

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 361**

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**AN ACT**

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

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## AN ACT

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

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

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

Sec. 1. Table of contents.

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 Sec. 103. Policy statement.  
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# 1                   **TITLE I—EXPORT** 2                   **ADMINISTRATION**

## 3   **SEC. 101. SHORT TITLE.**

4           This title may be cited as the “Export Administration  
 5 Act of 1996”.

## 6   **SEC. 102. FINDINGS.**

7           The Congress makes the following findings:

8                   (1) Export controls are a part of a comprehen-  
 9           sive response to national security threats. United  
 10           States exports should be restricted only for signifi-

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

3           (2) Exports of certain commodities and tech-  
4       nology may adversely affect the national security  
5       and foreign policy of the United States by making  
6       a significant contribution to the military potential of  
7       individual countries or by disseminating the capabil-  
8       ity to design, develop, test, produce, stockpile, or use  
9       weapons of mass destruction, missile delivery sys-  
10      tems, and other significant military capabilities.  
11      Therefore, the administration of export controls  
12      should emphasize the control of these exports.

13           (3) The acquisition of sensitive commodities  
14      and technology by those countries and end users  
15      whose actions or policies run counter to United  
16      States national security or foreign policy interests  
17      may enhance the military capabilities of those coun-  
18      tries, particularly their ability to design, develop,  
19      test, produce, stockpile, use, and deliver nuclear,  
20      chemical, and biological weapons, missile delivery  
21      systems, and other significant military capabilities.  
22      This enhancement threatens the security of the  
23      United States and its allies, and places additional  
24      demands on the defense budget of the United States.  
25      Availability to countries and end users of items that

1 contribute to military capabilities or the proliferation  
2 of weapons of mass destruction is a fundamental  
3 concern of the United States and should be elimi-  
4 nated through negotiations and other appropriate  
5 means whenever possible.

6 (4) With the growing importance of exports to  
7 sustained United States economic growth and vital-  
8 ity, restrictions on exports must be evaluated in  
9 terms of their effects on the United States economy.

10 (5) Export controls cannot be the sole instru-  
11 ment of the United States to prevent a country or  
12 end user from developing weapons of mass destruc-  
13 tion. For this reason, export controls should be ap-  
14 plied as part of a comprehensive response to security  
15 threats.

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

21 (7) International treaties, such as the Chemical  
22 Weapons Convention, and international agreements  
23 and arrangements intended to control, lessen, or  
24 eliminate weapons of mass destruction should be  
25 fully implemented by, among other things, imposing

1 restrictions on imports and exports of designated  
2 items, monitoring, and transmitting reports on, the  
3 production, processing, consumption, export, and im-  
4 port of designated items, and complying with ver-  
5 ification regimes mandated by such treaties, agree-  
6 ments, and arrangements.

7 (8) Except in the event the United States is the  
8 sole source of critical supplies, unilateral export con-  
9 trols are generally not truly effective in influencing  
10 the behavior of other governments or impeding ac-  
11 cess to controlled items. Unilateral controls alone  
12 may impede access to United States sources of sup-  
13 ply without affecting the ability of countries to ob-  
14 tain controlled items elsewhere. Moreover, unilateral  
15 controls generally permit foreign competitors to  
16 serve markets the United States Government denies  
17 to United States firms and workers, thus impairing  
18 the reliability of United States suppliers in compari-  
19 son with their foreign competitors. At the same  
20 time, the need to lead the international community  
21 or overriding national security or foreign policy in-  
22 terests may justify unilateral controls in specific  
23 cases.

1           (9) The United States recognizes the impor-  
2           tance of comprehensive enforcement measures to  
3           maximize the effectiveness of multilateral controls.

4           (10) The United States export control system  
5           must not be overly restrictive or bureaucratic, or un-  
6           dermine the competitive position of United States in-  
7           dustry. The export control system must be efficient,  
8           responsive, transparent, and effective.

9           (11) Export restrictions that negatively affect  
10          the United States industrial base may ultimately  
11          weaken United States military capabilities and lead  
12          to dependencies on foreign sources for key compo-  
13          nents.

14          (12) Minimization of restrictions on exports of  
15          agricultural commodities and products is of critical  
16          importance to the maintenance of a sound agricul-  
17          tural sector, to a positive contribution to the balance  
18          of payments, to reducing the level of Federal ex-  
19          penditures for agricultural support programs, and to  
20          United States cooperation in efforts to eliminate  
21          malnutrition and world hunger.

22          (13) Minimization of restrictions on the export  
23          of information technology products and services is of  
24          critical importance to United States leadership in re-  
25          moving obstacles to the effective development of a

1 superior global information infrastructure and the  
2 new jobs and markets, increased trade and informa-  
3 tion flows, improved national security, and new tools  
4 for the improvement of the quality of life for people  
5 globally that will be created.

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

10 **SEC. 103. POLICY STATEMENT.**

11 It is the policy of the United States to do the follow-  
12 ing:

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

16 (A) leading international efforts to control  
17 the proliferation of chemical and biological  
18 weapons, nuclear explosive devices, missile deliv-  
19 ery systems, and other significant military ca-  
20 pabilities;

21 (B) controlling involvement of United  
22 States persons in, and contributions by United  
23 States persons to, foreign programs intended to  
24 develop weapons of mass destruction, missiles,  
25 and other significant military capabilities, and

1 the means to design, test, develop, produce,  
2 stockpile, or use them; and

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

9 (2) To restrict the export of items—

10 (A) that would significantly contribute to  
11 the military potential of countries so as to prove  
12 detrimental to the national security of the Unit-  
13 ed States or its allies; or

14 (B) where necessary to further signifi-  
15 cantly the foreign policy of the United States or  
16 to fulfill its declared international commit-  
17 ments.

18 (3) To—

19 (A) minimize uncertainties in export con-  
20 trol policy; and

21 (B) encourage trade with all countries with  
22 which the United States has diplomatic or trad-  
23 ing relations, except those countries with which  
24 such trade has been determined by the Presi-  
25 dent to be against the national interest.

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

5           (5) To further increase the reliance of the Unit-  
6 ed States upon multilateral coordination of controls  
7 through effective control regimes that maintain lists  
8 of controlled items that are truly critical to the con-  
9 trol objectives, strive to increase membership to in-  
10 clude all relevant countries, maintain common cri-  
11 teria and procedures for licensing, and harmonize  
12 member countries' licensing practices. It is the pol-  
13 icy of the United States that multilateral controls  
14 are the best means of achieving the control objec-  
15 tives of the United States.

16           (6) To impose unilateral controls only when it  
17 is necessary to further significantly the national se-  
18 curity or foreign policy of the United States, and  
19 only after full consideration of the economic impact  
20 of the controls and their effectiveness in achieving  
21 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 person to lose an  
25 export sale.

1           (8) To use export controls to deter and punish  
2 acts of international terrorism and to encourage  
3 other countries to take immediate steps to prevent  
4 the use of their territories or resources to aid, en-  
5 courage, or give sanctuary to those persons involved  
6 in directing, supporting, or participating in acts of  
7 international terrorism. To this end, consistent with  
8 the policies of this section and the provisions of this  
9 title, the United States should, by restricting exports  
10 to countries that have violated international norms  
11 of behavior by repeatedly supporting acts of inter-  
12 national terrorism, distance itself from those coun-  
13 tries.

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

18           (B) To encourage and, in specified cases, re-  
19 quire United States persons engaged in the export of  
20 commodities, technology, and other information to  
21 refuse to take actions, including furnishing informa-  
22 tion or entering into or implementing agreements,  
23 which have the effect of furthering or supporting the  
24 restrictive trade practices or boycotts fostered or im-  
25 posed by any foreign country against a country

1 friendly to the United States or against any United  
2 States person.

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

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

10 (12) To minimize restrictions on the export of  
11 information technology products and services as part  
12 of a flexible regulatory environment that can keep  
13 pace with the rapid technological changes necessary  
14 to realize the full economic, societal, and national se-  
15 curity benefits of United States leadership in the de-  
16 velopment of a superior global information infra-  
17 structure.

18 (13) To cooperate with other countries to pro-  
19 mote greater transparency and responsibility with  
20 regard to the transfers of armaments and sensitive  
21 goods and technologies, both for the purpose of de-  
22 veloping common understandings of the risks to  
23 international peace and regional security associated  
24 with the transfers of such items and to coordinate  
25 national control policies to combat those risks.

1           (14) To enhance the national security and non-  
2 proliferation interests of the United States. To this  
3 end and consistent with the other policies of this sec-  
4 tion and the provisions of this title, the United  
5 States will use export controls when necessary to en-  
6 sure that access to weapons of mass destruction,  
7 missile delivery systems, and other significant mili-  
8 tary capabilities is restricted. While the multilateral  
9 nonproliferation regimes will be the primary instru-  
10 ments through which the United States will pursue  
11 its nonproliferation goals, it may also, consistent  
12 with the policies of this section and the provisions of  
13 this title, take unilateral action.

14           (15) To promote international peace, stability,  
15 and respect for fundamental human rights. The  
16 United States may establish controls on exports that  
17 contribute to the military capabilities of countries  
18 that threaten international peace or stability or to  
19 countries that abuse the fundamental rights of their  
20 citizens, or to promote other important foreign pol-  
21 icy objectives of the United States, consistent with  
22 the policies of this section and the provisions of this  
23 title.

1 **SEC. 104. GENERAL PROVISIONS.**

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

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

9 (2) MULTIPLE EXPORTS.—Licenses authorizing  
10 multiple exports, issued pursuant to an application  
11 by the exporter, in lieu of a license for each such ex-  
12 port. Licenses under this paragraph shall be de-  
13 signed to encourage and acknowledge exporters' in-  
14 ternal control programs for ensuring compliance  
15 with the terms of the license.

16 (b) UNITED STATES COMMODITY CONTROL  
17 INDEX.—

18 (1) IN GENERAL.—The Secretary shall establish  
19 and maintain, in consultation with the Secretary of  
20 Defense and the heads of other appropriate depart-  
21 ments and agencies, a United States Commodity  
22 Control Index specifying the license requirements  
23 under this title that are applicable to the items on  
24 the list.

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

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

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

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

16 (D) identify countries, and, as appropriate,  
17 end uses or end users, including specific  
18 projects and end users of concern, cross-ref-  
19 erenced with the list of commodities and tech-  
20 nology on which export controls are imposed;  
21 and

22 (E) be sufficiently specific and clear as to  
23 guide exporters and licensing officers in deter-  
24 minations of licensing requirements under this  
25 title.

1 (c) DENIED OR DEBARRED PARTIES, SANCTIONED  
2 PARTIES, BLOCKED PERSONS, SPECIALLY DESIGNATED  
3 NATIONALS, AND OTHER PARTIES PRESENTING UNAC-  
4 CEPTABLE RISKS OF DIVERSION.—

5 (1) DENIED OR DEBARRED PARTIES, SANC-  
6 TIONED PARTIES, BLOCKED PERSONS, AND SPE-  
7 Cially DESIGNATED NATIONALS.—The President  
8 shall ensure that an official list is published semi-  
9 annually in the Federal Register of all parties denied  
10 or debarred from export privileges under this title or  
11 under the Arms Export Control Act, all parties sanc-  
12 tioned for prohibited proliferation activity under this  
13 title or other statutes, and all blocked persons and  
14 specially designated nationals. For purposes of this  
15 paragraph, a “blocked person” or “specially des-  
16 igned national” is a person or entity so designated  
17 by the President or the Secretary of the Treasury  
18 under the Trading With the Enemy Act, or the  
19 International Emergency Economic Powers Act, with  
20 whom transactions are prohibited on account of the  
21 relationship of that person or entity with a country,  
22 organization, or activity against which sanctions are  
23 imposed under either such Act. Promptly after any  
24 person is designated a “blocked person” or “spe-  
25 cially designated national”, the Secretary of the

1 Treasury shall publish such designation in the Fed-  
2 eral Register.

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

6 (d) DELEGATION OF AUTHORITY.—Subject to the  
7 provisions of this title, the President may delegate the  
8 power, authority, and discretion conferred upon the Presi-  
9 dent by this title to such departments, agencies, and offi-  
10 cials of the Government as the President considers appro-  
11 priate, except that no authority under this title may be  
12 delegated to, or exercised by, any official of any depart-  
13 ment or agency the head of which is not appointed by the  
14 President, by and with the advice and consent of the Sen-  
15 ate. The President may not delegate or transfer his power,  
16 authority, or discretion to overrule or modify any rec-  
17 ommendation or decision made by the Secretary, the Sec-  
18 retary of Defense, or the Secretary of State under this  
19 title and may not delegate the authority under section  
20 106(a)(4).

21 (e) NOTIFICATION OF THE PUBLIC; CONSULTATION  
22 WITH BUSINESS.—The Secretary shall keep the public  
23 fully apprised of changes in export control policy and pro-  
24 cedures instituted in conformity with this title with a view  
25 to encouraging trade. The Secretary shall consult regu-

1 larly with representatives of a broad spectrum of enter-  
2 prises, labor organizations, and citizens interested in or  
3 affected by export controls, in order to obtain their views  
4 on United States export control policy and the foreign  
5 availability of items subject to controls.

6 (f) EXPORT ADVISORY COMMITTEES.—

7 (1) APPOINTMENT.—Upon his or her own ini-  
8 tiative or upon the written request of representatives  
9 of a substantial segment of any industry which pro-  
10 duces any items subject to export controls under this  
11 title or under the International Emergency Eco-  
12 nomic Powers Act, or being considered for such con-  
13 trols, the Secretary shall appoint export advisory  
14 committees with respect to any such items. Each  
15 such committee shall consist of representatives of  
16 United States industry and Government, including  
17 the Department of Commerce and other appropriate  
18 departments and agencies of the Government. The  
19 Secretary shall permit the widest possible participa-  
20 tion by the business community on the export advi-  
21 sory committees.

22 (2) FUNCTIONS.—Export advisory committees  
23 appointed under paragraph (1) shall advise and as-  
24 sist the Secretary, and any other department, agen-  
25 cy, or official of the Government carrying out func-

1 tions under this title, on actions (including all as-  
2 pects of controls imposed or proposed) designed to  
3 carry out the policies of this title concerning the  
4 items with respect to which such export advisory  
5 committees were appointed. Such committees, where  
6 they have expertise in such matters, shall be con-  
7 sulted on questions involving—

8 (A) technical matters,

9 (B) worldwide availability and actual utili-  
10 zation of production technology,

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

13 (D) revisions of the multilateral control list  
14 (as provided in section 105(g)), including pro-  
15 posed revisions of multilateral controls in which  
16 the United States participates,

17 (E) the issuance of regulations,

18 (F) the impact and interpretation of exist-  
19 ing regulations,

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

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

24 (I) the operation and conduct of inter-  
25 national business transactions.

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

9 (3) REIMBURSEMENT OF EXPENSES.—Upon  
10 the request of any member of any export advisory  
11 committee appointed under paragraph (1), the Sec-  
12 retary may, if the Secretary determines it to be ap-  
13 propriate, reimburse such member for travel, sub-  
14 sistence, and other necessary expenses incurred by  
15 such member in connection with the duties of such  
16 member.

17 (4) CHAIRPERSON.—Each export advisory com-  
18 mittee appointed under paragraph (1) shall elect a  
19 chairperson, and shall meet at least every 3 months  
20 at the call of the chairperson, unless the chairperson  
21 determines, in consultation with the other members  
22 of the committee, that such a meeting is not nec-  
23 essary to achieve the purposes of this subsection.  
24 Each such committee shall be terminated after a pe-  
25 riod of 2 years, unless extended by the Secretary for

1 additional periods of 2 years each. The Secretary  
2 shall consult with each such committee on such ter-  
3 mination or extension of that committee.

4 (5) ACCESS TO INFORMATION.—To facilitate  
5 the work of the export advisory committees ap-  
6 pointed under paragraph (1), the Secretary, in con-  
7 junction with other departments and agencies par-  
8 ticipating in the administration of this title, shall  
9 disclose to each such committee adequate informa-  
10 tion, consistent with national security, pertaining to  
11 the reasons for the export controls which are in ef-  
12 fect or contemplated for the items or policies for  
13 which that committee furnishes advice. Information  
14 provided by the export advisory committees shall not  
15 be subject to disclosure under section 552 of title 5,  
16 United States Code, and such information shall not  
17 be published or disclosed unless the Secretary deter-  
18 mines that the withholding thereof is contrary to the  
19 national interest.

20 (g) DEVELOPMENT AND REVIEW OF THE CONTROL

21 INDEX.—

22 (1) IN GENERAL.—

23 (A) Consistent with the general guidance  
24 of the Export Control Policy Committee estab-  
25 lished in section 114(e), the Secretary of De-

1           fense and the heads of other appropriate de-  
2           partments and agencies may identify and rec-  
3           ommend to the Secretary—

4                   (i) commodities and technology for in-  
5                   clusion on, or deletion from, the multilat-  
6                   eral and emergency control lists; and

7                   (ii) the licensing requirements that  
8                   should or should not apply to these com-  
9                   modities and technology.

10           (B) The Secretary of Defense shall have  
11           primary responsibility for identifying commod-  
12           ities and technologies that are critical to the de-  
13           sign, development, test, production, stockpiling,  
14           or use of weapons of mass destruction and  
15           other military capabilities, including nuclear, bi-  
16           ological, and chemical weapons, and manned  
17           and unmanned vehicles capable of delivering  
18           such weapons, in determining recommendations  
19           for inclusion of items on the control index.

20           (C) If the Secretary of Defense, the Sec-  
21           retary of State, or the Secretary of Energy dis-  
22           agrees with the decision of the Secretary re-  
23           garding the inclusion or deletion, or licensing  
24           requirements of, any commodity or technology,  
25           the Secretary of Defense, State, or Energy (as

1           the case may be) may, within 30 days after the  
2           Secretary makes the decision, appeal the Sec-  
3           retary's decision to the President in writing,  
4           but only on the basis of the specific provisions  
5           of this title. If the Secretary of Defense, the  
6           Secretary of State, or the Secretary of Energy  
7           fails to appeal a decision of the Secretary in ac-  
8           cordance with the preceding sentence, he or she  
9           shall be deemed to have no objection to the de-  
10          cision. The President shall resolve a disagree-  
11          ment under this subsection not later than 30  
12          days after the appeal is made under this para-  
13          graph.

14           (2) NEGOTIATIONS.—The Secretary of State, in  
15          consultation with appropriate departments and agen-  
16          cies, shall be responsible for conducting negotiations  
17          with other countries regarding multilateral arrange-  
18          ments for restricting the export of items to carry out  
19          the policies of this title. All appropriate departments  
20          and agencies shall develop initial technical param-  
21          eters and product definitions in connection with the  
22          development of proposals within the United States  
23          Government to be made to multilateral regimes, in  
24          consultation with the export advisory committees as  
25          provided in paragraph (3).

1           (3) CONSULTATIONS WITH EXPORT ADVISORY  
2           COMMITTEES.—The Secretary shall consult with the  
3           appropriate export advisory committee appointed  
4           under this section with respect to changes in the  
5           control index, and such export advisory committee  
6           may submit recommendations to the Secretary with  
7           respect to such changes. The Secretary shall con-  
8           sider the recommendations of the export advisory  
9           committee and shall inform the committee of the dis-  
10          position of its recommendations. The Secretary shall  
11          also seek comments and recommendations from the  
12          public in connection with changes in the control  
13          index. To the maximum extent practicable and con-  
14          sistent with the conduct of international negotia-  
15          tions, such comments and recommendations should  
16          be taken into consideration in the development of  
17          United States Government proposals and positions  
18          to be taken in multilateral regimes.

19          (h) RIGHT OF EXPORT.—No authority or permission  
20          to export may be required under this title, or under regula-  
21          tions issued under this title, except to carry out the poli-  
22          cies set forth in section 103.

23          (i) INTERNATIONAL OBLIGATIONS UNDER TREA-  
24          TIES.—Notwithstanding any other provision of this title  
25          containing limitations on authority to control exports, the

1 Secretary, in consultation with the Secretary of State, may  
2 impose controls on exports to a particular country or coun-  
3 tries in order to fulfill obligations of the United States  
4 under resolutions of the United Nations and under trea-  
5 ties to which the United States is a party. The Secretary  
6 may regulate domestic and foreign conduct consistent with  
7 the policies of such United Nations resolutions, treaties,  
8 and other international agreements. Such authority shall  
9 include, but not be limited to, authority to prohibit activity  
10 such as financing, contracting, providing services, or em-  
11 ployment, to deny access to items in the United States  
12 and abroad, to conduct audits of records and inspections  
13 of facilities, to compel reports, and to curtail travel.

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

17 **SEC. 105. MULTILATERAL CONTROLS.**

18 (a) AUTHORITY.—

19 (1) IN GENERAL.—In order to carry out the  
20 policies set forth in paragraphs (1), (2), (5), (13),  
21 (14), and (15) of section 103, the President may, in  
22 accordance with this section, prohibit, curtail, or re-  
23 quire the provision of information regarding, the ex-  
24 port of any commodities, technology, or other infor-  
25 mation subject to the jurisdiction of the United

1 States, or exported by any person subject to the ju-  
2 risdiction of the United States, in order to imple-  
3 ment multilateral export control regimes. The au-  
4 thority under this paragraph shall include, but not  
5 be limited to, the authority to regulate domestic and  
6 foreign conduct, to prohibit activity such as financ-  
7 ing, contracting, providing services, or employment,  
8 to deny access to items in the United States and  
9 abroad, to conduct audits of records and inspections  
10 of facilities, and to compel reports. The authority  
11 granted by this subsection may not be exercised to  
12 impose unilateral controls.

13 (2) EXERCISE OF AUTHORITY.—The authority  
14 granted by this subsection shall be implemented by  
15 the Secretary, in consultation with appropriate de-  
16 partments and agencies.

17 (3) CONSISTENCY WITH EXPORT CONTROL RE-  
18 GIMES.—Any provision of this title that provides  
19 that no authority or permission to export may be re-  
20 quired under this title shall not apply to the extent  
21 that such a provision is inconsistent with an inter-  
22 national commitment of the United States under a  
23 multilateral export control regime.

