

Union Calendar No. 304

103^D CONGRESS
2^D SESSION

H. R. 3937

[Report No. 103-531, Parts I, II, III, and IV]

Entitled the "Export Administration Act of 1994".

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1994

Mr. GEJDENSON (by request) introduced the following bill; which was referred to the Committee on Foreign Affairs

MAY 25, 1994

Reported with amendments, and referred to the Committees on Armed Services, Judiciary, Public Works and Transportation, Ways and Means, and the Permanent Select Committee on Intelligence for a period ending not later than June 17, 1994, for consideration of such provisions contained in the bill and amendment as fall within the respective jurisdictions of those committees pursuant to rule X.

[Strike out all after the enacting clause and insert the part printed in italic]

JUNE 16, 1994

Reported from the Permanent Select Committee on Intelligence with amendments

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

JUNE 17, 1994

Reported from the Committee on Ways and Means with amendments

[Omit the part in bold parentheses and insert the part printed in boldface roman in bold parentheses]

JUNE 17, 1994

Reported from the Committee on Armed Services with amendments

[Omit the part in italic black brackets and insert the part printed in boldface roman]

JUNE 17, 1994

Committees on the Judiciary and Public Works and Transportation dis-

charged; 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 March 2, 1994]

A BILL

Entitled the “Export Administration Act of 1994”.

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.**

4 *This Act may be cited as the “Omnibus Export Admin-*
 5 *istration Act of 1994”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents of this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—EXPORT ADMINISTRATION

Sec. 101. Short title.

Sec. 102. Findings.

Sec. 103. Policy statement.

Sec. 104. General provisions.

Sec. 105. Multilateral controls.

Sec. 106. Emergency controls.

Sec. 107. Short supply controls.

Sec. 108. Foreign boycotts.

Sec. 109. Procedures for processing export license applications; other inquiries.

Sec. 110. Violations.

Sec. 111. Controlling proliferation activity.

Sec. 112. Administrative and judicial review.

Sec. 113. Enforcement.

Sec. 114. Export control authorities and procedures.

Sec. 115. Annual report.

Sec. 116. Definitions.

Sec. 117. Effects on other Acts.

Sec. 118. Conforming amendments to other laws.

Sec. 119. Effective date.

Sec. 120. Expiration date.

Sec. 121. Savings provision.

TITLE II—NUCLEAR PROLIFERATION PREVENTION ACT

Sec. 201. Short title.

PART A—REPORTING ON NUCLEAR EXPORTS

Sec. 211. Reports to Congress.

Sec. 212. Effective date.

PART B—SANCTIONS FOR NUCLEAR PROLIFERATION

Sec. 221. Imposition of sanctions on persons engaging in export activities that contribute to proliferation.

Sec. 222. Eligibility for assistance.

Sec. 223. Role of international financial institutions.

Sec. 224. Prohibition on assisting nuclear proliferation through the provision of financing.

Sec. 225. Export-Import Bank.

Sec. 226. Sanctions against countries involved in transfer of nuclear weapons or design information or components.

Sec. 227. Amendment to the Arms Export Control Act.

Sec. 228. Reward.

Sec. 229. Reports.

Sec. 230. Technical correction.

Sec. 231. Definitions.

Sec. 232. Effective date.

PART C—INTERNATIONAL ATOMIC ENERGY AGENCY

Sec. 241. Bilateral and multilateral initiatives.

Sec. 242. IAEA internal reforms.

Sec. 243. Reporting requirement.

Sec. 244. Definitions.

PART D—REPEAL OF DUPLICATIVE PROVISIONS

Sec. 251. Repeal.

1 **TITLE I—EXPORT**
 2 **ADMINISTRATION**

3 **SEC. 101. SHORT TITLE.**

4 *This title may be cited as the “Export Act of 1994”.*

5 **SEC. 102. FINDINGS.**

6 *The Congress makes the following findings:*

7 (1) *Export controls are a part of a comprehensive*
 8 *response to national security threats. United*
 9 *States exports should be restricted only for critical*

1 *national security, nonproliferation, and foreign policy*
2 *reasons.*

3 (2) *Exports of certain commodities and tech-*
4 *nology may adversely affect the national security of*
5 *the United States by making a direct and significant*
6 *contribution to the military potential of individual*
7 *countries or by disseminating the capability to*
8 *produce or use weapons of mass destruction. There-*
9 *fore, the administration of export controls should em-*
10 *phasize the control of these exports.*

11 (3) *The acquisition of dual use commodities and*
12 *technology by those countries and end users whose ac-*
13 *tions or policies run counter to United States na-*
14 *tional security interests may enhance the military ca-*
15 *pabilities of those countries, particularly their ability*
16 *to produce and deliver nuclear, chemical, and biologi-*
17 *cal weapons. This enhancement threatens the security*
18 *of the United States and its allies, and places addi-*
19 *tional demands on the defense budget of the United*
20 *States. Availability to certain countries and end users*
21 *of items that contribute to certain military capabili-*
22 *ties or the proliferation of weapons of mass destruc-*
23 *tion is a fundamental concern of the United States*
24 *and should be eliminated through negotiations and*
25 *other appropriate means whenever possible.*

1 (4) *Exporting is critical to the economic health*
2 *of the United States and, therefore, to its national se-*
3 *curity as well. With the growing importance of ex-*
4 *ports to sustained United States economic growth and*
5 *vitality, restrictions on exports must be evaluated in*
6 *terms of their effects on the United States economy as*
7 *well as on its national security. Restrictions on ex-*
8 *ports from the United States have had serious adverse*
9 *effects on economic competitiveness and domestic em-*
10 *ployment, particularly when restraints applied by the*
11 *United States have been more extensive than those*
12 *imposed by other countries or when United States ex-*
13 *port control policy is uncertain.*

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

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

24 (7) *Effective export controls also must be focused*
25 *only on those items that materially contribute to a*

1 *country's or an end user's military potential or po-*
2 *tential to produce or use weapons of mass destruction.*

3 *(8) Unilateral export controls are generally not*
4 *effective in influencing the behavior of other govern-*
5 *ments or impeding access to controlled countries of*
6 *controlled items. In most situations, unilateral con-*
7 *trols alone impede access to United States sources of*
8 *supply without affecting the ability of controlled*
9 *countries to obtain controlled items elsewhere. More-*
10 *over, unilateral controls permit foreign competitors to*
11 *serve markets the United States Government denies to*
12 *United States firms and workers, thus impairing the*
13 *reliability of United States suppliers in comparison*
14 *with their foreign competitors. At the same time, the*
15 *need to lead the international community or over-*
16 *riding national security or foreign policy interests*
17 *may justify unilateral controls in specific cases.*

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

21 *(10) The United States' export control system*
22 *must not be overly restrictive or bureaucratic, or un-*
23 *dermine the competitive position of American indus-*
24 *try. The export control system must be efficient, re-*
25 *sponsive, transparent, and effective.*

1 (11) *Export restrictions that negatively affect the*
2 *United States industrial base ultimately weaken*
3 *United States military capabilities and lead to de-*
4 *pendencies on foreign sources for key components.*

5 (12) *Minimization of restrictions on exports of*
6 *agricultural commodities and products is of critical*
7 *importance to the maintenance of a sound agricul-*
8 *tural sector, to a positive contribution to the balance*
9 *of payments, to reducing the level of Federal expendi-*
10 *tures for agricultural support programs, and to Unit-*
11 *ed States cooperation in efforts to eliminate malnutri-*
12 *tion and world hunger.*

13 **SEC. 103. POLICY STATEMENT.**

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

15 (1) *To stem the proliferation of weapons of mass*
16 *destruction and the means to deliver them by—*

17 (A) *leading international efforts to control*
18 *the proliferation of chemical, biological, and nu-*
19 *clear weapons and missiles;*

20 (B) *controlling involvement of United*
21 *States persons in, and contributions by United*
22 *States persons to, foreign programs intended to*
23 *develop weapons of mass destruction or missiles*
24 *and the means to design, develop, produce, stock-*
25 *pile, or use them; and*

1 (C) *implementing international treaties or*
2 *other agreements that require controls on exports*
3 *of designated items, reports on the production,*
4 *processing, consumption, and exports of such*
5 *items, and compliance with verification pro-*
6 *grams.*

7 (2) *To restrict the export of items that would di-*
8 *rectly and significantly contribute to the military po-*
9 *tential of countries so as to [pose a threat to the na-*
10 *tional security] **prove detrimental to the na-***
11 ***tional security*** *of the United States or its allies.*

12 (3) *To—*

13 (A) *minimize uncertainties in export con-*
14 *trol policy; and*

15 (B) *encourage trade with all countries with*
16 *which the United States has diplomatic or trad-*
17 *ing relations, except those countries with which*
18 *such trade has been determined by the President*
19 *to be against the national interest, and to strong-*
20 *ly encourage the trading partners of the United*
21 *States not to trade with those other countries.*

22 (4) *To restrict export trade when necessary to*
23 *protect the domestic economy from the excessive drain*
24 *of scarce materials and to reduce the serious infla-*
25 *tionary impact of foreign demand.*

1 (5) *To increase the effectiveness of and the reli-*
2 *ance of the United States upon multilateral coordina-*
3 *tion of controls through effective export control re-*
4 *gimes that—*

5 (A) *clearly identify countries and entities to*
6 *which, and end uses for which, exports of items*
7 *are to be controlled,*

8 (B) *incorporate lists of controlled items that*
9 *are critical to the control objectives,*

10 (C) *establish uniform criteria and proce-*
11 *dures for licensing, and*

12 (D) *implement means to curtail member*
13 *countries from granting licenses that render inef-*
14 *fective license denials by the United States.*

15 (6) *To impose unilateral controls, under the pro-*
16 *cedures and conditions set forth in section 106, only*
17 *when it is [essential to] **necessary to further***
18 ***significantly*** *the national security or foreign pol-*
19 *icy of the United States, and only after full consider-*
20 *ation of the economic impact of the controls and their*
21 *effectiveness in achieving their intended objectives.*

22 (7) *To make all licensing determinations in a*
23 *timely manner so undue delays in the licensing proc-*
24 *ess will not cause a United States firm to lose an ex-*
25 *port sale.*

1 (8) *To maintain a presumption of approval of*
2 *license applications for authority to export items for*
3 *civil end use.*

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

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

14 (B) *To encourage and, in specified cases, require*
15 *United States persons engaged in the export of com-*
16 *modities, technology, and other information to refuse*
17 *to take actions, including furnishing information or*
18 *entering into or implementing agreements, which*
19 *have the effect of furthering or supporting the restric-*
20 *tive trade practices or boycotts fostered or imposed by*
21 *any foreign country against a country friendly to the*
22 *United States or against any United States person.*

23 (11) *To consolidate export control functions and*
24 *increase administrative accountability, and thereby*
25 *better serve the exporting public by reducing and*

1 *eliminating overlapping, conflicting, and inconsistent*
2 *regulatory burdens.*

3 *(12) To minimize restrictions on the export of*
4 *agricultural commodities and products.*

5 **SEC. 104. GENERAL PROVISIONS.**

6 *(a) TYPES OF LICENSES.—Under such conditions as*
7 *the Secretary may impose, consistent with the provisions*
8 *of this title, and subject to paragraph (2)(B), the Secretary*
9 *may require the following types of licenses for exports of*
10 *commodities and technology controlled under this title:*

11 *(1) SPECIFIC EXPORTS AND REEXPORTS.—An*
12 *individual validated license, authorizing a specific ex-*
13 *port.*

14 *(2) MULTIPLE EXPORTS AND REEXPORTS.—(A)*
15 *Validated licenses authorizing multiple exports, in*
16 *lieu of an individual validated license for each such*
17 *export.*

18 *(B)(i) A distribution license, authorizing mul-*
19 *tiiple exports of general application computers to any*
20 *country other than a sanctioned country. The Sec-*
21 *retary shall grant such distribution licenses strictly*
22 *on the basis of the reliability of the applicant and for-*
23 *oreign consignees with respect to the prevention of di-*
24 *version of commodities or technology, consistent with*
25 *section 105(a)(1). Not later than 30 days after an ap-*

1 *plication is submitted under section 109 for such a*
2 *distribution license to export general application com-*
3 *puters, the Secretary shall grant the license with re-*
4 *spect to such distributors and end users that the Sec-*
5 *retary determines to be reliable. The Secretary may*
6 *deny the license application with respect to those dis-*
7 *tributors and end users that present a risk of diver-*
8 *sion of commodities or technology, directly or indi-*
9 *rectly, consistent with the provisions of section*
10 *105(a)(1).*

11 *(ii) For purposes of this subparagraph, a “sanc-*
12 *tioned country” is any country—*

13 *(I) the government of which the Secretary of*
14 *State has determined to be a government that*
15 *has repeatedly provided support for acts of inter-*
16 *national terrorism; or*

17 *(II) against which the United States main-*
18 *tains an embargo on all, or substantially all, ex-*
19 *ports pursuant to the International Emergency*
20 *Economic Powers Act or the Trading With The*
21 *Enemy Act.*

22 *(iii) For purposes of this subparagraph, the term*
23 *“general application computers” means any computer*
24 *system, computer networking equipment, peripheral*
25 *to a computer system, or combination thereof, on*

1 *which export controls are in effect under section 105,*
2 *except the following:*

3 *(I) Supercomputers.*

4 *(II) Computers specially designed for use in*
5 *connection with the capability described in sub-*
6 *paragraph (A) or (B) of section 105(a)(1).*

7 *(III) Computers specially designed for use*
8 *in connection with the surreptitious interception*
9 *of wire or oral communications.*

10 *(b) GENERAL PROHIBITION.—Notwithstanding any*
11 *other provision of this title, no person may export any item*
12 *which such person knows will materially contribute to a*
13 *program or activity for the design, development, or manu-*
14 *facture of a weapon of mass destruction or missile in a*
15 *country that is not a member of, or a cooperating country*
16 *with respect to, an export control regime controlling such*
17 *weapon or missile.*

18 *(c) UNITED STATES COMMODITY CONTROL INDEX.—*

19 *(1) IN GENERAL.—The Secretary shall—*

20 *(A) establish and maintain a United States*
21 *Commodity Control Index which shall identify*
22 *all commodities and technology on which con-*
23 *trols are imposed under this title;*

24 *(B) specify the license requirements applica-*
25 *ble to the items on the control index; and*

1 (C) designate countries, and end uses or end
2 users, to which exports of commodities and tech-
3 nology are controlled.

4 (2) CONTENTS.—The control index shall—

5 (A) consist of a security control list of all
6 commodities and technology on which export
7 controls are imposed under section 105, an emer-
8 gency control list of all commodities and tech-
9 nology on which export controls are imposed
10 under section 106, and a short supply control
11 list of all commodities on which export controls
12 are imposed under section 107;

13 (B) for each item on the control index,
14 specify with particularity the performance
15 (where applicable) and other identifying charac-
16 teristics of the item and provide a rationale for
17 why the item is on the control list;

18 (C) identify countries, and end uses or end
19 users, to which exports are controlled, including
20 specific projects and end users of concern, cross-
21 referenced with the list of commodities and tech-
22 nology on which export controls are imposed;
23 and

24 (D) be sufficiently specific and clear as to
25 guide exporters and licensing officers in deter-

1 *minations of licensing requirements under this*
2 *title.*

3 (3) *LICENSING OF CONTROL INDEX COMMODITIES*
4 *AND TECHNOLOGY.—A validated license may be re-*
5 *quired for the export of those commodities and tech-*
6 *nology that are specifically and clearly identified on*
7 *the control index to countries, end uses, and end users*
8 *so designated on the control index. No authority or*
9 *permission may be required to export commodities*
10 *and technology not so identified to any country, end*
11 *use, or end user not so designated.*

12 (d) *DELEGATION OF AUTHORITY.—Subject to the pro-*
13 *visions of this title, the President may delegate the power,*
14 *authority, and discretion conferred upon the President by*
15 *this title to such departments, agencies, and officials of the*
16 *Government as the President considers appropriate, except*
17 *that no authority under this title may be delegated to, or*
18 *exercised by, any official of any department or agency the*
19 *head of which is not appointed by the President, by and*
20 *with the advice and consent of the Senate. The President*
21 *may not delegate or transfer his power, authority, or discre-*
22 *tion to overrule or modify any recommendation or decision*
23 *made by the Secretary, the Secretary of Defense, or the Sec-*
24 *retary of State under this title and may not delegate the*
25 *authority under section 106(a)(4).*

1 (e) *NOTIFICATION OF THE PUBLIC; CONSULTATION*
2 *WITH BUSINESS.*—*The Secretary shall keep the public fully*
3 *apprised of changes in export control policy and procedures*
4 *instituted in conformity with this title with a view to en-*
5 *couraging trade. The Secretary shall consult regularly with*
6 *representatives of a broad spectrum of enterprises, labor or-*
7 *ganizations, and citizens interested in or affected by export*
8 *controls, in order to obtain their views on United States*
9 *export control policy and the foreign availability of items*
10 *subject to controls.*

11 (f) *EXPORT ADVISORY COMMITTEES.*—

12 (1) *APPOINTMENT.*—*Upon his or her own initia-*
13 *tive or upon the written request of representatives of*
14 *a substantial segment of any industry which produces*
15 *any items subject to export controls under this title or*
16 *being considered for such controls, the Secretary shall*
17 *appoint export advisory committees with respect to*
18 *any such items. Each such committee shall consist of*
19 *representatives of United States industry and Govern-*
20 *ment, including the Department of Commerce and*
21 *other appropriate departments and agencies of the*
22 *Government. The Secretary shall permit the widest*
23 *possible participation by the business community on*
24 *the export advisory committees.*

1 (2) *FUNCTIONS.*—*Export advisory committees*
2 *appointed under paragraph (1) shall advise and as-*
3 *assist the Secretary, and any other department, agency,*
4 *or official of the Government carrying out functions*
5 *under this title, on actions (including all aspects of*
6 *controls imposed or proposed) designed to carry out*
7 *the policies of this title concerning the items with re-*
8 *spect to which such export advisory committees were*
9 *appointed. Such committees, where they have exper-*
10 *tise in such matters, shall be consulted on questions*
11 *involving—*

12 (A) *technical matters,*

13 (B) *worldwide availability and actual utili-*
14 *zation of production technology,*

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

17 (D) *revisions of the security control list (as*
18 *provided in section 105(j)), including proposed*
19 *revisions of multilateral controls in which the*
20 *United States participates,*

21 (E) *the issuance of regulations,*

22 (F) *the impact and interpretation of exist-*
23 *ing regulations,*

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

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

3 (I) the operation and conduct of inter-
4 national business transactions.

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

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

20 (4) CHAIRPERSON.—Each export advisory com-
21 mittee appointed under paragraph (1) shall elect a
22 chairperson, and shall meet at least every 3 months
23 at the call of the chairperson, unless the chairperson
24 determines, in consultation with the other members of
25 the committee, that such a meeting is not necessary

1 *to achieve the purposes of this subsection. Each such*
2 *committee shall be terminated after a period of 2*
3 *years, unless extended by the Secretary for additional*
4 *periods of 2 years each. The Secretary shall consult*
5 *each such committee on such termination or extension*
6 *of that committee.*

7 (5) *ACCESS TO INFORMATION.—To facilitate the*
8 *work of the export advisory committees appointed*
9 *under paragraph (1), the Secretary, in conjunction*
10 *with other departments and agencies participating in*
11 *the administration of this title, shall disclose to each*
12 *such committee adequate information, consistent with*
13 *national security, pertaining to the reasons for the ex-*
14 *port controls which are in effect or contemplated for*
15 *the items or policies for which that committee fur-*
16 *nishes advice.*

17 (6) *POLICY ADVICE.—The Secretary shall ap-*
18 *point a group of knowledgeable individuals from busi-*
19 *nesses affected by export controls to provide advice to*
20 *the Secretary on export control policy issues. The*
21 *chairperson of such group shall represent export advi-*
22 *sory committees regarding review of control lists*
23 *maintained by export control regimes and United*
24 *States proposals to export control regimes.*

1 (g) *DEVELOPMENT AND REVIEW OF THE CONTROL*
2 *LIST.*—*The Secretary of State, in consultation with appro-*
3 *priate departments and agencies, shall be responsible for*
4 *conducting negotiations with other countries regarding*
5 *multilateral arrangements for restricting the export of items*
6 *to carry out the policies of this title. All appropriate depart-*
7 *ments and agencies shall consult among themselves and*
8 *with the appropriate export advisory committees appointed*
9 *under subsection (f) to develop initial technical parameters*
10 *and product definitions in connection with the development*
11 *of proposals within the United States Government to be*
12 *made to multilateral regimes.*

13 (h) *RIGHT OF EXPORT.*—*No authority or permission*
14 *to export may be required under this title, or under regula-*
15 *tions issued under this title, except to carry out the policies*
16 *set forth in section 103.*

17 (i) *INTERNATIONAL OBLIGATIONS UNDER TREA-*
18 *TIES.*—*Notwithstanding any other provision of this title*
19 *containing limitations on authority to control exports, the*
20 *Secretary, in consultation with the Secretary of State, may*
21 *impose controls on exports to a particular country or coun-*
22 *tries in order to fulfill obligations of the United States*
23 *under resolutions of the United Nations and under treaties*
24 *to which the United States is a party.*

1 (j) *FEES.*—No fee may be charged in connection with
2 the submission or processing of an export license applica-
3 tion under this title.

4 **SEC. 105. MULTILATERAL CONTROLS.**

5 (a) *AUTHORITY.*—

6 (1) *IN GENERAL.*—In order to carry out the poli-
7 cies set forth in paragraphs (1), (2), and (5) of sec-
8 tion 103, the President may, in accordance with this
9 section, prohibit or curtail the export of any commod-
10 ities or technology subject to the jurisdiction of the
11 United States, or exported by any person subject to
12 the jurisdiction of the United States, if such commod-
13 ities or technology—

14 (A) would directly and significantly enable
15 a country or end user to acquire the capability
16 to develop, produce, stockpile, use, or deliver
17 weapons of mass destruction; or

18 (B) would directly and significantly con-
19 tribute to the military capability of a country so
20 as to **【pose a threat to the national security】**
21 **prove detrimental to the national se-**
22 **curity** of the United States or its allies.

23 (2) *EXERCISE OF AUTHORITY.*—The authority
24 granted by this subsection shall be implemented by
25 means of export licenses required by the Secretary.

1 (3) *CONSISTENCY WITH EXPORT CONTROL RE-*
2 *GIMES.*—Any provision of this title that provides that
3 no authority or permission to export may be required
4 under this section shall not apply to the extent that
5 the applicable export control regime provides other-
6 wise.

7 (b) *SECURITY CONTROL LIST.*—

8 (1) *IN GENERAL.*—(A) The Secretary shall, in
9 consultation with appropriate departments and agen-
10 cies, establish and maintain, as part of the control
11 index, a security control list, comprised of all com-
12 modities and technology on which export controls are
13 in effect under this section, and the countries, and
14 end uses or end users, to which the controls apply.
15 The security control list shall clearly identify the spe-
16 cific commodities and technology the export of which
17 is controlled, and each country, and end use or end
18 user, to which such exports are controlled.

19 (B) If a determination is made, with respect to
20 the inclusion of items on the security control list, that
21 affects the items controlled by an export control re-
22 gime, the Secretary of State shall propose to that re-
23 gime any revisions that would be necessary as a re-
24 sult of the determination. Such determination shall

1 *become effective only to the extent such revisions are*
2 *agreed to by the export control regime.*

3 **(2) PROCEDURE FOR INCLUDING ITEMS**
4 **ON THE SECURITY CONTROL LIST.—The Sec-**
5 **retaries of Defense and Energy and the**
6 **heads of other appropriate departments**
7 **and agencies shall identify commodities**
8 **and technology for inclusion on the secu-**
9 **rity control list. Those items which the**
10 **Secretary and the Secretary of Defense**
11 **concur shall be subject to export controls**
12 **under this section shall comprise the se-**
13 **curity control list. If the Secretary and**
14 **the Secretary of Defense are unable to**
15 **concur on such items, as determined by**
16 **the Secretary, the Secretary of Defense**
17 **may, within 20 days after receiving notifi-**
18 **cation of the Secretary's determination,**
19 **refer the matter to the President for reso-**
20 **lution. The Secretary of Defense shall no-**
21 **tify the Secretary of any such referral.**
22 **The President shall, not later than 20**
23 **days after such referral, notify the Sec-**
24 **retary of his determination with respect**
25 **to the inclusion of such items on the se-**

1 **curity control list. Failure of the Sec-**
2 **retary of Defense to notify the President**
3 **or the Secretary, or failure of the Presi-**
4 **dent to notify the Secretary, in accord-**
5 **ance with this paragraph, shall be**
6 **deemed by the Secretary to constitute**
7 **concurrence in the implementation of the**
8 **actions proposed by the Secretary re-**
9 **garding the inclusion of such items on**
10 **the security control list.**

11 **[(2)] (3)** *CONTROLLED COMMODITIES AND*
12 *TECHNOLOGY.—Export controls shall be imposed*
13 *under this section if, and may be imposed under this*
14 *section only if, the export controls are agreed to by an*
15 *export control regime [which includes export control*
16 *purposes, items subject to control, policy of review for*
17 *license applications, and all controlled destinations,*
18 *and end uses or end users].*

19 **[(3)] (4)** *CONTROLLED COUNTRIES, END USES,*
20 *AND END USERS.—A country shall be designated a*
21 *controlled country, and an end use or end user shall*
22 *be designated a controlled end use or controlled end*
23 *user, with respect to a particular commodity or tech-*
24 *nology on the security control list if exports of such*
25 *commodity or technology to such country, end use, or*

1 *end user are controlled multilaterally pursuant to the*
2 *agreement of an export control regime described in*
3 *paragraph (2).*

4 *(c) EXPORT LICENSING POLICIES FOR CONTROLLED*
5 *COUNTRIES AND CONTROLLED END USES OR END*
6 *USERS.—*

7 *(1) EXPORTS TO CONTROLLED COUNTRIES, AND*
8 *END USES OR END USERS.—*

9 *(A) IN GENERAL.—The Secretary shall re-*
10 *quire authority or permission to export commod-*
11 *ities and technology on the security control list*
12 *to a controlled country, a controlled end use, or*
13 *a controlled end user.*

14 *(B) PRESUMPTION OF APPROVAL FOR CIVIL*
15 *END USES.—Subject to subparagraph (C), appli-*
16 *cations to export commodities or technology for*
17 *civil end uses shall carry a presumption of ap-*
18 *proval.*

19 *(C) PRESUMPTION OF DENIAL FOR CON-*
20 *TROLLED END USERS.—Exports to controlled*
21 *end users of commodities or technology on which*
22 *controls are in effect under this section shall*
23 *carry a presumption of denial.*

24 *[(D) BASIS FOR DENIAL.—Licenses may be*
25 *denied under this section only if the commodity*

1 or technology meets the requirements of subpara-
2 graph (A) or (B) of subsection (a)(1).】

3 (2) *CIVIL END USE.*—A determination under
4 paragraph (1)(B) of whether commodities or tech-
5 nology are for civil end use shall be based on the fol-
6 lowing criteria:

7 (A) *Whether the stated end use is civil.*

8 (B) *Whether the civil application of the*
9 *commodities or technology is well established in*
10 *countries other than controlled countries.*

11 (C) *Whether the commodities or technology*
12 *proposed for export are reasonable in quantity*
13 *and quality for the proposed end use.*

14 (D) *The risk of diversion to an unauthor-*
15 *ized use or consignee, including whether such di-*
16 *version can be verified.*

17 (d) *EXPORT CONTROL REGIMES AND LICENSING POLI-*
18 *CIES.*—For the purposes of creating effective multilateral
19 export controls and strengthening the controls imposed by
20 export control regimes, the Secretary of State shall, with
21 respect to each export control regime, pursue negotiations
22 with other members of such regime to accomplish the follow-
23 ing objectives:

24 (1) *Development of a common list of commodities*
25 *and technology to which export controls are applied,*

1 *and a common list of countries, and end uses or end*
2 *users, to which exports are controlled, by members of*
3 *the regime.*

4 (2) *Agreement on the same treatment, to be ap-*
5 *plied by all members of the regime, of exports and re-*
6 *exports to members of the regime, cooperating coun-*
7 *tries, and other countries that are not controlled coun-*
8 *tries.*

9 (3) *National procedures resulting in comparable*
10 *implementation and enforcement of export controls*
11 *among the members of the regime, including laws pro-*
12 *viding appropriate civil and criminal penalties and*
13 *statutes of limitations sufficient to deter potential vio-*
14 *lations.*

15 (4) *Periodic meetings of high-level representa-*
16 *tives of governments participating in the regime for*
17 *the purpose of coordinating national export control*
18 *policies and issuing policy guidance for dissemina-*
19 *tion to exporters in participating countries.*

20 (5) *Establishment of procedures for regular con-*
21 *sultation among members of the regime on proposed*
22 *export license applications that includes consultation*
23 *with individuals with sufficient technical expertise to*
24 *assess the licensing status of exports and to ensure the*
25 *reliability of end users.*

1 (6) *An enforcement mechanism that provides au-*
2 *thority for adequately trained enforcement officers to*
3 *investigate and prevent illegal exports.*

4 (7) *Development of a system of export control*
5 *documentation to verify the movement of commodities*
6 *and technology.*

7 (8) *Establishment of procedures for the coordina-*
8 *tion and sharing of information on licensing, end*
9 *users, and enforcement.*

10 (9) *The application of adequate national re-*
11 *sources to carry out paragraphs (1) through (8).*

12 (e) *INCENTIVES FOR COUNTRIES TO PARTICIPATE IN*
13 *OR COOPERATE WITH EXPORT CONTROL REGIMES.—*

14 (1) *GENERAL RULE FOR REGIMES.—Unless the*
15 *Secretary, in consultation with the Secretary of State,*
16 *determines that an existing export control regime has*
17 *failed to meet the objectives set forth in subsection (d),*
18 *exports to all countries that are members of, or co-*
19 *operating countries with respect to, that regime shall*
20 *be subject to the licensing treatment set forth in this*
21 *subsection. The Secretary shall publish each deter-*
22 *mination under this paragraph in the Federal Reg-*
23 *ister.*

24 (2) *FAVORABLE LICENSING TREATMENT.—Sub-*
25 *ject to paragraphs (3) and (4), unless an export con-*

1 *trol regime is the subject of a determination under*
2 *paragraph (1), no authority or permission may be re-*
3 *quired for exports of any commodity or technology*
4 *controlled by that regime to or among members of*
5 *that regime or cooperating countries with respect to*
6 *that regime.*

7 (3) **【EXCEPTION.—】 EXCEPTIONS.—(A)** *If*
8 *the Secretary determines that a member of an export*
9 *control regime, a cooperating country with respect to*
10 *such regime, or an end user in a country that is such*
11 *a regime member or in such a cooperating country is*
12 *engaging in a pattern and practice of noncompliance*
13 *with controls agreed to by the regime—*

14 **【(A)】 (i)** *if the license treatment under*
15 *paragraph (2) is provided by the United States*
16 *unilaterally, the Secretary shall terminate such*
17 *treatment with respect to that noncomplying*
18 *member, cooperating country, or end user during*
19 *the period in which the determination is in ef-*
20 *fect; or*

21 **【(B)】 (ii)** *in any other case the Secretary*
22 *shall seek a similar determination by the other*
23 *members of the regime concerning such non-*
24 *compliance and, if such a determination is*
25 *made, the Secretary shall propose the suspension*

1 *of favorable licensing treatment of exports to that*
2 *noncomplying regime member, cooperating coun-*
3 *try, or end user by all members of the regime*
4 *during the period in which that determination is*
5 *in effect.*

6 **(B) If the Secretary of Defense deter-**
7 **mines that the absence of a requirement**
8 **of licenses for any exports described in**
9 **paragraph (2) would prove detrimental to**
10 **the national security of the United States**
11 **the Secretary of Defense may request**
12 **that a license be required for such ex-**
13 **port. If the Secretary refuses to require**
14 **the license, the Secretary shall report to**
15 **the Committees on Armed Services of the**
16 **House of Representatives and the Senate,**
17 **the Committee on Banking, Housing, and**
18 **Urban Affairs of the Senate, and the Com-**
19 **mittee on Foreign Affairs of the House of**
20 **Representatives on the reasons for refus-**
21 **ing to require a license.**

22 *(4) EXCEPTION FOR EXPORTS TO CERTAIN COUN-*
23 *TRIES.—(A) Should some of the members of an export*
24 *control regime decide to require licenses for the export*
25 *to other members of the regime or to cooperating*

1 *countries of certain items controlled by the regime, the*
2 *United States may require such licenses if—*

3 *(i) the Secretary determines that a prepon-*
4 *derance of the world's supply of the items in-*
5 *volved would be subject to such export license re-*
6 *quirements; or*

7 *(ii) after making a determination that a*
8 *preponderance of the world's supply of the items*
9 *involved would not be subject to such export li-*
10 *cence requirements, the Secretary, in consulta-*
11 *tion with the Secretary of State and the Sec-*
12 *retary of Defense, determines that the absence of*
13 *a requirement of export licenses for such items to*
14 *such members of the regime or cooperating coun-*
15 *tries would prove detrimental to the national se-*
16 *curity of the United States.*

17 *In any case in which the Secretary makes a deter-*
18 *mination under clause (ii), the Secretary shall pub-*
19 *lish that determination, together with a concise state-*
20 *ment of its basis and the estimated impact of the de-*
21 *termination.*

22 *(B) The Secretary shall notify the Congress at*
23 *least 30 days before a license requirement described in*
24 *subparagraph (A) goes into effect.*

1 (f) *CREATION AND ENHANCEMENT OF MULTILATERAL*
2 *CONTROL REGIMES.*—

3 (1) *EXPANSION OF MEMBERSHIP OF REGIMES.*—

4 *For each existing export control regime and for each*
5 *export control regime the United States seeks to cre-*
6 *ate, the Secretary of State, in consultation with the*
7 *Secretary, shall seek—*

8 (A) *to expand the membership of the regime*
9 *to include all countries that produce or export*
10 *items controlled pursuant to agreement by the re-*
11 *gime and share the objectives of the regime;*

12 (B) *the adoption of procedures for effective*
13 *implementation of the rules and guidelines of the*
14 *regime through uniform and consistent interpre-*
15 *tations of export controls agreed to by the re-*
16 *gime;*

17 (C) *agreement to create a secretariat, for*
18 *each regime that seeks the prevention of the pro-*
19 *liferation of weapons of mass destruction or mis-*
20 *siles, that would call regular meetings of mem-*
21 *bers of the regime and establish rules for the re-*
22 *gime; and*

23 (D) *agreement within each regime not to*
24 *render ineffective the denial of licenses by other*
25 *regime members and to establish procedures for*

1 *the coordination and regular exchange of infor-*
2 *mation about such denials.*

3 (2) *TERRORIST THREATS TO REGIME MEM-*
4 *BERS.—*

5 (A) *PRESUMPTION OF DENIAL FOR LI-*
6 *CENSES.—For each existing export control re-*
7 *gime and for each export control regime the*
8 *United States seeks to create, the Secretary of*
9 *State, in consultation with the Secretary, shall*
10 *pursue negotiations with other members of such*
11 *regime to establish a presumption of denial for*
12 *licenses for exports that would directly contribute*
13 *to acts of terrorism directed at 1 or more regime*
14 *members.—*

15 (B) *REPORTS TO CONGRESS.—The Sec-*
16 *retary shall annually report to the Committee on*
17 *Foreign Affairs of the House of Representatives*
18 *and the Committee on Banking, Housing, and*
19 *Urban Affairs of the Senate on the progress*
20 *made toward meeting the objectives set forth in*
21 *subparagraph (A).*

22 (3) *DISCLOSURE OF NONPROPRIETARY INFORMA-*
23 *TION.—The Secretary of State shall propose the fol-*
24 *lowing to each export control regime:*

1 (A) *Full disclosure on a confidential basis*
2 *to all members of the regime of all*
3 *nonproprietary information relating to all li-*
4 *licenses granted for the export of items controlled*
5 *by the regime, consistent with the protection of*
6 *intelligence sources and methods.*

7 (B) *A list of controlled items of particular*
8 *sensitivity for which such disclosure shall be*
9 *given 15 days before the license is issued.*

10 (g) *TRANSPARENCY OF MULTILATERAL CONTROL RE-*
11 *GIMES.—*

12 (1) *PUBLICATION OF INFORMATION ON EACH EX-*
13 *ISTING REGIME.—Within 6 months after the date of*
14 *the enactment of this Act, the Secretary shall publish*
15 *in the Federal Register the following information*
16 *with respect to export controls agreed to by each mul-*
17 *tilateral control regime existing on the date of the en-*
18 *actment of this Act:*

19 (A) *Purposes of the controls.*

20 (B) *Members of the regime.*

21 (C) *Licensing policy.*

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

1 (E) *Controlled countries, controlled end*
2 *uses, and, to the extent not inconsistent with re-*
3 *quirements of the regime, controlled end users.*

4 (F) *Rules of interpretation.*

5 (G) *Major policy actions.*

6 (H) *The rules and procedures of the regime*
7 *for establishing and modifying any matter de-*
8 *scribed in subparagraphs (A) through (G) and*
9 *for reviewing export license applications.*

10 (2) *INFORMATION REGARDING CONTROLLED END*
11 *USERS.—The United States shall propose to each ex-*
12 *port control regime to permit a member of the regime*
13 *to publish the controlled end users (including projects*
14 *of concern) agreed to by the regime.*

15 (3) *NEW REGIMES.—Within 2 months after join-*
16 *ing or organizing a new export control regime, the*
17 *Secretary shall publish the information described in*
18 *subparagraphs (A) through (H) of paragraph (1).*

19 (4) *PUBLICATION OF CHANGES.—The Secretary*
20 *shall publish in the Federal Register any changes in*
21 *the information published under this subsection with-*
22 *in 2 months after the applicable regime adopts such*
23 *changes.*

24 (h) *EFFECTIVENESS OF MULTILATERAL CONTROL RE-*
25 *GIMES AND IMPLEMENTATION BY THEIR MEMBERS.—*

1 (1) *ANNUAL EVALUATION.*—At least once each
2 year, the Secretary shall evaluate the effectiveness of
3 each export control regime and the effectiveness of the
4 implementation of the regime by each of its members,
5 including the United States. Such evaluation shall be
6 included in the annual report issued under section
7 115.

8 (2) *CONTENTS.*—The evaluation under para-
9 graph (1) shall include the following for the calendar
10 year for which the report is issued:

11 (A) *Items not controlled by the export con-*
12 *trol regime that the United States believes should*
13 *be controlled if the regime is to achieve its con-*
14 *trol purposes effectively.*

15 (B) *Countries that are sources of foreign*
16 *availability for each item controlled by agree-*
17 *ment of the regime. Such countries shall include*
18 *members of the regime, cooperating countries*
19 *with respect to the regime, and countries that are*
20 *not members of the regime.*

21 (C) *Countries that are risks for diverting*
22 *controlled items to controlled countries, end uses,*
23 *or end users.*

1 (D) *Members of the regime that have not, in*
2 *the judgment of the Secretary, implemented the*
3 *objectives set forth in subsection (d).*

4 (E) *The extent to which the regime and*
5 *each of its members have adopted and are imple-*
6 *menting uniform licensing policies.*

7 (F) *The extent to which the licensing policy*
8 *of the regime and each of its members adequately*
9 *prevents the export licensing decisions of one*
10 *member of the regime from rendering ineffective*
11 *the denial of license applications by another*
12 *member.*

13 (3) *COMMENTS.—Before beginning each evalua-*
14 *tion under this subsection, the Secretary shall request*
15 *comments from the public and the export advisory*
16 *committees appointed under section 104(f) regarding*
17 *the effectiveness of each export control regime. The*
18 *Secretary shall give the public at least 30 days to*
19 *provide comments under this paragraph.*

20 (i) *FOREIGN AVAILABILITY.—*

21 (1) *FOREIGN AVAILABILITY TO CONTROLLED*
22 *COUNTRIES.—*

23 (A) *IN GENERAL.—The Secretary, in con-*
24 *sultation with the Secretary of Defense, other ap-*
25 *propriate Government departments and agencies,*

1 *and appropriate export advisory committees ap-*
2 *pointed under section 104(f), shall review, on a*
3 *continuing basis, the availability of controlled*
4 *items to controlled countries from sources outside*
5 *the United States, including countries that par-*
6 *ticipate with the United States in export control*
7 *regimes.*

8 *(B) ITEMS CONTROLLED BY COCOM.—(i) In*
9 *any case in which the Secretary determines*
10 *under paragraph (3), **with the concur-***
11 ***rence of the Secretary of Defense, and***
12 *in accordance with procedures and criteria*
13 *which the Secretary shall establish by regulation,*
14 *that any item controlled for export pursuant to*
15 *the agreement of COCOM is available in fact***[**
16 *or will be available in fact within 2 years in the*
17 *future,***]** *to controlled countries from sources out-*
18 *side the United States in sufficient quantity and*
19 *of comparable quality so that the requirement of*
20 *a validated license for the export of such item is*
21 ***[or would be ineffective] ineffective*** *in*
22 *achieving the purposes of this section—*

23 *(I) the President shall propose to*
24 *COCOM that export controls on such item*
25 *be eliminated, or*

1 (ii) if the President determines that
2 the absence of export controls on the item
3 would prove detrimental to the national se-
4 curity of the United States, the President
5 shall actively pursue negotiations with the
6 governments of the appropriate foreign
7 countries for the purpose of eliminating
8 such availability.

9 No later than the commencement of such negotia-
10 tions, the President shall notify in writing the
11 Committee on Banking, Housing, and Urban Af-
12 fairs **and the Committee on Armed**
13 **Services** of the Senate and the Committee on
14 Foreign Affairs **and the Committee on**
15 **Armed Services** of the House of Representa-
16 tives that the President has begun such negotia-
17 tions and why the President believes it is impor-
18 tant to the national security that export controls
19 on the item involved be maintained.

