

Union Calendar No. 212

107TH CONGRESS
2^D SESSION

H. R. 2581

[Report No. 107-297, Parts I and II]

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

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2001

Mr. GILMAN introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

NOVEMBER 16, 2001

Reported from the Committee on International Relations with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

NOVEMBER 16, 2001

Referral to the Committee on Rules extended for a period not later than
December 7, 2001

NOVEMBER 16, 2001

Referred to the Committees on Agriculture, Armed Services, Energy and Commerce, the Judiciary, Ways and Means, and the Permanent Select Committee on Intelligence for a period ending not later than December 7, 2001, for consideration of such provisions of the bill and amendment as fall within the respective jurisdiction of those committees pursuant to clauses 1 and 11 of rule X

DECEMBER 7, 2001

Referral to the Committees on Agriculture, Armed Services, Energy and Commerce, the Judiciary, Rules, Ways and Means, and the Permanent Select Committee on Intelligence extended for a period ending not later than December 15, 2001

DECEMBER 14, 2001

Referral to the Committees on Agriculture, Armed Services, Energy and Commerce, the Judiciary, Rules, Ways and Means, and the Permanent Select Committee on Intelligence extended for a period ending not later than February 28, 2002

FEBRUARY 28, 2002

Referral to the Committee on Agriculture, Armed Services, Energy and Commerce, Rules, the Judiciary, Ways and Means, and the Permanent Select Committee on Intelligence extended for a period ending not later than March 8, 2002

MARCH 8, 2002

Reported from the Committee on Armed Services with amendments

[Omit the part struck through in italic and insert the part printed in boldface roman]

MARCH 8, 2002

The Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, Ways and Means, and the Permanent Select Committee on Intelligence discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 20, 2001]

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 “Ex-*
 5 *port Administration Act of 2001”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 7 *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.
Sec. 206. Congressional review and report.

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.

Subtitle C—High Performance Computers

- Sec. 221. Exports of high performance computing technology.**

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.
Sec. 312. Measures to protect the public health.
Sec. 313. Promotion of safe environments.

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—EXPORTS OF SATELLITES

Sec. 701. *Applicability.*
 Sec. 702. *Export controls on satellites and related items.*
 Sec. 703. *Export license procedures.*
 Sec. 704. *Mandatory State Department review.*
 Sec. 705. *Definitions.*
 Sec. 706. *Conforming amendments.*
 Sec. 707. *Effective date.*
 Sec. 708. *Effect on existing law.*

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. ~~801~~ **701.** *Annual report.*
 Sec. ~~802~~ **702.** *Relationship to the Arms Export Control Act.*
 Sec. ~~803~~ **703.** *Enhancement of congressional oversight of nuclear transfers to North Korea.*
 Sec. ~~804~~ **704.** *Procedures for consideration of joint resolutions.*
 Sec. ~~805~~ **705.** *Recommendations of the Judicial Review Commission on Foreign Asset Control.*
 Sec. ~~806~~ **706.** *Improvements to the automated export system.*
 Sec. ~~807~~ **707.** *Technical and conforming amendments.*
 Sec. ~~808~~ **708.** *Savings provisions.*

1 SEC. 2. DEFINITIONS.

2 *Except as otherwise expressly provided, 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 “con-*
 8 *trol” and “controlled” mean any requirement, condi-*
 9 *tion, authorization, or prohibition on the export or*
 10 *reexport of an item.*

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

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

7 (5) *CONTROLLED ITEM.*—The term “controlled
8 item” means an item the export of which is controlled
9 under this Act.

10 (6) *COUNTRY.*—The term “country” means a
11 sovereign country or an autonomous customs terri-
12 tory.

13 (7) *COUNTRY SUPPORTING INTERNATIONAL TER-*
14 *RORISM.*—The term “country supporting inter-
15 national terrorism” means a country designated by
16 the Secretary of State pursuant to section 310.

17 (8) *DEPARTMENT.*—The term “Department”
18 means the Department of Commerce.

19 (9) *EXPORT.*—

20 (A) The term “export” means—

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

24 (ii) a transfer to any person of an item
25 either within the United States or outside of

1 the United States with the knowledge or in-
2 tent that the item will be shipped, trans-
3 ferred, or transmitted to an unauthorized
4 recipient outside the United States;

5 ~~(iii) the release of technology to a for-~~
6 ~~ign national within the United States; or~~

7 **(iii) the release of an item to a**
8 **foreign national within or outside**
9 **of the United States;**

10 (iv) a transfer of an item in the
11 United States to an embassy or affiliate of
12 a country, which shall be considered an ex-
13 port to that country.

14 (B) The term includes a reexport.

15 (10) FOREIGN AVAILABILITY STATUS.—The term
16 “foreign availability status” means the status de-
17 scribed in section 211(d)(1).

18 (11) FOREIGN PERSON.—The term “foreign per-
19 son” means—

20 (A) an individual who is not—

21 (i) a United States citizen;

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

24 (iii) a protected individual as defined
25 in section 274B(a)(3) of the Immigration

1 *and Nationality Act. (8 U.S.C.*
2 *1324b(a)(3));*

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

9 *(C) any governmental entity of a foreign*
10 *country.*

11 (12) *ITEM.—*

12 (A) *IN GENERAL.—The term “item” means*
13 *any good, technology, or service.*

14 (B) *OTHER DEFINITIONS.—In this para-*
15 *graph:*

16 (i) *GOOD.—The term “good” means*
17 *any article, natural or manmade substance,*
18 *material, supply or manufactured product,*
19 *including inspection and test equipment,*
20 *including source code, and excluding tech-*
21 *nical data.*

22 (ii) *TECHNOLOGY.—The term “tech-*
23 *nology” means specific information that is*
24 *necessary for the development, production,*

1 *or use of an item, and takes the form of*
2 *technical data or technical assistance.*

3 **(ii) TECHNOLOGY.—The term**
4 **“technology” means specific infor-**
5 **mation, communicated by any**
6 **means tangible or intangible, that**
7 **is necessary for the design, devel-**
8 **opment, production, or use of an**
9 **item, including taking the form of**
10 **technical data or technical assist-**
11 **ance.**

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

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

17 *(14) MULTILATERAL EXPORT CONTROL RE-*
18 *GIME.—The term “multilateral export control regime”*
19 *means an international agreement or arrangement*
20 *among two or more countries, including the United*
21 *States, a purpose of which is to coordinate national*
22 *export control policies of its members regarding cer-*
23 *tain items. The term includes regimes such as the*
24 *Australia Group, the Wassenaar Arrangement, the*

1 *Missile Technology Control Regime (MTCR), and the*
2 *Nuclear Suppliers' Group Dual Use Arrangement.*

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

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

7 (A) *any individual, or any partnership,*
8 *corporation, business association, society, trust,*
9 *organization, or any other group created or or-*
10 *ganized under the laws of a country; and*

11 (B) *any government, or any governmental*
12 *entity, including any governmental entity oper-*
13 *ating as a business enterprise.*

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

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

19 (19) *UNITED STATES.*—*The term “United*
20 *States” means the States of the United States, the*
21 *District of Columbia, and any commonwealth, terri-*
22 *tory, dependency, or possession of the United States,*
23 *and includes the outer Continental Shelf, as defined*
24 *in section 2(a) of the Outer Continental Shelf Lands*
25 *Act (42 U.S.C. 1331(a)).*

1 (20) *UNITED STATES PERSON.*—*The term*
2 *“United States person” means—*

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

7 (B) *any domestic concern (including any*
8 *permanent domestic establishment of any foreign*
9 *concern); and*

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

15 **TITLE I—GENERAL AUTHORITY**

16 **SEC. 101. COMMERCE CONTROL LIST.**

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

20 (1) *shall establish and maintain a Commerce*
21 *Control List consisting of items the export of which*
22 *are subject to licensing or other authorization or re-*
23 *quirement; and*

24 (2) *may require any type of license, or other au-*
25 *thorization, including recordkeeping and reporting,*

1 *appropriate to the effective and efficient implementa-*
2 *tion of this Act with respect to the export of an item*
3 *on the Control List or otherwise subject to control*
4 *under title II or III of this Act.*

5 ***(b) TYPES OF LICENSE OR OTHER AUTHORIZATION.—***

6 *The types of license or other authorization referred to in*
7 *subsection (a)(2) include the following:*

8 ***(1) SPECIFIC EXPORTS.—****A license that author-*
9 *izes a specific export.*

10 ***(2) MULTIPLE EXPORTS.—****A license that author-*
11 *izes multiple exports in lieu of a license for each ex-*
12 *port.*

13 ***(3) NOTIFICATION IN LIEU OF LICENSE.—****A no-*
14 *tification in lieu of a license that authorizes a specific*
15 *export or multiple exports subject to the condition*
16 *that the exporter file with the Department advance*
17 *notification of the intent to export in accordance with*
18 *regulations prescribed by the Secretary.*

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

22 ***(c) AFTER-MARKET SERVICE AND REPLACEMENT***
23 ***PARTS.—****A license to export an item under this Act shall*
24 *not be required for an exporter to provide after-market serv-*
25 *ice or replacement parts in order to replace on a one-for-*

1 *one basis parts that were in an item that was lawfully ex-*
2 *ported from the United States, unless—*

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

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

8 *(d) INCIDENTAL TECHNOLOGY.—A license or other au-*
9 *thorization to export an item under this Act includes au-*
10 *thorization to export technology related to the item, if the*
11 *level of the technology does not exceed the minimum nec-*
12 *essary to install, repair, maintain, inspect, operate, or use*
13 *the item.*

14 **SEC. 102. DELEGATION OF AUTHORITY.**

15 *(a) IN GENERAL.—Except as provided in subsection*
16 *(b) and subject to the provisions of this Act, the President*
17 *may delegate the power, authority, and discretion conferred*
18 *upon the President by this Act to such departments, agen-*
19 *cies, and officials of the Government as the President con-*
20 *siders appropriate.*

21 *(b) EXCEPTIONS.—*

22 *(1) DELEGATION TO APPOINTEES CONFIRMED BY*
23 *SENATE.—No authority delegated to the President*
24 *under this Act may be delegated by the President to,*
25 *or exercised by, any official of any department or*

1 **SEC. 104. RIGHT OF EXPORT.**

2 *No license or other authorization to export may be re-*
3 *quired under this Act, or under regulations issued under*
4 *this Act, except to carry out the provisions of this Act.*

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

6 *(a) APPOINTMENT.—Upon the Secretary’s own initia-*
7 *tive or upon the written request of representatives of a sub-*
8 *stantial segment of any industry which produces any items*
9 *subject to export controls under this Act or being considered*
10 *for such controls, the Secretary may appoint export control*
11 *advisory committees with respect to any such items. Each*
12 *such committee shall consist of representatives of United*
13 *States industry and Government officials, including offi-*
14 *cials from the Departments of Commerce, Defense, and*
15 *State, and other appropriate departments and agencies of*
16 *the Government. The Secretary shall permit the widest pos-*
17 *sible participation by the business community on the export*
18 *control advisory committees* **on the export control**
19 **advisory committees by nonproliferation and**
20 **national security experts, and by the business**
21 **community.**

22 *(b) FUNCTIONS.—*

23 *(1) IN GENERAL.—Export control advisory com-*
24 *mittees appointed under subsection (a) shall advise*
25 *and assist the Secretary, and any other department,*
26 *agency, or official of the Government carrying out*

1 *functions under this Act, on actions (including all as-*
2 *pects of controls imposed or proposed) designed to*
3 *carry out the provisions of this Act concerning the*
4 *items with respect to which such export control advi-*
5 *sory committees were appointed.*

6 (2) *OTHER CONSULTATIONS.*—*Nothing in para-*
7 *graph (1) shall prevent the United States Government*
8 *from consulting, at any time, with any person rep-*
9 *resenting an industry or the general public, regardless*
10 *of whether such person is a member of an export con-*
11 *trol advisory committee. Members of the public shall*
12 *be given a reasonable opportunity, pursuant to regu-*
13 *lations prescribed by the Secretary, to present infor-*
14 *mation to such committees.*

15 (c) *REIMBURSEMENT OF EXPENSES.*—*Upon the re-*
16 *quest of any member of any export control advisory com-*
17 *mittee appointed under subsection (a), the Secretary may,*
18 *if the Secretary determines it to be appropriate, reimburse*
19 *such member for travel, subsistence, and other necessary ex-*
20 *penses incurred by such member in connection with the du-*
21 *ties of such member.*

22 (d) *CHAIRPERSON.*—*Each export control advisory*
23 *committee appointed under subsection (a) shall elect a*
24 *chairperson, and shall meet at least every 3 months at the*
25 *call of the chairperson, unless the chairperson determines,*

1 *in consultation with the other members of the committee,*
2 *that such a meeting is not necessary to achieve the purposes*
3 *of this section. Each such committee shall be terminated*
4 *after a period of 2 years, unless extended by the Secretary*
5 *for additional periods of 2 years each. The Secretary shall*
6 *consult with each such committee on such termination or*
7 *extension of that committee.*

8 *(e) ACCESS TO INFORMATION.—To facilitate the work*
9 *of the export control advisory committees appointed under*
10 *subsection (a), the Secretary, in conjunction with other de-*
11 *partments and agencies participating in the administra-*
12 *tion of this Act, shall disclose to each such committee ade-*
13 *quate information, consistent with national security and*
14 *intelligence sources and methods, pertaining to the reasons*
15 *for the export controls which are in effect or contemplated*
16 *for the items or policies for which that committee furnishes*
17 *advice. Information provided by the export control advisory*
18 *committees shall not be subject to disclosure under section*
19 *552 of title 5, United States Code, and such information*
20 *shall not be published or disclosed unless the Secretary de-*
21 *termines that the withholding thereof is contrary to the na-*
22 *tional interest.*

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

2 *The President may establish a President's Technology*
3 *Export Council to advise the President on the implementa-*
4 *tion, operation, and effectiveness of this Act.*

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

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

9 **TITLE II—NATIONAL SECURITY**
10 **EXPORT CONTROLS**
11 **Subtitle A—Authority and**
12 **Procedures**

13 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**
14 **CONTROLS.**

15 (a) *AUTHORITY.*—

16 (1) *IN GENERAL.*—*In order to carry out the pur-*
17 *poses set forth in subsection (b), the President may,*
18 *in accordance with the provisions of this Act, pro-*
19 *hibit, curtail, or require a license, or other authoriza-*
20 *tion for the export of any item subject to the jurisdic-*
21 *tion of the United States or exported by any person*
22 *subject to the jurisdiction of the United States. The*
23 *President may also require recordkeeping and report-*
24 *ing with respect to the export of such item.*

25 (2) *EXERCISE OF AUTHORITY.*—*The authority*
26 *contained in this subsection shall be exercised by the*

1 *Secretary, in consultation with the Secretary of De-*
2 *fense, the Secretary of State, **with the concur-***
3 ***rence of the Secretary of Defense and in***
4 ***consultation with the Secretary of State,***
5 *the intelligence agencies, and the heads of such other*
6 *departments and agencies as the Secretary considers*
7 *appropriate.*

8 (b) *PURPOSES.*—*The purposes of national security ex-*
9 *port controls are the following:*

10 (1) *To restrict the export of items that ~~would~~*
11 ***could** contribute to the military potential of coun-*
12 *tries so as to prove detrimental to the national secu-*
13 *rity of the United States, its allies, or countries shar-*
14 *ing common strategic objectives with the United*
15 *States.*

16 (2) *To stem the proliferation of weapons of mass*
17 *destruction, and the means to deliver them, and other*
18 *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 other*
23 *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, stock-*
5 *pile, 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, and*
10 *exports and imports of such items, and compli-*
11 *ance with verification programs.*

12 ~~*(3) To deter acts of international terrorism.*~~

13 **(3) To restrict the export of items that**
14 **could contribute to acts of international**
15 **terrorism so as to prove detrimental to**
16 **the national security of the United States,**
17 **its allies, or countries sharing common**
18 **strategic objectives with the United**
19 **States.**

20 *(c) END USE AND END USER CONTROLS.—*

21 *(1) GENERAL AUTHORITY.—(A) Notwithstanding*
22 *any other provision of this Act, controls may be im-*
23 *posed, based on the end use or end user, on the export*
24 *of any item, that could contribute to the proliferation*

1 *of weapons of mass destruction or the means to de-*
2 *liver them.*

3 *(B) The President shall seek to strengthen multi-*
4 *lateral cooperation to identify more effectively end*
5 *users of concern.*

6 *(C) The Secretary shall establish and maintain*
7 *a database listing end users of concern and develop*
8 *a procedure by which exporters can utilize such data-*
9 *base to screen prospective end users.*

10 *(2) PRESUMPTION OF DENIAL OF CERTAIN LI-*
11 *CENSES.—Notwithstanding any other provision of*
12 *this Act, there shall be a presumption of denial for the*
13 *export of an item if the Secretary, with the concur-*
14 *rence of the Secretary of Defense and the Secretary of*
15 *State, determines that there is a significant risk*
16 *that—*

17 *(A) the end user designated to receive such*
18 *item is involved in a program or activity for the*
19 *design, development, manufacture, stockpiling,*
20 *testing, or other acquisition of a weapon of mass*
21 *destruction or the means to deliver such a weap-*
22 *on and is in a country that is not an adherent*
23 *to a multilateral export control regime control-*
24 *ling such weapon or means of delivery, unless the*
25 *Secretary, with the concurrence of the Secretary*

1 *of Defense and the Secretary of State, and in*
2 *consultation with the intelligence agencies and*
3 *the head of any other department or agency of*
4 *the United States that the Secretary considers*
5 *appropriate, determines that such export would*
6 *not make a material contribution to such pro-*
7 *gram or activity; or*

8 *(B) the export of such item would otherwise*
9 *contribute to the military capabilities of a coun-*
10 *try so as to undermine regional stability or oth-*
11 *erwise prove detrimental to the national security*
12 *of the United States, a NATO ally, or major*
13 *non-NATO ally.*

14 *(3) DEFINITION.—For purposes of this sub-*
15 *section, an “adherent to a multilateral export control*
16 *regime” is—*

17 *(A) a country that is a member of a multi-*
18 *lateral export control regime;*

19 *(B) a country that, pursuant to an inter-*
20 *national understanding to which the United*
21 *States is a party, controls exports in accordance*
22 *with relevant criteria and standards of a multi-*
23 *lateral export control regime; or*

1 (C) a major non-NATO ally that, pursuant
2 to its national legislation, controls exports in ac-
3 cordance with such criteria and standards.

4 (d) *ENHANCED CONTROL.*—

5 (1) *IN GENERAL.*—Notwithstanding any other
6 provision of this title, the President may determine
7 that applying the provisions of section 204 or 211
8 with respect to an item on the National Security Con-
9 trol List could constitute a threat to the national se-
10 curity of the United States and that such item re-
11 quires enhanced control, including the requirement for
12 a license for such item. If the President determines
13 that enhanced control should apply to such item, the
14 item may be excluded from the provisions of sections
15 204 or 211, or both, until such time as the President
16 determines that enhanced control should no longer
17 apply to such item.

18 (2) *CONTROL OF ITEMS.*—Notwithstanding any
19 other provision of this Act, the President may identify
20 items to be included on the National Security Control
21 List, and any such item shall be included on that list.

22 (3) *NONDELEGATION.*—The President may not
23 delegate the authority provided under paragraphs (1)
24 and (2).

1 (4) *REPORT TO CONGRESS.*—*The President shall*
2 *promptly report any determination described in*
3 *paragraph (1) or any items included on the National*
4 *Security Control List under paragraph (2), along*
5 *with the specific reasons for that determination or in-*
6 *clusion (as the case may be), to the Committee on*
7 *International Relations of the House of Representa-*
8 *tives and the Committee on Banking, Housing, and*
9 *Urban Affairs of the Senate.*

10 (e) *PRESUMPTION OF DENIAL ON CERTAIN LI-*
11 *CENSES.*—

12 (1) *PRESUMPTION.*—*Notwithstanding any other*
13 *provision of law, when a license is required for export*
14 *to any country of any item on the National Security*
15 *Control List for any reason specified in subsection*
16 *(b), there shall be a presumption of denial for the ex-*
17 *port of such item if there is a significant risk that—*

18 (A) *such item ~~would~~ **could** contribute to*
19 *the nuclear, chemical, or biological weapons ca-*
20 *pabilities of such country or the capabilities of*
21 *such country to deliver such weapons;*

22 (B) *such item ~~would~~ **could** otherwise con-*
23 *tribute to the military capabilities of such coun-*
24 *try so as to undermine regional stability or oth-*
25 *erwise prove detrimental to the national security*

1 of the United States, a NATO ally, or major
2 non-NATO ally;

3 (C) such item ~~would~~ **could** likely be used
4 or diverted to a use or destination not authorized
5 by the license or United States policy; or

6 (D) the export of such item ~~would~~ **could**
7 otherwise materially and adversely affect the na-
8 tional security interests of the United States.

9 (2) *EXCEPTION.*—Paragraph (1) shall not apply
10 to the export of an item to a country that is an ad-
11 herent to a multilateral export control regime control-
12 ling the export of such item.

13 (3) *DEFINITION.*—For purposes of this sub-
14 section, an “adherent to a multilateral export control
15 regime” is—

16 (A) a country that is a member of a multi-
17 lateral export control regime;

18 (B) a country that, pursuant to an inter-
19 national understanding to which the United
20 States is a party, controls exports in accordance
21 with relevant criteria and standards of a multi-
22 lateral export control regime; or

23 (C) a major non-NATO ally that, pursuant
24 to its national legislation, controls exports in ac-
25 cordance with such criteria and standards.

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

2 (a) *ESTABLISHMENT OF LIST.*—

3 (1) *ESTABLISHMENT.*—*The Secretary shall estab-*
4 *lish and maintain a National Security Control List,*
5 *as part of the Control List.*

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

10 (3) *IDENTIFICATION OF ITEMS FOR NATIONAL SE-*
11 *curity CONTROL LIST.*—*The Secretary, with the con-*
12 *currence of the Secretary of Defense and the Secretary*
13 *of State and in consultation with the head of any*
14 *other department or agency of the United States that*
15 *the Secretary considers appropriate, shall identify the*
16 *items to be included on the National Security Control*
17 *List, except that the National Security Control List*
18 *shall, on the date of enactment of this Act, include all*
19 *of the items on the Commerce Control List controlled*
20 *on the day before the date of enactment of this Act to*
21 *protect the national security of the United States, to*
22 *prevent the proliferation of weapons of mass destruc-*
23 *tion and the means to deliver them, and to deter acts*
24 *of international terrorism. The Secretary shall review*
25 *on a continuing basis and, with the concurrence of*
26 *the Secretary of Defense and the Secretary of State*

1 *and in consultation with the head of any other de-*
2 *partment or agency of the United States that the Sec-*
3 *retary considers appropriate, adjust the National Se-*
4 *curity Control List to add items that require control*
5 *under this section and to remove items that no longer*
6 *warrant control under this section.*

7 **(4) MILITARILY CRITICAL TECHNOLOGIES**
8 **LIST.—**

9 **(A) ESTABLISHMENT.—The Sec-**
10 **retary of Defense shall establish and**
11 **maintain a Militarily Critical Tech-**
12 **nologies List, which shall be part of**
13 **the National Security Control List.**

14 **(B) CONTENTS.—The Militarily**
15 **Critical Technologies List shall be**
16 **composed of a list of items that are,**
17 **or could be, critical to the United**
18 **States military maintaining or ad-**
19 **vancing its qualitative advantage and**
20 **superiority relative to other countries**
21 **or potential adversaries.**

22 **(C) AUTHORITY OF THE SECRETARY**
23 **OF DEFENSE.—Notwithstanding any**
24 **other provision of this Act, other than**
25 **section 201(d)(2), the Secretary of De-**

1 **fense shall have sole authority for**
2 **adding any item to or removing any**
3 **item from the Militarily Critical Tech-**
4 **nologies List, regardless of whether**
5 **that item is otherwise on the Control**
6 **List or otherwise controlled for ex-**
7 **port under this Act.**

8 **(D) LICENSING OF MILITARILY CRIT-**
9 **ICAL TECHNOLOGIES LIST ITEMS.—Items**
10 **listed on the Militarily Critical Tech-**
11 **nologies List shall not be approved**
12 **for export without the express con-**
13 **sent of the Secretary of Defense, un-**
14 **less the President determines other-**
15 **wise pursuant to section 402(b).**

16 **(E) ANNUAL REPORT.—The Sec-**
17 **retary of Defense shall report annu-**
18 **ally to the Committee on Armed Serv-**
19 **ices of the House of Representatives**
20 **and the Committee on Armed Serv-**
21 **ices of the Senate on actions taken to**
22 **carry out this paragraph.**

23 *(b) RISK ASSESSMENT.—*

24 *(1) REQUIREMENT.—In establishing and main-*
25 *taining the National Security Control List as set*

1 **forth in paragraphs (1), (2), and (3) of**
2 **subsection (a),** *the risk factors set forth in para-*
3 *graph (2) shall be considered, weighing national secu-*
4 *rity concerns and economic costs.*

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

8 (A) *The characteristics of the item.*

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

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

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

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 the*
24 *date of enactment of this Act to protect the national security*
25 *of the United States, to prevent the proliferation of weapons*

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

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

6 (a) *IN GENERAL.*—

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

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

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

20 (2) *CONSULTATION.*—*The establishment and as-*
21 *signment of country tiers under this section shall be*
22 *made after consultation with the Secretary, the Sec-*
23 *retary of Defense, the Secretary of State, the intel-*
24 *ligence agencies, and the heads of such other depart-*

1 *ments and agencies as the President considers appro-*
2 *priate.*

3 (3) *REDETERMINATION AND REVIEW OF ASSIGN-*
4 *MENTS.—The President may redetermine the assign-*
5 *ment of a country to a particular tier at any time*
6 *and shall review and, as the President considers ap-*
7 *propriate, reassign country tiers on an on-going*
8 *basis. The Secretary shall provide notice of any such*
9 *reassignment to the Committee on Banking, Housing,*
10 *and Urban Affairs of the Senate and the Committee*
11 *on International Relations of the House of Represent-*
12 *atives.*

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

17 (b) *TIERS.—*

18 (1) *IN GENERAL.—The President shall establish*
19 *a country tiering system consisting of not less than*
20 *3 tiers for purposes of this section.*

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

1 *sion or misuse of an item on the National Security*
2 *Control List shall be assigned to the highest tier.*

3 (3) *OTHER COUNTRIES.*—*Countries that fall be-*
4 *tween the lowest and highest risk to the national secu-*
5 *rity interest of the United States with respect to the*
6 *risk of diversion or misuse of an item on the National*
7 *Security Control List shall be assigned to a tier other*
8 *than the lowest or highest tier, based on the assess-*
9 *ments required under subsection (c).*

10 (4) **NONDELEGATION.—The President**
11 **may not delegate the authorities he has**
12 **under subsection (a) and this subsection.**

13 (c) *ASSESSMENTS.*—*The President shall make an as-*
14 *essment of each country in assigning a country tier taking*
15 *into consideration risk factors that include the following:*

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

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

21 (3) *The country's goals, capabilities, and inten-*
22 *tions regarding chemical, biological, and nuclear*
23 *weapons and the country's membership in or adher-*
24 *ence to, and level of compliance with, relevant multi-*
25 *lateral export control regimes.*

1 (4) *The country's capabilities regarding missile*
2 *systems and the country's membership in or adher-*
3 *ence to, and level of compliance with, relevant multi-*
4 *lateral export control regimes.*

5 (5) *Whether the country, if a NATO or major*
6 *non-NATO ally with whom the United States has en-*
7 *tered into a free trade agreement as of January 1,*
8 *1986, controls exports in accordance with the criteria*
9 *and standards of a multilateral export control regime.*

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

13 (7) *The effectiveness of the country's export con-*
14 *trol system.*

15 (8) *The level of the country's cooperation with*
16 *United States export control enforcement and other ef-*
17 *forts.*

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

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

22 (11) *The extent to which the country, pursuant*
23 *to its laws, regulations, and practices, controls items*
24 *consistent with the criteria and standards of relevant*
25 *multilateral export control regimes.*

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

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

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

11 (1) *are essential to the functioning of the item,*
12 (2) *are customarily included in sales of the item*
13 *in countries other than controlled countries, and*
14 (3) *comprise 25 percent or less of the total value*
15 *of the item,*

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

24 (b) *REEXPORTS OF FOREIGN-MADE ITEMS INCOR-*
25 *PORATING UNITED STATES CONTROLLED CONTENT.*—

1 (1) *IN GENERAL.*—No authority or permission
2 may be required under this title to reexport to a coun-
3 try an item that is produced in a country other than
4 the United States and incorporates parts or compo-
5 nents that are subject to the jurisdiction of the United
6 States, if the value of the controlled United States
7 content of the item produced in such other country is
8 25 percent or less of the total value of the item; except
9 that in the case of reexports of an item to a country
10 designated as a country supporting international ter-
11 rorism pursuant to section 310, controls may be
12 maintained if the value of the controlled United
13 States content is more than 10 percent of the total
14 value of the item.