24 (b) MULTILATERAL CONTROL LIST.—The Secretary  
25 shall, in consultation with appropriate departments and

1 agencies as provided in section 104(g), designate as part  
2 of the control index, a multilateral control list, comprised  
3 of the items on which export controls are in effect under  
4 this section.

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

11 (d) MULTILATERAL CONTROL REGIMES.—

12 (1) POLICY.—In order to carry out the policies  
13 set forth in section 103, the Secretary of State, in  
14 consultation with appropriate departments and agen-  
15 cies, should seek multilateral arrangements that are  
16 intended to secure effective achievement of these  
17 policies and, in so doing, also establish fairer and  
18 more predictable competitive opportunities for Unit-  
19 ed States exporters.

20 (2) STANDARDS FOR NATIONAL SYSTEMS.—In  
21 the establishment and maintenance of multilateral  
22 regimes, the Secretary of State, in consultation with  
23 appropriate departments and agencies, shall take  
24 steps to attain the cooperation of members of the re-  
25 gimes in the effective implementation of export con-

1 trol systems. Such systems should contain the fol-  
2 lowing elements:

3 (A) National laws providing enforcement  
4 authorities, civil and criminal penalties, and  
5 statutes of limitations sufficient to deter poten-  
6 tial violations and punish violators.

7 (B) A program to evaluate export license  
8 applications that includes sufficient technical  
9 expertise to assess the licensing status of ex-  
10 ports and ensure the reliability of end users.

11 (C) An enforcement mechanism that pro-  
12 vides authority for trained enforcement officers  
13 to investigate and prevent illegal exports.

14 (D) A system of export control documenta-  
15 tion to verify the movement of items.

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

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

21 (3) STANDARDS FOR MULTILATERAL RE-  
22 GIMES.—In the establishment and maintenance of  
23 multilateral regimes, the Secretary of State, in con-  
24 sultation with appropriate departments and agen-  
25 cies, should seek, consistent with the policies set

1       forth in section 103, the following features for the  
2       multilateral control regimes in which the United  
3       States participates:

4               (A) FULL MEMBERSHIP.—Achieve mem-  
5       bership of all supplier countries whose policies  
6       and activities are consistent with the objectives  
7       and membership criteria of the multilateral re-  
8       gime.

9               (B) EFFECTIVE ENFORCEMENT AND COM-  
10       PLIANCE.—Promote enforcement and compli-  
11       ance with the rules and guidelines of the mem-  
12       bers of the regime through maintenance of an  
13       effective control list.

14              (C) PUBLIC UNDERSTANDING.—Enhance  
15       public understanding of each regime’s purpose  
16       and procedures.

17              (D) EFFECTIVE IMPLEMENTATION PROCE-  
18       DURES.—Achieve procedures for effective imple-  
19       mentation of the rules and guidelines of the re-  
20       gime through uniform and consistent interpre-  
21       tations of export controls agreed to by the gov-  
22       ernments participating in the regime.

23              (E) ENHANCED COOPERATION AMONG RE-  
24       GIME MEMBERS.—Reach agreement to enhance  
25       cooperation among members of the regime in

1 obtaining the agreement of governments outside  
2 the regime to restrict the export of items con-  
3 trolled by the regime, to establish an ongoing  
4 mechanism in the regime to coordinate planning  
5 and implementation of export control measures  
6 related to such agreements, and to remove  
7 items from the list of items controlled by the re-  
8 gime if the control of such items no longer  
9 serves the objectives of the members of the re-  
10 gime.

11 (F) PERIODIC HIGH-LEVEL MEETINGS.—  
12 Conduct periodic meetings of high-level rep-  
13 resentatives of participating governments for  
14 the purpose of coordinating export control poli-  
15 cies and issuing policy guidance to members of  
16 the regime.

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

20 (H) TREATMENT OF CERTAIN COUN-  
21 TRIES.—Prevent the export or diversion of the  
22 most sensitive items to countries whose activi-  
23 ties are threatening to the national security of  
24 the United States or its allies.

1 (I) DISCLOSURE OF NONPROPRIETARY IN-  
2 FORMATION.—Promote transparency and timely  
3 disclosure of nonproprietary information with  
4 respect to the transfers of sensitive dual-use  
5 commodities and technologies, when appro-  
6 priate, for the purpose of developing common  
7 understandings of the risks to international  
8 peace and regional security associated with such  
9 transfers and to coordinate national control  
10 policies to combat those risks.

11 (e) INCENTIVES FOR PARTNERSHIP.—Consistent  
12 with the policies of this title and consistent with the objec-  
13 tives, rules, and guidelines of the individual regime—

14 (1) the Secretary, in consultation with appro-  
15 priate departments and agencies, may provide for  
16 exports free of license requirements to and among  
17 members of a multilateral regime for items subject  
18 to controls under such a multilateral regime; and

19 (2) the Secretary, in consultation with appro-  
20 priate departments and agencies, may adjust licens-  
21 ing policies with respect to a particular country or  
22 entity for access to items controlled under this title  
23 to the extent of the adherence of that country or en-  
24 tity to the export control policies of this section.

1 Actions by the Secretary under paragraphs (1) and (2)  
2 shall be consistent with the requirements of section  
3 111(a)(1)(C).

4 (f) TRANSPARENCY OF MULTILATERAL CONTROL  
5 REGIMES.—

6 (1) PUBLICATION OF INFORMATION ON EACH  
7 EXISTING REGIME.—Within 6 months after the date  
8 of the enactment of this Act, the Secretary shall, to  
9 the extent doing so is not inconsistent with arrange-  
10 ments in multilateral export control regimes, publish  
11 in the Federal Register the following information  
12 with respect to each multilateral control regime ex-  
13 isting on the date of the enactment of this Act:

14 (A) Purposes of the control regime.

15 (B) Members of the regime.

16 (C) Licensing policy.

17 (D) Items subject to the controls under the  
18 regime, together with all public notes, under-  
19 standings, and other aspects of the agreement  
20 of the regime, and all changes thereto.

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

23 (F) Rules of interpretation.

24 (G) Major policy actions.

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

5           (2) NEW REGIMES.—Within 2 months after the  
6           United States joins or organizes a new export con-  
7           trol regime, the Secretary shall, to the extent doing  
8           so is not inconsistent with arrangements in the re-  
9           gime, publish the information described in subpara-  
10          graphs (A) through (H) of paragraph (1) with re-  
11          spect to that regime.

12          (3) PUBLICATION OF CHANGES.—Within 2  
13          months after the applicable regime adopts any  
14          changes in the information published under this sub-  
15          section, the Secretary shall, to the extent doing so  
16          is not inconsistent with arrangements in the regime,  
17          publish such changes in the Federal Register.

18          (g) REVIEW OF CONTROLLED ITEMS.—

19           (1) IN GENERAL.—Under the policy guidance of  
20           the Export Control Policy Committee established in  
21           section 114(c), and consistent with the procedures in  
22           section 104(g), the Secretary shall review all items  
23           on the multilateral control list maintained under  
24           subsection (b) at least every 2 years, except that the  
25           Secretary shall review annually whether the policy

1 set forth in section 103(12) is being achieved. At the  
2 conclusion of each review, the Secretary shall decide  
3 whether to maintain or remove items from the multi-  
4 lateral control list, maintain, change, or eliminate  
5 the specifications, performance thresholds, or licens-  
6 ing requirements on items on the list, or add items  
7 to the list.

8 (2) CONSIDERATIONS.—In conducting the re-  
9 view, the Secretary shall—

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

12 (B) consult with the appropriate export ad-  
13 visory committees appointed under section  
14 104(f) and consider recommendations of such  
15 committees with respect to proposed changes in  
16 the multilateral control list;

17 (C) consider whether controlled items or  
18 their equivalent are so widely available in the  
19 United States (in terms of quantity, cost, and  
20 means of sale and delivery) that the require-  
21 ment for a license is ineffective in achieving the  
22 purpose of the control;

23 (D) consider whether the differences be-  
24 tween the export controls of the United States  
25 and that of governments of foreign suppliers of

1 competing items effectively has placed or will  
2 place the United States exporter at a significant  
3 commercial disadvantage with respect to its  
4 competitors abroad, and has placed, or will  
5 place, employment in the United States in jeop-  
6 ardy;

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

9 (F) consider comments received pursuant  
10 to the notice of review provided under para-  
11 graph (3)(A).

12 (3) PROCEDURES.—

13 (A) NOTICE OF REVIEW.—Before begin-  
14 ning each review under this subsection, the Sec-  
15 retary shall publish a notice of that review in  
16 the Federal Register and shall provide a 30-day  
17 period for comments and submission of data,  
18 including by exporters and other interested par-  
19 ties.

20 (B) PROPOSALS TO EXPORT CONTROL RE-  
21 GIMES.—If a revision to the multilateral control  
22 list or to a licensing requirement under this  
23 paragraph is inconsistent with the control lists,  
24 guidelines, or the licensing requirements of, an  
25 export control regime, the Secretary of State

1 shall propose such revision to that regime. Such  
2 revision shall become effective only to the extent  
3 such revision is agreed to by the export control  
4 regime.

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

9 **SEC. 106. EMERGENCY CONTROLS.**

10 (a) AUTHORITY.—

11 (1) IN GENERAL.—In order to carry out the  
12 policy set forth in paragraphs (1), (2), (6), (8), (14),  
13 and (15) of section 103, the President may, in ac-  
14 cordance with the provisions of this section, unilater-  
15 ally prohibit, curtail, or require the provision of in-  
16 formation regarding the export of any commodity,  
17 technology, or other information subject to the juris-  
18 diction of the United States or exported by any per-  
19 son subject to the jurisdiction of the United States.  
20 The authority under this paragraph shall include,  
21 but not be limited to, the authority to regulate do-  
22 mestic and foreign conduct, to prohibit activity such  
23 as financing, contracting, providing services, or em-  
24 ployment, to deny access to items in the United

1 States and abroad, to conduct audits of records and  
2 inspections of facilities, and to compel reports.

3 (2) EXERCISE OF AUTHORITY.—The authority  
4 contained in this section shall be exercised by the  
5 Secretary, in consultation with the Secretary of  
6 State, the Secretary of Defense, and such other de-  
7 partments and agencies as the President considers  
8 appropriate, and consistent with the procedures in  
9 section 104(g).

10 (3) EXPIRATION OF CONTROLS.—

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

1 terminated earlier by the President or unless  
2 they are further extended under this section,  
3 except that such controls may be adopted as  
4 multilateral controls under section 105 or in-  
5 cluded in an embargo described in the first sen-  
6 tence of this subparagraph.

7 (B) EXCEPTION FOR MULTILATERAL  
8 AGREEMENTS.—Subparagraph (A) shall not  
9 apply to controls imposed by the President in  
10 order to fulfill obligations of the United States  
11 under resolutions of the United Nations or  
12 under treaties to which the United States is a  
13 party. If such a resolution or treaty ceases to  
14 be in effect, controls imposed by the President  
15 pursuant to such resolution or treaty shall im-  
16 mediately cease to be in effect.

17 (4) CRITERIA.—Controls may be imposed, ex-  
18 panded, or extended under this section only if the  
19 President determines that—

20 (A) the controls are necessary to further  
21 significantly the nonproliferation, national secu-  
22 rity, or foreign policies of the United States  
23 provided in section 103, the objective of the  
24 controls is in the overall national interest of the

1 United States, and reasonable alternative  
2 means to the controls are not available;

3 (B) the controls are likely to make sub-  
4 stantial progress toward achieving the intended  
5 purpose of—

6 (i) changing, modifying, or constrain-  
7 ing the undesirable conduct or policies of  
8 the country to which the controls apply;

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

11 (iii) establishing multilateral coopera-  
12 tion to deny the country access to con-  
13 trolled items from all sources; or

14 (iv) denying exports or assistance that  
15 significantly contributes to the prolifera-  
16 tion of weapons of mass destruction or  
17 other important military capabilities, ter-  
18 rorism, or human rights abuses;

19 (C) the proposed controls are compatible  
20 with the foreign policy objectives of the United  
21 States and with overall United States policy to-  
22 ward the country to which the controls apply;

23 (D) the reaction of other countries to the  
24 imposition, expansion, or extension of such ex-  
25 port controls by the United States is not likely

1 to render the controls ineffective in achieving  
2 the intended purpose or to be counter-productive to United States policy interests;

3  
4 (E) the effect of the proposed controls on  
5 the export performance of the United States,  
6 the competitive position of the United States as  
7 a supplier of items, or on the economic well-  
8 being of individual United States companies  
9 and their employees and communities does not  
10 exceed the benefit to the United States foreign  
11 policy, nonproliferation, or national security in-  
12 terests; and

13 (F) the United States has the ability to en-  
14 force the proposed controls effectively.

15 (b) CONSULTATION WITH INDUSTRY.—The Sec-  
16 retary shall consult with and seek advice from affected  
17 United States industries and export advisory committees  
18 appointed under section 104(f) before the imposition, ex-  
19 pansion, or extension of any export control under this sec-  
20 tion.

21 (c) CONSULTATION WITH OTHER COUNTRIES.—  
22 When expanding or extending export controls under this  
23 section (unless such action is taken under subsection  
24 (a)(3)(B)), the Secretary of State, in consultation with ap-  
25 propriate departments and agencies, shall, at the earliest

1 appropriate opportunity, consult with the countries with  
2 which the United States maintains export controls coop-  
3 eratively, and with other countries, as appropriate, to ad-  
4 vise them of the reasons for the action and to urge them  
5 to adopt similar controls.

6 (d) CONSULTATIONS WITH THE CONGRESS.—

7 (1) CONSULTATIONS.—The Secretary may im-  
8 pose, expand, or extend export controls under this  
9 section only after consultation with the Congress, in-  
10 cluding the Committee on International Relations of  
11 the House of Representatives and the Committee on  
12 Banking, Housing, and Urban Affairs of the Senate.

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

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

18 (B) specifying the purpose of the controls;

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

23 (D) specifying the nature and results of  
24 any alternative means attempted to achieve the  
25 objectives of the controls, or the reasons for im-

1           posing or expanding the controls without at-  
2           tempting any such alternative means; and

3           (E) describing the availability from other  
4           countries of items comparable to the items sub-  
5           ject to the controls, and describing the nature  
6           and results of the efforts made to secure the co-  
7           operation of foreign governments in controlling  
8           the foreign availability of such comparable  
9           items.

10          Such report shall also indicate how such controls will  
11          further significantly the policies of the United States  
12          as set forth in section 103 or will further its de-  
13          clared international obligations.

14          (e) SEEKING MULTILATERAL SUPPORT FOR UNILAT-  
15          ERAL CONTROLS.—The Secretary of State, in consultation  
16          with appropriate departments and agencies, shall have a  
17          continuing duty to seek support for controls imposed  
18          under this section by other countries and by effective mul-  
19          tilateral control regimes.

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

22                  (1) CESSATION OF EMERGENCY CONTROLS.—

23                          (A) IN GENERAL.—Controls imposed under  
24                          this section on commodities, technology, or

1 other information shall cease to be in effect im-  
2 mediately upon—

3 (i) the imposition of similarly restric-  
4 tive controls under section 105 on the  
5 same commodities, technology, or informa-  
6 tion to the country or end user, or for the  
7 end use, with respect to which the controls  
8 were imposed under this section; or

9 (ii) the imposition of an embargo,  
10 under the International Emergency Eco-  
11 nomic Powers Act, the Trading with the  
12 Enemy Act, or other provision of law, on  
13 exports to, and imports from the country  
14 with respect to which the controls were im-  
15 posed under this section.

16 (B) CONVERSION TO MULTILATERAL  
17 AGREEMENTS.—If the President imposes con-  
18 trols on commodities, technology, or other infor-  
19 mation to a country or end user, or for an end  
20 use, under this section in order to fulfill obliga-  
21 tions of the United States under resolutions of  
22 the United Nations or under a treaty to which  
23 the United States is a party, any equivalent  
24 controls imposed prior thereto under this sec-  
25 tion on the same commodities, technology, or

1 information to the same country or end user, or  
2 for the same end use, shall immediately cease  
3 to be in effect.

4 (2) LIMITATIONS ON REIMPOSITION.—Controls  
5 which have ceased to be in effect under subsection  
6 (a)(3), and which have not been extended under sub-  
7 section (g), may not be reimposed by the President  
8 under subsection (a) for a period of 6 months begin-  
9 ning on the date on which the original controls ex-  
10 pire, unless the President determines that reimposi-  
11 tion of controls is warranted due to significant  
12 changes in circumstances since the expiration of the  
13 controls.

14 (g) EXTENSION OF EMERGENCY CONTROLS.—

15 (1) REPORT.—If the President decides to ex-  
16 tend controls imposed under subsection (a), which  
17 are due to expire under subsection (a)(3), the Presi-  
18 dent shall, not later than 30 calendar days before  
19 the expiration of such controls, transmit to the Con-  
20 gress a report on the proposed extension, setting  
21 forth the reasons for the proposed extension in detail  
22 and specifying the period of time, which may not ex-  
23 ceed 1 year, for which the controls are proposed to  
24 be extended. In particular, such report shall—

1 (A) contain determinations by the Presi-  
2 dent—

3 (i) that the controls are likely to con-  
4 tinue to make substantial progress toward  
5 achieving the intended purpose of—

6 (I) changing, modifying, or con-  
7 straining the undesirable conduct or  
8 policies of the country to which the  
9 controls apply;

10 (II) denying access by the coun-  
11 try to controlled items from all  
12 sources;

13 (III) establishing multilateral co-  
14 operation to deny the country access  
15 to controlled items from all sources;  
16 or

17 (IV) denying exports or assist-  
18 ance that significantly contributes to  
19 the proliferation of weapons of mass  
20 destruction or other important mili-  
21 tary capabilities, terrorism, or human  
22 rights abuses;

23 (ii) that the impact of the controls has  
24 been compatible with the foreign policy ob-  
25 jectives of the United States and with

1 overall United States policy toward the  
2 controlled country;

3 (iii) that the reaction of other coun-  
4 tries to the imposition or expansion of the  
5 controls by the United States has not ren-  
6 dered the controls ineffective in achieving  
7 the intended purpose and have not been  
8 counterproductive to United States policy  
9 interests;

10 (iv) that the effect of the controls on  
11 the export performance of the United  
12 States, the competitive position of the  
13 United States as a supplier of items, and  
14 the economic well-being of individual Unit-  
15 ed States companies and their employees  
16 and communities has not exceeded the ben-  
17 efit to the United States foreign policy,  
18 nonproliferation, or national security inter-  
19 ests; and

20 (v) that the United States has en-  
21 forced the controls effectively.

22 (2) FURTHER EXTENSIONS OF CONTROLS.—If,  
23 upon the expiration of the controls extended under  
24 this subsection, the President determines that a fur-  
25 ther extension of emergency controls for an addi-

1 tional period of time of not more than 1 year is nec-  
2 essary, paragraph (1) shall apply to such further ex-  
3 tension.

4 (h) EFFECT ON OTHER AUTHORITY.—

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

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

23 (B) Nothing in this section affects the authori-  
24 ties conferred upon the President by the Inter-  
25 national Economic Powers Act or other provision of

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

8 (i) COUNTRIES SUPPORTING INTERNATIONAL TER-  
9 RORISM.—

10 (1) PROHIBITION ON EXPORTS.—(A) No export  
11 described in subparagraph (B) may be made to any  
12 country the government of which the Secretary of  
13 State has determined has repeatedly provided sup-  
14 port for acts of international terrorism.

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

17 (i) of any commodity or technology the ex-  
18 port of which is controlled under this title pur-  
19 suant to the Wassenaar Arrangement, the Mis-  
20 sile Technology Control Regime, or the Aus-  
21 tralia Group, or controlled under this title pur-  
22 suant to section 309(c) of the Nuclear Non-  
23 Proliferation Act of 1978,

24 (ii) of any other commodity or technology  
25 the export of which is controlled under this title

1           pursuant to multilateral export control regimes  
2           in which the United States participates, and

3                   (iii) of any commodity or technology which  
4           could make a significant contribution to the  
5           military potential of a country described in sub-  
6           paragraph (A), including its military logistics  
7           capability, or could enhance the ability of such  
8           country to support acts of international terror-  
9           ism,

10          other than food, medicine, or medical supplies that  
11          the President determines will be used only for hu-  
12          manitarian purposes. An individual validated license  
13          shall be required for the export under this subpara-  
14          graph of any such food, medicine, or medical sup-  
15          plies.

16                (C) Subsections (a)(3) and (b) shall not apply  
17          to exports prohibited or restricted under this sub-  
18          section.

19                (D)(i) The Secretary shall maintain a list of  
20          commodities and technology described in subpara-  
21          graph (B)(iii). The Secretary shall review the list of  
22          items on that list at least annually. At the conclu-  
23          sion of the review, the Secretary shall determine  
24          whether to remove items from the list, change the  
25          specifications of items on the list, or add items to

1 the list, in order to ensure that the items on the list  
2 meet the requirements of subparagraph (B)(iii).

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

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

19 (3) PUBLICATION OF DETERMINATIONS.—Each  
20 determination of the Secretary of State under para-  
21 graph (1)(A) shall be published in the Federal Reg-  
22 ister.

23 (4) RESCISSION OF DETERMINATIONS.—A de-  
24 termination made by the Secretary of State under  
25 paragraph (1)(A) may not be rescinded unless the

1 President submits to the Speaker of the House of  
2 Representatives and the chairman of the Committee  
3 on Banking, Housing, and Urban Affairs and the  
4 chairman of the Committee on Foreign Relations of  
5 the Senate—

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

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

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

13 (iii) that government has provided as-  
14 surances that it will not support acts of  
15 international terrorism in the future; or

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

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

23 (ii) the government concerned has  
24 provided assurances that it will not sup-

1 port acts of international terrorism in the  
2 future.