20 (ii) If, within 6 months after the President's
21 determination under clause (i)(II) that export
22 controls be maintained notwithstanding foreign
23 availability, the foreign availability has not been
24 eliminated, the Secretary may not, after the end
25 of that 6-month period, require a validated li-

1 cense for the export of the item involved. The
2 President may extend the 6-month period for an
3 additional period of 12 months if the President
4 certifies to the Congress that the negotiations in-
5 volved are progressing and that the absence of
6 the export controls involved would prove det-
7 rimental to the national security of the United
8 States.

9 (C) ITEMS CONTROLLED BY OTHER RE-
10 GIMES.—(i) In any case in which the Secretary
11 determines under paragraph (3), **with the**
12 **concurrence of the Secretary of De-**
13 **fense, and** in accordance with procedures and
14 criteria which the Secretary shall establish by
15 regulation, that any item controlled for export
16 pursuant to an export control regime other than
17 COCOM is available in fact【, or will be avail-
18 able in fact within 2 years in the future.】 to
19 controlled countries from sources outside the
20 United States in sufficient quantity and of com-
21 parable quality so that the requirement of a vali-
22 dated license for the export of such item is 【or
23 would be ineffective】 **ineffective** in achieving
24 the purposes of this section, the President shall
25 actively pursue negotiations with the govern-

1 *ments of the appropriate foreign countries for the*
2 *purpose of eliminating such availability. No*
3 *later than the commencement of such negotia-*
4 *tions, the President shall notify in writing the*
5 *Committee on Banking, Housing, and Urban Af-*
6 *airs* **and the Committee on Armed**
7 **Services** *of the Senate and the Committee on*
8 *Foreign Affairs* **and the Committee on**
9 **Armed Services** *of the House of Representa-*
10 *tives that the President has begun such negotia-*
11 *tions, indicating whether the President believes it*
12 *is important that export controls on the item in-*
13 *volved be maintained to avoid a significant risk*
14 *to the national security interests of the United*
15 *States.*

16 *(ii) If, within 120 days after a determina-*
17 *tion of foreign availability described in clause (i)*
18 *is made, the foreign person or persons that are*
19 **【or will be】** *the source of such foreign availabil-*
20 *ity have not taken the steps necessary to elimi-*
21 *nate such availability, the President shall pro-*
22 *pose to the export control regime controlling the*
23 *commodities or technology that are the subject of*
24 *the foreign availability determination—*

25 *(I) that such controls be eliminated, or*

1 (ii) that the members of the regime im-
2 pose all of the sanctions described in clause
3 (iii) on such foreign person or persons.

4 (iii) The sanctions referred to in clause (ii)
5 to be imposed on a foreign person or persons are
6 the following:

7 (I) A prohibition on the export to such
8 person or persons of all items controlled by
9 such export control regime.

10 (II) A prohibition on the import of all
11 goods that are produced by such person or
12 persons.

13 (III) A prohibition on procurement by
14 such governments of any services, commod-
15 ities, technology, or other products from or
16 produced by such person or persons.

17 (iv) If, within 90 days after a proposal
18 under clause (ii)(II) regarding sanctions is made
19 to an export control regime, such regime has not
20 agreed to such proposal, the President shall ei-
21 ther propose to such regime that the export con-
22 trols on the commodities or technology that are
23 the subject of the foreign availability determina-
24 tion be eliminated, or report to the Congress that
25 the President has determined that elimination of

1 *the controls would create a significant risk to the*
2 *national security interests of the United States.*
3 *Such report shall include the basis for such de-*
4 *termination.*

5 (2) *NOTICE OF ALL FOREIGN AVAILABILITY AS-*
6 *SESSMENTS.—Whenever the Secretary undertakes a*
7 *foreign availability assessment under this subsection,*
8 *the Secretary shall publish notice of such assessment*
9 *in the Federal Register.*

10 (3) *PROCEDURES FOR MAKING DETERMINA-*
11 *TIONS.—*

12 (A) *PROCEDURES.—(i) The Secretary shall*
13 *make a foreign availability determination under*
14 *paragraph (1) on the Secretary's own initiative,*
15 *upon the certification of an export advisory com-*
16 *mittee appointed under section 104(f) with re-*
17 *spect to the commodities or technology concern-*
18 *ing which the certification is made, or upon re-*
19 *ceipt of an allegation from an export license ap-*
20 *plicant that such availability exists. [In making*
21 *any such determination, the Secretary shall ac-*
22 *cept the representations of applicants made in*
23 *writing and supported by reasonable evidence,*
24 *unless such representations are contradicted by*
25 *reliable evidence, including scientific or physical*

1 *examination, expert opinion based upon ade-*
2 *quate factual information, or intelligence infor-*
3 *mation.】*

4 (ii) *In making determinations of foreign*
5 *availability, the Secretary may consider such*
6 *factors as cost, reliability, the availability and*
7 *reliability of spare parts and the cost and qual-*
8 *ity thereof, maintenance programs, durability,*
9 *quality of end products produced by the item*
10 *subject to the determination, and scale of produc-*
11 *tion.*

12 (iii) *For purposes of this subparagraph, the*
13 *term “evidence” may include such items as for-*
14 *oreign manufacturers’ catalogues, brochures, oper-*
15 *ations or maintenance manuals, articles from*
16 *reputable trade publications, photographs, and*
17 *depositions based upon eyewitness accounts.*

18 (B) *CERTIFICATIONS BY EXPORT ADVISORY*
19 *COMMITTEES.—At the same time as an export*
20 *advisory committee submits a certification to the*
21 *Secretary under subparagraph (A)(i), the com-*
22 *mittee shall submit the certification to the Con-*
23 *gress. The Secretary shall investigate the foreign*
24 *availability so certified and, not later than 90*
25 *days after the certification is made, shall submit*

1 a report to the export advisory committee and
2 the Congress stating that—

3 (i) the foreign availability does exist,
4 and the applicable steps are being taken
5 under paragraph (1); or

6 (ii) the foreign availability does not
7 exist.

8 To the extent necessary, the report may be sub-
9 mitted on a classified basis.

10 (C) ALLEGATIONS BY EXPORT LICENSE AP-
11 PPLICANTS.—Within 4 months after receiving an
12 allegation described in subparagraph (A)(i) from
13 an export license applicant, the Secretary shall
14 determine whether the foreign availability exists,
15 and shall so notify the applicant. If the Sec-
16 retary has determined that the foreign availabil-
17 ity exists, the Secretary shall, upon making such
18 determination, submit the determination for re-
19 view to other departments and agencies as the
20 Secretary considers appropriate. **【**The Sec-
21 retary's determination of foreign availability
22 shall not require the concurrence or approval of
23 any such department or agency.**】** Not later than
24 30 days after the Secretary makes the determina-
25 tion, the Secretary shall respond in writing to

1 the applicant and submit for publication in the
2 Federal Register, that—

3 (i) the foreign availability does exist,
4 and the applicable steps are being taken
5 under paragraph (1); or

6 (ii) the foreign availability does not
7 exist.

8 **(D) ROLE OF SECRETARY OF DE-**
9 **FENSE.—All determinations of the Sec-**
10 **retary under this subsection of**
11 **whether foreign availability exists**
12 **shall be made with the concurrence**
13 **of the Secretary of Defense.**

14 (4) *SHARING OF INFORMATION.*—Each de-
15 partment or agency of the United States, includ-
16 ing any intelligence agency, and all contractors
17 with any such department or agency, shall, upon
18 the request of the Secretary and consistent with
19 the protection of intelligence sources and methods
20 as determined by the Director of Central Intel-
21 ligence, furnish information to the Department
22 of Commerce concerning foreign availability of
23 items subject to export controls under this sec-
24 tion, including allowing access to any informa-

1 tion from a laboratory or other facility within
2 such department or agency.

3 (5) CONGRESSIONAL NOTIFICATIONS.—The Sec-
4 retary shall annually notify the Committee on For-
5 eign Affairs of the House of Representatives, and the
6 Committee on Banking, Housing, and Urban Affairs
7 of the Senate, of all allegations of foreign availability
8 received from export license applicants under para-
9 graph (3), and the actions the Secretary has taken
10 pursuant to such allegations.

11 (j) REVIEW OF CONTROLLED ITEMS.—

12 (1) IN GENERAL.—The Secretary shall review all
13 commodities and technology on the security control
14 list maintained under subsection (b) at least annu-
15 ally. At the conclusion of each review, the Secretary,
16 **with the concurrence of the Secretaries**
17 **of Defense and Energy**, shall justify the inclu-
18 sion of each item on the security control list, remove
19 items from the security control list, change the speci-
20 fications of items on the list, or add items to the list,
21 in order to meet the requirements of subsection (a)(1).
22 The data developed from such reviews shall be used in
23 formulating United States proposals for revision of
24 multilateral controls in the applicable export control
25 regimes.

1 (2) *CONSIDERATIONS.*—*In conducting the an-*
2 *nu**al review, the Secretary shall—*

3 (A) *consult with the appropriate export ad-*
4 *visory committees appointed under section 104(f)*
5 *and consider recommendations of such commit-*
6 *tees with respect to proposed changes in the secu-*
7 *rity control list;*

8 (B) *consider the results of foreign availabil-*
9 *ity determinations made under subsection (i);*

10 (C) *consider comments received pursuant to*
11 *the notice of review provided under paragraph*
12 *(3)(B); and*

13 (D) *consult with other appropriate depart-*
14 *ments or agencies.*

15 (3) *PROCEDURES.*—

16 (A) *DURATION OF REVIEW.*—*The annual re-*
17 *view required under paragraph (1) may not ex-*
18 *tend beyond 180 days after such review is begun.*

19 (B) *NOTICE OF REVIEW.*—*Before beginning*
20 *each annual review, the Secretary shall publish*
21 *a notice of that review in the Federal Register*
22 *and shall provide a 30-day period for comments*
23 *and submission of data, with or without oral*
24 *presentation, by interested Government agencies,*
25 *exporters, and other interested parties.*

1 (C) *REVISIONS.*—The Secretary, **with the**
2 **concurrence of the Secretaries of De-**
3 **fense and Energy,** shall make a determina-
4 tion of any revisions in the security control list
5 not later than 30 days after the end of the review
6 period. In making such determination, the Sec-
7 retary shall consult with the appropriate depart-
8 ments or agencies. **【The concurrence or approval**
9 **of any other department or agency shall not be**
10 **required before any such revision is made.】**

11 (D) *PROPOSALS TO EXPORT CONTROL RE-*
12 *GIMES.*—If a revision of the security control list
13 under this paragraph affects the items controlled
14 by an export control regime, the Secretary of
15 State shall propose such revision to that regime.
16 Such revision shall become effective only to the
17 extent such revision is agreed to by the export
18 control regime.

19 (E) *PUBLICATION OF REVISIONS.*—The Sec-
20 retary shall publish in the Federal Register any
21 revisions in the list, with an explanation of the
22 reasons for the revisions.

23 (k) *INDEXING.*—The Secretary shall develop, with the
24 assistance of the export advisory committees appointed
25 under section 104(f), methodologies and procedures for in-

1 *dexing items on the security control list where performance*
2 *capabilities are relevant and measurable. Such methodolo-*
3 *gies and procedures shall provide for increases in the per-*
4 *formance levels of commodities and technology on the secu-*
5 *rity control list and shall provide for the technical specifica-*
6 *tions below which no authority or permission to export is*
7 *required as compared to the most technologically advanced*
8 *commercially available version of the same or equivalent*
9 *commodities or technology. Such methodologies and proce-*
10 *dures shall be published in the Federal Register and used*
11 *in the annual review of the security control list under sub-*
12 *section (j).*

13 *(l) REVIEW OF EXPORT CONTROLS ON COMPUTER*
14 *EQUIPMENT AND TECHNOLOGY.—*

15 *(1) IN GENERAL.—In order to ensure that re-*
16 *quirements of validated licenses are periodically re-*
17 *moved as computer equipment, computer communica-*
18 *tions and networking equipment, computer software,*
19 *and related technology, that are subject to such re-*
20 *quirements become obsolete with respect to the specific*
21 *objectives of the export controls requiring such li-*
22 *ceses, the Secretary shall conduct periodic reviews of*
23 *such controls. The Secretary shall complete such a re-*
24 *view not later than 6 months after the date of the en-*

1 *actment of this Act, and thereafter as part of the re-*
2 *views conducted under subsection (j).*

3 *(2) REVIEW ELEMENTS.—In conducting each re-*
4 *view under paragraph (1), the Secretary shall do the*
5 *following with respect to the export controls described*
6 *in paragraph (1):*

7 *(A) OBJECTIVES OF CONTROLS.—The Sec-*
8 *retary shall identify the specific objectives of the*
9 *export controls, as part of a comprehensive strat-*
10 *egy to prevent the proliferation of weapons of*
11 *mass destruction, for the 12-month period follow-*
12 *ing completion of the review, for each country or*
13 *group of countries for which a validated license*
14 *is required. When an objective of an export con-*
15 *trol is to defer the development of a specific ca-*
16 *pability in such country or group of countries,*
17 *the Secretary shall specify for what period of*
18 *time the controls are expected to defer such capa-*
19 *bility.*

20 *(B) QUANTITY AND PERFORMANCE.—The*
21 *Secretary shall estimate, for the 12-month period*
22 *described in subparagraph (A), the quantity and*
23 *performance (measured in Composite Theoretical*
24 *Performance or other relevant performance*
25 *metrics) of computer systems that must be ob-*

1 *tained by each country or group of countries for*
2 *which a validated license is required in order to*
3 *defeat the objectives of the export controls.*

4 (C) *AVAILABILITY TO CONTROLLED DES-*
5 *TINATIONS.—The Secretary shall evaluate the ef-*
6 *fectiveness of the export controls in achieving*
7 *their specific objectives, including explicit de-*
8 *scriptions of the availability from sources outside*
9 *the United States, during the 12-month period*
10 *described in subparagraph (A), to controlled*
11 *countries of computer equipment, computer com-*
12 *munications and networking equipment, com-*
13 *puter software, and related technology on which*
14 *the export controls are in effect.*

15 (D) *ECONOMIC IMPACT.—The Secretary*
16 *shall evaluate the economic impact, during the*
17 *12-month period described in subparagraph (A),*
18 *of the export controls on exporting companies,*
19 *including estimates of lost sales, loss in market*
20 *share, and administrative overhead.*

21 (3) *INCREASE IN THRESHOLDS.—*

22 (A) *INCREASES.—After completing each re-*
23 *view under this subsection, the Secretary shall,*
24 ***[after consultation with appropriate depart-***
25 ***ments or agencies]** **with the concurrence***

1 **of the Secretaries of Defense and En-**
2 **ergy**, *increase, if warranted by the findings of*
3 *the review, the following export control thresh-*
4 *olds, consistent with the obligations of the United*
5 *States under export control regimes:*

6 *(i) The performance levels at which*
7 *computer systems are eligible for delivery*
8 *under a distribution license or other license*
9 *authorizing multiple exports.*

10 *(ii) The performance levels defining a*
11 *“supercomputer”.*

12 *(iii) The performance levels at which*
13 *an individual validated license is required*
14 *for the export to a controlled country of*
15 *computer systems and peripherals, software,*
16 *parts, and communications equipment nor-*
17 *mally supplied with such computer systems.*

18 *In any recommendation for or publication of*
19 *such increase, the Secretary shall include the spe-*
20 *cific rationale for the increase.*

21 *(B) PROPOSALS TO MULTILATERAL RE-*
22 *GIMES.—The Secretary of State shall, within 30*
23 *days after a determination by the Secretary to*
24 *increase thresholds, propose to the other members*
25 *of the applicable export control regime the elimi-*

1 *nation of the applicable controls on the items*
2 *with respect to which such determination is*
3 *made, in accordance with the procedures of the*
4 *regime, and publish a notice of such proposal in*
5 *the Federal Register.*

6 (4) *REPORT.—The Secretary shall transmit to*
7 *the Congress, and to any export advisory committee*
8 *appointed under section 104(f) with respect to com-*
9 *puter systems, a report on the findings of each review*
10 *conducted under this subsection, addressing each re-*
11 *quirement set forth in paragraph (2).*

12 (5) *HEARINGS.—The Secretary shall conduct*
13 *public hearings not less than once each year in order*
14 *to solicit information from all interested parties on*
15 *all matters to be addressed in each review conducted*
16 *under this subsection.*

17 (6) *REMOVAL OF CONTROLS ON MASS-MARKET*
18 *COMPUTER EQUIPMENT.—*

19 (A) *MASS-MARKET COMPUTER EQUIPMENT*
20 *DEFINED.—For purposes of this paragraph, the*
21 *term “mass-market computer equipment” means*
22 *any computer system, computer networking*
23 *equipment, peripheral to a computer system,*
24 *part or subassembly of a computer system, or*
25 *combination thereof, on which export controls are*

1 *in effect under this section, and which will have*
2 *been installed for end use outside the United*
3 *States in a quantity exceeding 100,000 units*
4 *over a 12-month period, as determined under*
5 *subparagraph (B).*

6 (B) *ANTICIPATORY REVIEW OF MASS-MAR-*
7 *KET COMPUTER EQUIPMENT.—Not later than—*

8 *(i) 6 months after the date of the enact-*
9 *ment of this Act, and*

10 *(ii) the end of each 1-year period oc-*
11 *curring thereafter,*

12 *the Secretary shall, in consultation with the*
13 *Computer Systems Technical Advisory Commit-*
14 *tee (or successor export advisory committee), in-*
15 *dustry groups, and computer equipment produc-*
16 *ers, identify those items described in subpara-*
17 *graph (A) (including computer systems differen-*
18 *tiated in terms of Composite Theoretical Per-*
19 *formance) that will be installed for end use out-*
20 *side the United States in a quantity exceeding*
21 *100,000 units during the 12-month period begin-*
22 *ning on the applicable date described in clause*
23 *(i) or (ii). For purposes of this paragraph, esti-*
24 *mates of numbers of items that will be installed*

1 *shall be based on reliable estimates provided by*
2 *producers of such items.*

3 (C) ACTION BY THE SECRETARY.—*Not later*
4 *than 30 days after an item is determined by the*
5 *Secretary under subparagraph (B) to be mass-*
6 *market computer equipment, the Secretary of*
7 *State shall propose to the export control regime*
8 *controlling the equipment the eliminaton of con-*
9 *trols on such equipment in accordance with the*
10 *procedures of the appropriate regime and shall*
11 *publish a notice of such proposal in the Federal*
12 *Register.*

13 (m) TRADE SHOWS.—*Consistent with the agreements*
14 *of applicable multilateral export control regimes, an appli-*
15 *cation for a license for the export to a controlled country*
16 *of any commodity on which export controls are in effect*
17 *under this section, without regard to the technical specifica-*
18 *tions of the commodity, for the purpose of demonstration*
19 *or exhibition at a trade show shall carry a presumption*
20 *of approval if—*

21 (1) *the United States exporter retains title to,*
22 *and maintains effective control of, the commodity,*
23 *and complies with any safeguard requirement im-*
24 *posed by the Secretary, during the entire period in*
25 *which the commodity is in the controlled country; and*

1 (2) *the exporter removes the commodity from the*
2 *controlled country within a reasonable period of time*
3 *after the conclusion of the trade show, as defined in*
4 *regulations issued by the Secretary.*

5 (n) *STUDY ON COMPUTER EXPORT CONTROLS.—*

6 (1) *ARRANGEMENTS FOR AND CONTENT OF*
7 *STUDY.—*

8 (A) *ARRANGEMENTS FOR CONDUCTING*
9 *STUDY.—The Secretary, not later than 60 days*
10 *after the date of the enactment of this Act, shall*
11 *enter into appropriate arrangements with the*
12 *National Academy of Sciences and the National*
13 *Academy of Engineering (hereafter in this sub-*
14 *section referred to as the “Academies”) to con-*
15 *duct a comprehensive study on the extent to*
16 *which exports of computers can be effectively*
17 *controlled, and the policy reasons for maintain-*
18 *ing such controls.*

19 (B) *REQUIREMENT OF STUDY.—Recognizing*
20 *the need to enhance the competitiveness of the*
21 *United States computer industry while prevent-*
22 *ing sensitive technology from being used to de-*
23 *velop weapons of mass destruction by controlled*
24 *countries, the study shall—*

1 (i) examine the trends of the computer
2 industry, including those toward new and
3 more powerful computer systems based upon
4 “Parallel Computing” and “Virtual Par-
5 allel Processing”, and their effect on the ex-
6 tent to which exports of computer systems
7 can be effectively controlled, with respect to
8 the factors described in clause (ii);

9 (ii) examine the factors that make it
10 increasingly difficult to control the export of
11 computers, including the size and
12 expandability of many modern computer
13 systems and the availability of such com-
14 puter systems from foreign sources; and

15 (iii) the effect of export controls on the
16 competitiveness of the United States com-
17 puter industry.

18 (2) *ADVISORY PANEL.*—In conducting the study
19 under paragraph (1), the Academies shall appoint an
20 Advisory Panel of not more than 12 members who
21 shall be selected from among individuals who, by vir-
22 tue of their experience and expertise, are knowledge-
23 able in relevant scientific, business, legal, or adminis-
24 trative matters. No individual may serve as a mem-
25 ber who is an elected or appointed official or em-

1 *ployee in the executive, legislative, or judicial branch*
2 *of any government. In selecting members of the Advi-*
3 *sory Panel, the Academies shall seek suggestions from*
4 *the President, the Congress, and representatives of in-*
5 *dustry and the academic community.*

6 (3) *EXECUTIVE BRANCH COOPERATION.*—*The*
7 *Secretary, the Secretary of Defense, the Secretary of*
8 *State, the Director of the Central Intelligence Agency,*
9 *and the head of any department or agency that exer-*
10 *cises authority under this title—*

11 (A) *shall furnish to the Academies, upon re-*
12 *quest and under appropriate safeguards, classi-*
13 *fied or unclassified information which the Acad-*
14 *emies determine to be necessary for the purposes*
15 *of conducting the study required by this sub-*
16 *section; and*

17 (B) *shall work with the Academies on such*
18 *problems related to the study as the Academies*
19 *consider necessary.*

20 (4) *REPORT.*—*Under the direction of the Advi-*
21 *sory Panel, the Academies shall prepare and submit*
22 *to the President and the Congress, not later than 9*
23 *months after entering into the arrangements referred*
24 *to in paragraph (1), a report which contains a de-*
25 *tailed statement of findings and conclusions of the*

1 *Academies from the study conducted under paragraph*
2 *(1), together with their recommendations for the com-*
3 *plete removal of controls from computers or specifying*
4 *the level of technology to which controls on computers*
5 *should be reduced.*

6 **SEC. 106. EMERGENCY CONTROLS.**

7 (a) *AUTHORITY.—*

8 (1) *IN GENERAL.—In order to carry out the pol-*
9 *icy set forth in paragraphs (6) and (9) of section 103,*
10 *the President may, in accordance with the provisions*
11 *of this section, unilaterally prohibit or curtail the ex-*
12 *port of any commodity or technology subject to the ju-*
13 *risdiction of the United States or exported by any*
14 *person subject to the jurisdiction of the United States.*

15 (2) *EXERCISE OF AUTHORITY.—*

16 (A) **IN GENERAL.—***The authority con-*
17 *tained in this section shall be exercised by the*
18 *Secretary, in consultation with the Secretary of*
19 *State, the Secretary of Defense, and such other*
20 *departments and agencies as the President con-*
21 *siders appropriate.*

22 (B) **NATIONAL SECURITY ITEMS.—**
23 **The Secretaries of Defense and En-**
24 **ergy and the heads of other appro-**
25 **priate departments and agencies**

1 shall identify commodities and tech-
2 nology, the export of which would
3 prove detrimental to the national se-
4 curity of the United States, for con-
5 trol under this section. If the Sec-
6 retary and the Secretary of Defense
7 are unable to concur on such items,
8 as determined by the Secretary, the
9 Secretary of Defense may, within 20
10 days after receiving notification of
11 the Secretary's determination, refer
12 the matter to the President for reso-
13 lution. The Secretary of Defense shall
14 notify the Secretary of any such re-
15 ferral. The President shall, not later
16 than 20 days after such referral, no-
17 tify the Secretary of his determina-
18 tion with respect to the control of
19 such items under this section. Failure
20 of the Secretary of Defense to notify
21 the President or the Secretary, or
22 failure of the President to notify the
23 Secretary, in accordance with this
24 paragraph, shall be deemed by the
25 Secretary to constitute concurrence

1 **in the implementation of the actions**
2 **proposed by the Secretary regarding**
3 **the control of such items under this**
4 **section.**

5 (3) *EXPIRATION OF AUTHORITY.*—

6 (A) *IN GENERAL.*—Any controls imposed
7 under this section shall expire 6 months after
8 they are imposed, unless they are terminated
9 earlier by the President or unless they are ex-
10 tended under this section, except that such con-
11 trols may be adopted as multilateral controls
12 under section 105 or included in an embargo de-
13 scribed in subsection (f)(1) that is imposed by
14 the President under the International Emergency
15 Economic Powers Act, the Trading with the
16 Enemy Act, or other provision of law other than
17 this title. Any extension or subsequent extension
18 of the controls under this section shall be for a
19 period of not more than 1 year each. The con-
20 trols shall expire at the end of each such exten-
21 sion unless they are terminated earlier by the
22 President or unless they are further extended
23 under this section, except that such controls may
24 be adopted as multilateral controls under section

1 105 or included in an embargo described in the
2 first sentence of this subparagraph.

3 (B) *EXCEPTION FOR MULTILATERAL AGREEMENTS.*—Subparagraph (A) shall not apply to
4 controls imposed by the President in order to ful-
5 fill obligations of the United States under resolu-
6 tions of the United Nations or under treaties to
7 which the United States is a party. If such a res-
8 olution or treaty ceases to be in effect, controls
9 imposed by the President pursuant to such reso-
10 lution or treaty shall immediately cease to be in
11 effect.
12

13 (4) *CRITERIA.*—The President may impose con-
14 trols under this section only if the President—

15 (A) determines that the controls are **【essen-**
16 **cial to】 necessary to further signifi-**
17 **cantly** the national security or foreign policy of
18 the United States or its allies, including the pre-
19 vention of acts of international terrorism;

20 **【(B)** determines that no other alternative
21 means can achieve the national security or for-
22 eign policy objectives of the United States within
23 a reasonable period of time, including all other
24 possible sanctions;

1 **[(C)] (B)** *determines that the controls can*
2 *reasonably be expected to achieve their intended*
3 *objectives after having taken into consideration*
4 *other factors, including the availability from one*
5 *or more countries of comparable commodities*
6 *and technology to those on which the controls are*
7 *to be imposed;*

8 **[(D)] (C)** *determines that the United*
9 *States has the ability to enforce all aspects of the*
10 *proposed controls effectively;*

11 **[(E)] (D)** *determines that the effect of the*
12 *proposed controls on the export performance of*
13 *the United States, the competitive position of the*
14 *United States as a supplier of items, or on the*
15 *economic well-being of individual United States*
16 *companies and their employees and communities*
17 *does not exceed the benefits to the foreign policy*
18 *or national security interests of the United*
19 *States; and*

20 **[(F)] (E)** *identifies those commodities and*
21 *technology to be controlled, determines that they*
22 *must be controlled in order to achieve the in-*
23 *tended purpose of the controls, and describes the*
24 *reasons for selecting such items.*

1 (5) *NEGOTIATIONS.*—*The President shall com-*
2 *mence, through the Secretary of State, within 10 days*
3 *after the imposition of controls under this section, ne-*
4 *gotiations with other countries to adopt the controls*
5 *so that such controls may be imposed under section*
6 *105, unless such controls are imposed under para-*
7 *graph (3)(B).*

8 (b) *CONSULTATION WITH INDUSTRY.*—*The Secretary*
9 *in every possible instance shall consult with and seek advice*
10 *from affected United States industries and export advisory*
11 *committees appointed under section 104(f) before the impo-*
12 *sition, expansion, or extension of any export control under*
13 *this section.*

14 (c) *CONSULTATION WITH OTHER COUNTRIES.*—*When*
15 *expanding or extending export controls under this section*
16 *(unless such action is taken under subsection (a)(3)(B)), the*
17 *Secretary of State, in consultation with the Secretary, shall,*
18 *at the earliest appropriate opportunity, consult with the*
19 *countries with which the United States maintains export*
20 *controls cooperatively, and with other countries, as appro-*
21 *priate, to advise them of the reasons for the action and to*
22 *urge them to adopt similar controls, so that the controls*
23 *may be imposed under section 105.*

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

1 (1) *CONSULTATIONS.*—*The Secretary may im-*
2 *pose, expand, or extend export controls under this sec-*
3 *tion only after consultation with the Congress, includ-*
4 *ing the Committee on Foreign Affairs of the House of*
5 *Representatives and the Committee on Banking,*
6 *Housing, and Urban Affairs of the Senate.*

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

10 (A) *addressing each of the criteria set forth*
11 *in subparagraphs (A) through **[(F)] (E)** of sub-*
12 *section (a)(4);*

13 (B) *specifying the purpose of the controls;*

14 (C) *describing the nature, the subjects, and*
15 *the results of, or plans for, the consultation with*
16 *industry under subsection (b) and with other*
17 *countries under subsections (a)(5) and (c);*

18 (D) *specifying the nature and results of any*
19 *alternative means attempted to achieve the objec-*
20 *tives of the controls, or the reasons for imposing*
21 *or expanding the controls without attempting*
22 *any such alternative means; and*

23 (E) *describing the availability from other*
24 *countries of items comparable to the items sub-*
25 *ject to the controls, and describing the nature*

1 *and results of the efforts made to secure the co-*
2 *operation of foreign governments in controlling*
3 *the foreign availability of such comparable com-*
4 *modities or technology.*

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

9 (3) *SUBMISSION OF REPORT TO GAO.—Each re-*
10 *port required by paragraph (2) shall, at the same*
11 *time it is submitted to the Congress, also be submitted*
12 *to the General Accounting Office for the purpose of*
13 *assessing the report's full compliance with the purpose*
14 *of this subsection.*

15 (e) *SEEKING MULTILATERAL SUPPORT FOR UNILAT-*
16 *ERAL CONTROLS.—The Secretary and the Secretary of*
17 *State shall have a continuing duty to seek support, by other*
18 *countries and by multilateral export control regimes, for all*
19 *controls imposed under this section.*

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

22 (1) *IMPOSITION OF AN EMBARGO.—An embargo*
23 *under subsection (a)(3)(A) shall include the prohibi-*
24 *tion of all exports to and imports from the country*
25 *against which the controls under this section were im-*

1 *posed, except that such an embargo need not include*
2 *a prohibition on exports of items described in section*
3 *114(k).*

4 (2) *CESSATION OF EMERGENCY CONTROLS.—*

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

8 (i) *the imposition of multilateral con-*
9 *trols under section 105 on the same com-*
10 *modities and technology to the country or*
11 *end user, or for the end use, with respect to*
12 *which the controls were imposed under this*
13 *section; or*

14 (ii) *the imposition, under the Inter-*
15 *national Emergency Economic Powers Act,*
16 *the Trading with the Enemy Act, or other*
17 *provision of law, of an embargo described in*
18 *paragraph (1).*

19 (B) *CONVERSION TO MULTILATERAL AGREE-*
20 *MENTS.—If the President imposes controls on*
21 *commodities or technology to a country or end*
22 *user, or for an end use, under this section in*
23 *order to fulfill obligations of the United States*
24 *under resolutions of the United Nations or under*
25 *a treaty to which the United States is a party,*

1 *any controls imposed prior thereto under this*
2 *section on the same commodities or technology to*
3 *the same country or end user, or for the same*
4 *end use, shall immediately cease to be in effect.*

5 (3) *LIMITATIONS ON REIMPOSITION.*—*Controls*
6 *which have ceased to be in effect under subsection*
7 *(a)(3), and which have not been extended under sub-*
8 *section (g), may not be reimposed by the President*
9 *under subsection (a) for a period of 6 months begin-*
10 *ning on the date on which the original controls ex-*
11 *pire.*

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

13 (1) *REPORT.*—*If the President decides to extend*
14 *controls imposed under subsection (a), which are due*
15 *to expire under subsection (a)(3), the President shall,*
16 *not later than 60 calendar days before the expiration*
17 *of such controls, transmit to the Congress a report on*
18 *the proposed extension, setting forth the reasons for*
19 *the proposed extension in detail and specifying the*
20 *period of time, which may not exceed 1 year, for*
21 *which the controls are proposed to be extended. In*
22 *particular, such report shall—*

23 (A) *contain determinations by the Presi-*
24 *dent—*

1 (i) that the controls continue to be es-
2 sential to the national security or foreign
3 policy of the United States;

4 **[(ii)]** that no other alternative means
5 can achieve the national security or foreign
6 policy objectives of the United States within
7 a reasonable period of time, as described in
8 subsection (a)(4)(B);

9 **[(iii)] (ii)** that the United States has
10 demonstrated the ability to enforce all as-
11 pects of the controls effectively; and

12 **[(iv)] (iii)** that the effect of the con-
13 trols on those factors described in subsection
14 (a)(4)**[(E)](D)** has not exceeded the bene-
15 fits to the foreign policy or national secu-
16 rity interests of the United States;

17 (B) identify those commodities and tech-
18 nology to be controlled, specify that they must be
19 controlled in order to achieve the intended pur-
20 pose of the controls, and describe the reasons for
21 the selection of such items;

22 (C) specify the reasons why negotiations re-
23 quired under subsection (a)(5) or (c) failed to re-
24 sult in the adoption of the controls under section

1 105, and the prospects for the multilateral adop-
2 tion of such controls;

3 (D) specify the reasons why an embargo de-
4 scribed in paragraph (1) is not presently justi-
5 fied to achieve the national security or foreign
6 policy objectives of the United States;

7 (E) include an assessment by the Secretary
8 of the economic consequences of the controls dur-
9 ing the preceding 4 months (in the case of the
10 first extension of the controls under this section)
11 or during the preceding 10 months (in the case
12 of any subsequent extension of the controls under
13 this section), including estimates of any lost
14 United States exports and jobs;

15 (F) include an assessment by the Secretary
16 of State of the objectives of the controls and the
17 extent to which the controls have attained those
18 objectives during the preceding 4 months (in the
19 case of the first extension of the controls under
20 this section) or during the preceding 10 months
21 (in the case of any subsequent extension of the
22 controls under this section); and

23 (G) include an assessment by the Secretary
24 of Defense of the impact the controls have had on
25 the national security of the United States in the

1 *preceding 4 months (in the case of the first ex-*
2 *ension of the controls under this section) or in*
3 *the preceding 10 months (in the case of any sub-*
4 *sequent extension of the controls under this sec-*
5 *tion).*

6 (2) *CONSIDERATION OF EXTENSION.—The con-*
7 *trols shall remain in effect unless the Congress, within*
8 *60 calendar days after its receipt of the report under*
9 *paragraph (1), enacts a joint resolution pursuant to*
10 *paragraph (3) disapproving the extension of the con-*
11 *trols. Any controls remaining in effect shall continue*
12 *for the period specified in the report or until termi-*
13 *nated by the President, whichever occurs first, but in*
14 *no case longer than 1 year after the date on which the*
15 *controls would otherwise expire under subsection*
16 *(a)(3), unless the Congress by law terminates the con-*
17 *trols. If the Congress, within 60 calendar days after*
18 *the date of its receipt of such report, enacts a joint*
19 *resolution disapproving the extension of such controls,*
20 *then such controls shall cease to be effective upon the*
21 *expiration of that 60-day period.*

22 (3) *JOINT RESOLUTIONS.—*

23 (A) *DEFINITION.—For purposes of this*
24 *paragraph, the term “joint resolution” means*
25 *only a joint resolution the matter after the re-*

1 *solving clause of which is as follows: “That, pur-*
2 *suant to section 106(g) of the Export Act of*
3 *1994, the President may not extend emergency*
4 *controls as specified in the report submitted to*
5 *the Congress on _____.”, with*
6 *the blank space being filled with the appropriate*
7 *date.*

8 (B) *INTRODUCTION.—On the day on which*
9 *a report is submitted to the House of Representa-*
10 *tives and the Senate under paragraph (1), a*
11 *joint resolution with respect to the extension of*
12 *controls specified in such report shall be intro-*
13 *duced (by request) in the House of Representa-*
14 *tives by the chairman of the Committee on For-*
15 *oreign Affairs, for the chairman and the ranking*
16 *minority member of the Committee, or by Mem-*
17 *bers of the House designated by the chairman*
18 *and ranking minority member; and shall be in-*
19 *troduced (by request) in the Senate by the major-*
20 *ity leader of the Senate, for the majority leader*
21 *and the minority leader of the Senate, or by*
22 *Members of the Senate designated by the major-*
23 *ity leader and the minority leader of the Senate.*
24 *If either House of Congress is not in session on*
25 *the day on which such a report is submitted, the*

1 *joint resolution shall be introduced in that*
2 *House, as provided for in the preceding sentence,*
3 *on the first day thereafter on which that House*
4 *is in session.*

5 (C) *DISCHARGE.*—*If the Committee of ei-*
6 *ther House to which a joint resolution has been*
7 *referred has not reported the joint resolution by*
8 *the end of 30 calendar days after its referral, the*
9 *committee shall be discharged from further con-*
10 *sideration of the joint resolution or of any other*
11 *joint resolution introduced with respect to the*
12 *same matter.*

13 (D) *CONSIDERATION.*—*A joint resolution*
14 *under this paragraph shall be considered in the*
15 *Senate in accordance with the provisions of sec-*
16 *tion 601(b)(4) of the International Security As-*
17 *istance and Arms Export Control Act of 1976.*
18 *For the purpose of expediting the consideration*
19 *and passage of joint resolutions reported or dis-*
20 *charged under this paragraph, it shall be in*
21 *order for the Committee on Rules of the House*
22 *of Representatives to present for consideration a*
23 *resolution of the House of Representatives pro-*
24 *viding procedures for the immediate consider-*
25 *ation of a joint resolution under this paragraph*

1 *which may be similar, if applicable, to the proce-*
2 *dures set forth in section 601(b)(4) of the Inter-*
3 *national Security Assistance and Arms Export*
4 *Control Act of 1976.*

5 (E) *DUPLICATIVE RESOLUTIONS.*—*In the*
6 *case of a joint resolution described in subpara-*
7 *graph (A), if, before the passage by one House of*
8 *a joint resolution of that House, that House re-*
9 *ceives a resolution with respect to the same mat-*
10 *ter from the other House, then—*

11 (i) *the procedure in that House shall be*
12 *the same as if no joint resolution had been*
13 *received from the other House; and*

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

16 (4) *FURTHER EXTENSIONS OF CONTROLS.*—*If,*
17 *upon the expiration of the emergency controls ex-*
18 *tended under this subsection, the President determines*
19 *that a further extension of emergency controls for an*
20 *additional period of time of not more than 1 year is*
21 *necessary, paragraphs (1) through (3) shall apply to*
22 *such further extension.*

23 (5) *CALCULATION OF TIME PERIODS.*—*For pur-*
24 *poses of calculating calendar days under this sub-*
25 *section, there shall be excluded the days on which ei-*

1 *ther House of Congress is not in session because of an*
2 *adjournment of more than 3 days to a day certain or*
3 *because of an adjournment of the Congress sine die.*

4 *(h) EFFECT ON OTHER AUTHORITY.—*

5 *(1) EMBARGO AUTHORITY.—Nothing in this sec-*
6 *tion shall be construed to limit the authority of the*
7 *President to impose an embargo described in sub-*
8 *section (f)(1) on exports to, and imports from, a spe-*
9 *cific country under the International Emergency Eco-*
10 *nomics Powers Act, the Trading with the Enemy Act,*
11 *or other provision of law (other than this title). In*
12 *any case in which the President exercises any such*
13 *authority to impose an embargo, the requirements of*
14 *this section shall not apply for so long as such embar-*
15 *go is in effect.*

16 *(2) EFFECT ON EXISTING EMBARGOES.—(A)*
17 *Nothing in this section affects the authorities con-*
18 *ferred upon the President by section 5(b) of the Trad-*
19 *ing with the Enemy Act, which were being exercised*
20 *with respect to a country on July 1, 1977, as a result*
21 *of a national emergency declared by the President be-*
22 *fore that date, and are being exercised on the date of*
23 *the enactment of this Act.*

24 *(B) Nothing in this section affects the authorities*
25 *conferred upon the President by the International*

1 *Economic Powers Act or other provision of law (other*
2 *than the Export Administration Act of 1979), which*
3 *were being exercised with respect to a country before*
4 *the date of the enactment of this Act as a result of*
5 *a national emergency declared by the President before*
6 *that date, and are being exercised with respect to such*
7 *country on such date of enactment.*

8 *(i) COUNTRIES SUPPORTING INTERNATIONAL TERROR-*
9 *ISM.—*

10 *(1) PROHIBITION ON EXPORTS.—(A) No export*
11 *or reexport of commodities or technology described in*
12 *subparagraph (B) may be made to any country the*
13 *government of which the Secretary of State has deter-*
14 *mined has repeatedly provided support for acts of*
15 *international terrorism.*

16 *(B) The commodities or technology referred to in*
17 *subparagraph (A) are—*

18 *(i) any commodities or technology the ex-*
19 *port of which is controlled under this title pursu-*
20 *ant to the Missile Technology Control Regime or*
21 *the Australia Group, or controlled under this*
22 *title pursuant to section 309(c) of the Nuclear*
23 *Non-Proliferation Act of 1978,*

1 (ii) any commodities or technology de-
2 scribed in section 105(a)(1)(B) the export of
3 which is controlled under section 105, and

4 (iii) any commodities or technology the ex-
5 port of which could make a significant contribu-
6 tion to the military potential of a country de-
7 scribed in subparagraph (A), including its mili-
8 tary logistics capability, or could enhance the
9 ability of such country to support acts of inter-
10 national terrorism,

11 other than commodities or technology that the Presi-
12 dent determines will be used only for humanitarian
13 purposes. A validated license shall be required for the
14 export under this paragraph of any such commodities
15 or technology that will be used only for humanitarian
16 purposes.

