATIONAL AR-**
9 **RANGEMENTS; FOREIGN BOY-**
10 **COTTS; SANCTIONS; AND EN-**
11 **FORCEMENT**

12 **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

13 (a) MULTILATERAL EXPORT CONTROL REGIMES.—

14 (1) POLICY.—It is the policy of the United
15 States to seek multilateral arrangements that sup-
16 port the national security objectives of the United
17 States (as described in title II) and that establish
18 fairer and more predictable competitive opportunities
19 for United States exporters.

20 (2) PARTICIPATION IN EXISTING REGIMES.—

21 Congress encourages the United States to continue
22 its active participation in and to strengthen existing
23 multilateral export control regimes.

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

25 policy of the United States to participate in addi-

1 tional multilateral export control regimes if such
2 participation would serve the national security inter-
3 ests of the United States.

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

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

20 (1) FULL MEMBERSHIP.—All supplier countries
21 are members of the regime, and the policies and ac-
22 tivities of the members are consistent with the objec-
23 tives and membership criteria of the multilateral ex-
24 port control regime.

1 (2) EFFECTIVE ENFORCEMENT AND COMPLI-
2 ANCE.—The regime promotes enforcement and com-
3 pliance with the regime’s rules and guidelines.

4 (3) PUBLIC UNDERSTANDING.—The regime
5 makes an effort to enhance public understanding of
6 the purpose and procedures of the multilateral ex-
7 port control regime.

8 (4) EFFECTIVE IMPLEMENTATION PROCE-
9 DURES.—The multilateral export control regime has
10 procedures for the uniform and consistent interpre-
11 tation and implementation of its rules and guide-
12 lines.

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

17 (A) cooperate with governments outside
18 the regime to restrict the export of items con-
19 trolled by such regime; and

20 (B) establish an ongoing mechanism in the
21 regime to coordinate planning and implementa-
22 tion of export control measures related to such
23 cooperation.

24 (6) PERIODIC HIGH-LEVEL MEETINGS.—There
25 are regular periodic meetings of high-level represent-

1 atives of the governments of members of the multi-
2 lateral export control regime for the purpose of co-
3 ordinating export control policies and issuing policy
4 guidance to members of the regime.

5 (7) COMMON LIST OF CONTROLLED ITEMS.—

6 There is agreement on a common list of items con-
7 trolled by the multilateral export control regime.

8 (8) REGULAR UPDATES OF COMMON LIST.—

9 There is a procedure for removing items from the
10 list of controlled items when the control of such
11 items no longer serves the objectives of the members
12 of the multilateral export control regime.

13 (9) TREATMENT OF CERTAIN COUNTRIES.—

14 There is agreement to prevent the export or diver-
15 sion of the most sensitive items to countries whose
16 activities are threatening to the national security of
17 the United States or its allies.

18 (10) HARMONIZATION OF LICENSE APPROVAL

19 PROCEDURES.—There is harmonization among the
20 members of the regime of their national export li-
21 cense approval procedures, practices, and standards.

22 (11) UNDERCUTTING.—There is a limit with re-

23 spect to when members of a multilateral export con-
24 trol regime—

1 (A) grant export licenses for any item that
2 is substantially identical to or directly competi-
3 tive with an item controlled pursuant to the re-
4 gime, where the United States has denied an
5 export license for such item, or

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

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

14 (1) EXPORT CONTROL LAW.—Enforcement au-
15 thority, civil and criminal penalties, and statutes of
16 limitations are sufficient to deter potential violations
17 and punish violators under the member’s export con-
18 trol law.

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

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

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

7 (5) INFORMATION.—There are procedures for
8 the coordination and exchange of information con-
9 cerning licensing, end users, and enforcement with
10 other members of the multilateral export control re-
11 gime.

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

16 (e) OBJECTIVES REGARDING MULTILATERAL EX-
17 PORT CONTROL REGIMES.—The President shall seek to
18 achieve the following objectives with regard to multilateral
19 export control regimes:

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

23 (A) by creating a requirement to share in-
24 formation about export license applications

1 among members before a member approves an
2 export license; and

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

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

9 (A) national security concerns;

10 (B) the controllability of items; and

11 (C) the costs and benefits of controls.

12 (3) ENCOURAGE COMPLIANCE BY NONMEM-
13 BERS.—Encourage nonmembers of the multilateral
14 export control regime—

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

17 (B) to adhere to the appropriate multilat-
18 eral export control regime; and

19 (C) not to undermine an existing multilat-
20 eral export control regime by exporting con-
21 trolled items in a manner inconsistent with the
22 guidelines of the regime.

23 (f) TRANSPARENCY OF MULTILATERAL EXPORT
24 CONTROL REGIMES.—

1 (1) PUBLICATION OF INFORMATION ON EACH
2 EXISTING REGIME.—Not later than 120 days after
3 the date of enactment of this Act, the Secretary
4 shall, for each multilateral export control regime, to
5 the extent that it is not inconsistent with the ar-
6 rangements of that regime (in the judgment of the
7 Secretary of State) or with the national interest,
8 publish in the Federal Register and post on the De-
9 partment of Commerce website the following infor-
10 mation with respect to the regime:

11 (A) The purposes of the regime.

12 (B) The members of the regime.

13 (C) The export licensing policy of the re-
14 gime.

15 (D) The items that are subject to export
16 controls under the regime, together with all
17 public notes, understandings, and other aspects
18 of the agreement of the regime, and all changes
19 thereto.

20 (E) Any countries, end uses, or end users
21 that are subject to the export controls of the re-
22 gime.

23 (F) Rules of interpretation.

24 (G) Major policy actions.

1 (H) The rules and procedures of the re-
2 gime for establishing and modifying any matter
3 described in subparagraphs (A) through (G)
4 and for reviewing export license applications.

5 (2) NEW REGIMES.—Not later than 60 days
6 after the United States joins or organizes a new
7 multilateral export control regime, the Secretary
8 shall, to the extent that it is not inconsistent with
9 arrangements under the regime (in the judgment of
10 the Secretary of State) or with the national interest,
11 publish in the Federal Register and post on the De-
12 partment of Commerce website the information de-
13 scribed in subparagraphs (A) through (H) of para-
14 graph (1) with respect to the regime.

15 (3) PUBLICATION OF CHANGES.—Not later
16 than 60 days after a multilateral export control re-
17 gime adopts any change in the information published
18 under this subsection, the Secretary shall, to the ex-
19 tent not inconsistent with the arrangements under
20 the regime or the national interest, publish such
21 changes in the Federal Register and post such
22 changes on the Department of Commerce website.

23 (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
24 TROL SYSTEMS.—The Secretary is encouraged to continue
25 to—

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

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

8 **SEC. 502. FOREIGN BOYCOTTS.**

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

11 (1) To counteract restrictive trade practices or
12 boycotts fostered or imposed by foreign countries
13 against other countries friendly to the United States
14 or against any United States person.

15 (2) To encourage and, in specified cases, re-
16 quire United States persons engaged in the export of
17 items to refuse to take actions, including furnishing
18 information or entering into or implementing agree-
19 ments, which have the effect of furthering or sup-
20 porting the restrictive trade practices or boycotts
21 fostered or imposed by any foreign country against
22 a country friendly to the United States or against
23 any United States person.

24 (b) PROHIBITIONS AND EXCEPTIONS.—

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

13 (A) Refusing, or requiring any other per-
14 son to refuse, to do business with or in the boy-
15 cotted country, with any business concern orga-
16 nized under the laws of the boycotted country,
17 with any national or resident of the boycotted
18 country, or with any other person, pursuant to
19 an agreement with, or requirement of, or a re-
20 quest from or on behalf of the boycotting coun-
21 try (subject to the condition that the intent re-
22 quired to be associated with such an act in
23 order to constitute a violation of the prohibition
24 is not indicated solely by the mere absence of
25 a business relationship with or in the boycotted

1 country, with any business concern organized
2 under the laws of the boycotted country, with
3 any national or resident of the boycotted coun-
4 try, or with any other person).