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

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

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

11 (i) consults with the Committee on  
12 International Relations of the House of  
13 Representatives and the Committee on  
14 Banking, Housing, and Urban Affairs of  
15 the Senate regarding the proposed trans-  
16 action; and

17 (ii) submits to the Speaker of the  
18 House of Representatives and the chair-  
19 man of the Committee on Banking, Hous-  
20 ing, and Urban Affairs of the Senate a re-  
21 port containing—

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

1 proposed transaction, and the antici-  
2 pated use of those items;

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

8 (III) the reasons why the pro-  
9 posed transaction is essential to the  
10 national security interests of the Unit-  
11 ed States and the justification for the  
12 proposed transaction;

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

16 (V) the name of any foreign gov-  
17 ernments involved in the proposed  
18 transaction.

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

22 (6) MULTILATERAL REGIMES.—The Secretary  
23 of State, in consultation with appropriate depart-  
24 ments and agencies, shall seek support by other

1 countries and by effective multilateral control re-  
2 gimes of controls imposed by this subsection.

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

11 (j) CRIME CONTROL INSTRUMENTS.—

12 (1) LICENSE REQUIRED.—Crime control and  
13 detection instruments and equipment shall be ap-  
14 proved for export by the Secretary only pursuant to  
15 an export license. Paragraphs (3)(A) and (4) of sub-  
16 section (a) shall not apply to the export controls im-  
17 posed by this subsection.

18 (2) CONCURRENCE OF SECRETARY OF STATE.—

19 (A) ITEMS ON CONTROL INDEX.—Any de-  
20 termination of the Secretary of what commod-  
21 ities or technology shall be included on the con-  
22 trol index as a result of the export restrictions  
23 imposed by this subsection shall be made with  
24 the concurrence of the Secretary of State.

1 (B) ACTION ON LICENSE APPLICATION.—

2 Any determination of the Secretary to approve  
3 or deny an export license application to export  
4 crime control or detection instruments or equip-  
5 ment shall be made with the concurrence of the  
6 Secretary of State.

7 (3) DISPUTE RESOLUTION.—If the Secretary of  
8 State does not agree with the Secretary with respect  
9 to any determination under paragraph (2), the Sec-  
10 retary of State shall refer the matter to the Presi-  
11 dent for resolution.

12 (4) EXCEPTIONS.—The provisions of this sub-  
13 section shall not apply with respect to exports to  
14 countries which are members of the North Atlantic  
15 Treaty Organization or to Japan, Australia, or New  
16 Zealand, or to such other countries as the President  
17 shall designate consistent with the purposes of this  
18 subsection and section 502B of the Foreign Assist-  
19 ance Act of 1961.

20 (k) SPARE PARTS.—At the same time as the Presi-  
21 dent imposes or expands export controls under this sec-  
22 tion, the President shall determine whether such export  
23 controls will apply to replacement parts or parts in com-  
24 modities subject to such export controls.

1 (l) EFFECT ON OTHER LAWS.—None of the prohibi-  
2 tions contained in this section shall apply to any trans-  
3 action subject to the reporting requirements of title V of  
4 the National Security Act of 1947.

5 **SEC. 107. SHORT SUPPLY CONTROLS.**

6 (a) AUTHORITY.—

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

20 (2) PUBLIC PARTICIPATION.—Upon imposing  
21 quantitative restrictions on exports of any commod-  
22 ities to carry out the policy set forth in section  
23 103(4), the Secretary shall include in a notice pub-  
24 lished in the Federal Register with respect to such  
25 restrictions an invitation to all interested parties to

1 submit written comments within 15 days after the  
2 date of publication on the impact of such restrictions  
3 and the method of licensing used to implement  
4 them.

5 (3) LICENSE FEES.—In imposing export con-  
6 trols under this section, the President’s authority  
7 shall include, but not be limited to, the imposition  
8 of export license fees.

9 (b) MONITORING.—

10 (1) IN GENERAL.—In order to carry out the  
11 policy set forth in section 103(4), the Secretary shall  
12 monitor exports, and contracts for exports, of any  
13 commodity (other than a commodity which is subject  
14 to the reporting requirements of section 602 of the  
15 Agricultural Trade Act of 1978 (7 U.S.C. 5712))  
16 when the volume of such exports in relation to do-  
17 mestic supply contributes, or may contribute, to an  
18 increase in domestic prices or a domestic shortage,  
19 and such price increase or shortage has, or may  
20 have, a serious adverse impact on the economy or  
21 any sector thereof. Any such monitoring shall com-  
22 mence at a time adequate to assure that the mon-  
23 itoring will result in a data base sufficient to enable  
24 policies to be developed, in accordance with section  
25 103(4), to mitigate a short supply situation or seri-

1       ous inflationary price rise or, if export controls are  
2       needed, to permit imposition of such controls in a  
3       timely manner. Information which the Secretary re-  
4       quires to be furnished in effecting such monitoring  
5       shall be confidential, except as provided in para-  
6       graph (2).

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

16              (3) CONSULTATION WITH SECRETARY OF EN-  
17      ERGY.—The Secretary shall consult with the Sec-  
18      retary of Energy to determine whether monitoring or  
19      export controls under this section are warranted  
20      with respect to exports of facilities, machinery, or  
21      equipment normally and principally used, or in-  
22      tended to be used, in the production, conversion, or  
23      transportation of fuels and energy (except nuclear  
24      energy), including, but not limited to—

25                      (A) drilling rigs, platforms, and equipment;

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

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

5 (D) oil and gas pipelines, pumping sta-  
6 tions, and associated equipment; and

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

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

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

21 (B) Each petition shall be in such form as the  
22 Secretary shall prescribe and shall contain informa-  
23 tion in support of the action requested. The petition  
24 shall include any information reasonably available to

1 the petitioner indicating that each of the criteria set  
2 forth in paragraph (3)(A) is satisfied.

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

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

9 (B) include the schedule B number of the  
10 material as set forth in the Statistical Classi-  
11 fication of Domestic and Foreign Commodities  
12 Exported from the United States;

13 (C) indicate whether the petition is re-  
14 questing that controls or monitoring, or both,  
15 be imposed with respect to the exportation of  
16 such material; and

17 (D) provide that interested persons shall  
18 have a period of 30 days beginning on the date  
19 on which the notice is published to submit to  
20 the Secretary written data, views, or argu-  
21 ments, with or without opportunity for oral  
22 presentation, with respect to the matter in-  
23 volved.

24 At the request of the petitioner or any other entity  
25 described in paragraph (1)(A) with respect to the

1 material which is the subject of the petition, or at  
2 the request of any entity representative of producers  
3 or exporters of such material, the Secretary shall  
4 conduct public hearings with respect to the subject  
5 of the petition, in which case the 30-day period may  
6 be extended to 45 days.

7 (3) DETERMINATION OF MONITORING OR CON-  
8 TROLS.—(A) Within 45 days after the end of the  
9 30- or 45-day period described in paragraph (2), as  
10 the case may be, the Secretary shall determine  
11 whether to impose monitoring or controls, or both,  
12 on the export of the material that is the subject of  
13 the petition in order to carry out the policy set forth  
14 in section 103(4). In making such determination,  
15 the Secretary shall determine whether—

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

20 (ii) there has been a significant increase in  
21 domestic price of such material or a domestic  
22 shortage of such material relative to demand;

23 (iii) exports of such material are as impor-  
24 tant as any other cause of a domestic price in-

1           crease or shortage relative to demand found  
2           under clause (ii);

3           (iv) a domestic price increase or shortage  
4           relative to demand found under clause (ii) has  
5           significantly adversely affected or may signifi-  
6           cantly adversely affect the national economy or  
7           any sector thereof, including a domestic indus-  
8           try; and

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

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

18          (4) PUBLICATION OF REGULATIONS.—Within  
19          15 days after making a determination under para-  
20          graph (3) to impose monitoring or controls on the  
21          export of a material, the Secretary shall publish in  
22          the Federal Register proposed regulations with re-  
23          spect to such monitoring or controls. Within 30 days  
24          after the publication of such proposed regulations,  
25          and after considering any public comments on the

1 proposed regulations, the Secretary shall publish and  
2 implement final regulations with respect to such  
3 monitoring or controls.

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

10 (6) SUBSEQUENT PETITIONS ON SAME MATE-  
11 RIAL.—If a petition with respect to a particular ma-  
12 terial or group of materials has been considered in  
13 accordance with all the procedures described in this  
14 subsection, the Secretary may determine, in the ab-  
15 sence of significantly changed circumstances, that  
16 any other petition with respect to the same material  
17 or group of materials which is filed within 6 months  
18 after the consideration of the prior petition has been  
19 completed does not merit complete consideration  
20 under this subsection.

21 (7) PRECEDENCE OF PROCEDURES OVER  
22 OTHER REVIEWS.—The procedures and time limits  
23 set forth in this subsection with respect to a petition  
24 filed under this subsection shall take precedence over  
25 any review undertaken at the initiative of the Sec-

1       retary with respect to the same subject as that of  
2       the petition.

3               (8) TEMPORARY CONTROLS.—The Secretary  
4       may impose monitoring or controls, on a temporary  
5       basis, on the export of a metallic material after a pe-  
6       tition is filed under paragraph (1)(A) with respect to  
7       that material but before the Secretary makes a de-  
8       termination under paragraph (3) with respect to  
9       that material only if—

10               (A) the failure to take such temporary ac-  
11       tions would result in irreparable harm to the  
12       entity filing the petition, or to the national  
13       economy or segment thereof, including a domes-  
14       tic industry, and

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

18               (9) OTHER AUTHORITY NOT AFFECTED.—The  
19       authority under this subsection shall not be con-  
20       strued to affect the authority of the Secretary under  
21       any other provision of this title, except that if the  
22       Secretary determines, on the Secretary's own initia-  
23       tive, to impose monitoring or controls, or both, on  
24       the export of metallic materials capable of being re-  
25       cycled, under the authority of this section, the Sec-

1       retary shall publish the reasons for such action in  
2       accordance with paragraph (3)(A) and (B).

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

14      (d) AGRICULTURAL COMMODITIES.—

15              (1) APPROVAL OF CONTROLS BY SECRETARY OF  
16      AGRICULTURE.—The authority conferred by this sec-  
17      tion shall not be exercised with respect to any agri-  
18      cultural commodity, including fats and oils, forest  
19      products, or animal hides or skins, without the ap-  
20      proval of the Secretary of Agriculture. The Secretary  
21      of Agriculture shall not approve the exercise of such  
22      authority with respect to any such commodity during  
23      any period for which the supply of such commodity  
24      is determined by the Secretary of Agriculture to be  
25      in excess of the requirements of the domestic econ-

1 omy, except to the extent the President determines  
2 that the controls on such agricultural commodities  
3 are also imposed under section 106. The Secretary  
4 of Agriculture shall, by exercising the authority  
5 which the Secretary of Agriculture has under other  
6 applicable provisions of law, collect data with respect  
7 to export sales of animal hides and skins.

8 (2) PROTECTION OF STORED COMMODITIES  
9 FROM FUTURE CONTROLS.—Upon approval of the  
10 Secretary, in consultation with the Secretary of Ag-  
11 riculture, agricultural commodities purchased by or  
12 for use in a foreign country may remain in the Unit-  
13 ed States for export at a later date free from any  
14 quantitative limitations on export which may be im-  
15 posed to carry out the policy set forth in section  
16 103(4) subsequent to such approval. The Secretary  
17 may not grant such approval unless the Secretary  
18 receives adequate assurance and, in conjunction with  
19 the Secretary of Agriculture, finds—

20 (A) that such commodities will eventually  
21 be exported,

22 (B) that neither the sale nor export thereof  
23 will result in an excessive drain of scarce mate-  
24 rial and have a serious domestic inflationary  
25 impact,

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

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

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

11          (3) PROCEDURES FOR IMPOSING CONTROLS.—

12          (A) If the President imposes export controls on any  
13          agricultural commodity under section 106 or this  
14          section, the President shall immediately transmit a  
15          report on such action to the Congress, setting forth  
16          the reasons for the controls in detail and specifying  
17          the period of time, which may not exceed 1 year,  
18          that the controls are proposed to be in effect. If the  
19          Congress, within 60 days after the date of the re-  
20          ceipt of the report, enacts a joint resolution pursu-  
21          ant to paragraph (4) approving the imposition of the  
22          export controls, then such controls shall remain in  
23          effect for the period specified in the report, or until  
24          terminated by the President, whichever occurs first.

25          If the Congress, within 60 days after the date of its

1 receipt of such report, fails to adopt a joint resolu-  
2 tion approving such controls, then such controls  
3 shall cease to be effective upon the expiration of that  
4 60-day period.

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

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

11 (ii) which are imposed with respect to a  
12 country as part of the prohibition or curtail-  
13 ment of all exports to that country.

14 (4) EXPEDITED PROCEDURES.—(A) For pur-  
15 poses of this paragraph, the term “joint resolution”  
16 means only a joint resolution the matter after the  
17 resolving clause of which is as follows: “That pursu-  
18 ant to section 107(d)(3) of the Export Administra-  
19 tion Act of 1996, the President may impose export  
20 controls as specified in the report submitted to the  
21 Congress on \_\_\_\_\_.”, with the blank space being  
22 filled with the appropriate date.

23 (B) On the day on which a report is submitted  
24 to the House of Representatives and the Senate  
25 under paragraph (3), a joint resolution with respect

1 to the export controls specified in such report shall  
2 be introduced (by request) in the House by either  
3 the chairman of the Committee on International Re-  
4 lations, for the chairman and the ranking minority  
5 member of the Committee, or by Members of the  
6 House designated by the chairman and ranking mi-  
7 nority member; and shall be introduced (by request)  
8 in the Senate by the majority leader of the Senate,  
9 for the majority leader and the minority leader of  
10 the Senate, or by Members of the Senate designated  
11 by the majority leader and minority leader of the  
12 Senate. If either House is not in session on the day  
13 on which such a report is submitted, the joint reso-  
14 lution shall be introduced in that House, as provided  
15 in the preceding sentence, on the first day thereafter  
16 on which that House is in session.

17 (C) If the committee of either House to which  
18 a joint resolution has been referred has not reported  
19 the joint resolution at the end of 30 days after its  
20 referral, the committee shall be discharged from fur-  
21 ther consideration of the resolution.

22 (D) A joint resolution under this paragraph  
23 shall be considered in the Senate in accordance with  
24 the provisions of section 601(b)(4) of the Inter-  
25 national Security Assistance and Arms Export Con-

1 trol Act of 1976. For the purpose of expediting the  
2 consideration and passage of joint resolutions re-  
3 ported to the House of Representatives by the Com-  
4 mittee on International Relations under this para-  
5 graph, a motion to proceed to the consideration in  
6 the House of any such joint resolution shall be con-  
7 sidered as highly privileged if offered by the chair-  
8 man of the committee or a designee on or after the  
9 third day the report on the joint resolution has been  
10 available to Members pursuant to clause 2(1)(6) of  
11 rule XI of the Rules of the House of Representa-  
12 tives. The motion shall not be subject to debate or  
13 to intervening motion or otherwise subject to points  
14 of order, nor shall it be in order to move to recon-  
15 sider the vote by which the motion is agreed to or  
16 not agreed to. If the motion is agreed to, the joint  
17 resolution shall be considered in the House and de-  
18 batable for not to exceed two hours equally divided  
19 and controlled by the chairman and ranking minor-  
20 ity member of the committee. The previous question  
21 shall be considered as ordered on the joint resolution  
22 to final passage without intervening motion.

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

1 House receives a resolution with respect to the same  
2 matter from the other House, then—

3 (i) the procedure in that House shall be  
4 the same as if no joint resolution has been re-  
5 ceived from the other House; but

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

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

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

18 (A) as an exercise of the rulemaking power  
19 of the House of Representatives and the Sen-  
20 ate, respectively, and as such, they shall be con-  
21 sidered as part of the rules of each House, re-  
22 spectively, or of that House to which they spe-  
23 cifically apply, and such rules shall supersede  
24 other rules only to the extent that they are in-  
25 consistent therewith; and

1           (B) with full recognition of the constitu-  
2           tional right of either House to change such  
3           rules (so far as relating to such House) at any  
4           time, in the same manner, and to the same ex-  
5           tent as in the case of any other rule of such  
6           House.

7           (e) BARTER AGREEMENTS.—

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

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

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

24                          (i) the average annual quantity of the  
25                          commodities to be exported pursuant to

1 the barter agreement will not be required  
2 to satisfy the average amount of such com-  
3 modities estimated to be required annually  
4 by the domestic economy and will be sur-  
5 plus thereto; and

6 (ii) the average annual quantity of the  
7 commodities to be imported will be more  
8 than the average amount of such commod-  
9 ities estimated to be required annually to  
10 supplement domestic production; and

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

15 (3) DEFINITION.—For purposes of this sub-  
16 section, the term “barter agreement” means any  
17 agreement which is made for the exchange, without  
18 monetary consideration, of any commodities pro-  
19 duced in the United States for any commodities pro-  
20 duced outside of the United States.

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

24 (f) EFFECT OF CONTROLS ON EXISTING CON-  
25 TRACTS.—

1           (1) WESTERN RED CEDAR.—Any export con-  
2           trols imposed under section 7(i) of the Export Ad-  
3           ministration Act of 1979 or this section shall not af-  
4           fect any contract to harvest unprocessed western red  
5           cedar from State lands which was entered into be-  
6           fore October 1, 1979, and the performance of which  
7           would make the red cedar available for export.

8           (2) OTHER CONTROLS.—Any export controls  
9           imposed under this section on any agricultural com-  
10          modity (including fats, oils, forest products, and ani-  
11          mal hides and skins), or on any fishery product,  
12          shall not affect any contract to export entered into  
13          before the date on which such controls are imposed.  
14          For purposes of this paragraph, the term “contract  
15          to export” includes, but is not limited to, an export  
16          sales agreement and an agreement to invest in an  
17          enterprise which involves the export of commodities  
18          or technology.

19          (g) OIL EXPORTS FOR USE BY UNITED STATES  
20          MILITARY FACILITIES.—For purposes of this section, and  
21          for purposes of any export controls imposed under this  
22          title, shipments of crude oil, refined petroleum products,  
23          or partially refined petroleum products from the United  
24          States for use by the Department of Defense or United

1 States-supported installations or facilities shall not be con-  
2 sidered to be exports.

3 **SEC. 108. FOREIGN BOYCOTTS.**

4 (a) PROHIBITIONS AND EXCEPTIONS.—

5 (1) PROHIBITIONS.—In order to carry out the  
6 policies set forth in section 103(9), the President  
7 shall issue regulations prohibiting any United States  
8 person, with respect to that person's activities in the  
9 interstate or foreign commerce of the United States,  
10 from taking or knowingly agreeing to take any of  
11 the following actions with intent to comply with, fur-  
12 ther, or support any boycott fostered or imposed by  
13 a foreign country against a country which is friendly  
14 to the United States and which is not itself the ob-  
15 ject of any form of boycott pursuant to United  
16 States law or regulation:

17 (A) Refusing, or requiring any other per-  
18 son to refuse, to do business with or in the boy-  
19 cotted country, with any business concern orga-  
20 nized under the laws of the boycotted country,  
21 with any national or resident of the boycotted  
22 country, or with any other person, pursuant to  
23 an agreement with, a requirement of, or a re-  
24 quest from or on behalf of the boycotting coun-  
25 try. The mere absence of a business relationship

1 with or in the boycotted country, with any busi-  
2 ness concern organized under the laws of the  
3 boycotted country, with any national or resident  
4 of the boycotted country, or with any other per-  
5 son, does not indicate the existence of the in-  
6 tent required to establish a violation of regula-  
7 tions issued to carry out this subparagraph.

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

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

18 (D) Furnishing information about whether  
19 any person has, has had, or proposes to have  
20 any business relationship (including a relation-  
21 ship by way of sale, purchase, legal or commer-  
22 cial representation, shipping or other transport,  
23 insurance, investment, or supply) with or in the  
24 boycotted country, with any business concern  
25 organized under the laws of the boycotted coun-

1 try, with any national or resident of the boy-  
2 cotted country, or with any other person that is  
3 known or believed to be restricted from having  
4 any business relationship with or in the boycott-  
5 ing country. Nothing in this paragraph shall  
6 prohibit the furnishing of normal business in-  
7 formation in a commercial context as defined by  
8 the Secretary.

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

15 (F) Paying, honoring, confirming, or other-  
16 wise implementing a letter of credit which con-  
17 tains any condition or requirement compliance  
18 with which is prohibited by regulations issued  
19 pursuant to this paragraph, and no United  
20 States person shall, as a result of the applica-  
21 tion of this paragraph, be obligated to pay or  
22 otherwise honor or implement such letter of  
23 credit.

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

1 (A) complying or agreeing to comply with  
2 requirements—

3 (i) prohibiting the import of commod-  
4 ities or services from the boycotted country  
5 or commodities produced or services pro-  
6 vided by any business concern organized  
7 under the laws of the boycotted country or  
8 by nationals or residents of the boycotted  
9 country; or

10 (ii) prohibiting the shipment of com-  
11 modities to the boycotting country on a  
12 carrier of the boycotted country, or by a  
13 route other than that prescribed by the  
14 boycotting country or the recipient of the  
15 shipment;

16 (B) complying or agreeing to comply with  
17 import and shipping document requirements  
18 with respect to the country of origin, the name  
19 of the carrier and route of shipment, the name  
20 of the supplier of the shipment, or the name of  
21 the provider of other services, except that no in-  
22 formation knowingly furnished or conveyed in  
23 response to such requirements may be stated in  
24 negative, blacklisting, or similar exclusionary  
25 terms, other than with respect to carriers or

1 route of shipment as may be permitted by such  
2 regulations in order to comply with precautionary  
3 requirements protecting against war risks  
4 and confiscation;

5 (C) complying or agreeing to comply in the  
6 normal course of business with the unilateral  
7 and specific selection by a boycotting country,  
8 or national or resident thereof, of carriers, in-  
9 surers, suppliers of services to be performed  
10 within the boycotting country, or specific com-  
11 modities which, in the normal course of busi-  
12 ness, are identifiable by source when imported  
13 into the boycotting country;

14 (D) complying or agreeing to comply with  
15 export requirements of the boycotting country  
16 relating to shipments or transshipment of ex-  
17 ports to the boycotted country, to any business  
18 concern of or organized under the laws of the  
19 boycotted country, or to any national or resi-  
20 dent of the boycotted country;

21 (E) compliance by an individual or agree-  
22 ment by an individual to comply with the immi-  
23 gration or passport requirements of any country  
24 with respect to such individual or any member  
25 of such individual's family or with requests for

1 information regarding requirements of employ-  
2 ment of such individual within the boycotting  
3 country; and

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

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

22 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT  
23 AFFECTED.—Nothing in the subsection may be con-  
24 strued to supersede or limit the operation of the  
25 antitrust or civil rights laws of the United States.