17 (C) Paragraphs (3)(A) and (4) of subsection (a)
18 shall not apply to exports prohibited or restricted
19 under this subsection.

20 (D)(i) The Secretary shall review the list of
21 items described in subparagraph (B)(iii) at least an-
22 nually. At the conclusion of the review, the Secretary
23 shall justify the inclusion of each item on the list, re-
24 move items from the list, change the specifications of
25 items on the list, or add items to the list, in order to

1 *ensure that the items on the list meet the requirements*
2 *of subparagraph (B)(iii).*

3 (ii) *The procedures set forth in subparagraphs*
4 *(B), (C), and (E) of section 105(j) shall apply to re-*
5 *views under clause (i) of the list of items described in*
6 *subparagraph (B)(iii) to the same extent as such sub-*
7 *paragraphs apply to reviews of the security control*
8 *list under section 105(j).*

9 (2) *NOTIFICATION OF CONGRESS OF LICENSES*
10 *ISSUED.—The Secretary and the Secretary of State*
11 *shall notify the Committee on Foreign Affairs of the*
12 *House of Representatives and the Committee on*
13 *Banking, Housing, and Urban Affairs and the Com-*
14 *mittee on Foreign Relations of the Senate at least 30*
15 *days before issuing any validated license under this*
16 *title for exports to a country the government of which*
17 *the Secretary of State has determined has repeatedly*
18 *provided support for acts of international terrorism.*

19 (3) *PUBLICATION OF DETERMINATIONS.—Each*
20 *determination of the Secretary of State under para-*
21 *graph (1)(A), and each determination under section*
22 *6(j)(1)(A) of the Export Administration Act of 1979*
23 *in effect at the time this title takes effect, shall be pub-*
24 *lished in the Federal Register.*

1 (4) *RESCISSION OF DETERMINATIONS.*—A deter-
2 mination made by the Secretary of State under para-
3 graph (1)(A) may not be rescinded unless the Presi-
4 dent submits to the Speaker of the House of Rep-
5 resentatives and the chairman of the Committee on
6 Banking, Housing, and Urban Affairs and the chair-
7 man of the Committee on Foreign Relations of the
8 Senate—

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

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

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

16 (iii) that government has provided as-
17 surances that it will not support acts of
18 international terrorism in the future; or

19 (B) at least 45 days before the proposed re-
20 scission would take effect, a report justifying the
21 rescission and certifying that—

22 (i) the government concerned has not
23 provided any support for international ter-
24 rorism during the preceding 6-month pe-
25 riod; and

1 (ii) the government concerned has pro-
2 vided assurances that it will not support
3 acts of international terrorism in the future.

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

7 (A) the President determines that the trans-
8 action is essential to the national security inter-
9 ests of the United States; and

10 (B) not less than 30 days prior to the pro-
11 posed transaction, the President—

12 (i) consults with the Committee on
13 Foreign Affairs of the House of Representa-
14 tives and the Committee on Banking, Hous-
15 ing, and Urban Affairs of the Senate re-
16 garding the proposed transaction; and

17 (ii) submits to the Speaker of the
18 House of Representatives and the chairman
19 of the Committee on Banking, Housing, and
20 Urban Affairs of the Senate a report con-
21 taining—

22 (I) the name of any country in-
23 volved in the proposed transaction, the
24 identity of any recipient of the items
25 to be provided pursuant to the pro-

1 *posed transaction, and the anticipated*
2 *use of those items;*

3 *(II) a description of the items in-*
4 *involved in the proposed transaction (in-*
5 *cluding their market value) and the ac-*
6 *tual sale price at each step in the*
7 *transaction;*

8 *(III) the reasons why the proposed*
9 *transaction is essential to the national*
10 *security interests of the United States*
11 *and the justification for the proposed*
12 *transaction;*

13 *(IV) the date on which the pro-*
14 *posed transaction is expected to occur;*
15 *and*

16 *(V) the name of every United*
17 *States Government department, agen-*
18 *cy, or other entity involved in the pro-*
19 *posed transaction, and every foreign*
20 *government involved in the proposed*
21 *transaction.*

22 *To the extent possible, the information specified in*
23 *clause (ii) of subparagraph (B) shall be provided in*
24 *unclassified form, with any classified information*
25 *provided in an addendum to the report.*

1 (6) *MULTILATERAL REGIMES.*—*The Secretary of*
2 *State shall propose to COCOM, to the Australia*
3 *Group, to the countries participating in the Missile*
4 *Technology Control Regime, and to the Nuclear Sup-*
5 *pliers Group, that each such group adopt those con-*
6 *trols that are imposed by this subsection on exports*
7 *of commodities or technology subject to control by*
8 *such group. The Secretary of State shall continue to*
9 *make such proposals until such export controls are so*
10 *adopted.*

11 (7) *EFFECT ON OTHER LAWS.*—*The provisions of*
12 *this subsection do not affect any other provision of*
13 *law to the extent such other provision imposes greater*
14 *restrictions on exports to any country the government*
15 *of which the Secretary of State has determined has re-*
16 *peatedly provided support for acts of international*
17 *terrorism than are imposed under this subsection.*

18 (j) *CRIME CONTROL INSTRUMENTS.*—

19 (1) *VALIDATED LICENSE REQUIRED.*—*Crime*
20 *control and detection instruments and equipment*
21 *shall be approved for export by the Secretary only*
22 *pursuant to a validated export license. Paragraphs*
23 *(3)(A) and (4) of subsection (a) shall not apply to the*
24 *export controls imposed by this subsection.*

1 (2) *CONSULTATION WITH SECRETARY OF*
2 *STATE.—*

3 (A) *ITEMS ON CONTROL LIST.—Any deter-*
4 *mination of the Secretary of what commodities*
5 *or technology shall be included on the control*
6 *index as a result of the export restrictions im-*
7 *posed by this subsection shall be made after con-*
8 *sultation with the Secretary of State.*

9 (B) *ACTION ON LICENSE APPLICATION.—*
10 *Any determination of the Secretary to approve*
11 *or deny an export license application to export*
12 *crime control or detection instruments or equip-*
13 *ment shall be made after consultation with the*
14 *Secretary of State.*

15 (3) *DISPUTE RESOLUTION.—If the Secretary of*
16 *State does not agree with the Secretary with respect*
17 *to any determination under paragraph (2), the Sec-*
18 *retary of State shall refer the matter to the President*
19 *for resolution.*

20 (4) *EXCEPTIONS.—The provisions of this sub-*
21 *section shall not apply with respect to exports to*
22 *countries which are members of the North Atlantic*
23 *Treaty Organization or to Japan, Australia, or New*
24 *Zealand, or to such other countries as the President*
25 *shall designate consistent with the purposes of this*

1 *subsection and section 502B of the Foreign Assistance*
2 *Act of 1961.*

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

8 **(I) TREATMENT OF CERTAIN SENSITIVE**
9 **ITEMS.—**

10 **(1) FINDINGS.—The Congress makes**
11 **the following findings:**

12 **(A) The United States continues**
13 **to play a leadership role in control-**
14 **ling the export of sensitive dual use**
15 **items and munitions items to dan-**
16 **gerous countries.**

17 **(B) The importance of maintain-**
18 **ing this leadership and securing the**
19 **adherence of friendly nations to ex-**
20 **port restrictions similar to those of**
21 **the United States was demonstrated**
22 **by the large number of dual use and**
23 **munitions items Iraq was able to se-**
24 **cure from Western exporters prior to**
25 **Desert Storm.**

1 **(C) Besides Iraq, the United**
2 **States has voiced its concern about**
3 **Libya, North Korea, Syria, Cuba, and**
4 **Iran acquiring dual use and muni-**
5 **tions items from Western sources, re-**
6 **publics of the former Soviet Union,**
7 **and the Peoples' Republic of China.**

8 **(D) Since Desert Storm, the Unit-**
9 **ed States has learned that a substan-**
10 **tial number of sensitive items Iraq re-**
11 **ceived from Western nations were not**
12 **sent directly, but were reexported**
13 **from third-party destinations.**

14 **(E) The threat of third-party reex-**
15 **ports of sensitive exports could be ag-**
16 **gravated by proposals to send dual**
17 **use items to friendly nations “license-**
18 **free” or under “substitute” licensing**
19 **schemes that would be less restrictive**
20 **than individual validated licensing,**
21 **which requires prior United States**
22 **consent for any reexport.**

23 **(F) Eliminating or reducing indi-**
24 **vidual validated licensing require-**
25 **ments on sensitive dual use and mu-**

1 **ditions exports to friendly countries**
2 **increases the risk that such items will**
3 **be reexported to rogue countries, in-**
4 **cluding Iran, Iraq, Syria, Libya, Cuba,**
5 **and North Korea.**

6 **(2) POLICY STATEMENT.—It shall be the**
7 **policy of the United States to maintain its**
8 **international leadership in restricting**
9 **the export of sensitive dual use items and**
10 **of munitions to rogue countries such as**
11 **Iran, Iraq, Syria, Libya, Cuba, and North**
12 **Korea by—**

13 **(A) maintaining existing unilat-**
14 **eral controls whenever necessary to**
15 **keep sensitive United States dual use**
16 **items and munitions from being ex-**
17 **ported to these countries;**

18 **(B) encouraging all other coun-**
19 **tries producing such items to restrict**
20 **the export of these items in a similar**
21 **manner;**

22 **(C) working with the republics of**
23 **the former Soviet Union and of the**
24 **members of COCOM to create a suc-**
25 **cessor to COCOM that would prohibit**

1 **the export of the most sensitive dual**
2 **use items and munitions to rogue**
3 **countries such as Iran, Iraq, Syria,**
4 **Libya, Cuba, and North Korea; and**

5 **(D) not reducing existing levels of**
6 **controls on the export of sensitive**
7 **dual use items and munitions**
8 **through the creation of license-free**
9 **zones and substitute licensing**
10 **schemes.**

11 **(3) LICENSING REQUIREMENT.—**

12 **(A) LIST OF SENSITIVE ITEMS.—Not-**
13 **withstanding any other provision of**
14 **this title, the President, in consulta-**
15 **tion with the Secretary and the Sec-**
16 **retaries of State, Defense, and Energy**
17 **and the Director of the Arms Control**
18 **and Disarmament Agency, shall com-**
19 **pile a list of the most sensitive dual**
20 **use and munitions items the Presi-**
21 **dent wishes to deny to the countries**
22 **set forth in subparagraph (C). This**
23 **list shall indicate whether the item is**
24 **being controlled unilaterally or with**
25 **other countries and shall be pub-**

1 **lished in the Federal Register not**
2 **later than 60 days after the date of**
3 **the enactment of this Act.**

4 **(B) INDIVIDUAL VALIDATED LICENSE**
5 **REQUIREMENT.—The President shall**
6 **instruct the Secretary to require an**
7 **individual validated license for the**
8 **export to any destination of any item**
9 **on the list compiled under subpara-**
10 **graph (A).**

11 **(C) LIST OF COUNTRIES.—The coun-**
12 **tries referred to in subparagraph (A)**
13 **are Iran, Iraq, Syria, Libya, Cuba, and**
14 **North Korea.**

15 **SEC. 107. SHORT SUPPLY CONTROLS.**

16 *(a) AUTHORITY.—*

17 *(1) IN GENERAL.—In order to carry out the pol-*
18 *icy set forth in section 103(4), the President may pro-*
19 *hibit or curtail the export of any commodities subject*
20 *to the jurisdiction of the United States or exported by*
21 *any person subject to the jurisdiction of the United*
22 *States. In curtailing exports to carry out the policy*
23 *set forth in section 103(4), the President shall allocate*
24 *a portion of export licenses on the basis of factors*
25 *other than a prior history of exportation. Such factors*

1 *shall include the extent to which a country engages in*
2 *equitable trade practices with respect to United States*
3 *commodities and treats the United States equitably in*
4 *times of short supply.*

5 (2) *PUBLIC PARTICIPATION.*—*Upon imposing*
6 *quantitative restrictions on exports of any commod-*
7 *ities to carry out the policy set forth in section*
8 *103(4), the Secretary shall include in a notice pub-*
9 *lished in the Federal Register with respect to such re-*
10 *strictions an invitation to all interested parties to*
11 *submit written comments within 15 days after the*
12 *date of publication on the impact of such restrictions*
13 *and the method of licensing used to implement them.*

14 (3) *LICENSE FEES.*—*In imposing export controls*
15 *under this section, the President's authority shall in-*
16 *clude, but not be limited to, the imposition of export*
17 *license fees.*

18 (b) *MONITORING.*—

19 (1) *IN GENERAL.*—*In order to carry out the pol-*
20 *icy set forth in section 103(4), the Secretary shall*
21 *monitor exports, and contracts for exports, of any*
22 *commodity when the volume of such exports in rela-*
23 *tion to domestic supply contributes, or may contrib-*
24 *ute, to an increase in domestic prices or a domestic*
25 *shortage, and such price increase or shortage has, or*

1 *may have, a serious adverse impact on the economy*
2 *or any sector thereof. Any such monitoring shall com-*
3 *mence at a time adequate to assure that the monitor-*
4 *ing will result in a data base sufficient to enable poli-*
5 *cies to be developed, in accordance with section*
6 *103(4), to mitigate a short supply situation or serious*
7 *inflationary price rise or, if export controls are need-*
8 *ed, to permit imposition of such controls in a timely*
9 *manner. Information which the Secretary requires to*
10 *be furnished in effecting such monitoring shall be con-*
11 *fidential, except as provided in paragraph (2).*

12 (2) *REPORTS ON MONITORING.—The results of*
13 *monitoring under paragraph (1) shall, to the extent*
14 *practicable, be aggregated and included in weekly re-*
15 *ports setting forth, with respect to each item mon-*
16 *itored, actual and anticipated exports, the destination*
17 *by country, and the domestic and worldwide price,*
18 *supply, and demand. Such reports may be made*
19 *monthly if the Secretary determines that there is in-*
20 *sufficient information to justify weekly reports.*

21 (3) *CONSULTATION WITH SECRETARY OF EN-*
22 *ERGY.—The Secretary shall consult with the Sec-*
23 *retary of Energy to determine whether monitoring or*
24 *export controls under this section are warranted with*
25 *respect to exports of facilities, machinery, or equip-*

1 *ment normally and principally used, or intended to*
2 *be used, in the production, conversion, or transpor-*
3 *tation of fuels and energy (except nuclear energy), in-*
4 *cluding, but not limited to—*

5 *(A) drilling rigs, platforms, and equipment;*

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

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

10 *(D) oil and gas pipelines, pumping sta-*
11 *tions, and associated equipment; and*

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

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

16 *(1) IN GENERAL.—(A) Any entity, including a*
17 *trade association, firm, or certified or recognized*
18 *union or group of workers, that is representative of*
19 *an industry or a substantial segment of an industry*
20 *that processes metallic materials capable of being re-*
21 *cycled may transmit a written petition to the Sec-*
22 *retary requesting the monitoring of exports or the im-*
23 *position of export controls, or both, with respect to*
24 *any such material, in order to carry out the policy*
25 *set forth in section 103(4).*

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

7 (2) PUBLICATION OF NOTICE.—Within 15 days
8 after receipt of any petition described in paragraph
9 (1), the Secretary shall publish a notice in the Fed-
10 eral Register. The notice shall—

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

13 (B) include the schedule B number of the
14 material as set forth in the Statistical Classifica-
15 tion of Domestic and Foreign Commodities Ex-
16 ported from the United States;

17 (C) indicate whether the petition is request-
18 ing that controls or monitoring, or both, be im-
19 posed with respect to the exportation of such ma-
20 terial; and

21 (D) provide that interested persons shall
22 have a period of 30 days beginning on the date
23 on which the notice is published to submit to the
24 Secretary written data, views, or arguments,

1 *with or without opportunity for oral presen-*
2 *tation, with respect to the matter involved.*

3 *At the request of the petitioner or any other entity de-*
4 *scribed in paragraph (1)(A) with respect to the mate-*
5 *rial which is the subject of the petition, or at the re-*
6 *quest of any entity representative of producers or ex-*
7 *porters of such material, the Secretary shall conduct*
8 *public hearings with respect to the subject of the peti-*
9 *tion, in which case the 30-day period may be ex-*
10 *tended to 45 days.*

11 (3) *DETERMINATION OF MONITORING OR CON-*
12 *TROLS.—(A) Within 45 days after the end of the 30-*
13 *or 45-day period described in paragraph (2), as the*
14 *case may be, the Secretary shall determine whether to*
15 *impose monitoring or controls, or both, on the export*
16 *of the material that is the subject of the petition in*
17 *order to carry out the policy set forth in section*
18 *103(4). In making such determination, the Secretary*
19 *shall determine whether—*

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

1 (ii) there has been a significant increase in
2 domestic price of such material or a domestic
3 shortage of such material relative to demand;

4 (iii) exports of such material are as impor-
5 tant as any other cause of a domestic price in-
6 crease or shortage relative to demand found
7 under clause (ii);

8 (iv) a domestic price increase or shortage
9 relative to demand found under clause (ii) has
10 significantly adversely affected or may signifi-
11 cantly adversely affect the national economy or
12 any sector thereof, including a domestic indus-
13 try; and

14 (v) monitoring or controls, or both, are nec-
15 essary in order to carry out the policy set forth
16 in section 103(4).

17 (B) The Secretary shall publish in the Federal
18 Register a detailed statement of the reasons for the
19 Secretary's determination under subparagraph (A) of
20 whether to impose monitoring or controls, or both, in-
21 cluding the findings of fact in support of that deter-
22 mination.

23 (4) PUBLICATION OF REGULATIONS.—Within 15
24 days after making a determination under paragraph
25 (3) to impose monitoring or controls on the export of

1 *a material, the Secretary shall publish in the Federal*
2 *Register proposed regulations with respect to such*
3 *monitoring or controls. Within 30 days after the pub-*
4 *lication of such proposed regulations, and after con-*
5 *sidering any public comments on the proposed regula-*
6 *tions, the Secretary shall publish and implement final*
7 *regulations with respect to such monitoring or con-*
8 *trols.*

9 (5) *CONSOLIDATION OF PETITIONS.—For pur-*
10 *poses of publishing notices in the Federal Register*
11 *and scheduling public hearings pursuant to this sub-*
12 *section, the Secretary may consolidate petitions, and*
13 *responses to such petitions, which involve the same or*
14 *related materials.*

15 (6) *SUBSEQUENT PETITIONS ON SAME MATE-*
16 *RIAL.—If a petition with respect to a particular ma-*
17 *terial or group of materials has been considered in ac-*
18 *cordance with all the procedures described in this sub-*
19 *section, the Secretary may determine, in the absence*
20 *of significantly changed circumstances, that any other*
21 *petition with respect to the same material or group*
22 *of materials which is filed within 6 months after the*
23 *consideration of the prior petition has been completed*
24 *does not merit complete consideration under this sub-*
25 *section.*

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

8 (8) *TEMPORARY CONTROLS.*—*The Secretary may*
9 *impose monitoring or controls, on a temporary basis,*
10 *on the export of a metallic material after a petition*
11 *is filed under paragraph (1)(A) with respect to that*
12 *material but before the Secretary makes a determina-*
13 *tion under paragraph (3) with respect to that mate-*
14 *rial only if—*

15 (A) *the failure to take such temporary ac-*
16 *tions would result in irreparable harm to the en-*
17 *tity filing the petition, or to the national econ-*
18 *omy or segment thereof, including a domestic in-*
19 *dustry, and*

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

23 (9) *OTHER AUTHORITY NOT AFFECTED.*—*The*
24 *authority under this subsection shall not be construed*
25 *to affect the authority of the Secretary under any*

1 *other provision of this title, except that if the Sec-*
2 *retary determines, on the Secretary's own initiative,*
3 *to impose monitoring or controls, or both, on the ex-*
4 *port of metallic materials capable of being recycled,*
5 *under the authority of this section, the Secretary shall*
6 *publish the reasons for such action in accordance with*
7 *paragraph (3)(A) and (B).*

8 *(10) SUBMISSION AND CONSIDERATION OF ADDI-*
9 *TIONAL INFORMATION.—Nothing contained in this*
10 *subsection shall be construed to preclude submission*
11 *on a confidential basis to the Secretary of informa-*
12 *tion relevant to a decision to impose or remove mon-*
13 *itoring or controls under the authority of this title, or*
14 *to preclude consideration of such information by the*
15 *Secretary in reaching decisions required under this*
16 *subsection. The provisions of this paragraph shall not*
17 *be construed to affect the applicability of section*
18 *552(b) of title 5, United States Code.*

19 *(d) DOMESTICALLY PRODUCED CRUDE OIL.—*

20 *(1) PROHIBITION ON EXPORTS.—Notwithstand-*
21 *ing any other provision of this title and notwith-*
22 *standing subsection (u) of section 28 of the Mineral*
23 *Leasing Act of 1920 (30 U.S.C. 185), no domestically*
24 *produced crude oil transported by pipeline over right-*
25 *of-way granted pursuant to section 203 of the Trans-*

1 *Alaska Pipeline Authorization Act (43 U.S.C. 1652)*
2 *may, subject to paragraph (2), be exported from the*
3 *United States, except any such crude oil which—*

4 *(A) is exported to an adjacent foreign coun-*
5 *try to be refined and consumed therein in an ex-*
6 *change that—*

7 *(i) is for the same quantity of crude oil*
8 *being exported from that country to the*
9 *United States; and*

10 *(ii) results through convenience or in-*
11 *creased efficiency of transportation in lower*
12 *prices for consumers of petroleum products*
13 *in the United States as described in para-*
14 *graph (2)(A)(ii);*

15 *(B) is temporarily exported for convenience*
16 *or increased efficiency of transportation across*
17 *parts of an adjacent foreign country and reenters*
18 *the United States; or*

19 *(C) is transported to Canada, to be*
20 *consumed therein, in amounts not to exceed an*
21 *annual average of 50,000 barrels per day, in ad-*
22 *dition to exports under subparagraphs (A) and*
23 *(B), except that any ocean transportation of such*
24 *oil shall be by vessels documented under section*
25 *12106 of title 46, United States Code.*

1 (2) *EXCEPTIONS.*—Crude oil subject to the prohi-
2 bition contained in paragraph (1) may be exported
3 only if—

4 (A) the President so recommends to the
5 Congress after making and publishing express
6 findings that exports of such crude oil, including
7 exchanges—

8 (i) will not diminish the total quantity
9 or quality of petroleum refined within,
10 stored within, or legally committed to be
11 transported to and sold within the United
12 States;

13 (ii) will, within 3 months following the
14 initiation of such exports or exchanges, re-
15 sult in—

16 (I) acquisition costs to the refiners
17 that purchase the imported crude oil
18 being lower than the acquisition costs
19 such refiners would have to pay for the
20 domestically produced oil in the ab-
21 sence of such an export or exchange,
22 and

23 (II) not less than 75 percent of
24 such savings in costs being reflected in

1 *wholesale and retail prices of products*
2 *refined from such imported crude oil;*

3 *(iii) will be made only pursuant to*
4 *contracts which may be terminated if the*
5 *crude oil supplies of the United States are*
6 *interrupted, threatened, or diminished;*

7 *(iv) are clearly necessary to protect the*
8 *national interest; and*

9 *(v) are in accordance with the provi-*
10 *sions of this title; and*

11 *(B) the President includes such findings in*
12 *the recommendation to the Congress and the*
13 *Congress, within 60 days after receiving that rec-*
14 *ommendation, agrees to a joint resolution which*
15 *approves such exports on the basis of those find-*
16 *ings, and which is thereafter enacted into law.*

17 *(3) EXPORTS UNDER BILATERAL AGREE-*
18 *MENTS.—Notwithstanding any other provision of this*
19 *section or any other provision of law, including sub-*
20 *section (u) of section 28 of the Mineral Leasing Act*
21 *of 1920, the President may export oil to any country*
22 *pursuant to a bilateral international oil supply*
23 *agreement entered into by the United States with such*
24 *country before June 25, 1979, or to any country pur-*

1 *suant to the International Emergency Oil Sharing*
2 *Plan of the International Energy Agency.*

3 *(e) REFINED PETROLEUM PRODUCTS.—*

4 *(1) EXPORT LICENSES.—In any case in which*
5 *the President determines that it is necessary to im-*
6 *pose export controls on refined petroleum products in*
7 *order to carry out the policy set forth in section*
8 *103(4), the President shall notify the Congress of that*
9 *determination. The President shall also notify the*
10 *Congress if and when the President determines that*
11 *such export controls are no longer necessary. During*
12 *any period in which a determination that such export*
13 *controls are necessary is in effect, no refined petro-*
14 *leum product may be exported except pursuant to an*
15 *export license specifically authorizing such export.*

16 *(2) NOTIFICATION TO CONGRESS AND LAY-*
17 *OVER.—(A) Not later than 5 days after an applica-*
18 *tion for a license to export any refined petroleum*
19 *product is received, the Secretary shall notify the*
20 *Congress of such application, together with the name*
21 *of the exporter, the destination of the proposed export,*
22 *and the amount and price of the proposed export.*
23 *Such notification shall be made to the chairman of*
24 *the Committee on Foreign Affairs of the House of*
25 *Representatives and the chairman of the Committee*

1 on Banking, Housing, and Urban Affairs of the Sen-
2 ate.

3 (B) *The Secretary may not grant such license*
4 *during the 30-day period beginning on the date on*
5 *which notification to the Congress under paragraph*
6 *(1) is received, unless the President certifies in writ-*
7 *ing to the Speaker of the House of Representatives*
8 *and the President pro tempore of the Senate that the*
9 *proposed export is vital to the national interest and*
10 *that a delay in issuing the license would adversely af-*
11 *fect that interest.*

12 (3) *EXCEPTION.—This subsection shall not apply*
13 *to—*

14 (A) *any export license application for ex-*
15 *ports to a country with respect to which histori-*
16 *cal export quotas established by the Secretary on*
17 *the basis of past trading relationships apply; or*

18 (B) *any license application for exports to a*
19 *country if exports under the license would not re-*
20 *sult in the export from the United States of more*
21 *than 250,000 barrels of refined petroleum prod-*
22 *ucts to such country in any fiscal year.*

23 (4) *DEFINITION.—For purposes of this sub-*
24 *section, the term “refined petroleum product” means*
25 *gasoline, kerosene, distillates, propane or butane gas,*

1 *diesel fuel, and residual fuel oil, that is refined within*
2 *the United States or entered for consumption within*
3 *the United States.*

4 (5) *EXTENSION OF LICENSE APPLICATION PROC-*
5 *ESSING TIME.—The Secretary may extend any time*
6 *period prescribed in section 109 to the extent nec-*
7 *essary to take into account delays in action by the*
8 *Secretary on a license application on account of the*
9 *provisions of this subsection.*

10 (f) *CERTAIN PETROLEUM PRODUCTS.—Petroleum*
11 *products refined in United States foreign trade zones, or*
12 *in the United States Territory of Guam, from foreign crude*
13 *oil shall be excluded from any quantitative restrictions im-*
14 *posed under this section, except that, if the Secretary finds*
15 *that a product is in short supply, the Secretary may issue*
16 *such regulations as may be necessary to limit exports.*

17 (g) *AGRICULTURAL COMMODITIES.—*

18 (1) *APPROVAL OF CONTROLS BY SECRETARY OF*
19 *AGRICULTURE.—The authority conferred by this sec-*
20 *tion shall not be exercised with respect to any agricul-*
21 *tural commodity, including fats and oils or animal*
22 *hides or skins, without the approval of the Secretary*
23 *of Agriculture. The Secretary of Agriculture shall not*
24 *approve the exercise of such authority with respect to*
25 *any such commodity during any period for which the*

1 *supply of such commodity is determined by the Sec-*
2 *retary of Agriculture to be in excess of the require-*
3 *ments of the domestic economy, except to the extent*
4 *the President determines that the controls on such ag-*
5 *ricultural commodities are also imposed under section*
6 *106. The Secretary of Agriculture shall, by exercising*
7 *the authority which the Secretary of Agriculture has*
8 *under other applicable provisions of law, collect data*
9 *with respect to export sales of animal hides and skins.*

10 (2) *PROTECTION OF STORED COMMODITIES FROM*
11 *FUTURE CONTROLS.—Upon approval of the Secretary,*
12 *in consultation with the Secretary of Agriculture, ag-*
13 *ricultural commodities purchased by or for use in a*
14 *foreign country may remain in the United States for*
15 *export at a later date free from any quantitative lim-*
16 *itations on export which may be imposed to carry out*
17 *the policy set forth in section 103(4) subsequent to*
18 *such approval. The Secretary may not grant such ap-*
19 *proval unless the Secretary receives adequate assur-*
20 *ance and, in conjunction with the Secretary of Agri-*
21 *culture, finds—*

22 (A) *that such commodities will eventually*
23 *be exported,*

24 (B) *that neither the sale nor export thereof*
25 *will result in an excessive drain of scarce mate-*

1 *rial and have a serious domestic inflationary*
2 *impact,*

3 *(C) that storage of such commodities in the*
4 *United States will not unduly limit the space*
5 *available for storage of domestically owned com-*
6 *modities, and*

7 *(D) that the purpose of such storage is to es-*
8 *tablish a reserve of such commodities for later*
9 *use, not including resale to or use by another*
10 *country.*

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

13 *(3) PROCEDURES FOR IMPOSING CONTROLS.—*

14 *(A) If the President imposes export controls on any*
15 *agricultural commodity under section 106 (including*
16 *section 106(i)) or this section, the President shall im-*
17 *mediately transmit a report on such action to the*
18 *Congress, setting forth the reasons for the controls in*
19 *detail and specifying the period of time, which may*
20 *not exceed 1 year, that the controls are proposed to*
21 *be in effect. If the Congress, within 60 days after the*
22 *date of the receipt of the report, adopts a joint resolu-*
23 *tion pursuant to paragraph (4) approving the impo-*
24 *sition of the export controls, then such controls shall*
25 *remain in effect for the period specified in the report,*

1 *or until terminated by the President, whichever occurs*
2 *first. If the Congress, within 60 days after the date*
3 *of its receipt of such report, fails to adopt a joint res-*
4 *olution approving such controls, then such controls*
5 *shall cease to be effective upon the expiration of that*
6 *60-day period.*

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

9 *(i) which are extended under this title if the*
10 *controls, when imposed, were approved by the*
11 *Congress under subparagraph (A) and para-*
12 *graph (4); or*

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

16 *(4) EXPEDITED PROCEDURES.—(A) For pur-*
17 *poses of this paragraph, the term “joint resolution”*
18 *means only a joint resolution the matter after the re-*
19 *solving clause of which is as follows: “That pursuant*
20 *to section 107(g)(3) of the Export Act of 1994, the*
21 *President may impose export controls as specified in*
22 *the report submitted to the Congress on _____.”,*
23 *with the blank space being filled with the appropriate*
24 *date.*

1 (B) On the day on which a report is submitted
2 to the House of Representatives and the Senate under
3 paragraph (3), a joint resolution with respect to the
4 export controls specified in such report shall be intro-
5 duced (by request) in the House by the chairman of
6 the Committee on Foreign Affairs, for the chairman
7 and the ranking minority member of the Committee,
8 or by Members of the House designated by the chair-
9 man and ranking minority member; and shall be in-
10 troduced (by request) in the Senate by the majority
11 leader of the Senate, for the chairman and the minor-
12 ity leader of the Senate, or by Members of the Senate
13 designated by the majority leader and minority lead-
14 er of the Senate. If either House is not in session on
15 the day on which such a report is submitted, the joint
16 resolution shall be introduced in that House, as pro-
17 vided in the preceding sentence, on the first day there-
18 after on which that House is in session.

19 (C) If the committee of either House to which a
20 joint resolution has been referred has not reported the
21 joint resolution at the end of 30 days after its refer-
22 ral, the committee shall be discharged from further
23 consideration of the resolution or of any other joint
24 resolution introduced with respect to the same matter.

1 (D) A joint resolution under this paragraph
2 shall be considered in the Senate in accordance with
3 the provisions of section 601(b)(4) of the Inter-
4 national Security Assistance and Arms Export Con-
5 trol Act of 1976. For the purpose of expediting the
6 consideration and passage of joint resolutions re-
7 ported or discharged pursuant to the provisions of
8 this paragraph, it shall be in order for the Committee
9 on Rules of the House of Representatives to present
10 for consideration a resolution of the House of Rep-
11 resentatives providing procedures for the immediate
12 consideration of a joint resolution under this para-
13 graph which may be similar, if applicable, to the pro-
14 cedure set forth in section 601(b)(4) of the Inter-
15 national Security Assistance and Arms Export Con-
16 trol Act of 1976.

17 (E) In the case of a joint resolution described in
18 subparagraph (A), if, before the passage by one House
19 of a joint resolution of that House, that House re-
20 ceives a resolution with respect to the same matter
21 from the other House, then—

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

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

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

11 (h) BARTER AGREEMENTS.—

12 (1) EXEMPTION FROM CONTROLS.—The expor-
13 tation pursuant to a barter agreement of any com-
14 modities which may lawfully be exported from the
15 United States, for any commodities which may law-
16 fully be imported into the United States, may be ex-
17 empted, in accordance with paragraph (2), from any
18 quantitative limitation on exports (other than any re-
19 porting requirement) imposed to carry out the policy
20 set forth in section 103(4).

21 (2) CRITERIA FOR EXEMPTION.—The Secretary
22 shall grant an exemption under paragraph (1) if the
23 Secretary finds, after consultation with the appro-
24 priate department or agency of the United States,
25 that—

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

3 (i) the average annual quantity of the
4 commodities to be exported pursuant to the
5 barter agreement will not be required to sat-
6 isfy the average amount of such commod-
7 ities estimated to be required annually by
8 the domestic economy and will be surplus
9 thereto; and

10 (ii) the average annual quantity of the
11 commodities to be imported will be less than
12 the average amount of such commodities es-
13 timated to be required annually to supple-
14 ment domestic production; and

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

19 (3) *DEFINITION.*—For purposes of this sub-
20 section, the term “barter agreement” means any
21 agreement which is made for the exchange, without
22 monetary consideration, of any commodities produced
23 in the United States for any commodities produced
24 outside of the United States.

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

4 (i) *UNPROCESSED RED CEDAR.*—

5 (1) *PROHIBITION.*—*No unprocessed western red*
6 *cedar (Thuja plicata) logs harvested from State or*
7 *Federal lands may be exported from the United*
8 *States.*

9 (2) *RED CEDAR NOT AN AGRICULTURAL COM-*
10 *MODITY.*—*Unprocessed western red cedar logs shall*
11 *not be considered to be an agricultural commodity for*
12 *purposes of subsection (g).*

13 (3) *DEFINITION.*—*As used in this subsection, the*
14 *term “unprocessed western red cedar” means red*
15 *cedar timber which has not been processed into—*

16 (A) *lumber of American Lumber Standards*
17 *Grades of Number 3 dimension or better, or Pa-*
18 *cific Lumber Inspection Bureau Export R-List*
19 *Grades of Number 3 common or better;*

20 (B) *chips, pulp, and pulp products;*

21 (C) *veneer and plywood;*

22 (D) *poles, posts, or pilings cut or treated*
23 *with preservative for use as such and not in-*
24 *tended to be further processed; or*

25 (E) *shakes and shingles.*

1 (j) *EFFECT OF CONTROLS ON EXISTING CONTRACTS.*—

2 (1) *WESTERN RED CEDAR.*—*The export restric-*
3 *tions contained in subsection (i) and any export con-*
4 *trols imposed under this section shall not affect—*

5 (A) *any contract to harvest unprocessed*
6 *western red cedar from State lands which was*
7 *entered into before October 1, 1979, and the per-*
8 *formance of which would make the red cedar*
9 *available for export; or*

10 (B) *any contract to harvest unprocessed red*
11 *cedar which was entered into after September 30,*
12 *1979, and before October 1, 1982, and the per-*
13 *formance of which would make the red cedar*
14 *available for export, to the extent such exports*
15 *were permitted under section 7(i) of the Export*
16 *Administration Act of 1979.*

17 (2) *OTHER COMMODITIES.*—*Any export controls*
18 *imposed under this section on any agricultural com-*
19 *modity (including fats, oils, and animal hides and*
20 *skins), or on any forest product or fishery product,*
21 *shall not affect any contract to export entered into be-*
22 *fore the date on which such controls are imposed. For*
23 *purposes of this paragraph, the term “contract to ex-*
24 *port” includes, but is not limited to, an export sales*
25 *agreement and an agreement to invest in an enter-*

1 *prise which involves the export of commodities or*
2 *technology.*

3 *(k) OIL EXPORTS FOR USE BY UNITED STATES MILI-*
4 *TARY FACILITIES.—For purposes of subsection (d), and for*
5 *purposes of any export controls imposed under this title,*
6 *shipments of crude oil, refined petroleum products, or par-*
7 *tially refined petroleum products from the United States*
8 *for use by the Department of Defense or United States-sup-*
9 *ported installations or facilities shall not be considered to*
10 *be exports.*

11 **SEC. 108. FOREIGN BOYCOTTS.**

12 *(a) PROHIBITIONS AND EXCEPTIONS.—*

13 *(1) PROHIBITIONS.—In order to carry out the*
14 *policies set forth in section 103(10), the President*
15 *shall issue regulations prohibiting any United States*
16 *person, with respect to that person's activities in the*
17 *interstate or foreign commerce of the United States,*
18 *from taking or knowingly agreeing to take any of the*
19 *following actions with intent to comply with, further,*
20 *or support any boycott fostered or imposed by a for-*
21 *foreign country against a country which is friendly to*
22 *the United States and which is not itself the object of*
23 *any form of boycott pursuant to United States law or*
24 *regulation:*

1 (A) Refusing, or requiring any other person
2 to refuse, to do business with or in the boycotted
3 country, with any business concern organized
4 under the laws of the boycotted country, with
5 any national or resident of the boycotted coun-
6 try, or with any other person, pursuant to an
7 agreement with, a requirement of, or a request
8 from or on behalf of the boycotting country. The
9 mere absence of a business relationship with or
10 in the boycotted country with any business con-
11 cern organized under the laws of the boycotted
12 country, with any national or resident of the
13 boycotted country, or with any other person, does
14 not indicate the existence of the intent required
15 to establish a violation of regulations issued to
16 carry out this subparagraph.

17 (B) Refusing, or requiring any other person
18 to refuse, to employ or otherwise discriminating
19 against any United States person on the basis of
20 race, religion, sex, or national origin of that per-
21 son or of any owner, officer, director, or em-
22 ployee of such person.

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

1 *United States person or of any owner, officer, di-*
2 *rector, or employee of such person.*

3 *(D) Furnishing information about whether*
4 *any person has, has had, or proposes to have any*
5 *business relationship (including a relationship*
6 *by way of sale, purchase, legal or commercial*
7 *representation, shipping or other transport, in-*
8 *surance, investment, or supply) with or in the*
9 *boycotted country, with any business concern or-*
10 *ganized under the laws of the boycotted country,*
11 *with any national or resident of the boycotted*
12 *country, or with any other person that is known*
13 *or believed to be restricted from having any busi-*
14 *ness relationship with or in the boycotted coun-*
15 *try. Nothing in this paragraph shall prohibit the*
16 *furnishing of normal business information in a*
17 *commercial context as defined by the Secretary.*

18 *(E) Furnishing information about whether*
19 *any person is a member of, has made a contribu-*
20 *tion to, or is otherwise associated with or in-*
21 *involved in the activities of any charitable or fra-*
22 *ternal organization which supports the boycotted*
23 *country.*

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

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

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

9 *(A) complying or agreeing to comply with*
10 *requirements—*

11 *(i) prohibiting the import of commod-*
12 *ities or services from the boycotted country*
13 *or commodities produced or services pro-*
14 *vided by any business concern organized*
15 *under the laws of the boycotted country or*
16 *by nationals or residents of the boycotted*
17 *country; or*

18 *(ii) prohibiting the shipment of com-*
19 *modities to the boycotted country on a car-*
20 *rier of the boycotted country, or by a route*
21 *other than that prescribed by the boycotting*
22 *country or the recipient of the shipment;*

23 *(B) complying or agreeing to comply with*
24 *import and shipping document requirements*
25 *with respect to the country of origin, the name*

1 *of the carrier and route of shipment, the name*
2 *of the supplier of the shipment, or the name of*
3 *the provider of other services, except that no in-*
4 *formation knowingly furnished or conveyed in*
5 *response to such requirements may be stated in*
6 *negative, blacklisting, or similar exclusionary*
7 *terms, other than with respect to carriers or*
8 *route of shipment as may be permitted by such*
9 *regulations in order to comply with precaution-*
10 *ary requirements protecting against war risks*
11 *and confiscation;*

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

21 (D) *complying or agreeing to comply with*
22 *export requirements of the boycotting country re-*
23 *lating to shipments or transshipment of exports*
24 *to the boycotted country, to any business concern*
25 *of or organized under the laws of the boycotted*

1 country, or to any national or resident of the
2 boycotted country;

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

11 (F) compliance by a United States person
12 resident in a foreign country or agreement by
13 such person to comply with the laws of the coun-
14 try with respect to such person's activities exclu-
15 sively therein, and such regulations may contain
16 exceptions for such resident complying with the
17 laws or regulations of the foreign country govern-
18 ing imports into such country of trademarked,
19 trade named, or similarly specifically identifi-
20 able products, or components of products for such
21 person's own use, including the performance of
22 contractual services within that country, as may
23 be defined by such regulations.