15 (2) *DEFINITION OF CONTROLLED UNITED STATES*
16 *CONTENT.*—For purposes of this paragraph, the term
17 “controlled United States content” of an item means
18 those parts or components that—

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

21 (B) are incorporated into the item; and

22 (C) would, at the time of the reexport, re-
23 quire a license under this title if exported from
24 the United States to a country to which the item
25 is to be reexported.

1 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STA-**
2 **TUS.**

3 (a) *ESTABLISHMENT.*—*The Secretary shall establish a*
4 *process for interested persons to petition the Secretary to*
5 *change the status of an item on the National Security Con-*
6 *trol List.*

7 (b) *EVALUATIONS AND DETERMINATIONS.*—*Evalua-*
8 *tions and determinations with respect to a petition filed*
9 *pursuant to this section shall be made in accordance with*
10 *section 202.*

11 **SEC. 206. CONGRESSIONAL REVIEW AND REPORT.**

12 (a) **NOTIFICATION.**—**The Secretary shall in-**
13 **form the appropriate committees of Congress**
14 **at least 30 days before any change to the ex-**
15 **port status of an item on the National Secu-**
16 **rity Control List (other than the Military Crit-**
17 **ical Technologies List) is made.**

18 (b) **REPORT.**—**Upon the request of either**
19 **the chairman or ranking member of any of the**
20 **committees of Congress notified of a proposed**
21 **change under subsection (a), the Secretary**
22 **shall promptly provide to that committee a re-**
23 **port that contains a clearly stated description**
24 **of the proposed change, and the reasons why**
25 **the change is justified and necessary. The re-**
26 **port shall include in its entirety the assess-**

1 **ment of the Secretary of Defense under sub-**
2 **section (c). The report may be provided on a**
3 **classified basis if the Secretary considers it**
4 **necessary.**

5 **(c) ASSESSMENT.—The Secretary of De-**
6 **fense, in consultation with the Secretary of**
7 **State and the Director of Central Intelligence,**
8 **shall submit to the Secretary an assessment of**
9 **the following with respect to a proposed**
10 **change on which a report is requested under**
11 **subsection (b):**

12 **(1) The impact that the proposed**
13 **change will have on the national security**
14 **of the United States with respect to the**
15 **purposes of export controls set forth in**
16 **section 201(b).**

17 **(2) The impact the proposed change**
18 **will have on the United States Armed**
19 **Forces and the intelligence community.**

20 **(3) The cumulative effects that the**
21 **proposed change could have on the na-**
22 **tional security of the United States, as**
23 **well as the military potential, prolifera-**
24 **tion activities, and support for inter-**
25 **national terrorism by countries that may**

1 receive the exported items with respect
2 to which the proposed change would
3 apply.

4 (d) APPROPRIATE COMMITTEES.—For pur-
5 poses of this section, the appropriate commit-
6 tees of Congress are the Committee on Armed
7 Services and the Committee on International
8 Relations of the House of Representatives,
9 and the Committee on Foreign Relations, the
10 Committee on Armed Services, and the Com-
11 mittee on Banking, Housing, and Urban Af-
12 fairs of the Senate.

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

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

17 (a) *IN GENERAL.*—The Secretary shall—

18 (1) *on a continuing basis,*

19 (2) *upon a request from the Office of Technology*
20 *Evaluation established pursuant to section 214, or*

21 (3) *upon receipt of a petition filed by an inter-*
22 *ested person,*

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

1 (b) *PETITION AND CONSULTATION.*—

2 (1) *IN GENERAL.*—*The Secretary shall establish*
3 *a process for an interested person to petition the Sec-*
4 *retary for a determination that an item has a foreign*
5 *availability or mass-market status. In evaluating ~~and~~*
6 *making a determination with respect to a petition*
7 *filed under this section, the Secretary shall consult*
8 *with the Secretary of Defense, the Secretary of State,*
9 *and the heads of other appropriate Government agen-*
10 *cies and with the Office of Technology Evaluation.*

11 (2) *TIME FOR MAKING DETERMINATION.*—*The*
12 *Secretary, with the concurrence of the Sec-*
13 *retary of Defense and the Secretary of*
14 **State**, *shall, within 6 months after receiving a peti-*
15 *tion described in subsection (a)(3), determine in ac-*
16 **cordance with subsection (c)** *whether the*
17 *item that is the subject of the petition has foreign*
18 *availability or mass-market status and shall notify*
19 *the petitioner of the determination.*

20 (e) *RESULT OF DETERMINATION.*—*In any case in*
21 *which the Secretary determines,*

22 (c) **DETERMINATION.**—**In any case in which**
23 **the Secretary, with the concurrence of the**
24 **Secretary of Defense and the Secretary of**
25 **State, determines,** *in accordance with procedures and*

1 *criteria which the Secretary shall by regulation establish,*
 2 *that an item described in subsection (a) has—*

3 *(1) a foreign availability status, or*

4 *(2) a mass-market status,*

5 *the Secretary shall notify the President (and other appro-*
 6 *priate departments and agencies) and publish the notice of*
 7 *the determination in the Federal Register. The Secretary's*
 8 *determination shall become final 30 days after the date the*
 9 *notice is published, the item shall be removed from the Na-*
 10 *tional Security Control List, and a license or other author-*
 11 *ization shall not be required under this title with respect*
 12 *to the item, unless the President makes a determination de-*
 13 *scribed in section 212 or 213, or takes action under section*
 14 *309, with respect to the item in that 30-day period.*

15 *(d) CRITERIA FOR DETERMINING FOREIGN AVAIL-*
 16 *ABILITY AND MASS-MARKET STATUS.—*

17 *(1) FOREIGN AVAILABILITY STATUS.—The Sec-*
 18 *retary shall determine that an item has foreign avail-*
 19 *ability status under this subtitle, if the item (or a*
 20 *substantially identical or directly competitive item)—*

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

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

6 (C) is available in sufficient quantity so
7 that the requirement of a license or other author-
8 ization with respect to the export of such item is
9 or would be ineffective.

10 **(1) FOREIGN AVAILABILITY STATUS.—An**
11 **item has foreign availability status under**
12 **this subtitle only if the item—**

13 **(A) is available to controlled**
14 **countries without restriction from**
15 **sources outside the United States,**
16 **more than one of which are countries**
17 **that participate with the United**
18 **States in multilateral export control**
19 **regimes as members; and**

20 **(B) is available in significant**
21 **quantity and comparable quality to**
22 **the item produced in the United**
23 **States so that the requirement of a li-**
24 **cence or other authorization with re-**

1 **spect to the export of the item is or**
2 **would be ineffective.**

3 *(2) MASS-MARKET STATUS.—*

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

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

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

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

19 *(iv) The use for the item's normal in-*
20 *tended purpose without substantial and spe-*
21 *cialized service provided by the manufac-*
22 *turer, distributor, or other third party.*

23 *(B) DETERMINATION BY SECRETARY.—If*
24 *the Secretary finds that the item (or a substan-*
25 *tially identical or directly competitive item)*

1 *meets the criteria set forth in subparagraph (A),*
2 *the Secretary shall determine that the item has*
3 *mass-market status.*

4 **(2) MASS-MARKET STATUS.—An item has**
5 **mass-market status under this subtitle**
6 **only if the following criteria are met:**

7 **(A) The item is produced in a**
8 **large volume and is available for sale**
9 **to multiple potential purchasers.**

10 **(B) The item is widely distributed**
11 **through normal commercial channels,**
12 **such as retail stores, direct marketing**
13 **catalogues, electronic commerce, and**
14 **other channels.**

15 **(C) The item is conducive to ship-**
16 **ment and delivery by generally ac-**
17 **cepted commercial means of trans-**
18 **port.**

19 **(D) The item can be used for its**
20 **normal intended purpose without**
21 **substantial and specialized service**
22 **provided by the manufacturer, dis-**
23 **tributor, or other third party.**

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

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

6 (B) *DIRECTLY COMPETITIVE ITEM.*—The de-
 7 termination of whether an item in relation to
 8 another item is a directly competitive item shall
 9 include a fair assessment of whether the item, al-
 10 though not substantially identical in its intrinsic
 11 or inherent characteristics, is substantially
 12 equivalent for commercial purposes and may be
 13 adapted for substantially the same uses.

14 (C) *EXCEPTION.*—An item is not a directly
 15 competitive item or a substantially identical
 16 item in relation to a controlled item if the item
 17 is not of comparable quality to the controlled
 18 item with respect to characteristics that resulted
 19 in the export of the item being controlled.

20 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**
 21 **ABILITY STATUS DETERMINATION.**

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

23 (1) *GENERAL CRITERIA.*—

24 (A) *IN GENERAL.*—If the President deter-
 25 mines that—

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

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

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

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

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

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

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

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

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

7 ***(1) IN GENERAL.—***

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

15 ***(B) REPORT TO CONGRESS.—****Not later than*
16 *the date the President begins negotiations, the*
17 *President shall notify in writing the Committee*
18 *on Banking, Housing, and Urban Affairs of the*
19 *Senate and the Committee on International Re-*
20 *lations of the House of Representatives that the*
21 *President has begun such negotiations and why*
22 *the President believes it is important to the na-*
23 *tional security that export controls on the item*
24 *involved be maintained.*

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

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

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

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

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

1 *eliminating foreign availability of the item*
2 *through negotiation; or*

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

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

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

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

17 *(1) GENERAL CRITERIA.—If the President deter-*
18 *mines that—*

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

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

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

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

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

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

21 (2) *PERIODIC REVIEW OF DETERMINATION.—The*
22 *President shall review a determination made under*
23 *subsection (a) at least every 6 months. Promptly after*
24 *each review is completed, the Secretary shall submit*
25 *a report on the results of the review to the Committee*

1 *on Banking, Housing, and Urban Affairs of the Sen-*
2 *ate and the Committee on International Relations of*
3 *the House of Representatives.*

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

5 *(a) IN GENERAL.—*

6 *(1) ESTABLISHMENT OF OFFICE.—The Secretary*
7 *shall establish in the Department of Commerce an Of-*
8 *fice of Technology Evaluation (in this section referred*
9 *to as the “Office”), which shall be under the direction*
10 *of the Secretary. The Office shall be responsible for*
11 *gathering, coordinating, and analyzing all the nec-*
12 *essary information in order for the Secretary to make*
13 *determinations of foreign availability and mass-mar-*
14 *ket status under this Act.*

15 *(2) STAFF.—*

16 *(A) IN GENERAL.—The Secretary shall en-*
17 *sure that the Office include persons to carry out*
18 *the responsibilities set forth in subsection (b) of*
19 *this section that have training, expertise, and ex-*
20 *perience in—*

21 *(i) economic analysis;*

22 *(ii) the defense industrial base;*

23 *(iii) technological developments; and*

24 *(iv) national security and foreign pol-*
25 *icy export controls.*

1 (B) *DETAILEES.*—*In addition to employees*
2 *of the Department of Commerce, the Secretary*
3 *may accept on nonreimbursable detail to the Of-*
4 *fice, employees of the Departments of Defense,*
5 *State, and Energy and other departments and*
6 *agencies as appropriate.*

7 (b) *RESPONSIBILITIES.*—*The Office shall be respon-*
8 *sible for—*

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

14 (2) *conducting mass-market assessments to deter-*
15 *mine whether a controlled item is available to con-*
16 *trolled countries because of the mass-market status of*
17 *the item;*

18 (3) *monitoring and evaluating worldwide techno-*
19 *logical developments in industry sectors critical to the*
20 *national security interests of the United States to de-*
21 *termine foreign availability and mass-market status*
22 *of controlled items;*

23 (4) *monitoring and evaluating multilateral ex-*
24 *port control regimes and foreign government export*

1 *control policies and practices that affect the national*
2 *security interests of the United States;*

3 (5) *conducting assessments of United States in-*
4 *dustrial sectors critical to the United States defense*
5 *industrial base and how the sectors are affected by*
6 *technological developments, technology transfers, and*
7 *foreign competition; and*

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

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

13 (B) *the United States economy in general.*

14 (c) *REPORTS TO CONGRESS.—The Secretary shall*
15 *make available to the Committee on International Relations*
16 *of the House of Representatives and the Committee on*
17 *Banking, Housing, and Urban Affairs of the Senate as part*
18 *of the Secretary’s annual report required under section 701*
19 *information on the operations of the Office, and on im-*
20 *provements in the Government’s ability to assess foreign*
21 *availability and mass-market status, during the fiscal year*
22 *preceding the report, including information on the training*
23 *of personnel, and the use of Commercial Service Officers*
24 *of the United States and Foreign Commercial Service to*
25 *assist in making determinations. The information shall also*

1 *include a description of determinations made under this*
2 *Act during the preceding fiscal year that foreign avail-*
3 *ability or mass-market status did or did not exist (as the*
4 *case may be), together with an explanation of the deter-*
5 *minations.*

6 *(d) SHARING OF INFORMATION.—Each department or*
7 *agency of the United States, including any intelligence*
8 *agency, and all contractors with any such department or*
9 *agency, shall, consistent with the need to protect intelligence*
10 *sources and methods, furnish information to the Office con-*
11 *cerning foreign availability and the mass-market status of*
12 *items subject to export controls under this Act.*

13 **Subtitle C—High Performance** 14 **Computers**

15 **SEC. 221. EXPORTS OF HIGH PERFORMANCE COMPUTING** 16 **TECHNOLOGY.**

17 **(a) JOINT PROCESS.—The Secretary, the**
18 **Secretary of State, the Secretary of Defense,**
19 **and the Secretary of Energy shall jointly de-**
20 **velop and implement a process that would**
21 **permit the United States to monitor effec-**
22 **tively the export of high performance com-**
23 **puting technology to countries of prolifera-**
24 **tion concern. Such a process shall include, at**
25 **a minimum, the following:**

1 **(1) A definition of high performance**
2 **computing technology and any associated**
3 **performance metrics.**

4 **(2) The ability to assess the proposed**
5 **export of high performance computing**
6 **technology prior to its export and pos-**
7 **sibly require a license for such export to**
8 **end users or end uses of concern.**

9 **(3) The use of post-shipment**
10 **verifications and other procedures to**
11 **monitor end uses and end users in order**
12 **to ensure that exports of high perform-**
13 **ance computing technology are not being**
14 **used by countries of proliferation con-**
15 **cern in a manner detrimental to the na-**
16 **tional security of the United States.**

17 **(b) REPORT TO CONGRESS.—The President**
18 **shall submit to the Congress, not later than**
19 **180 days after the date of the enactment of**
20 **this Act, a report describing the process de-**
21 **veloped under subsection (a).**

22 **(c) IMPLEMENTATION.—The process devel-**
23 **oped under subsection (a) shall first become**
24 **effective 60 days after the end of the 180-day**
25 **period described in subsection (b).**

1 **(d) REPEAL OF CERTAIN EXPORT CON-**
2 **TROLS.—**Subtitle B of title XII of division A of
3 **the National Defense Authorization Act for**
4 **Fiscal Year 1998 (50 U.S.C. App. 2404 note) is**
5 **repealed, effective 60 days after the end of the**
6 **180-day period described in subsection (b).**

7 **(e) INCLUSION OF ITEMS IN DEFINITION.—**
8 **The definition of “high performance com-**
9 **puting technology” under subsection (a)(1)**
10 **shall include computer hardware, software,**
11 **technical data, and source codes.**

12 **(f) END USE REVIEW.—**

13 **(1) NOTIFICATION.—**Any United States
14 **person that exports a computer with a**
15 **dollar value of over \$250,000, or any**
16 **equivalent metric developed pursuant to**
17 **subsection (a), shall, not less than 10 days**
18 **before the item is exported, provide to**
19 **the Secretary a 1-page notification de-**
20 **scribed in paragraph (2) with respect to**
21 **the export.**

22 **(2) CONTENT.—**A notification under
23 **paragraph (1) with respect to a proposed**
24 **export shall include the following:**

1 **(A) A detailed description of the**
2 **item to be exported.**

3 **(B) Performance measures of the**
4 **item to be exported.**

5 **(C) The quantity and dollar value**
6 **of the item to be exported.**

7 **(D) The name, address, and tele-**
8 **phone number of the end user of the**
9 **exported item.**

10 **(E) The end uses of the exported**
11 **item.**

12 **(3) INTERAGENCY REVIEW.—Within 24**
13 **hours after receiving a notification under**
14 **paragraph (1), the Secretary shall refer**
15 **the notification to the Director of Central**
16 **Intelligence (in this subsection referred**
17 **to as the “Director”) and the Secretary of**
18 **Defense. The Director and the Secretary**
19 **of Defense shall review the notification to**
20 **determine whether the end user or any**
21 **end use of the item to be exported—**

22 **(A) could threaten the national se-**
23 **curity of the United States;**

1 **(B) could contribute to the pro-**
2 **liferation of weapons of mass destruc-**
3 **tion or the means to deliver them; or**

4 **(C) could assist foreign terrorist**
5 **organizations in performing acts of**
6 **international terrorism.**

7 **(4) DETERMINATION.—Within 7 cal-**
8 **endar days after receiving a notification**
9 **under paragraph (3), the Director and the**
10 **Secretary of Defense shall inform the**
11 **Secretary of any determinations they**
12 **made under paragraph (3) with respect to**
13 **the notification. If the Director or the**
14 **Secretary of Defense determines that a**
15 **proposed export meets any of the criteria**
16 **set forth in subparagraphs (A), (B), and**
17 **(C) of paragraph (3), the Secretary shall**
18 **immediately so notify the United States**
19 **person exporting the item.**

20 **(5) REPORT.—The Secretary, with the**
21 **concurrence of the Secretary of Defense**
22 **and the Director, shall report annually to**
23 **the Congress on the implementation of**
24 **this subsection. The report shall contain**
25 **the number and type of determinations**

1 **made by the Director and the Secretary**
2 **of Defense under paragraph (3).**

3 **(6) EFFECTIVE DATE.—This subsection**
4 **shall take effect 90 days after the date of**
5 **the enactment of this Act.**

6 ***TITLE III—FOREIGN POLICY***
7 ***EXPORT CONTROLS***

8 ***SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-***
9 ***TROLS.***

10 *(a) AUTHORITY.—*

11 *(1) IN GENERAL.—In order to carry out the pur-*
12 *poses set forth in subsection (b), the President may,*
13 *in accordance with the provisions of this Act, pro-*
14 *hibit, curtail, or require a license, other authoriza-*
15 *tion, recordkeeping, or reporting for, the export of any*
16 *item subject to the jurisdiction of the United States*
17 *or exported by any person subject to the jurisdiction*
18 *of the United States.*

19 *(2) EXERCISE OF AUTHORITY.—The authority*
20 *contained in this subsection shall be exercised by the*
21 *Secretary, in consultation with the Secretary of State*
22 *and such other departments and agencies as the Sec-*
23 *retary considers appropriate.*

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

1 (1) *To promote the foreign policy objectives of the*
2 *United States, consistent with the purposes of this sec-*
3 *tion and the provisions of this Act.*

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

6 (3) *To use export controls to deter and punish*
7 *acts of international terrorism and to encourage other*
8 *countries to take immediate steps to prevent the use*
9 *of their territories or resources to aid, encourage, or*
10 *give sanctuary to those persons involved in directing,*
11 *supporting, or participating in acts of international*
12 *terrorism.*

13 (4) *To control the export of test articles intended*
14 *for clinical investigation involving human subjects so*
15 *as to foster public health and safety and to prevent*
16 *injury to the foreign policy of the United States as*
17 *well as to the credibility of the United States as a re-*
18 *sponsible trading partner.*

19 (5) *To control the export of goods and substances*
20 *which are banned, severely restricted, highly regu-*
21 *lated, or never regulated for use in the United States*
22 *in order to foster public health and safety and to pre-*
23 *vent injury to the foreign policy of the United States*
24 *as well as to the credibility of the United States as*
25 *a responsible trading partner.*

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

11 (d) *CONTRACT SANCTITY.*—

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

15 (A) *in performance of a binding contract,*
16 *agreement, or other contractual commitment en-*
17 *tered into before the earlier of the date on which*
18 *the President publishes in the Federal Register*
19 *pursuant to section 302(a) a notice of intent to*
20 *impose or implement an export control on that*
21 *item or the date on which the President reports*
22 *to Congress the President's intention to impose*
23 *an export control on that item under this title;*
24 *or*

1 (B) under a license or other authorization
2 issued under this Act before the earlier of the
3 date on which the export control is imposed, the
4 date on which the President publishes in the
5 *Federal Register* pursuant to section 302(a) a
6 notice of intent to impose or implement an ex-
7 port control on that item, or the date on which
8 the President reports to Congress the President's
9 intention to impose an export control on that
10 item under this title.

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

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

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

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

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

2 (a) NOTICE.—

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

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

9 (B) *provide for a period of not less than 30*
10 *days for any interested person to submit com-*
11 *ments on the export control proposed under this*
12 *title.*

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

15 (A) *to provide an opportunity for the for-*
16 *mulation of an effective export control policy*
17 *under this title that advances United States eco-*
18 *nomical and foreign policy interests; and*

19 (B) *to provide an opportunity for negotia-*
20 *tions to achieve the purposes set forth in section*
21 *301(b).*

22 (b) NEGOTIATIONS.—*During the 45-day period that*
23 *begins on the date of notice described in subsection (a), the*
24 *President may negotiate with the government of the foreign*
25 *country against which the export control is proposed in*

1 *order to resolve the reasons underlying the proposed export*
2 *control.*

3 (c) *CONSULTATION.*—

4 (1) *REQUIREMENT.*—*The President shall consult*
5 *with the Committee on Banking, Housing, and Urban*
6 *Affairs of the Senate and the Committee on Inter-*
7 *national Relations of the House of Representatives re-*
8 *garding any export control proposed under this title*
9 *and the efforts to achieve or increase multilateral co-*
10 *operation on the issues or problems underlying the*
11 *proposed export control.*

12 (2) *CLASSIFIED CONSULTATION.*—*The consulta-*
13 *tions described in paragraph (1) may be conducted on*
14 *a classified basis if the Secretary considers it nec-*
15 *essary.*

16 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
17 **TROLS.**

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

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

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

24 (3) *include an assessment by the President*
25 *that—*

1 303. *In addition, the report shall contain a description and*
2 *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 other*
7 *measures taken, by other countries to achieve the in-*
8 *tended objective of the proposed export control;*

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

11 (4) *alternative measures to promote the same ob-*
12 *jectives and the likelihood of their potential success;*

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

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

20 (7) *the likely economic impact of the proposed*
21 *export control on the United States economy, United*
22 *States international trade and investment, and*
23 *United States agricultural interests, commercial in-*
24 *terests, and employment; and*

1 (8) *whether the objectives of the proposed export*
2 *control outweighs any likely costs to United States*
3 *economic, foreign policy, humanitarian, or national*
4 *security interests, including any potential harm to*
5 *the United States agricultural and business firms and*
6 *to the international reputation of the United States*
7 *as a reliable supplier of goods, services, or technology.*

8 **SEC. 305. IMPOSITION OF CONTROLS.**

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

13 **SEC. 306. DEFERRAL AUTHORITY.**

14 (a) *AUTHORITY.*—*The President may defer compliance*
15 *with any requirement contained in section 302(a), 304, or*
16 *305 in the case of a proposed export control if—*

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

20 (2) *the requirement is satisfied not later than 60*
21 *days after the date on which the export control is im-*
22 *posed under this title.*

23 (b) *TERMINATION OF CONTROL.*—*An export control*
24 *with respect to which a deferral has been made under sub-*
25 *section (a) shall terminate 60 days after the date the export*

1 *control is imposed unless all requirements have been satis-*
2 *fied before the expiration of that 60-day period.*

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

4 *(a) RENEWAL AND TERMINATION.—*

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

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

13 *(A) is required by law;*

14 *(B) is targeted against any country des-*
15 *ignated as a country supporting international*
16 *terrorism pursuant to section 310; or*

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

19 *(b) REVIEW.—*

20 *(1) IN GENERAL.—Not later than February 1 of*
21 *each renewal year, the President shall review all ex-*
22 *port controls in effect under this title.*

23 *(2) CONSULTATION.—*

24 *(A) REQUIREMENT.—Before completing a*
25 *review under paragraph (1), the President shall*

1 *consult with the Committee on Banking, Hous-*
2 *ing, and Urban Affairs of the Senate and the*
3 *Committee on International Relations of the*
4 *House of Representative regarding each export*
5 *control that is being reviewed.*

6 *(B) CLASSIFIED CONSULTATION.—The con-*
7 *sultations may be conducted on a classified basis*
8 *if the Secretary considers it necessary.*

9 *(3) PUBLIC COMMENT.—In conducting the review*
10 *of each export control under paragraph (1), the Presi-*
11 *dent shall provide a period of not less than 30 days*
12 *for any interested person to submit comments on re-*
13 *newal of the export control. The President shall pub-*
14 *lish notice of the opportunity for public comment in*
15 *the Federal Register not less than 45 days before the*
16 *review is required to be completed.*

17 *(c) REPORT TO CONGRESS.—*

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

23 *(2) FORM AND CONTENT OF REPORT.—The re-*
24 *port may be provided on a classified basis if the Sec-*

1 *retary considers it necessary. Each report shall con-*
2 *tain the following:*

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

7 *(B) An assessment of—*

8 *(i) the extent to which the existing ex-*
9 *port control achieved its objectives before re-*
10 *newal based on the objective criteria estab-*
11 *lished for evaluating the export control; and*

12 *(ii) the reasons why the existing export*
13 *control has failed to fully achieve its objec-*
14 *tives and, if renewed, how the export control*
15 *will achieve that objective before the next re-*
16 *newal year.*

17 *(C) An updated description and assessment*
18 *of—*

19 *(i) each of the criteria described in sec-*
20 *tion 303, and*

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

23 *(3) RENEWAL OF EXPORT CONTROL.—The Presi-*
24 *dent may renew an export control under this title*
25 *after submission of the report described in paragraph*

1 (2) and publication of notice of renewal in the Fed-
2 eral Register.