1           (5) EVASION.—This section shall apply to any  
2 transaction or activity undertaken, by or through a  
3 United States person or any other person, with in-  
4 tent to evade the provisions of this section as imple-  
5 mented by the regulations issued pursuant to this  
6 subsection, and such regulations shall expressly pro-  
7 vide that the exceptions set forth in paragraph (2)  
8 shall not permit activities or agreements (expressed  
9 or implied by a course of conduct, including a pat-  
10 tern of responses) otherwise prohibited, which are  
11 not within the intent of such exceptions.

12           (b) ADDITIONAL REGULATIONS AND REPORTS.—

13           (1) REGULATIONS.—In addition to the regula-  
14 tions issued pursuant to subsection (a), regulations  
15 issued under section 106 shall implement the policies  
16 set forth in section 103(9).

17           (2) REPORTS BY UNITED STATES PERSONS.—  
18 Such regulations shall require that any United  
19 States person receiving a request for the furnishing  
20 of information, the entering into or implementing of  
21 agreements, or the taking of any other action re-  
22 ferred to in section 103(9) shall report that fact to  
23 the Secretary, together with such other information  
24 concerning such request as the Secretary may re-  
25 quire, for such action as the Secretary considers ap-

1       appropriate for carrying out the policies of that sec-  
2       tion. Such person shall also report to the Secretary  
3       whether such person intends to comply and whether  
4       such person has complied with such request. Any re-  
5       port filed pursuant to this paragraph shall be made  
6       available promptly for public inspection and copying,  
7       except that information regarding the quantity, de-  
8       scription, and value of any commodities or tech-  
9       nology to which such report relates may be kept con-  
10      fidential if the Secretary determines that disclosure  
11      thereof would place the United States person in-  
12      volved at a competitive disadvantage. The Secretary  
13      shall periodically transmit summaries of the infor-  
14      mation contained in such reports to the Secretary of  
15      State for such action as the Secretary of State, in  
16      consultation with the Secretary, considers appro-  
17      priate for carrying out the policies set forth in sec-  
18      tion 103(9).

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

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

1           (2) pertains to participation in, compliance  
2 with, implementation of, or the furnishing of infor-  
3 mation regarding restrictive trade practices or boy-  
4 cotts fostered or imposed by foreign countries  
5 against other countries.

6 **SEC. 109. PROCEDURES FOR PROCESSING EXPORT LI-**  
7 **CENSE APPLICATIONS; OTHER INQUIRIES.**

8           (a) PRIMARY RESPONSIBILITY OF THE SEC-  
9 RETARY.—

10           (1) IN GENERAL.—All export license applica-  
11 tions required under this title shall be submitted by  
12 the applicant to the Secretary. Subject to the proce-  
13 dures provided in this section—

14                   (A) if referral of an application to other  
15 departments or agencies for review is not re-  
16 quired, the Secretary shall, within 9 days after  
17 receiving the application, issue a license or no-  
18 tify the applicant of the intent to deny the ap-  
19 plication; or

20                   (B) if referral of the application to other  
21 departments or agencies for review is required,  
22 the Secretary shall, within 30 days after refer-  
23 ral of any such application to other depart-  
24 ments or agencies—

25                           (i) issue a license;

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

3 (iii) ensure that the application is sub-  
4 ject to the interagency resolution process  
5 set forth in subsection (d).

6 (2) RECOMMENDATIONS OF OTHER AGEN-  
7 CIES.—The Secretary shall seek information and  
8 recommendations from the Department of Defense  
9 and other departments and agencies of the United  
10 States that are identified by the President as being  
11 concerned with factors having an important bearing  
12 on exports administered under this title. Such de-  
13 partments and agencies shall cooperate fully and  
14 promptly in rendering information and recommenda-  
15 tions.

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

23 (4) CALCULATION OF PROCESSING TIMES.—In  
24 calculating the processing times set forth in this sec-  
25 tion, the Secretary shall use calendar days, except

1 that if the final day for a required action falls on a  
2 weekend or holiday, that action shall be taken no  
3 later than the following business day.

4 (5) RELIABILITY OF PARTIES.—In reviewing  
5 applications for export licenses, the Secretary may in  
6 each case consider the reliability of the parties to the  
7 proposed export. In making such an evaluation, the  
8 Secretary may consider all sources of information,  
9 including results of other United States Government  
10 actions, such as actions by the Committee on For-  
11 eign Investment in the United States, investigations  
12 of diversions from authorized end uses or end users,  
13 and intelligence information, except that the consid-  
14 eration of such information in connection with the  
15 evaluation of the reliability of parties shall not au-  
16 thorize the direct or indirect disclosure of classified  
17 information or sources and methods of gathering  
18 classified information and shall not confer a right on  
19 private parties to have access to classified informa-  
20 tion.

21 (b) INITIAL SCREENING.—

22 (1) UPON RECEIPT OF APPLICATION.—Upon re-  
23 ceipt of an export license application, the Secretary  
24 shall enter and maintain in the records of the De-

1        department of Commerce information regarding the re-  
2        ceipt and status of the application.

3            (2) INITIAL PROCEDURES.—Promptly upon re-  
4        ceiving any license application, the Secretary shall—

5            (A) contact the applicant if the application  
6        is improperly completed or if additional infor-  
7        mation is required, and hold the application for  
8        a reasonable time while the applicant provides  
9        the necessary corrections or information, and  
10       such time shall not be included in calculating  
11       the time periods prescribed in this section;

12           (B) refer the application, including all in-  
13       formation submitted by the applicant, and all  
14       necessary recommendations and analyses by the  
15       Secretary to the Department of Defense and  
16       other departments and agencies identified by  
17       the President under subsection (a)(2); and

18           (C) ensure that the classification stated on  
19       the application for the export items is correct,  
20       return the application if a license is not re-  
21       quired, and, if referral to other departments or  
22       agencies is not required, grant the application  
23       or notify the applicant of the Secretary's intent  
24       to deny the application.

1 In the event that the head of a department or agen-  
2 cy determines that certain types of applications need  
3 not be referred to the department or agency, such  
4 department or agency head shall notify the Sec-  
5 retary of the specific types of such applications that  
6 the department or agency does not wish to review.

7 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-  
8 CIES.—

9 (1) REFERRAL TO OTHER AGENCIES.—The Sec-  
10 retary shall promptly refer license applications to de-  
11 partments and agencies under subsection (b) to  
12 make recommendations and provide information to  
13 the Secretary.

14 (2) RESPONSIBILITY OF REFERRAL AGEN-  
15 CIES.—The Department of Defense and other re-  
16 viewing departments and agencies shall organize  
17 their resources and units to plan for the prompt and  
18 expeditious internal dissemination of export license  
19 applications, if necessary, so as to avoid delays in re-  
20 sponding to the referral of applications.

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

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

9 (4) TIME PERIOD FOR ACTION BY REFERRAL  
10 DEPARTMENTS AND AGENCIES.—Within 30 days  
11 after receiving a referral of an application under this  
12 section, the department or agency concerned shall  
13 provide the Secretary with a recommendation either  
14 to approve the license or to deny the license. A rec-  
15 ommendation that the Secretary deny a license shall  
16 include a statement of reasons for the recommenda-  
17 tion that are consistent with the provisions of this  
18 title, and shall cite both the specific statutory and  
19 the regulatory basis for the recommendation. A de-  
20 partment or agency that fails to provide a rec-  
21 ommendation in accordance with this paragraph  
22 within that 30-day period shall be deemed to have  
23 no objection to the decision of the Secretary on the  
24 application.

25 (d) INTERAGENCY RESOLUTION.—

1           (1) INITIAL RESOLUTION.—The Secretary shall  
2           establish, select the chairperson of, and determine  
3           procedures for an interagency committee to review  
4           initially all license applications on which the depart-  
5           ments and agencies reviewing the applications under  
6           this section are not in agreement. The chairperson  
7           of such committee shall consider the recommenda-  
8           tions of the departments and agencies reviewing a  
9           particular application and inform them of his or her  
10          decision on the application, which may include a de-  
11          cision that the particular application requires further  
12          consideration under the procedures established  
13          under paragraph (2). An application may also be re-  
14          ferred to further consideration under the procedures  
15          established under paragraph (2) if an appeal from  
16          the chairperson’s decision is made in writing by an  
17          official of the department or agency concerned who  
18          is appointed by the President by and with the advice  
19          and consent of the Senate, or an officer properly  
20          acting in such capacity.

21          (2) FURTHER RESOLUTION.—The President  
22          shall establish a process for the further review and  
23          determination of export license applications pursuant  
24          to a decision by the chairperson under paragraph (1)

1 or an appeal by a department or agency under para-  
2 graph (1). Such process shall—

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

5 (B) ensure that license applications are re-  
6 solved or referred to the President no later than  
7 90 days after the date the license application is  
8 initially received by the Secretary;

9 (C) provide that a department or agency  
10 dissenting from the decision reached under sub-  
11 paragraph (B) may appeal the decision to the  
12 President; and

13 (D) provide that a department or agency  
14 that fails to take a timely position, citing the  
15 specific statutory and regulatory bases for a de-  
16 nial, shall be deemed to have no objection to the  
17 pending decision.

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

22 (1) the determination to deny;

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

1           (3) what, if any, modifications in or restrictions  
2           on the items for which the license was sought would  
3           allow such export to be compatible with export con-  
4           trols imposed under this title, and which officer or  
5           employee of the Department of Commerce would be  
6           in a position to discuss modifications or restrictions  
7           with the applicant and the specific statutory and  
8           regulatory bases for imposing such modifications or  
9           restrictions;

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

14           (5) the availability of appeal procedures.

15           The Secretary shall allow the applicant 20 days to  
16           respond to the determination before the license ap-  
17           plication is denied.

18           (f) EXCEPTIONS FROM REQUIRED TIME PERIODS.—

19           The following actions related to processing an application  
20           shall not be included in calculating the time periods pre-  
21           scribed in this section:

22           (1) AGREEMENT OF THE APPLICANT.—Delays  
23           upon which the Secretary and the applicant mutu-  
24           ally agree.

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

5           (A) the need for the prelicense check is de-  
6 termined by the Secretary, or by another de-  
7 partment or agency if the request for the  
8 prelicense check is made by such department or  
9 agency;

10           (B) the request for the prelicense check is  
11 sent by the Secretary within 5 days after the  
12 determination that the prelicense check is re-  
13 quired; and

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

17           (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-  
18 MENT ASSURANCES.—Any request by the Secretary  
19 or another department or agency for government-to-  
20 government assurances of suitable end uses of items  
21 approved for export, when failure to obtain such as-  
22 surances would result in rejection of the application,  
23 if—

24           (A) the request for such assurances is sent  
25 to the Secretary of State within 5 days after

1 the determination that the assurances are re-  
2 quired;

3 (B) the Secretary of State initiates the re-  
4 quest of the relevant government within 10  
5 days thereafter; and

6 (C) the license is issued within 5 days  
7 after the Secretary receives the requested assur-  
8 ances.

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

15 (4) MULTILATERAL REVIEW.—Multilateral re-  
16 view of a license application to the extent that such  
17 multilateral review is required by a relevant multilat-  
18 eral regime.

19 (5) CONGRESSIONAL NOTIFICATION.—Such  
20 time as is required for mandatory congressional noti-  
21 fications under this title.

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

1 (g) APPEALS.—

2 (1) IN GENERAL.—The Secretary shall establish  
3 appropriate procedures for any applicant to appeal  
4 to the Secretary the denial of an export license ap-  
5 plication or other administrative action under this  
6 title.

7 (2) FILING OF PETITION.—In any case in which  
8 any action prescribed in this section is not taken on  
9 a license application within the time periods estab-  
10 lished by this section (except in the case of a time  
11 period extended under subsection (f) of which the  
12 applicant is notified), the applicant may file a peti-  
13 tion with the Secretary requesting compliance with  
14 the requirements of this section. When such petition  
15 is filed, the Secretary shall take immediate steps to  
16 correct the situation giving rise to the petition and  
17 shall immediately notify the applicant of such steps.

18 (3) BRINGING COURT ACTION.—If, within 20  
19 days after a petition is filed under paragraph (2),  
20 the processing of the application has not been  
21 brought into conformity with the requirements of  
22 this section, or the application has been brought into  
23 conformity with such requirements but the Secretary  
24 has not so notified the applicant, the applicant may  
25 bring an action in an appropriate United States dis-

1       trict court for an order requiring compliance with  
2       the time periods required by this section. The Unit-  
3       ed States district courts shall have jurisdiction to  
4       provide such relief, as appropriate.

5       (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-  
6       IES.—

7               (1) CLASSIFICATION REQUESTS.—In any case  
8       in which the Secretary receives a written request  
9       asking for the proper classification of an item on the  
10      control index, the Secretary shall, within 14 days  
11      after receiving the request, inform the person mak-  
12      ing the request of the proper classification.

13              (2) OTHER INQUIRIES.—In any case in which  
14      the Secretary receives a written request for informa-  
15      tion about the applicability of licensing requirements  
16      under this title to a proposed export transaction or  
17      series of transactions, the Secretary shall, within 30  
18      days after receiving the request, reply with that in-  
19      formation to the person making the request.

20   **SEC. 110. VIOLATIONS.**

21      (a) CRIMINAL PENALTIES.—

22              (1) VIOLATIONS BY AN INDIVIDUAL.—Except as  
23      provided in paragraph (3), any individual who know-  
24      ingly violates or conspires to or attempts to violate  
25      any provision of this title or any regulation, license,

1 or order issued under this title shall be fined not  
2 more than 5 times the value of the exports involved  
3 or \$500,000, whichever is greater, or imprisoned not  
4 more than 10 years, or both.

5 (2) VIOLATIONS BY A PERSON OTHER THAN AN  
6 INDIVIDUAL.—Except as provided in paragraph (3),  
7 any person other than an individual who knowingly  
8 violates or conspires to or attempts to violate any  
9 provision of this title or any regulation, license, or  
10 order issued under this title shall be fined not more  
11 than 10 times the value of the exports involved or  
12 \$1,000,000, whichever is greater.

13 (3) ANTIBOYCOTT VIOLATIONS.—

14 (A) Any individual who knowingly violates  
15 or conspires to or attempts to violate any regu-  
16 lation or order issued under section 108 shall  
17 be fined, for each violation, not more than 5  
18 times the value of the exports involved or  
19 \$250,000, whichever is greater, or imprisoned  
20 not more than 10 years, or both.

21 (B) Any person other than an individual  
22 who knowingly violates or conspires to or at-  
23 tempts to violate any regulation or order issued  
24 under section 108 shall be fined, for each viola-  
25 tion, not more than 5 times the value of the ex-

1           ports involved or \$500,000, whichever is great-  
2           er.

3           (b) FORFEITURE OF PROPERTY INTEREST AND PRO-  
4           CEEDS.—

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

8                   (A) any of that person’s interest in, secu-  
9                   rity of, claim against, or property or contractual  
10                  rights of any kind in the commodities or tan-  
11                  gible items that were the subject of the viola-  
12                  tion;

13                   (B) any of that person’s interest in, secu-  
14                   rity of, claim against, or property or contractual  
15                  rights of any kind in tangible property that was  
16                  used in the export or attempt to export that  
17                  was the subject of the violation; and

18                   (C) any of that person’s property con-  
19                  stituting, or derived from, any proceeds ob-  
20                  tained directly or indirectly as a result of the  
21                  violation.

22           (2) PROCEDURES.—The procedures in any for-  
23           feiture under this subsection, and the duties and au-  
24           thority of the courts of the United States and the  
25           Attorney General with respect to any forfeiture ac-

1       tion under this subsection or with respect to any  
2       property that may be subject to forfeiture under this  
3       subsection, shall be governed by the provisions of  
4       chapter 46 of title 18, United States Code, to the  
5       same extent as property subject to forfeiture under  
6       that chapter.

7       (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-  
8       TIONS.—

9               (1) CIVIL PENALTIES.—The Secretary may im-  
10       pose a civil penalty of not more than \$250,000 for  
11       each violation of this title or any regulation, license,  
12       or order issued under this title, either in addition to  
13       or in lieu of any other liability or penalty which may  
14       be imposed, except that the civil penalty for each  
15       such violation of regulations issued under section  
16       108 may not exceed \$50,000.

17              (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-  
18       retary may deny the export privileges of any person,  
19       including suspending or revoking the authority of  
20       any person to export or receive United States-origin  
21       commodities or technology subject to this title, on  
22       account of any violation of this title or any regula-  
23       tion, license, or order issued under this title.

24       (d) PAYMENT OF CIVIL PENALTIES.—The payment  
25       of any civil penalty imposed under subsection (c) may be

1 made a condition, for a period not exceeding 1 year after  
2 the penalty has become due but has not been paid, to the  
3 granting, restoration, or continuing validity of any export  
4 license, permission, or privilege granted or to be granted  
5 to the person upon whom such penalty is imposed. In addi-  
6 tion, the payment of any civil penalty imposed under sub-  
7 section (c) may be deferred or suspended in whole or in  
8 part for a period of time no longer than any probation  
9 period (which may exceed 1 year) that may be imposed  
10 upon such person. Such deferral or suspension shall not  
11 operate as a bar to the collection of the penalty in the  
12 event that the conditions of the suspension, deferral, or  
13 probation are not fulfilled.

14 (e) REFUNDS.—Any amount paid in satisfaction of  
15 any civil penalty imposed under subsection (c) shall be cov-  
16 ered into the Treasury as a miscellaneous receipt. The  
17 head of the department or agency concerned may, in his  
18 or her discretion, refund any such civil penalty imposed  
19 under subsection (c), within 2 years after payment, on the  
20 ground of a material error of fact or law in the imposition  
21 of the penalty. Notwithstanding section 1346(a) of title  
22 28, United States Code, no action for the refund of any  
23 such penalty may be maintained in any court.

24 (f) EFFECT OF OTHER CONVICTIONS.—

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

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

5                   (B) the International Emergency Economic  
6           Powers Act,

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

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

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

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

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

18                  (H) section 371 or 1001 of title 18, United  
19          States Code, if in connection with the export of  
20          commodities or technology controlled under this  
21          title, any regulation, license or order issued  
22          under the International Emergency Economic  
23          Powers Act, or defense articles or defense serv-  
24          ices controlled under the Arms Export Control  
25          Act,

1        may, at the discretion of the Secretary, be denied ex-  
2        port privileges under this title for a period of up to  
3        10 years from the date of the conviction. The Sec-  
4        retary may also revoke any export license under this  
5        title in which such person had an interest at the  
6        time of the conviction.

7            (2) RELATED PERSONS.—The Secretary may  
8        exercise the authority under paragraph (1) with re-  
9        spect to any person related, through affiliation, own-  
10        ership, control, or position of responsibility, to any  
11        person convicted of any violation of a law set forth  
12        in paragraph (1), upon a showing of such relation-  
13        ship with the convicted person, after providing notice  
14        and opportunity for a hearing.

15           (g) STATUTE OF LIMITATIONS.—Any proceeding in  
16        which a civil penalty or other administrative sanction  
17        (other than a temporary denial order) is sought under sub-  
18        section (c) may not be instituted more than 5 years after  
19        the date of the alleged violation, except that, in any case  
20        in which a criminal indictment alleging a violation of this  
21        title is returned within the time limits prescribed by law  
22        for the institution of such action, the statute of limitations  
23        for bringing a proceeding to impose such a civil penalty  
24        or other administrative sanction under this title shall,  
25        upon the return of the criminal indictment, be tolled

1 against all persons named as a defendant. The tolling of  
2 the statute of limitations shall continue for a period of  
3 6 months from the date a conviction becomes final or the  
4 indictment is dismissed.

5 (h) VIOLATIONS DEFINED BY REGULATION.—Noth-  
6 ing in this section shall limit the power of the Secretary  
7 to define by regulation violations under this title.

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

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

14 (2) the authority to compromise and settle ad-  
15 ministrative proceedings brought with respect to any  
16 such violation; or

17 (3) the authority to compromise, remit, or miti-  
18 gate seizures and forfeitures pursuant to section  
19 1(b) of title VI of the Act of June 15, 1917 (22  
20 U.S.C. 401(b)).

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

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

24 (2) who, on account of a violation of the regula-  
25 tions issued pursuant to section 108(a), loses an op-

1        opportunity to engage in a commercial venture pursu-  
2        ant to a contract, joint venture, or other commercial  
3        transaction, including an opportunity to bid or ten-  
4        der an offer for a contract,  
5        may bring an action in an appropriate district court of  
6        the United States against the United States person com-  
7        mitting the violation, for recovery of actual damages in-  
8        curred on account of such act of discrimination or lost  
9        opportunity. In any such action the court may award puni-  
10       tive damages. An action may be brought under this sub-  
11       section against a United States person whether or not the  
12       United States person has been determined under this sec-  
13       tion to have violated the regulations issued pursuant to  
14       section 108(a) on account of which the action is brought.  
15       In an action brought under this subsection, unless the  
16       court finds that the interests of justice require otherwise,  
17       the court shall designate the substantially prevailing party  
18       or parties in the action, and the remaining parties shall  
19       pay the reasonable attorneys' fees of the substantially pre-  
20       vailing party or parties in such proportion as the court  
21       shall determine.

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

23        (a) PROLIFERATION CONTROLS.—

24                (1) MISSILE TECHNOLOGY CONTROLS.—The  
25        Secretary, in consultation with the Secretary of De-

1 fense and the heads of other appropriate depart-  
2 ments and agencies and consistent with sections 103  
3 and 104(g)—

4 (A) shall establish and maintain, as part of  
5 the control index established under section  
6 104(b), dual-use items on the MTCR Annex;

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

10 (i) would make a material contribu-  
11 tion to the design, development, test, pro-  
12 duction, stockpiling, or use of missile deliv-  
13 ery systems, and

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

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

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

1           (ii) any export of items that the ex-  
2           porter knows is destined for a project or  
3           facility for the design, development, or  
4           manufacture of a missile in a country that  
5           is not an adherent to the MTCR.