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

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

15 (D) Furnishing information (other than
16 furnishing normal business information in a
17 commercial context, as defined by the Sec-
18 retary) about whether any person has, has had,
19 or proposes to have any business relationship
20 (including a relationship by way of sale, pur-
21 chase, legal or commercial representation, ship-
22 ping or other transport, insurance, investment,
23 or supply) with or in the boycotted country,
24 with any business concern organized under the
25 laws of the boycotted country, with any national

1 or resident of the boycotted country, or with
2 any other person that is known or believed to
3 be restricted from having any business relation-
4 ship with or in the boycotting country.

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

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

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

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

24 (i) prohibiting the import of items
25 from the boycotted country or items pro-

1 duced or provided, by any business concern
2 organized under the laws of the boycotted
3 country or by nationals or residents of the
4 boycotted country; or

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

10 (B) compliance, or agreement to comply,
11 with import and shipping document require-
12 ments with respect to the country of origin, the
13 name of the carrier and route of shipment, the
14 name of the supplier of the shipment, or the
15 name of the provider of other services, except
16 that, for purposes of applying any exception
17 under this subparagraph, no information know-
18 ingly furnished or conveyed in response to such
19 requirements may be stated in negative, black-
20 listing, or similar exclusionary terms, other
21 than with respect to carriers or route of ship-
22 ment as may be permitted by such regulations
23 in order to comply with precautionary require-
24 ments protecting against war risks and confis-
25 cation;

1 (C) compliance, or agreement to comply, in
2 the normal course of business with the unilat-
3 eral and specific selection by a boycotting coun-
4 try, or a national or resident thereof, or car-
5 riers, insurers, suppliers of services to be per-
6 formed within the boycotting country, or spe-
7 cific items which, in the normal course of busi-
8 ness, are identifiable by source when imported
9 into the boycotting country;

10 (D) compliance, or agreement to comply,
11 with export requirements of the boycotting
12 country relating to shipment or transshipment
13 of exports to the boycotted country, to any busi-
14 ness concern of or organized under the laws of
15 the boycotted country, or to any national or
16 resident of the boycotted country;

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

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

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

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

22 (5) EVASION.—This section applies to any
23 transaction or activity undertaken by or through a
24 United States person or any other person with in-
25 tent to evade the provisions of this section or the

1 regulations issued pursuant to this subsection. The
2 regulations issued pursuant to this section shall ex-
3 pressly provide that the exceptions set forth in para-
4 graph (2) do not permit activities or agreements (ex-
5 pressed or implied by a course of conduct, including
6 a pattern of responses) that are otherwise prohib-
7 ited, pursuant to the intent of such exceptions.

8 (c) ADDITIONAL REGULATIONS AND REPORTS.—

9 (1) REGULATIONS.—In addition to the regula-
10 tions issued pursuant to subsection (b), regulations
11 issued pursuant to title III shall implement the pur-
12 poses set forth in subsection (a).

13 (2) REPORTS BY UNITED STATES PERSONS.—

14 The regulations shall require that any United States
15 person receiving a request to furnish information,
16 enter into or implement an agreement, or take any
17 other action referred to in subsection (a) shall report
18 that request to the Secretary, together with any
19 other information concerning the request that the
20 Secretary determines appropriate. The person shall
21 also submit to the Secretary a statement regarding
22 whether the person intends to comply, and whether
23 the person has complied, with the request. Any re-
24 port filed pursuant to this paragraph shall be made
25 available promptly for public inspection and copying,

1 except that information regarding the quantity, de-
2 scription, and value of any item to which such report
3 relates may be treated as confidential if the Sec-
4 retary determines that disclosure of that information
5 would place the United States person involved at a
6 competitive disadvantage. The Secretary shall peri-
7 odically transmit summaries of the information con-
8 tained in the reports to the Secretary of State for
9 such action as the Secretary of State, in consultation
10 with the Secretary, considers appropriate to carry
11 out the purposes set forth in subsection (a).

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

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

19 (2) pertains to participation in, compliance
20 with, implementation of, or the furnishing of infor-
21 mation regarding restrictive trade practices or boy-
22 cotts fostered or imposed by foreign countries
23 against other countries.

24 **SEC. 503. PENALTIES.**

25 (a) **CRIMINAL PENALTIES.**—

1 (1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-
2 vidual who willfully violates, conspires to violate, or
3 attempts to violate any provision of this Act or any
4 regulation, license, or order issued under this Act
5 shall be fined up to 10 times the value of the exports
6 involved or \$1,000,000, whichever is greater, impris-
7 oned for not more than 10 years, or both, for each
8 violation.

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

17 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
18 CEEDS.—

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

23 (A) any of that person's security or other
24 interest in, claim against, or property or con-

1 tractual rights of any kind in the tangible items
2 that were the subject of the violation;

3 (B) any of that person's security or other
4 interest in, claim against, or property or con-
5 tractual rights of any kind in the tangible prop-
6 erty that was used in the export or attempt to
7 export that was the subject of the violation; and

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

11 (2) PROCEDURES.—The procedures in any for-
12 feiture under this subsection, and the duties and au-
13 thority of the courts of the United States and the
14 Attorney General with respect to any forfeiture ac-
15 tion under this subsection, or with respect to any
16 property that may be subject to forfeiture under this
17 subsection, shall be governed by the provisions of
18 chapter 46 of title 18, United States Code (relating
19 to criminal forfeiture), to the same extent as prop-
20 erty subject to forfeiture under that chapter.

21 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
22 TIONS.—

23 (1) CIVIL PENALTIES.—The Secretary may im-
24 pose a civil penalty of up to \$500,000 for each viola-
25 tion of a provision of this Act or any regulation, li-

1 cense, or order issued under this Act. A civil penalty
2 under this paragraph may be in addition to, or in
3 lieu of, any other liability or penalty which may be
4 imposed for such a violation.

5 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
6 retary may deny the export privileges of any person,
7 including the suspension or revocation of the author-
8 ity of such person to export or receive United
9 States-origin items subject to this Act, for a viola-
10 tion of a provision of this Act or any regulation, li-
11 cense, or order issued under this Act.

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

18 (d) PAYMENT OF CIVIL PENALTIES.—

19 (1) PAYMENT AS CONDITION OF FURTHER EX-
20 PORT PRIVILEGES.—The payment of a civil penalty
21 imposed under subsection (c) may be made a condi-
22 tion for the granting, restoration, or continuing va-
23 lidity of any export license, permission, or privilege
24 granted or to be granted to the person upon whom
25 such penalty is imposed. The period for which the

1 payment of a penalty may be made such a condition
2 may not exceed 1 year after the date on which the
3 payment is due.

4 (2) DEFERRAL OR SUSPENSION.—

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

12 (B) NO BAR TO COLLECTION OF PEN-
13 ALTY.—A deferral or suspension under sub-
14 paragraph (A) shall not operate as a bar to the
15 collection of the penalty concerned in the event
16 that the conditions of the suspension, deferral,
17 or probation are not fulfilled.

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

22 (e) REFUNDS.—

23 (1) AUTHORITY.—

24 (A) IN GENERAL.—The Secretary may, in
25 the Secretary's discretion, refund any civil pen-

1 alty imposed under subsection (c) on the
2 ground of a material error of fact or law in im-
3 position of the penalty.

4 (B) LIMITATION.—A civil penalty may not
5 be refunded under subparagraph (A) later than
6 2 years after payment of the penalty.