24 (3) LIMITATION ON EXCEPTIONS.—Regulations
25 issued pursuant to paragraphs (2)(C) and (2)(F)

1 *shall not provide exceptions from paragraphs (1)(B)*
2 *and (1)(C).*

3 (4) *ANTITRUST AND CIVIL RIGHTS LAWS NOT AF-*
4 *FECTED.—Nothing in the subsection may be construed*
5 *to supersede or limit the operation of the antitrust or*
6 *civil rights laws of the United States.*

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

18 (b) *EMERGENCY CONTROLS.—*

19 (1) *REGULATIONS.—In addition to the regula-*
20 *tions issued pursuant to subsection (a), regulations is-*
21 *ssued under section 106 shall implement the policies*
22 *set forth in section 103(10).*

23 (2) *REPORTS BY UNITED STATES PERSONS.—*
24 *Such regulations shall require that any United States*
25 *person receiving a request for the furnishing of infor-*

1 *mation, the entering into or implementing of agree-*
2 *ments, or the taking of any other action referred to*
3 *in section 103(10) shall report that fact to the Sec-*
4 *retary, together with such other information concern-*
5 *ing such request as the Secretary may require, for*
6 *such action as the Secretary considers appropriate for*
7 *carrying out the policies of that section. Such person*
8 *shall also report to the Secretary whether such person*
9 *intends to comply and whether such person has com-*
10 *plied with such request. Any report filed pursuant to*
11 *this paragraph shall be made available promptly for*
12 *public inspection and copying, except that informa-*
13 *tion regarding the quantity, description, and value of*
14 *any commodities or technology to which such report*
15 *relates may be kept confidential if the Secretary de-*
16 *termines that disclosure thereof would place the Unit-*
17 *ed States person involved at a competitive disadvan-*
18 *tage. The Secretary shall periodically transmit sum-*
19 *maries of the information contained in such reports*
20 *to the Secretary of State for such action as the Sec-*
21 *retary of State, in consultation with the Secretary,*
22 *considers appropriate for carrying out the policies set*
23 *forth in section 103(10).*

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

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

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

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

15 (a) *PRIMARY RESPONSIBILITY OF THE SECRETARY.*—

16 (1) *IN GENERAL.*—*All export license applications*
17 *required under this title shall be submitted by the ap-*
18 *plicant to the Secretary. All determinations with re-*
19 *spect to any such application shall be made by the*
20 *Secretary, subject to the procedures provided in this*
21 *section.*

22 **(2) ROLE OF SECRETARIES OF DEFENSE**
23 **AND ENERGY.—(A) Notwithstanding any**
24 **other provision of this section, the Sec-**
25 **retaries of Defense and Energy are au-**

1 **thorized to review any proposed export**
2 **of commodities or technology that is con-**
3 **trolled under section 105(a)(1) or con-**
4 **trolled for national security purposes**
5 **under section 106. Whenever—**

6 **(i) the Secretary of Defense or the**
7 **Secretary of Energy determines that**
8 **the export of such commodities or**
9 **technology will directly and signifi-**
10 **cantly enable a country or end user**
11 **to acquire the capability to develop,**
12 **produce, stockpile, use, or deliver**
13 **weapons of mass destruction, or**

14 **(ii) the Secretary of Defense de-**
15 **termines that the export of such com-**
16 **modities or technology will directly**
17 **and significantly contribute to the**
18 **military capability of a country so as**
19 **to prove detrimental to the national**
20 **security of the United States or its al-**
21 **lies,**

22 **the Secretary of Defense or the Secretary**
23 **of Energy (as the case may be) shall rec-**
24 **ommend to the President that such ex-**
25 **port be disapproved.**

1 **(B)(i) Notwithstanding any other pro-**
2 **vision of this section, the Secretary of De-**
3 **fense and the Secretary of Energy shall**
4 **determine, in consultation with the Sec-**
5 **retary, and confirm in writing the types**
6 **and categories of transactions which**
7 **should be reviewed by the Secretary of**
8 **Defense or the Secretary of Energy in**
9 **order to make a determination referred**
10 **to in subparagraph (A). Whenever a li-**
11 **cence for export or other authority with-**
12 **in such type or category is received by**
13 **the Secretary, the Secretary shall notify**
14 **the Secretary of Defense or the Secretary**
15 **of Energy (as the case may be) of such re-**
16 **quest, and the Secretary may not issue**
17 **any license or other authority pursuant**
18 **to such request until the Secretary is no-**
19 **tified by the Secretary of Defense or En-**
20 **ergy under subclause (II) or (III) or noti-**
21 **fied by the President under clause (ii).**
22 **The Secretary of Defense or the Sec-**
23 **retary of Energy (as the case may be)**
24 **shall carefully consider any notification**
25 **submitted by the Secretary pursuant to**

1 **this paragraph and, not later than 30**
2 **days after notification of the request,**
3 **shall—**

4 **(I) make a recommendation to the**
5 **President referred to in subpara-**
6 **graph (A);**

7 **(II) notify the Secretary that he**
8 **or she would recommend approval**
9 **subject to specified conditions; or**

10 **(III) recommend to the Secretary**
11 **that the export of the commodities or**
12 **technology be approved.**

13 **(ii) Whenever the Secretary of De-**
14 **fense or the Secretary of Energy makes a**
15 **recommendation to the President under**
16 **subparagraph (A), the Secretary shall**
17 **also submit his or her recommendation to**
18 **the President on the request to export if**
19 **the Secretary differs with the Secretary**
20 **of Defense or the Secretary of Energy.**
21 **The President shall notify the Secretary**
22 **of his decision on the matter before the**
23 **end of the 50-day period set forth in sub-**
24 **section (c). If the President notifies the**
25 **Secretary, after receiving a recommenda-**

1 **tion from the Secretary of Defense or the**
2 **Secretary of Energy, that the President**
3 **disapproves such export, no license or**
4 **other authority may be issued for the ex-**
5 **port to such country of the commodities**
6 **or technology involved.**

7 **(iii) If the Secretary of Defense or the**
8 **Secretary of Energy fails to make a rec-**
9 **ommendation or notification under this**
10 **paragraph within the 30-day period spec-**
11 **ified in clause (i), the Secretary shall ap-**
12 **prove or deny the request for a license or**
13 **other authority to export without such**
14 **recommendation or notification.**

15 **[(2)] (3) REGULATIONS.**—*In regulations that*
16 *carry out this section, the Secretary shall describe the*
17 *procedures required by this section, the responsibil-*
18 *ities of the Secretary and of other departments and*
19 *agencies in reviewing applications, the rights of the*
20 *applicant, and the extent of any multilateral review*
21 *of a given license application.*

22 **[(3)] (4) CALCULATION OF TIME PERIODS.**—*In*
23 *calculating the processing times set forth in this sec-*
24 *tion, the Secretary shall use calendar days, except*
25 *that if the final day for a required action falls on a*

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

3 **[(4)] (5)** *CONSIDERATION OF RELIABILITY OF*
4 *PARTIES.—In reviewing applications for validated ex-*
5 *port licenses, the Secretary may in each case consider*
6 *the reliability of the parties to the proposed export. In*
7 *making such an evaluation, the Secretary may con-*
8 *sider all sources of information, including intelligence*
9 *information. The consideration of intelligence infor-*
10 *mation in connection with the evaluation of the reli-*
11 *ability of parties shall not authorize the direct or in-*
12 *direct disclosure of classified information or sources*
13 *and methods of gathering classified information.*

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

16 *(1) REFERRALS.—(A) At the direction of the*
17 *President, the Secretary shall refer appropriate li-*
18 *cence applications required under section 105 or 106*
19 *to appropriate departments and agencies of the Gov-*
20 *ernment to make recommendations and provide infor-*
21 *mation to the Secretary on such applications.*

22 *(B) The President shall restrict referrals of li-*
23 *cence applications to Government departments and*
24 *agencies that possess particular expertise and infor-*

1 *mation that is relevant to the licensing process and*
2 *is not possessed by the Secretary.*

3 ~~(C) To assist the Secretary in export licensing~~
4 ~~*determinations, the Director of Central Intelligence*~~
5 ~~*shall collect all intelligence information regarding*~~
6 ~~*controlled end users and shall have such information*~~
7 ~~*accessible in computerized form at the Central Intel-*~~
8 ~~*ligence Agency no later than December 31, 1994.*~~
9 ~~*Each department or agency of the Government in pos-*~~
10 ~~*session of intelligence information regarding con-*~~
11 ~~*trolled end users shall provide that information to the*~~
12 ~~*Central Intelligence Agency not later than September*~~
13 ~~*30, 1994.*~~

14 (2) ORGANIZATION OF REVIEWING AGENCIES.—
15 *Departments and agencies reviewing license applica-*
16 *tions shall organize their resources and units to plan*
17 *for the prompt and expeditious internal dissemina-*
18 *tion of export license applications, if necessary, so as*
19 *to avoid delays in responding to the Secretary's re-*
20 *quest for information and recommendations.*

21 (3) REQUESTS FOR ADDITIONAL INFORMATION.—
22 *Within 5 days after an export license application is*
23 *referred to a department or agency under this sub-*
24 *section, the agency or department shall specify to the*
25 *Secretary all information that is not in the applica-*

1 *tion that would be required to respond to the referral*
2 *of the application, and the Secretary shall, pursuant*
3 *to subsection (d)(1)(C), request such information from*
4 *the applicant. The time that may elapse between the*
5 *date the information is requested from the applicant*
6 *and the date the information is received by the Sec-*
7 *retary shall not be included in calculating the time*
8 *periods prescribed in this section.*

9 *(c) ACTION BY THE SECRETARY.—Subject to sub-*
10 *section (d)(4), **[30 days] 50 days** after the date of formal*
11 *filing with the Secretary of an export license application,*
12 *a license for the transaction specified in the application*
13 *shall become valid and effective and the commodities or*
14 *technology involved are authorized for export or reexport*
15 *pursuant to such license, unless—*

16 *(1) the application has been otherwise approved*
17 *by the Secretary, in which case it shall be valid and*
18 *effective according to the terms of the approval; or*

19 *(2) the application has been denied by the Sec-*
20 *retary under this section and the applicant has been*
21 *so informed.*

22 *(d) PROCEDURES FOR PROCESSING EXPORT LICENSE*
23 *APPLICATIONS.—*

1 (1) *INITIAL SCREENING.*—Not more than 10 days
2 after the date on which any export license application
3 is submitted to the Secretary, the Secretary shall—

4 (A) send the applicant an acknowledgment
5 of the receipt of the application and the date of
6 the receipt;

7 (B) submit to the applicant a written de-
8 scription of the procedures required by this sec-
9 tion, the responsibilities of the Secretary with re-
10 spect to the application, and the rights of the ap-
11 plicant;

12 (C) on the basis of information the Sec-
13 retary has, including information provided to
14 the Secretary under subsection (b)(3), return the
15 application without action if the application is
16 improperly completed or if additional informa-
17 tion is required, with sufficient information to
18 permit the application to be properly resubmit-
19 ted; and

20 (D) determine whether it is necessary to
21 submit the application to a multilateral review
22 process pursuant to an export control regime
23 and, if so, inform the applicant of such require-
24 ment.

1 (2) *REFERRAL.*—(A) *If, pursuant to criteria es-*
2 *tablished by the President, the Secretary is to refer an*
3 *export license application to any other department or*
4 *agency for a recommendation under subsection (b)(1),*
5 *the Secretary shall, within 2 days after receiving the*
6 *application, refer the application concurrently to all*
7 *such departments or agencies, transmitting the appli-*
8 *cation electronically whenever possible. A department*
9 *or agency reviewing an export license application re-*
10 *ferred by the Secretary shall have **【10 days】 30***
11 ***days** in which to submit to the Secretary its rec-*
12 *ommendations on the application. Any department or*
13 *agency which does not submit its recommendations*
14 *within that **【10-day period】 30-day period** shall*
15 *be deemed by the Secretary to have no objection to the*
16 *approval of such application.*

17 (B) *A recommendation that the Secretary deny*
18 *a validated license shall include a statement of rea-*
19 *sons for the recommendation that are consistent with*
20 *the provisions of this title, and shall cite both the stat-*
21 *utory and the regulatory basis for the recommenda-*
22 *tion.*

23 (3) *INTERAGENCY COMMITTEE.*—*An interagency*
24 *committee may be established by the President for the*
25 *purpose of resolving disputes among departments and*

1 agencies on export license applications under this
2 title. Such committee shall be chaired by the Sec-
3 retary. The procedures followed by such interagency
4 committee shall provide—

5 (A) deadlines for decisions within the inter-
6 agency committee consistent with the duty of the
7 Secretary to reach his or her final decision on an
8 application within **[30 days] 50 days** after
9 the date of filing of the license application;

10 (B) that a department or agency dissenting
11 from the position of the Secretary shall have the
12 burden to bring the issue in writing to the next
13 level of review provided within the interagency
14 committee and may only dissent on the basis of
15 the criteria set forth in section 105(c)(1)(D) or
16 section 106(a)(4); and

17 (C) that a department or agency that fails
18 to make a timely escalation of a disputed matter
19 shall be deemed to have no objection to the deci-
20 sion of the Secretary.

21 (4) ACTIONS BY THE SECRETARY.—(A) When a
22 referral of a license application to other departments
23 or agencies is not required, the Secretary shall issue
24 a license or notify the applicant of the intent to deny
25 within 10 days after receiving the application.

1 (B) *If an application is to be denied because the*
2 *export would be made to a controlled end user, no re-*
3 *ferral to other departments or agencies is required,*
4 *and the applicant shall be informed of the reason for*
5 *the denial.*

6 (5) *ACTION UPON DENIAL.—In cases in which*
7 *the Secretary has determined that a license applica-*
8 *tion should be denied, the applicant shall be informed*
9 *in writing, not later than 3 days after such deter-*
10 *mination is made, of—*

11 (A) *the determination;*

12 (B) *the statutory and regulatory basis for*
13 *the proposed denial;*

14 (C) *the reasons for such denial, with ref-*
15 *erences to the criteria set forth in section 105,*
16 *106, or 107 (as the case may be);*

17 (D) *what, if any, modifications in, or re-*
18 *strictions on, the commodities or technology for*
19 *which the license was sought would allow the ex-*
20 *port or reexport of the commodities or technology*
21 *to be compatible with controls imposed under*
22 *this title;*

23 (E) *which officers and employees of the De-*
24 *partment of Commerce who are familiar with the*
25 *application will be made reasonably available to*

1 *the applicant for considerations with regard to*
2 *such modifications or restrictions, if appro-*
3 *priate;*

4 *(F) to the extent consistent with the na-*
5 *tional security and foreign policy of the United*
6 *States, the specific considerations which led to*
7 *the determination to deny the application; and*

8 *(G) the availability of appeal procedures.*

9 *The Secretary shall allow the applicant not less than*
10 *30 days to respond to the Secretary's determination*
11 *before the license application is finally denied.*

12 **(e) TIME LIMIT EXTENSION.—If required for**
13 **national security reasons, the President may**
14 **increase the time periods set forth in sub-**
15 **sections (a), (c), and (d) to not more than 2**
16 **times the number of days in each time period,**
17 **for not more than 4 percent of the export li-**
18 **cence applications filed with the Secretary**
19 **during any calendar year.**

20 **[(e)] (f) RECORDKEEPING.—***The Secretary shall*
21 *make and keep records of all advice and recommendations*
22 *given by Federal departments and agencies, and decisions*
23 *made by the Department of Commerce, in connection with*
24 *any export license application or revision of an export li-*
25 *cence application under this title, including the factual and*

1 *analytical basis of the advice, recommendations, or deci-*
2 *sions.*

3 **[(f)] (g) CHANGES IN REQUIREMENTS FOR APPLICA-**
4 *TIONS.—Except as provided in subsection (d), in any case*
5 *in which, after an export license application is submitted,*
6 *the Secretary changes the requirements for such a license*
7 *application, the Secretary may request appropriate addi-*
8 *tional information of the applicant, but the Secretary may*
9 *not return the application to the applicant without action*
10 *because it fails to meet the changed requirements.*

11 **[(g)] (h) APPEALS.—***The Secretary shall establish*
12 *appropriate procedures for any applicant to appeal to the*
13 *Secretary the denial of an export license application under*
14 *this title.*

15 **[(h)] (i) OTHER INQUIRIES.—**

16 (1) *CLASSIFICATION REQUESTS.—In any case in*
17 *which the Secretary receives a written request for the*
18 *proper classification of a commodity or technology on*
19 *the control index, the Secretary shall, not more than*
20 *10 working days after receiving the request, inform*
21 *the person making the request of the proper classifica-*
22 *tion.*

23 (2) *APPLICABILITY OF REQUIREMENTS.—In any*
24 *case in which the Secretary receives a written request*
25 *for information about the applicability of export li-*

1 *cense requirements under this title to a proposed*
2 *transaction or series of transactions, the Secretary*
3 *shall, not more than 30 days after receiving the re-*
4 *quest, reply with that information to the person mak-*
5 *ing the request.*

6 (3) *PUBLICATION OF CLASSIFICATION DETER-*
7 *MINATIONS.—The Secretary shall, to the greatest ex-*
8 *tent practicable, taking into account restrictions on*
9 *the disclosure of classified or confidential information,*
10 *publish in the Federal Register classification deter-*
11 *minations made under paragraph (1).*

12 **[(i)] (j) REPORTS ON LICENSE APPLICATIONS.—**

13 (1) *QUARTERLY REPORT.—Not later than 180*
14 *days after the date of the enactment of this Act, and*
15 *not later than the end of each 3-month period there-*
16 *after, the Secretary shall submit to the Committee on*
17 *Foreign Affairs **and the Committee on Armed***
18 ***Services** of the House of Representatives and to the*
19 *Committee on Banking, Housing, and Urban Affairs*
20 ***and the Committee on Armed Services** of*
21 *the Senate a report listing all applications **for vali-***
22 ***dated licenses under section 105 or 106** on*
23 *which action was completed during the preceding 3-*
24 *month period **[and which required a period longer***
25 *than the period permitted under subsection (c) or*

1 (d)(4), as the case may be, before notification on a de-
2 cision to approve or deny the application was sent to
3 the applicant】.

4 (2) *INFORMATION ON LICENSE APPLICATIONS.*—
5 With regard to each application, each listing shall
6 identify—

7 (A) the application case number;

8 (B) the value of the commodities or tech-
9 nology to which the application relates;

10 (C) the country of destination of the com-
11 modities or technology;

12 (D) the date on which the application was
13 received by the Secretary;

14 (E) the date on which the Secretary ap-
15 proved or denied the application; and

16 (F) the date on which the notification of ap-
17 proval or denial of the application was sent to
18 the applicant.

19 【(3) *INTRODUCTION TO REPORT.*—With respect
20 to an application referred to any other department or
21 agency which did not submit or has not submitted its
22 recommendations on the application within the pe-
23 riod permitted under subsection (d)(2) to submit such
24 recommendations, the listing shall also include—

1 【(A) the office responsible for processing
2 the application and the officer responsible for
3 the office; and

4 【(B) the period of time that elapsed before
5 the recommendations were submitted or that
6 has elapsed since referral of the application, as
7 the case may be.】

8 **SEC. 110. VIOLATIONS.**

9 (a) *CRIMINAL PENALTIES.*—

10 (1) *VIOLATIONS BY AN INDIVIDUAL.*—Any indi-
11 vidual who knowingly violates or conspires to or at-
12 tempts to violate any provision of this title or any
13 regulation, license, or order issued under this title
14 shall be fined not more than 5 times the value of the
15 exports involved or \$500,000, whichever is greater, or
16 imprisoned not more than 10 years, or both.

17 (2) *VIOLATIONS BY A PERSON OTHER THAN AN*
18 *INDIVIDUAL.*—Any person other than an individual
19 who knowingly violates or conspires to or attempts to
20 violate any provision of this title or any regulation,
21 license, or order issued under this title shall be fined
22 not more than 10 times the value of the exports in-
23 volved or \$1,000,000, whichever is greater.

24 (b) *FORFEITURE OF PROPERTY INTEREST AND PRO-*
25 *CEEDS.*—

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

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

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

13 (C) any of that person's property constitut-
14 ing, or derived from, any proceeds obtained di-
15 rectly or indirectly as a result of the violation.

16 (2) *PROCEDURES.*—The procedures in any for-
17 feiture under this subsection, and the duties and au-
18 thority of the courts of the United States and the At-
19 torney General with respect to any forfeiture action
20 under this subsection or with respect to any property
21 that may be subject to forfeiture under this subsection,
22 shall be governed by the provisions of section 1963 of
23 title 18, United States Code.

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

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

9 (2) *DENIAL OF EXPORT PRIVILEGES.*—*The Sec-*
10 *retary may deny the export privileges of any person,*
11 *including suspending or revoking the authority of any*
12 *person to export or receive United States-origin com-*
13 *modities or technology, on account of any violation of*
14 *this title or any regulation, license, or order issued*
15 *under this title.*

16 (d) *PAYMENT OF CIVIL PENALTIES.*—*The payment of*
17 *any civil penalty imposed under subsection (c) may be*
18 *made a condition, for a period not exceeding 1 year after*
19 *the penalty has become due but has not been paid, to the*
20 *granting, restoration, or continuing validity of any export*
21 *license, permission, or privilege granted or to be granted*
22 *to the person upon whom such penalty is imposed. In addi-*
23 *tion, the payment of any civil penalty imposed under sub-*
24 *section (c) may be deferred or suspended in whole or in*
25 *part for a period of time no longer than any probation pe-*

1 riod (which may exceed 1 year) that may be imposed upon
2 such person. Such deferral or suspension shall not operate
3 as a bar to the collection of the penalty in the event that
4 the conditions of the suspension, deferral, or probation are
5 not fulfilled.

6 (e) REFUNDS.—Any amounts realized from the forfeit-
7 ure of any property interest or proceeds under subsection
8 (b), and any amount paid in satisfaction of any civil pen-
9 alty imposed under subsection (c) shall be covered into the
10 Treasury as a miscellaneous receipt. The head of the depart-
11 ment or agency concerned may, in his or her discretion,
12 refund any such civil penalty imposed under subsection (c),
13 within 2 years after payment, on the ground of a material
14 error of fact or law in the imposition of the penalty. Not-
15 withstanding section 1346(a) of title 28, United States
16 Code, no action for the refund of any such penalty may
17 be maintained in any court.

18 (f) EFFECT OF OTHER CONVICTIONS.—

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

21 (A) this title or the Export Administration
22 Act of 1979 (or any regulation, license, or order
23 issued under this title or that Act),

1 (B) any regulation, license, or order issued
2 under the International Emergency Economic
3 Powers Act,

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

6 (D) section 371 or 1001 of title 18, United
7 States Code, if in connection with the export of
8 commodities or technology controlled under this
9 title, or defense articles or defense services con-
10 trolled under the Arms Export Control Act,

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

13 (F) section 38 of the Arms Export Control
14 Act,

15 may, at the discretion of the Secretary, be denied ex-
16 port privileges under this title for a period of up to
17 10 years from the date of the conviction. The Sec-
18 retary may also revoke any export license under this
19 title in which such person had an interest at the time
20 of the conviction.

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

1 *graph (1), upon a showing of such relationship with*
2 *the convicted person, after providing notice and op-*
3 *portunity for a hearing.*

4 (g) *STATUTE OF LIMITATIONS.—Any proceeding in*
5 *which a civil penalty or other administrative sanction*
6 *(other than a temporary denial order) is sought under sub-*
7 *section (c) may not be instituted more than 5 years after*
8 *the date of the alleged violation, except that, in any case*
9 *in which a criminal indictment alleging a violation of this*
10 *title is returned within the time limits prescribed by law*
11 *for the institution of such action, the statute of limitations*
12 *for bringing a proceeding to impose such a civil penalty*
13 *or other administrative sanction under this title shall, upon*
14 *the return of the criminal indictment, be tolled against all*
15 *persons named as a defendant. The tolling of the statute*
16 *of limitations shall continue for a period of 6 months from*
17 *the date a conviction is entered or the indictment is dis-*
18 *missed.*

19 (h) *VIOLATIONS DEFINED BY REGULATION.—Nothing*
20 *in this section shall limit the power of the Secretary to de-*
21 *fine by regulation violations under this title.*

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

24 *(1) the availability of other administrative or ju-*
25 *dicial remedies with respect to violations of this title,*

1 or any regulation, order, or license issued under this
2 title;

3 (2) the authority to compromise and settle ad-
4 ministrative proceedings brought with respect to any
5 such violation; or

6 (3) the authority to compromise, remit, or miti-
7 gate seizures and forfeitures pursuant to section 1(b)
8 of title VI of the Act of June 15, 1917 (22 U.S.C.
9 401(b)).

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

11 (1) against whom an act of discrimination de-
12 scribed in section 108(a)(1)(B) is committed, or

13 (2) who, on account of a violation of the regula-
14 tions issued pursuant to section 108(a), loses an op-
15 portunity to engage in a commercial venture pursu-
16 ant to a contract, joint venture, or other commercial
17 transaction, including an opportunity to bid or ten-
18 der an offer for a contract,

19 may bring an action in an appropriate district court of
20 the United States against the United States person commit-
21 ting the violation, for recovery of actual damages incurred
22 on account of such act of discrimination or lost oppor-
23 tunity. In any such action the court may award punitive
24 damages. An action may be brought under this subsection
25 against a United States person whether or not the United

1 *States person has been determined under this section to*
2 *have violated the regulations issued pursuant to section*
3 *108(a) on account of which the action is brought.*

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

5 *(a) ESTABLISHMENT OF PROLIFERATION LISTS.—*

6 *(1) ESTABLISHMENT OF CHEMICAL AND BIOLOGI-*
7 *CAL WEAPONS CONTROL LIST UNDER THIS TITLE.—*

8 *(A) IN GENERAL.—The Secretary, [in con-*
9 *sultation with the Secretary of State, the Sec-*
10 *retary of Defense, and the heads of other appro-*
11 *priate departments and agencies,] shall establish*
12 *and maintain a list of commodities and tech-*
13 *nology, which shall include those commodities*
14 *and technology controlled pursuant to multilat-*
15 *eral export control regimes such as the Australia*
16 *Group—*

17 *(i) that would directly and substan-*
18 *tially assist a foreign government, group,*
19 *entity, or project in acquiring the capabil-*
20 *ity to develop, produce, stockpile, or deliver*
21 *chemical or biological weapons; and*

22 *(ii) the licensing of which would be ef-*
23 *fective in barring the acquisition or en-*
24 *hancement of such capability.*

1 **(B) ROLE OF OTHER DEPARTMENTS**
2 **AND AGENCIES.—The Secretary of De-**
3 **fense and the heads of other appro-**
4 **priate departments and agencies**
5 **shall identify goods and technology**
6 **for inclusion on the list referred to in**
7 **subparagraph (A). Those items which**
8 **the Secretary and the Secretary of**
9 **Defense concur shall be included on**
10 **the list shall comprise the list. If the**
11 **Secretary and the Secretary of De-**
12 **fense are unable to concur on such**
13 **items, as determined by the Sec-**
14 **retary, the Secretary of Defense may,**
15 **within 20 days after receiving notifi-**
16 **cation of the Secretary’s determina-**
17 **tion, refer the matter to the President**
18 **for resolution. The Secretary of De-**
19 **fense shall notify the Secretary of any**
20 **such referral. The President shall, not**
21 **later than 20 days after such referral,**
22 **notify the Secretary of his determina-**
23 **tion with respect to the inclusion of**
24 **such items on the list. Failure of the**
25 **Secretary of Defense to notify the**

1 **President or the Secretary, or failure**
2 **of the President to notify the Sec-**
3 **retary, in accordance with this para-**
4 **graph, shall be deemed by the Sec-**
5 **retary to constitute concurrence in**
6 **the implementation of the actions**
7 **proposed by the Secretary regarding**
8 **the inclusion of such items on the list.**

9 **[(B)] (C)** *REQUIREMENT FOR VALIDATED*
10 *LICENSES.—Subject to the provisions of this title,*
11 *the Secretary shall require a validated license for*
12 *any export of commodities or technology on the*
13 *list established under subparagraph (A) to any*
14 *country of concern.*

15 **[(C)] (D)** *COUNTRY OF CONCERN.—For*
16 *purposes of subparagraph (B), the term “country*
17 *of concern” means any country other than—*

18 *(i) a country with whose government*
19 *the United States has entered into a bilat-*
20 *eral or multilateral arrangement for the*
21 *control of commodities or technology on the*
22 *list established under subparagraph (A);*
23 *and*

24 *(ii) such other countries as the Sec-*
25 *retary of State, in consultation with the*

1 *Secretary and the Secretary of Defense,*
2 *shall designate consistent with the purposes*
3 *of this section.*

4 (2) *ESTABLISHMENT OF MISSILE TECHNOLOGY*
5 *CONTROL LIST UNDER THIS TITLE.—*

6 (A) *The Secretary*【, *in consultation with*
7 *the Secretary of State, the Secretary of Defense,*
8 *and the heads of other appropriate departments*
9 *and agencies*】—

10 (i) *shall establish and maintain a list*
11 *of all dual use commodities and technology*
12 *on the MTCR Annex; and*

13 (ii) *may include on that list any com-*
14 *modities or technology that would provide a*
15 *direct and significant impact on the devel-*
16 *opment of missile delivery systems.*

17 **(B) ROLE OF OTHER DEPARTMENTS**
18 **AND AGENCIES.—The Secretary of De-**
19 **fense and the heads of other appro-**
20 **priate departments and agencies**
21 **shall identify goods and technology**
22 **for inclusion on the list referred to in**
23 **subparagraph (A). Those items which**
24 **the Secretary and the Secretary of**
25 **Defense concur shall be included on**

1 **the list shall comprise the list. If the**
2 **Secretary and the Secretary of De-**
3 **fense are unable to concur on such**
4 **items, as determined by the Sec-**
5 **retary, the Secretary of Defense may,**
6 **within 20 days after receiving notifi-**
7 **cation of the Secretary's determina-**
8 **tion, refer the matter to the President**
9 **for resolution. The Secretary of De-**
10 **fense shall notify the Secretary of any**
11 **such referral. The President shall, not**
12 **later than 20 days after such referral**
13 **notify the Secretary of his determina-**
14 **tion with respect to the inclusion of**
15 **such items on the list. Failure of the**
16 **Secretary of Defense to notify the**
17 **President or the Secretary, or failure**
18 **of the President to notify the Sec-**
19 **retary, in accordance with this para-**
20 **graph, shall be deemed by the Sec-**
21 **retary to constitute concurrence in**
22 **the implementation of the actions**
23 **proposed by the Secretary regarding**
24 **the inclusion of such items on the list.**

1 **[(B)] (C)** *REQUIREMENT OF INDIVIDUAL*
2 *VALIDATED LICENSES.*—*Subject to the provisions*
3 *of this title, the Secretary shall require an indi-*
4 *vidual validated license for—*

5 *(i) any export of commodities or tech-*
6 *nology on the list established under sub-*
7 *paragraph (A) to any country; and*

8 *(ii) any export of commodities or tech-*
9 *nology that the exporter knows is destined*
10 *for a project or facility for the design, devel-*
11 *opment, or manufacture of a missile in a*
12 *country that is not an MTCR adherent.*

13 **[(C)] (D)** *POLICY OF DENIAL OF LI-*
14 *CENSES.*—*(i) Licenses under subparagraph (B)*
15 *should in general be denied if the ultimate con-*
16 *signee of the commodities or technology is a fa-*
17 *ility in a country that is not an MTCR adher-*
18 *ent and the facility is designed to develop or*
19 *build missiles.*

20 (ii) Licenses under subparagraph (B) shall
21 be denied if the ultimate consignee of the com-
22 modities or technology is a facility in a country
23 the government of which has been determined
24 under section 106(i)(1) to have repeatedly pro-

1 vided support for acts of international terror-
2 ism.

3 **[(D)] (E)** *DEFINITION.*—For purposes of
4 this paragraph, the term “MTCR adherent”
5 means a country that participates in the MTCR
6 or that, pursuant to an international under-
7 standing to which the United States is a party,
8 controls MTCR equipment or technology in ac-
9 cordance with the criteria and standards set
10 forth in the MTCR.

11 **(b) ESTABLISHMENT OF LISTS UNDER ARMS EXPORT**
12 **CONTROL ACT.**—

13 **(1) CHEMICAL AND BIOLOGICAL WEAPONS**
14 *LIST.*—Section 81 of the Arms Export Control Act (22
15 U.S.C. 2798) is amended to read as follows:

16 **“SEC. 81. ESTABLISHMENT OF CHEMICAL AND BIOLOGICAL**
17 **WEAPONS CONTROL LIST**

18 “(a) *IN GENERAL.*—The Secretary of State, **[in con-**
19 *sultation with the Secretary of Defense, and the heads of*
20 *other appropriate departments and agencies,] **with the**
21 **concurrence of the Secretary of Defense,** *shall*
22 *establish and maintain, as part of the United States Muni-*
23 *tions List, a list of items, which shall include those items*
24 *controlled pursuant to multilateral export control regimes,*
25 *such as the Australia Group—**

1 “(1) that would directly and substantially assist
2 a foreign government, group, entity, or project in ac-
3 quiring the capability to develop, produce, stockpile,
4 or deliver chemical or biological weapons;

5 “(2) the licensing of which would be effective in
6 barring the acquisition or enhancement of such capa-
7 bility; and

8 “(3) the export of which is not subject to control
9 under section 111(a)(1) of the Export Act of 1994.

10 “(b) *REQUIREMENT FOR VALIDATED LICENSES.*—The
11 Secretary of State shall require a validated license for any
12 export of items on the list established under subsection (a).

13 “(c) *DEFINITIONS.*—For purposes of this section, the
14 terms ‘multilateral export control regime’ and ‘Australia
15 Group’ have the meanings given those terms in section 116
16 of the Export Act of 1994.”.

17 (2) *MISSILE TECHNOLOGY CONTROL LIST.*—Sec-
18 tion 71 of the Arms Export Control Act (22 U.S.C.
19 2797) is amended to read as follows:

20 “**SEC. 71. LICENSING.**

21 “(a) *ESTABLISHMENT OF MISSILE TECHNOLOGY CON-*
22 *TROL LIST.*—The Secretary of State, **[***in consultation with*
23 *the Secretary of Defense and the heads of other appropriate*
24 *departments and agencies,***]** **with the concurrence of**
25 **the Secretary of Defense,** shall establish and main-

1 *tain a list of all items, which shall include those items listed*
2 *on the MTCR Annex, that would provide a direct and sig-*
3 *nificant impact on the development of missile delivery sys-*
4 *tems and the export of which is not subject to control under*
5 *section 111(a)(2) of the Export Act of 1994.*

6 “(b) *REQUIREMENT OF VALIDATED LICENSES.*—*The*
7 *Secretary shall require a validated license for—*

8 “(1) *any export of items on the list established*
9 *under subsection (a) to any country; and*

10 “(2) *any export of items that the exporter knows*
11 *is destined for a project or facility for the design, de-*
12 *velopment, or manufacture of a missile in a country*
13 *that is not an MTCR adherent.*

14 “(c) *POLICY OF DENIAL OF LICENSES.*—

15 “(1) *EXPORTS TO OTHER THAN MTCR ADHER-*
16 *ENTS.*—*Licenses under subsection (b) shall be denied*
17 *if the ultimate consignee of the items is a facility in*
18 *a country that is not an MTCR adherent and the fa-*
19 *cility is designed to develop or build missiles.*

20 “(2) *EXPORTS TO TERRORIST COUNTRIES.*—*Li-*
21 *censes under subsection (b) shall be denied if the ulti-*
22 *mate consignee of the items is a facility in a country*
23 *the government of which has been determined under*
24 *section 106(i)(1) of the Export Act of 1994 to have re-*

1 *peatedly provided support for acts of international*
2 *terrorism.”.*

3 *(c) SANCTIONS FOR ACTIVITIES SUPPORTING THE*
4 *PROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS*
5 *AND MISSILES.—*

6 *(1) VIOLATIONS BY UNITED STATES PERSONS.—*

7 *(A) If the President determines that a United States*
8 *person, on or after the date of the enactment of this*
9 *Act, with requisite knowledge—*

10 *(i) exports or transfers—*

11 *(I) any item on the list established*
12 *under subsection (a)(1) or (a)(2), or*

13 *(II) any item on the list established*
14 *under section 71(a) or 81(a) of the Arms*
15 *Export Control Act,*

16 *in violation of United States law,*

17 *(ii) conspires to or attempts to engage in*
18 *such export or transfer, or*

19 *(iii) facilitates such export or transfer by*
20 *any other person,*

21 *then the President shall impose, for a period of 2*
22 *years, the sanctions described in subparagraph (B) on*
23 *the entities described in paragraph (3).*

24 *(B) The sanctions referred to in subparagraph*

25 *(A) are the following:*

1 (i) All export licenses under this title for
2 items controlled under section 105, or for items
3 controlled under section 106 that meet the re-
4 quirements of section 105(a)(1)(A) or (B), and
5 all export licenses under the Arms Export Con-
6 trol Act for items on the United States Muni-
7 tions List, shall be denied to the sanctioned en-
8 tity.

9 (ii) The United States Government shall not
10 procure, or enter into any contract for the pro-
11 curement of, any services, commodities, tech-
12 nology, or other products from or produced by
13 the sanctioned entity.

14 (C) In the case of a determination made under
15 subparagraph (A), the President may pursue any
16 penalty provided in section 38(c) of the Arms Export
17 Control Act.

18 (2) VIOLATIONS BY FOREIGN PERSONS.—(A) If
19 the President determines that a foreign person, on or
20 after the date of the enactment of this Act, with req-
21 uisite knowledge contributed to the efforts of any gov-
22 ernment, group, entity, or project to use, design, de-
23 velop, produce, stockpile, or otherwise acquire chemi-
24 cal or biological weapons or missiles—

25 (i) through the export or transfer of—

1 (I) any item on the MTCR Annex,
2 whether or not of United States origin, or

3 (II) any item on the list established
4 under subsection (a)(1) of this section or
5 section 81(a) of the Arms Export Control
6 Act, whether or not of United States origin,

7 (ii) by conspiring or attempting to engage
8 in such export or transfer or,

9 (iii) by facilitating any export or transfer
10 described in clause (i) by any other person,

11 then the President shall impose, for a period of 2
12 years, the sanctions described in subparagraph (B) on
13 the entities described in paragraph (3).

14 (B) The sanctions referred to in subparagraph
15 (A) are the following:

16 (i) All export licenses under this title for
17 items controlled under section 105, or items con-
18 trolled under section 106 that meet the require-
19 ments of section 105(a)(1)(A) or (B), and all ex-
20 port licenses under the Arms Export Control Act
21 for items on the United States Munitions List,
22 shall be denied to the sanctioned entity.

23 (ii) The United States Government shall not
24 procure, or enter into any contract for the pro-
25 curement of, any services, commodities, tech-

1 *nology, or other products from or produced by*
2 *the sanctioned entity.*

3 *(iii) Imports of **(all products) (prod-***
4 ***ucts)** from or produced by the sanctioned en-*
5 *tity shall be prohibited.*

6 *(3) ENTITIES AGAINST WHICH SANCTIONS ARE*
7 *IMPOSED.—The President shall impose sanctions*
8 *under paragraphs (1) and (2) on—*

9 *(A) the person that committed the conduct*
10 *that is the subject of the determination giving*
11 *rise to the sanctions;*

12 *(B) any successor of a person or entity de-*
13 *scribed in subparagraph (A);*

14 *(C) any foreign person or United States*
15 *person that is a parent or subsidiary of a person*
16 *or entity described in subparagraph (A), if that*
17 *parent or subsidiary with requisite knowledge*
18 *assisted in the activities which are the basis of*
19 *that determination; and*

20 *(D) any foreign person or United States*
21 *person that is an affiliate of a person or entity*
22 *described in subparagraph (A), if that affiliate*
23 *with requisite knowledge assisted in the activities*
24 *which were the basis of that determination and*

1 *if that affiliate is controlled in fact by that per-*
2 *son or entity.*

3 *For purposes of this section, any person or entity de-*
4 *scribed in subparagraph (A), (B), (C), or (D) shall be*
5 *referred to as a “sanctioned entity”.*

6 (4) *EXEMPTION OF CERTAIN EXPORTS FROM*
7 *SANCTIONS.—The requirement in paragraph (1)(B)(i)*
8 *and (2)(B)(i) that licenses to export items controlled*
9 *under section 105 or 106 be denied shall not apply*
10 *to items which require individual validated licenses*
11 *solely by virtue of the imposition of controls under the*
12 *Enhanced Proliferation Control Initiative regulations*
13 *set forth in section 778.7(c) of title 15, Code of Fed-*
14 *eral Regulations.*

15 (5) *EXEMPTION FOR MTCR ADHERENTS.—*

16 (A) *EXEMPTION.—Paragraphs (1) and (2)*
17 *do not apply with respect to any export or trans-*
18 *fer—*

19 (i) *that is authorized by the laws of an*
20 *MTCR adherent, if such authorization is*
21 *not obtained by misrepresentation or fraud;*
22 *or*

23 (ii) *to an end user in a country that*
24 *is an MTCR adherent.*

1 (B) *DEFINITION.*—For purposes of this
2 paragraph, the term “MTCR adherent” has the
3 meaning given that term in subsection (a)(2)(D).

4 (6) *CONSULTATION WITH AND ACTIONS BY FOR-*
5 *EIGN GOVERNMENT OF JURISDICTION.*—

6 (A) *CONSULTATIONS.*—If the President
7 makes a determination described in paragraph
8 (2) with respect to a foreign person, the Congress
9 urges the President to initiate consultations im-
10 mediately with the government with primary ju-
11 risdiction over that foreign person with respect
12 to the imposition of sanctions pursuant to this
13 subsection.