6           (2) CHEMICAL AND BIOLOGICAL WEAPONS CON-  
7           TROLS.—The Secretary, in consultation with the  
8           Secretary of Defense and the heads of other appro-  
9           priate departments and agencies and consistent with  
10          sections 103 and 104(g)—

11           (A) shall establish and maintain, as part of  
12          the control index established under section  
13          104(b), dual-use items listed by the Australia  
14          Group or the Chemical Weapons Convention;

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

18           (i) would make a material contribu-  
19          tion to the design, development, test, pro-  
20          duction, stockpiling, or use of chemical or  
21          biological weapons, and

22           (ii) are not contained on the list of  
23          controlled items of the Australia Group but  
24          which the United States has proposed to

1 the other members of the Australia Group  
2 for inclusion in such list; and

3 (C) shall require a license under paragraph  
4 (1) or (2) of section 104(a), consistent with the  
5 arrangements of the Australia Group and the  
6 Chemical Weapons Convention, for—

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

11 (ii) any export of items that the ex-  
12 porter knows is destined for a project or  
13 facility for the design, development, or  
14 manufacture of a chemical or biological  
15 weapon.

16 (3) POLICY OF DENIAL OF LICENSES.—(A) Li-  
17 censes under paragraph (1)(C) should in general be  
18 denied if the ultimate consignee of the commodities  
19 or technology is a facility in a country that is not  
20 an adherent to the MTCR and the facility is de-  
21 signed to develop or build missiles.

22 (B) Licenses under paragraph (1)(C) shall be  
23 denied if the ultimate consignee of the commodities  
24 or technology is a facility in a country the govern-  
25 ment of which has been determined under section

1       106(i)(1) to have repeatedly provided support for  
2       acts of international terrorism.

3       (b) TECHNICAL AMENDMENTS TO ARMS EXPORT  
4 CONTROL ACT.—(1) Section 71(a) of the Arms Export  
5 Control Act (22 U.S.C. 2797(a)) is amended by striking  
6 “6(l) of the Export Administration Act of 1979” and in-  
7 serting “111(a) of the Export Administration Act of  
8 1996”.

9       (2) Section 81(a)(1) of the Arms Export Control Act  
10 (22 U.S.C. 2798(a)(1)) is amended in subparagraphs (A)  
11 and (B) by inserting “under this Act” after “United  
12 States” the second place it appears in each subparagraph.

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

23       (d) CHEMICAL AND BIOLOGICAL WEAPONS PRO-  
24 LIFERATION SANCTIONS.—

25               (1) IMPOSITION OF SANCTIONS.—

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

8 (i) through the export from the Unit-  
9 ed States of any goods or technology that  
10 are subject to the jurisdiction of the Unit-  
11 ed States under this title, or

12 (ii) through the export from any other  
13 country of any goods or technology that  
14 would be, if they were United States goods  
15 or technology, subject to the jurisdiction of  
16 the United States under this title,

17 to the efforts by any foreign country, project, or  
18 entity described in subparagraph (B) to use, de-  
19 velop, produce, stockpile, or otherwise acquire  
20 chemical or biological weapons.

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

1 (i) any foreign country that the Presi-  
2 dent determines has, at any time after  
3 January 1, 1980—

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

7 (II) used lethal chemical or bio-  
8 logical weapons against its own na-  
9 tionals; or

10 (III) made substantial prepara-  
11 tions to engage in the activities de-  
12 scribed in subclause (I) or (II);

13 (ii) any foreign country whose govern-  
14 ment is determined for purposes of section  
15 106(i) to be a government that has repeat-  
16 edly provided support for acts of inter-  
17 national terrorism; or

18 (iii) any other foreign country,  
19 project, or entity designated by the Presi-  
20 dent for purposes of this subsection.

21 (C) PERSONS AGAINST WHICH SANCTIONS  
22 ARE TO BE IMPOSED.—Sanctions shall be im-  
23 posed pursuant to subparagraph (A) on—

1 (i) the foreign person with respect to  
2 which the President makes the determina-  
3 tion described in that subparagraph;

4 (ii) any successor entity to that for-  
5 eign person;

6 (iii) any foreign person that is a par-  
7 ent or subsidiary of that foreign person if  
8 that parent or subsidiary knowingly as-  
9 sisted in the activities which were the basis  
10 of that determination; and

11 (iv) any foreign person that is an af-  
12 filiate of that foreign person if that affili-  
13 ate knowingly assisted in the activities  
14 which were the basis of that determination  
15 and if that affiliate is controlled in fact by  
16 that foreign person.

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

19 (A) CONSULTATIONS.—If the President  
20 makes the determinations described in para-  
21 graph (1)(A) with respect to a foreign person,  
22 the Congress urges the President to initiate  
23 consultations immediately with the government  
24 with primary jurisdiction over that foreign per-

1 son with respect to the imposition of sanctions  
2 pursuant to this subsection.

3 (B) ACTIONS BY GOVERNMENT OF JURIS-  
4 DICTION.—In order to pursue such consulta-  
5 tions with that government, the President may  
6 delay imposition of sanctions pursuant to this  
7 subsection for a period of up to 90 days. Fol-  
8 lowing these consultations, the President shall  
9 impose sanctions unless the President deter-  
10 mines and certifies to the Congress that that  
11 government has taken specific and effective ac-  
12 tions, including appropriate penalties, to termi-  
13 nate the involvement of the foreign person in  
14 the activities described in paragraph (1)(A).  
15 The President may delay imposition of sanc-  
16 tions for an additional period of up to 90 days  
17 if the President determines and certifies to the  
18 Congress that that government is in the process  
19 of taking the actions described in the preceding  
20 sentence.

21 (C) REPORT TO CONGRESS.—The Presi-  
22 dent shall report to the Congress, not later than  
23 90 days after making a determination under  
24 paragraph (1)(A), on the status of consultations  
25 with the appropriate government under this

1 subsection, and the basis for any determination  
2 under subparagraph (B) of this paragraph that  
3 such government has taken specific corrective  
4 actions.

5 (3) SANCTIONS.—

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

10 (i) PROCUREMENT SANCTION.—The  
11 United States Government shall not pro-  
12 cure, or enter into any contract for the  
13 procurement of, any goods or services from  
14 any person described in paragraph (1)(C).

15 (ii) IMPORT SANCTIONS.—The impor-  
16 tation into the United States of products  
17 produced by any person described in para-  
18 graph (1)(C) shall be prohibited.

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

22 (i) in the case of procurement of de-  
23 fense articles or defense services—

24 (I) under existing contracts or  
25 subcontracts, including the exercise of

1 options for production quantities to  
2 satisfy United States operational mili-  
3 tary requirements;

4 (II) if the President determines  
5 that the person or other entity to  
6 which the sanctions would otherwise  
7 be applied is a sole source supplier of  
8 the defense articles or services, that  
9 the defense articles or services are es-  
10 sential, and that alternative sources  
11 are not readily or reasonably avail-  
12 able; or

13 (III) if the President determines  
14 that such articles or services are es-  
15 sential to the national security under  
16 defense coproduction agreements;

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

21 (iii) to—

22 (I) spare parts,

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

1 (III) routine servicing and main-  
2 tenance of products, to the extent that  
3 alternative sources are not readily or  
4 reasonably available;

5 (iv) to information and technology es-  
6 sential to United States products or pro-  
7 duction; or

8 (v) to medical or other humanitarian  
9 items.

10 (4) TERMINATION OF SANCTIONS.—The sanc-  
11 tions imposed pursuant to this subsection shall apply  
12 for a period of at least 12 months following the im-  
13 position of sanctions and shall cease to apply there-  
14 after only if the President determines and certifies  
15 to the Congress that reliable information indicates  
16 that the foreign person with respect to which the de-  
17 termination was made under paragraph (1)(A) has  
18 ceased to aid or abet any foreign government,  
19 project, or entity in its efforts to acquire chemical or  
20 biological weapons capability as described in that  
21 paragraph.

22 (5) WAIVER.—

23 (A) CRITERION FOR WAIVER.—The Presi-  
24 dent may waive the application of any sanction  
25 imposed on any person pursuant to this sub-

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

7 (B) NOTIFICATION OF AND REPORT TO  
8 CONGRESS.—If the President decides to exercise  
9 the waiver authority provided in subparagraph  
10 (A), the President shall so notify the Congress  
11 not less than 20 days before the waiver takes  
12 effect. Such notification shall include a report  
13 fully articulating the rationale and cir-  
14 cumstances which led the President to exercise  
15 the waiver authority.

16 (6) DEFINITION OF FOREIGN PERSON.—For  
17 purposes of this subsection, the term “foreign per-  
18 son” means—

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

23 (B) a corporation, partnership, or other  
24 entity which is created or organized under the  
25 laws of a foreign country or which has its prin-

1            cial place of business outside the United  
2            States.

3            (e) MISSILE PROLIFERATION CONTROL VIOLA-  
4            TIONS.—

5            (1) VIOLATIONS BY UNITED STATES PER-  
6            SONS.—

7            (A) SANCTIONS.—(i) If the President de-  
8            termines that a United States person know-  
9            ingly—

10            (I) exports, transfers, or otherwise en-  
11            gages in the trade of any item on the  
12            MTCR Annex, in violation of the provi-  
13            sions of section 38 (22 U.S.C. 2778) or  
14            chapter 7 of the Arms Export Control Act,  
15            this title, or any regulations or orders is-  
16            sued under any such provisions,

17            (II) conspires to or attempts to en-  
18            gage in such export, transfer, or trade, or

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

21            then the President shall impose the applicable  
22            sanctions described in clause (ii).

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

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

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

17 (B) DISCRETIONARY SANCTIONS.—In the  
18 case of any determination referred to in sub-  
19 paragraph (A), the Secretary may pursue any  
20 other appropriate penalties under section 110.

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

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

4 (ii) such person is a sole source sup-  
5 plier of the product or service, the product  
6 or service is not available from any alter-  
7 native reliable supplier, and the need for  
8 the product or service cannot be met in a  
9 timely manner by improved manufacturing  
10 processes or technological developments.

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

13 (A) SANCTIONS.—(i) Subject to subpara-  
14 graphs (C) through (G), if the President deter-  
15 mines that a foreign person, after the date of  
16 the enactment of this section, knowingly—

17 (I) exports, transfers, or otherwise en-  
18 gages in the trade of any MTCR equip-  
19 ment or technology that contributes to the  
20 design, development, or production of mis-  
21 siles in a country that is not an adherent  
22 to the MTCR and would be, if it were  
23 United States-origin equipment or tech-  
24 nology, subject to the jurisdiction of the  
25 United States under this title,

1 (II) conspires to or attempts to en-  
2 gage in such export, transfer, or trade, or

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

5 or if the President has made a determination  
6 with respect to a foreign person, under section  
7 73(a) of the Arms Export Control Act, then the  
8 President shall impose on that foreign person  
9 the applicable sanctions under clause (ii).

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

12 (I) If the item involved in the export,  
13 transfer, or trade is within category II of  
14 the MTCR Annex, then the President shall  
15 deny, for a period of 2 years, licenses for  
16 the transfer to such foreign person of mis-  
17 sile equipment or technology the export of  
18 which is controlled under this title.

19 (II) If the item involved in the export,  
20 transfer, or trade is within category I of  
21 the MTCR Annex, then the President shall  
22 deny, for a period of not less than 2 years,  
23 licenses for the transfer to such foreign  
24 person of items the export of which is con-  
25 trolled under this title.

1           (III) If, in addition to actions taken  
2           under subclauses (I) and (II), the Presi-  
3           dent determines that the export, transfer,  
4           or trade has substantially contributed to  
5           the design, development, or production of  
6           missiles in a country that is not an adher-  
7           ent to the MTCR, then the President shall  
8           prohibit, for a period of not less than 2  
9           years, the importation into the United  
10          States of products produced by that for-  
11          eign person.

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

15                 (i) any export, transfer, or trading ac-  
16                 tivity that is authorized by the laws of an  
17                 adherent to the MTCR, if such authoriza-  
18                 tion is not obtained by misrepresentation  
19                 or fraud; or

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

23          (C) EFFECT OF ENFORCEMENT ACTIONS  
24          BY MTCR ADHERENTS.—Sanctions set forth in  
25          subparagraph (A) may not be imposed under

1 this paragraph on a person with respect to acts  
2 described in such subparagraph or, if such  
3 sanctions are in effect against a person on ac-  
4 count of such acts, such sanctions shall be ter-  
5 minated, if an adherent to the MTCR is taking  
6 judicial or other enforcement against that per-  
7 son with respect to such acts, or that person  
8 has been found by the government of an adher-  
9 ent to the MTCR to be innocent of wrongdoing  
10 with respect to such acts.

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

24 (E) WAIVER AND REPORT TO CONGRESS.—

25 (i) In any case other than one in which an advi-

1 sory opinion has been issued under subpara-  
2 graph (D) stating that a proposed activity  
3 would not subject a person to sanctions under  
4 this paragraph, the President may waive the  
5 application of subparagraph (A) to a foreign  
6 person if the President determines that such  
7 waiver is essential to the national security of  
8 the United States.

9 (ii) In the event that the President decides  
10 to apply the waiver described in clause (i), the  
11 President shall so notify the Congress not less  
12 than 20 working days before issuing the waiver.  
13 Such notification shall include a report fully ar-  
14 ticulating the rationale and circumstances  
15 which led the President to apply the waiver.

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

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

24 (ii) such person is a sole source sup-  
25 plier of the product or service, the product

1 or service is not available from any alter-  
2 native reliable supplier, and the need for  
3 the product or service cannot be met in a  
4 timely manner by improved manufacturing  
5 processes or technological developments.

6 (G) EXCEPTIONS FROM IMPORT SANC-  
7 TIONS.—The President shall not apply the  
8 sanction under this subsection prohibiting the  
9 importation of the products of a foreign per-  
10 son—

11 (i) in the case of procurement of de-  
12 fense articles or defense services—

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

18 (II) if the President determines  
19 that the person to which the sanctions  
20 would be applied is a sole source sup-  
21 plier of the defense articles and serv-  
22 ices, that the defense articles or serv-  
23 ices are essential to the national secu-  
24 rity of the United States, and that al-

1           ternative sources are not readily or  
2           reasonably available; or

3                   (III) if the President determines  
4           that such articles or services are es-  
5           sential to the national security of the  
6           United States under defense co-  
7           production agreements;

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

12                   (iii) to—

13                           (I) spare parts,

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

17                           (III) routine services and mainte-  
18           nance of products, to the extent that  
19           alternative sources are not readily or  
20           reasonably available, or

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

24                   (3) DEFINITIONS.—For purposes of this sub-  
25          section—

1 (A) the terms “missile equipment or tech-  
2 nology” and “MTCR equipment or technology”  
3 mean those items listed in category I or cat-  
4 egory II of the MTCR Annex;

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

7 (C)(i) the term “person” means a natural  
8 person as well as a corporation, business asso-  
9 ciation, partnership, society, trust, any other  
10 nongovernmental entity, organization, or group,  
11 and any governmental entity operating as a  
12 business enterprise, and any successor of any  
13 such entity; and

14 (ii) in the case of a country where it may  
15 be impossible to identify a specific governmental  
16 entity referred to in clause (i), the term “per-  
17 son” means—

18 (I) all activities of that government  
19 relating to the development or production  
20 of any missile equipment or technology;  
21 and

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

1           (D) the term “otherwise engaged in the  
2           trade of” means, with respect to a particular  
3           export or transfer, to be a freight forwarder or  
4           designated exporting agent, or a consignee or  
5           end user of the item to be exported or trans-  
6           ferred.

7           (f) EFFECT ON OTHER LAWS.—The provisions of  
8           this section do not affect any activities subject to the re-  
9           porting requirements contained in title V of the National  
10          Security Act of 1947.

11          (g) SEEKING MULTILATERAL SUPPORT FOR UNILAT-  
12          ERAL SANCTIONS.—The Secretary of State, in consulta-  
13          tion with appropriate departments and agencies, shall seek  
14          the support of other countries for sanctions imposed under  
15          this section.

16          **SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.**

17          (a) APPLICABILITY.—

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

24                (2) JUDICIAL REVIEW.—Except as otherwise  
25                provided in this section, a final agency action under

1 this title may be reviewed by appeal to the United  
2 States Court of Appeals for the District of Columbia  
3 Circuit, to the extent provided in this paragraph.  
4 The court's review in any such appeal shall be lim-  
5 ited to determining whether—

6 (A) a regulation—

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

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

11 (iii) otherwise violates this title;

12 (B) an agency action violates this title;

13 (C) an agency action violates an agency  
14 regulation establishing time requirements or  
15 other procedural requirements of a non-discre-  
16 tionary nature;

17 (D) the issuance of regulations required by  
18 this title complies with time restrictions im-  
19 posed by this title;

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

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

1 (G) unfair impact determinations under  
2 section 114(k) are in compliance with time re-  
3 strictions imposed by that section; or

4 (H) the United States has complied with  
5 the requirements of section 114(k) after an un-  
6 fair impact determination has been made.

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

9 (1) ADMINISTRATIVE PROCEDURES.—Any ad-  
10 ministrative sanction imposed under section 110(c)  
11 may be imposed only after notice and opportunity  
12 for an agency hearing on the record in accordance  
13 with sections 554 through 557 of title 5, United  
14 States Code. The imposition of any such administra-  
15 tive sanction shall be subject to judicial review in ac-  
16 cordance with sections 701 through 706 of title 5,  
17 United States Code.

18 (2) AVAILABILITY OF CHARGING LETTER.—Any  
19 charging letter or other document initiating adminis-  
20 trative proceedings for the imposition of sanctions  
21 for violations of the regulations issued under section  
22 108(a) shall be made available for public inspection  
23 and copying.

24 (c) COLLECTION.—If any person fails to pay a civil  
25 penalty imposed under section 110(c), the Secretary may

1 ask the Attorney General to bring a civil action in an ap-  
2 propriate district court to recover the amount imposed  
3 (plus interest at currently prevailing rates from the date  
4 of the final order). No such action may be commenced  
5 more than 5 years after the order imposing the civil pen-  
6 alty becomes final. In such an action, the validity, amount,  
7 and appropriateness of such penalty shall not be subject  
8 to review.

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, including any diversion  
16 of goods or technology from an authorized end use  
17 or end user, or in any case in which a criminal in-  
18 dictment has been returned against a person alleging  
19 a violation of this title or any of the statutes listed  
20 in section 110(f), the Secretary may, without a hear-  
21 ing, issue an order temporarily denying that person’s  
22 United States export privileges (hereafter in this  
23 subsection referred to a “temporary denial order”).  
24 A temporary denial order may be effective for no  
25 longer than 180 days, but may be renewed by the

1 Secretary, following notice and an opportunity for a  
2 hearing, for additional periods of not more than 180  
3 days each.

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

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

20 (B) a criminal indictment has been re-  
21 turned against the person subject to the order  
22 alleging a violation of this title or any of the  
23 statutes listed in section 110(f).

24 The decision of the administrative law judge shall be  
25 final unless, within 10 working days after the date

1 of the administrative law judge's decision, an appeal  
2 is filed with the Secretary. On appeal, the Secretary  
3 shall either affirm, modify, reverse, or vacate the de-  
4 cision of the administrative law judge by written  
5 order within 10 working days after receiving the ap-  
6 peal. The written order of the Secretary shall be  
7 final and is not subject to judicial review, except as  
8 provided in paragraph (3). The materials submitted  
9 to the administrative law judge and the Secretary  
10 shall constitute the administrative record for pur-  
11 poses of review by the court.

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

1 under this title, or if a criminal indictment has been  
2 returned against the person subject to the order al-  
3 leging a violation of this title or any of the statutes  
4 listed in section 110(f). The court shall vacate the  
5 Secretary's order if the court finds that the Sec-  
6 retary's order is arbitrary, capricious, an abuse of  
7 discretion, or otherwise not in accordance with law.

8 **SEC. 113. ENFORCEMENT.**

9 (a) GENERAL AUTHORITY AND DESIGNATION.—

10 (1) POLICY GUIDANCE ON ENFORCEMENT.—

11 The Secretary, in consultation with the Secretary of  
12 the Treasury and the heads of other appropriate de-  
13 partments and agencies, shall be responsible for pro-  
14 viding policy guidance on the enforcement of this  
15 title.

16 (2) GENERAL AUTHORITIES.—(A) To the extent  
17 necessary or appropriate to the enforcement of this  
18 title or to the imposition of any penalty, forfeiture,  
19 or liability arising under the Export Administration  
20 Act of 1979, officers or employees of the Depart-  
21 ment of Commerce designated by the Secretary and  
22 officers and employees of the United States Customs  
23 Service designated by the Commissioner may exer-  
24 cise the enforcement authorities described in para-  
25 graph (3).

1           (B) In carrying out the enforcement authorities  
2 described in paragraph (3), the Commissioner of  
3 Customs, and employees of the United States Customs  
4 Service designated by the Commissioner, may  
5 make investigations within or outside the United  
6 States and at those ports of entry or exit from the  
7 United States where officers of the United States  
8 Customs Service are authorized by law to carry out  
9 such enforcement responsibilities. Subject to paragraph  
10 (3), the United States Customs Service is authorized,  
11 in the enforcement of this title, to search,  
12 detain (after search), and seize commodities or technology  
13 at those ports of entry or exit from the United  
14 States where officers of the Customs Service are  
15 authorized by law to conduct such searches, detentions,  
16 and seizures, and at those places outside the  
17 United States where the Customs Service, pursuant  
18 to agreements or other arrangements with other  
19 countries, is authorized to perform enforcement activities.  
20

21           (C) In carrying out the enforcement authorities  
22 described in paragraph (3), the Secretary, and officers  
23 and employees of the Department of Commerce  
24 designated by the Secretary, may make investigations  
25 within the United States, and shall conduct,

1 outside the United States, prelicense and  
2 postshipment verifications of items licensed for ex-  
3 port and investigations in the enforcement of section  
4 108. The Secretary, and officers and employees of  
5 the Department of Commerce designated by the Sec-  
6 retary, are authorized to search, detain (after  
7 search), and seize items at those places within the  
8 United States other than those ports specified in  
9 subparagraph (B). The search, detention (after  
10 search), or seizure of items at those ports and places  
11 specified in subparagraph (B) may be conducted by  
12 officers and employees of the Department of Com-  
13 merce only with the concurrence of the Commis-  
14 sioner of Customs or a person designated by the  
15 Commissioner.