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

4 (a) *IN GENERAL.*—Notwithstanding any other provi-
5 sion of law, the President—

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

10 (2) may terminate at any time any export con-
11 trol imposed under this title that is not required by
12 law.

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

16 (c) *EFFECTIVE DATE OF TERMINATION.*—The termi-
17 nation of an export control pursuant to this section shall
18 take effect 30 days after the President has consulted with
19 the Committee on International Relations of the House of
20 Representatives and the Committee on Foreign Relations of
21 the Senate on the foreign policy implications of such termi-
22 nation. Notice of the termination shall be published in the
23 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, the*
6 **President shall** *impose controls on exports to a par-*
7 *ticular country or countries—*

8 (1) *of items listed on the control list of a multi-*
9 *lateral export control regime; or*

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

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

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

22 (1) **that** *the government of such country has re-*
23 *peatedly provided support for acts of international*
24 *terrorism; and*

25 (2) **in consultation with the Secretary**
26 **of Defense, that** *the export of the item could make*

1 *a significant contribution to the military potential of*
2 *such country, including its military logistics capa-*
3 *bility, or could enhance the ability of such country*
4 *to support acts of international terrorism.*

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

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

17 *(d) LIMITATIONS ON RESCINDING DETERMINATION.—*
18 *A determination made by the Secretary of State under sub-*
19 *section (a)(1) may not be rescinded unless the President*
20 *submits to the Speaker of the House of Representatives and*
21 *the Chairman of the Committee on Banking, Housing, and*
22 *Urban Affairs and the Chairman of the Committee on For-*
23 *ign Relations of the Senate—*

24 *(1) before the proposed rescission would take ef-*
25 *fect, a report certifying that—*

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

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

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

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

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

15 (B) the government concerned has provided
16 assurances that it will not support acts of inter-
17 national terrorism in the future.

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

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

24 (2) the reasons why the foreign country or inter-
25 national organization to which the export or transfer

1 *is proposed to be made needs the item which is the*
2 *subject of such export or transfer and a description of*
3 *the manner in which such country or organization*
4 *intends to use the item;*

5 *(3) the reasons why the proposed export or trans-*
6 *fer is in the national interest of the United States;*

7 *(4) an analysis of the impact of the proposed ex-*
8 *port or transfer on the military capabilities of the*
9 *foreign country or international organization to*
10 *which such export or transfer would be made;*

11 *(5) an analysis of the manner in which the pro-*
12 *posed export would affect the relative military*
13 *strengths of countries in the region to which the item*
14 *which is the subject of such export would be delivered*
15 *and whether other countries in the region have com-*
16 *parable kinds and amounts of the item; and*

17 *(6) an analysis of the impact of the proposed ex-*
18 *port or transfer on the United States relations with*
19 *the countries in the region to which the item which*
20 *is the subject of such export would be delivered.*

21 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

22 *(a) IN GENERAL.—Crime control and detection instru-*
23 *ments and equipment shall not be approved for export by*
24 *the Secretary except pursuant to an individual export li-*
25 *cense.*

1 (b) *IMPLEMENTATION.*—*Notwithstanding any other*
2 *provision of this Act—*

3 (1) *any determination by the Secretary of what*
4 *goods or technology shall be included on the list estab-*
5 *lished pursuant to this subsection as a result of the*
6 *export restrictions imposed by this section shall be*
7 *made with the concurrence of the Secretary of State;*
8 *and*

9 (2) *any determination by the Secretary to ap-*
10 *prove or deny an export license application to export*
11 *crime control or detection instruments or equipment*
12 *shall be made in concurrence with the recommenda-*
13 *tions of the Secretary of State submitted to the Sec-*
14 *retary with respect to the application pursuant to sec-*
15 *tion 401 of this Act.*

16 (c) *LIMITATION.*—

17 (1) *IN GENERAL.*—*Notwithstanding subsection*
18 *(b), the Secretary shall not approve the export to a*
19 *country of crime control and detection instruments*
20 *and equipment especially susceptible to abuse as im-*
21 *plements of torture if the government of such country,*
22 *or any group supported by or acting on behalf of such*
23 *government, has repeatedly engaged in acts of torture*
24 *unless the Secretary, with the concurrence of the Sec-*
25 *retary of State, determines that the end user of the in-*

1 *struments or equipment proposed for export has not*
2 *been engaged in acts of torture.*

3 (2) *LIST.*—*The Secretary shall establish and*
4 *maintain a list of crime control and detection instru-*
5 *ments and equipment especially susceptible to abuse*
6 *as implements of torture for purposes of paragraph*
7 *(1), and shall publish such list in the Federal Reg-*
8 *ister.*

9 (d) *EXCEPTION.*—*Subsection (a) shall not apply to ex-*
10 *ports to countries that are NATO or are major non-NATO*
11 *allies.*

12 (e) *PROHIBITION.*—*Notwithstanding any other provi-*
13 *sion of this section, including subsection (d), the export to*
14 *any country of leg irons, saps, blackjacks, electroshock stun*
15 *belts, thumb cuffs, and items specially designed as imple-*
16 *ments of torture, as determined by the Secretary, including*
17 *components produced for incorporation into these items and*
18 *the technology used for the development or production of*
19 *these items, shall be prohibited.*

20 (f) *DEFINITION.*—*For purposes of this section, the term*
21 *“acts of torture” means acts committed by a person acting*
22 *under the color of law that are specifically intended to in-*
23 *flict severe physical or mental pain or suffering (other than*
24 *pain or suffering incidental to lawful sanctions) upon an-*

1 *other person within the custody or physical control of the*
2 *person performing the acts.*

3 **SEC. 312. MEASURES TO PROTECT THE PUBLIC HEALTH.**

4 *(a) IN GENERAL.—In order to carry out the policy set*
5 *forth in paragraph (4) of section 301(b), test articles in-*
6 *tended for clinical investigations shall be approved for ex-*
7 *port by the President only pursuant to an export license.*

8 *(b) CRITERIA FOR EXPORT LICENSE.—In addition to*
9 *the criteria set forth in paragraph (4) of section 401(a),*
10 *the President shall require, as a prerequisite for approval*
11 *of an export license for a test article required by subsection*
12 *(a) of this section, that an applicant for such license—*

13 *(1) identify each clinical investigation for which*
14 *the test article is intended; and*

15 *(2) submit proof that each of the protocols for*
16 *every clinical investigation identified under para-*
17 *graph (1) has been reviewed by an institutional re-*
18 *view board and met the same standards for the pro-*
19 *tection of the rights and welfare of human subjects as*
20 *would be required for IRB approval of the protocol if*
21 *the protocol were for a clinical investigation of such*
22 *test article pursuant to the Federal Food, Drug, and*
23 *Cosmetic Act.*

24 *(c) REPORTING REQUIREMENT.—Not later than one*
25 *year after the date of enactment of this Act, and annually*

1 *thereafter, the President shall prepare and submit to the*
2 *appropriate congressional committees a report regarding*
3 *the approval of export licenses as required by subsection (a).*

4 *Such report shall include—*

5 *(1) the names of the applicants for such export*
6 *licenses;*

7 *(2) the names of approved applicants for such*
8 *export licenses; and*

9 *(3) the destination country or countries for each*
10 *application for such export licenses.*

11 *(d) EXCEPTION.—The provisions of this section shall*
12 *not apply if the destination country is a full member of*
13 *the European Union, a full member of the European Free*
14 *Trade Association, Canada, Japan, Australia, Israel, or*
15 *New Zealand.*

16 *(e) DEFINITIONS.—In this section:*

17 *(1) APPLICATION FOR RESEARCH OR MARKETING*
18 *PERMIT.—The term “application for research or mar-*
19 *keting permit” has the meaning given that term in*
20 *section 56.102(b) of title 21, Code of Federal Regula-*
21 *tions, or successor regulations.*

22 *(2) APPROPRIATE CONGRESSIONAL COMMIT-*
23 *TEES.—The term “appropriate congressional commit-*
24 *tees” means the Committee on International Relations*

1 *of the House of Representatives and the Committee on*
2 *Banking, Housing, and Urban Affairs of the Senate.*

3 (3) *CLINICAL INVESTIGATION.*—*The term “clin-*
4 *ical investigation” means any experiment that in-*
5 *volves a test article and one or more human subjects,*
6 *and that either must meet the requirements for prior*
7 *submission to the Food and Drug Administration*
8 *under section 505(i), 507(d), or 520(g) of the Federal*
9 *Food, Drug, and Cosmetic Act (21 U.S.C. 355(i),*
10 *357(d), or 360j(g)), or need not meet the requirements*
11 *for prior submission to the Food and Drug Adminis-*
12 *tration under those sections, but the results of which*
13 *are intended to be later submitted to, or held for in-*
14 *spection by, the Food and Drug Administration as*
15 *part of an application for a research or marketing*
16 *permit. The term does not include experiments that*
17 *must meet the provisions of part 58 of title 21, Code*
18 *of Federal Regulations, or successor regulations, re-*
19 *garding nonclinical laboratory studies.*

20 (4) *DESTINATION COUNTRY.*—*The term “destina-*
21 *tion country” means the country into which test arti-*
22 *cles are being exported.*

23 (5) *HUMAN SUBJECT.*—*The term “human sub-*
24 *ject” means an individual who is or becomes a partic-*
25 *ipant in research, either as a recipient of the test ar-*

1 *ticle or as a control. A subject may be either a healthy*
2 *individual or a patient.*

3 (6) *INSTITUTION.*—*The term “institution” means*
4 *any public or private entity or agency (including*
5 *Federal, State, and other agencies), either in the*
6 *United States or other country.*

7 (7) *INSTITUTIONAL REVIEW BOARD; IRB.*—*The*
8 *terms “institutional review board” and “IRB” mean*
9 *any board, committee, or other group formally des-*
10 *ignated by an institution to review, to approve the*
11 *initiation of, and to conduct periodic review of, bio-*
12 *medical research involving human subjects. The pri-*
13 *mary purpose of such review is to assure the protec-*
14 *tion of the rights and welfare of the human subjects.*

15 (8) *IRB APPROVAL.*—*The term “IRB approval”*
16 *means the determination of an IRB made pursuant*
17 *to part 56 of title 21, Code of Federal Regulations, or*
18 *successor regulations, that a clinical investigation has*
19 *been reviewed and may be conducted at an institution*
20 *within the constraints set forth by the IRB and by*
21 *other institutional and Federal requirements.*

22 (9) *TEST ARTICLE.*—*The term “test article”*
23 *means any drug for human use, biological product for*
24 *human use, medical device for human use, human*
25 *food additive, color additive, electronic product, or*

1 *any other article that would be subject to regulation*
2 *under the Federal Food, Drug, and Cosmetic Act if*
3 *introduced into interstate commerce.*

4 **SEC. 313. PROMOTION OF SAFE ENVIRONMENTS.**

5 *(a) IN GENERAL.—In order to carry out the policy set*
6 *forth in paragraph (5) of section 301(b), the President may*
7 *prohibit the exportation of pesticides or chemicals that the*
8 *President deems to be a risk to the public health, safety,*
9 *or environment of the United States or any other country.*

10 *(b) REPORT ON EXPORTS.—*

11 *(1) REPORT.—The President shall, by not later*
12 *than 6 months after the date of enactment of this*
13 *Act—*

14 *(A) identify all United States persons who*
15 *export any hazardous pesticide or chemical that*
16 *is—*

17 *(i) included in the Convention on the*
18 *Prior Informed Consent Procedure for Cer-*
19 *tain Hazardous Chemicals and Pesticides*
20 *in International Trade, or the Convention*
21 *on Persistent Organic Pollutants; or*

22 *(ii) either banned, severely restricted,*
23 *highly regulated, or never regulated for use*
24 *in the United States;*

1 (B) determine the quantities of each haz-
2 ardous pesticide and chemical described in sub-
3 paragraph (A) that each United States person
4 has exported in the 2-year period preceding the
5 date of enactment of this Act; and

6 (C) submit to the Committee on Inter-
7 national Relations of the House of Representa-
8 tives and to the Committee on Banking, Hous-
9 ing, and Urban Affairs and the Committee on
10 Foreign Relations of the Senate a comprehensive
11 report on the information described in subpara-
12 graphs (A) and (B).

13 (2) *REGULATORY AND ADMINISTRATIVE FRAME-*
14 *WORKS.*—The President shall include in the report
15 under paragraph (1) a detailed description, done in
16 consultation with appropriate departments and agen-
17 cies, of the regulatory and administrative frameworks
18 in the United States for measuring, monitoring, and
19 controlling the export of the pesticides and chemicals
20 described in paragraph (1), and any recommenda-
21 tions the President has on how such frameworks could
22 be improved as methods for controlling the export of
23 those substances.

24 (c) *GAO REPORT.*—The Comptroller General of the
25 United States, in consultation with the National Academy

1 *of Sciences and such other departments and agencies as the*
2 *Comptroller General considers appropriate, shall, by not*
3 *later than 1 year after the date of the enactment of this*
4 *Act—*

5 (1) *examine the regulatory and administrative*
6 *frameworks in the United States for measuring, mon-*
7 *itoring, and controlling the exportation of the pes-*
8 *ticides and chemicals described in subsection (b), and*
9 *determine the efficiency and effectiveness of those*
10 *frameworks;*

11 (2) *compare the United States regulatory and*
12 *administrative frameworks under paragraph (1) with*
13 *those of the other member countries of the Organiza-*
14 *tion for Economic Cooperation and Development, and*
15 *provide recommendations concerning any elements of*
16 *the frameworks of those countries that might be ap-*
17 *plied to the United States frameworks to help improve*
18 *their efficiency and effectiveness;*

19 (3) *compare the quantities of each of the sub-*
20 *stances described in paragraph (1) which have been*
21 *exported by the United States and all other member*
22 *countries of the Organization for Economic Coopera-*
23 *tion and Development during the 2-year period pre-*
24 *ceding the date of enactment of this Act;*

1 (4) *evaluate the adequacy of current statutory*
 2 *and regulatory authority, as well as appropriations,*
 3 *for measuring, monitoring, and controlling the export*
 4 *of those substances and suggest improvements for en-*
 5 *sureing better measuring, monitoring, and control of*
 6 *those exports; and*

7 (5) *submit to the Committee on International*
 8 *Relations of the House of Representatives and to the*
 9 *Committee on Banking, Housing, and Urban Affairs*
 10 *and the Committee on Foreign Relations of the Senate*
 11 *a report on the findings under paragraphs (1)*
 12 *through (4).*

13 ***TITLE IV—PROCEDURES FOR EX-***
 14 ***PORT LICENSES AND INTER-***
 15 ***AGENCY DISPUTE RESOLU-***
 16 ***TION***

17 ***SEC. 401. EXPORT LICENSE PROCEDURES.***

18 (a) *RESPONSIBILITY OF THE SECRETARY.*—

19 (1) *IN GENERAL.*—*All applications for a license*
 20 *or other authorization to export a controlled item*
 21 *shall be filed in such manner and include such infor-*
 22 *mation as the Secretary may, by regulation, pre-*
 23 *scribe.*

24 (2) *PROCEDURES.*—*In guidance and regulations*
 25 *that implement this section, the Secretary shall de-*

1 *scribe the procedures required by this section, the re-*
2 *responsibilities of the Secretary and of other depart-*
3 *ments and agencies in reviewing applications, the*
4 *rights of the applicant, and other relevant matters af-*
5 *fecting the review of license applications.*

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

12 (4) *CRITERIA FOR EVALUATING APPLICATIONS.—*
13 *In determining whether to grant an application to ex-*
14 *port a controlled item under this Act, the following*
15 *criteria shall be considered:*

16 (A) *The characteristics of the controlled*
17 *item.*

18 (B) *The threat to—*

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

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

1 (C) *The country tier designation of the*
2 *country to which a controlled item is to be ex-*
3 *ported pursuant to section 203.*

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

6 (i) *the exporter;*

7 (ii) *the method of export;*

8 (iii) *the end user;*

9 (iv) *the country where the end user is*
10 *located; and*

11 (v) *the end use.*

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

14 (i) *changing the characteristics of the*
15 *controlled item;*

16 (ii) *after-market monitoring by the ex-*
17 *porter; and*

18 (iii) *post-shipment verification.*

19 (b) *INITIAL SCREENING.—*

20 (1) *UPON RECEIPT OF APPLICATION.—Upon re-*
21 *ceipt of an export license application, the Secretary*
22 *shall enter and maintain in the records of the Depart-*
23 *ment information regarding the receipt and status of*
24 *the application.*

25 (2) *INITIAL PROCEDURES.—*

1 (A) *IN GENERAL.*—Not later than 9 days
2 after receiving any license application, the Sec-
3 retary shall—

4 (i) *contact the applicant if the applica-*
5 *tion is improperly completed or if addi-*
6 *tional information is required, and hold the*
7 *application for a reasonable time while the*
8 *applicant provides the necessary corrections*
9 *or information, and such time shall not be*
10 *included in calculating the time periods*
11 *prescribed in this title; and*

12 (ii) *upon receipt of a completed*
13 *application—*

14 (I) *ensure that the classification*
15 *state on the application for the export*
16 *items is correct, and, if so, refer the*
17 *application, through the use of a com-*
18 *mon data base or other means, and all*
19 *information submitted by the appli-*
20 *cant, and all necessary recommenda-*
21 *tions and analyses by the Secretary, to*
22 *the Secretary of Defense, the Secretary*
23 *of State, and the heads of and other de-*
24 *partments and agencies the Secretary*
25 *considers appropriate; or*

1 (II) return the application if a li-
2 cense is not required.

3 (B) REFERRAL NOT REQUIRED.—In the
4 event that the head of a department or agency
5 determines that certain types of applications
6 need not be referred to the department or agency,
7 such department or agency head shall notify the
8 Secretary of the specific types of such applica-
9 tions that the department or agency does not
10 wish to review.

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

14 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
15 CIES.—

16 (1) REFERRAL TO OTHER AGENCIES.—The Sec-
17 retary shall promptly refer a license application to
18 the departments and agencies under subsection (b) to
19 make recommendations and provide information to
20 the Secretary.

21 (2) RESPONSIBILITY OF REFERRAL DEPART-
22 MENTS AND AGENCIES.—The Secretary of Defense, the
23 Secretary of State, and the heads of other reviewing
24 departments and agencies shall take all necessary ac-
25 tions on an application in a prompt and responsible

1 *manner. Each department or agency reviewing an*
2 *application under this section shall establish and*
3 *maintain records properly identifying and moni-*
4 *toring the status of the matter referred to the depart-*
5 *ment or agency.*

6 (3) *ADDITIONAL INFORMATION REQUESTS.—*
7 *Each department or agency to which a license appli-*
8 *cation is referred shall specify to the Secretary any*
9 *information that is not in the application that would*
10 *be required for the department or agency to make a*
11 *determination with respect to the application, and the*
12 *Secretary shall promptly request such information*
13 *from the applicant. The time that may elapse between*
14 *the date the information is requested by that depart-*
15 *ment or agency and the date the information is re-*
16 *ceived by that department or agency shall not be in-*
17 *cluded in calculating the time periods prescribed in*
18 *this title.*

19 (4) *TIME PERIOD FOR ACTION BY REFERRAL DE-*
20 *PARTMENTS AND AGENCIES.—Within 30 days after*
21 *the Secretary refers an application under this section,*
22 *each department or agency to which an application*
23 *has been referred shall provide the Secretary with a*
24 *recommendation either to approve the license or to*
25 *deny the license. A recommendation that the Sec-*

1 *retary deny a license shall include a statement of rea-*
2 *sons for the recommendation that are consistent with*
3 *the provisions of this title, and shall cite both the spe-*
4 *cific statutory and regulatory basis for the rec-*
5 *ommendation. A department or agency that fails to*
6 *provide a recommendation in accordance with this*
7 *paragraph within that 30-day period shall be deemed*
8 *to have no objection to the decision of the Secretary*
9 *on the application.*

10 *(d) ACTION BY THE SECRETARY.—Not later than 30*
11 *days after the date the application is referred, the Secretary*
12 *shall—*

13 *(1) if there is agreement among the departments*
14 *and agencies to which the application has been re-*
15 *ferred under subsection (c) to issue or deny the*
16 *license—*

17 *(A) issue the license and ensure all appro-*
18 *priate personnel in the Department (including*
19 *the Office of Export Enforcement) are notified of*
20 *all approved license applications; or*

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

23 *(2) if there is no agreement among such depart-*
24 *ments and agencies, notify the applicant that the ap-*

1 *plication is subject to the interagency dispute resolu-*
2 *tion process provided for in section 402.*

3 *(e) CONSEQUENCES OF APPLICATION DENIAL.—*

4 *(1) IN GENERAL.—If a determination is made to*
5 *deny a license, the Secretary shall inform the appli-*
6 *cant in writing, consistent with the protection of in-*
7 *telligence information sources and methods, of—*

8 *(A) the determination;*

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

11 *(C) what, if any, modifications to, or re-*
12 *strictions on, the items for which the license was*
13 *sought would allow such export to be compatible*
14 *with export controls imposed under this Act, and*
15 *which officer or employee of the Department*
16 *would be in a position to discuss modifications*
17 *or restrictions with the applicant and the spe-*
18 *cific statutory and regulatory bases for imposing*
19 *such modifications or restrictions;*

20 *(D) to the extent consistent with the na-*
21 *tional security and foreign policy interests of the*
22 *United States, the specific considerations that led*
23 *to the determination to deny the application;*
24 *and*

25 *(E) the availability of appeal procedures.*

1 (2) *PERIOD FOR APPLICANT TO RESPOND.*—The
2 applicant shall have 20 days from the date of the no-
3 tice of intent to deny the application to respond in
4 a manner that addresses and corrects the reasons for
5 the denial. If the applicant does not adequately ad-
6 dress or correct the reasons for denial or does not re-
7 spond, the license shall be denied. If the applicant
8 does address or correct the reasons for denial, the ap-
9 plication shall be considered in a timely manner.