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

12 (f) EFFECT OF OTHER CONVICTIONS.—

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

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

17 (B) a provision of the International Emer-
18 gency Economic Powers Act (50 U.S.C. 1701 et
19 seq.),

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

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

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

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

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

6 (H) section 371 or 1001 of title 18, United
7 States Code, if in connection with the export of
8 controlled items under this Act or any regula-
9 tion, license, or order issued under the Inter-
10 national Emergency Economic Powers Act, or
11 the export of items controlled under the Arms
12 Export Control Act,

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

15 (J) a provision of the Atomic Energy Act
16 (42 U.S.C. 201 et seq.),

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

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

21 may, at the discretion of the Secretary, be denied ex-
22 port privileges under this Act for a period not to ex-
23 ceed 10 years from the date of the conviction. The
24 Secretary may also revoke any export license under

1 this Act in which such person had an interest at the
2 time of the conviction.

3 (2) RELATED PERSONS.—The Secretary may
4 exercise the authority under paragraph (1) with re-
5 spect to any person related through affiliation, own-
6 ership, control, or position of responsibility to a per-
7 son convicted of any violation of a law set forth in
8 paragraph (1) upon a showing of such relationship
9 with the convicted person. The Secretary shall make
10 such showing only after providing notice and oppor-
11 tunity for a hearing.

12 (g) STATUTE OF LIMITATIONS.—

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

20 (2) EXCEPTION.—

21 (A) TOLLING.—In any case in which a
22 criminal indictment alleging a violation under
23 subsection (a) is returned within the time limits
24 prescribed by law for the institution of such ac-
25 tion, the limitation under paragraph (1) for

1 bringing a proceeding to impose a civil penalty
2 or other administrative sanction under this sec-
3 tion shall, upon the return of the criminal in-
4 dictment, be tolled against all persons named as
5 a defendant.

6 (B) DURATION.—The tolling of the limita-
7 tion with respect to a defendant under subpara-
8 graph (A) as a result of a criminal indictment
9 shall continue for a period of 6 months from
10 the date on which the conviction of the defend-
11 ant becomes final, the indictment against the
12 defendant is dismissed, or the criminal action
13 has concluded.

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

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

19 (1) the availability of other administrative or
20 judicial remedies with respect to a violation of a pro-
21 vision of this Act, or any regulation, order, or license
22 issued under this Act;

23 (2) the authority to compromise and settle ad-
24 ministrative proceedings brought with respect to any
25 such violation; or

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

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

6 (a) VIOLATIONS BY UNITED STATES PERSONS.—

7 (1) SANCTIONS.—

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

10 (i) exports, transfers, or otherwise en-
11 gages in the trade of any item on the
12 MTCR Annex, in violation of the provi-
13 sions of section 38 (22 U.S.C. 2778) or
14 chapter 7 of the Arms Export Control Act,
15 title II or III of this Act, or any regula-
16 tions or orders issued under any such pro-
17 visions,

18 (ii) conspires to or attempts to engage
19 in such export, transfer, or trade, or

20 (iii) facilitates such export, transfer,
21 or trade by any other person,

22 then the President shall impose the applicable
23 sanctions described in subparagraph (B).

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

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

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

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

24 (3) WAIVER.—The President may waive the im-
25 position of sanctions under paragraph (1) on a per-

1 son with respect to an item if the President certifies
2 to Congress that—

3 (A) the item is essential to the national se-
4 curity of the United States; and

5 (B) such person is a sole source supplier of
6 the item, the item is not available from any al-
7 ternative reliable supplier, and the need for the
8 item cannot be met in a timely manner by im-
9 proved manufacturing processes or technological
10 developments.

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

13 (1) SANCTIONS.—

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

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

1 subject to the jurisdiction of the United
2 States under this Act,

3 (ii) conspires to or attempts to engage
4 in such export, transfer, or trade, or

5 (iii) facilitates such export, transfer,
6 or trade by any other person,

7 or if the President has made a determination
8 with respect to a foreign person under section
9 73(a) of the Arms Export Control Act, then the
10 President shall impose on that foreign person
11 the applicable sanctions under subparagraph
12 (B).

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

16 (i) If the item involved in the export,
17 transfer, or trade is within category II of
18 the MTCR Annex, then the President shall
19 deny, for a period of 2 years, licenses for
20 the transfer to such foreign person of mis-
21 sile equipment or technology the export of
22 which is controlled under this Act.

23 (ii) If the item involved in the export,
24 transfer, or trade is within category I of
25 the MTCR Annex, then the President shall

1 deny, for a period of not less than 2 years,
2 licenses for the transfer to such foreign
3 person of items the export of which is con-
4 trolled under this Act.

5 (iii) If, in addition to actions taken
6 under clauses (i) and (ii), the President de-
7 termines that the export, transfer, or trade
8 has substantially contributed to the design,
9 development, or production of missiles in a
10 country that is not an MTCR adherent,
11 then the President shall prohibit, for a pe-
12 riod of not less than 2 years, the importa-
13 tion into the United States of products
14 produced by that foreign person.

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

18 (A) any export, transfer, or trading activ-
19 ity that is authorized by the laws of an MTCR
20 adherent, if such authorization is not obtained
21 by misrepresentation or fraud; or

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

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

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

25 (5) WAIVER AND REPORT TO CONGRESS.—

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

10 (B) REPORT TO CONGRESS.—In the event
11 that the President decides to apply the waiver
12 described in subparagraph (A), the President
13 shall so notify Congress not less than 20 work-
14 ing days before issuing the waiver. Such notifi-
15 cation shall include a report fully articulating
16 the rationale and circumstances which led the
17 President to apply the waiver.

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

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

24 (B) such person is a sole source supplier of
25 the product or service, the product or service is

1 not available from any alternative reliable sup-
2 plier, and the need for the product or service
3 cannot be met in a timely manner by improved
4 manufacturing processes or technological devel-
5 opments.

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

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

12 (i) under existing contracts or sub-
13 contracts, including the exercise of options
14 for production quantities to satisfy require-
15 ments essential to the national security of
16 the United States;

17 (ii) if the President determines that
18 the person to which the sanctions would be
19 applied is a sole source supplier of the de-
20 fense articles and services, that the defense
21 articles or services are essential to the na-
22 tional security of the United States, and
23 that alternative sources are not readily or
24 reasonably available; or

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

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

10 (C) to—

11 (i) spare parts,

12 (ii) component parts, but not finished
13 products, essential to United States prod-
14 ucts or production,

15 (iii) routine services and maintenance
16 of products, to the extent that alternative
17 sources are not readily or reasonably avail-
18 able, or

19 (iv) information and technology essen-
20 tial to United States products or produc-
21 tion.

22 (c) DEFINITIONS.—In this section:

23 (1) MISSILE.—The term “missile” means a cat-
24 egory I system as defined in the MTCR Annex, and
25 any other unmanned delivery system of similar capa-

1 bility, as well as the specially designed production
2 facilities for these systems.

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

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

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

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

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

3 (6) FOREIGN PERSON.—The term “foreign per-
4 son” means any person other than a United States
5 person.

6 (7) PERSON.—

7 (A) IN GENERAL.—The term “person”
8 means a natural person as well as a corpora-
9 tion, business association, partnership, society,
10 trust, any other nongovernmental entity, orga-
11 nization, or group, and any governmental entity
12 operating as a business enterprise, and any suc-
13 cessor of any such entity.

14 (B) IDENTIFICATION IN CERTAIN CASES.—

15 In the case of countries where it may be impos-
16 sible to identify a specific governmental entity
17 referred to in subparagraph (A), the term “per-
18 son” means—

19 (i) all activities of that government re-
20 lating to the development or production of
21 any missile equipment or technology; and

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

1 (8) OTHERWISE ENGAGED IN THE TRADE OF.—
2 The term “otherwise engaged in the trade of”
3 means, with respect to a particular export or trans-
4 fer, to be a freight forwarder or designated export-
5 ing agent, or a consignee or end user of the item to
6 be exported or transferred.