16 (D) The Secretary and the Commissioner of  
17 Customs may enter into agreements and arrange-  
18 ments for the enforcement of this title, including for-  
19 eign investigations and information exchange.

20 (3) SPECIFIC AUTHORITIES.—(A) Any officer or  
21 employee designated under paragraph (2) may do  
22 the following in carrying out the enforcement au-  
23 thority under this title:

24 (i) Make investigations of, obtain informa-  
25 tion from, make inspection of any books,

1 records, or reports (including any writings re-  
2 quired to be kept by the Secretary), premises,  
3 or property of, and take the sworn testimony of,  
4 any person.

5 (ii) Administer oaths or affirmations, and  
6 by subpoena require any person to appear and  
7 testify or to appear and produce books, records,  
8 and other writings, or both. In the case of con-  
9 tumacy by, or refusal to obey a subpoena issued  
10 to, any such person, a district court of the  
11 United States, on request of the Attorney Gen-  
12 eral and after notice to any such person and a  
13 hearing, shall have jurisdiction to issue an order  
14 requiring such person to appear and give testi-  
15 mony or to appear and produce books, records,  
16 and other writings, or both. Any failure to obey  
17 such order of the court may be punished by  
18 such court as a contempt thereof. The attend-  
19 ance of witnesses and the production of docu-  
20 ments provided for in this clause may be re-  
21 quired from any State, the District of Colum-  
22 bia, or in any territory of the United States at  
23 any designated place. Witnesses subpoenaed  
24 under this subsection shall be paid the same

1 fees and mileage as are paid witnesses in the  
2 district courts of the United States.

3 (B)(i) Any officer or employee of the Office of  
4 Export Enforcement of the Department of Com-  
5 merce who is designated by the Secretary under  
6 paragraph (2), and any officer or employee of the  
7 United States Customs Service who is designated by  
8 the Commissioner of Customs under paragraph (2),  
9 may do the following in carrying out the enforce-  
10 ment authority under this title:

11 (I) Execute any warrant or other process  
12 issued by a court or officer of competent juris-  
13 diction with respect to the enforcement of this  
14 title.

15 (II) Make arrests without warrant for any  
16 violation of this title committed in his or her  
17 presence or view, or if the officer or employee  
18 has probable cause to believe that the person to  
19 be arrested has committed, is committing, or is  
20 about to commit such a violation.

21 (III) Carry firearms.

22 (ii) Officers and employees of the Office of Ex-  
23 port Enforcement designated by the Secretary under  
24 paragraph (2) shall exercise the authorities set forth

1 in clause (i) pursuant to guidelines approved by the  
2 Attorney General.

3 (C) Any officer or employee of the United  
4 States Customs Service designated by the Commis-  
5 sioner of Customs under paragraph (2) may do the  
6 following in carrying out the enforcement authority  
7 under this title:

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

15 (ii) Detain and search any package or con-  
16 tainer in which the officer or employee has rea-  
17 sonable cause to suspect there is any item that  
18 has been, is being, or is about to be exported  
19 from or transited through the United States in  
20 violation of this title.

21 (iii) Detain (after search) or seize any  
22 item, for purposes of securing for trial or for-  
23 feiture to the United States, on or about such  
24 vehicle, vessel, aircraft, or person or in such  
25 package or container, if the officer or employee

1           has probable cause to believe the item has been,  
2           is being, or is about to be exported from or  
3           transited through the United States in violation  
4           of this title.

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

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

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

15           (2) the disposition of such property or the pro-  
16           ceeds from the sale thereof,

17           (3) the remission or mitigation of such forfeit-  
18           ures, and

19           (4) the compromise of claims,  
20          shall apply to seizures and forfeitures incurred, or alleged  
21          to have been incurred, under the provisions of this sub-  
22          section, insofar as applicable and not inconsistent with  
23          this title; except that such duties as are imposed upon the  
24          customs officer or any other person with respect to the  
25          seizure and forfeiture of property under the customs laws

1 may be performed with respect to seizures and forfeitures  
2 of property under this subsection by the Secretary or such  
3 officers and employees of the Department of Commerce  
4 as may be authorized or designated for that purpose by  
5 the Secretary, or, upon the request of the Secretary, by  
6 any other agency that has authority to manage and dis-  
7 pose of seized property.

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

14 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

15 (1) USE OF FUNDS.—With respect to any un-  
16 dercover investigative operation conducted by the Of-  
17 fice of Export Enforcement of the Department of  
18 Commerce (hereafter in this subsection referred to  
19 as “OEE”) necessary for the detection and prosecu-  
20 tion of violations of this title—

21 (A) funds made available for export en-  
22 forcement under this title may be used to pur-  
23 chase property, buildings, and other facilities,  
24 and to lease space within the United States,  
25 without regard to sections 1341 and 3324 of

1 title 31, United States Code, the third undesig-  
2 nated paragraph under the heading of “MIS-  
3 CELLANEOUS” of the Act of March 3, 1877, (40  
4 U.S.C. 34), sections 3732(a) and 3741 of the  
5 Revised Statutes of the United States (41  
6 U.S.C. 11(a) and 22), and subsections (a) and  
7 (c) of section 304, and section 305 of the Fed-  
8 eral Property and Administrative Services Act  
9 of 1949 (41 U.S.C. 254(a) and (c) and 255),

10 (B) funds made available for export en-  
11 forcement under this title may be used to estab-  
12 lish or to acquire proprietary corporations or  
13 business entities as part of an undercover oper-  
14 ation, and to operate such corporations or busi-  
15 ness entities on a commercial basis, without re-  
16 gard to section 9102 of title 31, United States  
17 Code,

18 (C) funds made available for export en-  
19 forcement under this title and the proceeds  
20 from undercover operations may be deposited in  
21 banks or other financial institutions without re-  
22 gard to the provisions of section 648 of title 18,  
23 United States Code, and section 3302 of title  
24 31, United States Code, and

1           (D) the proceeds from undercover oper-  
2           ations may be used to offset necessary and rea-  
3           sonable expenses incurred in such operations  
4           without regard to the provisions of section 3302  
5           of title 31, United States Code,  
6           if the Director of OEE (or an officer or employee  
7           designated by the Director) certifies, in writing, that  
8           the action authorized by subparagraph (A), (B), (C),  
9           or (D) for which the funds would be used is nec-  
10          essary for the conduct of the undercover operation.

11           (2) DISPOSITION OF BUSINESS ENTITIES.—If a  
12          corporation or business entity established or ac-  
13          quired as part of an undercover operation with a net  
14          value of more than \$50,000 is to be liquidated, sold,  
15          or otherwise disposed of, the Director of OEE shall  
16          report the circumstances to the Secretary and the  
17          Comptroller General, as much in advance of such  
18          disposition as the Director of OEE or his or her des-  
19          ignee determines is practicable. The proceeds of the  
20          liquidation, sale, or other disposition, after obliga-  
21          tions incurred by the corporation or business enter-  
22          prise are met, shall be deposited in the Treasury of  
23          the United States as miscellaneous receipts.

24           (3) DEPOSIT OF PROCEEDS.—As soon as the  
25          proceeds from an OEE undercover investigative op-

1       eration with respect to which an action is authorized  
2       and carried out under this subsection are no longer  
3       necessary for the conduct of such operation, such  
4       proceeds or the balance of such proceeds remaining  
5       at the time shall be deposited into the Treasury of  
6       the United States as miscellaneous receipts.

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

15           (B) The Secretary shall submit annually to the  
16      Congress a report, which may be included in the an-  
17      nual report under section 115, specifying the follow-  
18      ing information:

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

22           (ii) The number of undercover investigative  
23      operations commenced in the 1-year period pre-  
24      ceding the period for which such report is sub-  
25      mitted.

1 (iii) The number of undercover investiga-  
2 tive operations closed in the 1-year period pre-  
3 ceding the period for which such report is sub-  
4 mitted and, with respect to each such closed un-  
5 dercover operation, the results obtained and any  
6 civil claims made with respect thereto.

7 (5) DEFINITIONS.—For purposes of paragraph  
8 (4)—

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

16 (B) the terms “undercover investigative  
17 operation” and “undercover operation” mean  
18 any undercover investigative operation con-  
19 ducted by OEE—

20 (i) in which the gross receipts (exclud-  
21 ing interest earned) exceed \$25,000, or ex-  
22 penditures (other than expenditures for  
23 salaries of employees) exceed \$75,000, and

24 (ii) which is exempt from section 3302  
25 or 9102 of title 31, United States Code,

1           except that clauses (i) and (ii) shall not apply  
2           with respect to the report to the Congress re-  
3           quired by subparagraph (B) of paragraph (4);  
4           and

5                   (C) the term “employees” means employ-  
6           ees, as defined in section 2105 of title 5, United  
7           States Code, of the Department of Commerce.

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

13   **SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCE-**  
14                   **DURES.**

15          (a) POLICY GUIDANCE.—

16                   (1) IN GENERAL.—As directed by the Presi-  
17          dent, annual policy guidance shall be issued to pro-  
18          vide detailed implementing guidance to export licens-  
19          ing officials in all appropriate departments and  
20          agencies.

21                   (2) ELEMENTS OF ANNUAL POLICY REVIEW.—

22          In order to develop such annual policy guidance, ex-  
23          port controls and other regulations to implement  
24          this title shall be reviewed annually. This annual pol-  
25          icy review shall include an evaluation of the benefits

1 and costs of the imposition, extension, or removal of  
2 controls under this title. This review shall include—

3 (A) an assessment by the Secretary of the  
4 economic consequences of the imposition, exten-  
5 sion, or removal of controls during the preced-  
6 ing 12 months, including the impact on United  
7 States exports or jobs;

8 (B) an assessment by the Secretary of  
9 State of the objectives of the controls in effect  
10 during the preceding 12 months, and the extent  
11 to which the controls have served those objec-  
12 tives; and

13 (C) an assessment by the Secretary of De-  
14 fense of the impact that the imposition, exten-  
15 sion, or removal of controls during the preced-  
16 ing 12 months has had on United States na-  
17 tional security.

18 (b) EXPORT CONTROL AUTHORITY AND FUNC-  
19 TIONS.—

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

1           (2) DELEGATION OF FUNCTIONS OF THE SEC-  
2           RETARY.—The Secretary may delegate any function  
3           under this title to the Under Secretary of Commerce  
4           for Export Administration appointed under sub-  
5           section (d) or to any other officer of the Department  
6           of Commerce.

7           (c) EXPORT CONTROL POLICY COMMITTEE.—

8           (1) ESTABLISHMENT.—There is established an  
9           Export Control Policy Committee (hereafter in this  
10          subsection referred to as the “Committee”).

11          (2) FUNCTIONS.—The Committee shall—

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

15                 (B) review policy recommendations pro-  
16                 posed by the Secretary and other members of  
17                 the Committee; and

18                 (C) receive policy recommendations from  
19                 other departments and agencies and resolve pol-  
20                 icy disputes among departments and agencies  
21                 under this title.

22          (3) MEMBERSHIP.—The Committee shall in-  
23          clude the Secretary, the Secretary of Defense, the  
24          Secretary of Energy, the heads of other relevant de-

1       partments, and appropriate officials of the Executive  
2       Office of the President.

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

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

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

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

21           (1) APPOINTMENT.—The President shall ap-  
22      point, by and with the advice and consent of the  
23      Senate, an Under Secretary of Commerce for Export  
24      Administration who shall carry out all functions of  
25      the Secretary under this title and other provisions of

1 law relating to national security, as the Secretary  
2 may delegate. The President shall appoint, by and  
3 with the advice and consent of the Senate, two As-  
4 sistant Secretaries of Commerce to assist the Under  
5 Secretary in carrying out such functions.

6 (2) TRANSITION PROVISIONS.—Those individ-  
7 uals serving in the positions of Under Secretary of  
8 Commerce for Export Administration and Assistant  
9 Secretaries of Commerce under section 15(a) of the  
10 Export Administration Act of 1979, on the day be-  
11 fore the date of the enactment of this Act, shall be  
12 deemed to have been appointed under paragraph (1),  
13 by and with the advice and consent of the Senate,  
14 as of 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, 106, or 111(a) may  
19 be issued only after the regulations are submitted for re-  
20 view to such departments or agencies as the President con-  
21 siders appropriate. The Secretary shall consult with the  
22 appropriate export advisory committee appointed under  
23 section 104(f) in formulating regulations under this title.  
24 The second sentence of this subsection does not require

1 the concurrence or approval of any official, department,  
2 or agency to which such regulations are submitted.

3 (f) AMENDMENTS TO REGULATIONS.—If the Sec-  
4 retary proposes to amend regulations issued under this  
5 title, the Secretary shall report to the Committee on Bank-  
6 ing, Housing, and Urban Affairs of the Senate and the  
7 Speaker of the House of Representatives on the intent and  
8 rationale of such amendments. Such report shall evaluate  
9 the cost and burden to the United States exporters of the  
10 proposed amendments in relation to any enhancement of  
11 licensing objectives. The Secretary shall consult with the  
12 appropriate export advisory committees appointed under  
13 section 104(f) in amending regulations issued under this  
14 title.

15 (g) CONFIDENTIALITY OF INFORMATION.—

16 (1) EXEMPTIONS FROM DISCLOSURE.—

17 (A) INFORMATION OBTAINED ON OR BE-  
18 FORE JUNE 30, 1980.—Except as otherwise pro-  
19 vided by the third sentence of section  
20 108(b)(2), information obtained under the Ex-  
21 port Administration Act of 1979 and its prede-  
22 cessor statutes on or before June 30, 1980,  
23 which is deemed confidential, including Ship-  
24 per's Export Declarations, or with reference to  
25 which a request for confidential treatment is

1           made by the person furnishing such informa-  
2           tion, shall not be subject to disclosure under  
3           section 552 of title 5, United States Code, and  
4           such information shall not be published or dis-  
5           closed unless the Secretary determines that the  
6           withholding thereof is contrary to the national  
7           interest.

8                   (B) INFORMATION OBTAINED AFTER JUNE  
9           30, 1980.—Except as otherwise provided by the  
10          third sentence of section 108(b)(2), information  
11          obtained under this title or under the Export  
12          Administration Act of 1979 after June 30,  
13          1980, may be withheld from disclosure only to  
14          the extent permitted by statute, except that in-  
15          formation submitted, obtained, or considered in  
16          connection with an application for an export li-  
17          cense or other export authorization under the  
18          Export Administration Act of 1979 or this title,  
19          including—

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

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

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

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

6 (v) information obtained or furnished  
7 under this title in connection with inter-  
8 national agreements, treaties, or obliga-  
9 tions,

10 shall be withheld from public disclosure and  
11 shall not be subject to disclosure under section  
12 552 of title 5, United States Code, unless the  
13 release of such information is determined by the  
14 Secretary to be in the national interest.

15 (2) INFORMATION TO CONGRESS AND GAO.—

16 (A) IN GENERAL.—Nothing in this title  
17 shall be construed as authorizing the withhold-  
18 ing of information from the Congress or from  
19 the General Accounting Office.

20 (B) AVAILABILITY TO THE CONGRESS.—

21 (i) IN GENERAL.—All information ob-  
22 tained at any time under this title or pre-  
23 vious Acts regarding the control of exports,  
24 including any report or license application  
25 required under this title, shall be made

1 available to any committee or subcommit-  
2 tee of Congress of appropriate jurisdiction  
3 upon the request of the chairman or rank-  
4 ing minority member of such committee or  
5 subcommittee.

6 (ii) PROHIBITION ON FURTHER DIS-  
7 CLOSURE.—No committee, subcommittee,  
8 or Member of Congress shall disclose any  
9 information obtained under this title or  
10 previous Acts regarding the control of ex-  
11 ports which is submitted on a confidential  
12 basis to the Congress under clause (i) un-  
13 less the full committee to which the infor-  
14 mation is made available determines that  
15 the withholding of the information is con-  
16 trary to the national interest.

17 (C) AVAILABILITY TO THE GAO.—

18 (i) IN GENERAL.—Notwithstanding  
19 paragraph (1), information referred to in  
20 subparagraph (B) shall, consistent with  
21 the protection of intelligence, counterintel-  
22 ligence, and law enforcement sources,  
23 methods, and activities, as determined by  
24 the agency that originally obtained the in-  
25 formation, and consistent with the provi-

1           sions of section 716 of title 31, United  
2           States Code, be made available only by the  
3           agency, upon request, to the Comptroller  
4           General of the United States or to any of-  
5           ficer or employee of the General Account-  
6           ing Office authorized by the Comptroller  
7           General to have access to such informa-  
8           tion.

9           (ii) PROHIBITION ON FURTHER DIS-  
10          CLOSURES.—No officer or employee of the  
11          General Accounting Office shall disclose,  
12          except to the Congress in accordance with  
13          this paragraph, any such information  
14          which is submitted on a confidential basis  
15          and from which any individual can be iden-  
16          tified.

17          (3) INFORMATION EXCHANGE.—Notwithstand-  
18          ing paragraph (1), the Secretary and the Commis-  
19          sioner of Customs shall exchange licensing and en-  
20          forcement information with each other which is nec-  
21          essary to facilitate enforcement efforts and effective  
22          license decisions.

23          (4) PENALTIES FOR DISCLOSURE OF CON-  
24          FIDENTIAL INFORMATION.—Any officer or employee  
25          of the United States, or any department or agency

1       thereof, who publishes, divulges, discloses, or makes  
2       known in any manner or to any extent not author-  
3       ized by law any confidential information that—

4               (A) he or she obtains in the course of his  
5               or her employment or official duties or by rea-  
6               son of any examination or investigation made  
7               by, or report or record made to or filed with,  
8               such department or agency, or officer or em-  
9               ployee thereof, and

10              (B) is exempt from disclosure under this  
11              subsection,

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

17       (h) **AUTHORITY FOR SEMINAR AND PUBLICATIONS**  
18 **FUND.**—The Secretary is authorized to cooperate with  
19 public agencies, other governments, international organi-  
20 zations, private individuals, private associations, and other  
21 groups in connection with seminars, publications, and re-  
22 lated activities to carry out export activities, including  
23 educating the public or government officials on the appli-  
24 cation of this title and the regulations issued under this  
25 title. The Secretary is further authorized to accept con-

1 tributions of funds, property, or services in connection  
2 with such activities to recover the cost of such programs  
3 and activities. Contributions may include payments for  
4 materials or services provided as part of such activities.  
5 The contributions collected may be retained for use in cov-  
6 ering the costs of such activities, and for providing infor-  
7 mation to the public with respect to this title and other  
8 export control programs of the United States and other  
9 governments.

10 (i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-  
11 TROL PROGRAM.—The Secretary is authorized to partici-  
12 pate in and provide training to officials of other countries  
13 on the principles and procedures for the implementation  
14 of effective export controls and may participate in any  
15 such training provided by other departments and agencies  
16 of the United States.

17 (j) INCORPORATED COMMODITIES AND TECH-  
18 NOLOGY.—

19 (1) COMMODITIES CONTAINING CONTROLLED  
20 PARTS AND COMPONENTS.—Controls may not be im-  
21 posed under this title or any other provision of law  
22 for a commodity solely because the commodity con-  
23 tains parts or components subject to export controls  
24 under this title if such parts or components—

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

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

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

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

14 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-  
15 CORPORATING U.S. ITEMS.—

16 (A) COMMODITIES.—(i) No authority or  
17 permission may be required under section 105  
18 or section 106 to reexport to a country other  
19 than a terrorist country or an embargoed coun-  
20 try a commodity that is produced in a country  
21 other than the United States and incorporates  
22 commodities that are subject to the jurisdiction  
23 of the United States, if the value of the con-  
24 trolled United States content of the commodity

1 produced in such other country is 25 percent or  
2 less of the total value of the commodity.

3 (ii) No authority or permission may be re-  
4 quired under section 105 or section 106 to reex-  
5 port to a terrorist country or to an embargoed  
6 country a commodity that is produced in a  
7 country other than the United States and incor-  
8 porates commodities that are subject to the ju-  
9 risdiction of the United States, if the value of  
10 the controlled United States content of the  
11 commodity produced in such other country is  
12 10 percent or less of the total value of the com-  
13 modity.

14 (B) TECHNOLOGY.—(i) No authority or  
15 permission may be required under section 105  
16 or section 106 to reexport to a country other  
17 than a terrorist country or an embargoed coun-  
18 try technology that is produced in a country  
19 other than the United States and is commingled  
20 with or drawn from technology that is produced  
21 in the United States, if the value of the con-  
22 trolled United States content of the technology  
23 produced in such other country is 25 percent or  
24 less of the total value of the technology.

1           (ii) No authority or permission may be re-  
2           quired under section 105 or section 106 to reex-  
3           port to a terrorist country or an embargoed  
4           country technology that is produced in a coun-  
5           try other than the United States and is com-  
6           mingled with or drawn from technology that is  
7           produced in the United States, if the value of  
8           the controlled United States content of the  
9           technology produced in such other country is 10  
10          percent or less of the total value of the tech-  
11          nology.

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

14           (i) the “controlled United States con-  
15          tent” of a commodity or technology means  
16          those commodities or technology that—

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

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

21                   (III) would, at the time of the re-  
22                   export, require a license under section  
23                   105 or 106 if exported from the Unit-  
24                   ed States to a country to which the

1 commodity or technology is to be reex-  
2 ported;

3 (ii) an “embargoed country” is a  
4 country against which an embargo is in ef-  
5 fect under the Trading with the Enemy  
6 Act, the International Emergency Eco-  
7 nomic Powers Act, or other provision of  
8 law; and

9 (iii) a “terrorist country” is a country  
10 with respect to which a determination is in  
11 effect that was made under section  
12 106(i)(1)(A) of this Act, or section  
13 6(j)(1)(A) of the Export Administration  
14 Act of 1979, that the government of such  
15 country has repeatedly provided support  
16 for acts of international terrorism.