14 (B) *ACTIONS BY GOVERNMENT OF JURISDIC-*
15 *TION.*—In order to pursue such consultations
16 with that government, the President may delay
17 imposition of sanctions pursuant to this sub-
18 section for up to 90 days. Following these con-
19 sultations, the President shall impose sanctions
20 unless the President determines and certifies to
21 the Congress that that government has taken spe-
22 cific and effective actions, including appropriate
23 penalties, to terminate the involvement of the for-
24 eign person in the activities described in para-
25 graph (2). The President may delay the imposi-

1 *tion of sanctions for up to an additional 90 days*
2 *if the President determines and certifies to the*
3 *Congress that that government is in the process*
4 *of taking the actions described in the preceding*
5 *sentence.*

6 *(C) REPORT TO CONGRESS.—Not later than*
7 *90 days after making a determination under*
8 *paragraph (2), the President shall submit to the*
9 *Committee on Foreign Relations and the Com-*
10 *mittee on Governmental Affairs of the Senate*
11 *and the Committee on Foreign Affairs of the*
12 *House of Representatives a report on the status*
13 *of consultations with the appropriate government*
14 *under this paragraph, and the basis for any de-*
15 *termination under subparagraph (B) that such*
16 *government has taken specific and effective ac-*
17 *tions.*

18 *(7) EFFECT OF ENFORCEMENT ACTIONS BY RE-*
19 *GIME ADHERENTS.—*

20 *(A) EXEMPTION FROM SANCTIONS.—San-*
21 *ctions set forth in paragraph (1) or (2) may not*
22 *be imposed under this subsection on a person*
23 *with respect to acts described in either such*
24 *paragraph or, if such sanctions are in effect*
25 *against a person on account of such acts, such*

1 *sanctions shall be terminated, if the government*
2 *of a regime adherent other than the United*
3 *States is taking judicial or other enforcement ac-*
4 *tion against that person with respect to such*
5 *acts, or that person has been found by the gov-*
6 *ernment of a regime adherent to be innocent of*
7 *wrongdoing with respect to such acts.*

8 (B) *REGIME ADHERENT DEFINED.*—*For*
9 *purposes of subparagraph (A), a “regime adher-*
10 *ent” is a country that is a member of a multilat-*
11 *eral regime that controls the export or transfer*
12 *giving rise to the sanctions, or that, pursuant to*
13 *an international understanding to which the*
14 *United States is a party, controls the export or*
15 *transfer in accordance with the criteria and*
16 *standards set forth in the regime.*

17 (8) *REQUISITE KNOWLEDGE DEFINED.*—*For pur-*
18 *poses of this subsection, the term “requisite knowl-*
19 *edge” means situations in which a person “knows”,*
20 *as “knowing” is defined in section 104 of the Foreign*
21 *Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2).*

22 (9) *FOREIGN PERSON DEFINED FOR CERTAIN EX-*
23 *PORTS.*—(A) *For purposes of any determination*
24 *under paragraph (2)(A) with respect to an export or*
25 *transfer of an item on the MTCR Annex, the term*

1 *'foreign person', in addition to the meaning set forth*
2 *in section 116(13), means, in the case of countries*
3 *with nonmarket economies (other than former mem-*
4 *bers of the Warsaw Pact)—*

5 *(i) all activities of the government of any*
6 *such country relating to the development or pro-*
7 *duction of any missile equipment or technology;*
8 *and*

9 *(ii) all activities of that government affect-*
10 *ing the development or production of electronics,*
11 *space systems or equipment, and military air-*
12 *craft.*

13 *(B) As used in subparagraph (A), the term "mis-*
14 *sile equipment or technology' means those items listed*
15 *in category I or II of the MTCR Annex.*

16 *(d) SANCTIONS AGAINST COUNTRIES FOR USE OF*
17 *CHEMICAL OR BIOLOGICAL WEAPONS.—*

18 *(1) DETERMINATION.—*

19 *(A IN GENERAL.—Whenever persuasive in-*
20 *formation becomes available to the executive*
21 *branch indicating the substantial possibility*
22 *that, on or after the date of the enactment of this*
23 *Act, the government of a foreign country has*
24 *made substantial preparation to use or has used*
25 *chemical or biological weapons in violation of*

1 *international law or has used lethal chemical or*
2 *biological weapons against its own nationals, the*
3 *President shall, within 60 days after the receipt*
4 *of such information by the executive branch, de-*
5 *termine whether that government, on or after*
6 *such date of enactment, has used chemical or bio-*
7 *logical weapons in violation of international*
8 *law, or has used lethal chemical or biological*
9 *weapons against its own nationals.*

10 *(B) MATTERS TO BE CONSIDERED.—In*
11 *making the determination under subparagraph*
12 *(A), the President shall consider the following:*

13 *(i) All physical and circumstantial*
14 *evidence available bearing on the possible*
15 *use of chemical or biological weapons.*

16 *(ii) All information provided by al-*
17 *leged victims, witnesses, and independent*
18 *observers.*

19 *(iii) The extent of the availability of*
20 *the weapons in question to the purported*
21 *user.*

22 *(iv) All official and unofficial state-*
23 *ments bearing on the possible use of such*
24 *weapons.*

1 (v) *Whether, and to what extent, the*
2 *government in question is willing to honor*
3 *a request from the Secretary General of the*
4 *United Nations to grant timely access to a*
5 *United Nations fact-finding team to inves-*
6 *tigate the possibility of chemical or biologi-*
7 *cal weapons use or to grant such access to*
8 *other legitimate outside parties.*

9 (2) *DETERMINATION TO BE REPORTED TO CON-*
10 *GRESS.—Upon making a determination under para-*
11 *graph (1), the President shall promptly report that*
12 *determination to the Congress. If the determination is*
13 *that a foreign government has used such weapons as*
14 *described in that paragraph, the report shall specify*
15 *the sanctions to be imposed pursuant to paragraph*
16 *(4).*

17 (3) *CONGRESSIONAL REQUESTS; REPORT.—*

18 (A) *REQUEST.—The Chairman of the Com-*
19 *mittee on Foreign Relations of the Senate (upon*
20 *consultation with the ranking minority member*
21 *of such committee) or the Chairman of the Com-*
22 *mittee on Foreign Affairs of the House of Rep-*
23 *resentatives (upon consultation with the ranking*
24 *minority member of such committee) may at any*
25 *time request the President to consider whether a*

1 *particular foreign government, on or after the*
2 *date of the enactment of this Act, has used chem-*
3 *ical or biological weapons in violation of inter-*
4 *national law or has used lethal chemical or bio-*
5 *logical weapons against its own nationals.*

6 *(B) REPORT TO CONGRESS.—Not later than*
7 *60 days after receiving such a request, the Presi-*
8 *dent shall provide to the Chairman of the Com-*
9 *mittee on Foreign Relations of the Senate and*
10 *the Chairman of the Committee on Foreign Af-*
11 *airs of the House of Representatives a written*
12 *report on the information held by the executive*
13 *branch which is pertinent to the issue of whether*
14 *the specified government, on or after the date of*
15 *the enactment of this Act, has used chemical or*
16 *biological weapons in violation of international*
17 *law or has used lethal chemical or biological*
18 *weapons against its own nationals. The report*
19 *under this subparagraph shall contain an analy-*
20 *sis of each of the items enumerated in paragraph*
21 *(1)(B).*

22 *(4) MANDATORY SANCTIONS FOR USE OF CHEMI-*
23 *CAL OR BIOLOGICAL WEAPONS.—The following sanc-*
24 *tions shall be imposed for a minimum of 2 years in*
25 *the event the President makes an affirmative deter-*

1 *mination under paragraph (1) with respect to the*
2 *government of a foreign country:*

3 (A) *FOREIGN ASSISTANCE.*—*The United*
4 *States Government shall terminate assistance to*
5 *that country under the Foreign Assistance Act of*
6 *1961, except for urgent humanitarian assistance*
7 *and food or other agricultural commodities or*
8 *products.*

9 (B) *ARMS SALES.*—*The United States Gov-*
10 *ernment shall—*

11 (i) *terminate sales to that country*
12 *under the Arms Export Control Act of any*
13 *defense articles, defense services, or design*
14 *and construction services; and*

15 (ii) *terminate and deny licenses for the*
16 *export to that country of any item on the*
17 *United States Munitions list.*

18 (C) *ARMS SALES FINANCING.*—*The United*
19 *States Government shall terminate all foreign*
20 *military financing for that country under the*
21 *Arms Export Control Act.*

22 (D) *DENIAL OF UNITED STATES GOVERN-*
23 *MENT CREDIT OR OTHER FINANCIAL ASSIST-*
24 *ANCE.*—*The United States Government shall*
25 *deny to that country any credit, credit guaran-*

1 *tees, or other financial assistance by any depart-*
2 *ment, agency, or instrumentality of the United*
3 *States Government, including the Export-Import*
4 *Bank of the United States.*

5 *(E) EXPORTS OF NATIONAL SECURITY-SEN-*
6 *SITIVE ITEMS.—The authorities of this title shall*
7 *be used to prohibit the export to that country of*
8 *any commodities or technology controlled or pro-*
9 *hibited for export under section 106(i).*

10 *(F) IMPORTS.—There shall be a prohibi-*
11 *tion on the importation into the United States*
12 *of goods that are the growth, produce, or manu-*
13 *facture of that country in an amount equal to or*
14 *greater than the dollar value of exports prohib-*
15 *ited under subparagraph (E).)*

16 **((F) IMPORTS.—There shall be a**
17 **prohibition on the importation into**
18 **the United States of goods that are**
19 **the growth, produce, or manufacture**
20 **of that country. The President shall**
21 **determine the type and volume of im-**
22 **ports to be prohibited, taking into**
23 **consideration the volume of exports**
24 **prohibited under subparagraph (E).)**

1 (5) *ADDITIONAL SANCTIONS IF CERTAIN CONDI-*
2 *TIONS NOT MET.*—Unless, within 3 months after mak-
3 ing a determination under paragraph (1) with re-
4 spect to the government of a foreign country, the
5 President determines and certifies, in writing, to the
6 Congress that—

7 (A) *the government is no longer using chem-*
8 *ical or biological weapons in violation of inter-*
9 *national law or using lethal chemical or biologi-*
10 *cal weapons against its own nationals,*

11 (B) *the government has provided reliable as-*
12 *surances that it will not, in the future, engage in*
13 *any such activities, and*

14 (C) *the government is willing to allow on-*
15 *site inspections by United Nations observers or*
16 *other internationally recognized, impartial ob-*
17 *servers, or other reliable means exist, to ensure*
18 *that government is not using chemical or biologi-*
19 *cal weapons in violation of international law*
20 *and is not using lethal chemical or biological*
21 *weapons against its own nationals,*

22 *then the President, after consultation with the Con-*
23 *gress, shall impose on that country for a period of at*
24 *least 2 years the sanctions set forth in at least 3 of*
25 *subparagraphs (A) through (F) of paragraph (6).*

1 (6) *ADDITIONAL SANCTIONS FOR USE OF CHEMI-*
2 *CAL OR BIOLOGICAL WEAPONS.*—*The sanctions re-*
3 *ferred to in paragraph (5) are the following:*

4 (A) *MULTILATERAL DEVELOPMENT BANK*
5 *ASSISTANCE.*—*The United States Government*
6 *shall oppose, in accordance with section 701 of*
7 *the International Financial Institutions Act (22*
8 *U.S.C. 262d), the extension of any loan or finan-*
9 *cial or technical assistance to the foreign country*
10 *by international financial institutions.*

11 (B) *BANK LOANS.*—*The United States Gov-*
12 *ernment shall prohibit any United States bank*
13 *from making any loan or providing any credit*
14 *to the government of that country, except for*
15 *loans or credits for the purpose of purchasing*
16 *food or other agricultural commodities or prod-*
17 *ucts.*

18 (C) *FURTHER RESTRICTIONS.*—(i) *The au-*
19 *thorities of this title shall be used to prohibit ex-*
20 *ports to that country of all items (except for*
21 *those items described in section 114(k)).*

22 (ii) *Restrictions shall be imposed on the im-*
23 *portation into the United States of goods (which*
24 *may include petroleum or any petroleum prod-*

1 uct) that are the growth, product, or manufac-
2 ture of that country.

3 (D) DIPLOMATIC RELATIONS.—The Presi-
4 dent shall use his constitutional authorities to
5 downgrade or suspend diplomatic relations be-
6 tween the United States and the government of
7 that country.

8 (E) PRESIDENTIAL ACTION REGARDING
9 AVIATION.—

10 (i)(I) The President is authorized to
11 notify the government of that country of his
12 intention to suspend the authority of foreign
13 air carriers owned or controlled by the gov-
14 ernment of that country to engage in for-
15 oreign air transportation to or from the Unit-
16 ed States.

17 (II) Within 10 days after the date of
18 notification of a government under
19 subclause (I), the Secretary of Transpor-
20 tation shall take all steps necessary to sus-
21 pend at the earliest possible date the author-
22 ity of any foreign air carrier owned or con-
23 trolled, directly or indirectly, by that gov-
24 ernment to engage in foreign air transpor-
25 tation to or from the United States, not-

1 *withstanding any agreement relating to air*
2 *services.*

3 *(ii)(I) The President may direct the*
4 *Secretary of State to terminate any air*
5 *service agreement between the United States*
6 *and that country, in accordance with the*
7 *provisions of that agreement.*

8 *(II) Upon termination of an agreement*
9 *under this clause, the Secretary of Trans-*
10 *portation shall take such steps as may be*
11 *necessary to revoke at the earliest possible*
12 *date the right of any foreign air carrier*
13 *owned or controlled, directly or indirectly,*
14 *by the government of that country to engage*
15 *in foreign air transportation to or from the*
16 *United States.*

17 *(iii) The Secretary of Transportation*
18 *may provide for such exceptions from*
19 *clauses (i) and (ii) as the Secretary consid-*
20 *ers necessary to provide for emergencies in*
21 *which the safety of an aircraft or its crew*
22 *or passengers is threatened.*

23 *(iv) For purposes of this subparagraph,*
24 *the terms “air transportation”, “air car-*
25 *rier”, “foreign air carrier”, and “foreign*

1 *air transportation*” have the meanings
2 *given those terms in section 101 of the Fed-*
3 *eral Aviation Act of 1958 (49 U.S.C. App.*
4 *1301).*

5 *(e) REMOVAL OF SANCTIONS.—*

6 *(1) FOR VIOLATIONS UNDER SUBSECTION (c).—*

7 *The President shall remove the sanctions imposed*
8 *under paragraph (1) or (2) of subsection (c) if the*
9 *President determines and so certifies to the Congress,*
10 *after the end of the 12-month period beginning on the*
11 *date on which the sanctions were initially imposed,*
12 *that—*

13 *(A) reliable information indicates that—*

14 *(i) the United States person with re-*
15 *spect to which the determination was made*
16 *under subsection (c)(1) has ceased all activi-*
17 *ties that gave rise to the sanctions; or*

18 *(ii) the foreign person with respect to*
19 *which the determination was made under*
20 *subsection (c)(2) has ceased to contribute to*
21 *the efforts of any government, group, entity,*
22 *or project to use, design, develop, produce,*
23 *stockpile, or otherwise acquire chemical or*
24 *biological weapons or missiles; and*

1 (B) the President has received reliable as-
2 surances from that United States person or for-
3 foreign person that such person will not, in the fu-
4 ture, perform any of the actions described in sub-
5 section (c)(1) or (2) (as the case may be).

6 (2) FOR VIOLATIONS UNDER SUBSECTION (d).—
7 The President shall remove the sanctions imposed
8 with respect to a country under paragraph (4) or (6)
9 of subsection (d) if the President determines and so
10 certifies to the Congress, after the end of the 12-month
11 period beginning on the date on which such sanctions
12 were initially imposed, that—

13 (A) the government of that country has pro-
14 vided reliable assurances that it will not use
15 chemical or biological weapons in violation of
16 international law and will not use lethal chemi-
17 cal or biological weapons against its own nation-
18 als;

19 (B) the government is not making prepara-
20 tions to use chemical or biological weapons in
21 violation of international law or to use lethal
22 chemical or biological weapons against its own
23 nationals;

24 (C) the government is willing to allow on-
25 site inspections by United Nations observers or

1 *other internationally recognized, impartial ob-*
2 *servers to verify that it is not making prepara-*
3 *tions to use chemical or biological weapons in*
4 *violation of international law or to use lethal*
5 *chemical or biological weapons against its own*
6 *nationals, or other reliable means exist to verify*
7 *that it is not making such preparations; and*

8 *(D) the government is making restitution to*
9 *those affected by any use of chemical or biologi-*
10 *cal weapons in violation of international law or*
11 *by any use of lethal chemical or biological weap-*
12 *ons against its own nationals.*

13 **((3) AUTHORITY TO REVOKE IMPORT**
14 **SANCTIONS IN CERTAIN CIRCUMSTANCES.—**
15 **The President may revoke any import**
16 **sanction imposed under subsection (c) or**
17 **(d) if the President determines, as a re-**
18 **sult of applicable international dispute**
19 **settlement proceedings, that the imposi-**
20 **tion of such sanctions is inconsistent**
21 **with international legal obligations of the**
22 **United States and that it is appropriate**
23 **under the circumstances to comply with**
24 **such obligations.))**

1 (f) *WAIVERS FOR VIOLATIONS UNDER SUBSECTION*
2 (c).—

3 (1) *WAIVER.*—*The President may waive the im-*
4 *position of sanctions under paragraph (1) or (2) of*
5 *subsection (c) with respect to a product or service if*
6 *the President certifies to the Congress that—*

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

9 (B) *the sanctioned entity is a sole source*
10 *supplier of the product or service, the product or*
11 *service is not available from any alternative reli-*
12 *able supplier, and the need for the product or*
13 *service cannot be met in a timely manner by im-*
14 *proved manufacturing processes or technological*
15 *developments.*

16 (2) *ADDITIONAL WAIVER.*—(A) *The President*
17 *may waive the imposition of any sanction under sub-*
18 *section (c)(2) if the President determines such waiver*
19 *is essential to the national security of the United*
20 *States.*

21 (B) *If the President decides to apply the waiver*
22 *described in subparagraph (A), the President shall so*
23 *notify the Congress not less than 20 days before issu-*
24 *ing the waiver. Such notification shall include a re-*
25 *port fully articulating the rationale and cir-*

1 *cumstances which led the President to exercise the*
2 *waiver authority.*

3 (3) *EXCEPTIONS.*—*The President shall not apply*
4 *the sanction under subsection (c)(2) prohibiting the*
5 *importation of the products of a sanctioned entity—*

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

8 (i) *under existing contracts or sub-*
9 *contracts, including the exercise of options*
10 *for production quantities to satisfy require-*
11 *ments essential to the national security of*
12 *the United States;*

13 (ii) *if the President determines that the*
14 *entity to which the sanctions would be ap-*
15 *plied is a sole source supplier of the defense*
16 *articles and services, that the defense arti-*
17 *cles or services are essential to the national*
18 *security of the United States, and that al-*
19 *ternative sources are not readily or reason-*
20 *ably available; or*

21 (iii) *if the President determines that*
22 *such articles or services are essential to the*
23 *national security of the United States under*
24 *defense coproduction agreements or Pro-*

1 *grams of Cooperation of the North Atlantic*
2 *Treaty Organization;*

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

7 *(C) to—*

8 *(i) spare parts;*

9 *(ii) components parts, but not finished*
10 *products, essential to United States prod-*
11 *ucts or production;*

12 *(iii) routine services and maintenance*
13 *of products, to the extent that alternative*
14 *sources are not readily or reasonably avail-*
15 *able; or*

16 *(iv) information or technology essential*
17 *to United States products or production.*

18 *(g) WAIVERS OF VIOLATIONS UNDER SUBSECTION*

19 *(d).—*

20 *(1) CRITERIA FOR WAIVER.—The President may*
21 *waive the application of any sanction imposed with*
22 *respect to a country under paragraph (4) or (6) of*
23 *subsection (d)—*

24 *(A) if—*

1 (i) in the case of any sanction other
2 than a sanction specified in subsection
3 (d)(4)(F) or (d)(6)(C)(ii) (relating to im-
4 port restrictions) or (d)(6)(D) (relating to
5 the downgrading or suspension of diplo-
6 matic relations), the President determines
7 and certifies to the Congress that such waiv-
8 er is essential to the national security inter-
9 ests of the United States, and the President
10 notifies the Committee on Foreign Relations
11 of the Senate and the Committee on Foreign
12 Affairs of the House of Representatives of
13 his determination and certification at least
14 15 days before the waiver takes effect, in ac-
15 cordance with the procedures applicable to
16 reprogramming notifications under section
17 634A of the Foreign Assistance Act of 1961;
18 or

19 (ii) in the case of any sanction speci-
20 fied in subsection (d)(4)(F) or (d)(6)(C)(ii)
21 (relating to import restrictions), the Presi-
22 dent determines and certifies to the Con-
23 gress that such waiver is essential to the na-
24 tional security interests of the United
25 States, and the President notifies the Com-

1 *mittee on Finance of the Senate and the*
2 *Committee on Ways and Means and the*
3 *Committee on Foreign Affairs of the House*
4 *of Representatives of his determination and*
5 *certification at least 15 days before the*
6 *waiver takes effect; or*

7 *(B) if the President determines and certifies*
8 *to the Congress that there has been a fundamen-*
9 *tal change in the leadership and policies of the*
10 *government of that country, and if the President*
11 *notifies the Congress at least 20 days before the*
12 *waiver takes effect.*

13 *(2) REPORT.—In the event that the President de-*
14 *cides to exercise the waiver authority provided in*
15 *paragraph (1) with respect to a country, the Presi-*
16 *dent's notification to the Congress under such para-*
17 *graph shall include a report fully articulating the ra-*
18 *tionale and circumstances which led the President to*
19 *exercise that waiver authority, including a descrip-*
20 *tion of the steps which the government of that country*
21 *has taken to satisfy the conditions set forth in sub-*
22 *paragraphs (A) through (D) of subsection (e)(2).*

23 *(h) CONTRACT SANCTITY.—*

24 *(1) SANCTIONS NOT APPLIED TO EXISTING CON-*
25 *TRACTS.—(A) A sanction described in subparagraph*

1 (D), (E), or (F) of subsection (d)(4) or in any of sub-
2 paragraphs (A) through (C) of subsection (d)(6) shall
3 not apply to any activity pursuant to any contract
4 or international agreement entered into before the
5 date of the presidential determination under sub-
6 section (d)(1) unless the President determines, on a
7 case-by-case basis, that to apply such sanction to that
8 activity would prevent the performance of a contract
9 or agreement that would have the effect of assisting a
10 country in using chemical or biological weapons in
11 violation of international law or in using lethal
12 chemical or biological weapons against its own na-
13 tionals.

14 (B) The same restrictions of section 114(l) (relat-
15 ing to contract sanctity) which are applicable to ex-
16 ports prohibited under this title shall apply to exports
17 prohibited under subsection (d)(4)(E) or (d)(6)(C)(i).
18 For purposes of this subparagraph, any contract or
19 agreement the performance of which (as determined
20 by the President) would have the effect of assisting a
21 foreign government in using chemical or biological
22 weapons in violation of international law or in using
23 chemical or biological weapons against its own na-
24 tionals shall be treated as constituting a breach of the
25 peace that poses a serious and direct threat to the

1 *strategic interest of the United States, within the*
2 *meaning of subparagraph (A) of section 114(l)(2).*

3 (2) *SANCTIONS APPLIED TO EXISTING CON-*
4 *TRACTS.—The sanctions described in subparagraphs*
5 *(A), (B), and (C) of subsection (d)(4) shall apply to*
6 *contracts, agreements, and licenses without regard to*
7 *the date the contract or agreement was entered into*
8 *or the license was issued (as the case may be), except*
9 *that such sanctions shall not apply to any contract*
10 *or agreement entered into or license issued before the*
11 *date of the presidential determination under sub-*
12 *section (d)(1) if the President determines that the ap-*
13 *plication of such sanction would be detrimental to the*
14 *national security interests of the United States.*

15 (i) *PROTECTION OF CLASSIFIED INFORMATION.—To*
16 *the extent practicable, reports submitted under this section*
17 *should be based on unclassified information. Portions of*
18 *such reports may be classified.*

19 **SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.**

20 (a) *APPLICABILITY.—*

21 (1) *EXEMPTIONS FROM ADMINISTRATIVE PROCE-*
22 *DURE.—Except as provided in this section, sections*
23 *551 and 553 through 559 of title 5, United States*
24 *Code, do not apply to the functions exercised under*
25 *this title.*

1 (2) *JUDICIAL REVIEW.*—(A) *Subject to subpara-*
2 *graphs (B) and (C) and except as otherwise provided*
3 *in this section, actions under this title shall be subject*
4 *to judicial review under chapter 7 of title 5, United*
5 *States Code.*

6 (B) *Any discretionary determination of whether*
7 *a commodity or technology should or should not be on*
8 *the control index shall not be subject to judicial re-*
9 *view.*

10 (C) *An action to obtain judicial review under*
11 *this subsection may be brought in the appropriate*
12 *United States district court.*

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

15 (1) *ADMINISTRATIVE PROCEDURES.*—*Any ad-*
16 *ministrative sanction imposed under section 110(c)*
17 *may be imposed only after notice and opportunity for*
18 *an agency hearing on the record in accordance with*
19 *sections 554 through 557 of title 5, United States*
20 *Code.*

21 (2) *AVAILABILITY OF CHARGING LETTER.*—*Any*
22 *charging letter or other document initiating adminis-*
23 *trative proceedings for the imposition of sanctions for*
24 *violations of the regulations issued under section*

1 108(a) shall be made available for public inspection
2 and copying.

3 (c) *COLLECTION.*—If any person fails to pay a civil
4 penalty imposed under section 110(c), the Secretary may
5 ask the Attorney General to bring a civil action in an ap-
6 propriate district court to recover the amount imposed (plus
7 interest at currently prevailing rates from the date of the
8 final order).

9 (d) *IMPOSITION OF TEMPORARY DENIAL ORDERS.*—

10 (1) *GROUNDS FOR IMPOSITION.*—In any case in
11 which there is reasonable cause to believe that a per-
12 son is engaged in or is about to engage in any act
13 or practice which constitutes or would constitute a
14 violation of this title, or any regulation, order, or li-
15 cense issued under this title, or in any case in which
16 a criminal indictment has been returned against a
17 person alleging a violation of this title or any of the
18 statutes listed in section 110(f), the Secretary may,
19 without a hearing, issue an order temporarily deny-
20 ing that person's United States export privileges
21 (hereafter in this subsection referred to a "temporary
22 denial order"). A temporary denial order may be ef-
23 fective for no longer than 180 days, but may be re-
24 newed by the Secretary, following notice and an op-

1 *portunity for a hearing, for additional periods of not*
2 *more than 180 days each.*

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

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

18 (B) *a criminal indictment has been re-*
19 *turned against the person subject to the order al-*
20 *leging a violation of this title or any of the stat-*
21 *utes listed in section 110(f).*

22 *The decision of the administrative law judge shall be*
23 *final unless, within 10 working days after the date of*
24 *the administrative law judge's decision, an appeal is*
25 *filed with the Secretary. On appeal, the Secretary*

1 *shall either affirm, modify, reverse, or vacate the deci-*
2 *sion of the administrative law judge by written order*
3 *within 10 working days after receiving the appeal.*
4 *The written order of the Secretary shall be final and*
5 *is not subject to judicial review, except as provided in*
6 *paragraph (3). The materials submitted to the admin-*
7 *istrative law judge and the Secretary shall constitute*
8 *the administrative record for purposes of review by*
9 *the court.*

10 (3) *COURT APPEALS.*—*An order of the Secretary*
11 *affirming, in whole or in part, the issuance or re-*
12 *newal of a temporary denial order may, within 15*
13 *days after the order is issued, be appealed by a person*
14 *subject to the order to the United States Court of Ap-*
15 *peals for the District of Columbia Circuit, which shall*
16 *have jurisdiction of the appeal. The court may review*
17 *only those issues necessary to determine whether the*
18 *issuance of the temporary denial order was based on*
19 *reasonable cause to believe that the person subject to*
20 *the order was engaged in or was about to engage in*
21 *any act or practice which constitutes or would con-*
22 *stitute a violation of this title, or any regulation,*
23 *order, or license issued under this title, or if a crimi-*
24 *nal indictment has been returned against the person*
25 *subject to the order alleging a violation of this title*

1 or any of the statutes listed in section 110(f). The
2 court shall vacate the Secretary's order if the court
3 finds that the Secretary's order is arbitrary, capri-
4 cious, an abuse of discretion, or otherwise not in ac-
5 cordance with law.

6 (e) *APPEALS FROM LICENSING AND CLASSIFICATION*
7 *ACTIONS.*—

8 (1) *LICENSE DENIALS.*—A determination of the
9 Secretary under section 109 to deny a license may be
10 appealed by the applicant to an administrative law
11 judge who shall have the authority to conduct proceed-
12 ings to determine only whether the item sought to be
13 exported is in fact on the control list. Such proceed-
14 ings shall be conducted within 90 days after the ap-
15 peal is filed. Any determination by an administrative
16 law judge under this subsection and all materials
17 filed before such judge in the proceedings shall be re-
18 viewed by the Secretary, who shall either affirm or
19 vacate the determination in a written decision within
20 30 days after receiving the determination.

21 (2) *CLASSIFICATION DECISIONS.*—(A) Within 30
22 days after the issuance of a classification decision
23 under section **【109(h)(1)】 109(i)(1)**, or within 30
24 days after the failure to issue such a classification de-
25 cision in response to a request for such a decision,

1 *any United States person aggrieved by such decision*
2 *or failure may file an appeal thereof to an adminis-*
3 *trative law judge, but only on issues regarding such*
4 *classification decision including, but not limited to,*
5 *decisions of whether an item is covered by any gen-*
6 *eral or specific note. The administrative law judge*
7 *may not review determinations as to the reliability of*
8 *an end user or the nature of an end use or end user.*
9 *The administrative law judge shall, within 90 days*
10 *after such appeal is filed, issue his or her decision*
11 *and issue any order that is necessary or appropriate*
12 *to carry out such decision. Such order shall be bind-*
13 *ing upon the Secretary unless and until vacated or*
14 *modified under subparagraph (B). Such order may be*
15 *stayed by the administrative law judge or the Sec-*
16 *retary pending the filing and determination of an ap-*
17 *peal under subparagraph (B).*

18 *(B) Any United States person aggrieved by a de-*
19 *cision of the administrative law judge under subpara-*
20 *graph (A) may appeal such decision to the Secretary*
21 *within 45 days after receiving notification of such de-*
22 *cision. The Secretary shall, in a written order, affirm,*
23 *modify, or vacate the decision of the administrative*
24 *law judge within 30 days after such appeal is filed.*
25 *The authority of the Secretary under this paragraph*

1 *may not be delegated to an officer or employee of the*
2 *Bureau of Export Administration.*

3 (3) *PUBLICATION AND INDEXING OF DECISIONS.—Subject to the limitations of section 114(g),*
4 *final decisions of administrative law judges and the*
5 *Secretary under this subsection shall be published in*
6 *the Federal Register within 15 days after they are*
7 *rendered. The Secretary shall index decisions on ap-*
8 *peals of license denials.*

10 (4) *CONDUCT OF PROCEEDINGS.—Except as pro-*
11 *vided in this subsection, proceedings under this sub-*
12 *section shall be conducted in accordance with sections*
13 *554 (notwithstanding subsection (a)(4) of such sec-*
14 *tion), 556, and 557 of title 5, United States Code.*

15 (5) *REGULATIONS.—The Secretary shall issue*
16 *such regulations as are necessary to carry out this*
17 *subsection.*

18 (6) *OTHER RIGHTS NOT AFFECTED.—The rights*
19 *granted by this subsection do not abridge any other*
20 *rights provided by law.*

21 (7) *EFFECTIVE DATE.—This subsection shall take*
22 *effect 120 days after the date of the enactment of this*
23 *Act. Regulations implementing this subsection shall be*
24 *promulgated no later than such effective date.*

1 **SEC. 113. ENFORCEMENT.**

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

3 (1) *POLICY GUIDANCE ON ENFORCEMENT.*—The
4 Secretary, in consultation with the Secretary of the
5 Treasury and the heads of other appropriate depart-
6 ments and agencies, shall be responsible for providing
7 policy guidance on the enforcement of this title.

8 (2) *GENERAL AUTHORITIES.*—(A) To the extent
9 necessary or appropriate to the enforcement of this
10 title or to the imposition of any penalty, forfeiture,
11 or liability arising under the Export Administration
12 Act of 1979, officers or employees of the Department
13 of Commerce designated by the Secretary and officers
14 and employees of the United States Customs Service
15 designated by the Commissioner may exercise the en-
16 forcement authorities described in paragraph (3).

17 (B) In carrying out the enforcement authorities
18 described in paragraph (3), the Commissioner of Cus-
19 toms, and employees of the United States Customs
20 Service designated by the Commissioner, may make
21 investigations within or outside the United States
22 and at those ports of entry or exit from the United
23 States where officers of the United States Customs
24 Service are authorized by law to carry out such en-
25 forcement responsibilities. Subject to paragraph (3),
26 the United States Customs Service is authorized, in

1 *the enforcement of this title, to search, detain (after*
2 *search), and seize commodities or technology at those*
3 *ports of entry or exit from the United States where*
4 *officers of the Customs Service are authorized by law*
5 *to conduct such searches, detentions, and seizures, and*
6 *at those places outside the United States where the*
7 *Customs Service, pursuant to agreements or other ar-*
8 *rangements with other countries, is authorized to per-*
9 *form enforcement activities.*

10 *(C) In carrying out the enforcement authorities*
11 *described in paragraph (3), the Secretary, and officers*
12 *and employees of the Department of Commerce des-*
13 *ignated by the Secretary, may make investigations*
14 *within the United States, and shall conduct, outside*
15 *the United States, pre-license and post-shipment ver-*
16 *ifications of items licensed for export and investiga-*
17 *tions in the enforcement of section 108. The Secretary,*
18 *and officers and employees of the Department of Com-*
19 *merce designated by the Secretary, are authorized to*
20 *search, detain (after search), and seize items at those*
21 *places within the United States other than those ports*
22 *and borders specified in subparagraph (B). The*
23 *search, detention (after search), or seizure of items at*
24 *those ports and borders specified in subparagraph (B)*
25 *may be conducted by officers and employees of the De-*

1 *partment of Commerce only with the concurrence of*
2 *the Commissioner of Customs or a person designated*
3 *by the Commissioner.*

4 *(D) The Secretary and the Commissioner of Cus-*
5 *toms may enter into agreements and arrangements*
6 *for the enforcement of this title, including foreign in-*
7 *vestigations and information exchange.*

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

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

17 *(ii) Administer oaths or affirmations, and*
18 *by subpoena require any person to appear and*
19 *testify or to appear and produce books, records,*
20 *and other writings, or both. In the case of contu-*
21 *macy by, or refusal to obey a subpoena issued to,*
22 *any such person, a district court of the United*
23 *States, after notice to any such person and a*
24 *hearing, shall have jurisdiction to issue an order*
25 *requiring such person to appear and give testi-*

1 *mony or to appear and produce books, records,*
2 *and other writings, or both. Any failure to obey*
3 *such order of the court may be punished by such*
4 *court as a contempt thereof.*

5 *(B) Any officer or employee of the Office of Ex-*
6 *port Enforcement of the Department of Commerce*
7 *who is designated by the Secretary under paragraph*
8 *(2), and any officer or employee of the United States*
9 *Customs Service who is designated by the Commis-*
10 *sioner of Customs under paragraph (2), may do the*
11 *following in carrying out the enforcement authority*
12 *under this title:*

13 *(i) Execute any warrant or other process is-*
14 *sued by a court or officer of competent jurisdic-*
15 *tion with respect to the enforcement of this title.*

16 *(ii) Make arrests without warrant for any*
17 *violation of this title committed in his or her*
18 *presence or view, or if the officer or employee has*
19 *probable cause to believe that the person to be ar-*
20 *rested has committed, is committing, or is about*
21 *to commit such a violation.*

22 *(iii) Carry firearms.*

23 *(C) Any officer or employee of the United States*
24 *Customs Service designated by the Commissioner of*
25 *Customs under paragraph (2) may do the following*

1 *in carrying out the enforcement authority under this*
2 *title:*

3 *(i) Stop, search, and examine a vehicle, ves-*
4 *sel, aircraft, or person on which or whom the of-*
5 *ficer or employee has reasonable cause to suspect*
6 *there is any item that has been, is being, or is*
7 *about to be exported from or transited through*
8 *the United States in violation of this title.*

9 *(ii) Detain and search any package or con-*
10 *tainer in which the officer or employee has rea-*
11 *sonable cause to suspect there is any item that*
12 *has been, is being, or is about to be exported*
13 *from or transited through the United States in*
14 *violation of this title.*

15 *(D) Any officer or employee designated under*
16 *paragraph (2) may detain (after search under sub-*
17 *paragraph (C)) or seize any item, for purposes of se-*
18 *curing for trial or forfeiture to the United States, on*
19 *or about a vehicle, vessel, aircraft, or person described*
20 *in subparagraph (C)(i), or in a package or container*
21 *described in subparagraph (C)(ii), if the officer or*
22 *employee has probable cause to believe the item has*
23 *been, is being, or is about to be exported from or*
24 *transited through the United States in violation of*
25 *this title.*

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

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

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

11 (2) *the disposition of such property or the pro-*
12 *ceeds from the sale thereof,*

13 (3) *the remission or mitigation of such forfeit-*
14 *ures, and*

15 (4) *the compromise of claims,*

16 *shall apply to seizures and forfeitures incurred, or alleged*
17 *to have been incurred, under the provisions of this sub-*
18 *section, insofar as applicable and not inconsistent with this*
19 *title; except that such duties as are imposed upon the cus-*
20 *toms officer or any other person with respect to the seizure*
21 *and forfeiture of property under the customs laws may be*
22 *performed with respect to seizures and forfeitures of prop-*
23 *erty under this subsection by the Secretary or such officers*
24 *and employees of the Department of Commerce as may be*
25 *authorized or designated for that purpose by the Secretary,*

1 *or, upon the request of the Secretary, by any other agency*
2 *that has authority to manage and dispose of seized prop-*
3 *erty.*

4 (c) *REFERRAL OF CASES.*—*All cases involving viola-*
5 *tions of this title shall be referred to the Secretary for pur-*
6 *poses of determining civil penalties and administrative*
7 *sanctions under section 110(c), or to the Attorney General*
8 *for criminal action in accordance with this title.*

9 (d) *UNDERCOVER INVESTIGATION OPERATIONS.*—

10 (1) *USE OF FUNDS.*—*With respect to any under-*
11 *cover investigative operation conducted by the Office*
12 *of Export Enforcement of the Department of Com-*
13 *merce (hereafter in this subsection referred to as*
14 *“OEE”)* *necessary for the detection and prosecution of*
15 *violations of this title—*

16 (A) *funds made available for export enforce-*
17 *ment under this title may be used to purchase*
18 *property, buildings, and other facilities, and to*
19 *lease space within the United States, without re-*
20 *gard to sections 1341 and 3324 of title 31, Unit-*
21 *ed States Code, the third undesignated para-*
22 *graph under the heading of “MISCELLANEOUS” of*
23 *the Act of March 3, 1877, (40 U.S.C. 34), sec-*
24 *tions 3732(a) and 3741 of the Revised Statutes*
25 *of the United States (41 U.S.C. 11(a) and 22),*

1 *and subsections (a) and (c) of section 304, and*
2 *section 305 of the Federal Property and Admin-*
3 *istrative Services Act of 1949 (41 U.S.C. 254(a)*
4 *and (c) and 255),*

5 *(B) funds made available for export enforce-*
6 *ment under this title may be used to establish or*
7 *to acquire proprietary corporations or business*
8 *entities as part of an undercover operation, and*
9 *to operate such corporations or business entities*
10 *on a commercial basis, without regard to section*
11 *9102 of title 31, United States Code,*

12 *(C) funds made available for export enforce-*
13 *ment under this title and the proceeds from un-*
14 *dercover operations may be deposited in banks or*
15 *other financial institutions without regard to the*
16 *provisions of section 648 of title 18, United*
17 *States Code, and section 3302 of title 31, United*
18 *States Code, and*

19 *(D) the proceeds from undercover operations*
20 *may be used to offset necessary and reasonable*
21 *expenses incurred in such operations without re-*
22 *gard to the provisions of section 3302 of title 31,*
23 *United States Code,*

24 *if the Director of OEE (or an officer or employee des-*
25 *ignated by the Director) certifies, in writing, that the*

1 *action authorized by subparagraph (A), (B), (C), or*
2 *(D) for which the funds would be used is necessary for*
3 *the conduct of the undercover operation.*

4 (2) *DISPOSITION OF BUSINESS ENTITIES.—If a*
5 *corporation or business entity established or acquired*
6 *as part of an undercover operation with a net value*
7 *of more than \$50,000 is to be liquidated, sold, or oth-*
8 *erwise disposed of, the Director of OEE shall report*
9 *the circumstances to the Secretary and the Comptrol-*
10 *ler General, as much in advance of such disposition*
11 *as the Director of OEE or his or her designee deter-*
12 *mines is practicable. The proceeds of the liquidation,*
13 *sale, or other disposition, after obligations incurred*
14 *by the corporation or business enterprise are met,*
15 *shall be deposited in the Treasury of the United*
16 *States as miscellaneous receipts.*

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

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

9 (B) *The Secretary shall submit annually to the*
10 *Congress a report, which may be included in the an-*
11 *annual report under section 115, specifying the follow-*
12 *ing information:*

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

16 (ii) *The number of undercover investigative*
17 *operations commenced in the 1-year period pre-*
18 *ceding the period for which such report is sub-*
19 *mitted.*

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

1 (5) *DEFINITIONS.*—For purposes of paragraph
2 (4)—

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

10 (B) the terms “undercover investigative op-
11 eration” and “undercover operation” mean any
12 undercover investigative operation conducted by
13 OEE—

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

18 (ii) which is exempt from section 3302
19 or 9102 of title 31, United States Code,
20 except that clauses (i) and (ii) shall not apply
21 with respect to the report to the Congress re-
22 quired by subparagraph (B) of paragraph (4);
23 and

1 (C) the term “employees” means employees,
2 as defined in section 2105 of title 5, United
3 States Code, of the Department of Commerce.