7 **SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
8 **LIFERATION SANCTIONS.**

9 (a) IMPOSITION OF SANCTIONS.—

10 (1) DETERMINATION BY THE PRESIDENT.—Ex-
11 cept as provided in subsection (b)(2), the President
12 shall impose both of the sanctions described in sub-
13 section (c) if the President determines that a foreign
14 person, on or after the date of enactment of this sec-
15 tion, has knowingly and materially contributed—

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

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

23 to the efforts by any foreign country, project, or en-
24 tity described in paragraph (2) to use, develop,

1 produce, stockpile, or otherwise acquire chemical or
2 biological weapons.

3 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
4 CEIVING ASSISTANCE.—Paragraph (1) applies in the
5 case of—

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

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

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

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

16 (B) any foreign country whose government
17 is determined for purposes of section 310 to be
18 a government that has repeatedly provided sup-
19 port for acts of international terrorism; or

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

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

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

4 (B) any successor entity to that foreign
5 person;

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

10 (D) any foreign person that is an affiliate
11 of that foreign person if that affiliate knowingly
12 assisted in the activities which were the basis of
13 that determination and if that affiliate is con-
14 trolled in fact by that foreign person.

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

17 (1) CONSULTATIONS.—If the President makes
18 the determinations described in subsection (a)(1)
19 with respect to a foreign person, Congress urges the
20 President to initiate consultations immediately with
21 the government with primary jurisdiction over that
22 foreign person with respect to the imposition of
23 sanctions pursuant to this section.

24 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
25 TION.—In order to pursue such consultations with

1 that government, the President may delay imposition
2 of sanctions pursuant to this section for a period of
3 up to 90 days. Following the consultations, the
4 President shall impose sanctions unless the Presi-
5 dent determines and certifies to Congress that gov-
6 ernment has taken specific and effective actions, in-
7 cluding appropriate penalties, to terminate the in-
8 volvement of the foreign person in the activities de-
9 scribed in subsection (a)(1). The President may
10 delay imposition of sanctions for an additional pe-
11 riod of up to 90 days if the President determines
12 and certifies to Congress that government is in the
13 process of taking the actions described in the pre-
14 ceding sentence.

15 (3) REPORT TO CONGRESS.—The President
16 shall report to Congress, not later than 90 days
17 after making a determination under subsection
18 (a)(1), on the status of consultations with the appro-
19 priate government under this subsection, and the
20 basis for any determination under paragraph (2) of
21 this subsection that such government has taken spe-
22 cific corrective actions.

23 (c) SANCTIONS.—

24 (1) DESCRIPTION OF SANCTIONS.—The sanc-
25 tions to be imposed pursuant to subsection (a)(1)

1 are, except as provided in paragraph (2) of this sub-
2 section, the following:

3 (A) PROCUREMENT SANCTION.—The
4 United States Government shall not procure, or
5 enter into any contract for the procurement of,
6 any goods or services from any person described
7 in subsection (a)(3).

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

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

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

17 (i) under existing contracts or sub-
18 contracts, including the exercise of options
19 for production quantities to satisfy United
20 States operational military requirements;

21 (ii) if the President determines that
22 the person or other entity to which the
23 sanctions would otherwise be applied is a
24 sole source supplier of the defense articles
25 or services, that the defense articles or

1 services are essential, and that alternative
2 sources are not readily or reasonably avail-
3 able; or

4 (iii) if the President determines that
5 such articles or services are essential to the
6 national security under defense coproduc-
7 tion agreements;

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

12 (C) to—

13 (i) spare parts,

14 (ii) component parts, but not finished
15 products, essential to United States prod-
16 ucts or production, or

17 (iii) routine servicing and mainte-
18 nance of products, to the extent that alter-
19 native sources are not readily or reason-
20 ably available;

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

23 (E) to medical or other humanitarian
24 items.

1 (d) TERMINATION OF SANCTIONS.—The sanctions
2 imposed pursuant to this section shall apply for a period
3 of at least 12 months following the imposition of sanctions
4 and shall cease to apply thereafter only if the President
5 determines and certifies to the Congress that reliable in-
6 formation indicates that the foreign person with respect
7 to which the determination was made under subsection
8 (a)(1) has ceased to aid or abet any foreign government,
9 project, or entity in its efforts to acquire chemical or bio-
10 logical weapons capability as described in that subsection.

11 (e) WAIVER.—

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

20 (2) NOTIFICATION OF AND REPORT TO CON-
21 GRESS.—If the President decides to exercise the
22 waiver authority provided in paragraph (1), the
23 President shall so notify the Congress not less than
24 20 days before the waiver takes effect. Such notifica-
25 tion shall include a report fully articulating the ra-

1 tionale and circumstances which led the President to
2 exercise the waiver authority.

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

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

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

12 **SEC. 506. ENFORCEMENT.**

13 (a) GENERAL AUTHORITY AND DESIGNATION.—

14 (1) POLICY GUIDANCE ON ENFORCEMENT.—

15 The Secretary, in consultation with the Secretary of
16 the Treasury and the heads of other departments
17 and agencies that the Secretary considers appro-
18 priate, shall be responsible for providing policy guid-
19 ance on the enforcement of this Act.

20 (2) GENERAL AUTHORITIES.—

21 (A) EXERCISE OF AUTHORITY.—To the ex-
22 tent necessary or appropriate to the enforce-
23 ment of this Act, officers and employees of the
24 Department designated by the Secretary, offi-
25 cers and employees of the United States Cus-

1 toms Service designated by the Commissioner of
2 Customs, and officers and employees of any
3 other department or agency designated by the
4 head of a department or agency exercising func-
5 tions under this Act, may exercise the enforce-
6 ment authority under paragraph (3).

7 (B) CUSTOMS SERVICE.—In carrying out
8 enforcement authority under paragraph (3), the
9 Commissioner of Customs and employees of the
10 United States Customs Service designated by
11 the Commissioner may make investigations
12 within or outside the United States and at
13 ports of entry into or exit from the United
14 States where officers of the United Statescus-
15 toms Service are authorized by law to carry out
16 law enforcement responsibilities. Subject to
17 paragraph (3), the United States Customs
18 Service is authorized, in the enforcement of this
19 Act, to search, detain (after search), and seize
20 items at the ports of entry into or exit from
21 the United States where officers of the United
22 States Customs Service are authorized by law
23 to conduct searches, detentions, and seizures,
24 and at the places outside the United States
25 where the United States Customs Service, pur-

1 suant to agreement or other arrangement with
2 other countries, is authorized to perform en-
3 forcement activities.

4 (C) OTHER EMPLOYEES.—In carrying out
5 enforcement authority under paragraph (3), the
6 Secretary and officers and employees of the De-
7 partment designated by the Secretary may
8 make investigations within the United States,
9 and may conduct, outside the United States,
10 pre-license and post-shipment verifications of
11 controlled items and investigations in the en-
12 forcement of section 502. The Secretary and of-
13 ficers and employees of the Department des-
14 ignated by the Secretary are authorized to
15 search, detain (after search), and seize items at
16 places within the United States other than
17 ports referred to in subparagraph (B). The
18 search, detention (after search), or seizure of
19 items at the ports and places referred to in sub-
20 paragraph (B) may be conducted by officers
21 and employees of the Department only with the
22 concurrence of the Commissioner of Customs or
23 a person designated by the Commissioner.

24 (D) AGREEMENTS AND ARRANGEMENTS.—
25 The Secretary and the Commissioner of Cus-

1 toms may enter into agreements and arrange-
2 ments for the enforcement of this Act, including
3 foreign investigations and information ex-
4 change.