10 (f) *APPEALS AND OTHER ACTIONS BY APPLICANT.*—

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

20 (2) *ENFORCEMENT OF TIME LIMITS.*—

21 (A) *IN GENERAL.*—In any case in which an
22 action prescribed in this section is not taken on
23 an application within the time period estab-
24 lished by this section (except in the case of a
25 time period extended under subsection (g) of

1 *which the applicant is notified), the applicant*
2 *may file a petition with the Secretary requesting*
3 *compliance with the requirements of this section.*
4 *When such petition is filed, the Secretary shall*
5 *take immediate steps to correct the situation giv-*
6 *ing rise to the petition and shall immediately*
7 *notify the applicant of such steps.*

8 *(B) BRINGING COURT ACTION.—If, within*
9 *20 days after a petition is filed under subpara-*
10 *graph (A), the processing of the application has*
11 *not been brought into conformity with the re-*
12 *quirements of this section, or the processing of*
13 *the application has been brought into conformity*
14 *with such requirements but the Secretary has not*
15 *so notified the applicant, the applicant may*
16 *bring an action in an appropriate United States*
17 *district court for an order requiring compliance*
18 *with the time periods required by this section.*

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

23 *(1) AGREEMENT OF THE APPLICANT; COM-*
24 *PLEXITY OF ANALYSIS; NATIONAL SECURITY IM-*
25 *PACT.—*

1 (A) *AGREEMENT OF THE APPLICANT.*—
2 *Delays upon which the Secretary and the appli-*
3 *cant mutually agree.*

4 (B) *COMPLEXITY OF ANALYSIS.*—*A review-*
5 *ing department or agency requires more time*
6 *due to the complexity of the analysis, if the addi-*
7 *tional time is not more than 60 days.*

8 (C) *NATIONAL SECURITY IMPACT.*—*A re-*
9 *viewing department or agency requires addi-*
10 *tional time because of the potential impact on*
11 *the national security or foreign policy interests*
12 *of the United States, if the additional time is not*
13 *more than 60 days.*

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

18 (A) *the need for the prelicense check is de-*
19 *termined by the Secretary or by another depart-*
20 *ment or agency in any case in which the request*
21 *for the prelicense check is made by such depart-*
22 *ment or agency;*

23 (B) *the request for the prelicense check is*
24 *initiated by the Secretary within 5 days after*

1 *the determination that the prelicense check is re-*
2 *quired; and*

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

6 (3) *REQUESTS FOR GOVERNMENT-TO-GOVERN-*
7 *MENT ASSURANCES.—Any request by the Secretary or*
8 *another department or agency for government-to-gov-*
9 *ernment assurances of suitable end uses of items ap-*
10 *proved for export, when failure to obtain such assur-*
11 *ances would result in rejection of the application, if—*

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

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

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

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

1 *calculating the time periods established by this sec-*
2 *tion.*

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

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

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

14 (8) *INTELLIGENCE AGENCIES.*—*Delays necessary*
15 *to obtain information or assessments from intelligence*
16 *agencies.*

17 (h) *CLASSIFICATION REQUESTS AND OTHER INQUIR-*
18 *IES.*—

19 (1) *CLASSIFICATION REQUEST.*—

20 (A) *NOTIFICATION OF OTHER AGENCIES.*—
21 *In any case in which the Secretary receives a*
22 *written request asking for the proper classifica-*
23 *tion of an item on the Control List or the appli-*
24 *cability of licensing requirements under this*
25 *title, the Secretary shall promptly notify the Sec-*

1 *retary of Defense, the Secretary of State, and the*
2 *head of any other department or agency of the*
3 *United States that the Secretary considers ap-*
4 *propriate, of the request.*

5 *(B) DETERMINATION; RESOLUTION OF DIS-*
6 *PUTES.—The Secretary shall make the deter-*
7 *mination regarding proper classification within*
8 *14 days after receiving the request and inform*
9 *the person making the request of such determina-*
10 *tion. If an objection is raised by the Secretary*
11 *of State or the Secretary of Defense regarding the*
12 *Secretary’s determination within that time pe-*
13 *riod, the disagreement shall be resolved through*
14 *the interagency resolution process described in*
15 *section 402, except that any such disagreement*
16 *shall be resolved within 60 days.*

17 *(2) OTHER INQUIRIES.—In any case in which*
18 *the Secretary receives a written request for informa-*
19 *tion under this Act, the Secretary shall, within 30*
20 *days after receiving the request, reply with that infor-*
21 *mation to the person making the request.*

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

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

1 (b) *INTERAGENCY DISPUTE RESOLUTION PROCESS.*—

2 (1) *INITIAL RESOLUTION.*—*The Secretary shall*
3 *establish, select the chairperson of, and determine pro-*
4 *cedures for an interagency committee to review ini-*
5 *tially all license applications described in subsection*
6 *(a) with respect to which the Secretary and any of the*
7 *referral departments and agencies are not in agree-*
8 *ment. The chairperson **committee** shall consider*
9 *the positions of all the referral departments and agen-*
10 *cies (which shall be included in the minutes described*
11 *in subsection (c)(2)) and make a decision on the li-*
12 *cence application, including appropriate revisions or*
13 *conditions thereto, **except that any decision***
14 ***of the committee is not valid unless it is***
15 ***unanimous. If such a unanimous decision***
16 ***is not reached, the license at issue shall***
17 ***be denied, unless the matter is appealed***
18 ***under paragraph (3).***

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

23 (3) *FURTHER RESOLUTION.*—*The President shall*
24 *establish additional levels for review or appeal of any*
25 *matter that cannot be resolved pursuant to the process*

1 *described in paragraph (1). Each such review shall*
2 *ensure that matters are resolved or referred to the*
3 *President not later than 90 days after the completed*
4 *license application is referred by the Secretary.*

5 **(3) FURTHER RESOLUTION.—The Presi-**
6 **dent shall establish additional levels for**
7 **review or appeal of any matter that can-**
8 **not be resolved pursuant to the process**
9 **described in paragraph (1). Each such re-**
10 **view shall—**

11 **(A) provide for decision-making**
12 **based on the concurrence of the par-**
13 **ticipating departments and agencies;**

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

20 **(C) provide that any decision of**
21 **an interagency committee established**
22 **under paragraph (1) or interagency**
23 **dispute resolution process estab-**
24 **lished under this paragraph may be**
25 **escalated to the next higher level of**

1 review at the request of an official
2 appointed by the President, by and
3 with the advice of the Senate, or an
4 officer properly acting in such capac-
5 ity, of a department or agency that
6 participated in the interagency com-
7 mittee or dispute resolution process
8 that made the decision; and

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

14 If concurrence of the participating de-
15 partments and agencies is not reached at
16 a level of review established under this
17 paragraph, the license at issue shall be
18 denied unless the matter is escalated to
19 the next higher level of review or the
20 President determines otherwise.

21 (c) *FINAL ACTION.*—

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

24 (A) issue the license and ensure that all ap-
25 propriate personnel in the Department (includ-

1 ing the Office of Export Enforcement) are noti-
2 fied of all approved license applications; or

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

5 (2) *MINUTES.*—The interagency committee and
6 each level of the interagency dispute resolution process
7 shall keep reasonably detailed minutes of all meetings.
8 On each matter before the interagency committee or
9 before any other level of the interagency dispute reso-
10 lution process in which members disagree, each mem-
11 ber shall clearly state the reasons for the member’s po-
12 sition and the reasons shall be entered in the minutes.

13 **TITLE V—INTERNATIONAL AR-**
14 **RANGEMENTS; FOREIGN BOY-**
15 **COTTS; SANCTIONS; AND EN-**
16 **FORCEMENT**

17 **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

18 (a) *MULTILATERAL EXPORT CONTROL REGIMES.*—

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

1 (2) *PARTICIPATION IN EXISTING REGIMES.*—Con-
2 gress encourages the United States to continue its ac-
3 tive participation in and to strengthen existing mul-
4 tilateral export control regimes.

5 (3) *PARTICIPATION IN NEW REGIMES.*—It is the
6 policy of the United States to participate in addi-
7 tional multilateral export control regimes if such par-
8 ticipation would serve the national security interests
9 of the United States.

10 (b) *ANNUAL REPORT ON MULTILATERAL EXPORT CON-*
11 *TROL REGIMES.*—Not later than February 1 of each year,
12 the President shall submit to the Committee on Banking,
13 Housing, and Urban Affairs of the Senate and the Com-
14 mittee on International Relations of the House of Rep-
15 resentatives a report evaluating the effectiveness of each
16 multilateral export control regime, including an assessment
17 of the steps undertaken pursuant to subsections (c) and (d).
18 The report, or any part of this report, may be submitted
19 in classified form to the extent the President considers nec-
20 essary.

21 (c) *STANDARDS FOR MULTILATERAL EXPORT CON-*
22 *TROL REGIMES.*—The President shall take steps to establish
23 the following features in any multilateral export control re-
24 gime in which the United States is participating or may
25 participate:

1 (1) *FULL MEMBERSHIP.*—*All supplier countries*
2 *are members of the regime, and the policies and ac-*
3 *tivities of the members are consistent with the objec-*
4 *tives and membership criteria of the multilateral ex-*
5 *port control regime.*

6 (2) *EFFECTIVE ENFORCEMENT AND COMPLI-*
7 *ANCE.*—*The regime promotes enforcement and compli-*
8 *ance with the regime’s rules and guidelines.*

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

13 (4) *EFFECTIVE IMPLEMENTATION PROCEDURE-*
14 *S.*—*The multilateral export control regime has*
15 *procedures for the uniform and consistent interpreta-*
16 *tion and implementation of its rules and guidelines.*

17 (5) *ENHANCED COOPERATION WITH REGIME*
18 *NONMEMBERS.*—*There is agreement among the mem-*
19 *bers of the multilateral export control regime to—*

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

23 (B) *establish an ongoing mechanism in the*
24 *regime to coordinate planning and implementa-*

1 *tion of export control measures related to such*
2 *cooperation.*

3 (6) *PERIODIC HIGH-LEVEL MEETINGS.*—*There*
4 *are regular periodic meetings of high-level representa-*
5 *tives of the governments of members of the multilat-*
6 *eral export control regime for the purpose of coordi-*
7 *nating export control policies and issuing policy*
8 *guidance to members of the regime.*

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

12 (8) *REGULAR UPDATES OF COMMON LIST.*—
13 *There is a procedure for removing items from the list*
14 *of controlled items when the control of such items no*
15 *longer serves the objectives of the members of the mul-*
16 *tilateral export control regime.*

17 (9) *TREATMENT OF CERTAIN COUNTRIES.*—*There*
18 *is agreement to prevent the export or diversion of the*
19 *most sensitive items to countries whose activities are*
20 *threatening to the national security of the United*
21 *States or its allies.*

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

1 (11) *UNDERCUTTING.*—*There is a limit with re-*
2 *spect to when members of a multilateral export con-*
3 *trol regime—*

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

9 (B) *approve exports to a particular end*
10 *user to which the United States has denied ex-*
11 *port license for a similar item.*

12 (d) *STANDARDS FOR NATIONAL EXPORT CONTROL*
13 *SYSTEMS.*—*The President shall take steps to attain the co-*
14 *operation of members of each regime in implementing effec-*
15 *tive national export control systems containing the fol-*
16 *lowing features:*

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

22 (2) *LICENSE APPROVAL PROCESS.*—*The system*
23 *for evaluating export license applications includes*
24 *sufficient technical expertise to assess the licensing*

1 *status of exports and ensure the reliability of end*
2 *users.*

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

6 (4) *DOCUMENTATION.*—*There is a system of ex-*
7 *port control documentation and verification with re-*
8 *spect to controlled items.*

9 (5) *INFORMATION.*—*There are procedures for the*
10 *coordination and exchange of information concerning*
11 *licensing, end users, and enforcement with other mem-*
12 *bers of the multilateral export control regime.*

13 (6) *RESOURCES.*—*The member has devoted ade-*
14 *quate resources to administer effectively the authori-*
15 *ties, systems, mechanisms, and procedures described*
16 *in paragraphs (1) through (5).*

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

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

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

1 *among members before a member approves an ex-*
2 *port license; and*

3 *(B) harmonizing national export license ap-*
4 *proval procedures and practices, including the*
5 *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 con-*
16 *trol 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 CON-*
24 *TROL REGIMES.— -*

1 (1) *PUBLICATION OF INFORMATION ON EACH EX-*
2 *ISTING REGIME.*—*Not later than 120 days after the*
3 *date of enactment of this Act, the Secretary shall, for*
4 *each multilateral export control regime, to the extent*
5 *that it is not inconsistent with the arrangements of*
6 *that regime (in the judgment of the Secretary of*
7 *State) or with the national interest, publish in the*
8 *Federal Register and post on the Department of Com-*
9 *merce website the following information with respect*
10 *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 pub-*
17 *lic notes, understandings, and other aspects of*
18 *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 regime*
2 *for establishing and modifying any matter de-*
3 *scribed in subparagraphs (A) through (G) and*
4 *for reviewing export license applications.*

5 (2) *NEW REGIMES.—Not later than 60 days after*
6 *the United States joins or organizes a new multilat-*
7 *eral export control regime, the Secretary shall, to the*
8 *extent that it is not inconsistent with arrangements*
9 *under the regime (in the judgment of the Secretary of*
10 *State) or with the national interest, publish in the*
11 *Federal Register and post on the Department of Com-*
12 *merce website the information described in subpara-*
13 *graphs (A) through (H) of paragraph (1) with respect*
14 *to the regime.*

15 (3) *PUBLICATION OF CHANGES.—Not later than*
16 *60 days after a multilateral export control regime*
17 *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 the*
20 *regime or the national interest, publish such changes*
21 *in the Federal Register and post such changes on the*
22 *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*
2 *training to, officials of other countries on the prin-*
3 *ciples and procedures for implementing effective ex-*
4 *port controls; and*

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

7 **SEC. 502. FOREIGN BOYCOTTS.**

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

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

14 (2) *To encourage and, in specified cases, require*
15 *United States persons engaged in the export of items*
16 *to refuse to take actions, including furnishing infor-*
17 *mation or entering into or implementing agreements,*
18 *which have the effect of furthering or supporting the*
19 *restrictive trade practices or boycotts fostered or im-*
20 *posed by any foreign country against a country*
21 *friendly to the United States or against any United*
22 *States person.*

23 (b) *PROHIBITIONS AND EXCEPTIONS.—*

24 (1) *PROHIBITIONS.—In order to carry out the*
25 *purposes set forth in subsection (a), the President*

1 *shall issue regulations prohibiting any United States*
2 *person, with respect to that person's activities in the*
3 *interstate or foreign commerce of the United States,*
4 *from taking or knowingly agreeing to take any of the*
5 *following actions with intent to comply with, further,*
6 *or support any boycott fostered or imposed by a for-*
7 *foreign country against a country that is friendly to the*
8 *United States and is not itself the object of any form*
9 *of boycott pursuant to United States law or regula-*
10 *tion:*

11 *(A) Refusing, or requiring any other person*
12 *to refuse, to do business with or in the boycotted*
13 *country, with any business concern organized*
14 *under the laws of the boycotted country, with*
15 *any national or resident of the boycotted coun-*
16 *try, or with any other person, pursuant to an*
17 *agreement with, or requirement of, or a request*
18 *from or on behalf of the boycotting country (sub-*
19 *ject to the condition that the intent required to*
20 *be associated with such an act in order to con-*
21 *stitute a violation of the prohibition is not indi-*
22 *cated solely by the mere absence of a business re-*
23 *lationship with or in the boycotted country, with*
24 *any business concern organized under the laws of*
25 *the boycotted country, with any national or resi-*

1 *dent of the boycotted country, or with any other*
2 *person).*

3 *(B) Refusing, or requiring any other person*
4 *to refuse, to employ or otherwise discriminate*
5 *against any United States person on the basis of*
6 *the race, religion, sex, or national origin of that*
7 *person or of any owner, officer, director, or em-*
8 *ployee of such person.*

9 *(C) Furnishing information with respect to*
10 *the race, religion, sex, or national origin of any*
11 *United States person or of any owner, officer, di-*
12 *rector, or employee of such person.*

13 *(D) Furnishing information (other than*
14 *furnishing normal business information in a*
15 *commercial context, as defined by the Secretary)*
16 *about whether any person has, has had, or pro-*
17 *poses to have any business relationship (includ-*
18 *ing a relationship by way of sale, purchase, legal*
19 *or commercial representation, shipping or other*
20 *transport, insurance, investment, or supply)*
21 *with or in the boycotted country, with any busi-*
22 *ness concern organized under the laws of the boy-*
23 *cotted country, with any national or resident of*
24 *the boycotted country, or with any other person*
25 *that is known or believed to be restricted from*

1 *having any business relationship with or in the*
2 *boycotting country.*

3 *(E) Furnishing information about whether*
4 *any person is a member of, has made a contribu-*
5 *tion to, or is otherwise associated with or in-*
6 *involved in the activities of any charitable or fra-*
7 *ternal organization which supports the boycotted*
8 *country.*

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

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

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

22 *(i) prohibiting the import of items*
23 *from the boycotted country or items pro-*
24 *duced or provided, by any business concern*
25 *organized under the laws of the boycotted*

1 country or by nationals or residents of the
2 boycotted country; or

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

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

23 (C) compliance, or agreement to comply, in
24 the normal course of business with the unilateral
25 and specific selection by a boycotting country, or

1 *a national or resident thereof, or carriers, insur-*
2 *ers, suppliers of services to be performed within*
3 *the boycotting country, or specific items which,*
4 *in the normal course of business, are identifiable*
5 *by source when imported into the boycotting*
6 *country;*

7 *(D) compliance, or agreement to comply,*
8 *with export requirements of the boycotting coun-*
9 *try relating to shipment or transshipment of ex-*
10 *ports to the boycotted country, to any business*
11 *concern of or organized under the laws of the*
12 *boycotted country, or to any national or resident*
13 *of the boycotted country;*

14 *(E) compliance by an individual, or agree-*
15 *ment by an individual to comply, with the im-*
16 *migration or passport requirements of any coun-*
17 *try with respect to such individual or any mem-*
18 *ber of such individual's family or with requests*
19 *for information regarding requirements of em-*
20 *ployment of such individual within the boy-*
21 *cotting country; and*

22 *(F) compliance by a United States person*
23 *resident in a foreign country, or agreement by*
24 *such a person to comply, with the laws of the*
25 *country with respect to the person's activities ex-*

1 *clusively therein, and such regulations may con-*
2 *tain exceptions for such resident complying with*
3 *the laws or regulations of the foreign country*
4 *governing imports into such country of*
5 *trademarked, trade-named, or similarly specifi-*
6 *cally identifiable products, or components of*
7 *products for such person's own use, including the*
8 *performance of contractual services within that*
9 *country.*

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

14 (4) *ANTITRUST AND CIVIL RIGHTS LAWS NOT AF-*
15 *FECTED.*—*Nothing in this subsection may be con-*
16 *strued to supersede or limit the operation of the anti-*
17 *trust or civil rights laws of the United States.*

18 (5) *EVASION.*—*This section applies to any trans-*
19 *action or activity undertaken by or through a United*
20 *States person or any other person with intent to*
21 *evade the provisions of this section or the regulations*
22 *issued pursuant to this subsection. The regulations*
23 *issued pursuant to this section shall expressly provide*
24 *that the exceptions set forth in paragraph (2) do not*
25 *permit activities or agreements (expressed or implied*

1 *by a course of conduct, including a pattern of re-*
2 *sponses) that are otherwise prohibited, pursuant to*
3 *the intent of such exceptions.*

4 *(c) ADDITIONAL REGULATIONS AND REPORTS.—*

5 *(1) REGULATIONS.—In addition to the regula-*
6 *tions issued pursuant to subsection (b), regulations*
7 *issued pursuant to title III shall implement the pur-*
8 *poses set forth in subsection (a).*

9 *(2) REPORTS BY UNITED STATES PERSONS.—The*
10 *regulations shall require that any United States per-*
11 *son receiving a request to furnish information, enter*
12 *into or implement an agreement, or take any other*
13 *action referred to in subsection (a) shall report that*
14 *request to the Secretary, together with any other in-*
15 *formation concerning the request that the Secretary*
16 *determines appropriate. The person shall also submit*
17 *to the Secretary a statement regarding whether the*
18 *person intends to comply, and whether the person has*
19 *complied, with the request. Any report filed pursuant*
20 *to this paragraph shall be made available promptly*
21 *for public inspection and copying, except that infor-*
22 *mation regarding the quantity, description, and value*
23 *of any item to which such report relates may be treat-*
24 *ed as confidential if the Secretary determines that*
25 *disclosure of that information would place the United*

1 *States person involved at a competitive disadvantage.*
2 *The Secretary shall periodically transmit summaries*
3 *of the information contained in the reports to the Sec-*
4 *retary of State for such action as the Secretary of*
5 *State, in consultation with the Secretary, considers*
6 *appropriate to carry out the purposes set forth in sub-*
7 *section (a).*

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

11 *(1) is a law, rule, or regulation of any of the sev-*
12 *eral States or the District of Columbia, or any of the*
13 *territories or possessions of the United States, or of*
14 *any governmental subdivision thereof; and*

15 *(2) pertains to participation in, compliance*
16 *with, implementation of, or the furnishing of infor-*
17 *mation regarding restrictive trade practices or boy-*
18 *cotts fostered or imposed by foreign countries against*
19 *other countries.*

20 **SEC. 503. PENALTIES.**

21 *(a) CRIMINAL PENALTIES.—*

22 *(1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-*
23 *vidual who willfully violates, conspires to violate, or*
24 *attempts to violate any provision of this Act or any*
25 *regulation, license, or order issued under this Act*

1 *shall be fined up to 10 times the value of the exports*
2 *involved or \$1,000,000, whichever is greater, impris-*
3 *oned for not more than 10 years, or both, for each vio-*
4 *lation.*

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

13 (b) *FORFEITURE OF PROPERTY INTEREST AND PRO-*
14 *CEEDS.—*

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

19 (A) *any of that person's security or other*
20 *interest in, claim against, or property or con-*
21 *tractual rights of any kind in the tangible items*
22 *that were the subject of the violation;*

23 (B) *any of that person's security or other*
24 *interest in, claim against, or property or con-*
25 *tractual rights of any kind in the tangible prop-*

1 *erty that was used in the export or attempt to*
2 *export that was the subject of the violation; and*

3 *(C) any of that person's property consti-*
4 *tuting, or derived from, any proceeds obtained*
5 *directly or indirectly as a result of the violation.*

6 *(2) PROCEDURES.—The procedures in any for-*
7 *feiture under this subsection, and the duties and au-*
8 *thority of the courts of the United States and the At-*
9 *torney General with respect to any forfeiture action*
10 *under this subsection, or with respect to any property*
11 *that may be subject to forfeiture under this subsection,*
12 *shall be governed by the provisions of chapter 46 of*
13 *title 18, United States Code (relating to criminal for-*
14 *feiture), to the same extent as property subject to for-*
15 *feiture under that chapter.*

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

17 *(1) CIVIL PENALTIES.—The Secretary may im-*
18 *pose a civil penalty of up to \$500,000 for each viola-*
19 *tion of a provision of this Act or any regulation, li-*
20 *cence, or order issued under this Act. A civil penalty*
21 *under this paragraph may be in addition to, or in*
22 *lieu of, any other liability or penalty which may be*
23 *imposed for such a violation.*

24 *(2) DENIAL OF EXPORT PRIVILEGES.—The Sec-*
25 *retary may deny the export privileges of any person,*

1 including the suspension or revocation of the author-
2 ity of such person to export or receive United States-
3 origin items subject to this Act, for a violation of a
4 provision of this Act or any regulation, license, or
5 order issued under this Act.

6 (3) *EXCLUSION FROM PRACTICE.*—The Secretary
7 may exclude any person acting as an attorney, ac-
8 countant, consultant, freight forwarder, or in any
9 other representative capacity from participating be-
10 fore the Department with respect to a license applica-
11 tion or any other matter under this Act.

12 (d) *PAYMENT OF CIVIL PENALTIES.*—

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

23 (2) *DEFERRAL OR SUSPENSION.*—

24 (A) *IN GENERAL.*—The payment of a civil
25 penalty imposed under subsection (c) may be de-

1 *ferred or suspended in whole or in part for a pe-*
2 *riod no longer than any probation period (which*
3 *may exceed 1 year) that may be imposed upon*
4 *the person on whom the penalty is imposed.*

5 *(B) NO BAR TO COLLECTION OF PENALTY.—*

6 *A deferral or suspension under subparagraph (A)*
7 *shall not operate as a bar to the collection of the*
8 *penalty concerned in the event that the condi-*
9 *tions of the suspension, deferral, or probation are*
10 *not fulfilled.*

11 *(3) TREATMENT OF PAYMENTS.—Any amount*

12 *paid in satisfaction of a civil penalty imposed under*
13 *subsection (c) shall be covered into the Treasury as*
14 *miscellaneous receipts.*

15 *(e) REFUNDS.—*

16 *(1) AUTHORITY.—*

17 *(A) IN GENERAL.—The Secretary may, in*
18 *the Secretary's discretion, refund any civil pen-*
19 *alty imposed under subsection (c) on the ground*
20 *of a material error of fact or law in imposition*
21 *of the penalty.*

22 *(B) LIMITATION.—A civil penalty may not*
23 *be refunded under subparagraph (A) later than*
24 *2 years after payment of the penalty.*

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

6 (f) *EFFECT OF OTHER CONVICTIONS.*—

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

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

11 (B) *a provision of the International Emer-*
12 *gency Economic Powers Act (50 U.S.C. 1701 et*
13 *seq.),*

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

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

18 (E) *section 38 of the Arms Export Control*
19 *Act (22 U.S.C. 2778),*

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

22 (G) *any regulation, license, or order issued*
23 *under any provision of law listed in subpara-*
24 *graph (A), (B), (C), (D), (E), or (F),*

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

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

10 (J) a provision of the Atomic Energy Act
11 (42 U.S.C. 201 et seq.),

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

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

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

22 (2) *RELATED PERSONS.*—The Secretary may ex-
23 ercise the authority under paragraph (1) with respect
24 to any person related through affiliation, ownership,
25 control, or position of responsibility to a person con-

1 *victed of any violation of a law set forth in para-*
2 *graph (1) upon a showing of such relationship with*
3 *the convicted person. The Secretary shall make such*
4 *showing only after providing notice and opportunity*
5 *for a hearing.*

6 *(g) STATUTE OF LIMITATIONS.—*

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

14 *(2) EXCEPTION.—*

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

1 (B) *DURATION.*—*The tolling of the limita-*
2 *tion with respect to a defendant under subpara-*
3 *graph (A) as a result of a criminal indictment*
4 *shall continue for a period of 6 months from the*
5 *date on which the conviction of the defendant be-*
6 *comes final, the indictment against the defendant*
7 *is dismissed, or the criminal action has con-*
8 *cluded.*

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

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

14 (1) *the availability of other administrative or ju-*
15 *dicial remedies with respect to a violation of a provi-*
16 *sion of this Act, or any regulation, order, or license*
17 *issued under this Act;*

18 (2) *the authority to compromise and settle ad-*
19 *ministrative proceedings brought with respect to any*
20 *such violation; or*

21 (3) *the authority to compromise, remit, or miti-*
22 *gate seizures and forfeitures pursuant to section 1(b)*
23 *of title VI of the Act of June 15, 1917 (22 U.S.C.*
24 *401(b)).*

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

2 (a) *VIOLATIONS BY UNITED STATES PERSONS.—*

3 (1) *SANCTIONS.—*

4 (A) *IN GENERAL.—If the President deter-*
5 *mines that a United States person knowingly—*

6 (i) *exports, transfers, or otherwise en-*
7 *gages in the trade of any item on the*
8 *MTCR Annex, in violation of the provisions*
9 *of section 38 (22 U.S.C. 2778) or chapter 7*
10 *of the Arms Export Control Act, title II or*
11 *III of this Act, or any regulations or orders*
12 *issued under any such provisions,*

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

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

17 *then the President shall impose the applicable*
18 *sanctions described in subparagraph (B).*