4 (e) REFERENCE TO ENFORCEMENT.—For purposes of
5 this section, a reference to the enforcement of this title or
6 to a violation of this title includes a reference to the enforce-
7 ment or a violation of any regulation, license, or order is-
8 sued under this title.

9 **SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCE-**
10 **DURES.**

11 (a) POLICY GUIDANCE.—

12 (1) IN GENERAL.—As directed by the President,
13 annual policy guidance shall be issued to provide de-
14 tailed implementing guidance to export licensing offi-
15 cials in all appropriate departments and agencies.

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

23 (A) an assessment by the Secretary of the
24 economic consequences of the imposition, exten-
25 sion, or removal of controls during the preceding

1 *12 months, including the impact on United*
2 *States exports or jobs;*

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

7 *(C) an assessment by the Secretary of De-*
8 *fense of the impact that the imposition, exten-*
9 *sion, or removal of controls during the preceding*
10 *12 months has had on United States national se-*
11 *curity.*

12 ***(b) EXPORT CONTROL AUTHORITY AND FUNCTIONS.—***

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

18 ***(2) DELEGATION OF FUNCTIONS OF THE SEC-***
19 ***RETARY.—****The Secretary may delegate any function*
20 *under this title to the Under Secretary of Commerce*
21 *for Export Administration appointed under sub-*
22 *section (d) or to any other officer of the Department*
23 *of Commerce.*

24 ***(c) EXPORT CONTROL POLICY COMMITTEE.—***

1 (1) *ESTABLISHMENT.*—*There is established an*
2 *Export Control Policy Committee (hereafter in this*
3 *subsection referred to as the “Committee”).*

4 (2) *FUNCTIONS.*—*The Committee shall—*

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

8 (B) *review policy recommendations pro-*
9 *posed by the Secretary and other members of the*
10 *Committee; and*

11 (C) *receive policy recommendations from*
12 *other agencies and resolve any policy disputes*
13 *among departments and agencies under this*
14 *title.*

15 (3) *MEMBERSHIP.*—*The Committee shall be com-*
16 *prised of—*

17 (A) *the Secretary;*

18 (B) *the Secretary of Defense;*

19 (C) *the Secretary of Energy;*

20 (D) *the Secretary of State;*

21 (E) *the National Security Adviser;*

22 (F) *the National Economic Adviser;*

23 (G) *the Secretary of the Treasury;*

24 (H) *the United States Trade Representative;*

25 *and*

1 (I) *the Director of the Arms Control and*
2 *Disarmament Agency.*

3 (4) *CHAIR.—The Committee shall be jointly*
4 *chaired by the National Economic Adviser and the*
5 *National Security Adviser.*

6 (5) *DELEGATION; OTHER REPRESENTATIVES.—A*
7 *member of the Committee under paragraph (3) may*
8 *designate the deputy head of his or her department or*
9 *agency to serve in his or her absence as a member of*
10 *the Committee, but this authority may not be dele-*
11 *gated to any other individual. The Chairs may also*
12 *invite the temporary participation in the Committee's*
13 *meetings of representatives from other offices and*
14 *agencies as appropriate to the issues under consider-*
15 *ation.*

16 (6) *MEETINGS.—The Secretary or either Chair of*
17 *the Committee may call a meeting of the Committee.*
18 *Meetings shall not be subject to section 552b of title*
19 *5, United States Code.*

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

22 (1) *APPOINTMENT.—The President shall appoint,*
23 *by and with the advice and consent of the Senate, an*
24 *Under Secretary of Commerce for Export Administra-*
25 *tion who shall carry out all functions of the Secretary*

1 *under this title and other provisions of law relating*
2 *to national security, as the Secretary may delegate.*
3 *The President shall appoint, by and with the advice*
4 *and consent of the Senate, two Assistant Secretaries*
5 *of Commerce to assist the Under Secretary in carry-*
6 *ing out such functions.*

7 (2) *TRANSITION PROVISIONS.—Those individuals*
8 *servng in the positions of Under Secretary of Com-*
9 *merce for Export Administration and Assistant Sec-*
10 *retaries of Commerce under section 15(a) of the Ex-*
11 *port Administration Act of 1979, on the day before*
12 *the date of the enactment of this Act, shall be deemed*
13 *to have been appointed under paragraph (1) as of*
14 *such date of enactment.*

15 (e) *ISSUANCE OF REGULATIONS.—The President and*
16 *the Secretary may issue such regulations as are necessary*
17 *to carry out this title. Any such regulations the purpose*
18 *of which is to carry out section 105 or 106 may be issued*
19 *only after the regulations are submitted for review to such*
20 *departments or agencies as the President considers appro-*
21 *priate, and to any appropriate export advisory committee*
22 *appointed under section 104(f). The preceding sentence does*
23 *not require the concurrence or approval of any official, de-*
24 *partment, or agency to which such regulations are submit-*
25 *ted.*

1 (f) *AMENDMENTS TO REGULATIONS.*—*If the Secretary*
2 *proposes to amend regulations issued under this title, the*
3 *Secretary shall report to the Committee on Banking, Hous-*
4 *ing, and Urban Affairs of the Senate and the Committee*
5 *on Foreign Affairs of the House of Representatives on the*
6 *intent and rationale of such amendments. Such report shall*
7 *evaluate the cost and burden to the United States exporters*
8 *of the proposed amendments in relation to any enhance-*
9 *ment of licensing objectives. The Secretary shall consult*
10 *with the appropriate export advisory committees appointed*
11 *under section 104(f) in formulating or amending regula-*
12 *tions issued under this title.*

13 (g) *CONFIDENTIALITY OF INFORMATION.*—

14 (1) *EXEMPTIONS FROM DISCLOSURE.*—

15 (A) *Except as otherwise provided by the*
16 *third sentence of section 108(b)(2), information*
17 *obtained under the Export Administration Act of*
18 *1979 and its predecessor statutes on or before*
19 *June 30, 1980, which is deemed confidential, in-*
20 *cluding Shipper's Export Declarations, or with*
21 *reference to which a request for confidential*
22 *treatment is made by the person furnishing such*
23 *information, shall be exempt from disclosure*
24 *under section 552 of title 5, United States Code,*
25 *and such information shall not be published or*

1 disclosed unless the Secretary determines that the
2 withholding thereof is contrary to the national
3 interest.

4 (B) Except as otherwise provided by the
5 third sentence of section 108(b)(2), information
6 obtained under this title or under the Export Ad-
7 ministration Act of 1979 after June 30, 1980,
8 may be withheld from disclosure only to the ex-
9 tent permitted by statute, except that informa-
10 tion submitted, obtained, or considered in con-
11 nection with an application for an export license
12 or other export authorization under the Export
13 Administration Act of 1979 or this title, includ-
14 ing the export license or other export authoriza-
15 tion itself, classification requests described in sec-
16 tion 109(h)(1), information obtained during the
17 course of a foreign availability assessment, infor-
18 mation or evidence obtained in the course of any
19 investigation, and information obtained or fur-
20 nished under this title in connection with inter-
21 national agreements, treaties, or obligations shall
22 be withheld from public disclosure unless the re-
23 lease of such information is determined by the
24 Secretary to be in the national interest.

25 (2) INFORMATION TO CONGRESS AND GAO.—

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

5 (B) *AVAILABILITY TO THE CONGRESS.*—

6 (i) *IN GENERAL.*—*All information ob-*
7 *tained at any time under this title or pre-*
8 *vious Acts regarding the control of exports,*
9 *including any report or license application*
10 *required under this title, shall be made*
11 *available to any committee or subcommittee*
12 *of Congress of appropriate jurisdiction upon*
13 *the request of the chairman or ranking mi-*
14 *nority member of such committee or sub-*
15 *committee.*

16 (ii) *PROHIBITION ON FURTHER DIS-*
17 *CLOSURE.*—*No committee, subcommittee, or*
18 *Member of Congress shall disclose any infor-*
19 *mation obtained under this title or previous*
20 *Acts regarding the control of exports which*
21 *is submitted on a confidential basis to the*
22 *Congress under clause (i) unless the full*
23 *committee to which the information is made*
24 *available determines that the withholding of*

1 *the information is contrary to the national*
2 *interest.*

3 (C) *AVAILABILITY TO THE GAO.*—

4 (i) *IN GENERAL.*—*Notwithstanding*
5 *paragraph (1), information referred to in*
6 *subparagraph (B) shall, consistent with the*
7 *protection of intelligence, counterintel-*
8 *ligence, and law enforcement sources, meth-*
9 *ods, and activities, as determined by the*
10 *agency that originally obtained the infor-*
11 *mation, and consistent with the provisions*
12 *of section 716 of title 31, United States*
13 *Code, be made available only by the agency,*
14 *upon request, to the Comptroller General of*
15 *the United States or to any officer or em-*
16 *ployee of the General Accounting Office au-*
17 *thorized by the Comptroller General to have*
18 *access to such information.*

19 (ii) *PROHIBITION ON FURTHER DIS-*
20 *CLOSURES.*—*No officer or employee of the*
21 *General Accounting Office shall disclose, ex-*
22 *cept to the Congress in accordance with this*
23 *paragraph, any such information which is*
24 *submitted on a confidential basis and from*
25 *which any individual can be identified.*

1 (3) *INFORMATION EXCHANGE.*—Notwithstanding
2 paragraph (1), the Secretary and the Commissioner of
3 Customs shall exchange licensing and enforcement in-
4 formation with each other which is necessary to facili-
5 tate enforcement efforts and effective license decisions.

6 (4) *PENALTIES FOR DISCLOSURE OF CONFIDEN-*
7 *TIAL INFORMATION.*—Any officer or employee of the
8 United States, or any department or agency thereof,
9 who publishes, divulges, discloses, or makes known in
10 any manner or to any extent not authorized by law
11 any information that—

12 (A) he or she obtains in the course of his or
13 her employment or official duties or by reason of
14 any examination or investigation made by, or
15 report or record made to or filed with, such de-
16 partment or agency, or officer or employee there-
17 of, and

18 (B) is exempt from disclosure under this
19 subsection,

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

1 (h) *AUTHORITY FOR SEMINAR AND PUBLICATIONS*
2 *FUND.*—*The Secretary is authorized to cooperate with pub-*
3 *lic agencies, other governments, international organiza-*
4 *tions, private individuals, private associations, and other*
5 *groups in connection with seminars, publications, and re-*
6 *lated activities to carry out export activities, including edu-*
7 *cating the public or government officials on the application*
8 *of this title and the regulations issued under this title. The*
9 *Secretary is further authorized to accept contributions of*
10 *funds, property, or services in connection with such activi-*
11 *ties to recover the cost of such programs and activities. Con-*
12 *tributions may include payments for materials or services*
13 *provided as part of such activities. The contributions col-*
14 *lected may be retained for use in covering the costs of such*
15 *activities, and for providing information to the public with*
16 *respect to this title and other export control programs of*
17 *the United States and other governments.*

18 (i) *SUPPORT OF OTHER COUNTRIES' EXPORT CON-*
19 *TROL PROGRAM.*—*The Secretary is authorized to provide*
20 *training to officials of other countries on the principles and*
21 *procedures for the implementation of effective export con-*
22 *trols and shall participate in any such training provided*
23 *by other departments and agencies of the United States.*

24 (j) *INCORPORATED COMMODITIES AND TECH-*
25 *NOLOGY.*—

1 (1) *COMMODITIES CONTAINING CONTROLLED*
2 *PARTS AND COMPONENTS.*—*Export licenses may not*
3 *be required under this title or any other provision of*
4 *law for a commodity solely because the commodity*
5 *contains parts or components on which export con-*
6 *trols are in effect under this title if such parts or*
7 *components—*

8 (A) *are essential to the functioning of the*
9 *commodity;*

10 (B) *are customarily included in sales of the*
11 *commodity in countries other than controlled*
12 *countries; and*

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

15 *unless the commodity itself, if exported, would by vir-*
16 *tue of the functional characteristics of the commodity*
17 *as a whole meet the requirements of subparagraph (A)*
18 *or (B) of section 105(a)(1).*

19 (2) *REEXPORTS OF FOREIGN-MADE ITEMS INCOR-*
20 *PORATING U.S. ITEMS.*—

21 (A) *COMMODITIES.*—(i) *Subject to clause*
22 *(ii), no authority or permission may be required*
23 *under section 105 or 106 to reexport a commod-*
24 *ity that is produced in a country other than the*
25 *United States and incorporates commodities that*

1 are subject to the jurisdiction of the United
2 States, if the value of the controlled United
3 States content of the commodity produced in
4 such other country is 25 percent or less of the
5 total value of the commodity.

6 (ii) No authority or permission may be re-
7 quired under section 106 to reexport to a terror-
8 ist country, or to a country against which an
9 embargo described in section 106(f)(1) is in ef-
10 fect, a commodity that is produced in a country
11 other than the United States and incorporates
12 commodities that are subject to the jurisdiction
13 of the United States, if the value of the controlled
14 United States content of the commodity produced
15 in such other country is 10 percent or less of the
16 total value of the commodity.

17 (iii) For purposes of clause (ii), a “terrorist
18 country” is a country with respect to which a
19 determination is in effect that was made under
20 section 106(i)(1)(A) of this Act, or section
21 6(j)(1)(A) of the Export Administration Act of
22 1979, that the government of such country has
23 repeatedly provided support for acts of inter-
24 national terrorism.

1 (B) *TECHNOLOGY.*—(i) *No authority or per-*
2 *mission may be required under section 105 to re-*
3 *export technology that is produced in a country*
4 *other than the United States and is commingled*
5 *with or drawn from technology that is produced*
6 *in the United States, if the value of the con-*
7 *trolled United States content of the technology*
8 *produced in such other country is 25 percent or*
9 *less of the total value of the technology.*

10 (ii) *No authority or permission may be re-*
11 *quired under section 106 to reexport technology*
12 *that is produced in a country other than the*
13 *United States and is commingled with or drawn*
14 *from technology that is produced in the United*
15 *States, if the value of the controlled United*
16 *States content of the technology produced in such*
17 *other country is 10 percent or less of the total*
18 *value of the technology.*

19 (C) *CONTROLLED CONTENT.*—*For purposes*
20 *of this paragraph, the “controlled United States*
21 *content” of a commodity or technology means*
22 *those commodities or technology that—*

23 (i) *are subject to the jurisdiction of the*
24 *United States;*

1 (ii) are incorporated into the commod-
2 ity or technology; and

3 (iii) would, at the time of the reexport,
4 require a validated license under section
5 105 or 106 if exported from the United
6 States to a country to which the commodity
7 or technology is to be reexported.

8 (D) TREATMENT OF CERTAIN TECHNICAL
9 DATA.—For purposes of this subsection, tech-
10 nology and source code used to design or produce
11 commodities or software produced in a country
12 other than the United States are not incor-
13 porated into such commodities or software.

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

16 (1) medicine or medical supplies; or

17 (2) donations of items that are intended to meet
18 basic human needs, including food, educational mate-
19 rials, seeds, hand tools, water resources equipment,
20 clothing and shelter materials, and basic household
21 supplies.

22 (l) SANCTITY OF EXISTING CONTRACTS AND LI-
23 CENSES.—

24 (1) IN GENERAL.—The President may not pro-
25 hibit the export of items under section 105 or 106—

1 (A) *in performance of a contract, agree-*
2 *ment, or other contractual commitment entered*
3 *into before the effective date of any export con-*
4 *trols imposed on such items by this title, or the*
5 *date on which the President reports to the Con-*
6 *gress the President's intention to impose controls*
7 *on the export of such items, whichever date oc-*
8 *currs first, or*

9 (B) *under a validated license or other au-*
10 *thorization issued under this title before the effec-*
11 *tive date of any export controls imposed on such*
12 *items by this title, or the date on which the*
13 *President reports to the Congress the President's*
14 *intention to impose controls on the export of such*
15 *items, whichever date occurs first.*

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

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

22 (B) *the prohibition of exports under each*
23 *such contract, agreement, commitment, license,*
24 *or authorization will be directly instrumental in*

1 *remedying the situation posing the direct threat;*
2 *and*

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

5 *The authority of the President to make determina-*
6 *tions under this paragraph may not be delegated.*

7 *(m) PUBLICATION OF ACTIONS.—*

8 *(1) DECISIONS AND ACTIONS OF THE SEC-*
9 *RETARY.—*

10 *(A) IN GENERAL.—The Secretary shall pub-*
11 *lish in the Federal Register, to the greatest extent*
12 *practicable, actions, procedures, and decisions of*
13 *the Secretary under this title, taking into ac-*
14 *count restrictions on disclosure of classified or*
15 *confidential information. The following deter-*
16 *minations of the Secretary shall in every case be*
17 *published in the Federal Register, unless a pri-*
18 *vate party requested the determination and asked*
19 *that it not be published:*

20 *(i) Classification of a commodity or*
21 *technology on the control index.*

22 *(ii) Calculation of a commonly-used*
23 *control index parameter for a commodity or*
24 *technology, including all officially accepted*

1 *composite theoretical performance calcula-*
2 *tions for computers and microprocessors.*

3 *(B) NOTICE OF REVISIONS.—Whenever the*
4 *Secretary makes any revision in the control*
5 *index with respect to any commodity or tech-*
6 *nology, or with respect to any country or des-*
7 *tination affected by controls imposed under sec-*
8 *tion 105 or section 106, the Secretary shall pub-*
9 *lish in the Federal Register a notice of such revi-*
10 *sion and shall specify in such notice under which*
11 *authority the revision is being made.*

12 *(2) EXPORT CONTROL REGIME ACTIONS.—*

13 *(A) IN GENERAL.—Not more than 90 days*
14 *after the date of the enactment of this Act, the*
15 *Secretary shall publish in the Federal Register*
16 *the full text of the lists of controlled items of all*
17 *export control regimes and all notes and under-*
18 *standings of the regimes concerning such lists.*
19 *The Secretary shall update the publication under*
20 *the preceding sentence at least once in each 1-*
21 *year period occurring after the original publica-*
22 *tion under this subparagraph.*

23 *(B) CONTENTS.—The Secretary shall pub-*
24 *lish in the Federal Register—*

1 (i) the full text of any agreements af-
2 fecting the lists of controlled items of all ex-
3 port control regimes, together with all notes,
4 understandings, and other aspects of such
5 agreements and all revisions to such texts;

6 (ii) subject to the limitations set forth
7 in subsection (g), decisions on requests for
8 exceptions permitted by such export control
9 regimes for particular exports;

10 (iii) other actions and decisions of such
11 export control regimes, to the maximum ex-
12 tent possible; and

13 (iv) unreliable end users with respect
14 to items on which export controls are im-
15 posed under this title, and persons to whom
16 sanctions have been applied, or whose ex-
17 port privileges have been denied, under this
18 title.

19 (C) *TIMING.*—Such publication shall be
20 made not more than 30 days after the agree-
21 ments are reached, the decisions are made, the
22 actions are taken, or the information becomes
23 available, as the case may be.

24 (D) *EXCEPTION.*—The publication of a par-
25 ticular matter need not be made under this

1 *paragraph to the extent that the Secretary sub-*
2 *mits a written finding to the Congress that to*
3 *publish that matter would be contrary to na-*
4 *tional or international security, would abridge*
5 *the confidentiality of the decision-making proc-*
6 *esses of an export control regime, or would other-*
7 *wise be inconsistent with the obligations of the*
8 *United States to an export control regime.*

9 (n) *NOTIFICATION OF THE PUBLIC; CONSULTATION*
10 *WITH INDUSTRY; RECORDKEEPING.—*

11 (1) *NOTIFICATION OF THE PUBLIC.—The Sec-*
12 *retary shall keep the public fully apprised of changes*
13 *in export control policy and procedures instituted*
14 *under this title with a view to encouraging trade.*

15 (2) *CONSULTATION WITH INDUSTRY.—The Sec-*
16 *retary shall meet regularly with export advisory com-*
17 *mittees appointed under section 104(f) in order to ob-*
18 *tain their views on United States export control pol-*
19 *icy and the foreign availability of commodities and*
20 *technology.*

21 (o) *DELEGATION TO COCOM.—The Secretary, or an*
22 *officer or employee of the Department of Commerce des-*
23 *ignated by the Secretary, shall be a member of the perma-*
24 *nent United States delegation to COCOM or its successor*
25 *export control regime.*

1 (p) *EXPORT CONTROL ATTACHES.*—The Secretary
2 shall assign a full-time export control attache to each of
3 those countries that—

4 (1) *pose the greatest threat to the United States*
5 *and its allies with respect to the proliferation of*
6 *weapons of mass destruction and missiles; and*

7 (2) *received exports pursuant to the largest num-*
8 *ber of licenses issued under sections 105 and 106, dur-*
9 *ing the preceding 2 calendar years, as compared to li-*
10 *ces issued under such sections for exports to all*
11 *countries.*

12 *Each such attache shall give priority to conducting post-*
13 *shipment verifications, prelicense checks, and other mon-*
14 *itoring of end uses in the country to which the attache is*
15 *assigned.*

16 (q) *AUTHORIZATION FOR TECHNICAL DATA.*—A vali-
17 dated license authorizing the export of any commodities or
18 technology under this title shall also authorize the export
19 of operation technical data related to such commodities or
20 technology, whether or not such data is specifically ref-
21 erenced in the license or license application, if the technical
22 level of the data does not exceed the level reasonably nec-
23 essary to install, repair, maintain, inspect, operate, or use
24 the commodities or technology.

1 (r) *LICENSES FOR SPARE PARTS NOT REQUIRED.*—
2 *An individual validated license shall not be required under*
3 *this title for replacement parts which are exported to re-*
4 *place on a one-for-one basis parts that were in a commodity*
5 *that was lawfully exported from the United States, unless*
6 *the President determines that such a license should be re-*
7 *quired for such parts.*

8 **SEC. 115. ANNUAL REPORT.**

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

15 (1) *The implementation of the policies set forth*
16 *in section 103, including delegations of authority by*
17 *the President under section 104(d), consultations with*
18 *the export advisory committees established under sec-*
19 *tion 104(f), and any changes in the exercise of the au-*
20 *thorities contained in sections 105(a), 106(a), 107(a),*
21 *and 108(a).*

22 (2) *With respect to multilateral export controls*
23 *imposed or maintained under section 105, the follow-*
24 *ing:*

1 (A) *The effectiveness of each export control*
2 *regime, as required by section 105(h), including*
3 *all information required by section 105(h)(2).*

4 (B) *Adjustments to multilateral export con-*
5 *trols.*

6 (C) *The implementation of the export licens-*
7 *ing treatment authorized by section 105(e).*

8 (D) *Determinations of foreign availability*
9 *made under section 105(i), the criteria used to*
10 *make such determinations, the removal of any*
11 *export controls under such subsection, and any*
12 *evidence demonstrating a need to maintain ex-*
13 *port controls notwithstanding foreign availabil-*
14 *ity.*

15 (E) *The operation of the indexing system*
16 *under section 105(k).*

17 (3) *With respect to unilateral export controls im-*
18 *posed under section 106, the following:*

19 (A) *The effectiveness of such controls.*

20 (B) *Adjustments to such controls pursuant*
21 *to negotiations under subsections (a)(5) and (c)*
22 *of section 106.*

23 (C) *Embargoes imposed, maintained, or re-*
24 *moved in accordance with section 106, including*
25 *descriptions of each embargo and the rationale*

1 for imposing, maintaining, or removing such
2 embargo.

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

5 (5) *Organizational and procedural changes un-*
6 *dertaken in furtherance of the policies set forth in this*
7 *title, including changes to increase the efficiency of*
8 *the export licensing process and to fulfill the require-*
9 *ments of section 109, including an accounting of ap-*
10 *peals received, and actions taken pursuant thereto,*
11 *under section **[109(g)] 109(h).***

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

14 (7) *The issuance of regulations under this title.*

15 (8) *The results, in as much detail as may be in-*
16 *cluded consistent with the strategic and political in-*
17 *terests of the United States and the need to maintain*
18 *the confidentiality of proprietary information, of the*
19 *reviews of the security control list, and any revisions*
20 *to the list resulting from such reviews, required by*
21 *section 105.*

22 (9) *Each of the assessments described in section*
23 *114(a)(2).*

24 (b) *INFORMATION ON SECTION 111.—*

1 (1) *INFORMATION TO BE INCLUDED.*—*The Presi-*
2 *dent shall include in each annual report under sub-*
3 *section (a)—*

4 (A) *a description of the actions taken to*
5 *carry out section 111, including the imposition*
6 *and removal of sanctions under such section;*

7 (B) *a description of the current efforts of*
8 *foreign countries and subnational groups to ac-*
9 *quire equipment, materials, or technology to de-*
10 *velop, produce, or use chemical or biological*
11 *weapons, together with an assessment of the cur-*
12 *rent and likely future capabilities of such coun-*
13 *tries and groups to develop, produce, stockpile,*
14 *deliver, transfer, or use such weapons;*

15 (C) *a description of—*

16 (i) *the use of chemical or biological*
17 *weapons by foreign countries in violation of*
18 *international law,*

19 (ii) *the use of chemical or biological*
20 *weapons by subnational groups,*

21 (iii) *substantial preparations by for-*
22 *ign countries and subnational groups to do*
23 *so, and*

24 (iv) *the development, production, stock-*
25 *piling, or use of chemical or biological*

1 *weapons by foreign countries and*
2 *subnational groups; and*

3 *(D) a description of the extent to which for-*
4 *ign persons or governments have knowingly and*
5 *materially assisted third countries or*
6 *subnational groups to acquire equipment, mate-*
7 *rial, or technology intended to develop, produce,*
8 *or use chemical or biological weapons.*

9 *(2) INFORMATION SHOULD BE UNCLASSIFIED.—*
10 *To the extent practicable, information submitted*
11 *under paragraph (1) should be based on unclassified*
12 *information.*

13 **SEC. 116. DEFINITIONS.**

14 *As used in this title:*

15 *(1) AUSTRALIA GROUP.—The term “Australia*
16 *Group” means the multilateral arrangement in which*
17 *the United States participates that seeks to prevent*
18 *the proliferation of chemical and biological weapons.*

19 *(2) COCOM.—The term “COCOM” means the*
20 *Coordinating Committee for Multilateral Export Con-*
21 *trols, and any successor entity.*

22 *(3) COMMODITY.—The term “commodity” means*
23 *any article, natural or manmade substance, material,*
24 *supply, or manufactured product, including inspec-*

1 *tion and test equipment, and excluding technical*
2 *data.*

3 (4) *CONTROL OR CONTROLLED.*—*The terms “con-*
4 *trol” and “controlled” refer to a requirement that an*
5 *export have a validated license or written reexport*
6 *authorization.*

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

10 (6) *CONTROLLABLE.*—*The term “controllable”*
11 *means capable of being made subject to an effective*
12 *prohibition or significant restriction on exports. A*
13 *commodity or technology shall not be considered to be*
14 *controllable unless it is—*

15 (A) *manufactured or sold by only a limited*
16 *number of suppliers who can be positively identi-*
17 *fied;*

18 (B) *consumed or used by only a limited*
19 *number of end users who can be positively iden-*
20 *tified and whose export activities can be con-*
21 *trolled; and*

22 (C) *individually traceable or not easily con-*
23 *cealed or disguised.*

24 (7) *CONTROLLED COUNTRY, CONTROLLED END*
25 *USE, AND CONTROLLED END USER.*—(A) *The term*

1 *“controlled country” means a country identified*
2 *under section 105(b)(3), and a country on which con-*
3 *trols are imposed under section 106.*

4 (B) *The term “controlled end use” means an end*
5 *use identified under section 105(b)(3) and an end use*
6 *for which exports are controlled under section 106.*

7 (C) *The term “controlled end user” means an*
8 *end user identified under section 105(b)(3) and an*
9 *end user to which exports are controlled under section*
10 *106.*

11 (8) *COOPERATING COUNTRY.—The term “cooper-*
12 *ating country” means a country that, pursuant to an*
13 *agreement or other arrangement with the United*
14 *States or an export control regime, controls exports of*
15 *items that are consistent with the criteria and stand-*
16 *ards of that export control regime.*

17 (9) *END USE AND END USER.—(A) The term*
18 *“end use” means the intended application or use of*
19 *an item as represented by an export license applicant.*

20 (B) *The term “end user” means the person lo-*
21 *cated abroad who is the true party in interest in ac-*
22 *tually receiving an export for the end use designated*
23 *for the export.*

24 (10) *EXPORT.—The term “export” —*

25 (A) *means—*

1 (i) an actual shipment, transfer, or
2 transmission of items out of the United
3 States; and

4 (ii) a transfer to any person of items
5 either within the United States or outside of
6 the United States with the knowledge or in-
7 tent that the items will be shipped outside
8 the United States, transferred, or transmit-
9 ted to an unauthorized end user, end use, or
10 destination;

11 (B) includes the transfer of the registration
12 of a satellite or operational control of a satellite
13 from a party resident in the United States to a
14 party resident in another country; and

15 (C) includes the term “reexport”.

16 (11) *EXPORT CONTROL REGIME, MULTILATERAL*
17 *EXPORT CONTROL REGIME, MULTILATERAL REGIME,*
18 *AND REGIME.*—The terms “export control regime”,
19 “multilateral export control regime”, “multilateral re-
20 gime”, and “regime” each mean a group of two or
21 more countries which includes the United States and
22 the purpose of which is to curtail, by means of cooper-
23 ative export controls, access to certain items by cer-
24 tain countries, by certain end users, or for certain
25 end uses.

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

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

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

10 *For purposes of subparagraph (B), the mere inclusion*
11 *of items on a list of items subject to export controls*
12 *imposed pursuant to a multilateral export control re-*
13 *gime shall not alone constitute credible evidence that*
14 *the government of a country provides an effective*
15 *means of controlling the export of such items to con-*
16 *trolled countries.*

17 (13) *FOREIGN PERSON.*—The term “foreign per-
18 *son*” means—

19 (A) *an individual who is not a United*
20 *States citizen or an alien admitted for perma-*
21 *nent residence to the United States;*

22 (B) *any corporation, partnership, business*
23 *association, society, trust, organization, or other*
24 *nongovernmental entity created or organized*
25 *under the laws of a foreign country or that has*

1 *its principal place of business outside the United*
2 *States; and*

3 *(C) any governmental entity of a foreign*
4 *country that is operating as a business enter-*
5 *prise.*

6 *(14) ITEM.—The term “item” means any com-*
7 *modity or technology.*

8 *(15) LICENSE.—The term “license” includes both*
9 *validated licenses and written reexport authoriza-*
10 *tions.*

11 *(16) MEMBER OF AN EXPORT CONTROL RE-*
12 *GIME.—A “member” of an export control regime is a*
13 *country that participates in that regime.*

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

20 *(18) MISSILE TECHNOLOGY CONTROL REGIME;*
21 *MTCR.—The term “Missile Technology Control Re-*
22 *gime” or “MTCR” means the policy statement and*
23 *guidelines between the United States, the United*
24 *Kingdom, the Federal Republic of Germany, France,*
25 *Italy, Canada, and Japan, announced on April 16,*

1 *1987, to restrict sensitive missile-related transfers*
2 *based on the MTCR Annex, and any amendments*
3 *thereto.*

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

7 (20) *NUCLEAR EXPLOSIVE DEVICE.*—*The term*
8 *“nuclear explosive device” means any device, whether*
9 *assembled or disassembled, that is designed to produce*
10 *an instantaneous release of an amount of nuclear en-*
11 *ergy from special nuclear material that is greater*
12 *than the amount of energy that would be released*
13 *from the detonation of one pound of trinitrotoluene*
14 *(TNT).*

15 (21) *NUCLEAR SUPPLIERS’ GROUP.*—*The term*
16 *“Nuclear Suppliers’ Group” means the multilateral*
17 *arrangement in which the United States participates*
18 *whose purpose is to restrict the transfers of items with*
19 *relevance to the nuclear fuel cycle or nuclear explosive*
20 *applications.*

21 (22) *PERSON.*—*The term “person” includes the*
22 *singular and the plural and any individual, partner-*
23 *ship, corporation, or other form of association, includ-*
24 *ing (except when used in the term “foreign person”*

1 or “United States person”) any government or agency
2 thereof.

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

6 (24) *SECRETARY.*—The term “Secretary” means
7 the Secretary of Commerce.

8 (25) *SOFTWARE.*—The term “software” means
9 one or more computer programs or microprograms
10 fixed in any tangible medium of expression.

11 (26) *TECHNOLOGY.*—The term “technology”
12 means specific information necessary for the develop-
13 ment, production, or use of a commodity, and in-
14 cludes software.

15 (27) *UNILATERAL AND UNILATERALLY.*—(A) The
16 terms “unilateral” and “unilaterally”, with respect to
17 an export control or license treatment, refer to a li-
18 cense requirement or license treatment that is not
19 agreed to by a multilateral regime for any or all of
20 the following elements: the purpose of the license re-
21 quirement or treatment, the items subject to the li-
22 cense requirement or treatment, the standard of re-
23 view for applications for such license, the domestic
24 and international procedures for review of such li-
25 cense applications, and the controlled countries, and

1 *end uses or end users, to which the review policy ap-*
2 *plies.*

3 *(B) An export control or license treatment shall*
4 *be considered to be unilateral or unilaterally main-*
5 *tained by the United States if it is a restriction, con-*
6 *dition, or interpretation imposed by the Secretary*
7 *upon commodities or technology, or upon a license*
8 *application for the export of commodities or tech-*
9 *nology, that is not imposed or implemented in simi-*
10 *lar circumstances by other members of an export con-*
11 *trol regime, or that is not otherwise specifically per-*
12 *mitted by this title.*

13 *(28) UNITED STATES.—The term “United*
14 *States” means the States of the United States, the*
15 *District of Columbia, and any commonwealth, terri-*
16 *tory, dependency, or possession of the United States,*
17 *and includes the Outer Continental Shelf, as defined*
18 *in section 2(a) of the Outer Continental Shelf Lands*
19 *Act (43 U.S.C. 1331(a)).*

20 *(29) UNITED STATES PERSON.—The term “Unit-*
21 *ed States person” means any United States resident*
22 *or national (other than an individual resident outside*
23 *the United States and employed by other than a*
24 *United States person), any domestic concern (includ-*
25 *ing any permanent domestic establishment of any for-*

1 *eign concern) and any foreign subsidiary or affiliate*
2 *(including any permanent foreign establishment) of*
3 *any domestic concern which is controlled in fact by*
4 *such domestic concern, as determined under regula-*
5 *tions of the President.*

6 (30) *WEAPONS OF MASS DESTRUCTION.—The*
7 *term “weapons of mass destruction” means any chem-*
8 *ical, biological, or nuclear weapon, including a nu-*
9 *clear explosive device.*

10 **SEC. 117. EFFECTS ON OTHER ACTS.**

11 **[(a) COMMODITY JURISDICTION.—**

12 **[(1) IN GENERAL.—Notwithstanding any other**
13 *provision of law—*

14 **[(A) an item agreed for control on the**
15 *International Munitions List of COCOM shall be*
16 *subject to control under the Arms Export Control*
17 *Act and not under this title;*

18 **[(B) except as provided in paragraphs (2),**
19 *(3), and (5), an item which is on the Inter-*
20 *national Industrial List of COCOM shall be sub-*
21 *ject to control under this title and not under the*
22 *Arms Export Control Act; and*

23 **[(C) no item may be included on both the**
24 *control index and the United States Munitions*
25 *List after publication of the lists required under*

1 *paragraph (4) and resolution of any dispute*
2 *with respect to such lists under paragraph (5).*

3 **[(2) EXCEPTIONS.—(A)** *An item described in*
4 *subparagraph (B) that is not on the International*
5 *Munitions List may be subject to control under the*
6 *Arms Export Control Act—*

7 **[(i)(I)** *for a period of 9 months after the*
8 *date on which the United States proposes to*
9 *COCOM that the item be added to the Inter-*
10 *national Munitions List; and*

11 **[(II)** *for an additional 9-month period, but*
12 *only if negotiations in COCOM to add the item*
13 *to the International Munitions List are continu-*
14 *ing; or*

15 **[(ii)** *if the Secretary of State, in consulta-*
16 *tion with the Secretary, so determines, except*
17 *that if the Secretary disagrees with the Secretary*
18 *of State with respect to such item, the item may*
19 *be subject to control under the Arms Export Con-*
20 *trol Act only if the disagreement is resolved by*
21 *the Secretaries or by the President pursuant to*
22 *the procedures set forth in subparagraphs (B)*
23 *and (C) of paragraph (5).*

24 **[(B)** *An item referred to in subparagraph (A) is*
25 *an item that—*

1 **[(i)** *is specifically designed, developed, con-*
2 *figured, adapted, or modified for military or in-*
3 *telligence application;*

4 **[(ii)** *does not have significant civil appli-*
5 *cations; and*

6 **[(iii)** *is not a component the performance*
7 *capacity and function of which are essentially*
8 *equivalent to those used for civil applications.*

9 **[(3) PRESIDENTIAL DETERMINATIONS.—***An item*
10 *that is not on the International Munitions List may*
11 *be subject to control under the Arms Export Control*
12 *Act if the President—*

13 **[(A)** *determines that extraordinary cir-*
14 *cumstances exist affecting the national security*
15 *of the United States, which require that the item*
16 *be controlled under the Arms Export Control Act;*

17 **[(B)** *proposes to COCOM that the item be*
18 *added to the International Munitions List; and*

19 **[(C)** *not later than 10 days after making*
20 *the determination under subparagraph (A), sub-*
21 *mits a report to the Speaker of the House of Rep-*
22 *resentatives and the President pro tempore of the*
23 *Senate, describing in detail the reasons for the*
24 *determination, in appropriate classified form, as*
25 *necessary.*

1 **[(4) PUBLICATION OF LISTS.—**

2 **[(A)(i)** *Not later than 3 months after the*
3 *date of the enactment of this Act, the Secretary*
4 *shall publish the control index and the Secretary*
5 *of State shall publish the United States Muni-*
6 *tions List, with all revisions that have been*
7 *made in accordance with this subsection.*

8 **[(ii)** *Not later than 3 months after the date*
9 *of the enactment of this Act, the Secretary of*
10 *State shall publish in a separate list those items*
11 *remaining subject to control under the Arms Ex-*
12 *port Control Act under paragraph (2).*

13 **[(iii)** *The publications required by clauses*
14 *(i) and (ii) shall be made in the Federal Reg-*
15 *ister.*

16 **[(B)** *If either the Secretary or the Secretary*
17 *of State fails to publish a revised list in accord-*
18 *ance with subparagraph (A), there shall be ex-*
19 *cluded from the list of the Secretary that did not*
20 *so publish a revised list any item included on the*
21 *list of the Secretary that did so publish a revised*
22 *list.*

23 **[(5) COMMODITY JURISDICTION DISPUTE RESO-**
24 **LUTION.—**

25 **[(A)** *Whenever—*

1 **[(i)** *the Secretary or the Secretary of*
2 *State receives a request to determine wheth-*
3 *er an item is subject to control under this*
4 *title or the Arms Export Control Act,*

5 **[(ii)** *either Secretary finds that an*
6 *item is included on both the control index*
7 *and the United States Munitions List,*

8 **[(iii)** *an item appearing on the list of*
9 *one Secretary under paragraph (4)(A)(i) is*
10 *considered by the other Secretary to be*
11 *under the jurisdiction of that other Sec-*
12 *retary, or*

13 **[(iv)** *the Secretary disagrees with the*
14 *inclusion of an item on the list published*
15 *under paragraph (4)(A)(ii),*

16 *the Secretary or the Secretary of State (as the*
17 *case may be) shall refer the matter and any rel-*
18 *evant information to the other Secretary.*

19 **[(B)** *The 2 Secretaries shall have a period*
20 *of 15 days following the referral of a matter*
21 *under subparagraph (A) to resolve any dif-*
22 *ferences with respect to the matter involved.*

23 **[(C)** *If the 2 Secretaries fail to resolve such*
24 *differences within that 15-day period, either Sec-*
25 *retary may refer the matter to the President,*

1 *who, not later than 15 days after receiving the*
2 *referral, shall notify the 2 Secretaries of his de-*
3 *termination on the matter in dispute.*

4 **[(D)** *In the event that either the Secretary*
5 *or the Secretary of State does not respond to a*
6 *referral under subparagraph (A) by the other*
7 *Secretary, the Secretary that did not so respond*
8 *shall be deemed to concur with the other Sec-*
9 *retary on the matter involved.*

10 **[(6) REFERENCES.—***For purposes of this sub-*
11 *section, any reference to the “International Munitions*
12 *List” or the “International Industrial List” includes*
13 *a reference to any successor list to the International*
14 *Munitions List or the International Industrial List,*
15 *as the case may be.]*

16 **(a) COMMODITY JURISDICTION.—**

17 **(1) COORDINATION OF CONTROLS.—****The**
18 **authority granted under this title and**
19 **under section 38 of the Arms Export Con-**
20 **trol Act (22 U.S.C. 2778) shall be exercised**
21 **in such a manner as to achieve effective**
22 **coordination between the licensing sys-**
23 **tems under this title and such section 38**
24 **and to share information regarding the**
25 **trustworthiness of parties.**

1 **(2) ELIMINATION OF OVERLAPPING CON-**
2 **TROLS.—No item may be included on both**
3 **the control index and the United States**
4 **Munitions List after the effective date of**
5 **this title.**

6 **(3) COMMODITY JURISDICTION DISPUTE**
7 **RESOLUTION.—Under such procedures as**
8 **the President shall establish, disputes re-**
9 **garding conflicting claims of jurisdiction**
10 **between the control index and the United**
11 **States Munitions List shall be resolved in**
12 **a timely fashion by the Department of**
13 **State, in consultation with other depart-**
14 **ments and agencies. Consultations shall**
15 **be carried out through committees**
16 **chaired by representatives of the Depart-**
17 **ment of State at the level of Assistant**
18 **Secretary or Under Secretary. The proce-**
19 **dures of the committees shall allow the**
20 **Department of State or other depart-**
21 **ments or agencies to initiate the resolu-**
22 **tion of disputes, including in response to**
23 **requests made to the Departments of**
24 **State and Commerce. Consultation proce-**
25 **dures within the committees shall pro-**

1 **vide for interagency meetings to permit**
2 **the free exchange of views regarding ju-**
3 **risdictional issues. Disputes that cannot**
4 **be resolved may be referred to the Presi-**
5 **dent by the Secretary of State, the Sec-**
6 **retary of Defense, or the Secretary of**
7 **Commerce.**

8 **(b) CONTROL OF ARMS EXPORTS AND IM-**
9 **PORTS.—Section 38 of the Arms Export Control**
10 **Act (22 U.S.C. 2778) is amended by striking**
11 **subsection (a)(1) and inserting the following:**

12 **“(a)(1) In furtherance of world peace and**
13 **the security and foreign policy of the United**
14 **States, the President is authorized to control**
15 **the import and the export of defense articles**
16 **and defense services and to provide foreign**
17 **policy guidance to persons of the United**
18 **States involved in the export and import of**
19 **such articles and services. The Secretary of**
20 **State, with the concurrence of the Secretary**
21 **of Defense, is authorized to designate those**
22 **items which shall be considered as defense ar-**
23 **ticles and defense services for the purposes of**
24 **this section. The Secretary of State is also au-**
25 **thorized to promulgate regulations for the im-**

1 **port and export of such articles and services.**
2 **The items so designated shall constitute the**
3 **United States Munitions List.”.**

4 **[(b)] (c)** *EXPORT CONTROLS ON TELECOMMUNI-*
5 *CATIONS.—*

6 (1) *NO LICENSE REQUIRED FOR CIVIL END*
7 *USES.—The Secretary shall not require a validated li-*
8 *cence for export or authorization for reexport of tele-*
9 *communications equipment to civil end users for civil*
10 *end uses in any of the republics of the former Soviet*
11 *Union, the People’s Republic of China, Poland, the*
12 *Czech Republic, Slovakia, Bulgaria, Romania, Alba-*
13 *nia, Estonia, Lithuania, Latvia, Cambodia, Laos,*
14 *Mongolia, or Vietnam.*

15 (2) *DEFINITIONS.—For purposes of this sub-*
16 *section, the term “telecommunications equipment” in-*
17 *cludes—*

18 (A) *those items described in the Advisory*
19 *Notes to Category 5 of the Commerce Control*
20 *List set forth in part 799 of title 15, Code of*
21 *Federal Regulations, as of April 4, 1994, that in-*
22 *dicade likelihood of approval—*

23 (i) *for country groups QWY and the*
24 *People’s Republic of China,*

1 (ii) only for the People's Republic of
2 China, or

3 (iii) to specified destinations in coun-
4 try group Y; and

5 (B) those entries and subentries listed in ex-
6 port control classification numbers 5A02A (ex-
7 cept subentries h and i), 5A03A, 5A04A, 5A05A,
8 5A06A, 5B01A, 5B02A, 5C01A, 5D01A, 5D02A,
9 and 5D03A of the Commerce Control List set
10 forth in part 799 of title 15, Code of Federal
11 Regulations, as of April 4, 1994, but not includ-
12 ing software designed or modified for the devel-
13 opment, production, or use of items controlled
14 under export control classification number
15 5A01A of the Commerce Control List.