5 (3) SPECIFIC AUTHORITIES.—

6 (A) ACTIONS BY ANY DESIGNATED PER-
7 SONNEL.—Any officer or employee designated
8 under paragraph (2), in carrying out the en-
9 forcement authority under this Act, may do the
10 following:

11 (i) Make investigations of, obtain in-
12 formation from, make inspection of any
13 books, records, or reports (including any
14 writings required to be kept by the Sec-
15 retary), premises, or property of, and take
16 the sworn testimony of, any person.

17 (ii) Administer oaths or affirmations,
18 and by subpoena require any person to ap-
19 pear and testify or to appear and produce
20 books, records, and other writings, or both.
21 In the case of contumacy by, or refusal to
22 obey a subpoena issued to, any such per-
23 son, a district court of the United States,
24 on request of the Attorney General and
25 after notice to any such person and a hear-

1 ing, shall have jurisdiction to issue an
2 order requiring such person to appear and
3 give testimony or to appear and produce
4 books, records, and other writings, or both.
5 Any failure to obey such order of the court
6 may be punished by such court as a con-
7 tempt thereof. The attendance of witnesses
8 and the production of documents provided
9 for in this clause may be required from
10 any State, the District of Columbia, or in
11 any territory of the United States at any
12 designated place. Witnesses subpoenaed
13 under this subsection shall be paid the
14 same fees and mileage allowance as paid
15 witnesses in the district courts of the
16 United States.

17 (B) ACTIONS BY OFFICE OF EXPORT EN-
18 FORCEMENT AND CUSTOMS SERVICE PER-
19 SONNEL.—

20 (i) OFFICE OF EXPORT ENFORCE-
21 MENT AND CUSTOMS SERVICE PER-
22 SONNEL.—Any officer or employee of the
23 Office of Export Enforcement of the De-
24 partment of Commerce (in this Act re-
25 ferred to as “OEE”) who is designated by

1 the Secretary under paragraph (2), and
2 any officer or employee of the United
3 States Customs Service who is designated
4 by the Commissioner of Customs under
5 paragraph (2), may do the following in
6 carrying out the enforcement authority
7 under this Act:

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

12 (II) Make arrests without war-
13 rant for any violation of this Act com-
14 mitted in his or her presence or view,
15 or if the officer or employee has prob-
16 able cause to believe that the person
17 to be arrested has committed, is com-
18 mitting, or is about to commit such a
19 violation.

20 (III) Carry firearms.

21 (ii) OEE PERSONNEL.—Any officer or
22 employee of the OEE designated by the
23 Secretary under paragraph (2) shall exer-
24 cise the authority set forth in clause (i)

1 pursuant to guidelines approved by the At-
2 torney General.

3 (C) OTHER ACTIONS BY CUSTOMS SERVICE
4 PERSONNEL.—Any officer or employee of the
5 United States Customs Service designated by
6 the Commissioner of Customs under paragraph
7 (2) may do the following in carrying out the en-
8 forcement authority under this Act:

9 (i) Stop, search, and examine a vehi-
10 cle, vessel, aircraft, or person on which or
11 whom the officer or employee has reason-
12 able cause to suspect there is any item
13 that has been, is being, or is about to be
14 exported from or transited through the
15 United States in violation of this Act.

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

23 (iii) Detain (after search) or seize any
24 item, for purposes of securing for trial or
25 forfeiture to the United States, on or

1 about such vehicle, vessel, aircraft, or per-
2 son or in such package or container, if the
3 officer or employee has probable cause to
4 believe the item has been, is being, or is
5 about to be exported from or transited
6 through the United States in violation of
7 this Act.

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

11 (b) FORFEITURE.—

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

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

18 (A) the seizure, summary and judicial for-
19 feiture, and condemnation of property for viola-
20 tions of the customs laws;

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

23 (C) the remission or mitigation of such for-
24 feitures; and

25 (D) the compromise of claims,

1 shall apply to seizures and forfeitures incurred, or
2 alleged to have been incurred, under the provisions
3 of this subsection, insofar as applicable and not in-
4 consistent with this Act.

5 (3) FORFEITURES UNDER CUSTOMS LAWS.—

6 Duties that are imposed upon a customs officer or
7 any other person with respect to the seizure and for-
8 feiture of property under the customs laws may be
9 performed with respect to seizures and forfeitures of
10 property under this subsection by the Secretary or
11 any officer or employee of the Department that may
12 be authorized or designated for that purpose by the
13 Secretary (or by the Commissioner of Customs or
14 any officer or employee of the United States Cus-
15 toms Service designated by the Commissioner), or,
16 upon the request of the Secretary, by any other
17 agency that has authority to manage and dispose of
18 seized property.

19 (c) REFERRAL OF CASES.—All cases involving viola-
20 tions of this Act shall be referred to the Secretary for pur-
21 poses of determining civil penalties and administrative
22 sanctions under section 503 or to the Attorney General
23 for criminal action in accordance with this Act or to both
24 the Secretary and the Attorney General.

25 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

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

5 (A) funds made available for export en-
6 forcement under this Act may be used to pur-
7 chase property, buildings, and other facilities,
8 and to lease equipment, conveyances, and space
9 within the United States, without regard to sec-
10 tions 1341 and 3324 of title 31, United States
11 Code, the third undesignated paragraph under
12 the heading of “miscellaneous” of the Act of
13 March 3, 1877, (40 U.S.C. 34), sections
14 3732(a) and 3741 of the Revised Statutes of
15 the United States (41 U.S.C. 11(a) and 22),
16 subsections (a) and (c) of section 304 of the
17 Federal Property and Administrative Services
18 Act of 1949 (41 U.S.C. 254 (a) and (c)), and
19 section 305 of the Federal Property and Ad-
20 ministrative Services Act of 1949 (41 U.S.C.
21 255);

22 (B) funds made available for export en-
23 forcement under this Act may be used to estab-
24 lish or to acquire proprietary corporations or
25 business entities as part of an undercover oper-

1 ation, and to operate such corporations or busi-
2 ness entities on a commercial basis, without re-
3 gard to sections 1341, 3324, and 9102 of title
4 31, United States Code;

5 (C) funds made available for export en-
6 forcement under this Act and the proceeds from
7 undercover operations may be deposited in
8 banks or other financial institutions without re-
9 gard to the provisions of section 648 of title 18,
10 United States Code, and section 3302 of title
11 31, United States Code; and

12 (D) the proceeds from undercover oper-
13 ations may be used to offset necessary and rea-
14 sonable expenses incurred in such operations
15 without regard to the provisions of section 3302
16 of title 31, United States Code,

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

22 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
23 corporation or business entity established or ac-
24 quired as part of an undercover operation has a net
25 value of more than \$250,000 and is to be liquidated,

1 sold, or otherwise disposed of, the Director of OEE
2 shall report the circumstances to the Secretary and
3 the Comptroller General of the United States as
4 much in advance of such disposition as the Director
5 of the OEE (or the Director's designee) determines
6 is practicable. The proceeds of the liquidation, sale,
7 or other disposition, after obligations incurred by the
8 corporation or business enterprise are met, shall be
9 deposited in the Treasury of the United States as
10 miscellaneous receipts. Any property or equipment
11 purchased pursuant to paragraph (1) may be re-
12 tained for subsequent use in undercover operations
13 under this section. When such property or equip-
14 ment is no longer needed, it shall be considered sur-
15 plus and disposed of as surplus government prop-
16 erty.

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

25 (4) AUDIT AND REPORT.—

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

9 (B) REPORT.—The Secretary shall submit
10 annually to Congress a report, which may be in-
11 cluded in the annual report under section 701,
12 specifying the following information:

13 (i) The number of undercover inves-
14 tigative operations pending as of the end of
15 the period for which such report is sub-
16 mitted.