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

22 (i) *If the item on the MTCR Annex in-*
23 *volved in the export, transfer, or trade is*
24 *missile equipment or technology within cat-*
25 *egory II of the MTCR Annex, then the*
26 *President shall deny to such United States*

1 *person, for a period of 2 years, licenses for*
2 *the transfer of missile equipment or tech-*
3 *nology controlled under this Act.*

4 *(ii) 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 I of the MTCR Annex, then the Presi-*
8 *dent shall deny to such United States per-*
9 *son, for a period of not less than 2 years,*
10 *all licenses for items the export of which is*
11 *controlled under this Act.*

12 *(2) DISCRETIONARY SANCTIONS.—In the case of*
13 *any determination referred to in paragraph (1), the*
14 *Secretary may pursue any other appropriate pen-*
15 *alties under section 503.*

16 *(3) WAIVER.—The President may waive the im-*
17 *position of sanctions under paragraph (1) on a per-*
18 *son with respect to an item if the President certifies*
19 *to Congress that—*

20 *(A) the item is essential to the national se-*
21 *curity of the United States; and*

22 *(B) such person is a sole source supplier of*
23 *the item, the item is not available from any al-*
24 *ternative reliable supplier, and the need for the*
25 *item cannot be met in a timely manner by im-*

1 *proved manufacturing processes or technological*
2 *developments.*

3 **(b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-**
4 **NOLOGY BY FOREIGN PERSONS.—**

5 **(1) SANCTIONS.—**

6 **(A) IN GENERAL.—***Subject to paragraphs*
7 *(3) through (7), if the President determines that*
8 *a foreign person, after the date of enactment of*
9 *this section, knowingly—*

10 *(i) exports, transfers, or otherwise en-*
11 *gages in the trade of any MTCR equipment*
12 *or technology that contributes to the design,*
13 *development, or production of missiles in a*
14 *country that is not an MTCR adherent and*
15 *would be, if it were United States-origin*
16 *equipment or technology, subject to the ju-*
17 *risdiction of the United States under this*
18 *Act,*

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

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

23 *or if the President has made a determination*
24 *with respect to a foreign person under section*
25 *73(a) of the Arms Export Control Act, then the*

1 *President shall impose on that foreign person the*
2 *applicable sanctions under subparagraph (B).*

3 *(B) SANCTIONS DESCRIBED.—The sanctions*
4 *which apply to a foreign person under subpara-*
5 *graph (A) are the following:*

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

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

20 *(iii) If, in addition to actions taken*
21 *under clauses (i) and (ii), the President de-*
22 *termines that the export, transfer, or trade*
23 *has substantially contributed to the design,*
24 *development, or production of missiles in a*
25 *country that is not an MTCR adherent,*

1 *then the President shall prohibit, for a pe-*
2 *riod of not less than 2 years, the importa-*
3 *tion into the United States of products pro-*
4 *duced by that foreign person.*

5 (2) *INAPPLICABILITY WITH RESPECT TO MTCR*
6 *ADHERENTS.—Paragraph (1) does not apply with re-*
7 *spect to—*

8 *(A) any export, transfer, or trading activity*
9 *that is authorized by the laws of an MTCR ad-*
10 *herent, if such authorization is not obtained by*
11 *misrepresentation or fraud; or*

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

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

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

13 (5) *WAIVER AND REPORT TO CONGRESS.*—

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

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

1 *shall so notify Congress not less than 20 working*
2 *days before issuing the waiver. Such notification*
3 *shall include a report fully articulating the ra-*
4 *tionale and circumstances which led the Presi-*
5 *dent to apply the waiver.*

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

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

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

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

22 (A) *in the case of procurement of defense ar-*
23 *ticles or defense services—*

24 (i) *under existing contracts or sub-*
25 *contracts, including the exercise of options*

1 *for production quantities to satisfy require-*
2 *ments essential to the national security of*
3 *the United States;*

4 *(ii) if the President determines that the*
5 *person to which the sanctions would be ap-*
6 *plied is a sole source supplier of the defense*
7 *articles and services, that the defense arti-*
8 *cles or services are essential to the national*
9 *security of the United States, and that al-*
10 *ternative sources are not readily or reason-*
11 *ably available; or*

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

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

21 *(C) to—*

22 *(i) spare parts,*

23 *(ii) component parts, but not finished*
24 *products, essential to United States prod-*
25 *ucts or production,*

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

5 (iv) information and technology essen-
6 tial to United States products or produc-
7 tion.

8 (c) *DEFINITIONS.*—*In this section:*

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

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

22 (3) *MTCR ADHERENT.*—*The term “MTCR ad-*
23 *herent” means a country that participates in the*
24 *MTCR or that, pursuant to an international under-*
25 *standing to which the United States is a party, con-*

1 *trols MTCR equipment or technology in accordance*
2 *with the criteria and standards set forth in the*
3 *MTCR.*

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

7 (5) *MISSILE EQUIPMENT OR TECHNOLOGY; MTCR*
8 *EQUIPMENT OR TECHNOLOGY.—The terms “missile*
9 *equipment or technology” and “MTCR equipment or*
10 *technology” mean those items listed in category I or*
11 *category II of the MTCR Annex.*

12 (6) *FOREIGN PERSON.—The term “foreign per-*
13 *son” means any person other than a United States*
14 *person.*

15 (7) *PERSON.—*

16 (A) *IN GENERAL.—The term “person”*
17 *means a natural person as well as a corporation,*
18 *business association, partnership, society, trust,*
19 *any other nongovernmental entity, organization,*
20 *or group, and any governmental entity operating*
21 *as a business enterprise, and any successor of*
22 *any such entity.*

23 (B) *IDENTIFICATION IN CERTAIN CASES.—*

24 *In the case of countries where it may be impos-*
25 *sible to identify a specific governmental entity*

1 referred to in subparagraph (A), the term “per-
2 son” means—

3 (i) all activities of that government re-
4 lating to the development or production of
5 any missile equipment or technology; and

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

10 (8) *OTHERWISE ENGAGED IN THE TRADE OF.*—

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

16 **SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
17 **LIFERATION SANCTIONS.**

18 (a) *IMPOSITION OF SANCTIONS.*—

19 (1) *DETERMINATION BY THE PRESIDENT.*—*Ex-*
20 *cept as provided in subsection (b)(2), the President*
21 *shall impose both of the sanctions described in sub-*
22 *section (c) if the President determines that a foreign*
23 *person, on or after the date of enactment of this sec-*
24 *tion, has knowingly and materially contributed—*

1 (A) through the export from the United
2 States of any item that is subject to the jurisdic-
3 tion of the United States under this Act, or

4 (B) through the export from any other coun-
5 try of any item that would be, if it were a
6 United States item, subject to the jurisdiction of
7 the United States under this Act,
8 to the efforts by any foreign country, project, or entity
9 described in paragraph (2) to use, develop, produce,
10 stockpile, or otherwise acquire chemical or biological
11 weapons.

12 (2) COUNTRIES, PROJECTS, OR ENTITIES RECEIV-
13 ING ASSISTANCE.—Paragraph (1) applies in the case
14 of—

15 (A) any foreign country that the President
16 determines has, at any time after the date of en-
17 actment of this Act—

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

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

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

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

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

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

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

14 (B) any successor entity to that foreign per-
15 son;

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

20 (D) any foreign person that is an affiliate
21 of that foreign person if that affiliate knowingly
22 assisted in the activities which were the basis of
23 that determination and if that affiliate is con-
24 trolled in fact by that foreign person.

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

3 **(1) CONSULTATIONS.—***If the President makes the*
4 *determinations described in subsection (a)(1) with re-*
5 *spect to a foreign person, Congress urges the President*
6 *to initiate consultations immediately with the govern-*
7 *ment with primary jurisdiction over that foreign per-*
8 *son with respect to the imposition of sanctions pursu-*
9 *ant to this section.*

10 **(2) ACTIONS BY GOVERNMENT OF JURISDIC-**
11 **TION.—***In order to pursue such consultations with*
12 *that government, the President may delay imposition*
13 *of sanctions pursuant to this section for a period of*
14 *up to 90 days. Following the consultations, the Presi-*
15 *dent shall impose sanctions unless the President deter-*
16 *mines and certifies to Congress that government has*
17 *taken specific and effective actions, including appro-*
18 *priate penalties, to terminate the involvement of the*
19 *foreign person in the activities described in subsection*
20 *(a)(1). The President may delay imposition of sanc-*
21 *tions for an additional period of up to 90 days if the*
22 *President determines and certifies to Congress that*
23 *government is in the process of taking the actions de-*
24 *scribed in the preceding sentence.*

1 (3) *REPORT TO CONGRESS.*—*The President shall*
2 *report to Congress, not later than 90 days after mak-*
3 *ing a determination under subsection (a)(1), on the*
4 *status of consultations with the appropriate govern-*
5 *ment under this subsection, and the basis for any de-*
6 *termination under paragraph (2) of this subsection*
7 *that such government has taken specific corrective ac-*
8 *tions.*

9 (c) *SANCTIONS.*—

10 (1) *DESCRIPTION OF SANCTIONS.*—*The sanctions*
11 *to be imposed pursuant to subsection (a)(1) are, ex-*
12 *cept as provided in paragraph (2) of this subsection,*
13 *the following:*

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

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

23 (2) *EXCEPTIONS.*—*The President shall not be re-*
24 *quired to apply or maintain sanctions under this*
25 *section—*

1 (A) *in the case of procurement of defense ar-*
2 *ticles or defense services—*

3 (i) *under existing contracts or sub-*
4 *contracts, including the exercise of options*
5 *for production quantities to satisfy United*
6 *States operational military requirements;*

7 (ii) *if the President determines that the*
8 *person or other entity to which the sanc-*
9 *tions would otherwise be applied is a sole*
10 *source supplier of the defense articles or*
11 *services, that the defense articles or services*
12 *are essential, and that alternative sources*
13 *are not readily or reasonably available; or*

14 (iii) *if the President determines that*
15 *such articles or services are essential to the*
16 *national security under defense coproduc-*
17 *tion agreements;*

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

22 (C) *to—*

23 (i) *spare parts,*

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

4 (iii) routine servicing and mainte-
5 nance of products, to the extent that alter-
6 native sources are not readily or reasonably
7 available;

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

10 (E) to medical or other humanitarian
11 items.

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

22 (e) *WAIVER.*—

23 (1) *CRITERION FOR WAIVER.*—*The President*
24 *may waive the application of any sanction imposed*
25 *on any person pursuant to this section, after the end*

1 of the 12-month period beginning on the date on
2 which that sanction was imposed on that person, if
3 the President determines and certifies to Congress
4 that such waiver is important to the national security
5 interests of the United States.

6 (2) *NOTIFICATION OF AND REPORT TO CON-*
7 *GRESS.*—If the President decides to exercise the waiv-
8 er authority provided in paragraph (1), the President
9 shall so notify the Congress not less than 20 days be-
10 fore the waiver takes effect. Such notification shall in-
11 clude a report fully articulating the rationale and
12 circumstances which led the President to exercise the
13 waiver authority.

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

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

19 (2) *a corporation, partnership, or other entity*
20 *which is created or organized under the laws of a for-*
21 *foreign country or which has its principal place of busi-*
22 *ness outside the United States.*

23 **SEC. 506. ENFORCEMENT.**

24 (a) *GENERAL AUTHORITY AND DESIGNATION.*—

1 (1) *POLICY GUIDANCE ON ENFORCEMENT.*—*The*
2 *Secretary, in consultation with the Secretary of the*
3 *Treasury and the heads of other departments and*
4 *agencies that the Secretary considers appropriate,*
5 *shall be responsible for providing policy guidance on*
6 *the enforcement of this Act.*

7 (2) *GENERAL AUTHORITIES.*—

8 (A) *EXERCISE OF AUTHORITY.*—*To the ex-*
9 *tent necessary or appropriate to the enforcement*
10 *of this Act, officers and employees of the Depart-*
11 *ment designated by the Secretary, officers and*
12 *employees of the United States Customs Service*
13 *designated by the Commissioner of Customs, and*
14 *officers and employees of any other department*
15 *or agency designated by the head of a depart-*
16 *ment or agency exercising functions under this*
17 *Act, may exercise the enforcement authority*
18 *under paragraph (3).*

19 (B) *CUSTOMS SERVICE.*—*In carrying out*
20 *enforcement authority under paragraph (3), the*
21 *Commissioner of Customs and employees of the*
22 *United States Customs Service designated by the*
23 *Commissioner may make investigations within*
24 *or outside the United States and at ports of*
25 *entry into or exit from the United States where*

1 *officers of the United States Customs Service are*
2 *authorized by law to carry out law enforcement*
3 *responsibilities. Subject to paragraph (3), the*
4 *United States Customs Service is authorized, in*
5 *the enforcement of this Act, to search, detain*
6 *(after search), and seize items at the ports of*
7 *entry into or exit from the United States where*
8 *officers of the United States Customs Service are*
9 *authorized by law to conduct searches, deten-*
10 *tions, and seizures, and at the places outside the*
11 *United States where the United States Customs*
12 *Service, pursuant to agreement or other arrange-*
13 *ment with other countries, is authorized to per-*
14 *form enforcement activities.*

15 (C) *OTHER EMPLOYEES.—In carrying out*
16 *enforcement authority under paragraph (3), the*
17 *Secretary and officers and employees of the De-*
18 *partment designated by the Secretary may make*
19 *investigations within the United States, and*
20 *may conduct, outside the United States, pre-li-*
21 *cence and post-shipment verifications of con-*
22 *trolled items and investigations in the enforce-*
23 *ment of section 502. The Secretary and officers*
24 *and employees of the Department designated by*
25 *the Secretary are authorized to search, detain*

1 *(after search), and seize items at places within*
2 *the United States other than ports referred to in*
3 *subparagraph (B). The search, detention (after*
4 *search), or seizure of items at the ports and*
5 *places referred to in subparagraph (B) may be*
6 *conducted by officers and employees of the De-*
7 *partment only with the concurrence of the Com-*
8 *missioner of Customs or a person designated by*
9 *the Commissioner.*

10 *(D) AGREEMENTS AND ARRANGEMENTS.—*
11 *The Secretary and the Commissioner of Customs*
12 *may enter into agreements and arrangements for*
13 *the enforcement of this Act, including foreign in-*
14 *vestigations and information exchange.*

15 *(3) SPECIFIC AUTHORITIES.—*

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

21 *(i) Make investigations of, obtain in-*
22 *formation from, make inspection of any*
23 *books, records, or reports (including any*
24 *writings required to be kept by the Sec-*

1 retary), premises, or property of, and take
2 the sworn testimony of, any person.

3 (ii) Administer oaths or affirmations,
4 and by subpoena require any person to ap-
5 pear and testify or to appear and produce
6 books, records, and other writings, or both.
7 In the case of contumacy by, or refusal to
8 obey a subpoena issued to, any such person,
9 a district court of the United States, on re-
10 quest of the Attorney General and after no-
11 tice to any such person and a hearing, shall
12 have jurisdiction to issue an order requiring
13 such person to appear and give testimony
14 or to appear and produce books, records,
15 and other writings, or both. Any failure to
16 obey such order of the court may be pun-
17 ished by such court as a contempt thereof.
18 The attendance of witnesses and the produc-
19 tion of documents provided for in this
20 clause may be required from any State, the
21 District of Columbia, or in any territory of
22 the United States at any designated place.
23 Witnesses subpoenaed under this subsection
24 shall be paid the same fees and mileage al-

1 *lowance as paid witnesses in the district*
2 *courts of the United States.*

3 *(B) ACTIONS BY OFFICE OF EXPORT EN-*
4 *FORCEMENT AND CUSTOMS SERVICE PER-*
5 *SONNEL.—*

6 *(i) OFFICE OF EXPORT ENFORCEMENT*
7 *AND CUSTOMS SERVICE PERSONNEL.—Any*
8 *officer or employee of the Office of Export*
9 *Enforcement of the Department of Com-*
10 *merce (in this Act referred to as “OEE”)*
11 *who is designated by the Secretary under*
12 *paragraph (2), and any officer or employee*
13 *of the United States Customs Service who is*
14 *designated by the Commissioner of Customs*
15 *under paragraph (2), may do the following*
16 *in carrying out the enforcement authority*
17 *under this Act:*

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

22 *(II) Make arrests without warrant*
23 *for any violation of this Act committed*
24 *in his or her presence or view, or if the*
25 *officer or employee has probable cause*

1 to believe that the person to be arrested
2 has committed, is committing, or is
3 about to commit such a violation.

4 (III) Carry firearms.

5 (ii) OEE PERSONNEL.—Any officer or
6 employee of the OEE designated by the Sec-
7 retary under paragraph (2) shall exercise
8 the authority set forth in clause (i) pursu-
9 ant to guidelines approved by the Attorney
10 General.

11 (C) OTHER ACTIONS BY CUSTOMS SERVICE
12 PERSONNEL.—Any officer or employee of the
13 United States Customs Service designated by the
14 Commissioner of Customs under paragraph (2)
15 may do the following in carrying out the enforce-
16 ment authority under this Act:

17 (i) Stop, search, and examine a vehi-
18 cle, vessel, aircraft, or person on which or
19 whom the officer or employee has reasonable
20 cause to suspect there is any item that has
21 been, is being, or is about to be exported
22 from or transited through the United States
23 in violation of this Act.

24 (ii) Detain and search any package or
25 container in which the officer or employee

1 *has reasonable cause to suspect there is any*
2 *item that has been, is being, or is about to*
3 *be exported from or transited through the*
4 *United States in violation of this Act.*

5 *(iii) Detain (after search) or seize any*
6 *item, for purposes of securing for trial or*
7 *forfeiture to the United States, on or about*
8 *such vehicle, vessel, aircraft, or person or in*
9 *such package or container, if the officer or*
10 *employee has probable cause to believe the*
11 *item has been, is being, or is about to be ex-*
12 *ported from or transited through the United*
13 *States in violation of this Act.*

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

17 (b) *FORFEITURE.—*

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

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

1 (A) the seizure, summary and judicial for-
2 feiture, and condemnation of property for viola-
3 tions of the customs laws;

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

6 (C) the remission or mitigation of such for-
7 feitures; and

8 (D) the compromise of claims,
9 shall apply to seizures and forfeitures incurred, or al-
10 leged to have been incurred, under the provisions of
11 this subsection, insofar as applicable and not incon-
12 sistent with this Act.

13 (3) *FORFEITURES UNDER CUSTOMS LAWS.*—Du-
14 ties that are imposed upon a customs officer or any
15 other person with respect to the seizure and forfeiture
16 of property under the customs laws may be performed
17 with respect to seizures and forfeitures of property
18 under this subsection by the Secretary or any officer
19 or employee of the Department that may be author-
20 ized or designated for that purpose by the Secretary
21 (or by the Commissioner of Customs or any officer or
22 employee of the United States Customs Service des-
23 ignated by the Commissioner), or, upon the request of
24 the Secretary, by any other agency that has authority
25 to manage and dispose of seized property.

1 (c) *REFERRAL OF CASES.*—All cases involving viola-
2 tions of this Act shall be referred to the Secretary for pur-
3 poses of determining civil penalties and administrative
4 sanctions under section 503 or to the Attorney General for
5 criminal action in accordance with this Act or to both the
6 Secretary and the Attorney General.

7 (d) *UNDERCOVER INVESTIGATION OPERATIONS.*—

8 (1) *USE OF FUNDS.*—With respect to any under-
9 cover investigative operation conducted by the OEE
10 that is necessary for the detection and prosecution of
11 violations of this Act—

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

1 *Property and Administrative Services Act of*
2 *1949 (41 U.S.C. 255);*

3 *(B) funds made available for export enforce-*
4 *ment under this Act may be used to establish or*
5 *to acquire proprietary corporations or business*
6 *entities as part of an undercover operation, and*
7 *to operate such corporations or business entities*
8 *on a commercial basis, without regard to sections*
9 *1341, 3324, and 9102 of title 31, United States*
10 *Code;*

11 *(C) funds made available for export enforce-*
12 *ment under this Act and the proceeds from un-*
13 *dercover operations may be deposited in banks or*
14 *other financial institutions without regard to the*
15 *provisions of section 648 of title 18, United*
16 *States Code, and section 3302 of title 31, United*
17 *States Code; and*

18 *(D) the proceeds from undercover operations*
19 *may be used to offset necessary and reasonable*
20 *expenses incurred in such operations without re-*
21 *gard to the provisions of section 3302 of title 31,*
22 *United States Code,*

23 *if the Director of OEE (or an officer or employee des-*
24 *ignated by the Director) certifies, in writing, that the*
25 *action authorized by subparagraph (A), (B), (C), or*

1 (D) for which the funds would be used is necessary for
2 the conduct of the undercover operation.

3 (2) *DISPOSITION OF BUSINESS ENTITIES.*—If a
4 corporation or business entity established or acquired
5 as part of an undercover operation has a net value
6 of more than \$250,000 and is to be liquidated, sold,
7 or otherwise disposed of, the Director of OEE shall re-
8 port the circumstances to the Secretary and the
9 Comptroller General of the United States as much in
10 advance of such disposition as the Director of the
11 OEE (or the Director’s designee) determines is prac-
12 ticable. The proceeds of the liquidation, sale, or other
13 disposition, after obligations incurred by the corpora-
14 tion or business enterprise are met, shall be deposited
15 in the Treasury of the United States as miscellaneous
16 receipts. Any property or equipment purchased pur-
17 suant to paragraph (1) may be retained for subse-
18 quent use in undercover operations under this section.
19 When such property or equipment is no longer needed,
20 it shall be considered surplus and disposed of as sur-
21 plus government property.

22 (3) *DEPOSIT OF PROCEEDS.*—As soon as the pro-
23 ceeds from an OEE undercover investigative oper-
24 ation with respect to which an action is authorized
25 and carried out under this subsection are no longer

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

5 (4) *AUDIT AND REPORT.—*

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

14 (B) *REPORT.—The Secretary shall submit*
15 *annually to Congress a report, which may be in-*
16 *cluded in the annual report under section 701,*
17 *specifying the following information:*

18 (i) *The number of undercover inves-*
19 *tigative operations pending as of the end of*
20 *the period for which such report is sub-*
21 *mitted.*

22 (ii) *The number of undercover inves-*
23 *tigative operations commenced in the 1-year*
24 *period preceding the period for which such*
25 *report is submitted.*

1 (iii) *The number of undercover inves-*
2 *tigative operations closed in the 1-year pe-*
3 *riod preceding the period for which such re-*
4 *port is submitted and, with respect to each*
5 *such closed undercover operation, the results*
6 *obtained and any civil claims made with*
7 *respect to the operation.*

8 (5) *DEFINITIONS.*—*For purposes of paragraph*
9 (4)—

10 (A) *the term “closed”, with respect to an*
11 *undercover investigative operation, refers to the*
12 *earliest point in time at which all criminal pro-*
13 *ceedings (other than appeals) pursuant to the in-*
14 *vestigative operation are concluded, or covert ac-*
15 *tivities pursuant to such operation are con-*
16 *cluded, whichever occurs later; and*

17 (B) *the terms “undercover investigative op-*
18 *eration” and “undercover operation” mean any*
19 *undercover investigative operation conducted by*
20 *the OEE—*

21 (i) *in which the gross receipts (exclud-*
22 *ing interest earned) exceed \$25,000, or ex-*
23 *penditures (other than expenditures for sal-*
24 *aries of employees) exceed \$75,000, and*

1 (ii) which is exempt from section 3302
2 or 9102 of title 31, United States Code, ex-
3 cept that clauses (i) and (ii) shall not apply
4 with respect to the report to Congress re-
5 quired by paragraph (4)(B).

6 (e) WIRETAPS.—

7 (1) AUTHORITY.—Interceptions of communica-
8 tions in accordance with section 2516 of title 18,
9 United States Code, are authorized to further the en-
10 forcement of this Act.

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

14 “(q) any violation of, or conspiracy to violate,
15 the Export Administration Act of 2001 or the Export
16 Administration Act of 1979.”.