16 ~~[(c)]~~ **(d)** *COMPUTERS AND RELATED EQUIPMENT.*—

17 (1) *GENERAL RULE.*—Subject to paragraphs (2)
18 and (3), the Secretary shall have exclusive authority
19 to control exports of all computer hardware, software,
20 and technology for information security (including
21 encryption), except that which is specifically designed
22 or modified for military use, including command,
23 control, and intelligence applications.

24 (2) *ITEMS NOT REQUIRING LICENSES.*—No vali-
25 dated license may be required, except pursuant to the

1 *Trading With The Enemy Act or the International*
2 *Emergency Economic Powers Act (but only to the ex-*
3 *tent that the authority of such Act is not exercised to*
4 *extend controls imposed under this title), for the ex-*
5 *port of—*

6 *(A) any software, including software with*
7 *encryption capabilities, that is—*

8 *(i) generally available, as is, and is de-*
9 *signed for installation by the purchaser; or*

10 *(ii) in the public domain or publicly*
11 *available because it is generally accessible to*
12 *the interested public in any form; or*

13 *(B) any computing device solely because it*
14 *incorporates or employs in any form software*
15 *(including software with encryption capabilities)*
16 *exempted from any requirement for a validated*
17 *license under subparagraph (A).*

18 *(3) SOFTWARE WITH ENCRYPTION CAPABILI-*
19 *TIES.—The Secretary shall authorize the export of*
20 *software with encryption capabilities for civil end*
21 *uses (determined on the basis of the criteria described*
22 *in section 105(c)(2)) in any country to which exports*
23 *of software of similar capability are permitted for use*
24 *by financial institutions not controlled in fact by*

1 *United States persons, unless there is substantial evi-*
2 *dence that such software will be—*

3 *(A) diverted to a military end use or an*
4 *end use supporting international terrorism;*

5 *(B) modified for an end use described in*
6 *subparagraph (A); or*

7 *(C) reexported without authorization by the*
8 *United States that is required.*

9 *(4) DEFINITIONS.—As used in this subsection—*

10 *(A) the term “generally available” means,*
11 *in the case of software (including software with*
12 *encryption capabilities), software that is offered*
13 *for sale, license, or transfer to any person with-*
14 *out restriction through any commercial means,*
15 *including, but not limited to, over-the-counter re-*
16 *tail sales, mail order transactions, phone order*
17 *transactions, electronic distribution, or sale on*
18 *approval;*

19 *(B) the term “as is” means, in the case of*
20 *software (including software with encryption ca-*
21 *pabilities), a software program that is not de-*
22 *signed, developed, or tailored by the software*
23 *company for specific purchasers, except that such*
24 *purchasers may supply certain installation pa-*
25 *rameters needed by the software program to*

1 *function properly with the purchaser's computer*
2 *system and may customize the software program*
3 *by choosing among options contained in the soft-*
4 *ware program;*

5 *(C) the term "is designed for installation by*
6 *the purchaser" means, in the case of software*
7 *(including software with encryption capabilities)*
8 *that—*

9 *(i) the software company intends for*
10 *the purchaser (including any licensee or*
11 *transferee), who may not be the actual user*
12 *of the software program, to install the soft-*
13 *ware program on a computing device and*
14 *has supplied the necessary instructions to*
15 *do so, except that the company may also*
16 *provide telephone help line services for soft-*
17 *ware installation, electronic transmission,*
18 *or basic operations; and*

19 *(ii) the software program is designed*
20 *for installation by the purchaser without*
21 *further substantial support by the supplier;*

22 *(D) the term "computing device" means a*
23 *device which incorporates one or more*
24 *microprocessor-based central processing units*

1 *that can accept, store, process or provide output*
2 *of data; and*

3 ~~(E)~~ *the term “computer hardware”, when*
4 *used in conjunction with information security,*
5 *includes, but is not limited to, computer systems,*
6 *equipment, application-specific assemblies, mod-*
7 *ules, and integrated circuits.*

8 **(c) ASSESSMENT OF ENCRYPTION SOFTWARE**
9 **MARKET.—**

10 **(1) PRESIDENTIAL REPORT REQUIRED.—**
11 ***Not later than 150 days after the date of***
12 ***enactment of this Act, the President shall***
13 ***submit a report to the Committee on***
14 ***Banking, Housing, and Urban Affairs of***
15 ***the Senate and the Committee on Foreign***
16 ***Affairs of the House of Representatives.***

17 **(2) CONTENTS OF REPORT.—The report**
18 ***required by paragraph (1) shall—***

19 **(A) *assess the current and future***
20 ***international market for computer***
21 ***software with encryption;***

22 **(B) *assess the impact of United***
23 ***States encryption export controls on***
24 ***the international competitiveness of***
25 ***the United States computer software***

1 **industry and their economic con-**
2 **sequences, including the impact on ex-**
3 **ports and jobs in the United States**
4 **computer software industry; and**

5 **(C) review the types, quality and**
6 **market penetration of foreign pro-**
7 **duced encryption software products**
8 **and any controls that influence the**
9 **international marketability of**
10 **encryption software products.**

11 **(3) CONSULTATION.—In preparing the**
12 **report required under paragraph (1), the**
13 **President shall consult with representa-**
14 **tives of the United States computer soft-**
15 **ware industry. Confidential business in-**
16 **formation provided by United States in-**
17 **dustry in the course of preparing the re-**
18 **port shall not be disclosed, except with the**
19 **permission of the submitter or when ag-**
20 **gregated so that the source of the infor-**
21 **mation cannot be identified.**

22 **[(d)] (e) IN GENERAL.—To the extent provided in**
23 **this title, this title shall be construed to modify, repeal, su-**
24 **persede, and otherwise affect the provisions of any other**

1 *laws authorizing control over exports of any commodities*
2 *or technology.*

3 **[(e) COORDINATION OF CONTROLS.—***The authority*
4 *granted under this title and under section 38 of the Arms*
5 *Export Control Act (22 U.S.C. 2778) shall be exercised in*
6 *such a manner as to share information regarding the trust-*
7 *worthiness of parties.*

8 **[(f) CIVIL AIRCRAFT EQUIPMENT.—***Notwithstanding*
9 *any other provision of law, any civil aircraft product, or*
10 *any technology used in a civil aircraft product, that is*
11 *standard equipment certified or scheduled to be certified by*
12 *the Federal Aviation Administration and is an integral*
13 *part of such aircraft, shall be subject to export controls ex-*
14 *clusively under this title.]*

15 **(f) CIVIL AIRCRAFT EQUIPMENT.—Notwith-**
16 **standing any other provision of law, any civil**
17 **aircraft product that is standard equipment**
18 **certified by the Federal Aviation Administra-**
19 **tion and is an integral part of such aircraft**
20 **shall be subject to export controls exclusively**
21 **under this title.**

22 *(g) NONPROLIFERATION CONTROLS.—The provisions*
23 *of section 109 shall supersede the procedures published pur-*
24 *suant to section 309(c) of the Nuclear Non-Proliferation Act*

1 *of 1978 (42 U.S.C. 2139a(c)) to the extent such procedures*
2 *are inconsistent with the provisions of section 109.*

3 *(h) AMENDMENTS TO THE INTERNATIONAL EMER-*
4 *GENCY ECONOMIC POWERS ACT.—*

5 *(1) PRESIDENTIAL AUTHORIZATION.—Section*
6 *203(a) of the International Emergency Economic*
7 *Powers Act (50 U.S.C. 1702(a)) is amended—*

8 *(A) by redesignating paragraphs (2) and*
9 *(3) as paragraphs (3) and (4), respectively, and*

10 *(B) by inserting after paragraph (1) the fol-*
11 *lowing new paragraph:*

12 *“(2) The President may prohibit or curtail the expor-*
13 *tation of any items on the United States Commodity Con-*
14 *trol Index that are subject to the jurisdiction of the United*
15 *States under this title only to the extent provided in, and*
16 *subject to the criteria of, sections 105, 106, and 114 of the*
17 *Export Act of 1994, unless such prohibition or curtailment*
18 *is part of an embargo (as described in section 106(f)(1) of*
19 *the Export Act of 1994) against the country concerned. The*
20 *preceding sentence shall continue to apply notwithstanding*
21 *the expiration of the Export Act of 1994.”.*

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

1 (A) by redesignating section 208 as section
2 209; and

3 (B) by inserting after section 207 the fol-
4 lowing:

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

6 “(a) *EXEMPTIONS FROM DISCLOSURE.*—Information
7 obtained under this title before or after the enactment of
8 this section may be withheld only to the extent permitted
9 by statute, except that information submitted, obtained, or
10 considered in connection with an application for an export
11 license or other export authorization under this title, in-
12 cluding the export license or other export authorization it-
13 self, classification requests, information or evidence ob-
14 tained in the course of any investigation, and information
15 obtained or furnished under this title in connection with
16 international agreements, treaties, or obligations shall be
17 withheld from public disclosure unless the release of such
18 information is determined by the Secretary to be in the na-
19 tional interest.

20 “(b) *INFORMATION TO CONGRESS AND GAO.*—

21 “(1) *IN GENERAL.*—Nothing in this title shall be
22 construed as authorizing the withholding of informa-
23 tion from the Congress or from the General Account-
24 ing Office.

25 “(2) *AVAILABILITY TO THE CONGRESS.*—

1 “(A) *IN GENERAL.*—All information ob-
2 tained at any time under this title regarding the
3 control of exports, including any report or li-
4 cense application required under this title, shall
5 be made available to any committee or sub-
6 committee of Congress of appropriate jurisdic-
7 tion upon the request of the chairman or ranking
8 minority member of such committee or sub-
9 committee.

10 “(B) *PROHIBITION ON FURTHER DISCLO-*
11 *SURE.*—No committee, subcommittee, or Member
12 of Congress shall disclose any information ob-
13 tained under this title or previous Acts regarding
14 the control of exports which is submitted on a
15 confidential basis to the Congress under subpara-
16 graph (A) unless the full committee to which the
17 information is made available determines that
18 the withholding of the information is contrary to
19 the national interest.

20 “(3) *AVAILABILITY TO THE GAO.*—

21 “(A) *IN GENERAL.*—Notwithstanding para-
22 graph (1), information referred to in paragraph
23 (2) shall, consistent with the protection of intel-
24 ligence, counterintelligence, and law enforcement
25 sources, methods, and activities, as determined

1 *by the agency that originally obtained the infor-*
2 *mation, and consistent with the provisions of*
3 *section 716 of title 31, United States Code, be*
4 *made available only by the agency, upon request,*
5 *to the Comptroller General of the United States*
6 *or to any officer or employee of the General Ac-*
7 *counting Office authorized by the Comptroller*
8 *General to have access to such information.*

9 “(B) *PROHIBITION ON FURTHER DISCLO-*
10 *SURES.—No officer or employee of the General*
11 *Accounting Office shall disclose, except to the*
12 *Congress in accordance with this subsection, any*
13 *such information which is submitted on a con-*
14 *fidential basis and from which any individual*
15 *can be identified.*

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

21 “(1) *he or she obtains in the course of his or her*
22 *employment or official duties or by reason of any ex-*
23 *amination or investigation made by, or report or*
24 *record made to or filed with, such department or*
25 *agency, or officer or employee thereof, and*

1 “(2) is exempt from disclosure under this section,
2 shall be fined not more than \$10,000, or imprisoned not
3 more than 1 year, or both, shall be removed from office or
4 employment, and shall be subject to a civil penalty of not
5 more than \$1,000.”.

6 【(i) REGULATION OF EXPORT OF CERTAIN COMMER-
7 CIAL COMMUNICATIONS SATELLITES AND ASSOCIATED
8 EQUIPMENT.—

9 【(1) REGULATION SOLELY UNDER THIS TITLE.—
10 Notwithstanding any other provision of law, the ex-
11 port of commercial communications satellites, includ-
12 ing any integral components of such satellites, which
13 are designed for civil applications, including items
14 necessary to achieve the ultimate orbit location of
15 such satellites, and associated ground and test equip-
16 ment, when exported as part of a satellite system for
17 purposes of launch, shall be regulated under this title.
18 The Secretary shall consult with the Secretary of De-
19 fense and the Secretary of State to determine the sat-
20 ellites and components to which this paragraph ap-
21 plies. The Secretary, in consultation with the Sec-
22 retary of State and the Secretary of Defense, shall
23 prohibit the unauthorized transfer of missile equip-
24 ment, data, or technology that are components of any
25 such satellite which is authorized for export.

1 **[(2) AMENDMENT TO ARMS EXPORT CONTROL**
2 *ACT.—Section 38(a) of the Arms Export Control Act*
3 *(22 U.S.C. 2778(a)) is amended—*

4 **[(A) in paragraph (3), by striking “In ex-**
5 *ercising the authorities” and inserting “Except*
6 *as provided in paragraph (4), in exercising the*
7 *authorities”;* and

8 **[(B) by adding at the end the following**
9 *new paragraph:*

10 **[(4) The export of commercial communications sat-**
11 *ellites, including any integral components of such satellites,*
12 *which are designed for civil applications, including items*
13 *necessary to achieve the ultimate orbit location of such sat-*
14 *ellites, and associated ground and test equipment, when ex-*
15 *ported as part of a satellite system for purposes of launch,*
16 *may be regulated only by the Secretary of Commerce under*
17 *the Export Act of 1994, pursuant to section 117(i)(1) of*
18 *that Act.”.*

19 **[(3) APPLICABILITY.—The amendments made by**
20 *this subsection shall apply only with respect to the ex-*
21 *port of satellites on or after the date of the enactment*
22 *of this Act.]*

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

24 **(a) FINDINGS.—The Congress finds that—**

1 (1) certain countries maintain an economic boy-
2 cott of Israel, including a secondary boycott of compa-
3 nies that refuse to cooperate with the economic boycott
4 of Israel;

5 (2) the secondary Arab boycott has caused eco-
6 nomic damage to the countries that maintain the boy-
7 cott as well as to Israel;

8 (3) the secondary Arab boycott causes great dif-
9 ficulties for United States firms that trade with Is-
10 rael, depriving them of trade opportunities and vio-
11 lating internationally accepted principles of free
12 trade;

13 (4) the United States has a longstanding policy
14 opposing the Arab League boycott of Israel and Unit-
15 ed States law prohibits American firms from provid-
16 ing information to Arab countries to demonstrate
17 compliance with the boycott;

18 (5) American companies on the list maintained
19 by the Arab League of companies prohibited from
20 doing business in Arab League countries can be de-
21 nied contracts by the Kuwaiti Government for the re-
22 construction of Kuwait because they conduct business
23 with Israel;

24 (6) under the leadership of the executive branch,
25 the United States has sent a clear, consistent, and un-

1 *ambiguous message that the Arab League boycott of*
2 *companies that do business with Israel is an obstacle*
3 *to peace and should be terminated;*

4 (7) *the United States Trade Representative, in*
5 *August 1993, commissioned the International Trade*
6 *Commission to undertake a study of the boycott's im-*
7 *pact on United States businesses which will provide,*
8 *for the first time, a carefully researched estimate of*
9 *the impact of the boycott on the United States;*

10 (8) *the executive branch has conducted an active*
11 *diplomatic campaign to convince Arab League coun-*
12 *tries that the time to end the secondary Arab boycott*
13 *and the economic discrimination against United*
14 *States businesses is now;*

15 (9) *under United States leadership, the G-7*
16 *countries have unconditionally called for an end to*
17 *the Arab boycott;*

18 (10) *the President, the Vice President, the Sec-*
19 *retary of State, the Secretary of Commerce, and other*
20 *senior executive branch officials have assured the Con-*
21 *gress that they will speak forcefully and candidly, in*
22 *every forum which touches upon the search for peace*
23 *in the Middle East, about the need to end the second-*
24 *ary Arab boycott;*

1 (11) *the Congress wishes to support the efforts of*
2 *the executive branch and to help see the promises*
3 *made to date translated into tangible results;*

4 (12) *the quarterly reports from the Office of*
5 *Anti-Boycott Compliance of the Department of Com-*
6 *merce show no loosening in enforcement by Arab*
7 *League countries of the secondary Arab boycott; and*

8 (13) *the recent statements made by Arab leaders*
9 *indicating that the secondary Arab boycott is no*
10 *longer being enforced must be translated into action,*
11 *as measured by quarterly reports from the Office of*
12 *Anti-Boycott Compliance of the Department of Com-*
13 *merce.*

14 (b) *SENSE OF CONGRESS.—*

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

18 (2) *ACTIONS TO END SECONDARY BOYCOTT.—The*
19 *United States will consider the secondary Arab boy-*
20 *cott to have ended when—*

21 (A) *the Arab League issues a public pro-*
22 *nouncement that the Arab League has ended the*
23 *secondary Arab boycott;*

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

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

13 (D) the Arab League, and the individual
14 countries that are the members of the Arab
15 League, have ceased requesting United States
16 persons from taking actions prohibited under
17 section 108(a).

18 (c) *DEFINITION.*—For purposes of this section, the
19 term “secondary Arab boycott” means the refusal to do busi-
20 ness with persons who do not comply with requests to take
21 any action prohibited under section 108(a) with respect to
22 Israel.

23 **SEC. 119. CONFORMING AMENDMENTS TO OTHER LAWS.**

24 (a) *ARMS EXPORT CONTROL ACT.*—

1 (1) *Section 38 of the Arms Export Control Act*
2 *(22 U.S.C. 2778) is amended—*

3 (A) *in subsection (e)—*

4 (i) *in the first sentence by striking*
5 *“subsections (c)” and all that follows*
6 *through “12 of such Act” and inserting*
7 *“subsections (b), (c), (d) and (e) of section*
8 *110 of the Export Act of 1994, by sub-*
9 *sections (a) and (b) of section 113 of such*
10 *Act, and by section 114(g) of such Act”;* and

11 (ii) *in the third sentence by striking*
12 *“11(c) of the Export Administration Act of*
13 *1979” and inserting “110(c) of the Export*
14 *Act of 1994”;* and

15 (B) *in subsection (g)(1)(A) by striking*
16 *clause (ii) and inserting the following:*

17 *“(ii) section 110 of the Export Act of*
18 *1994.”.*

19 (2) *Section 39A(c) of the Arms Export Control*
20 *Act, as added by the Foreign Relations Authorization*
21 *Act, Fiscal Years 1994 and 1995, is amended—*

22 (A) *by striking “(c),” and all that follows*
23 *through “12(a)” and inserting “(c), (d), and (e)*
24 *of section 110, section 112(c), and subsections (a)*

1 *and (b) of section 113, of the Export Act of*
2 *1994”;* and

3 *(B) by striking “11(c)” and inserting*
4 *“110(c)”.*

5 *(3) Section 40(k) of the Arms Export Control Act*
6 *(22 U.S.C. 2780(k)) is amended—*

7 *(A) by striking “11(c), 11(e), 11(g), and*
8 *12(a) of the Export Administration Act of 1979”*
9 *and inserting “110(b), 110(c), and 110(e) of the*
10 *Export Act of 1994”;* and

11 *(B) by striking “11(c)” and inserting*
12 *“110(c)”.*

13 *(4) Sections 72 and 73 of the Arms Export Con-*
14 *trol Act (22 U.S.C. 2797a and 2797b) are hereby re-*
15 *pealed.*

16 *(5) Section 73A of the Arms Export Control Act,*
17 *as added by the Foreign Relations Authorization Act,*
18 *Fiscal Years 1994 and 1995, is amended by striking*
19 *“a MTCR adherent” and inserting “an MTCR adher-*
20 *ent”.*

21 *(6) Section 74 of the Arms Export Control Act*
22 *(22 U.S.C. 2797c) is amended—*

23 *(A) by striking paragraphs (6), (7), (8),*
24 *and (9);*

1 (B) in paragraph (4) by adding “and”
2 after the semicolon; and

3 (C) in paragraph (5) by striking the semi-
4 colon and inserting a period.

5 (b) *CHEMICAL AND BIOLOGICAL WEAPONS.*—The
6 *Chemical and Biological Weapons Control and Warfare*
7 *Elimination Act of 1991 (title III of Public Law 102–182;*
8 *22 U.S.C. 5601 and following) is hereby repealed.*

9 (c) *OTHER PROVISIONS OF LAW.*—

10 (1) *Section 5(b)(4) of the Trading with the*
11 *Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.*
12 *5(b)(4)) is amended by striking “5 of the Export Ad-*
13 *ministration Act of 1979, or under section 6” and in-*
14 *serting “105 of the Export Act of 1994, or under sec-*
15 *tion 106”.*

16 (2) *Section 16(a) of the Trading with the Enemy*
17 *Act (50 U.S.C. App. 16(a)) is amended by striking*
18 *“participants” and inserting “participates”.*

19 (3) *Section 502B(a)(2) of the Foreign Assistance*
20 *Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the*
21 *second sentence—*

22 (A) *by striking “Export Administration Act*
23 *of 1979” the first place it appears and inserting*
24 *“Export Act of 1994”; and*

1 (B) by striking “Administration Act of
2 1979)” and inserting “Act of 1994”.

3 (4)(A) Section 140(a)(2) of the Foreign Relations
4 Authorization Act, Fiscal Years 1988 and 1989 (22
5 U.S.C. 2656f(a)(2)) is amended by striking “6(j) of
6 the Export Administration Act of 1979” and insert-
7 ing “106(i) of the Export Act of 1994”.

8 (B) For purposes of the report required by
9 March 31, 1995, under section 140(a) of the Foreign
10 Relations Authorization Act, Fiscal Years 1988 and
11 1989, the reference in paragraph (2) of such section
12 to “section 106(i) of the Export Act of 1994” shall be
13 deemed to refer to “section 6(j) of the Export Admin-
14 istration Act of 1979 or section 106(i) of the Export
15 Act of 1994”.

16 (5) Section 40(e)(1) of the State Department
17 Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1))
18 is amended by striking “6(j)(1) of the Export Admin-
19 istration Act of 1979” and inserting “106(i)(1) of the
20 Export Act of 1994”.

21 (6) Section 110 of the International Security
22 and Development Cooperation Act of 1980 (22 U.S.C.
23 2778a) is amended by striking “Administration Act
24 of 1979” and inserting “Act of 1994”.

1 (7) *Section 205(d)(4) of the State Department*
2 *Basic Authorities Act of 1956 (22 U.S.C. 4305(d)(4))*
3 *is amended by striking “6(j) of the Export Adminis-*
4 *tration Act of 1979” and inserting “106(i) of the Ex-*
5 *port Act of 1994”.*

6 (8) *Section 203(b)(3) of the International Emer-*
7 *gency Economic Powers Act (50 U.S.C. 1702(b)(3)) is*
8 *amended by striking “5 of the Export Administration*
9 *Act of 1979, or under section 6” and inserting “105*
10 *of the Export Act of 1994, or under section 106”.*

11 (9) *Section 491(f) of the Forest Resources Con-*
12 *servation and Shortage Relief Act of 1990 (16 U.S.C.*
13 *620c(f)) is amended by striking “supersede section*
14 *7(i) of the Export Administration Act of 1979 (50*
15 *U.S.C. App. 2406(i))” and inserting “affect section*
16 *107(i) of the Export Act of 1994”.*

17 **SEC. 120. EFFECTIVE DATE.**

18 *This title shall take effect upon the expiration of the*
19 *Export Administration Act of 1979.*

20 **SEC. 121. EXPIRATION DATE.**

21 *This title expires on June 30, 1998.*

22 **SEC. 122. SAVINGS PROVISIONS.**

23 (a) *IN GENERAL.*—*All delegations, rules, regulations,*
24 *orders, determinations, licenses, or other forms of adminis-*

1 *trative action which have been made, issued, conducted, or*
2 *allowed to become effective under—*

3 *(1) the Export Control Act of 1949, the Export*
4 *Administration Act of 1969, or the Export Adminis-*
5 *tration Act of 1979, or*

6 *(2) those provisions of the Arms Export Control*
7 *Act or the Chemical and Biological Weapons Control*
8 *and Warfare Elimination Act of 1991 which are re-*
9 *pealed and amended by section 119,*

10 *and are in effect at the time this title takes effect, shall con-*
11 *tinue in effect according to their terms until modified, su-*
12 *perseded, set aside, or revoked under this title.*

13 *(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—*

14 *(1) EXPORT ADMINISTRATION ACT.—This title*
15 *shall not affect any administrative or judicial pro-*
16 *ceedings commenced or any application for a license*
17 *made, under the Export Administration Act of 1979,*
18 *which is pending at the time this title takes effect.*
19 *Any such proceedings, and any action on such appli-*
20 *cation, shall continue under the Export Administra-*
21 *tion Act of 1979 as if that Act had not expired.*

22 *(2) OTHER PROVISIONS OF LAW.—This title shall*
23 *not affect any administrative or judicial proceedings*
24 *commenced or any application for a license made,*
25 *under those provisions of the Arms Export Control*

1 *Act or the Chemical and Biological Weapons Control*
2 *and Warfare Elimination Act of 1991 which are re-*
3 *pealed and amended by section 119, if such proceed-*
4 *ings or application is pending at the time this title*
5 *takes effect. Any such proceedings, and any action on*
6 *such application, shall continue under those provi-*
7 *sions as if those provisions had not been amended or*
8 *repealed by section 119.*

9 (c) *TREATMENT OF CERTAIN DETERMINATIONS.*—Any
10 *determination with respect to the government of a foreign*
11 *country under section 6(j) of the Export Administration Act*
12 *of 1979, that is in effect at the time this title takes effect,*
13 *shall, for purposes of this title or any other provision of*
14 *law, be deemed to be made under section 106(i) of this Act*
15 *until superseded by a determination under such section*
16 *106(i).*

17 **TITLE II—NUCLEAR PROLIF-**
18 **ERATION PREVENTION ACT**

19 **SEC. 201. SHORT TITLE.**

20 *This title may be cited as the “Nuclear Proliferation*
21 *Prevention Act of 1994”.*

22 **PART A—REPORTING ON NUCLEAR EXPORTS**

23 **SEC. 211. REPORTS TO CONGRESS.**

24 *Section 601(a) of the Nuclear Non-Proliferation Act of*
25 *1978 (22 U.S.C. 3281(a)) is amended—*

1 (1) in paragraph (4), by striking “and” after the
2 semicolon;

3 (2) in paragraph (5), by striking the period and
4 inserting a semicolon; and

5 (3) by adding after paragraph (5) the following:

6 “(6) a description of the implementation of nu-
7 clear and nuclear-related dual-use export controls in
8 the preceding calendar year, including a summary by
9 type of commodity and destination of—

10 “(A) all transactions for which—

11 “(i) an export license was issued for
12 any good controlled under section 309(c) of
13 this Act;

14 “(ii) an export license was issued
15 under section 109 b. of the 1954 Act;

16 “(iii) approvals were issued under the
17 Export Act of 1994, or section 109 b.(3) of
18 the 1954 Act, for the retransfer of any item,
19 technical data, component, or substance; or

20 “(iv) authorizations were made as re-
21 quired by section 57 b.(2) of the 1954 Act
22 to engage, directly or indirectly, in the pro-
23 duction of special nuclear material;

24 “(B) each instance in which—

1 “(i) a sanction has been imposed under
2 section 221(a), 224(h), or 226(a) of the Nu-
3 clear Proliferation Prevention Act of 1994;

4 “(ii) sales or leases have been denied
5 under section 3(f) of the Arms Export Con-
6 trol Act or transactions prohibited by rea-
7 son of acts relating to proliferation of nu-
8 clear explosive devices as described in sec-
9 tion 40(d) of that Act;

10 “(iii) a sanction has not been imposed
11 by reason of section 221(c)(2) of the Nuclear
12 Proliferation Prevention Act of 1994 or the
13 imposition of a sanction has been delayed
14 under section 226(d) of that Act; or

15 “(iv) a waiver of a sanction has been
16 made under—

17 “(I) section 221(f), section 224, or
18 subsection (e) or (f)(2) of section 226,
19 of the Nuclear Proliferation Prevention
20 Act of 1994,

21 “(II) section 620E(d) of the For-
22 eign Assistance Act of 1961,

23 “(III) section 40(g) of the Arms
24 Export Control Act with respect to the

1 *last sentence of section 40(d) of that*
2 *Act, or*

3 *“(IV) section 614 of the Foreign*
4 *Assistance Act of 1961 with respect to*
5 *section 620E of that Act or section 3(f),*
6 *or the last sentence of section 40(d), of*
7 *the Arms Export Control Act; and*

8 *“(7) the progress of those independent states of*
9 *the former Soviet Union that are non-nuclear-weapon*
10 *states and of the Baltic states towards achieving the*
11 *objective of applying full scope safeguards to all their*
12 *peaceful nuclear activities.*

13 *Portions of the information required by paragraphs (6) and*
14 *(7) may be submitted in classified form, as necessary. Any*
15 *such information that may not be published or disclosed*
16 *under section 114(g)(1) of the Export Act of 1994 shall be*
17 *submitted as confidential.”.*

18 **SEC. 212. EFFECTIVE DATE.**

19 *The amendments made by this part shall take effect*
20 *60 days after the date of the enactment of this Act.*

**PART B—SANCTIONS FOR NUCLEAR
PROLIFERATION**

**SEC. 221. IMPOSITION OF SANCTIONS ON PERSONS ENGAG-
ING IN EXPORT ACTIVITIES THAT CONTRIB-
UTE TO PROLIFERATION.**

(a) *DETERMINATION BY THE PRESIDENT.*—

(1) *IN GENERAL.*—*Except as provided in sub-
section (b)(2), the President shall impose the sanc-
tions described in subsection (c) if the President deter-
mines in writing that, on or after the effective date
of this part, a foreign person or a United States per-
son has materially and with requisite knowledge con-
tributed, through the export from the United States or
any other country of any goods or technology (as de-
fined in section 231(2)), to the efforts by any individ-
ual, group, or non-nuclear-weapon state to acquire
unsafeguarded special nuclear material or to use, de-
velop, produce, stockpile, or otherwise acquire any nu-
clear explosive device.*

(2) *PERSONS AGAINST WHICH THE SANCTIONS
ARE TO BE IMPOSED.*—*The sanctions shall be imposed
pursuant to paragraph (1) on—*

(A) *the foreign person or United States per-
son with respect to which the President makes
the determination described in that paragraph;*

1 (B) any successor entity to that foreign per-
2 son or United States person;

3 (C) any foreign person or United States
4 person that is a parent or subsidiary of that per-
5 son if that parent or subsidiary materially and
6 with requisite knowledge assisted in the activities
7 which were the basis of that determination; and

8 (D) any foreign person or United States
9 person that is an affiliate of that person if that
10 affiliate materially and with requisite knowledge
11 assisted in the activities which were the basis of
12 that determination and if that affiliate is con-
13 trolled in fact by that person.

14 (3) *OTHER SANCTIONS AVAILABLE.*—The sanc-
15 tions which are required to be imposed for activities
16 described in this subsection is in addition to any
17 other sanction which may be imposed for the same ac-
18 tivities under any other provision of law.

19 (4) *DEFINITION.*—For purposes of this sub-
20 section, the term “requisite knowledge” means situa-
21 tions in which a person “knows”, as “knowing” is de-
22 fined in section 104 of the Foreign Corrupt Practices
23 Act of 1977 (15 U.S.C. 78dd-2).

24 (b) *CONSULTATION WITH AND ACTIONS BY FOREIGN*
25 *GOVERNMENT OF JURISDICTION.*—

1 (1) *CONSULTATIONS.*—If the President makes a
2 determination described in subsection (a)(1) with re-
3 spect to a foreign person, the Congress urges the
4 President to initiate consultations immediately with
5 the government with primary jurisdiction over that
6 foreign person with respect to the imposition of the
7 sanctions pursuant to this section.

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

24 (3) *REPORT TO CONGRESS.*—Not later than 90
25 days after making a determination under subsection

1 (a)(1), the President shall submit to the Committee on
2 Foreign Relations and the Committee on Govern-
3 mental Affairs of the Senate and the Committee on
4 Foreign Affairs of the House of Representatives a re-
5 port on the status of consultations with the appro-
6 priate government under this subsection, and the
7 basis for any determination under paragraph (2) of
8 this subsection that such government has taken spe-
9 cific corrective actions.

10 (c) SANCTIONS.—

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

15 (A) The United States Government shall not
16 procure, or enter into any contract for the pro-
17 curement of, any goods or services from any per-
18 son described in subsection (a)(2).

19 (B) The importation into the United States
20 of products produced by any person described in
21 subsection (a)(2) shall be prohibited.

22 (2) EXCEPTIONS.—The President shall not be re-
23 quired to apply or maintain the sanctions under this
24 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 require-*
6 *ments essential to the national security of*
7 *the United States;*

8 (ii) *if the President determines in*
9 *writing that the person or other entity to*
10 *which the sanctions would otherwise be ap-*
11 *plied is a sole source supplier of the defense*
12 *articles or services, that the defense articles*
13 *or services are essential, and that alter-*
14 *native sources are not readily or reasonably*
15 *available; or*

16 (iii) *if the President determines in*
17 *writing that such articles or services are es-*
18 *sential to the national security under de-*
19 *fense coproduction agreements;*

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

24 (C) *to—*

1 (i) spare parts which are essential to
2 United States products or production;

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

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

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

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

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

24 (e) *TERMINATION OF THE SANCTIONS.*—The sanctions
25 imposed pursuant to this section shall apply for a period

1 *of at least 12 months following the imposition of the sanc-*
2 *tions and shall cease to apply thereafter only if the Presi-*
3 *dent determines and certifies in writing to the Congress*
4 *that—*

5 (1) *reliable information indicates that the for-*
6 *ign person or United States person with respect to*
7 *which the determination was made under subsection*
8 *(a)(1) has ceased to aid or abet any individual,*
9 *group, or non-nuclear-weapon state in its efforts to*
10 *acquire unsafeguarded special nuclear material or*
11 *any nuclear explosive device, as described in that sub-*
12 *section; and*

13 (2) *the President has received reliable assurances*
14 *from the foreign person or United States person, as*
15 *the case may be, that such person will not, in the fu-*
16 *ture, aid or abet any individual, group, or non-nu-*
17 *clear-weapon state in its efforts to acquire*
18 *unsafeguarded special nuclear material or any nu-*
19 *clear explosive device, as described in subsection*
20 *(a)(1).*

21 *(f) WAIVER.—*

22 (1) *CRITERION FOR WAIVER.—The President*
23 *may waive the application of the sanctions imposed*
24 *on any person pursuant to this section, after the end*
25 *of the 12-month period beginning on the date on*

1 *which that sanctions was imposed on that person, if*
2 *the President determines and certifies in writing to*
3 *the Congress that the continued imposition of the*
4 *sanctions would have a serious adverse effect on vital*
5 *United States interests.*

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 **SEC. 222. ELIGIBILITY FOR ASSISTANCE.**

15 (a) *AMENDMENTS TO THE ARMS EXPORT CONTROL*
16 *ACT.—*

17 (1) *PROHIBITION.—Section 3 of the Arms Ex-*
18 *port Control Act (22 U.S.C. 2753) is amended by*
19 *adding at the end the following new subsection:*

20 “(f) *No sales or leases shall be made to any country*
21 *that the President has determined is in material breach of*
22 *its binding commitments to the United States under inter-*
23 *national treaties or agreements concerning the nonprolifera-*
24 *tion of nuclear explosive devices (as defined in section*
25 *231(4) of the Nuclear Proliferation Prevention Act of 1994)*

1 *and unsafeguarded special nuclear material (as defined in*
2 *section 231(8) of that Act).”.*

3 (2) *DEFINITION OF SUPPORT FOR INTER-*
4 *NATIONAL TERRORISM.—Section 40 of such Act (22*
5 *U.S.C. 2780) is amended—*

6 (A) *in subsection (d), by adding at the end*
7 *the following new sentence: “For purposes of this*
8 *subsection, such acts shall include all activities*
9 *that the Secretary determines willfully aid or*
10 *abet the international proliferation of nuclear ex-*
11 *plosive devices to individuals or group or will-*
12 *fully aid or abet an individual or groups in ac-*
13 *quiring unsafeguarded special nuclear mate-*
14 *rial.”; and*

15 (B) *in subsection (l)—*

16 (i) *in paragraph (2), by striking*
17 *“and” after the semicolon;*

18 (ii) *in paragraph (3), by striking the*
19 *period at the end and inserting a semicolon;*
20 *and*

21 (iii) *by adding at the end the follow-*
22 *ing:*

23 *“(4) the term ‘nuclear explosive device’ has the*
24 *meaning given that term in section 231(4) of the Nu-*
25 *clear Proliferation Prevention Act of 1994; and*

1 “(5) the term ‘unsafeguarded special nuclear ma-
2 terial’ has the meaning given that term in section
3 231(8) of the Nuclear Proliferation Prevention Act of
4 1994.”.

5 (b) FOREIGN ASSISTANCE ACT OF 1961.—

6 (1) PRESIDENTIAL DETERMINATION 82-7.— Not-
7 withstanding any other provision of law, Presidential
8 Determination No. 82-7 of February 10, 1982, made
9 pursuant to section 670(a)(2) of the Foreign Assist-
10 ance Act of 1961, shall have no force or effect with re-
11 spect to any grounds for the prohibition of assistance
12 under section 102(a) of the Arms Export Control Act
13 arising on or after the effective date of this part.

14 (2) AMENDMENT.—Section 620E(d) of the For-
15 eign Assistance Act of 1961 (22 U.S.C. 2375(d)) is
16 amended to read as follows:

17 “(d) The President may waive the prohibitions of sec-
18 tion 101 of the Arms Export Control Act with respect to
19 any grounds for the prohibition of assistance under that
20 section arising before the effective date of part B of the Nu-
21 clear Proliferation Prevention Act of 1994 to provide assist-
22 ance to Pakistan if he determines that to do so is in the
23 national interest of the United States.”.