17 (ii) The number of undercover inves-
18 tigative operations commenced in the 1-
19 year period preceding the period for which
20 such report is submitted.

21 (iii) The number of undercover inves-
22 tigative operations closed in the 1-year pe-
23 riod preceding the period for which such
24 report is submitted and, with respect to
25 each such closed undercover operation, the

1 results obtained and any civil claims made
2 with respect to the operation.

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

5 (A) the term “closed”, with respect to an
6 undercover investigative operation, refers to the
7 earliest point in time at which all criminal pro-
8 ceedings (other than appeals) pursuant to the
9 investigative operation are concluded, or covert
10 activities pursuant to such operation are con-
11 cluded, whichever occurs later; and

12 (B) the terms “undercover investigative
13 operation” and “undercover operation” mean
14 any undercover investigative operation con-
15 ducted by the OEE—

16 (i) in which the gross receipts (exclud-
17 ing interest earned) exceed \$25,000, or ex-
18 penditures (other than expenditures for
19 salaries of employees) exceed \$75,000, and

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

25 (e) WIRETAPS.—

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

5 (2) CONFORMING AMENDMENT.—Section
6 2516(1) of title 18, United States Code, is amended
7 by adding at the end the following:

8 “(q)(i) any violation of, or conspiracy to
9 violate, the Export Administration Act of 2001
10 or the Export Administration Act of 1979.”.

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

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

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

21 (2) RELATED PERSONS.—The Secretary may
22 exercise the authority under paragraph (1) with re-
23 spect to any person related through affiliation, own-
24 ership, control, or position of responsibility, to any

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

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

10 (h) FREIGHT FORWARDERS BEST PRACTICES PRO-
11 GRAM AUTHORIZATION.—There is authorized to be appro-
12 priated for the Department of Commerce \$3,500,000 and
13 such sums as may be necessary to hire 20 additional em-
14 ployees to assist United States freight forwarders and
15 other interested parties in developing and implementing,
16 on a voluntary basis, a “best practices” program to ensure
17 that exports of controlled items are undertaken in compli-
18 ance with this Act.

19 (i) END-USE VERIFICATION AUTHORIZATION.—

20 (1) IN GENERAL.—There is authorized to be
21 appropriated for the Department of Commerce
22 \$4,500,000 and such sums as may be necessary to
23 hire 10 additional overseas investigators to be posted
24 in the People’s Republic of China, the Russian Fed-
25 eration, the Hong Kong Special Administrative Re-

1 gion, the Republic of India, Singapore, Egypt, and
2 Taiwan, or any other place the Secretary deems ap-
3 propriate, for the purpose of verifying the end use
4 of high-risk, dual-use technology.

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

12 (A) The activities of the overseas investiga-
13 tors of the Department.

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

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

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

1 (j) ENHANCED COOPERATION WITH UNITED STATES
2 CUSTOMS SERVICE.—Consistent with the purposes of this
3 Act, the Secretary is authorized to undertake, in coopera-
4 tion with the United States Customs Service, such meas-
5 ures as may be necessary or required to enhance the abil-
6 ity of the United States to detect unlawful exports and
7 to enforce violations of this Act.

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

13 (l) AUTHORIZATION FOR EXPORT LICENSING AND
14 ENFORCEMENT COMPUTER SYSTEM.—There is author-
15 ized to be appropriated for the Department \$5,000,000
16 and such other sums as may be necessary for planning,
17 design, and procurement of a computer system to replace
18 the Department's primary export licensing and computer
19 enforcement system.

20 (m) AUTHORIZATION FOR BUREAU OF EXPORT AD-
21 MINISTRATION.—The Secretary may authorize, without
22 fiscal year limitation, the expenditure of funds transferred
23 to, paid to, received by, or made available to the Bureau
24 of Export Administration as a reimbursement in accord-
25 ance with section 9703 of title 31, United States Code

1 (as added by Public Law 102–393). The Secretary may
2 also authorize, without fiscal year limitation, the expendi-
3 ture of funds transferred to, paid to, received by, or made
4 available to the Bureau of Export Administration as a re-
5 imbursement from the Department of Justice Assets For-
6 feiture Fund in accordance with section 524 of title 28,
7 United States Code. Such funds shall be deposited in an
8 account and shall remain available until expended.

9 (n) AMENDMENTS TO TITLE 31.—

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

16 (2) Section 9703(a)(2)(B)(i) of title 31, United
17 States Code is amended (as added by Public Law
18 102–393)—

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

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

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

1 “(III) a violation of the Export
2 Administration Act of 1979, the Ex-
3 port Administration Act of 2001, or
4 any regulation, license, or order issued
5 under those Acts;”.

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

13 (o) AUTHORIZATION FOR LICENSE REVIEW OFFI-
14 CERS.—

15 (1) IN GENERAL.—There is authorized to be
16 appropriated to the Department of Commerce
17 \$2,000,000 to hire additional license review officers.

18 (2) TRAINING.—There is authorized to be ap-
19 propriated to the Department of Commerce
20 \$2,000,000 to conduct professional training of li-
21 cense review officers, auditors, and investigators
22 conducting post-shipment verification checks. These
23 funds shall be used to—

1 (A) train and certify, through a formal
2 program, new employees entering these posi-
3 tions for the first time; and

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

6 (p) AUTHORIZATION.—

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

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

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

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

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

22 (E) such additional amounts, for each such
23 fiscal year, as may be necessary for increases in
24 salary, pay, retirement, other employee benefits

1 authorized by law, and other nondiscretionary
2 costs.

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

6 (A) Provides to Congress a detailed report
7 on—

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

10 (ii) the operation of United States ex-
11 port controls in general.

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

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

18 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

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

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

1 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
2 ministrative sanction imposed under section 503
3 may be imposed only after notice and opportunity
4 for an agency hearing on the record in accordance
5 with sections 554 through 557 of title 5, United
6 States Code. The imposition of any such administra-
7 tive sanction shall be subject to judicial review in ac-
8 cordance with sections 701 through 706 of title 5,
9 United States Code, except that the review shall be
10 initiated in the United States Court of Appeals for
11 the District of Columbia Circuit, which shall have
12 jurisdiction of the review.

13 (2) AVAILABILITY OF CHARGING LETTER.—Any
14 charging letter or other document initiating adminis-
15 trative proceedings for the imposition of sanctions
16 for violations of the regulations issued under section
17 502 shall be made available for public inspection and
18 copying.

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

1 posing the civil penalty becomes final. In such an action,
2 the validity, amount, and appropriateness of such penalty
3 shall not be subject to review.

4 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

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

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

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

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

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

1 cision of the administrative law judge by written
2 order within 10 working days after receiving the ap-
3 peal. The written order of the Secretary shall be
4 final and is not subject to judicial review, except as
5 provided in paragraph (3). The materials submitted
6 to the administrative law judge and the Secretary
7 shall constitute the administrative record for pur-
8 poses of review by the court.

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

1 the statutes listed in section 503. The court shall
2 vacate the Secretary's order if the court finds that
3 the Secretary's order is arbitrary, capricious, an
4 abuse of discretion, or otherwise not in accordance
5 with law.

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

11 **TITLE VI—EXPORT CONTROL** 12 **AUTHORITY AND REGULATIONS**

13 **SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-** 14 **TIONS.**

15 (a) EXPORT CONTROL AUTHORITY.—

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

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

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

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

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

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

24 (B) An Assistant Secretary for Export En-
25 forcement who shall be appointed by the Presi-

1 dent, by and with the advice and consent of the
2 Senate, and who shall assist the Secretary and
3 the Under Secretary in carrying out functions
4 relating to export enforcement.