17 (f) POST-SHIPMENT VERIFICATIONS.—

18 (1) FOR CERTAIN EXPORTS AND COUNTRIES.—
19 The Secretary shall target post-shipment
20 verifications—

21 (A) to exports involving the greatest risk to
22 national security; and

23 (B) to those countries identified by the Di-
24 rector of Central Intelligence in the most recent
25 report that was submitted to Congress under sec-

1 *tion 721 of the Intelligence Authorization Act for*
2 *Fiscal Year 1997 on the acquisition and supply*
3 *by foreign countries of dual-use items and other*
4 *technology useful for the development or produc-*
5 *tion of weapons of mass destruction.*

6 *(2) CONDUCT OF VERIFICATIONS.—The Secretary*
7 *may, with the concurrence of the Secretary of State—*

8 *(A) utilize embassy personnel to conduct*
9 *post-shipment verifications; and*

10 *(B) establish guidelines and regulations al-*
11 *lowing United States persons to conduct those*
12 *verifications.*

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

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

20 *(2) RELATED PERSONS.—The Secretary may ex-*
21 *ercise the authority under paragraph (1) with respect*
22 *to any person related through affiliation, ownership,*
23 *control, or position of responsibility, to any end user*
24 *refusing to allow post-shipment verification of a con-*
25 *trolled item.*

1 (3) *REFUSAL BY COUNTRY.*—(A) *If a country*
2 *with which the United States has entered into an*
3 *agreement providing for post-shipment verifications*
4 *~~repeatedly~~ obstructs or otherwise denies the post-ship-*
5 *ment verification of controlled items, the Secretary*
6 *shall deny a license for the export of those items or*
7 *any substantially identical or directly competitive*
8 *items or class of items to all end users in that country*
9 *until such post-shipment verification is allowed.*

10 (B) *If the country in which an end user is lo-*
11 *cated refuses to allow post-shipment verification of a*
12 *controlled item, whether or not the United States has*
13 *an agreement with that country providing for post-*
14 *shipment verifications, the Secretary may deny a li-*
15 *cence for the export of that item or any substantially*
16 *identical or directly competitive item or class of items*
17 *to all end users in that country until such post-ship-*
18 *ment verification is allowed.*

19 (h) *FREIGHT FORWARDERS BEST PRACTICES PRO-*
20 *GRAM AUTHORIZATION.*—*There is authorized to be appro-*
21 *priated for the Department of Commerce \$3,500,000 and*
22 *such sums as may be necessary to hire 20 additional em-*
23 *ployees to assist United States freight forwarders and other*
24 *interested parties in developing and implementing, on a*
25 *voluntary basis, a “best practices” program to ensure that*

1 *exports of controlled items are undertaken in compliance*
2 *with this Act.*

3 (i) *END USE VERIFICATION AUTHORIZATION.—*

4 (1) *IN GENERAL.—There is authorized to be ap-*
5 *propriated for the Department of Commerce*
6 *\$4,500,000 and such sums as may be necessary to*
7 *hire 10 additional overseas investigators to be posted*
8 *in the People’s Republic of China, the Russian Fed-*
9 *eration, the Hong Kong Special Administrative Re-*
10 *gion, the Republic of India, Singapore, Egypt, and*
11 *Taiwan, or any other place the Secretary deems ap-*
12 *propriate, for the purpose of verifying the end use of*
13 *high-risk, dual-use technology.*

14 (2) *REPORT.—Not later than 2 years after the*
15 *date of enactment of this Act and annually thereafter,*
16 *the Department shall, in its annual report to Con-*
17 *gress on export controls, include a report on the effec-*
18 *tiveness of the end use verification activities author-*
19 *ized under subsection (a). The report shall include the*
20 *following information:*

21 (A) *The activities of the overseas investiga-*
22 *tors of the Department.*

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

1 (C) *The ability of the Department's inves-*
2 *tigators to detect the illegal transfer of high risk,*
3 *dual-use goods and technologies.*

4 (3) *ENHANCEMENTS.—In addition to the author-*
5 *ization provided in paragraph (1), there is authorized*
6 *to be appropriated for the Department of Commerce*
7 *\$5,000,000 to enhance its program for verifying the*
8 *end use of items subject to controls under this Act.*

9 (j) *ENHANCED COOPERATION WITH UNITED STATES*
10 *CUSTOMS SERVICE.—Consistent with the purposes of this*
11 *Act, the Secretary is authorized to undertake, in coopera-*
12 *tion with the United States Customs Service, such measures*
13 *as may be necessary or required to enhance the ability of*
14 *the United States to detect unlawful exports and to enforce*
15 *violations of this Act.*

16 (k) *REFERENCE TO ENFORCEMENT.—For purposes of*
17 *this section, a reference to the enforcement of this Act or*
18 *to a violation of this Act includes a reference to the enforce-*
19 *ment or a violation of any regulation, license, or order*
20 *issued under this Act.*

21 (l) *AUTHORIZATION FOR EXPORT LICENSING AND EN-*
22 *FORCEMENT COMPUTER SYSTEM.—There is authorized to*
23 *be appropriated for the Department \$5,000,000 and such*
24 *other sums as may be necessary for planning, design, and*
25 *procurement of a computer system to replace the Depart-*

1 *ment's primary export licensing and computer enforcement*
2 *system.*

3 (m) *AUTHORIZATION FOR BUREAU OF EXPORT AD-*
4 *MINISTRATION.—The Secretary may authorize, without fis-*
5 *cal year limitation, the expenditure of funds transferred to,*
6 *paid to, received by, or made available to the Bureau of*
7 *Export Administration as a reimbursement in accordance*
8 *with section 9703 of title 31, United States Code (as added*
9 *by Public Law 102–393). The Secretary may also authorize,*
10 *without fiscal year limitation, the expenditure of funds*
11 *transferred to, paid to, received by, or made available to*
12 *the Bureau of Export Administration as a reimbursement*
13 *from the Department of Justice Assets Forfeiture Fund in*
14 *accordance with section 524 of title 28, United States Code.*
15 *Such funds shall be deposited in an account and shall re-*
16 *main available until expended.*

17 (n) *AMENDMENTS TO TITLE 31.—*

18 (1) *Section 9703(a) of title 31, United States*
19 *Code (as added by Public Law 102–393) is amended*
20 *by striking “or the United States Coast Guard” and*
21 *inserting “, the United States Coast Guard, or the*
22 *Bureau of Export Administration of the Department*
23 *of Commerce”.*

1 (2) *Section 9703(a)(2)(B)(i) of title 31, United*
2 *States Code is amended (as added by Public Law*
3 *102–393)—*

4 (A) *by striking “or” at the end of subclause*

5 (I);

6 (B) *by inserting “or” at the end of sub-*
7 *clause (II); and*

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

10 *“(III) a violation of the Export*
11 *Administration Act of 1979, the Ex-*
12 *port Administration Act of 2001, or*
13 *any regulation, license, or order issued*
14 *under those Acts;”.*

15 (3) *Section 9703(p)(1) of title 31, United States*
16 *Code (as added by Public Law 102–393) is amended*
17 *by adding at the end the following: “In addition, for*
18 *purposes of this section, the Bureau of Export Admin-*
19 *istration of the Department of Commerce shall be con-*
20 *sidered to be a Department of the Treasury law en-*
21 *forcement organization.”.*

22 (o) *AUTHORIZATION FOR LICENSE REVIEW OFFI-*
23 *CERS.—*

1 (1) *IN GENERAL.*—*There is authorized to be ap-*
2 *propriated to the Department of Commerce*
3 *\$2,000,000 to hire additional license review officers.*

4 (2) *TRAINING.*—*There is authorized to be appro-*
5 *priated to the Department of Commerce \$2,000,000 to*
6 *conduct professional training of license review offi-*
7 *cers, auditors, and investigators conducting post-ship-*
8 *ment verification checks. These funds shall be used*
9 *to—*

10 (A) *train and certify, through a formal pro-*
11 *gram, new employees entering these positions for*
12 *the first time; and*

13 (B) *the ongoing professional training of ex-*
14 *perienced employees on an as needed basis.*

15 (p) *AUTHORIZATION.*—

16 (1) *IN GENERAL.*—*There are authorized to be ap-*
17 *propriated to the Department of Commerce to carry*
18 *out the purposes of this Act—*

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

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

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

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

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

12 (2) *TERMINATION.*—The authority granted by
13 this Act shall terminate on December 31, 2005.

14 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

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

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

22 (1) *ADMINISTRATIVE PROCEDURES.*—Any ad-
23 ministrative sanction imposed under section 503 may
24 be imposed only after notice and opportunity for an
25 agency hearing on the record in accordance with sec-

1 *tions 554 through 557 of title 5, United States Code.*
2 *The imposition of any such administrative sanction*
3 *shall be subject to judicial review in accordance with*
4 *sections 701 through 706 of title 5, United States*
5 *Code, except that the review shall be initiated in the*
6 *United States Court of Appeals for the District of Co-*
7 *lumbia Circuit, which shall have jurisdiction of the*
8 *review.*

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

15 (c) *COLLECTION.—If any person fails to pay a civil*
16 *penalty imposed under section 503, the Secretary may ask*
17 *the Attorney General to commence a civil action in an ap-*
18 *propriate district court of the United States to recover the*
19 *amount imposed (plus interest at currently prevailing rates*
20 *from the date of the final order). No such action may be*
21 *commenced more than 5 years after the order imposing the*
22 *civil penalty becomes final. In such an action, the validity,*
23 *amount, and appropriateness of such penalty shall not be*
24 *subject to review.*

25 (d) *IMPOSITION OF TEMPORARY DENIAL ORDERS.—*

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

21 (2) *ADMINISTRATIVE APPEALS.*—*The person or*
22 *persons subject to the issuance or renewal of a tem-*
23 *porary denial order may appeal the issuance or re-*
24 *newal of the temporary denial order, supported by*
25 *briefs and other material, to an administrative law*

1 *judge who shall, within 15 working days after the ap-*
2 *peal is filed, issue a decision affirming, modifying, or*
3 *vacating the temporary denial order. The temporary*
4 *denial order shall be affirmed if it is shown that—*

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

11 *(B) a criminal indictment has been re-*
12 *turned against the person subject to the order al-*
13 *leging a violation of this Act or any of the stat-*
14 *utes listed in section 503.*

15 *The decision of the administrative law judge shall be*
16 *final unless, within 10 working days after the date of*
17 *the administrative law judge's decision, an appeal is*
18 *filed with the Secretary. On appeal, the Secretary*
19 *shall either affirm, modify, reverse, or vacate the deci-*
20 *sion of the administrative law judge by written order*
21 *within 10 working days after receiving the appeal.*

22 *The written order of the Secretary shall be final and*
23 *is not subject to judicial review, except as provided in*
24 *paragraph (3). The materials submitted to the admin-*
25 *istrative law judge and the Secretary shall constitute*

1 *the administrative record for purposes of review by*
2 *the court.*

3 (3) *COURT APPEALS.—An order of the Secretary*
4 *affirming, in whole or in part, the issuance or re-*
5 *newal of a temporary denial order may, within 15*
6 *days after the order is issued, be appealed by a person*
7 *subject to the order to the United States Court of Ap-*
8 *peals for the District of Columbia Circuit, which shall*
9 *have jurisdiction of the appeal. The court may review*
10 *only those issues necessary to determine whether the*
11 *issuance of the temporary denial order was based on*
12 *reasonable cause to believe that the person subject to*
13 *the order was engaged in or was about to engage in*
14 *any act or practice that constitutes or would con-*
15 *stitute a violation of this title, or any regulation,*
16 *order, or license issued under this Act, or whether a*
17 *criminal indictment has been returned against the*
18 *person subject to the order alleging a violation of this*
19 *Act or of any of the statutes listed in section 503. The*
20 *court shall vacate the Secretary’s order if the court*
21 *finds that the Secretary’s order is arbitrary, capri-*
22 *cious, an abuse of discretion, or otherwise not in ac-*
23 *cordance with law.*

24 (e) *LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-*
25 *MATION.—Any classified information that is included in*

1 *the administrative record that is subject to review pursuant*
2 *to subsection (b)(1) or (d)(3) may be reviewed by the court*
3 *only on an ex parte basis and in camera.*

4 **TITLE VI—EXPORT CONTROL**
5 **AUTHORITY AND REGULATIONS**

6 **SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-**
7 **TIONS.**

8 (a) *EXPORT CONTROL AUTHORITY.*—

9 (1) *IN GENERAL.*—*Unless otherwise reserved to*
10 *the President or a department (other than the Depart-*
11 *ment) or agency of the United States, all power, au-*
12 *thority, and discretion conferred by this Act shall be*
13 *exercised by the Secretary.*

14 (2) *DELEGATION OF FUNCTIONS OF THE SEC-*
15 *RETARY.*—*The Secretary may delegate any function*
16 *under this Act, unless otherwise provided, to the*
17 *Under Secretary of Commerce for Export Administra-*
18 *tion or to any other officer of the Department.*

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

21 (1) *UNDER SECRETARY OF COMMERCE.*—*There*
22 *shall be within the Department an Under Secretary*
23 *of Commerce for Export Administration (in this sec-*
24 *tion referred to as the “Under Secretary”) who shall*
25 *be appointed by the President, by and with the advice*

1 *and consent of the Senate. The Under Secretary shall*
2 *carry out all functions of the Secretary under this Act*
3 *and other provisions of law relating to national secu-*
4 *rity, as the Secretary may delegate.*

5 (2) *ADDITIONAL ASSISTANT SECRETARIES.—In*
6 *addition to the number of Assistant Secretaries other-*
7 *wise authorized for the Department of Commerce,*
8 *there shall be within the Department of Commerce the*
9 *following Assistant Secretaries of Commerce:*

10 (A) *An Assistant Secretary for Export Ad-*
11 *ministration who shall be appointed by the*
12 *President, by and with the advice and consent of*
13 *the Senate, and who shall assist the Secretary*
14 *and the Under Secretary in carrying out func-*
15 *tions relating to export listing and licensing.*

16 (B) *An Assistant Secretary for Export En-*
17 *forcement who shall be appointed by the Presi-*
18 *dent, by and with the advice and consent of the*
19 *Senate, and who shall assist the Secretary and*
20 *the Under Secretary in carrying out functions*
21 *relating to export enforcement.*

22 (c) *ISSUANCE OF REGULATIONS.—*

23 (1) *IN GENERAL.—The President and the Sec-*
24 *retary may issue such regulations as are necessary to*
25 *carry out this Act. Any such regulations the purpose*

1 of which is to carry out title II or title III may be
2 issued only after the regulations are submitted for re-
3 view to such departments or agencies as the President
4 considers appropriate. The Secretary shall consult
5 with the appropriate export control advisory com-
6 mittee appointed under section 105(a) in formulating
7 regulations under this title. The second sentence of
8 this subsection does not require the concurrence or ap-
9 proval of any official, department, or agency to which
10 such regulations are submitted.

11 (2) *AMENDMENTS TO REGULATIONS.*—If the Sec-
12 retary proposes to amend regulations issued under
13 this Act, the Secretary shall report to the Committee
14 on Banking, Housing, and Urban Affairs of the Sen-
15 ate and the Committee on International Relations of
16 the House of Representatives on the intent and ra-
17 tionale of such amendments. Such report shall evalu-
18 ate the cost and burden to the United States exporters
19 of the proposed amendments in relation to any en-
20 hancement of licensing objectives. The Secretary shall
21 consult with the appropriate export control advisory
22 committees appointed under section 105(a) in amend-
23 ing regulations issued under this Act.

24 (3) *REGULATIONS ON EXPORTS TO FOREIGN NA-*
25 *TIONALS.*—The Secretary, with the concurrence of the

1 *Secretary of State and the Secretary of Defense, shall*
2 *issue regulations to govern the release of technology*
3 *to a foreign national within the United States and*
4 *to establish appropriate procedures and entities to en-*
5 *sure compliance with those regulations.*

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

7 *(a) EXEMPTIONS FROM DISCLOSURE.—*

8 *(1) INFORMATION OBTAINED ON OR BEFORE*
9 *JUNE 30, 1980.—Except as otherwise provided by the*
10 *third sentence of section 502(c)(2) and by section*
11 *507(b)(2), information obtained under the Export Ad-*
12 *ministration Act of 1979, or any predecessor statute,*
13 *on or before June 30, 1980, which is deemed confiden-*
14 *tial, including Shipper's Export Declarations, or with*
15 *respect to which a request for confidential treatment*
16 *is made by the person furnishing such information,*
17 *shall not be subject to disclosure under section 552 of*
18 *title 5, United States Code, and such information*
19 *shall not be published or disclosed, unless the Sec-*
20 *retary determines that the withholding thereof is con-*
21 *trary to the national interest.*

22 *(2) INFORMATION OBTAINED AFTER JUNE 30,*
23 *1980.—Except as otherwise provided by the third sen-*
24 *tence of section 502(c)(2) and by section 507(b)(2),*
25 *information obtained under this Act, under the Ex-*

1 *port Administration Act of 1979 after June 30, 1980,*
2 *or under the Export Administration regulations as*
3 *maintained and amended under the authority of the*
4 *International Emergency Economic Powers Act (50*
5 *U.S.C. 1706), may be withheld from disclosure only*
6 *to the extent permitted by statute, except that infor-*
7 *mation submitted, obtained, or considered in connec-*
8 *tion with an application for an export license or*
9 *other export authorization (or recordkeeping or re-*
10 *porting requirement) under the Export Administra-*
11 *tion Act of 1979, under this Act, or under the Export*
12 *Administration regulations as maintained and*
13 *amended under the authority of the International*
14 *Emergency Economic Powers Act (50 U.S.C. 1706),*
15 *including—*

16 *(A) the export license or other export au-*
17 *thorization itself,*

18 *(B) classification requests described in sec-*
19 *tion 401(h),*

20 *(C) information or evidence obtained in the*
21 *course of any investigation by an officer or em-*
22 *ployee of the Department of Commerce,*

23 *(D) information obtained or furnished*
24 *under title V in connection with any inter-*

1 *national agreement, treaty, or other obligation,*
2 *and*

3 *(E) information obtained in making the de-*
4 *terminations set forth in section 211 of this Act,*
5 *and information obtained in any investigation of an*
6 *alleged violation of section 502 of this Act except for*
7 *information required to be disclosed by section*
8 *502(c)(2) or 507(b)(2) of this Act, shall be withheld*
9 *from public disclosure and shall not be subject to dis-*
10 *closure under section 552 of title 5, United States*
11 *Code, unless the release of such information is deter-*
12 *mined by the Secretary to be in the national interest.*

13 ***(b) INFORMATION TO CONGRESS AND GAO.—***

14 ***(1) IN GENERAL.—****Nothing in this title shall be*
15 *construed as authorizing the withholding of informa-*
16 *tion from Congress or from the General Accounting*
17 *Office.*

18 ***(2) AVAILABILITY TO THE CONGRESS—***

19 ***(A) IN GENERAL.—****Any information ob-*
20 *tained at any time under this title or under any*
21 *predecessor Act regarding the control of exports,*
22 *including any report or license application re-*
23 *quired under this title, shall be made available*
24 *to any committee or subcommittee of Congress of*
25 *appropriate jurisdiction upon the request of the*

1 *chairman or ranking minority member of such*
2 *committee or subcommittee.*

3 (B) *PROHIBITION ON FURTHER DISCLO-*
4 *SURE.—No committee, subcommittee, or Member*
5 *of Congress shall disclose any information ob-*
6 *tained under this Act or any predecessor Act re-*
7 *garding the control of exports which is submitted*
8 *on a confidential basis to the Congress under*
9 *subparagraph (A) unless the full committee to*
10 *which the information is made available deter-*
11 *mines that the withholding of the information is*
12 *contrary to the national interest.*

13 (3) *AVAILABILITY TO THE GAO.—*

14 (A) *IN GENERAL.—Notwithstanding sub-*
15 *section (a), information described in paragraph*
16 *(2) shall, consistent with the protection of intel-*
17 *ligence, counterintelligence, and law enforcement*
18 *sources, methods, and activities, as determined*
19 *by the agency that originally obtained the infor-*
20 *mation, and consistent with the provisions of*
21 *section 716 of title 31, United States Code, be*
22 *made available only by the agency, upon request,*
23 *to the Comptroller General of the United States*
24 *or to any officer or employee of the General Ac-*

1 *counting Office authorized by the Comptroller*
2 *General to have access to such information.*

3 *(B) PROHIBITION ON FURTHER DISCLO-*
4 *SURES.—No officer or employee of the General*
5 *Accounting Office shall disclose, except to Con-*
6 *gress in accordance with this paragraph, any*
7 *such information which is submitted on a con-*
8 *fidential basis and from which any individual*
9 *can be identified.*

10 *(c) INFORMATION EXCHANGE.—Notwithstanding sub-*
11 *section (a), the Secretary and the Commissioner of Customs*
12 *shall exchange licensing and enforcement information with*
13 *each other as necessary to facilitate enforcement efforts and*
14 *effective license decisions.*

15 *(d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL*
16 *INFORMATION.—*

17 *(1) DISCLOSURE PROHIBITED.—No officer or*
18 *employee of the United States, or any department or*
19 *agency thereof, may publish, divulge, disclose, or*
20 *make known in any manner or to any extent not au-*
21 *thorized by law any information that—*

22 *(A) the officer or employee obtains in the*
23 *course of his or her employment or official duties*
24 *or by reason of any examination or investigation*
25 *made by, or report or record made to or filed*

1 with, such department or agency, or officer or
2 employee thereof; and

3 (B) is exempt from disclosure under this
4 section.

5 (2) *CRIMINAL PENALTIES.*—Any such officer or
6 employee who knowingly violates paragraph (1) shall
7 be fined not more than \$50,000, imprisoned not more
8 than 1 year, or both, for each violation of paragraph
9 (1). Any such officer or employee may also be re-
10 moved from office or employment.

11 (3) *CIVIL PENALTIES; ADMINISTRATIVE SANC-*
12 *TIONS.*—The Secretary may impose a civil penalty of
13 not more than \$5,000 for each violation of paragraph
14 (1), except that no civil penalty may be imposed on
15 an officer or employee of the United States, or any
16 department or agency thereof, without the concurrence
17 of the department or agency employing such officer or
18 employee. Subsections 503(e), (g), (h), and (i) and
19 507(a), (b), and (c) shall apply to actions to impose
20 civil penalties under this paragraph. At the request of
21 the Secretary, a department or agency employing an
22 officer or employee determined to have violated para-
23 graph (1) shall deny that officer or employee access
24 to information exempt from disclosure under this sec-
25 tion. Any officer or employee who commits a violation

1 of paragraph (1) may also be removed from office or
2 employment by the employing agency. Any officer or
3 employee who commits such violation may also be re-
4 moved from office or employment for the violation of
5 paragraph (1). Sections 503 (e), (g), (h), and (i) and
6 507 (a), (b), and (c) shall apply to violations de-
7 scribed in this paragraph.

8 **~~TITLE VII—EXPORTS OF~~** 9 **~~SATELLITES~~**

10 **~~SEC. 701. APPLICABILITY.~~**

11 *This title applies with respect to exports, and all ap-*
12 *plications for licenses to export, satellites and related items,*
13 *notwithstanding any other provision of this or any other*
14 *Act.*

15 **~~SEC. 702. EXPORT CONTROLS ON SATELLITES AND RE-~~** 16 **~~LATED ITEMS.~~**

17 *All satellites and related items that were on the Com-*
18 *merce Control List of dual-use items in the Export Admin-*
19 *istration Regulations (15 C.F.R. part 730 et seq.) on Octo-*
20 *ber 16, 1998, shall, subject to sections 703 and 704, be con-*
21 *trolled under this Act.*

22 **~~SEC. 703. EXPORT LICENSE PROCEDURES.~~**

23 *(a) REFERRAL TO OTHER DEPARTMENTS AND AGEN-*
24 *CIES.—The Secretary shall refer to the Secretary of Defense,*
25 *the Secretary of State, and the heads of other departments*

1 *and agencies that the Secretary considers appropriate, all*
2 *applications for licenses to export satellites and related*
3 *items.*

4 *(b) REQUIRED CONSULTATIONS WITH INTELLIGENCE*
5 *COMMUNITY.—The Secretary, the Secretary of Defense, and*
6 *the Secretary of State, as appropriate, shall consult with*
7 *the Director of Central Intelligence during the review of any*
8 *application for a license involving the overseas launch of*
9 *a commercial satellite of United States origin.*

10 *(c) TIME PERIOD FOR REFERRALS.—Within 30 days*
11 *after the Secretary refers an export license application*
12 *under this section, each department or agency to which an*
13 *export license application has been referred shall provide*
14 *the Secretary with a recommendation to either approve or*
15 *deny the license application. A department or agency that*
16 *fails to provide a recommendation within that 30-day pe-*
17 *riod shall be deemed to have no objection to the decision*
18 *of the Secretary on the license application.*

19 *(d) INTERAGENCY DISPUTE RESOLUTION PROCESS.—*
20 *If there is no agreement among the Secretary, the Secretary*
21 *of Defense, and the Secretary of State to issue or deny a*
22 *license to which this section applies, then the Secretary shall*
23 *refer the license application to an interagency dispute reso-*
24 *lution process established by the President. The dispute reso-*
25 *lution process shall be completed within a period of 60 days.*

1 *A license pursuant to the application shall not be issued*
2 *or denied until the Secretary, the Secretary of Defense, and*
3 *the Secretary of State agree to issue or deny the license,*
4 *or until the President makes a determination to issue or*
5 *deny the license.*

6 **SEC. 704. MANDATORY STATE DEPARTMENT REVIEW.**

7 *(a) CERTAIN DEFENSE SERVICES.—The provision of*
8 *defense services by United States persons, including services*
9 *or assistance provided during technical interchange meet-*
10 *ings, in connection with the launch of a satellite from, or*
11 *by nationals of, the People's Republic of China, are subject*
12 *to section 38 of the Arms Export Control Act.*

13 *(b) NOTIFICATION TO CONGRESS.—At least 30 days be-*
14 *fore any export license or any technical assistance agree-*
15 *ment is approved under subsection (a), the President shall*
16 *transmit a certification with respect to such export license*
17 *or technical assistance agreement pursuant to section 36(e)*
18 *of the Arms Export Control Act, without regard to the value*
19 *limitation thereunder.*

20 **SEC. 705. DEFINITIONS.**

21 *In this title:*

22 *(1) DEFENSE SERVICE.—The term “defense serv-*
23 *ice” shall have the meaning set forth in section 47 of*
24 *the Arms Export Control Act or regulations issued*
25 *thereunder.*

1 (2) *RELATED ITEMS.*—*The term “related items”*
 2 *means the satellite fuel, ground support equipment,*
 3 *test equipment, payload adapter or interface hard-*
 4 *ware, replacement parts, and nonembedded solid pro-*
 5 *pellant orbit transfer engines described in the report*
 6 *submitted to Congress by the Department of State on*
 7 *February 6, 1998, pursuant to section 38(f) of the*
 8 *Arms Export Control Act (22 U.S.C. 2778(f)), as well*
 9 *as systems, components, parts, accessories, and associ-*
 10 *ated equipment for satellites, including ground con-*
 11 *trol equipment.*

12 (3) *SATELLITE.*—*The term “satellite” means any*
 13 *commercial communications satellite.*

14 **SEC. 706. CONFORMING AMENDMENTS.**

15 (a) *1999 NDAA.*—(1) *Section 1513(a) of the Strom*
 16 *Thurmond National Defense Authorization Act for Fiscal*
 17 *Year 1999 (22 U.S.C. 2778 note) is repealed.*

18 (2) *Section 1513(e) of that Act is amended by striking*
 19 *“(1) Subsection (a)” and all that follows through “(2)”.*

20 (3) *Section 1514(a)(6) of that Act is amended by strik-*
 21 *ing “Secretary of State” and inserting “Secretary of Com-*
 22 *merce and the Secretary of State”.*

23 (b) *2000 NDAA.*—(1) *Section 1404 of the National De-*
 24 *fense Authorization Act for Fiscal Year 2000 (22 U.S.C.*
 25 *2778 note) is amended in the matter preceding paragraph*

1 (1), by striking “Secretary of State” and inserting “Sec-
 2 retary of Commerce or the Secretary of State, as the case
 3 may be.”.

4 (2) Section 1410 of that Act, and the item relating to
 5 that section in the table of contents of that Act, are repealed.