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

22 (4) REPORTING REQUIREMENTS.—Notwith-  
23 standing paragraphs (1) through (3), the Secretary  
24 may require persons to report to the Department of  
25 Commerce their proposed calculations and underly-

1 ing data sufficient for the Department of Commerce  
2 to evaluate the adequacy of those calculations and  
3 data related to commodities and technology before a  
4 reexporter may rely upon the exclusions from con-  
5 trols provided in this subsection.

6 (5) EXCEPTIONS.—Paragraphs (1) and (2) do  
7 not require any changes to regulations in effect on  
8 the effective date of this title and, notwithstanding  
9 paragraphs (1) and (2), controls may be imposed on  
10 commodities or technology transferred, after March  
11 1, 1996, from export control under the Arms Export  
12 Control Act to control under this title if those com-  
13 modities or technology are designated by the Presi-  
14 dent for exemption from paragraph (1) or (2), as  
15 the case may be.

16 (k) UNFAIR IMPACT ON UNITED STATES EX-  
17 PORTER.—

18 (1) POLICY.—It is the policy of the United  
19 States that no United States exporter should be af-  
20 fected unfairly by export control policies or practices  
21 unless relief from such controls would create a sig-  
22 nificant risk to the foreign policy, nonproliferation,  
23 or national security interests of the United States.

24 (2) RELIEF FROM EXPORT CONTROLS.—(A) A  
25 person may petition the Secretary for relief from

1 current export control requirements (other than con-  
2 trol requirements specifically imposed by this title or  
3 other provisions of law) on the basis of foreign avail-  
4 ability. A person may also petition the Secretary for  
5 approval of an export license application on other  
6 grounds which the Secretary, with the concurrence  
7 of the Secretary of Defense, shall establish by regu-  
8 lation. The Secretary shall, upon receipt of such pe-  
9 titions, and may, on his or her initiative, conduct as-  
10 sessments for providing relief based upon these  
11 grounds.

12 (B) For purposes of this subsection, foreign  
13 availability exists when the controlled item is avail-  
14 able in fact, under terms and conditions established  
15 by the Secretary with the concurrence of the sec-  
16 retary of Defense, to controlled countries or end  
17 users from sources outside the United States so that  
18 the requirement for a license is or would be ineffec-  
19 tive in achieving the purpose of the control.

20 (3) PROVISIONS FOR RELIEF.—The Secretary,  
21 in consultation with appropriate departments and  
22 agencies, shall make determinations of facts under  
23 paragraph (2), addressing, in the case of a petition  
24 filed under paragraph (2), each ground for relief as-  
25 serted in the petition, and, subject to paragraph (4),

1 shall provide at least one of the following forms of  
2 relief to persons that meet the criteria in paragraph  
3 (2):

4 (A) Change the control status of, or licens-  
5 ing requirements on, all or some of the items in  
6 question so as to eliminate the unfair impact.

7 (B) Selectively approve the sale of con-  
8 trolled items so as to eliminate the unfair im-  
9 pact.

10 (C) Seek multilateral support to eliminate  
11 the source of unfair impact. If relief under this  
12 subparagraph is chosen and if such efforts fail  
13 to achieve multilateral support, then the Sec-  
14 retary, not later than 330 days from the date  
15 of the Secretary's initiation of the assessment  
16 under paragraph (2), shall provide other relief  
17 pursuant to subparagraph (A) or (B) or con-  
18 clude pursuant to paragraph (4) that the grant-  
19 ing of such relief would create a significant risk  
20 to United States nonproliferation, foreign pol-  
21 icy, or national security interests.

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

1           (4) EXCEPTIONS FROM RELIEF.—The Secretary  
2 shall provide relief under paragraph (3) to a peti-  
3 tioner who qualifies for relief under paragraph (2)  
4 unless the Secretary concludes that the granting of  
5 such relief would create a significant risk to United  
6 States nonproliferation, foreign policy, or national  
7 security interests. In the event the Secretary deter-  
8 mines to grant such relief, he or she may do so un-  
9 less the President determines that such relief would  
10 create a significant risk to the foreign policy, non-  
11 proliferation, or national security interests of the  
12 United States.

13           (5) PROCEDURES.—

14           (A) PUBLICATION.—In any case in which  
15 the President or the Secretary determines that  
16 relief under paragraph (3) will not be granted,  
17 notwithstanding the existence of facts that con-  
18 stitute a basis for granting relief, the Secretary  
19 shall publish that determination, together with  
20 a concise statement of its basis and the esti-  
21 mated economic impact of the decision.

22           (B) NOTICE OF ASSESSMENTS.—Whenever  
23 the Secretary undertakes an assessment under  
24 paragraph (2), the Secretary shall publish in

1 the Federal Register notice of the initiation of  
2 such assessment.

3 (C) PROCEDURES FOR MAKING DETER-  
4 MINATIONS.—During the conduct of an assess-  
5 ment under this subsection, the Secretary shall  
6 consult with other appropriate departments and  
7 agencies concerning the assessment. The Sec-  
8 retary shall make a determination as to whether  
9 relief is required under paragraph (2) within  
10 120 days after the date of the Secretary's re-  
11 ceipt of the petition requesting relief or the date  
12 of the Secretary's initiation of the assessment  
13 (as the case may be) and shall so notify the ap-  
14 plicant. If the Secretary has determined that  
15 relief is appropriate, the Secretary shall, upon  
16 making such a determination, submit the deter-  
17 mination for review to the Department of De-  
18 fense and other appropriate departments and  
19 agencies for consultations regarding the find-  
20 ings and the relief selected. If the Secretary of  
21 Defense or other department or agency head  
22 disagrees with the Secretary's determination, he  
23 or she may appeal the determination to the  
24 President in writing, but only on the basis of  
25 the criteria set forth in paragraph (4). The

1 President shall resolve any such disagreement  
2 so that, in all cases, not later than 150 days  
3 after the date of the Secretary's receipt of the  
4 petition requesting relief or the date of the Sec-  
5 retary's initiation of the assessment (as the  
6 case may be), the Secretary responds in writing  
7 to the petitioner and submits for publication in  
8 the Federal Register, that—

9 (i) unfair impact exists and—

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

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

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

19 (IV) export controls under this  
20 title are to be maintained notwith-  
21 standing the finding under paragraph  
22 (2); or

23 (V) the United States rec-  
24 ommendation to remove the license re-  
25 quirement or change the control sta-

1                   tus will be submitted to a relevant  
2                   multilateral regime for consideration  
3                   for a period of not more than 180  
4                   days beginning on the date of the  
5                   publication; or

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

8                   The reasons for maintaining export controls  
9                   under clause (i)(IV) shall be included in the  
10                  submission to the petitioner and the publica-  
11                  tion. In any case in which the submission for  
12                  publication is not made within the 150-day pe-  
13                  riod required by this subparagraph, the Sec-  
14                  retary may not thereafter require a license for  
15                  the export of items that are the subject of the  
16                  allegation under paragraph (2).

17                  (D) NEGOTIATIONS TO ELIMINATE UNFAIR  
18                  IMPACT.—(i) In any case in which export con-  
19                  trols are maintained under this section pursu-  
20                  ant to paragraph (4) despite a determination of  
21                  unfair impact, the Secretary of State shall ac-  
22                  tively pursue negotiations with the governments  
23                  of the appropriate foreign countries for the pur-  
24                  pose of eliminating the unfair impact. No later  
25                  than the commencement of such negotiations,

1 the Secretary of State shall notify the Congress  
2 in writing that the Secretary of State has begun  
3 such negotiations and why it is important that  
4 export controls on the items involved be main-  
5 tained to avoid a significant risk to the foreign  
6 policy, nonproliferation, or national security in-  
7 terests of the United States.

8 (ii) Whenever the Secretary of State has  
9 reason to believe that items subject to export  
10 controls by the United States may become  
11 available in fact from other countries to con-  
12 trolled countries and that such availability can  
13 be prevented or eliminated by means of negotia-  
14 tions with such other countries, the Secretary of  
15 State shall promptly initiate negotiations with  
16 the governments of such other countries to pre-  
17 vent such foreign availability.

18 (6) SHARING OF INFORMATION.—Each depart-  
19 ment or agency of the United States, including any  
20 intelligence agency, and all contractors with any  
21 such department or agency, shall, upon the request  
22 of the Secretary and consistent with the protection  
23 of intelligence sources and methods, furnish informa-  
24 tion to the Department of Commerce concerning for-  
25 eign availability of items subject to export controls

1 under this title. Consistent with the protection of in-  
2 telligence sources and methods and classification re-  
3 strictions, each such department or agency shall  
4 allow the Department of Commerce access to such  
5 information from a laboratory or other facility with-  
6 in such department or agency.

7 (7) CONGRESSIONAL NOTIFICATION AND RE-  
8 PORTING REQUIREMENTS.—The Secretary shall each  
9 year notify the Congress of all petitions for relief  
10 under this subsection and the status of all such peti-  
11 tions.

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

14 (1) medicine or medical supplies; or

15 (2) donations of items that are intended to  
16 meet basic human needs, including food, educational  
17 materials, seeds, hand tools, water resources equip-  
18 ment, clothing and shelter materials, and basic  
19 household supplies.

20 (m) SANCTITY OF EXISTING CONTRACTS AND LI-  
21 CENSES.—

22 (1) IN GENERAL.—In the case of a control im-  
23 posed under section 106 on the export of any items,  
24 the President may not prohibit the export of those  
25 items—

1 (A) in performance of a contract, agree-  
2 ment, or other contractual commitment entered  
3 into before the date on which the control is ini-  
4 tially imposed, or the date on which the Presi-  
5 dent reports to the Congress the President's in-  
6 tention to impose the control, whichever date  
7 occurs first, or

8 (B) under a license or other authorization  
9 issued under this title before the date on which  
10 the control is initially imposed, or the date on  
11 which the President reports to the Congress the  
12 President's intention to impose the control,  
13 whichever date occurs first.

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

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

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

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

3 The authority of the President to make determina-  
4 tions under this paragraph may not be delegated.

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

7 (1) IN GENERAL.—The Secretary shall publish  
8 in the Federal Register, to the greatest extent prac-  
9 ticable, actions, procedures, and decisions of the Sec-  
10 retary under this title, taking into account restric-  
11 tions on disclosure of classified or confidential infor-  
12 mation. The Secretary shall publish in the Federal  
13 Register calculations by the Secretary of commonly-  
14 used control index parameters for commodities and  
15 technologies, including all officially accepted compos-  
16 ite theoretical performance calculations for comput-  
17 ers and microprocessors, except in a case in which  
18 a private party requested the calculation and asked  
19 that it not be published.

20 (2) NOTICE OF REVISIONS.—Whenever the Sec-  
21 retary makes any revision in the control index with  
22 respect to any commodity or technology, or with re-  
23 spect to any country or destination affected by con-  
24 trols imposed under section 105 or section 106, the  
25 Secretary shall publish in the Federal Register a no-

1 tice of such revision and shall specify in such notice  
2 under which authority the revision is being made.

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

5 (1) NOTIFICATION OF THE PUBLIC.—The Sec-  
6 retary shall keep the public fully apprised of changes  
7 in export control policy and procedures instituted  
8 under this title with a view to encouraging trade.

9 (2) CONSULTATION WITH INDUSTRY.—The Sec-  
10 retary shall meet regularly with export advisory com-  
11 mittees appointed under section 104(f) in order to  
12 obtain their views on United States export control  
13 policy and the foreign availability of commodities  
14 and technology.

15 (p) EXPORT CONTROL DUTIES.—

16 (1) ASSIGNMENT.—The Secretary shall ensure  
17 that at least one full-time representative of the De-  
18 partment of Commerce stationed in the People's Re-  
19 public of China has duties related to the implemen-  
20 tation of export controls under this title. These du-  
21 ties shall include giving priority to conducting  
22 postshipment verifications and prelicense checks,  
23 and to using other means to ensure that United  
24 States exports from the United States of dual use

1 items are not diverted to unauthorized end uses or  
2 end users.

3 (2) OTHER RESOURCES.—The Secretary shall  
4 ensure that appropriate resources are made available  
5 and, if necessary, new procedures established to as-  
6 sist the representative or representatives of the De-  
7 partment of Commerce referred to in paragraph (1)  
8 in carrying out their duties and to ensure that sen-  
9 sitive items are not diverted to inappropriate end  
10 uses or end users in the People’s Republic of China.  
11 Efforts to carry out this paragraph shall include ap-  
12 propriate coordination with United States officials in  
13 Hong Kong to ensure that sensitive items exported  
14 to Hong Kong are protected from diversion.

15 (3) AUTHORIZATION OF APPROPRIATIONS.—  
16 There are authorized to be appropriated such sums  
17 as may be necessary to carry out paragraph (1).

18 (q) AUTHORIZATION FOR TECHNICAL DATA.—A li-  
19 cense authorizing the export of any commodities or tech-  
20 nology under this title shall also authorize the export of  
21 operation technical data related to such commodities or  
22 technology, if the technical level of the data does not ex-  
23 ceed the minimum necessary to install, repair, maintain,  
24 inspect, operate, or use the commodities or technology.

1 (r) LICENSES FOR SPARE PARTS NOT REQUIRED.—  
2 A license shall not be required under this title for replace-  
3 ment parts which are exported to replace on a one-for-  
4 one basis parts that were in a commodity that was lawfully  
5 exported from the United States, unless the President de-  
6 termines that such a license should be required for such  
7 parts.

8 **SEC. 115. ANNUAL REPORT.**

9 (a) CONTENTS.—Not later than March 1 of each  
10 year, the Secretary shall submit to the Congress a report  
11 on the administration of this title during the preceding  
12 calendar year. All agencies shall cooperate fully with the  
13 Secretary in providing information for such report. Such  
14 report shall 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  
18 with the export advisory committees established  
19 under section 104(f), and any changes in the exer-  
20 cise of the authorities contained in sections 105(a),  
21 106(a), 107(a), and 108(a).

22 (2) With respect to multilateral export controls  
23 imposed or maintained under section 105, the fol-  
24 lowing:

1 (A) Adjustments to multilateral export  
2 controls.

3 (B) The exercise of the Secretary's author-  
4 ity under section 105(e).

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

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

13 (5) Organizational and procedural changes un-  
14 dertaken in furtherance of the policies set forth in  
15 this title, including changes to increase the efficiency  
16 of the export licensing process and to fulfill the re-  
17 quirements of section 109, including an accounting  
18 of appeals received, and actions taken pursuant  
19 thereto, under section 109(g).

20 (6) Violations under section 110 and enforce-  
21 ment activities under section 113.

22 (7) The issuance of regulations under this title.

23 (8) The results, in as much detail as may be in-  
24 cluded consistent with the strategic and political in-  
25 terests of the United States and the need to main-

1       tain the confidentiality of proprietary information, of  
2       the reviews of the multilateral control list, and any  
3       revisions to the list resulting from such reviews, re-  
4       quired by section 105.

5       (b) COMPARATIVE REPORT ON EXPORT CONTROL  
6       SYSTEMS AMONG COUNTRIES.—The Secretary shall in-  
7       clude, in each annual report under subsection (a), a de-  
8       scription of significant differences between the export con-  
9       trol laws and regulations of the United States and its  
10      major trade competitors, particularly as these differences  
11      relate to the implementation of multilateral export control  
12      regimes. The Secretary shall include—

13           (1) an assessment of the impact of these dif-  
14           ferences on important interests of the United States;

15           (2) a description of the extent to which the ex-  
16           ecutive branch intends to address these differences;  
17           and

18           (3) a listing of unilateral controls and embar-  
19           goes imposed by the United States that are in effect,  
20           with a quantification of their economic impact, in-  
21           cluding the effect of such controls and embargoes on  
22           employment in the United States.

23      (c) GAO REPORT.—The Comptroller General shall  
24      prepare and submit to the Congress, not later than 120

1 days after each report under subsection (b) is submitted,  
2 an analysis of such report.

3 **SEC. 116. DEFINITIONS.**

4 As used in this title:

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

8 (2) **ADHERENT.**—An “adherent” to a multilat-  
9 eral regime is a country that is a member of that  
10 regime or that, pursuant to an international under-  
11 standing to which the United States is a party, con-  
12 trols exports in accordance with the criteria and  
13 standards of that regime.

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

18 (4) **CHEMICAL WEAPONS CONVENTION.**—The  
19 term “Chemical Weapons Convention” refers to the  
20 Convention on the Prohibition of the Development,  
21 Production, Stockpiling and Use of Chemical Weap-  
22 ons and on Their Destruction of 1992.

23 (5) **COMMODITY.**—The term “commodity”  
24 means any article, natural or manmade substance,  
25 material, software, source code, supply, or manufac-

1 tured product, including inspection and test equip-  
2 ment, and excluding technical data.

3 (6) CONTROL OR CONTROLLED.—The terms  
4 “control” and “controlled” refer to a licensing re-  
5 quirement, a written reexport authorization require-  
6 ment, or a prohibition on an export.

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

10 (8) CONTROLLED COUNTRY.—The term “con-  
11 trolled country” means a country to which exports  
12 are controlled under section 105 or 106.

13 (9) EXPORT.—(A) The term “export”—

14 (i) means—

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

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

24 (ii) includes the term “reexport”.

1           (B) The Secretary may further define the term  
2 export by regulation to include, among other con-  
3 cepts, that—

4           (i) a transfer of items in the United States  
5 to an embassy or affiliate of a country is an ex-  
6 port to the country,

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

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

13           (C) As used in this paragraph, the term “for-  
14 eign person” means—

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

18           (ii) any corporation, partnership, business  
19 association, society, trust, organization, or other  
20 nongovernmental entity created or organized  
21 under the laws of a foreign country or that has  
22 its principal place of business outside the Unit-  
23 ed States; and

1           (iii) any governmental entity of a foreign  
2           country that is operating as a business enter-  
3           prise.

4           (10) EXPORT CONTROL REGIME, MULTILAT-  
5           ERAL EXPORT CONTROL REGIME, MULTILATERAL  
6           REGIME, AND REGIME.—The terms “export control  
7           regime”, “multilateral export control regime”, “mul-  
8           tilateral regime”, and “regime” each means an  
9           international agreement or an arrangement among  
10          two or more countries, including the United States,  
11          a purpose of which is to coordinate national export  
12          control policies of participating countries regarding  
13          certain items. Such terms include the Australia  
14          Group, the Wassenaar Arrangement, the MTCR,  
15          and the Nuclear Supplies Group.

16          (11) FOREIGN AVAILABILITY, AVAILABLE IN  
17          FACT TO CONTROLLED COUNTRIES.—The terms  
18          “foreign availability” and “available in fact to con-  
19          trolled countries” each include production or avail-  
20          ability of any item from any country—

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

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

1 For purposes of subparagraph (B), the mere inclu-  
2 sion of items on a list of items subject to export con-  
3 trols imposed pursuant to a multilateral export con-  
4 trol regime shall not alone constitute credible evi-  
5 dence that the government of a country provides an  
6 effective means of controlling the export of such  
7 items to controlled countries.

8 (12) ITEM.—The term “item” means any com-  
9 modity, technology, or other information.

10 (13) LICENSING REQUIREMENT.—The term “li-  
11 censing requirement” includes any restriction or  
12 condition, including recordkeeping and reporting,  
13 imposed by the Secretary under this title in licensing  
14 the export of a commodity, technology, or other in-  
15 formation.

16 (14) MEMBER OF AN EXPORT CONTROL RE-  
17 GIME.—A “member” of an export control regime,  
18 multilateral export control regime, multilateral re-  
19 gime, or regime is a country that participates in that  
20 regime.

21 (15) MISSILE.—The term “missile” means any  
22 missile system or component listed in category I of  
23 the MTCR Annex, and any other unmanned delivery  
24 system or component of similar capability, as well as

1 the specially designed production facilities for these  
2 systems.

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

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

15 (18) NUCLEAR EXPLOSIVE DEVICE.—The term  
16 “nuclear explosive device” means any device, wheth-  
17 er assembled or disassembled, that is designed to  
18 produce an instantaneous release of an amount of  
19 nuclear energy from special nuclear material that is  
20 greater than the amount of energy that would be re-  
21 leased from the detonation of one pound of trinitro-  
22 toluene (TNT).

23 (19) NUCLEAR SUPPLIERS’ GROUP.—The term  
24 “Nuclear Suppliers’ Group” means the multilateral  
25 arrangement in which the United States participates

1 whose purpose is to restrict the transfers of items  
2 with relevance to the nuclear fuel cycle or nuclear  
3 explosive applications.

4 (20) PERSON.—Except as provided in section  
5 111, the term “person” includes—

6 (A) the singular and the plural and any in-  
7 dividual, partnership, corporation, business as-  
8 sociation, society, trust, organization, or any  
9 other group created or organized under the laws  
10 of a country; and

11 (B) any government, or any governmental  
12 body, corporation, trust, agency, department, or  
13 group, operating as a business enterprise.

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

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

21 (23) TECHNOLOGY.—The term “technology”  
22 means specific information that is necessary for the  
23 development, production, or use of a commodity, in-  
24 cluding source code, and that takes the form of tech-  
25 nical data or technical assistance.

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

8           (25) UNITED STATES.—The term “United  
9 States” means the States of the United States, the  
10 District of Columbia, and any commonwealth, terri-  
11 tory, dependency, or possession of the United States,  
12 and includes the outer Continental Shelf, as defined  
13 in section 2(a) of the Outer Continental Shelf Lands  
14 Act (43 U.S.C. 1331(a)).

15           (26) UNITED STATES PERSON.—The term  
16 “United States person” means any United States  
17 citizen, resident, or national (other than an individ-  
18 ual resident outside the United States and employed  
19 by other than a United States person), any domestic  
20 concern (including any permanent domestic estab-  
21 lishment of any foreign concern) and any foreign  
22 subsidiary or affiliate (including any permanent for-  
23 eign establishment) of any domestic concern which is  
24 controlled in fact by such domestic concern, as de-  
25 termined under regulations of the President.