5 (c) ISSUANCE OF REGULATIONS.—

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

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

1 shall evaluate the cost and burden to the United
2 States exporters of the proposed amendments in re-
3 lation to any enhancement of licensing objectives.
4 The Secretary shall consult with the appropriate ex-
5 port control advisory committees appointed under
6 section 105(a) in amending regulations issued under
7 this Act.

8 **SEC. 602. CONFIDENTIALITY OF INFORMATION.**

9 (a) EXEMPTIONS FROM DISCLOSURE.—

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

1 (2) INFORMATION OBTAINED AFTER JUNE 30,
2 1980.—Except as otherwise provided by the third
3 sentence of section 502(c)(2) and by section
4 507(b)(2), information obtained under this Act,
5 under the Export Administration Act of 1979 after
6 June 30, 1980, or under the Export Administration
7 regulations as maintained and amended under the
8 authority of the International Emergency Economic
9 Powers Act (50 U.S.C. 1706), may be withheld from
10 disclosure only to the extent permitted by statute,
11 except that information submitted, obtained, or con-
12 sidered in connection with an application for an ex-
13 port license or other export authorization (or record-
14 keeping or reporting requirement) under the Export
15 Administration Act of 1979, under this Act, or
16 under the Export Administration regulations as
17 maintained and amended under the authority of the
18 International Emergency Economic Powers Act (50
19 U.S.C. 1706), including—

20 (A) the export license or other export au-
21 thorization itself,

22 (B) classification requests described in sec-
23 tion 401(h),

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

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

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

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

17 (b) INFORMATION TO CONGRESS AND GAO.—

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

22 (2) AVAILABILITY TO THE CONGRESS.—

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

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

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

17 (3) AVAILABILITY TO THE GAO.—

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

1 Code, be made available only by the agency,
2 upon request, to the Comptroller General of the
3 United States or to any officer or employee of
4 the General Accounting Office authorized by
5 the Comptroller General to have access to such
6 information.

7 (B) PROHIBITION ON FURTHER DISCLO-
8 SURES.—No officer or employee of the General
9 Accounting Office shall disclose, except to Con-
10 gress in accordance with this paragraph, any
11 such information which is submitted on a con-
12 fidential basis and from which any individual
13 can be identified.

14 (c) INFORMATION EXCHANGE.—Notwithstanding
15 subsection (a), the Secretary and the Commissioner of
16 Customs shall exchange licensing and enforcement infor-
17 mation with each other as necessary to facilitate enforce-
18 ment efforts and effective license decisions.

19 (d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL
20 INFORMATION.—

21 (1) DISCLOSURE PROHIBITED.—No officer or
22 employee of the United States, or any department or
23 agency thereof, may publish, divulge, disclose, or
24 make known in any manner or to any extent not au-
25 thorized by law any information that—

1 (A) the officer or employee obtains in the
2 course of his or her employment or official du-
3 ties or by reason of any examination or inves-
4 tigation made by, or report or record made to
5 or filed with, such department or agency, or of-
6 ficer or employee thereof; and

7 (B) is exempt from disclosure under this
8 section.

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

15 (3) CIVIL PENALTIES; ADMINISTRATIVE SANC-
16 TIONS.—The Secretary may impose a civil penalty of
17 not more than \$5,000 for each violation of para-
18 graph (1). Any officer or employee who commits
19 such violation may also be removed from office or
20 employment for the violation of paragraph (1). Sec-
21 tions 503 (e), (g), (h), and (i) and 507 (a), (b), and
22 (c) shall apply to violations described in this para-
23 graph.

1 **TITLE VII—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 701. ANNUAL REPORT.**

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

10 (b) REPORT ELEMENTS.—Each such report shall in-
11 clude in detail—

12 (1) a description of the implementation of the
13 export control policies established by this Act, in-
14 cluding any delegations of authority by the President
15 and any other changes in the exercise of delegated
16 authority;

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

20 (3) a description of the petitions filed and the
21 determinations made with respect to foreign avail-
22 ability and mass-market status, the set-asides of for-
23 eign availability and mass-market status determina-
24 tions, and negotiations to eliminate foreign avail-
25 ability;

1 (4) a description of any enhanced control im-
2 posed on an item pursuant to section 201(d);

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

5 (6) a description of organizational and proce-
6 dural changes undertaken in furtherance of this Act;

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

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

11 (A) the number of applications and notifi-
12 cations pending review at the beginning of the
13 fiscal year;

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

16 (C) the number of notifications with no ac-
17 tion required;

18 (D) the number of applications that were
19 approved, denied, or withdrawn, and the num-
20 ber of applications where final action was
21 taken; and

22 (E) the number of applications and notifi-
23 cations pending review at the end of the fiscal
24 year;

- 1 (9) summary of export license data by export
2 identification code and dollar value by country;
- 3 (10) an identification of processing time by—
 - 4 (A) overall average, and
 - 5 (B) top 25 export identification codes;
- 6 (11) an assessment of the effectiveness of mul-
7 tilateral regimes, and a description of negotiations
8 regarding export controls;
- 9 (12) a description of the significant differences
10 between the export control requirements of the
11 United States and those of other multilateral control
12 regime members, and the specific differences be-
13 tween United States requirements and those of other
14 significant supplier countries;
- 15 (13) an assessment of the costs of export con-
16 trols;
- 17 (14) a description of the progress made toward
18 achieving the goals established for the Department
19 dealing with export controls under the Government
20 Performance Results Act; and
- 21 (15) any other reports required by this Act to
22 be submitted to the Committee on Banking, Hous-
23 ing, and Urban Affairs of the Senate and the Com-
24 mittee on International Relations of the House of
25 Representatives.

1 (c) FEDERAL REGISTER PUBLICATION REQUIRE-
2 MENTS.—Whenever information under this Act is required
3 to be published in the Federal Register, such information
4 shall, in addition, be posted on the Department of Com-
5 merce or other appropriate government website.

6 **SEC. 702. TECHNICAL AND CONFORMING AMENDMENTS.**

7 (a) REPEAL.—The Export Administration Act of
8 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

9 (b) ENERGY POLICY AND CONSERVATION ACT.—

10 (1) Section 103 of the Energy Policy and Con-
11 servation Act (42 U.S.C. 6212) is repealed.

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

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

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

19 (e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Sec-
20 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))
21 is repealed.

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

1 (g) OUTER CONTINENTAL SHELF LANDS ACT.—Sec-
2 tion 28 of the Outer Continental Shelf Lands Act (43
3 U.S.C. 1354) is repealed.

4 (h) ARMS EXPORT CONTROL ACT.—

5 (1) Section 38 of the Arms Export Control Act
6 (22 U.S.C. 2778) is amended—

7 (A) in subsection (e)—

8 (i) in the first sentence, by striking
9 “subsections (c)” and all that follows
10 through “12 of such Act,” and inserting
11 “subsections (b), (c), (d) and (e) of section
12 503 of the Export Administration Act of
13 2001, by subsections (a) and (b) of section
14 506 of such Act, and by section 602 of
15 such Act,”; and

16 (ii) in the third sentence, by striking
17 “11(c) of the Export Administration Act of
18 1979” and inserting “503(c) of the Export
19 Administration Act of 2001”; and

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

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

1 (A) by striking “subsections (c),” and all
2 that follows through “12(a) of such Act” and
3 inserting “subsections (c), (d), and (e) of sec-
4 tion 503, section 507(e), and subsections (a)
5 and (b) of section 506, of the Export Adminis-
6 tration Act of 2001”; and

7 (B) by striking “11(c)” and inserting
8 “503(c)”.