6 (3) Section 1411(a) of that Act is amended in the first
 7 sentence by striking “involving the overseas launch of a
 8 commercial satellite of United States origin” and inserting
 9 “to provide defense services referred to in section 704 of the
 10 Export Administration Act of 2001, in connection with the
 11 launch of a satellite”.

12 (4) Section 1412(d) of that Act is amended by striking
 13 “Secretary of State and” and inserting “Secretary of Com-
 14 merce, the Secretary of State, and”.

15 (e) *ADDITIONAL CONFORMING AMENDMENTS.—*(1)
 16 Section 1309 of the Admiral James W. Nance and Meg
 17 Donovan Foreign Relations Authorization Act, Fiscal Years
 18 2000 and 2001 (as enacted by Public Law 106–113; 113
 19 Stat. 1501A–460) is amended—

20 (A) by amending the section heading to read as
 21 follows:

22 **“SEC. 1309. OFFICE OF DEFENSE TRADE CONTROLS.”;**

23 (B) by striking subsections (a) and (e); and

24 (C) in subsection (b), by striking “(b) *FINANCIAL*
 25 *AND PERSONNEL RESOURCES.—*”.

1 (2) *The table of contents of that Act is amended by*
2 *striking the item relating to section 1309 and inserting the*
3 *following:*

“Sec. 1309. Office of Defense Trade Controls.”

4 **SEC. 707. EFFECTIVE DATE.**

5 (a) *IN GENERAL.—This title and the amendments*
6 *made by this Act shall take effect on the date of the enact-*
7 *ment of this Act, and shall apply to any export license ap-*
8 *plication made under the Arms Export Control Act before*
9 *such date of enactment which is pending on such date, and*
10 *to any export license application made on or after such*
11 *date.*

12 (b) *TRANSFER OF PENDING APPLICATIONS.—Any ex-*
13 *port license application made under the Arms Export Con-*
14 *trol Act before the date of the enactment of this Act, to which*
15 *section 702 of this Act applies and which is pending on*
16 *such date of enactment, shall be transferred to the Depart-*
17 *ment of Commerce upon the enactment of this Act.*

18 **SEC. 708. EFFECT ON EXISTING LAW.**

19 *Nothing in this title shall affect the continued applica-*
20 *tion of section 36 or 38 of the Arms Export Control Act,*
21 *or any other provision of that Act, to the export or other*
22 *provision of defense services related to items in Category*
23 *4 of the United States Munitions List.*

1 **TITLE ~~VIII~~ VII—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. ~~801~~ 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 end-
7 ing September 30 of the preceding calendar year. All Fed-
8 eral agencies shall cooperate fully with the Secretary in pro-
9 viding 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 ex-
13 port control policies established by this Act, including
14 any delegations of authority by the President and any
15 other changes in the exercise of delegated authority;

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

18 (3) a description of the petitions filed and the
19 determinations made with respect to foreign avail-
20 ability and mass-market status, the set-asides of for-
21 eign availability and mass-market status determina-
22 tions, and negotiations to eliminate foreign avail-
23 ability;

24 (4) a description of any enhanced control im-
25 posed on an item pursuant to section 201(d);

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

3 (6) a description of organizational and proce-
4 *dural changes undertaken in furtherance of this Act;*

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

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

9 (A) the number of applications and notifi-
10 *cations pending review at the beginning of the*
11 *fiscal year;*

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

14 (C) the number of notifications with no ac-
15 *tion required;*

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

20 (E) the number of applications and notifi-
21 *cations pending review at the end of the fiscal*
22 *year;*

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

25 (10) an identification of processing time by—

1 (A) overall average, and

2 (B) top 25 export identification codes;

3 (11) an assessment of the effectiveness of multi-
4 lateral regimes, and a description of negotiations re-
5 garding export controls;

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

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

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

17 (15) an analysis and risk assessment of dual-use
18 United States-origin items useful for the development
19 or production of weapons of mass destruction ac-
20 quired by countries identified by the Director of the
21 Central Intelligence in the most recent report sub-
22 mitted to Congress under section 721 of the Intel-
23 ligence Authorization Act for Fiscal Year 1997; and

24 (16) any other reports required by this Act to be
25 submitted to the Committee on Banking, Housing,

1 *and Urban Affairs of the Senate and the Committee*
2 *on International Relations of the House of Represent-*
3 *atives.*

4 (c) *FEDERAL REGISTER PUBLICATION REQUIRE-*
5 *MENTS.—Whenever information under this Act is required*
6 *to be published in the Federal Register, such information*
7 *shall, in addition, be posted on the Department of Com-*
8 *merce or other appropriate government website.*

9 **SEC. 802 702. RELATIONSHIP TO THE ARMS EXPORT CON-**
10 **TROL ACT.**

11 *Nothing in this Act shall be construed to alter or*
12 *affect—*

13 (1) *any provision of the Arms Export Control*
14 *Act; or*

15 (2) *any authority delegated by the President to*
16 *the Secretary of State under the Arms Export Control*
17 *Act.*

18 **SEC. 803 703. ENHANCEMENT OF CONGRESSIONAL OVER-**
19 **SIGHT OF NUCLEAR TRANSFERS TO NORTH**
20 **KOREA.**

21 *The North Korea Threat Reduction Act of 1999 (sub-*
22 *title B of title VIII of division A of H.R. 3427, as enacted*
23 *into law by section 1000(a)(7) of Public Law 106–113, and*
24 *as contained in appendix G to such Public Law) is amend-*
25 *ed in section 822(a)—*

1 (1) by redesignating paragraphs (1) through (7)
2 as subparagraphs (A) through (G), respectively, and
3 by indenting each such subparagraph 2 ems to the
4 right;

5 (2) by striking “until the President” and insert-
6 ing “until—

7 “(1) the President”;

8 (3) at the end of subparagraph (G) (as redesign-
9 ated in paragraph (1)) by striking the period and
10 inserting “; and

11 “(2) a joint resolution of the two Houses of Con-
12 gress is enacted into law—

13 “(A) the matter after the resolving clause of
14 which is as follows: ‘That the Congress hereby
15 concurs in the determination and report of the
16 President relating to compliance by North Korea
17 with certain international obligations trans-
18 mitted pursuant to section 822(a)(1) of the North
19 Korea Threat Reduction Act of 1999.’;

20 “(B) which does not have a preamble; and

21 “(C) the title of which is as follows: ‘Joint
22 Resolution relating to compliance by North
23 Korea with certain international obligations
24 pursuant to the North Korea Threat Reduction
25 Act of 1999.’”; and

1 (4) *by striking “such agreement,” both places it*
2 *appears and inserting in both places “such agreement*
3 *(or that are controlled under the Export Trigger List*
4 *of the Nuclear Suppliers Group),”.*

5 **SEC. 804 704. PROCEDURES FOR CONSIDERATION OF JOINT**
6 **RESOLUTIONS.**

7 *The North Korea Threat Reduction Act of 1999 is*
8 *amended—*

9 (1) *by redesignating section 823, and the item*
10 *relating to that section in the table of contents, as sec-*
11 *tion 824;*

12 (2) *by inserting after section 822 the following*
13 *new section:*

14 **“SEC. 823. PROCEDURES FOR CONSIDERATION OF JOINT**
15 **RESOLUTION DESCRIBED IN SECTION**
16 **822(A)(2).**

17 “(a) *RULEMAKING.—The provisions of this section are*
18 *enacted by the Congress—*

19 “(1) *as an exercise of the rulemaking power of*
20 *the House of Representatives and the Senate, respec-*
21 *tively, and, as such, shall be considered as part of the*
22 *rules of either House and shall supersede other rules*
23 *only to the extent they are inconsistent therewith; and*

24 “(2) *with full recognition of the constitutional*
25 *right of either House to change the rules so far as they*

1 *relate to the procedures of that House at any time,*
2 *in the same manner, and to the same extent as in*
3 *the case of any other rule of that House.*

4 *“(b) INTRODUCTION AND REFERRAL.—*

5 *“(1) INTRODUCTION.—A joint resolution de-*
6 *scribed in section 822(a)(2)—*

7 *“(A) shall be introduced in the House of*
8 *Representatives by the majority leader or minor-*
9 *ity leader or by a Member of the House of Rep-*
10 *resentatives designated by the majority leader or*
11 *minority leader; and*

12 *“(B) shall be introduced in the Senate by*
13 *the majority leader or minority leader or a*
14 *Member of the Senate designated by the majority*
15 *leader or minority leader.*

16 *“(2) REFERRAL.—The joint resolution shall be*
17 *referred to the Committee on International Relations*
18 *of the House of Representatives and the Committee on*
19 *Foreign Relations of the Senate.*

20 *“(c) DISCHARGE OF COMMITTEES.—If a committee to*
21 *which a joint resolution described in section 822(a)(2) is*
22 *referred has not reported such joint resolution by the end*
23 *of 30 days beginning on the date of its introduction, such*
24 *committee shall be discharged from further consideration of*

1 *such joint resolution, and such joint resolution shall be*
2 *placed on the appropriate calendar of the House involved.*

3 “(d) *FLOOR CONSIDERATION IN THE HOUSE OF REP-*
4 *RESENTATIVES.*—

5 “(1) *IN GENERAL.*—*On or after the third cal-*
6 *endar day (excluding Saturdays, Sundays, or legal*
7 *holidays, except when the House of Representatives is*
8 *in session on such a day) after the date on which the*
9 *committee to which a joint resolution described in sec-*
10 *tion 822(a)(2) is referred has reported, or has been*
11 *discharged from further consideration of, such a joint*
12 *resolution, it shall be in order for any Member of the*
13 *House to move to proceed to the consideration of the*
14 *joint resolution. A Member of the House may make*
15 *the motion only on the day after the calendar day on*
16 *which the Member announces to the House the Mem-*
17 *ber’s intention to do so. Such motion is privileged*
18 *and is not debatable. The motion is not subject to*
19 *amendment or to a motion to postpone. A motion to*
20 *reconsider the vote by which the motion is agreed to*
21 *shall not be in order. If a motion to proceed to the*
22 *consideration of the joint resolution is agreed to, the*
23 *House shall immediately proceed to consideration of*
24 *the joint resolution which shall remain the unfinished*
25 *business until disposed of.*

1 “(2) *DEBATE.*—*Debate on a joint resolution de-*
2 *scribed in section 822(a)(2), and on all debatable mo-*
3 *tions and appeals in connection therewith, shall be*
4 *limited to not more than two hours, which shall be di-*
5 *vided equally between those favoring and those oppos-*
6 *ing the joint resolution. An amendment to the joint*
7 *resolution is not in order. A motion further to limit*
8 *debate is in order and is not debatable. A motion to*
9 *table, a motion to postpone, or a motion to recommit*
10 *the joint resolution is not in order. A motion to recon-*
11 *sider the vote by which the joint resolution is agreed*
12 *to or disagreed to is not in order.*

13 “(3) *APPEALS.*—*Appeals from the decisions of*
14 *the Chair to the procedure relating to a joint resolu-*
15 *tion described in section 822(a)(2) shall be decided*
16 *without debate.*

17 “(e) *FLOOR CONSIDERATION IN THE SENATE.*—*Any*
18 *joint resolution described in section 822(a)(2) shall be con-*
19 *sidered in the Senate in accordance with the provisions of*
20 *section 601(b)(4) of the International Security Assistance*
21 *and Arms Export Control Act of 1976.*

22 “(f) *CONSIDERATION BY THE OTHER HOUSE.*—*If, be-*
23 *fore the passage by one House of a joint resolution of that*
24 *House described in section 822(a)(2), that House receives*

1 *from the other House a joint resolution described in section*
2 *822(a)(2), then the following procedures shall apply:*

3 “(1) *The joint resolution of the other House shall*
4 *not be referred to a committee and may not be consid-*
5 *ered in the House receiving it except in the case of*
6 *final passage as provided in paragraph (2)(B).*

7 “(2) *With respect to a joint resolution described*
8 *in section 822(a)(2) of the House receiving the joint*
9 *resolution—*

10 “(A) *the procedure in that House shall be*
11 *the same as if no joint resolution had been re-*
12 *ceived from the other House; but*

13 “(B) *the vote on final passage shall be on*
14 *the joint resolution of the other House.*

15 “(3) *Upon disposition of the joint resolution re-*
16 *ceived from the other House, it shall no longer be in*
17 *order to consider the joint resolution that originated*
18 *in the receiving House.*

19 “(g) *COMPUTATION OF DAYS.—In the computation of*
20 *the period of 30 days referred to in subsection (c), there*
21 *shall be excluded the days on which either House of Congress*
22 *is not in session because of an adjournment of more than*
23 *3 days to a day certain or because of an adjournment of*
24 *the Congress sine die.”; and*

1 (3) by inserting after the item relating to section
2 822 in the table of contents the following new item:

 “Sec. 823. Procedures for consideration of joint resolution described in section
 822(a)(2).”.

3 **SEC. 805 705. RECOMMENDATIONS OF THE JUDICIAL RE-**
4 **VIEW COMMISSION ON FOREIGN ASSET CON-**
5 **TROL.**

6 *In accordance with the findings of the Judicial Review*
7 *Commission on Foreign Asset Control contained in the re-*
8 *port of the Commission submitted to Congress in January*
9 *2001 under section 810(g) of the Foreign Narcotics Kingpin*
10 *Designation Act (21 U.S.C. 1908(g)), the President shall*
11 *direct the Office of Foreign Assets Control of the Depart-*
12 *ment of the Treasury to—*

13 (1) *publish proposed regulations on sanctions in*
14 *order to provide public notice of, and invite public*
15 *comment on, the proposed regulations, unless exigent*
16 *circumstances are present;*

17 (2) *provide interpretations and guidelines to ac-*
18 *company the issuance of regulations; and*

19 (3) *take steps to expand and enhance the trans-*
20 *parency of its operations and decisionmaking stand-*
21 *ards by publishing its licensing and civil penalty de-*
22 *isions in unclassified form and by providing answers*
23 *to “frequently asked questions” on its website.*

1 **SEC. 806 706. IMPROVEMENTS TO THE AUTOMATED EXPORT**
2 **SYSTEM.**

3 (a) *MANDATORY FILING.*—*The Secretary, with the con-*
4 *currence of the Secretary of State and the Secretary of the*
5 *Treasury, shall publish regulations in the Federal Register*
6 *to require, upon the effective date of those regulations, the*
7 *mandatory filing through the Automated Export System for*
8 *the remainder of exports that were not covered by regula-*
9 *tions issued pursuant to section 1252(b) of the Security As-*
10 *sistance Act of 1999 (113 Stat. 1501A–506), as enacted into*
11 *law by section 1000(a)(7) of Public Law 106–113.*

12 (b) *REQUIREMENT FOR INFORMATION SHARING.*—*The*
13 *Secretary of State shall conclude an information sharing*
14 *arrangement with the heads of United States Customs Serv-*
15 *ice and the Census Bureau to adjust the Automated Export*
16 *System to parallel information currently collected by the*
17 *Department of State.*

18 (c) *SECRETARY OF TREASURY FUNCTIONS.*—*Section*
19 *303 of title 13, United States Code, is amended by striking*
20 *“, other than by mail,”.*

21 (d) *FILING EXPORT INFORMATION, DELAYED FILINGS,*
22 *PENALTIES FOR FAILURE TO FILE.*—*Section 304 of title*
23 *13, United States Code, is amended—*

24 (1) *in subsection (a)—*

1 (A) in the first sentence, by striking “the
2 penal sum of \$1,000” and inserting “a penal
3 sum of \$10,000”; and

4 (B) in the third sentence, by striking “a
5 penalty not to exceed \$100 for each day’s delin-
6 quency beyond the prescribed period, but not
7 more than \$1,000, shall be exacted” and insert-
8 ing “the Secretary of Commerce (and officers
9 and employees of the Department of Commerce
10 designated by the Secretary) may impose a civil
11 penalty not to exceed \$1,000 for each day’s delin-
12 quency beyond the prescribed period, but not
13 more than \$10,000 per violation”;

14 (2) by redesignating subsection (b) as subsection
15 (c); and

16 (3) by inserting after subsection (a) the fol-
17 lowing:

18 “(b) Any person, other than a person described in
19 subsection (a), required to submit export information, shall
20 file such information in accordance with any rule, regula-
21 tion, or order issued pursuant to this chapter. In the event
22 any such information or reports are not filed within such
23 prescribed period, the Secretary of Commerce (and officers
24 and employees of the Department of Commerce designated
25 by the Secretary) may impose a civil penalty not to exceed

1 \$1,000 for each day's delinquency beyond the prescribed
2 period, but not more than \$10,000 per violation.”.

3 (e) *ADDITIONAL PENALTIES.*—

4 (1) *IN GENERAL.*—Section 305 of title 13,
5 *United States Code*, is amended to read as follows:

6 “§305. **Penalties for unlawful export information ac-**
7 **tivities**

8 “(a) *CRIMINAL PENALTIES.*—(1) *Any person who*
9 *knowingly fails to file or knowingly submits false or mis-*
10 *leading export information through the Shippers Export*
11 *Declaration (SED) (or any successor document) or the*
12 *Automated Export System (AES) shall be subject to a fine*
13 *not to exceed \$10,000 per violation or imprisonment for not*
14 *more than 5 years, or both.*

15 “(2) *Any person who knowingly reports any informa-*
16 *tion on or uses the SED or the AES to further any illegal*
17 *activity shall be subject to a fine not to exceed \$10,000 per*
18 *violation or imprisonment for not more than 5 years, or*
19 *both.*

20 “(3) *Any person who is convicted under this subsection*
21 *shall, in addition to any other penalty, forfeit to the United*
22 *States—*

23 “(A) *any of that person's interest in, security of,*
24 *claim against, or property or contractual rights of*

1 *any kind in the goods or tangible items that were the*
2 *subject of the violation;*

3 “(B) *any of that person’s interest in, security of,*
4 *claim against, or property or contractual rights of*
5 *any kind in tangible property that was used in the*
6 *export or attempt to export that was the subject of the*
7 *violation; and*

8 “(C) *any of that person’s property constituting,*
9 *or derived from, any proceeds obtained directly or in-*
10 *directly as a result of the violation.*

11 “(b) *CIVIL PENALTIES.—The Secretary (and officers*
12 *and employees of the Department of Commerce specifically*
13 *designated by the Secretary) may impose a civil penalty*
14 *not to exceed \$10,000 per violation on any person violating*
15 *the provisions of this chapter or any rule, regulation, or*
16 *order issued thereunder, except as provided in section 304.*
17 *Such penalty may be in addition to any other penalty im-*
18 *posed by law.*

19 “(c) *CIVIL PENALTY PROCEDURE.—(1) When a civil*
20 *penalty is sought for a violation of this section or of section*
21 *304, the charged party is entitled to receive a formal com-*
22 *plaint specifying the charges and, at his or her request, to*
23 *contest the charges in a hearing before an administrative*
24 *law judge. Any such hearing shall be conducted in accord-*
25 *ance with sections 556 and 557 of title 5.*

1 “(2) *If any person fails to pay a civil penalty imposed*
2 *under this chapter, the Secretary may ask the Attorney*
3 *General to commence a civil action in an appropriate dis-*
4 *trict court of the United States to recover the amount im-*
5 *posed (plus interest at currently prevailing rates from the*
6 *date of the final order). No such action may be commenced*
7 *more than 5 years after the order imposing the civil penalty*
8 *becomes final. In such action, the validity, amount, and*
9 *appropriateness of such penalty shall not be subject to re-*
10 *view.*

11 “(3) *The Secretary may remit or mitigate any pen-*
12 *alties imposed under paragraph (1) if, in his or her*
13 *opinion—*

14 “(A) *the penalties were incurred without willful*
15 *negligence or fraud; or*

16 “(B) *other circumstances exist that justify a re-*
17 *mission or mitigation.*

18 “(4) *If, pursuant to section 306, the Secretary dele-*
19 *gates functions under this section to another agency, the*
20 *provisions of law of that agency relating to penalty assess-*
21 *ment, remission or mitigation of such penalties, collection*
22 *of such penalties, and limitations of actions and com-*
23 *promise of claims, shall apply.*

24 “(5) *Any amount paid in satisfaction of a civil pen-*
25 *alty imposed under this section or section 304 shall be de-*

1 *posited into the general fund of the Treasury and credited*
2 *as miscellaneous receipts.*

3 “(d) *ENFORCEMENT.*—(1) *The Secretary of Commerce*
4 *may designate officers or employees of the Office of Export*
5 *Enforcement to conduct investigations pursuant to this*
6 *chapter. In conducting such investigations, those officers or*
7 *employees may, to the extent necessary or appropriate to*
8 *the enforcement of this chapter, exercise such authorities as*
9 *are conferred upon them by other laws of the United States,*
10 *subject to policies and procedures approved by the Attorney*
11 *General.*

12 “(2) *The Commissioner of Customs may designate offi-*
13 *cers or employees of the Customs Service to enforce the pro-*
14 *visions of this chapter, or to conduct investigations pursu-*
15 *ant to this chapter.*

16 “(e) *REGULATIONS.*—*The Secretary of Commerce shall*
17 *promulgate regulations for the implementation and enforce-*
18 *ment of this section.*

19 “(f) *EXEMPTION.*—*The criminal fines provided for in*
20 *this section are exempt from the provisions of section 3571*
21 *of title 18.”.*

22 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
23 *tions at the beginning of chapter 9 of title 13, United*
24 *States Code, is amended by striking the item relating*
25 *to section 305 and inserting the following:*

“305. *Penalties for unlawful export information activities.*”.

1 **SEC. 897 707. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) *REPEAL.*—*The Export Administration Act of 1979*
3 *(50 U.S.C. App. 2401 et seq.) is repealed.*

4 (b) *ENERGY POLICY AND CONSERVATION ACT.*—

5 (1) *Section 103 of the Energy Policy and Con-*
6 *servaion Act (42 U.S.C. 6212), and the item relating*
7 *to that section in the table of contents for that Act,*
8 *are repealed.*

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

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

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

16 (e) *EXPORTS OF ALASKAN NORTH SLOPE OIL.*—*Sec-*
17 *tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))*
18 *is repealed.*

19 (f) *DISPOSITION OF CERTAIN NAVAL PETROLEUM RE-*
20 *SERVE PRODUCTS.*—*Section 7430(e) of title 10, United*
21 *States Code, is repealed.*

22 (g) *OUTER CONTINENTAL SHELF LANDS ACT.*—*Sec-*
23 *tion 28 of the Outer Continental Shelf Lands Act (43 U.S.C.*
24 *1354) is repealed.*

25 (h) *ARMS EXPORT CONTROL ACT.*—*The Arms Export*
26 *Control Act is amended as follows:*

1 (1) *Section 36(g) (22 U.S.C. 2776(g)) is amend-*
2 *ed by striking “12(c) of the Export Administration*
3 *Act of 1979” and inserting “602(c) of the Export Ad-*
4 *ministration Act of 2001”.*

5 (2) *Section 38 (22 U.S.C. 2778) is amended—*

6 (A) *in subsection (e)—*

7 (i) *in the first sentence, by striking*
8 *“subsections (c)” and all that follows*
9 *through “12 of such Act,” and inserting*
10 *“subsections (b), (c), (d), and (e) of section*
11 *503 of the Export Administration Act of*
12 *2001, by subsections (a) and (b) of section*
13 *506 of that Act, and by section 602 of that*
14 *Act,”;*

15 (ii) *in the first sentence, by striking*
16 *“11(c)(2)(B)” and inserting “507(b)(1)”;*
17 *and*

18 (iii) *in the third sentence, by striking*
19 *“11(c) of the Export Administration Act of*
20 *1979” and inserting “503(c) of the Export*
21 *Administration Act of 2001”;*

22 (B) *in subsection (f)(1), by striking “1979”*
23 *and inserting “2001”; and*

1 (C) in subsection (g)(1)(A)(ii), by inserting
2 “or section 503 of the Export Administration Act
3 of 2001” after “1979”.

4 (3) Section 39A(c) (22 U.S.C. 2779a(c)) is
5 amended—

6 (A) by striking “subsections (c),” and all
7 that follows through “12(a) of such Act” and in-
8 serting “subsections (c), (d), and (e) of section
9 503, section 507(c), and subsections (a) and (b)
10 of section 506, of the Export Administration Act
11 of 2001”;

12 (B) by striking “11(c)(2)(B) of such Act”
13 and inserting “507(b)(1) of that Act”; and

14 (C) by striking “11(c)” and inserting
15 “503(c)”.

16 (4) Section 40(k) (22 U.S.C. 2780(k)) is
17 amended—

18 (A) by striking “11(c), 11(e), 11(g), and
19 12(a) of the Export Administration Act of 1979”
20 and inserting “503(b), 503(c), 503(e), 506(a),
21 and 506(b) of the Export Administration Act of
22 2001”;

23 (B) by striking “11(c)(2)(B)” and inserting
24 “507(b)(1)”; and

1 (C) by striking “11(c)” and inserting
2 “503(c)”.

3 (5) Section 71(a) (22 U.S.C. 2797(a)) is amend-
4 ed by striking “section 6(l) of the Export Administra-
5 tion Act of 1979” and inserting “title II or III of the
6 Export Administration Act of 2001”.

7 (6) Section 72 (22 U.S.C. 2797a) is amended—

8 (A) in subsection (a)(1)(A), by striking
9 “section 5 or 6 of the Export Administration Act
10 of 1979 (50 U.S.C. App. 2404, 2405)” and in-
11 serting “title II or III of the Export Administra-
12 tion Act of 2001”; and

13 (B) in subsection (c), by striking
14 “6(j)(1)(A) of the Export Administration Act of
15 1979” and inserting “310(a)(1) of the Export
16 Administration Act of 2001”.

17 (7) Section 73 (22 U.S.C. 2797b) is amended—

18 (A) in subsection (a)(1), by striking
19 “11B(b)(1) of the Export Administration Act of
20 1979” and inserting “504(b)(1) of the Export
21 Administration Act of 2001”; and

22 (B) in subsection (f), by striking “6(j)(1)(A)
23 of the Export Administration Act of 1979” and
24 inserting “section 310(a)(1) of the Export Ad-
25 ministration Act of 2001”.

1 (8) Section 74(a)(6) (22 U.S.C. 2797c(a)(6)) is
2 amended by striking “16(2) of the Export Adminis-
3 tration Act of 1979 (50 U.S.C. App. 2415(2))” and
4 inserting “2(20) of the Export Administration Act of
5 2001”.