1 **SEC. 223. ROLE OF INTERNATIONAL FINANCIAL INSTITU-**
2 **TIONS.**

3 (a) *IN GENERAL.*—*The Secretary of the Treasury shall*
4 *instruct the United States executive director to each of the*
5 *international financial institutions described in section*
6 *701(a) of the International Financial Institutions Act (22*
7 *U.S.C. 262d(a)) to use the voice and vote of the United*
8 *States to oppose any use of the institution’s funds to pro-*
9 *mote the acquisition of unsafeguarded special nuclear mate-*
10 *rial or the development, stockpiling, or use of any nuclear*
11 *explosive device by any non-nuclear-weapon state.*

12 (b) *DUTIES OF UNITED STATES EXECUTIVE DIREC-*
13 *TORS.*—*Section 701(b)(3) of the International Financial*
14 *Institutions Act (22 U.S.C. 262d(b)(3)) is amended to read*
15 *as follows:*

16 “(3) *whether the recipient country—*

17 “(A) *is seeking to acquire unsafeguarded*
18 *special nuclear material (as defined in section*
19 *231(8) of the Nuclear Proliferation Prevention*
20 *Act of 1994) or a nuclear explosive device (as de-*
21 *fined in section 231(4) of that Act);*

22 “(B) *is not a State Party to the Treaty on*
23 *the Non-Proliferation of Nuclear Weapons; or*

24 “(C) *has detonated a nuclear explosive de-*
25 *vice; and”.*

1 **SEC. 224. PROHIBITION ON ASSISTING NUCLEAR PRO-**
2 **LIFERATION THROUGH THE PROVISION OF**
3 **FINANCING.**

4 (a) *PROHIBITED ACTIVITY DEFINED.*—For purposes of
5 this section, the term “prohibited activity” means the act
6 of knowingly, materially, and directly contributing or at-
7 tempting to contribute, through the provision of financing,
8 to—

9 (1) *the acquisition of unsafeguarded special nu-*
10 *clear material; or*

11 (2) *the use, development, production, stockpiling,*
12 *or other acquisition of any nuclear explosive device,*
13 *by any individual, group, or non-nuclear-weapon state.*

14 (b) *PROHIBITION.*—To the extent that the United
15 States has jurisdiction to prohibit such activity by such per-
16 son, no United States person and no foreign person may
17 engage in any prohibited activity.

18 (c) *PRESIDENTIAL DETERMINATION AND ORDER WITH*
19 *RESPECT TO UNITED STATES AND FOREIGN PERSONS.*—
20 *If the President determines, in writing after opportunity*
21 *for a hearing on the record, that a United States person*
22 *or a foreign person has engaged in a prohibited activity*
23 *(without regard to whether subsection (b) applies), the*
24 *President shall, by order, impose the sanctions described in*
25 *subsection (d) on such person.*

1 (d) *SANCTIONS.*—*The following sanctions shall be im-*
2 *posed pursuant to any order issued under subsection (c)*
3 *with respect to any United States person or any foreign*
4 *person:*

5 (1) *BAN ON DEALINGS IN GOVERNMENT FI-*
6 *NANCE.*—

7 (A) *DESIGNATION AS PRIMARY DEALER.*—
8 *Neither the Board of Governors of the Federal*
9 *Reserve System nor the Federal Reserve Bank of*
10 *New York may designate, or permit the continu-*
11 *ation of any prior designation of, the person as*
12 *a primary dealer in United States Government*
13 *debt instruments.*

14 (B) *SERVICE AS DEPOSITARY.*—*The person*
15 *may not serve as a depositary for United States*
16 *Government funds.*

17 (2) *RESTRICTIONS ON OPERATIONS.*—*The person*
18 *may not, directly or indirectly—*

19 (A) *commence any line of business in the*
20 *United States in which the person was not en-*
21 *gaged as of the date of the order; or*

22 (B) *conduct business from any location in*
23 *the United States at which the person did not*
24 *conduct business as of the date of the order.*

1 (e) *JUDICIAL REVIEW.*—Any determination of the
2 President under subsection (c) shall be subject to judicial
3 review in accordance with chapter 7 of part I of title 5,
4 *United States Code.*

5 (f) *CONSULTATION WITH AND ACTIONS BY FOREIGN*
6 *GOVERNMENT OF JURISDICTION.*—

7 (1) *CONSULTATIONS.*—If the President makes a
8 determination under subsection (c) with respect to a
9 foreign person, the Congress urges the President to
10 initiate consultations immediately with any appro-
11 priate foreign government with respect to the imposi-
12 tion of any sanction pursuant to this section.

13 (2) *ACTIONS BY GOVERNMENT OF JURISDIC-*
14 *TION.*—

15 (A) *SUSPENSION OF IMPOSITION OF SANC-*
16 *TIONS.*—In order to pursue consultations de-
17 scribed in paragraph (1) with any government
18 referred to in such paragraph, the President may
19 delay, for up to 90 days, the effective date of an
20 order under subsection (c) imposing any sanc-
21 tion.

22 (B) *COORDINATION WITH ACTIVITIES OF*
23 *FOREIGN GOVERNMENT.*—Following consulta-
24 tions described in paragraph (1), the order is-
25 sued by the President under subsection (c) im-

1 *posing any sanction on a foreign person shall*
2 *take effect unless the President determines, and*
3 *certifies in writing to the Congress, that the gov-*
4 *ernment referred to in paragraph (1) has taken*
5 *specific and effective actions, including the impo-*
6 *sition of appropriate penalties, to terminate the*
7 *involvement of the foreign person in any prohib-*
8 *ited activity.*

9 *(C) EXTENSION OF PERIOD.—After the end*
10 *of the period described in subparagraph (A), the*
11 *President may delay, for up to an additional 90*
12 *days, the effective date of an order issued under*
13 *subsection (c) imposing any sanction on a for-*
14 *ign person if the President determines, and cer-*
15 *tifies in writing to the Congress, that the appro-*
16 *priate foreign government is in the process of*
17 *taking actions described in subparagraph (B).*

18 *(3) REPORT TO CONGRESS.—Before the end of*
19 *the 90-day period beginning on the date on which an*
20 *order is issued under subsection (c), the President*
21 *shall submit to the Congress a report on—*

22 *(A) the status of consultations under this*
23 *subsection with the government referred to in*
24 *paragraph (1); and*

1 (B) the basis for any determination under
2 paragraph (2) that such government has taken
3 specific corrective actions.

4 (g) *TERMINATION OF THE SANCTIONS.*—Any sanction
5 imposed on any person pursuant to an order issued under
6 subsection (c) shall—

7 (1) remain in effect for a period of not less than
8 12 months; and

9 (2) cease to apply after the end of such 12-month
10 period only if the President determines, and certifies
11 in writing to the Congress, that—

12 (A) the person has ceased to engage in any
13 prohibited activity; and

14 (B) the President has received reliable as-
15 surances from such person that the person will
16 not, in the future, engage in any prohibited ac-
17 tivity.

18 (h) *WAIVER.*—The President may waive the continued
19 application of any sanction imposed on any person pursu-
20 ant to an order issued under subsection (c) if the President
21 determines, and certifies in writing to the Congress, that
22 the continued imposition of the sanction would have a seri-
23 ous adverse effect on the safety and soundness of the domes-
24 tic or international financial system or on domestic or
25 international payments systems.

1 (i) *ENFORCEMENT ACTION.*—*The Attorney General*
2 *may bring an action in an appropriate district court of*
3 *the United States for injunctive and other appropriate relief*
4 *with respect to—*

5 (1) *any violation of subsection (b); or*

6 (2) *any order issued under subsection (c).*

7 (j) *KNOWINGLY DEFINED.*—

8 (1) *IN GENERAL.*—*For purposes of this section,*
9 *the term “knowingly” means the state of mind of a*
10 *person with respect to conduct, a circumstance, or a*
11 *result in which—*

12 (A) *such person is aware that such person*
13 *is engaging in such conduct, that such cir-*
14 *cumstance exists, or that such result is substan-*
15 *tially certain to occur; or*

16 (B) *such person has a firm belief that such*
17 *circumstance exists or that such result is sub-*
18 *stantially certain to occur.*

19 (2) *KNOWLEDGE OF THE EXISTENCE OF A PAR-*
20 *TICULAR CIRCUMSTANCE.*—*If knowledge of the exist-*
21 *ence of a particular circumstance is required for an*
22 *offense, such knowledge is established if a person is*
23 *aware of a high probability of the existence of such*
24 *circumstance, unless the person actually believes that*
25 *such circumstance does not exist.*

1 (k) *SCOPE OF APPLICATION.*—*This section shall apply*
2 *with respect to prohibited activities which occur on or after*
3 *the date this part takes effect.*

4 ***SEC. 225. EXPORT-IMPORT BANK.***

5 *Section 2(b)(4) of the Export-Import Bank Act of 1945*
6 *(12 U.S.C. 635(b)(4)) is amended in the first sentence by*
7 *inserting after “device” the following: “(as defined in sec-*
8 *tion 231(4) of the Nuclear Proliferation Prevention Act of*
9 *1994), or that any country has willfully aided or abetted*
10 *any non-nuclear-weapon state (as defined in section 231(5)*
11 *of that Act) to acquire any such nuclear explosive device*
12 *or to acquire unsafeguarded special nuclear material (as*
13 *defined in section 231(8) of that Act)”.*

14 ***SEC. 226. SANCTIONS AGAINST COUNTRIES INVOLVED IN***
15 ***TRANSFER OF NUCLEAR WEAPONS OR DE-***
16 ***SIGN INFORMATION OR COMPONENTS.***

17 (a) *DETERMINATION OF THE PRESIDENT.*—*Except as*
18 *provided in subsections (d), (e), and (f), in the event that*
19 *the President determines that any country, on or after the*
20 *effective date of this part—*

21 (1) *transfers to a non-nuclear-weapon state a*
22 *nuclear explosive device,*

23 (2) *is a non-nuclear-weapon state and either—*

24 (A) *receives a nuclear explosive device, or*

25 (B) *detonates a nuclear explosive device,*

1 (3) *transfers to a non-nuclear-weapon state any*
2 *design information or component which is determined*
3 *by the President to be important to, and known by*
4 *the transferring country to be intended by the recipi-*
5 *ent state for use in, the development or manufacture*
6 *of any nuclear explosive device, or*

7 (4) *is a non-nuclear-weapon state and seeks and*
8 *receives any design information or component which*
9 *is determined by the President to be important to,*
10 *and intended by the recipient state for use in, the de-*
11 *velopment or manufacture of any nuclear explosive*
12 *device,*

13 *then the President shall forthwith report to the Congress in*
14 *writing his determination with respect to that country and*
15 *shall forthwith impose the sanctions described in subsection*
16 *(b) against that country.*

17 (b) *SANCTIONS.—The sanctions referred to in sub-*
18 *section (a) are as follows:*

19 (1) *The United States Government shall termi-*
20 *nate assistance to that country under the Foreign As-*
21 *sistance Act of 1961, except for humanitarian assist-*
22 *ance or food or other agricultural commodities.*

23 (2) *The United States Government shall—*

24 (A) *terminate sales to that country under*
25 *the Arms Export Control Act of any defense arti-*

1 *cles, defense services, or design and construction*
2 *services, and*

3 *(B) terminate and deny licenses for the ex-*
4 *port to that country of any item on the United*
5 *States Munitions List.*

6 *(3) The United States Government shall termi-*
7 *nate all foreign military financing for that country*
8 *under the Arms Export Control Act.*

9 *(4) The United States Government shall deny to*
10 *that country any credit, credit guarantees, or other fi-*
11 *ancial assistance by any department, agency, or in-*
12 *strumentality of the United States Government, ex-*
13 *cept that the sanction of this paragraph shall not*
14 *apply—*

15 *(A) to any transaction subject to the report-*
16 *ing requirements of title V of the National Secu-*
17 *rity Act of 1947 (relating to congressional over-*
18 *sight of intelligence activities), or*

19 *(B) to humanitarian assistance.*

20 *(5) The United States Government shall oppose,*
21 *in accordance with section 701 of the International*
22 *Financial Institutions Act (22 U.S.C. 262d), the ex-*
23 *ension of any loan or financial or technical assist-*
24 *ance to that country by any international financial*
25 *institution.*

1 (6) *The United States Government shall prohibit*
2 *any United States bank from making any loan or*
3 *providing any credit to the government of that coun-*
4 *try, except for loans or credits for the purpose of pur-*
5 *chasing food or other agricultural commodities.*

6 (7) *The authorities of section 106 of the Export*
7 *Act of 1994 shall be used to prohibit exports to that*
8 *country of specific goods and technology (excluding*
9 *food and other agricultural commodities), except that*
10 *such prohibition shall not apply to any transaction*
11 *subject to the reporting requirements of title V of the*
12 *National Security Act of 1947 (relating to congress-*
13 *sional oversight of intelligence activities).*

14 **((8) In addition to the sanctions pro-**
15 **vided for in paragraphs (1) through (7),**
16 **the President may prohibit the importa-**
17 **tion into the United States of goods that**
18 **are the growth, product, or manufacture**
19 **of that country. The President shall de-**
20 **termine the type and volume of imports**
21 **to be prohibited.))**

22 (c) *DEFINITIONS.—As used in this section—*

23 (1) *the term “design information” means specific*
24 *information that relates to the design of a nuclear ex-*

1 *plosive device and that is not available to the public;*
2 *and*

3 *(2) the term “component” means a specific com-*
4 *ponent of a nuclear explosive device.*

5 *(d) AUTHORITY TO DELAY SANCTIONS RELATING TO*
6 *NUCLEAR EXPLOSIVE DEVICES.—*

7 *(1) PRESIDENTIAL CERTIFICATION.—Notwith-*
8 *standing subsection (a), the President may, for a pe-*
9 *riod of not more than 30 days of continuous session,*
10 *delay the imposition of sanctions which would other-*
11 *wise be required under subsection (a)(1) or (2) if the*
12 *President first transmits to the Speaker of the House*
13 *of Representatives, and to the chairman of the Com-*
14 *mittee on Foreign Relations of the Senate, a certifi-*
15 *cation that he has determined that an immediate im-*
16 *position of sanctions on that country would be det-*
17 *ritmental to the national security of the United States.*
18 *Not more than one such certification may be trans-*
19 *mitted for a country with respect to the same detona-*
20 *tion, transfer, or receipt of a nuclear explosive device.*

21 *(2) AUTHORITY TO GRANT WAIVER.—(A) If the*
22 *President transmits a certification to the Congress*
23 *under paragraph (1), a joint resolution which would*
24 *permit the President to exercise the waiver authority*
25 *of subsection (e) shall, if introduced in either House*

1 *within 30 days of continuous session after the Con-*
2 *gress receives this certification, be considered in the*
3 *Senate in accordance with subparagraph (B).*

4 *(B) Any joint resolution under this paragraph*
5 *shall be considered in the Senate in accordance with*
6 *the provisions of section 601(b) of the International*
7 *Security Assistance and Arms Export Control Act of*
8 *1976.*

9 *(C) For purposes of this paragraph, the term*
10 *“joint resolution” means a joint resolution the matter*
11 *after the resolving clause of which is as follows: “That*
12 *the Congress having received on ____ a certification*
13 *by the President under section 226(d)(1) of the Nu-*
14 *clear Proliferation Prevention Act of 1994 with re-*
15 *spect to ____, the Congress hereby authorizes the*
16 *President to exercise the waiver authority contained*
17 *in section 226(e) of that Act.”, with the date of receipt*
18 *of the certification inserted in the first blank and the*
19 *name of the country inserted in the second blank.*

20 *(e) WAIVER AUTHORITY.—Notwithstanding subsection*
21 *(a), if the Congress enacts a joint resolution under sub-*
22 *section (d), the President may waive any sanction which*
23 *would otherwise be required under subsection (a)(1) or (2)*
24 *if he determines and certifies in writing to the Speaker of*
25 *the House of Representatives and the Committee on Foreign*

1 *Relations of the Senate that the imposition of such sanction*
2 *would be seriously prejudicial to the achievement of United*
3 *States nonproliferation objectives or otherwise jeopardize*
4 *the common defense and security. The President shall trans-*
5 *mit with such certification a statement setting forth the spe-*
6 *cific reasons therefor.*

7 (f) *SANCTIONS RELATING TO INFORMATION AND COM-*
8 *PONENTS.—*

9 (1) *IMPOSITION.—In the event the President is*
10 *required to impose sanctions against a country under*
11 *subsection (a)(3) or (a)(4), the President shall forth-*
12 *with so inform such country and shall impose the re-*
13 *quired sanctions beginning 30 days after submitting*
14 *to the Congress the report required by subsection (a)*
15 *unless, and to the extent that, there is enacted during*
16 *the 30-day period a law prohibiting the imposition of*
17 *such sanctions.*

18 (2) *WAIVER.—Notwithstanding any other provi-*
19 *sion of law, the sanctions which are required to be*
20 *imposed against a country under subsection (a)(3) or*
21 *(4) shall not apply if the President determines and*
22 *certifies in writing to the Committee on Foreign Rela-*
23 *tions and the Committee on Governmental Affairs of*
24 *the Senate and the Committee on Foreign Affairs of*
25 *the House of Representatives that the application of*

1 *such sanctions against such country would have a se-*
2 *rious adverse effect on vital United States interests.*
3 *The President shall transmit with such certification a*
4 *statement setting forth the specific reasons therefor.*

5 (g) *CONTINUITY OF SESSION.*—*For purposes of this*
6 *section, continuity of session is broken only by an adjourn-*
7 *ment of the Congress sine die and the days on which either*
8 *House of Congress is not in session because of an adjourn-*
9 *ment of more than three days to a day certain are excluded*
10 *in the computation of any period of time in which the Con-*
11 *gress is in continuous session.*

12 (h) *AUTHORITY OF THE PRESIDENT NOT DELE-*
13 *GABLE.*—*The President may not delegate or transfer his*
14 *power, authority, or discretion to make or modify deter-*
15 *minations under this section.*

16 **SEC. 227. AMENDMENT TO THE ARMS EXPORT CONTROL**
17 **ACT.**

18 (a) *IN GENERAL.*—*The Arms Export Control Act is*
19 *amended by adding at the end the following new chapter:*

20 **“CHAPTER 10—NUCLEAR**
21 **NONPROLIFERATION CONTROLS**

22 **“SEC. 101. NUCLEAR ENRICHMENT TRANSFERS.**

23 *“(a) PROHIBITIONS; SAFEGUARDS AND MANAGE-*
24 *MENT.*—*Except as provided in subsection (b), no funds*
25 *made available to carry out the Foreign Assistance Act of*

1 1961 or this Act may be used for the purpose of providing
2 economic assistance (including assistance under chapter 4
3 of part II of the Foreign Assistance Act of 1961), providing
4 military assistance or grant military education and train-
5 ing, providing assistance under chapter 6 of part II of that
6 Act, or extending military credits or making guarantees,
7 to any country which the President determines delivers nu-
8 clear enrichment equipment, materials, or technology to
9 any other country on or after August 4, 1977, or receives
10 such equipment, materials, or technology from any other
11 country on or after August 4, 1977, unless before such deliv-
12 ery—

13 “(1) the supplying country and receiving coun-
14 try have reached agreement to place all such equip-
15 ment, materials, or technology, upon delivery, under
16 multilateral auspices and management when avail-
17 able; and

18 “(2) the recipient country has entered into an
19 agreement with the International Atomic Energy
20 Agency to place all such equipment, materials, tech-
21 nology, and all nuclear fuel and facilities in such
22 country, under the safeguards system of such Agency.

23 “(b) CERTIFICATION BY PRESIDENT OF NECESSITY OF
24 CONTINUED ASSISTANCE; DISAPPROVAL BY CONGRESS.—

25 (1) Notwithstanding subsection (a), the President may fur-

1 *nish assistance which would otherwise be prohibited under*
2 *such subsection if he determines and certifies in writing to*
3 *the Speaker of the House of Representatives and the Com-*
4 *mittee on Foreign Relations of the Senate that—*

5 “(A) *the termination of such assistance would*
6 *have a serious adverse effect on vital United States*
7 *interests; and*

8 “(B) *he has received reliable assurances that the*
9 *country in question will not acquire or develop nu-*
10 *clear weapons or assist other nations in doing so.*

11 *Such certification shall set forth the reasons supporting*
12 *such determination in each particular case.*

13 “(2)(A) *A certification under paragraph (1) shall take*
14 *effect on the date on which the certification is received by*
15 *the Congress. However, if, within 30 calendar days after*
16 *receiving this certification, the Congress enacts a joint reso-*
17 *lution stating in substance that the Congress disapproves*
18 *the furnishing of assistance pursuant to the certification,*
19 *then upon the enactment of that resolution the certification*
20 *shall cease to be effective and all deliveries of assistance fur-*
21 *nished under the authority of that certification shall be sus-*
22 *pending immediately.*

23 “(B) *Any joint resolution under this paragraph shall*
24 *be considered in the Senate in accordance with the provi-*

1 *sions of section 601(b) of the International Security Assist-*
2 *ance and Arms Export Control Act of 1976.*

3 **“SEC. 102. NUCLEAR REPROCESSING TRANSFERS AND ILLE-**
4 **GAL EXPORTS FOR NUCLEAR EXPLOSIVE DE-**
5 **VICES.**

6 *“(a) PROHIBITIONS ON ASSISTANCE TO COUNTRIES*
7 *INVOLVED IN TRANSFER OF NUCLEAR REPROCESSING*
8 *EQUIPMENT, MATERIALS, OR TECHNOLOGY.—Except as*
9 *provided in subsection (b), no funds made available to carry*
10 *out the Foreign Assistance Act of 1961 or this Act may be*
11 *used for the purpose of providing economic assistance (in-*
12 *cluding assistance under chapter 4 of part II of the Foreign*
13 *Assistance Act of 1961), providing military assistance or*
14 *grant military education and training, providing assist-*
15 *ance under chapter 6 of part II of that Act, or extending*
16 *military credits or making guarantees, to any country*
17 *which the President determines—*

18 *“(1) delivers nuclear reprocessing equipment,*
19 *materials, or technology to any other country on or*
20 *after August 4, 1977, or receives such equipment, ma-*
21 *terials, or technology from any other country on or*
22 *after August 4, 1977 (except for the transfer of reproc-*
23 *essing technology associated with the investigation,*
24 *under international evaluation programs in which*

1 *the United States participates, of technologies which*
2 *are alternatives to pure plutonium reprocessing), or*

3 “(2) *is a non-nuclear-weapon state which, on or*
4 *after August 8, 1985, exports illegally (or attempts to*
5 *export illegally) from the United States any material,*
6 *equipment, or technology which would contribute sig-*
7 *nificantly to the ability of such country to manufac-*
8 *ture a nuclear explosive device, if the President deter-*
9 *mines that the material, equipment, or technology*
10 *was to be used by such country in the manufacture*
11 *of a nuclear explosive device.*

12 *For purposes of paragraph (2), an export (or attempted ex-*
13 *port) by a person who is an agent of, or is otherwise acting*
14 *on behalf of or in the interests of, a country shall be consid-*
15 *ered to be an export (or attempted export) by that country.*

16 “(b) *EXCEPTION.—(1) Notwithstanding subsection (a),*
17 *the President in any fiscal year may furnish assistance*
18 *which would otherwise be prohibited under that subsection*
19 *if he determines and certifies in writing during that fiscal*
20 *year to the Speaker of the House of Representatives and*
21 *the Committee on Foreign Relations of the Senate that the*
22 *termination of such assistance would be seriously preju-*
23 *dicial to the achievement of United States nonproliferation*
24 *objectives or would otherwise jeopardize the common defense*

1 *and security. The President shall transmit with such certifi-*
2 *cation a statement setting forth the specific reasons therefor.*

3 “(2)(A) A certification under paragraph (1) shall take
4 *effect on the date on which the certification is received by*
5 *the Congress. However, if, within 30 calendar days after*
6 *receiving this certification, the Congress enacts a joint reso-*
7 *lution stating in substance that the Congress disapproves*
8 *the furnishing of assistance pursuant to the certification,*
9 *then upon the enactment of that resolution the certification*
10 *shall cease to be effective and all deliveries of assistance fur-*
11 *nished under the authority of that certification shall be sus-*
12 *pending immediately.*

13 “(B) Any joint resolution under this paragraph shall
14 *be considered in the Senate in accordance with the provi-*
15 *sions of section 601(b) of the International Security Assist-*
16 *ance and Arms Export Control Act of 1976.*

17 **“SEC. 103. DEFINITION OF NUCLEAR EXPLOSIVE DEVICE.**

18 “*As used in this chapter, the term ‘nuclear explosive*
19 *device’ has the meaning given that term in section 231(4)*
20 *of the Nuclear Proliferation Prevention Act of 1994.’”*

21 (b) *REPEALS.—Sections 669 and 670 of the Foreign*
22 *Assistance Act of 1961 are hereby repealed.*

23 (c) *REFERENCES IN LAW.—Any reference in law as*
24 *of the effective date of this part to section 669 or 670 of*
25 *the Foreign Assistance Act of 1961 shall, on and after such*

1 *date, be deemed to be a reference to section 101 or 102 of*
2 *the Arms Export Control Act, or section 226 of this Act,*
3 *as the case may be.*

4 **SEC. 228. REWARD.**

5 *Section 36(a) of the State Department Basic Authori-*
6 *ties Act of 1956 (22 U.S.C. 2708(a)) is amended—*

7 *(1) by redesignating paragraphs (1) through (3)*
8 *as subparagraphs (A) through (C), respectively;*

9 *(2) by inserting “(1)” after “(a)”;* and

10 *(3) by adding at the end the following:*

11 *“(2) For purposes of this subsection, the term ‘act of*
12 *international terrorism’ includes any act substantially con-*
13 *tributing to the acquisition of unsafeguarded special nu-*
14 *clear material (as defined in section 231(8) of the Nuclear*
15 *Proliferation Prevention Act of 1994) or any nuclear explo-*
16 *sive device (as defined in section 231(4) of that Act) by an*
17 *individual, group, or non-nuclear-weapon state (as defined*
18 *in section 231(5) of that Act).”.*

19 **SEC. 229. REPORTS.**

20 *(a) CONTENT OF ACDA ANNUAL REPORT.—Section 51*
21 *of the Arms Control and Disarmament Act, as amended by*
22 *section 717 of the Foreign Relations Authorization Act, Fis-*
23 *cal Years 1994 and 1995, is amended—*

24 *(1) in subsection (a)—*

1 (A) by striking “and” at the end of para-
2 graph (5);

3 (B) by striking the period at the end of
4 paragraph (6) and inserting “; and”; and

5 (C) by adding after paragraph (6) the fol-
6 lowing new paragraph:

7 “(7) a discussion of any material noncompliance
8 by foreign governments with their binding commit-
9 ments to the United States with respect to the preven-
10 tion of the spread of nuclear explosive devices (as de-
11 fined in section 231(4) of the Nuclear Proliferation
12 Prevention Act of 1994) by non-nuclear-weapon states
13 (as defined in section 231(5) of that Act) or the acqui-
14 sition by such states of unsafeguarded special nuclear
15 material (as defined in section 231(8) of that Act),
16 including—

17 “(A) a net assessment of the aggregate mili-
18 tary significance of all such violations;

19 “(B) a statement of the compliance policy of
20 the United States with respect to violations of
21 those commitments; and

22 “(C) what actions, if any, the President has
23 taken or proposes to take to bring any nation
24 committing such a violation into compliance
25 with those commitments.”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(c) *REPORTING CONSECUTIVE NONCOMPLIANCE.*—If
4 the President in consecutive reports submitted to the Con-
5 gress under this section reports that any designated nation
6 is not in full compliance with its binding nonproliferation
7 commitments to the United States, then the President shall
8 include in the second such report an assessment of what
9 actions are necessary to compensate for such violations.”.

10 (b) *REPORTING ON DEMARCHES.*—(1) It is the sense
11 of the Congress that the Department of State should, in the
12 course of implementing its reporting responsibilities under
13 section 602(c) of the Nuclear Non-Proliferation Act of 1978,
14 include a summary of demarches that the United States has
15 issued or received from foreign governments with respect to
16 activities which are of significance from the proliferation
17 standpoint.

18 (2) For purposes of this section, the term “demarche”
19 means any official communication by one government to
20 another, by written or oral means, intended by the originat-
21 ing government to express—

22 (A) a concern over a past, present, or possible fu-
23 ture action or activity of the recipient government, or
24 of a person within the jurisdiction of that govern-
25 ment, contributing to the global spread of

1 *unsafeguarded special nuclear material or of nuclear*
2 *explosive devices;*

3 *(B) a request for the recipient government to*
4 *counter such action or activity; or*

5 *(C) both the concern and request described in*
6 *subparagraphs (A) and (B).*

7 **SEC. 230. TECHNICAL CORRECTION.**

8 *Section 133 b. of the Atomic Energy Act of 1954 (42*
9 *U.S.C. 2160c) is amended by striking “20 kilograms” and*
10 *inserting “5 kilograms”.*

11 **SEC. 231. DEFINITIONS.**

12 *For purposes of this part—*

13 *(1) the term “foreign person” means—*

14 *(A) an individual who is not a citizen of*
15 *the United States or an alien admitted for per-*
16 *manent residence to the United States; or*

17 *(B) a corporation, partnership, or other*
18 *nongovernment entity which is created or orga-*
19 *nized under the laws of a foreign country or*
20 *which has its principal place of business outside*
21 *the United States;*

22 *(2) the term “goods or technology” means—*

23 *(A) nuclear materials and equipment and*
24 *sensitive nuclear technology (as such terms are*
25 *defined in section 4 of the Nuclear Non-Pro-*

1 *liferation Act of 1978), all export items des-*
2 *ignated by the President pursuant to section*
3 *309(c) of the Nuclear Non-Proliferation Act of*
4 *1978, and all technical assistance requiring au-*
5 *thorization under section 57 b. of the Atomic En-*
6 *ergy Act of 1954; and*

7 *(B) in the case of exports from a country*
8 *other than the United States, any goods or tech-*
9 *nology that, if exported from the United States,*
10 *would be goods or technology described in sub-*
11 *paragraph (A);*

12 *(3) the term “IAEA safeguards” means the safe-*
13 *guards set forth in an agreement between a country*
14 *and the International Atomic Energy Agency, as au-*
15 *thorized by Article III(A)(5) of the Statute of the*
16 *International Atomic Energy Agency;*

17 *(4) the term “nuclear explosive device” means*
18 *any device, whether assembled or disassembled, that is*
19 *designed to produce an instantaneous release of an*
20 *amount of nuclear energy from special nuclear mate-*
21 *rial that is greater than the amount of energy that*
22 *would be released from the detonation of one pound*
23 *of trinitrotoluene (TNT);*

24 *(5) the term “non-nuclear-weapon state” means*
25 *any country which is not a nuclear-weapon state, as*

1 *defined by Article IX (3) of the Treaty on the Non-*
2 *Proliferation of Nuclear Weapons, signed at Washing-*
3 *ton, London, and Moscow on July 1, 1968;*

4 *(6) the term “special nuclear material” has the*
5 *meaning given that term in section 11 aa. of the*
6 *Atomic Energy Act of 1954 (42 U.S.C. 2014aa);*

7 *(7) the term “United States person” means—*

8 *(A) an individual who is a citizen of the*
9 *United States or an alien admitted for perma-*
10 *nent residence to the United States; or*

11 *(B) a corporation, partnership, or other*
12 *nongovernment entity which is not a foreign per-*
13 *son; and*

14 *(8) the term “unsafeguarded special nuclear ma-*
15 *terial” means special nuclear material which is held*
16 *in violation of IAEA safeguards or not subject to*
17 *IAEA safeguards (excluding any quantity of material*
18 *that could, if it were exported from the United States,*
19 *be exported under a general license issued by the Nu-*
20 *clear Regulatory Commission).*

21 **SEC. 232. EFFECTIVE DATE.**

22 *The provisions of this part, and the amendments made*
23 *by this part, shall take effect 60 days after the date of the*
24 *enactment of this Act.*

PART C—INTERNATIONAL ATOMIC ENERGY**AGENCY****SEC. 241. BILATERAL AND MULTILATERAL INITIATIVES.**

1 *It is the sense of the Congress that in order to maintain*
2 *and enhance international confidence in the effectiveness of*
3 *IAEA safeguards and in other multilateral undertakings to*
4 *halt the global proliferation of nuclear weapons, the United*
5 *States should seek to negotiate with other nations and*
6 *groups of nations, including the IAEA Board of Governors*
7 *and the Nuclear Suppliers Group, to—*

8 (1) *build international support for the principle*
9 *that nuclear supply relationships must require pur-*
10 *chasing nations to agree to full-scope international*
11 *safeguards;*

12 (2) *encourage each nuclear-weapon state within*
13 *the meaning of the Treaty to undertake a comprehen-*
14 *sive review of its own procedures for declassifying in-*
15 *formation relating to the design or production of nu-*
16 *clear explosive devices and to investigate any meas-*
17 *ures that would reduce the risk of such information*
18 *contributing to nuclear weapons proliferation;*

19 (3) *encourage the deferral of efforts to produce*
20 *weapons-grade nuclear material for large-scale com-*
21 *mercial uses until such time as safeguards are devel-*
22 *oped that can detect, on a timely and reliable basis,*
23
24
25

1 *the diversion of significant quantities of such mate-*
2 *rial for nuclear explosive purposes;*

3 *(4) pursue greater financial support for the im-*
4 *plementation and improvement of safeguards from all*
5 *IAEA member nations with significant nuclear pro-*
6 *grams, particularly from those nations that are cur-*
7 *rently using or planning to use weapons-grade nu-*
8 *clear material for commercial purposes;*

9 *(5) arrange for the timely payment of annual fi-*
10 *nanacial contributions by all members of the IAEA,*
11 *including the United States;*

12 *(6) pursue the elimination of international com-*
13 *merce in highly enriched uranium for use in research*
14 *reactors while encouraging multilateral cooperation to*
15 *develop and to use low-enriched alternative nuclear*
16 *fuels;*

17 *(7) oppose efforts by non-nuclear-weapon states*
18 *to develop or use unsafeguarded nuclear fuels for pur-*
19 *poses of naval propulsion;*

20 *(8) pursue an international open skies arrange-*
21 *ment that would authorize the IAEA to operate sur-*
22 *veillance aircraft and would facilitate IAEA access to*
23 *satellite information for safeguards verification pur-*
24 *poses;*

1 (9) develop an institutional means for IAEA
2 member nations to share intelligence material with
3 the IAEA on possible safeguards violations without
4 compromising national security or intelligence
5 sources or methods;

6 (10) require any exporter of a sensitive nuclear
7 facility or sensitive nuclear technology to a non-nu-
8 clear-weapon state to notify the IAEA prior to export
9 and to require safeguards over that facility or tech-
10 nology, regardless of its destination; and

11 (11) seek agreement among the parties to the
12 Treaty to apply IAEA safeguards in perpetuity and
13 to establish new limits on the right to withdraw from
14 the Treaty.

15 **SEC. 242. IAEA INTERNAL REFORMS.**

16 In order to promote the early adoption of reforms in
17 the implementation of the safeguards responsibilities of the
18 IAEA, the Congress urges the President to negotiate with
19 other nations and groups of nations, including the IAEA
20 Board of Governors and the Nuclear Suppliers Group, to—

21 (1) improve the access of the IAEA within nu-
22 clear facilities that are capable of producing, process-
23 ing, or fabricating special nuclear material suitable
24 for use in a nuclear explosive device;

1 (2)(A) facilitate the IAEA's efforts to meet and
2 to maintain its own goals for detecting the diversion
3 of nuclear materials and equipment, giving particu-
4 lar attention to facilities in which there are bulk
5 quantities of plutonium; and

6 (B) if it is not technically feasible for the IAEA
7 to meet those detection goals in a particular facility,
8 require the IAEA to declare publicly that it is unable
9 to do so;

10 (3) enable the IAEA to issue fines for violations
11 of safeguards procedures, to pay rewards for informa-
12 tion on possible safeguards violations, and to establish
13 a "hot line" for the reporting of such violations and
14 other illicit uses of weapons-grade nuclear material;

15 (4) establish safeguards at facilities engaged in
16 the manufacture of equipment or material that is es-
17 pecially designated or prepared for the processing,
18 use, or production of special fissionable material or,
19 in the case of non-nuclear-weapon states, of any nu-
20 clear explosive device;

21 (5) establish safeguards over nuclear research
22 and development activities and facilities;

23 (6) implement special inspections of undeclared
24 nuclear facilities, as provided for under existing safe-
25 guards procedures, and seek authority for the IAEA

1 *to conduct challenge inspections on demand at sus-*
2 *pected nuclear sites;*

3 *(7) expand the scope of safeguards to include*
4 *tritium, uranium concentrates, and nuclear waste*
5 *containing special fissionable material, and increase*
6 *the scope of such safeguards on heavy water;*

7 *(8) revise downward the IAEA's official mini-*
8 *imum amounts of nuclear material ("significant*
9 *quantity") needed to make a nuclear explosive device*
10 *and establish these amounts as national rather than*
11 *facility standards;*

12 *(9) expand the use of full-time resident IAEA in-*
13 *spectors at sensitive fuel cycle facilities;*

14 *(10) promote the use of near real time material*
15 *accountancy in the conduct of safeguards at facilities*
16 *that use, produce, or store significant quantities of*
17 *special fissionable material;*

18 *(11) develop with other IAEA member nations*
19 *an agreement on procedures to expedite approvals of*
20 *visa applications by IAEA inspectors;*

21 *(12) provide the IAEA the additional funds,*
22 *technical assistance, and political support necessary*
23 *to carry out the goals set forth in this subsection; and*

24 *(13) make public the annual safeguards imple-*
25 *mentation report of the IAEA, establishing a public*

1 *registry of commodities in international nuclear com-*
2 *merce, including dual-use goods, and creating a pub-*
3 *lic repository of current nuclear trade control laws,*
4 *agreements, regulations, and enforcement and judicial*
5 *actions by IAEA member nations.*

6 **SEC. 243. REPORTING REQUIREMENT.**

7 (a) *REPORT REQUIRED.*—*The President shall, in the*
8 *report required by section 601(a) of the Nuclear Non-Pro-*
9 *liferation Act of 1978, describe—*

10 (1) *the steps he has taken to implement sections*
11 *241 and 242, and*

12 (2) *the progress that has been made and the ob-*
13 *stacles that have been encountered in seeking to meet*
14 *the objectives set forth in sections 241 and 242.*

15 (b) *CONTENTS OF REPORT.*—*Each report under para-*
16 *graph (1) shall describe—*

17 (1) *the bilateral and multilateral initiatives that*
18 *the President has taken during the period since the*
19 *enactment of this Act in pursuit of each of the objec-*
20 *tives set forth in sections 241 and 242;*

21 (2) *any obstacles that have been encountered in*
22 *the pursuit of those initiatives;*

23 (3) *any additional initiatives that have been*
24 *proposed by other countries or international organi-*

1 *zations to strengthen the implementation of IAEA*
2 *safeguards;*

3 *(4) all activities of the Federal Government in*
4 *support of the objectives set forth in sections 241 and*
5 *242;*

6 *(5) any recommendations of the President on ad-*
7 *ditional measures to enhance the effectiveness of IAEA*
8 *safeguards; and*

9 *(6) any initiatives that the President plans to*
10 *take in support of each of the objectives set forth in*
11 *sections 241 and 242.*

12 **SEC. 244. DEFINITIONS.**

13 *As used in this part—*

14 *(1) the term “highly enriched uranium” means*
15 *uranium enriched to 20 percent or more in the iso-*
16 *tope U-235;*

17 *(2) the term “IAEA” means the International*
18 *Atomic Energy Agency;*

19 *(3) the term “near real time material account-*
20 *ancy” means a method of accounting for the location,*
21 *quantity, and disposition of special fissionable mate-*
22 *rial at facilities that store or process such material,*
23 *in which verification of peaceful use is continuously*
24 *achieved by means of frequent physical inventories*
25 *and the use of in-process instrumentation;*

1 (4) the term “special fissionable material” has
2 the meaning given that term by Article XX(1) of the
3 Statute of the International Atomic Energy Agency,
4 done at the Headquarters of the United Nations on
5 October 26, 1956;

6 (5) the term “the Treaty” means the Treaty on
7 the Non-Proliferation of Nuclear Weapons, signed at
8 Washington, London, and Moscow on July 1, 1968;
9 and

10 (6) the terms “IAEA safeguards”, “non-nuclear-
11 weapon state”, “nuclear explosive device”, and “spe-
12 cial nuclear material” have the meanings given those
13 terms in section 231 of this Act.

14 **PART D—REPEAL OF DUPLICATIVE PROVISIONS**

15 **SEC. 251. REPEAL.**

16 *Effective 60 days after the date of the enactment of*
17 *this Act—*

18 (1) title VIII of the Foreign Relations Authoriza-
19 tion Act, Fiscal Years 1994 and 1995, the amend-
20 ments made by that title, and the items relating to
21 such title in the table of contents of that Act, are re-
22 pealed; and

23 (2) with respect to any provisions of law re-
24 pealed by title VIII of that Act, such title shall be
25 deemed not to have been enacted.

Amend the title so as to read: “A bill to provide authority to control exports, and for other purposes.”.

HR 3937 RH—2

HR 3937 RH—3

HR 3937 RH—4

HR 3937 RH—5

HR 3937 RH—6

HR 3937 RH—7

HR 3937 RH—8

HR 3937 RH—9

HR 3937 RH—10

HR 3937 RH—11

HR 3937 RH—12

HR 3937 RH—13

HR 3937 RH—14

HR 3937 RH—15

HR 3937 RH—16

HR 3937 RH—17

HR 3937 RH—18

HR 3937 RH—19

HR 3937 RH—20

HR 3937 RH—21

Union Calendar No. 304

103^D CONGRESS
2^D SESSION

H. R. 3937

[Report No. 103-531, Parts I, II, III, and IV]

A BILL

Entitled the "Export Administration Act of 1994".

JUNE 17, 1994

Committees on the Judiciary and Public Works and
Transportation discharged; committed to the Committee
of the Whole House on the State of the Union, and
ordered to be printed