9 (3) Section 40(k) of the Arms Export Control
10 Act (22 U.S.C. 2780(k)) is amended—

11 (A) by striking “11(c), 11(e), 11(g), and
12 12(a) of the Export Administration Act of
13 1979” and inserting “503(b), 503(c), 503(e),
14 506(a), and 506(b) of the Export Administra-
15 tion Act of 2001”; and

16 (B) by striking “11(c)” and inserting
17 “503(c)”.

18 (i) OTHER PROVISIONS OF LAW.—

19 (1) Section 5(b)(4) of the Trading with the
20 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by
21 striking “section 5 of the Export Administration Act
22 of 1979, or under section 6 of that Act to the extent
23 that such controls promote the nonproliferation or
24 antiterrorism policies of the United States” and in-

1 serting “titles II and III of the Export Administra-
2 tion Act of 2001”.

3 (2) Section 502B(a)(2) of the Foreign Assist-
4 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
5 ed in the second sentence—

6 (A) by striking “Export Administration
7 Act of 1979” the first place it appears and in-
8 serting “Export Administration Act of 2001”;
9 and

10 (B) by striking “Act of 1979” and insert-
11 ing “Act of 2001”.

12 (3) Section 140(a) of the Foreign Relations Au-
13 thorization Act, Fiscal Years 1988 and 1989 (22
14 U.S.C. 2656f(a)) is amended—

15 (A) in paragraph (1)(B), by inserting “or
16 section 310 of the Export Administration Act of
17 2001” after “Act of 1979”; and

18 (B) in paragraph (2), by inserting “or 310
19 of the Export Administration Act of 2001”
20 after “6(j) of the Export Administration Act of
21 1979”.

22 (4) Section 40(e)(1) of the State Department
23 Basic Authorities Act of 1956 (22 U.S.C.
24 2712(e)(1)) is amended by striking “section 6(j)(1)
25 of the Export Administration Act of 1979” and in-

1 serting “section 310 of the Export Administration
2 Act of 2001”.

3 (5) Section 205(d)(4)(B) of the State Depart-
4 ment Basic Authorities Act of 1956 (22 U.S.C.
5 305(d)(4)(B)) is amended by striking “section 6(j)
6 of the Export Administration Act of 1979” and in-
7 serting “section 310 of the Export Administration
8 Act of 2001”.

9 (6) Section 110 of the International Security
10 and Development Cooperation Act of 1980 (22
11 U.S.C. 2778a) is amended by striking “Act of
12 1979” and inserting “Act of 2001”.

13 (7) Section 203(b)(3) of the International
14 Emergency Economic Powers Act (50 U.S.C.
15 1702(b)(3)) is amended by striking “section 5 of the
16 Export Administration Act of 1979, or under section
17 6 of such Act to the extent that such controls pro-
18 mote the nonproliferation or antiterrorism policies of
19 the United States” and inserting “the Export Ad-
20 ministration Act of 2001”.

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

1 (9) Section 2332d(a) of title 18, United States
2 Code, is amended by striking “section 6(j) of the
3 Export Administration Act of 1979 (50 U.S.C. App.
4 2405)” and inserting “section 310 of the Export Ad-
5 ministration Act of 2001”.

6 (10) Section 620H(a)(1) of the Foreign Assist-
7 ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-
8 ed by striking “section 6(j) of the Export Adminis-
9 tration Act of 1979 (50 U.S.C. App. 2405(j))” and
10 inserting “section 310 of the Export Administration
11 Act of 2001”.

12 (11) Section 1621(a) of the International Fi-
13 nancial Institutions Act (22 U.S.C. 262p–4q(a)) is
14 amended by striking “section 6(j) of the Export Ad-
15 ministration Act of 1979 (50 U.S.C. App. 2405(j))”
16 and inserting “section 310 of the Export Adminis-
17 tration Act of 2001”.

18 (12) Section 1956(c)(7)(D) of title 18, United
19 States Code, is amended by striking “section 11 (re-
20 lating to violations) of the Export Administration of
21 1979” and inserting “section 503 (relating to pen-
22 alties) of the Export Administration Act of 2001”.

23 (13) Subsection (f) of section 491 and section
24 499 of the Forest Resources Conservation and

1 Shortage Relief Act of 1990 (16 U.S.C. 620c(f) and
2 620j) are repealed.

3 (14) Section 904(2)(B) of the Trade Sanctions
4 Reform and Export Enhancement Act of 2000 is
5 amended by striking “Export Administration Act of
6 1979” and inserting “Export Administration Act of
7 2001”.

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

11 (A) by striking the “or” at the end of sub-
12 paragraph (D);

13 (B) by striking the period at the end of
14 subparagraph (E) and inserting “; or”; and

15 (C) by inserting the following new subpara-
16 graph:

17 “(F) the Export Administration Act of
18 2001.”.

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

21 (1) is standard equipment, certified by the Fed-
22 eral Aviation Administration, in civil aircraft, and

23 (2) is an integral part of such aircraft, shall be
24 subject to export control only under this Act. Such
25 product shall not be subject to controls under sec-

1 tion 38(b)(2) of the Arms Export Control Act (22
2 U.S.C. 2778(b)).

3 (k) REPEAL OF CERTAIN EXPORT CONTROLS.—Sub-
4 title B of title XII of division A of the National Defense
5 Authorization Act for Fiscal Year 1998 (50 U.S.C. App.
6 2404 note) is repealed.

7 **SEC. 703. SAVINGS PROVISIONS.**

8 (a) IN GENERAL.—All delegations, rules, regulations,
9 orders, determinations, licenses, or other forms of admin-
10 istrative action which have been made, issued, conducted,
11 or allowed to become effective under—

12 (1) the Export Control Act of 1949, the Export
13 Administration Act of 1969, the Export Administra-
14 tion Act of 1979, or the International Emergency
15 Economic Powers Act when invoked to maintain and
16 continue the Export Administration regulations, or

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

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

23 (b) ADMINISTRATIVE AND JUDICIAL PRO-
24 CEEDINGS.—

1 (1) EXPORT ADMINISTRATION ACT.—This Act
2 shall not affect any administrative or judicial pro-
3 ceedings commenced or any application for a license
4 made, under the Export Administration Act of 1979
5 or pursuant to Executive Order 12924, which is
6 pending at the time this Act takes effect. Any such
7 proceedings, and any action on such application,
8 shall continue under the Export Administration Act
9 of 1979 as if that Act had not been repealed.

10 (2) OTHER PROVISIONS OF LAW.—This Act
11 shall not affect any administrative or judicial pro-
12 ceeding commenced or any application for a license
13 made, under those provisions of the Arms Export
14 Control Act which are amended by section 702, if
15 such proceeding or application is pending at the time
16 this Act takes effect. Any such proceeding, and any
17 action on such application, shall continue under
18 those provisions as if those provisions had not been
19 amended by section 702.

20 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
21 Any determination with respect to the government of a
22 foreign country under section 6(j) of the Export Adminis-
23 tration Act of 1979, or Executive Order 12924, that is
24 in effect on the day before the date of enactment of this
25 Act, shall, for purposes of this title or any other provision

1 of law, be deemed to be made under section 310 of this
2 Act until superseded by a determination under such sec-
3 tion 310.

4 (d) **LAWFUL INTELLIGENCE ACTIVITIES.**—The pro-
5 hibitions otherwise applicable under this Act do not apply
6 with respect to any transaction subject to the reporting
7 requirements of title V of the National Security Act of
8 1947. Notwithstanding any other provision of this Act,
9 nothing shall affect the responsibilities and authorities of
10 the Director of Central Intelligence under section 103 of
11 the National Security Act of 1947.

12 (e) **IMPLEMENTATION.**—The Secretary shall make
13 any revisions to the Export Administration regulations re-
14 quired by this Act no later than 180 days after the date
15 of enactment of this Act.

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