6 (9) Section 81(a) (22 U.S.C. 2798(a)) is
7 amended—

8 (A) in paragraph (1)(C), by striking
9 “1979” and inserting “2001”; and

10 (B) in paragraph (2)(B), by striking “sec-
11 tion 6(j) of the Export Administration Act of
12 1979 (50 U.S.C. 2405(j))” and inserting “section
13 310 of the Export Administration Act of 2001”.

14 (10) Section 102(b)(2)(G) (22 U.S.C. 2799aa-
15 1(b)(2)(G)) is amended by striking “section 6 of the
16 Export Administration Act of 1979” and inserting
17 “title III of the Export Administration Act of 2001”.

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)(A) Section 502B(a)(2) of the Foreign Assist-
4 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amended
5 in the second sentence—

6 (i) by striking “Export Administration Act
7 of 1979” the first place it appears and inserting
8 “Export Administration Act of 2001”; and

9 (ii) by striking “Act of 1979” and insert-
10 ing “Act of 2001”.

11 (B) Section 620E(h) of the Foreign Assistance
12 Act of 1961 (22 U.S.C. 2375(h)) is amended by strik-
13 ing “11B of the Export Administration Act of 1979”
14 and inserting “504 of the Export Administration Act
15 of 2001”.

16 (C) Section 620H(a)(1) of the Foreign Assistance
17 Act of 1961 (22 U.S.C. 2378(a)(1)) is amended by
18 striking “section 6(j) of the Export Administration
19 Act of 1979 (50 U.S.C. App. 2405(j))” and inserting
20 “section 310 of the Export Administration Act of
21 2001”.

22 (3) Section 565 of the Foreign Relations Author-
23 ization Act, Fiscal Years 1994 and 1995 (22 U.S.C.
24 2679c) is amended—

25 (A) in subsection (a)—

1 (i) in paragraph (2)—

2 (I) in subparagraph (A), by strik-
3 ing “8(a) of the Export Administra-
4 tion Act of 1979 (50 U.S.C. App.
5 2407(a))” and inserting “502(b) of the
6 Export Administration Act of 2001”;

7 (II) in subparagraph (A), by
8 striking “8(a)(1) of such Act” and in-
9 serting “502(b)(1) of that Act”; and

10 (III) in subparagraph (B), by
11 striking “16(2) of the Export Adminis-
12 tration Act of 1979 (50 U.S.C. App.
13 2415)” and inserting “2(20) of the Ex-
14 port Administration Act of 2001”; and

15 (ii) in paragraph (3), by striking
16 “8(a) of the Export Administration Act of
17 1979 (50 U.S.C. App. 2407(a))” and insert-
18 ing “502(b) of the Export Administration
19 Act of 2001”; and

20 (B) in subsection (c)—

21 (i) in paragraph (1), in subsection
22 (b)(1) of the quoted material, by striking
23 “8(a) of the Export Administration Act of
24 1979 (50 U.S.C. App. 2407(a))” and insert-

1 ing “502(b) of the *Export Administration*
2 *Act of 2001*”; and

3 (ii) in paragraph (3), by striking
4 “8(a) of the *Export Administration Act of*
5 *1979 (50 U.S.C. App. 2407(a))*” and insert-
6 ing “502(b) of the *Export Administration*
7 *Act of 2001*”.

8 (4) *Section 140(a) of the Foreign Relations Au-*
9 *thorization Act, Fiscal Years 1988 and 1989 (22*
10 *U.S.C. 2656f(a)) is amended—*

11 (A) in paragraph (1)(B), by inserting “or
12 section 310 of the *Export Administration Act of*
13 2001” after “Act of 1979”; and

14 (B) in paragraph (2), by inserting “or sec-
15 tion 310 of the *Export Administration Act of*
16 2001” after “6(j) of the *Export Administration*
17 *Act of 1979*”.

18 (5)(A) *Section 36(j)(1)(B) of the State Depart-*
19 *ment Basic Authorities Act of 1956 (22 U.S.C.*
20 *2708(j)(1)(B)) is amended by striking “section*
21 *6(j)(1)(A) of the Export Administration Act of 1979*
22 *(50 U.S.C. App. 2405(j)(1)(A))*” and inserting “sec-
23 tion 310(a)(1) of the *Export Administration Act of*
24 2001”.

1 (B) Section 40(e)(1) of the State Department
2 *Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1))*
3 is amended by striking “section 6(j)(1) of the *Export*
4 *Administration Act of 1979*” and inserting “section
5 310 of the *Export Administration Act of 2001*”.

6 (C) Section 205(d)(4)(B) of the State Depart-
7 ment *Basic Authorities Act of 1956 (22 U.S.C.*
8 *305(d)(4)(B))* is amended by striking “section 6(j) of
9 the *Export Administration Act of 1979*” and insert-
10 ing “section 310 of the *Export Administration Act of*
11 2001”.

12 (6) Section 528(a) of the *Foreign Operations,*
13 *Export Financing, and Related Programs Appropria-*
14 *tions Act, 1994 (Public Law 103–87)* is amended by
15 striking “6(j) of the *Export Administration Act of*
16 1979” and inserting “310 of the *Export Administra-*
17 *tion Act of 2001*”.

18 (7) Section 589(a) of the *Foreign Operations,*
19 *Export Financing, and Related Programs Appropria-*
20 *tions Act, 1997 (Public Law 104–208)* is amended by
21 striking “6(j) of the *Export Administration Act of*
22 1979” and inserting “310 of the *Export Administra-*
23 *tion Act of 2001*”.

24 (8) Section 110 of the *International Security*
25 and *Development Cooperation Act of 1980 (22 U.S.C.*

1 2778a) is amended by striking “Act of 1979” and in-
2 serting “Act of 2001”.

3 (9) Section 203(b)(3) of the *International Emer-*
4 *gency Economic Powers Act* (50 U.S.C. 1702(b)(3)) is
5 amended by striking “section 5 of the *Export Admin-*
6 *istration Act of 1979*, or under section 6 of such Act
7 to the extent that such controls promote the non-
8 proliferation or antiterrorism policies of the United
9 States” and inserting “the *Export Administration*
10 *Act of 2001*”.

11 (10)(A) Section 405(a)(13)(A) of the *Inter-*
12 *national Religious Freedom Act of 1998* (22 U.S.C.
13 6445(a)(13)(A)) is amended by striking “1979” and
14 inserting “2001”.

15 (B) Section 423(a) of that Act (22 U.S.C.
16 6461(a)) is amended by striking “6(n) of the *Export*
17 *Administration Act of 1979* (22 U.S.C. App.
18 2405(n))” and inserting “311 of the *Export Adminis-*
19 *tration Act of 2001*”.

20 (11)(A) Section 103(e)(2)(B)(ii) of the *Chemical*
21 *Weapons Convention Implementation Act of 1998* (22
22 U.S.C. 6713(e)(2)(B)(ii)) is amended to read as fol-
23 lows:

24 “(ii) SANCTIONS UNDER EXPORT AD-
25 MINISTRATION ACT OF 2001.—The authori-

1 *ties of title III of the Export Administra-*
2 *tion Act of 2001 shall be used to prohibit*
3 *the export to a person described in subpara-*
4 *graph (A) of any items on the National Se-*
5 *curity Control List established under section*
6 *202(a) of that Act.”.*

7 *(B) Section 103(e)(3)(B)(iv) of the Chemical*
8 *Weapons Convention Implementation Act of 1998 (22*
9 *U.S.C. 6713(e)(3)(B)(iv)) is amended to read as fol-*
10 *lows:*

11 *“(iv) SANCTIONS UNDER EXPORT AD-*
12 *MINISTRATION ACT OF 2001.—The authori-*
13 *ties of title III of the Export Administra-*
14 *tion Act of 2001 shall be used to prohibit*
15 *the export to a country described in sub-*
16 *paragraph (A) of any items on the National*
17 *Security Control List established under sec-*
18 *tion 202(a) of that Act.”.*

19 *(12) Section 1423(b)(1) of the Defense Against*
20 *Weapons of Mass Destruction Act of 1996 (50 U.S.C.*
21 *2332(b)(1)) is amended by striking “11 of the Export*
22 *Administration Act of 1979 (50 U.S.C. App. 2410)”*
23 *and inserting “503 of the Export Administration Act*
24 *of 2001”.*

1 (13) *Section 586G of the Iraq Sanctions Act of*
2 *1990 (50 U.S.C. 1701 note) is amended—*

3 (A) *by amending subsection (a)(3) to read*
4 *as follows:*

5 “(3) *EXPORTS OF CERTAIN COMMODITIES AND*
6 *TECHNOLOGY.—The authorities of titles II and III of*
7 *the Export Administration Act of 2001 shall be used*
8 *to prohibit the export to Iraq of any commodities or*
9 *technology on the Commerce Control List established*
10 *under that Act.”; and*

11 (B) *in subsection (b) by striking “the date*
12 *described in subsection (m)(1)” and all that fol-*
13 *lows through “shall be deemed” and inserting*
14 *“the dates described in section 301(d)(1) of the*
15 *Export Administration Act of 2001 shall be*
16 *deemed”.*

17 (14) *Section 601(a) of the Nuclear Non-Pro-*
18 *liferation Act of 1978 (22 U.S.C. 3281(a)) is*
19 *amended—*

20 (A) *in paragraph (6)—*

21 (i) *in subparagraph (A)—*

22 (I) *in clause (iii), by striking*
23 *“1979” and inserting “2001”; and*

24 (II) *in clause (iv), by adding*
25 *“and” after the semicolon; and*

1 (ii) in subparagraph (C)—

2 (I) by redesignating such sub-
3 paragraph as paragraph (7) and
4 aligning the text with the text of para-
5 graph (6) that precedes subparagraph
6 (A); and

7 (II) by inserting “a description
8 of” before “the progress”; and

9 (B) in the matter that appears following
10 paragraph (7), as so redesignated—

11 (i) by striking “paragraph (6)” and
12 inserting “paragraphs (6) and (7)”; and

13 (ii) by striking “12(c)(1) of the Export
14 Administration Act of 1979” and inserting
15 “602(a) of the Export Administration Act
16 of 2001”.

17 (15) Section 304(a)(2) of the Chemical and Bio-
18 logical Weapons Control and Warfare Elimination
19 Act of 1991 (22 U.S.C. 5603(a)(2)) is amended by
20 striking “1979” and inserting “2001”.

21 (16) Section 307 of the Chemical and Biological
22 Weapons Control and Warfare Elimination Act of
23 1991 (22 U.S.C. 5605) is amended—

24 (A) by amending paragraph (5) of sub-
25 section (a) to read as follows:

1 “(5) *EXPORTS OF CERTAIN GOODS AND TECH-*
2 *NOLOGY.—The authorities of title III of the Export*
3 *Administration Act of 2001 shall be used to prohibit*
4 *the export to that country of any goods or technology*
5 *on the National Security Control List established*
6 *under section 202 of that Act.”;*

7 *(B) in subsection (b)(2)(C) by striking “sec-*
8 *tion 6 of the Export Administration Act of*
9 *1979” and inserting “title III of the Export Ad-*
10 *ministration Act of 2001”;* and

11 *(C) in subsection (e)(1)(B)—*

12 *(i) in the first sentence, by striking*
13 *“subsection (p) of section 6 of the Export*
14 *Administration Act of 1979 (50 U.S.C.*
15 *App. 2405), as that subsection is so redesign-*
16 *ated by section 304(b) of this title, which*
17 *are applicable to exports prohibited under*
18 *section 6 of that Act” and inserting “section*
19 *301(d) of the Export Administration Act of*
20 *2001, which are applicable to exports pro-*
21 *hibited under title III of that Act”;* and

22 *(ii) in the last sentence, by striking “a*
23 *breach of the peace that poses a serious and*
24 *direct threat to the strategic interest of the*
25 *United States, within the meaning of sub-*

1 *paragraph (A) of section 6(p) of that Act”*
2 *and inserting “a serious threat to a foreign*
3 *policy interest of the United States, within*
4 *the meaning of section 301(d)(2)(A) of the*
5 *Export Administration Act of 2001”.*

6 *(17) Section 1705(c)(1) of the Cuban Democracy*
7 *Act of 1992 (22 U.S.C. 6004(c)(1)) is amended by*
8 *striking “5(m) of the Export Administration Act of*
9 *1979” and inserting “204(a) of the Export Adminis-*
10 *tration Act of 2001”.*

11 *(18)(A) Section 6(2)(i) of the Iran and Libya*
12 *Sanctions Act of 1996 (50 U.S.C. 1701 note) is*
13 *amended by striking “1979” and inserting “2001”.*

14 *(B) Section 8(a)(2) of the Iran and Libya Sanc-*
15 *tions Act of 1996 is amended by striking “6(j) of the*
16 *Export Administration Act of 1979” and inserting*
17 *“310 of the Export Administration Act of 2001”.*

18 *(C) Section 14 of the Iran and Libya Sanctions*
19 *Act of 1996 is amended—*

20 *(i) in paragraph (3), by striking “(50*
21 *U.S.C. App. 2410a(e)(1))” and inserting “(as in*
22 *effect on August 20, 2001)”;*

23 *(ii) in paragraph (6), by striking “(50*
24 *U.S.C. App. 2410a(e)(2))” and inserting “(as in*
25 *effect on August 20, 2001)”;* and

1 (iii) in paragraph (8), by striking “(50
2 U.S.C. App. 2415)” and inserting “(as in effect
3 on August 20, 2001)”.

4 (19) Section 1133(a)(3) of the Food Security Act
5 of 1985 (7 U.S.C. 1736y(3)) is amended by striking
6 “Export Administration Act” and inserting “Inter-
7 national Emergency Economic Powers Act or in time
8 of war under the Trading with the Enemy Act”.

9 (20) Section 208(a) of the Agricultural Trade
10 Suspension Adjustment Act of 1980 (7 U.S.C.
11 4001(a)) is amended by striking “for reasons of na-
12 tional security or foreign policy under the Export Ad-
13 ministration Act of 1979” and inserting “under title
14 II or III of the Export Administration Act of 2001”.

15 (21) Section 411(a)(1) of the Agricultural Trade
16 Act of 1978 (7 U.S.C. 5671(a)(1)) is amended by
17 striking “for reasons of national security or foreign
18 policy under the Export Administration Act of 1979
19 (50 U.S.C. App. 2401 et seq.)” and inserting “under
20 title II or III of the Export Administration Act of
21 2001”.

22 (22) Section 302(e) of the Bill Emerson Human-
23 itarian Trust Act (7 U.S.C. 1736f-1(e)) is amended—

24 (A) by striking “shall not be—

25 “(1) considered”

1 *and inserting “shall not be considered”; and*
2 *(B) by striking “; and*
3 *“(2) subject”*
4 *and all that follows through the end and insert-*
5 *ing a period.*

6 *(23)(A) Section 951(e)(2)(B) of title 18, United*
7 *States Code, is amended by striking “or under section*
8 *11 of the Export Administration Act of 1979” and in-*
9 *serting “, under section 11 of the Export Administra-*
10 *tion Act of 1979 (prior to its repeal by the Export*
11 *Administration Act of 2001), or under section 503 of*
12 *the Export Administration Act of 2001”.*

13 *(B) Section 1956(c)(7)(D) of title 18, United*
14 *States Code, is amended by striking “section 11 (re-*
15 *lating to violations) of the Export Administration Act*
16 *of 1979” and inserting “section 503 (relating to pen-*
17 *alties) of the Export Administration Act of 2001”.*

18 *(C) Section 2332d(a) of title 18, United States*
19 *Code, is amended by striking “section 6(j) of the Ex-*
20 *port Administration Act (50 U.S.C. App. 2405)” and*
21 *inserting “section 310 of the Export Administration*
22 *Act of 2001”.*

23 *(24)(A) Section 130(a) of title 10, United States*
24 *Code, is amended by striking “1979 (50 U.S.C. App.*
25 *2401–2420)” and inserting “2001”.*

1 (B) Section 2249a(a)(1) of title 10, United
2 States Code, is amended by striking “6(j)(1)(A) of the
3 Export Administration Act of 1979 (50 U.S.C. App.
4 2405(j))” and inserting “310(a)(1)(A) of the Export
5 Administration Act of 2001”.

6 (C) Section 2327(b)(2) of title 10, United States
7 Code, is amended by striking “6(j)(1)(A) of the Ex-
8 port Administration Act of 1979 (50 U.S.C. App.
9 2405(j)(1)(A))” and inserting “310(a)(1)(A) of the
10 Export Administration Act of 2001”.

11 (D) Section 2410i(a) of title 10, United States
12 Code, is amended by striking “3(5)(A) of the Export
13 Administration Act of 1979 (50 U.S.C. App.
14 2402(5)(A))” and inserting “502(a) of the Export Ad-
15 ministration Act of 2001”.

16 (25) Section 233 of the Trade Expansion Act of
17 1962 (19 U.S.C. 1864) is amended—

18 (A) by striking “(50 U.S.C. App. 2404),”
19 and inserting “(as in effect prior to its repeal by
20 the Export Administration Act of 2001), any ex-
21 port control imposed under title II of the Export
22 Administration Act of 2001,”; and

23 (B) by striking “that section” and inserting
24 “either such section”.

1 (26) *Section 502(b)(2)(F) of the Trade Act of*
2 *1974 (19 U.S.C. 2462(b)(2)(F)) is amended by strik-*
3 *ing “6(j)(1)(A) of the Export Administration Act of*
4 *1979” and inserting “310(a)(1) of the Export Admin-*
5 *istration Act of 2001”.*

6 (27) *Section 133 of the Uruguay Round Agree-*
7 *ments Act (19 U.S.C. 3553) is amended by striking*
8 *“section 8(a) of the Export Administration Act of*
9 *1979 (50 U.S.C. App. 2407(a)) (as in effect on Au-*
10 *gust 20, 1994)” and inserting “section 502 of the Ex-*
11 *port Administration Act of 2001”.*

12 (28) *Section 901(j)(2)(A)(iv) of the Internal Rev-*
13 *enue Code of 1986 (26 U.S.C. 901(j)(2)(A)(iv)) is*
14 *amended by striking “6(j) of the Export Administra-*
15 *tion Act of 1979, as amended” and inserting “310 of*
16 *the Export Administration Act of 2001”.*

17 (29) *Section 927(a)(2) of the Internal Revenue*
18 *Code of 1986 (26 U.S.C. 927(a)(2)) is amended—*

19 (A) *in subparagraph (C), by adding “or”*
20 *after the comma;*

21 (B) *by striking subparagraph (D);*

22 (C) *by redesignating subparagraph (E) as*
23 *subparagraph (D); and*

24 (D) *by striking “subparagraph (E)” and*
25 *inserting “subparagraph (D)”.*

1 (30) *Section 943(a)(3) of the Internal Revenue*
2 *Code of 1986 (26 U.S.C. 943(a)(3)) is amended—*

3 (A) *in subparagraph (C), by adding “or”*
4 *after the comma;*

5 (B) *by striking subparagraph (D);*

6 (C) *by redesignating subparagraph (E) as*
7 *subparagraph (D); and*

8 (D) *by striking “subparagraph (E)” and*
9 *inserting “subparagraph (D)”.*

10 (31) *Section 993(c)(2) of the Internal Revenue*
11 *Code of 1986 (26 U.S.C. 993(c)(2)) is amended—*

12 (A) *in subparagraph (C), by adding “or”*
13 *after the comma;*

14 (B) *by striking subparagraph (D);*

15 (C) *by redesignating subparagraph (E) as*
16 *subparagraph (D); and*

17 (D) *by striking “subparagraph (E)” and*
18 *inserting “subparagraph (D)”.*

19 (32) *Section 254(e)(3) of the Energy Policy and*
20 *Conservation Act (42 U.S.C. 6274(e)(3)) is amended*
21 *by striking “12 of the Export Administration Act of*
22 *1979” and inserting “602 of the Export Administra-*
23 *tion Act of 2001”.*

1 (33) Section 721(f)(4)(A) of the Defense Produc-
2 tion Act of 1950 (50 U.S.C. App. 2170(f)(4)(A)) is
3 amended—

4 (A) in clause (i), by striking “6(j) of the
5 Export Administration Act of 1979” and insert-
6 ing “310 of the Export Administration Act of
7 2001”;

8 (B) in clause (ii), by striking “section 6(l)
9 of the Export Administration Act of 1979” and
10 inserting “the Export Administration Act of
11 2001”; and

12 (C) in clause (iii), by striking “section 6(m)
13 of the Export Administration Act of 1979” and
14 inserting “the Export Administration Act of
15 2001”.

16 (34) Section 275 of the National Defense Author-
17 ization Act for Fiscal Years 1988 and 1989 (15
18 U.S.C. 4605) is amended by striking “1979 (50
19 U.S.C. App. 2401 et seq.)” and inserting “2001”.

20 (35) Section 1605(a)(7)(A) of title 28, United
21 States Code, is amended by striking “section 6(j) of
22 the Export Administration Act of 1979 (50 U.S.C.
23 App. 2405(j))” and inserting “section 310 of the Ex-
24 port Administration Act of 2001”.

1 (36) *Section 1621(a) of the International Finan-*
2 *cial Institutions Act (22 U.S.C. 262p–4q(a)) is*
3 *amended by striking “section 6(j) of the Export Ad-*
4 *ministration Act of 1979 (50 U.S.C. App. 2405(j))”*
5 *and inserting “section 310 of the Export Administra-*
6 *tion Act of 2001”.*

7 (37) *Subsection (f) of section 491 and section*
8 *499 of the Forest Resources Conservation and Short-*
9 *age Relief Act of 1990 (16 U.S.C. 620c(f) and 620j)*
10 *are repealed.*

11 (38) *Section 904(2)(B) of the Trade Sanctions*
12 *Reform and Export Enhancement Act of 2000 (22*
13 *U.S.C. 7203) is amended by striking “Export Admin-*
14 *istration Act of 1979” and inserting “Export Admin-*
15 *istration Act of 2001”.*

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

19 (A) *by striking the “or” at the end of sub-*
20 *paragraph (D);*

21 (B) *by striking the period at the end of sub-*
22 *paragraph (E) and inserting “; or”; and*

23 (C) *by inserting after subparagraph (E) the*
24 *following new subparagraph:*

1 “(F) the *Export Administration Act of*
2 2001.”.

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

5 (1) is standard equipment, certified by the Fed-
6 eral Aviation Administration, in civil aircraft, and

7 (2) is an integral part of such aircraft, shall be
8 subject to export control only under this Act. Such
9 product shall not be subject to controls under section
10 38(b)(2) of the *Arms Export Control Act* (22 U.S.C.
11 2778(b)).

12 ~~(k) *REPEAL OF CERTAIN EXPORT CONTROLS*.—Sub-~~
13 ~~title B of title XII of division A of the *National Defense*~~
14 ~~*Authorization Act for Fiscal Year 1998* (50 U.S.C. App.~~
15 ~~2404 note) is repealed.~~

16 **SEC. 808 708. SAVINGS PROVISIONS.**

17 (a) *IN GENERAL*.—All delegations, rules, regulations,
18 orders, determinations, licenses, or other forms of adminis-
19 trative action which have been made, issued, conducted, or
20 allowed to become effective under—

21 (1) the *Export Control Act of 1949*, the *Export*
22 *Administration Act of 1969*, the *Export Administra-*
23 *tion Act of 1979*, or the *International Emergency*
24 *Economic Powers Act* when invoked to maintain and
25 continue the *Export Administration regulations*, or

1 (2) *those provisions of the Arms Export Control*
2 *Act which are amended by section 702,*
3 *and are in effect on the date of enactment of this Act, shall*
4 *continue in effect according to their terms until modified,*
5 *superseded, set aside, or revoked under this Act or the Arms*
6 *Export Control Act.*

7 (b) *ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—*

8 (1) *EXPORT ADMINISTRATION ACT.—This Act*
9 *shall not affect any administrative or judicial pro-*
10 *ceedings commenced or any application for a license*
11 *made, under the Export Administration Act of 1979*
12 *or pursuant to Executive Order 12924, which is pend-*
13 *ing at the time this Act takes effect. Any such pro-*
14 *ceedings, and any action on such application, shall*
15 *continue under the Export Administration Act of*
16 *1979 as if that Act had not been repealed.*

17 (2) *OTHER PROVISIONS OF LAW.—This Act shall*
18 *not affect any administrative or judicial proceeding*
19 *commenced or any application for a license made,*
20 *under those provisions of the Arms Export Control*
21 *Act which are amended by section 702, if such pro-*
22 *ceeding or application is pending at the time this Act*
23 *takes effect. Any such proceeding, and any action on*
24 *such application, shall continue under those provi-*

1 *sions as if those provisions had not been amended by*
2 *section 702.*

3 *(c) TREATMENT OF CERTAIN DETERMINATIONS.—Any*
4 *determination with respect to the government of a foreign*
5 *country under section 6(j) of the Export Administration Act*
6 *of 1979, or Executive Order 12924, that is in effect on the*
7 *day before the date of enactment of this Act, shall, for pur-*
8 *poses of this title or any other provision of law, be deemed*
9 *to be made under section 310 of this Act until superseded*
10 *by a determination under such section 310.*

11 *(d) LAWFUL INTELLIGENCE ACTIVITIES.—The prohi-*
12 *bitions otherwise applicable under this Act do not apply*
13 *with respect to any transaction subject to the reporting re-*
14 *quirements of title V of the National Security Act of 1947.*
15 *Notwithstanding any other provision of this Act, nothing*
16 *shall affect the responsibilities and authorities of the Direc-*
17 *tor of Central Intelligence under section 103 of the National*
18 *Security Act of 1947.*

19 *(e) IMPLEMENTATION.—The Secretary shall make any*
20 *revisions to the Export Administration regulations required*
21 *by this Act no later than 180 days after the date of enact-*
22 *ment of this Act.*

Union Calendar No. 212

107TH CONGRESS
2^D SESSION

H. R. 2581

[Report No. 107-297, Parts I and II]

A BILL

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

MARCH 8, 2002

Reported from the Committee on Armed Services with
amendments

MARCH 8, 2002

The Committees on Agriculture, Energy and Commerce,
the Judiciary, Rules, Ways and Means, and the Per-
manent Select Committee on Intelligence discharged;
committed to the Committee of the Whole House on
the State of the Union and ordered to be printed