1           (27) WASSENAAR ARRANGEMENT.—The term  
2           “Wassenaar Arrangement” means the multilateral  
3           regime in which the United States participates that  
4           seeks to promote transparency and responsibility  
5           with regard to the transfers of conventional arma-  
6           ments and sensitive dual-use goods and technologies.

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

11 **SEC. 117. EFFECTS ON OTHER ACTS.**

12          (a) COMMODITY JURISDICTION.—

13           (1) COORDINATION OF CONTROLS.—The au-  
14          thority granted under this title and under section 38  
15          of the Arms Export Control Act (22 U.S.C. 2778)  
16          shall be exercised in such a manner as to achieve ef-  
17          fective coordination between the licensing systems  
18          under this title and such section 38 and to share in-  
19          formation regarding the trustworthiness of parties.

20           (2) ELIMINATION OF OVERLAPPING CON-  
21          TROLS.—Notwithstanding any other provision of  
22          law, no item may be included on both the control  
23          index and the United States Munitions List after  
24          the date of the enactment of this Act.

1           (3) COMMODITY JURISDICTION DISPUTE RESO-  
2           LUTION.—The President shall establish procedures  
3           for the resolution of commodity jurisdiction disputes  
4           among departments and agencies of the United  
5           States. Such disputes shall normally be resolved  
6           within 60 days, and the procedures shall allow dis-  
7           putes to be referred to the President normally within  
8           90 days. These procedures shall also—

9                   (A) require the Secretary and the Sec-  
10                  retary of State to refer matters to each other  
11                  in accordance with their respective jurisdictions;

12                  (B) require transparency, among the Sec-  
13                  retary, the Secretary of State, and the Sec-  
14                  retary of Defense, in commodity jurisdiction  
15                  cases and commodity classification requests and  
16                  determinations;

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

21                  (D) provide deadlines for action and stand-  
22                  ards for decision, and ensure that disputes that  
23                  cannot be resolved may be referred to the Presi-  
24                  dent by the Secretary of State, the Secretary of  
25                  Defense, or the Secretary.

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

6 (c) LICENSING PROCESS.—The provisions of section  
7 109 shall supersede the procedures published pursuant to  
8 section 309(c) of the Nuclear Non-Proliferation Act of  
9 1978 (42 U.S.C. 2139a(c)) to the extent such procedures  
10 are inconsistent with the provisions of section 109.

11 (d) AMENDMENTS TO THE INTERNATIONAL EMER-  
12 GENCY ECONOMIC POWERS ACT.—

13 (1) EXERCISE OF PRESIDENTIAL AUTHORITY.—

14 (A) Section 204(b) of the International Emergency  
15 Economic Powers Act (50 U.S.C. 1703(b)) is  
16 amended—

17 (i) by striking “and” at the end of para-  
18 graph (4);

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

21 (iii) by adding at the end the following:

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

23 “(A) why the President believes the action  
24 is necessary to meet the unusual and extraor-  
25 dinary threat referred to in paragraph (2); and

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

3           (B) Section 204(c) of that Act (50 U.S.C.  
4           1703(c)) is amended—

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

7           (ii) by striking the period and inserting “,  
8           and, in the case of controls referred to in para-  
9           graph (6) of subsection (b), the President shall  
10          report to the Congress on the economic losses  
11          that have occurred as a result of the unilateral  
12          action”.

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

16                 (A) by redesignating section 208 as section  
17                 209; and

18                 (B) by inserting after section 207 the fol-  
19                 lowing:

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

21                 “(a) EXEMPTIONS FROM DISCLOSURE.—Information  
22                 obtained under this title before or after the enactment of  
23                 this section may be withheld only to the extent permitted  
24                 by statute, except that information submitted, obtained,

1 or considered in connection with any transaction that  
2 would otherwise be prohibited under this title, including—

3 “(1) the license or other authorization itself,

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

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

9 “(4) information obtained or furnished under  
10 this title in connection with international agree-  
11 ments, treaties, or obligations,

12 shall be withheld from public disclosure, and shall not be  
13 subject to disclosure under section 552 of title 5, United  
14 States Code, unless the release of such information is de-  
15 termined by the Secretary of Commerce or the Secretary  
16 of the Treasury to be in the national interest. In the case  
17 of information obtained or furnished under this title in  
18 connection with international agreements, treaties, or obli-  
19 gations, such a determination may be made only after con-  
20 sultation with the Secretary of State.

21 “(b) INFORMATION TO CONGRESS AND GAO.—

22 “(1) IN GENERAL.—Nothing in this title shall  
23 be construed as authorizing the withholding of infor-  
24 mation from the Congress or from the General Ac-  
25 counting Office.

1 “(2) AVAILABILITY TO THE CONGRESS.—

2 “(A) IN GENERAL.—All information ob-  
3 tained at any time under this title regarding  
4 the control of exports, including any report or  
5 license application required under this title,  
6 shall be made available to any committee or  
7 subcommittee of Congress of appropriate juris-  
8 diction upon the request of the chairman or  
9 ranking minority member of such committee or  
10 subcommittee.

11 “(B) PROHIBITION ON FURTHER DISCLO-  
12 SURE.—No committee, subcommittee, or Mem-  
13 ber of Congress shall disclose any information  
14 obtained under this title or previous Acts re-  
15 garding the control of exports which is submit-  
16 ted on a confidential basis to the Congress  
17 under subparagraph (A) unless the full commit-  
18 tee to which the information is made available  
19 determines that the withholding of the informa-  
20 tion is contrary to the national interest.

21 “(3) AVAILABILITY TO THE GAO.—

22 “(A) IN GENERAL.—Notwithstanding para-  
23 graph (1), information referred to in paragraph  
24 (2) shall, consistent with the protection of intel-  
25 ligence, counterintelligence, and law enforce-

1           ment sources, methods, and activities, as deter-  
2           mined by the agency that originally obtained  
3           the information, and consistent with the provi-  
4           sions of section 716 of title 31, United States  
5           Code, be made available only by the agency,  
6           upon request, to the Comptroller General of the  
7           United States or to any officer or employee of  
8           the General Accounting Office authorized by  
9           the Comptroller General to have access to such  
10          information.

11           “(B) PROHIBITION ON FURTHER DISCLO-  
12          SURES.—No officer or employee of the General  
13          Accounting Office shall disclose, except to the  
14          Congress in accordance with this subsection,  
15          any such information which is submitted on a  
16          confidential basis and from which any individ-  
17          ual can be identified.

18           “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-  
19          TIAL INFORMATION.—Any officer or employee of the Unit-  
20          ed States, or any department or agency thereof, who pub-  
21          lishes, divulges, discloses, or makes known in any manner  
22          or to any extent not authorized by law any confidential  
23          information that—

24           “(1) he or she obtains in the course of his or  
25          her employment or official duties or by reason of any

1 examination or investigation made by, or report or  
2 record made to or filed with, such department or  
3 agency, or officer or employee thereof, and

4 “(2) is exempt from disclosure under this sec-  
5 tion,

6 shall be fined not more than \$10,000, or imprisoned not  
7 more than 1 year, or both, shall be removed from office  
8 or employment, and shall be subject to a civil penalty of  
9 not more than \$1,000.”.

10 (3) PENALTIES.—Section 206 of the Inter-  
11 national Emergency Economic Powers Act (50  
12 U.S.C. 1705) is amended—

13 (A) in subsection (a) by inserting “, or at-  
14 tempts to violate,” after “violates”; and

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

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

20 (1) in subsection (a)—

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

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

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

3           (f) REPORT ON OFAC AND ODTC.—

4           (1) STUDY ON OFAC.—The Secretary of the  
5           Treasury shall study ways to make the operations of  
6           the Office of Foreign Assets Control of the Depart-  
7           ment of the Treasury more effective and efficient in  
8           responding to licensing requests and other inquiries  
9           of United States exporters, including through the  
10          upgrading of technology in that office.

11          (2) STUDY ON ODTC.—The Secretary of State  
12          shall study ways to make the Office of Defense  
13          Trade Controls of the Department of State more ef-  
14          fective and efficient in responding to licensing re-  
15          quests and other inquiries of United States export-  
16          ers, including through the upgrading of technology  
17          in that office.

18          (3) SUBMISSION OF REPORTS.—Not later than  
19          6 months after the date of the enactment of this  
20          Act, the Secretary of the Treasury shall submit to  
21          the Congress a report on the study conducted under  
22          paragraph (1) and the Secretary of State shall sub-  
23          mit to the Congress a report on the study conducted  
24          under paragraph (2).

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

2 (a) SENSE OF CONGRESS.—

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

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

9 (A) the Arab League issues a public pro-  
10 nouncement that the Arab League has ended  
11 the secondary Arab boycott;

12 (B) all activities carried out by the Central  
13 Office for the Boycott of Israel in support of  
14 the secondary Arab boycott have been termi-  
15 nated;

16 (C) the Arab League and the individual  
17 countries that are members of the Arab League  
18 have terminated the practice of barring United  
19 States persons and foreign companies that do  
20 not comply with the secondary Arab boycott  
21 from doing business with countries that are  
22 members of the Arab League, and have de-  
23 clared null and void any existing list of such  
24 barred persons and companies; and

25 (D) the Arab League, and the individual  
26 countries that are the members of the Arab

1 League, have ceased requesting United States  
2 persons to take actions prohibited under section  
3 108(a).

4 (b) DEFINITION.—For purposes of this section, the  
5 term “secondary Arab boycott” means the refusal to do  
6 business with persons who do not comply with requests  
7 to take any action prohibited under section 108(a) with  
8 respect to Israel.

9 **SEC. 119. CONFORMING AMENDMENTS.**

10 (a) ARMS EXPORT CONTROL ACT.—

11 (1) Section 38 of the Arms Export Control Act  
12 (22 U.S.C. 2778) is amended—

13 (A) in subsection (e)—

14 (i) in the first sentence by striking  
15 “subsections (c)” and all that follows  
16 through “12 of such Act” and inserting  
17 “subsections (b), (c), (d) and (e) of section  
18 110 of the Export Administration Act of  
19 1996, by subsections (a) and (b) of section  
20 113 of such Act, and by section 114(g) of  
21 such Act”; and

22 (ii) in the third sentence by striking  
23 “11(c) of the Export Administration Act of  
24 1979” and inserting “110(c) of the Export  
25 Administration Act of 1996”; and

1 (B) in subsection (g)(1)(A) by striking  
2 clause (ii) and inserting the following:

3 “(ii) section 110 of the Export Administra-  
4 tion Act of 1996,”.

5 (2) Section 39A(c) of the Arms Export Control  
6 Act, as added by the Foreign Relations Authoriza-  
7 tion Act, Fiscal Years 1994 and 1995, is amended—

8 (A) by striking “(c),” and all that follows  
9 through “12(a) of such Act” and inserting “(c),  
10 (d), and (e) of section 110, section 112(c), and  
11 subsections (a) and (b) of section 113, of the  
12 Export Administration Act of 1996”; and

13 (B) by striking “11(c)” and inserting  
14 “110(c)”.

15 (3) Section 40(k) of the Arms Export Control  
16 Act (22 U.S.C. 2780(k)) is amended—

17 (A) by striking “11(c), 11(e), 11(g), and  
18 12(a) of the Export Administration Act of  
19 1979” and inserting “110(b), 110(c), 110(e),  
20 113(a), and 113(b) of the Export Administra-  
21 tion Act of 1996”; and

22 (B) by striking “11(c)” and inserting  
23 “110(c)”.

24 (4) Section 73A of the Arms Export Control  
25 Act, as added by the Foreign Relations Authoriza-

1 tion Act, Fiscal Years 1995 and 1995, is amended  
2 by striking “a MTCR adherent” and inserting “an  
3 MTCR adherent”.

4 (b) OTHER PROVISIONS OF LAW.—

5 (1) Section 5(b)(4) of the Trading with the  
6 Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.  
7 5(b)(4)) is amended by striking “section 5 of the  
8 Export Administration Act of 1979, or under section  
9 6 of that Act to the extent that such controls pro-  
10 mote the nonproliferation or antiterrorism policies of  
11 the United States” and inserting “the Export Ad-  
12 ministration Act of 1996”.

13 (2) Section 502B(a)(2) of the Foreign Assist-  
14 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-  
15 ed in the second sentence—

16 (A) by striking “Export Administration  
17 Act of 1979” the first place it appears and in-  
18 serting “Export Administration Act of 1996”;  
19 and

20 (B) by striking “Act of 1979” and insert-  
21 ing “Act of 1996”.

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

1 (i) in paragraph (1)(B) by inserting “or  
2 section 106(i) of the Export Administration Act  
3 of 1996” after “Act of 1979”; and

4 (ii) in paragraph (2) by striking “6(j) of  
5 the Export Administration Act of 1979” and  
6 inserting “106(i) of the Export Administration  
7 Act of 1996”.

8 (B) For purposes of the report required by  
9 March 31, 1996, under section 140(a) of the For-  
10 eign Relations Authorization Act, Fiscal Years 1988  
11 and 1989, the reference in paragraph (2) of such  
12 section to “section 106(i) of the Export Administra-  
13 tion Act of 1996” shall be deemed to refer to “sec-  
14 tion 6(j) of the Export Administration Act of 1979  
15 or section 106(i) of the Export Administration Act  
16 of 1996”.

17 (4) Section 40(e)(1) of the State Department  
18 Basic Authorities Act of 1956 (22 U.S.C.  
19 2712(e)(1)) is amended by striking “6(j)(1) of the  
20 Export Administration Act of 1979” and inserting  
21 “106(i)(1) of the Export Administration Act of  
22 1996”.

23 (5) Section 110 of the International Security  
24 and Development Cooperation Act of 1980 (22

1 U.S.C. 2778a) is amended by striking “Act of  
2 1979” and inserting “Act of 1996”.

3 (6) Section 205(d)(4)(B) of the State Depart-  
4 ment Basic Authorities Act of 1956 (22 U.S.C.  
5 4305(d)(4)(B)) is amended by striking “6(j) of the  
6 Export Administration Act of 1979” and inserting  
7 “106(i) of the Export Administration Act of 1996”.

8 (7) Section 203(b)(3) of the International  
9 Emergency Economic Powers Act (50 U.S.C.  
10 1702(b)(3)) is amended by striking “section 5 of the  
11 Export Administration Act of 1979, or under section  
12 6 of such Act to the extent that such controls pro-  
13 mote the nonproliferation or antiterrorism policies of  
14 the United States” and inserting “the Export Ad-  
15 ministration Act of 1996”.

16 (8) Section 491(f) of the Forest Resources Con-  
17 servation and Shortage Relief Act of 1990 (16  
18 U.S.C. 620e(f)) is repealed.

19 (9) Section 499 of the Forest Resources Con-  
20 servation and Shortage Relief Act of 1990 (16  
21 U.S.C. 620j) is amended by striking “section 7 of  
22 the Export Administration Act of 1979” and insert-  
23 ing “section 107 of the Export Act of 1996”.

24 (10) Section 1605 (a)(7)(A) of title 28, United  
25 States Code, is amended by striking “6(j) of the Ex-

1 port Administration Act of 1979 (50 U.S.C. App.  
2 2405(j))” and inserting “106(i) of the Export Ad-  
3 ministration Act of 1996”.

4 (11) Section 2332d(a) of title 18, United States  
5 Code, is amended by striking “6(j) of the Export  
6 Administration Act (50 U.S.C. App. 2405)” and in-  
7 serting “106(i) of the Export Administration Act of  
8 1996”.

9 (12) Section 620H (a)(1) of the Foreign Assist-  
10 ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-  
11 ed by striking “6(j) of the Export Administration  
12 Act of 1979 (50 U.S.C. App. 2405(j))” and insert-  
13 ing “106(i) of the Export Administration Act of  
14 1996”.

15 (13) Section 1621(a) of the International Fi-  
16 nancial Institutions Act (22 U.S.C. 262p–4q(a)) is  
17 amended by striking “6(j) of the Export Administra-  
18 tion Act of 1979 (50 U.S.C. App. 2405(j))” and in-  
19 serting “106(i) of the Export Administration Act of  
20 1996”.

21 (c) REPEAL.—The Export Administration Act of  
22 1979 is repealed.

23 **SEC. 120. EXPIRATION DATE.**

24 This title expires on June 30, 2001.

1 **SEC. 121. SAVINGS PROVISIONS.**

2 (a) IN GENERAL.—All delegations, rules, regulations,  
3 orders, determinations, licenses, or other forms of admin-  
4 istrative action which have been made, issued, conducted,  
5 or allowed to become effective under—

6 (1) the Export Control Act of 1949, the Export  
7 Administration Act of 1969, or the Export Adminis-  
8 tration Act of 1979, or

9 (2) those provisions of the Arms Export Control  
10 Act which are amended by section 119,

11 and are in effect at the time this title takes effect, shall  
12 continue in effect according to their terms until modified,  
13 superseded, set aside, or revoked under this title or the  
14 Arms Export Control Act.

15 (b) ADMINISTRATIVE AND JUDICIAL PROCEED-  
16 INGS.—

17 (1) EXPORT ADMINISTRATION ACT.—This title  
18 shall not affect any administrative or judicial pro-  
19 ceedings commenced or any application for a license  
20 made, under the Export Administration Act of 1979,  
21 which is pending at the time this title takes effect.  
22 Any such proceedings, and any action on such appli-  
23 cation, shall continue under the Export Administra-  
24 tion Act of 1979 as if that Act had not been re-  
25 pealed.

1           (2) OTHER PROVISIONS OF LAW.—This title  
2 shall not affect any administrative or judicial pro-  
3 ceedings commenced or any application for a license  
4 made, under those provisions of the Arms Export  
5 Control Act which are amended by section 119, if  
6 such proceedings or application is pending at the  
7 time this title takes effect. Any such proceedings,  
8 and any action on such application, shall continue  
9 under those provisions as if those provisions had not  
10 been amended by section 119.

11       (c) TREATMENT OF CERTAIN DETERMINATIONS.—  
12 Any determination with respect to the government of a  
13 foreign country under section 6(j) of the Export Adminis-  
14 tration Act of 1979, that is in effect at the time this title  
15 takes effect, shall, for purposes of this title or any other  
16 provision of law, be deemed to be made under section  
17 106(i) of this Act until superseded by a determination  
18 under such section 106(i).

19                           **TITLE II—NUCLEAR**  
20           **PROLIFERATION PREVENTION**  
21   **SEC. 201. REPEAL OF TERMINATION OF PROVISIONS OF**  
22                           **THE NUCLEAR PROLIFERATION PREVENTION**  
23                           **ACT OF 1994.**

24       (a) REPEAL.—Part D of the Nuclear Proliferation  
25 Prevention Act of 1994 (part D of title VIII of the For-

1 eign Relations Authorization Act, Fiscal Years 1994 and  
2 1995; Public Law 103–236; 108 Stat. 525) is hereby re-  
3 pealed.

4 (b) PRESIDENTIAL DETERMINATIONS.—Section  
5 824(c) of the Nuclear Proliferation Prevention Act of  
6 1994 is amended by striking “, in writing after oppor-  
7 tunity for a hearing on the record,”.

8 (c) JUDICIAL REVIEW.—Section 824 of the Nuclear  
9 Proliferation Prevention Act of 1994 is amended—

10 (1) by striking subsection (e); and

11 (2) by redesignating subsections (f) through (k)  
12 as subsections (e) through (j), respectively.

13 (d) CONFORMING AMENDMENT.—Section  
14 102(b)(2)(G) of the Arms Export Control Act (22 U.S.C.  
15 2799aa–1(b)(2)(G)) is amended by striking “section 6 of  
16 the Export Administration Act of 1979” and inserting  
17 “section 105 or 106 of the Export Administration Act of  
18 1996”.

19 **SEC. 202. SEEKING MULTILATERAL SUPPORT FOR UNILAT-**  
20 **ERAL SANCTIONS.**

21 The Secretary of State, in consultation with appro-  
22 priate departments and agencies, shall seek the support  
23 of other countries for sanctions imposed under the Nuclear  
24 Proliferation Prevention Act of 1994 or the amendments  
25 made by that Act.

1 **SEC. 203. SANCTIONS UNDER THE NUCLEAR PROLIFERA-**  
2 **TION PREVENTION ACT OF 1994.**

3 Section 102(b)(2) of the Arms Export Control Act  
4 (22 U.S.C. 2799aa-1(b)(2)) is amended—

5 (1) in subparagraph (D) by striking “shall not  
6 apply—” and all that follows through the end of  
7 clause (ii) and inserting “shall not apply to humani-  
8 tarian assistance.”;

9 (1) in subparagraph (G) by striking “, except  
10 that” and all that follows through the end of the  
11 subparagraph and inserting a period; and

12 (3) by adding at the end the following:

13 “(H)(i) The President shall prohibit the impor-  
14 tation into the United States of specific products  
15 produced in that country by persons who have en-  
16 gaged in the activities described in paragraph (1)  
17 that were the basis of the President’s determination  
18 under such paragraph.

19 “(ii) In the event that it is not possible to iden-  
20 tify the persons who have engaged in the activities  
21 described in paragraph (1) that were the basis of the  
22 President’s determination under such paragraph, the  
23 President shall prohibit the importation into the  
24 United States of products produced in that country  
25 by those persons that the President shall designate  
26 as most closely identified with those activities.

1           “(iii) For purposes of this subparagraph, the  
2 term ‘person’ means—

3                   “(I) a natural person;

4                   “(II) a corporation, business association,  
5 partnership, society, or trust, or any other non-  
6 governmental entity, organization, or group;

7                   “(III) a governmental entity operating as a  
8 business enterprise;

9                   “(IV) a division or office of a governmental  
10 department; or

11                   “(V) a military unit or successor to such  
12 unit.

13           “(iv) The prohibition on imports imposed under  
14 this subparagraph shall be in addition to any other  
15 prohibition on imports in effect before the Presi-  
16 dent’s determination under paragraph (1) is made.  
17 The prohibitions contained in subparagraphs (D), (G),  
18 and (H) shall not apply to any transaction subject to the  
19 reporting requirements of title V of the National Security  
20 Act of 1947.”.

Passed the House of Representatives July 16, 1996.

Attest:

*Clerk.*